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## NATIONAL INTEGRITY SYSTEM ASSESSMENT UKRAINE 2015

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# TABLE OF CONTENTS

I. INTRODUCTORY INFORMATION	3
ACKNOWLEDGEMENTS	
II. ABOUT THE ASSESSMENT OF THE NA	
III. EXECUTIVE SUMMARY	11
1. General overview	
2. Strongest and the weakest pillars of the NIS	
3. The reasons for the weakness of NIS pillars	
IV. COUNTRY PROFILE – THE FOUNDATI TIONAL INTEGRITY SYSTEM	
V. CORRUPTION PROFILE	28
VI. ANTI-CORRUPTION ACTIVITIES	
VII. NATIONAL INTEGRITY SYSTEM	
1. Legislature	37
2. Executive	
3. Judiciary	60
4. Public Sector	
5. Law Enforcement Agencies	
6. Electoral Management Body	
7. Ombudsman	

VIII. CONCLUSION	_204
13. Business	
12. Civil Society	180
11. Media	170
10. Political parties	157
9. Anti-Corruption Agencies	132
8. Supreme Audit Institution	122

# I. INTRODUCTORY INFORMATION

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#### ACRONYMS AND ABBREVIATIONS

ACKON TWIS AND A	
ACA	Anti-Corruption Agencies
AMC	Anti-Monopoly Committee
BTI	Bertelsmann Transformation Index
CEC	Central Election Commission
CIDA	Canadian International Development Agency
CM CoE	Committee of Ministers of the Council of Europe
CMU	Cabinet of Ministers of Ukraine
CPC	Criminal Procedure Code of Ukraine
CPI	Corruption Perceptions Index
CSOs	Civil Society Organisations
CVU	Committee of Voters of Ukraine
EBRD	European Bank for Reconstruction and Development
ECtHR	European Court of Human Rights
EMB	Electoral Management Body
EU	European Union
GCB	Global Corruption Barometer
GCR	Global Competitiveness Report
GDP	Gross Domestic Product
GRECO	Council's of Europe Group of States against Corruption
HACU	Higher Administrative Court of Ukraine
HCJ	High Council of Justice
HRW	Human Rights Watch
HQCJ	High Qualification Commission of Judges
ICC	International Chamber of Commerce
IFES	International Foundation for Electoral Systems
INTOSAI	International Organisation of Supreme Audit Institutions
IREX	International Research and Exchanges Board
IRF	International Renaissance Foundation
ISA	International Standards on Auditing
JSC	Joint Stock Company
MP	Member of Parliament
NACBU	National Anti-Corruption Bureau of Ukraine
NAPC	National Agency for Prevention of Corruption
NBC	National Broadcasting Council
NEC	National Expert Commission for Protection of Public Morality

#### ACRONYMS AND ABBREVIATIONS

NGO	Nongovernmental Organisation
ODIHR	Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe
OECD/ACN	Organisation for Economic Co-operation and Development / Anti-Corruption Network for Eastern Europe and Central Asia
OSCE	Organisation for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
SAI	Supreme Audit Institution
SCA	State Court Administration
SIGMA	Support for Improvement in Governance and Management
SSU	Security Service of Ukraine
ТІ	Transparency International
TRBs	Television and Radio Stations
UCAN	Ukrainian Civic Action Network Project
UNCAC	United Nations Convention against Corruption
UN CEDAW	United Nations Committee on the Elimination of Discrimination against Women
UNDP	United Nations Development Program
UNITER	Ukraine National Initiatives to Enhance Reforms
UNODC	United Nations Office on Drugs and Crime
UPAC	Support to Good Governance: Project against Corruption in Ukraine
USAID	United States Agency for International Development
VRU	Verkhovna Rada of Ukraine (the Legislature)
WB	World Bank
WTO	World Trade Organisation

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June 2015

For many years, Ukraine's Government has been failing to implement effective reforms aimed to curb corruption in the country. Lack of significant efforts aimed to combat corruption is reflected in permanently low scores for Ukraine under the key international corruption-related indexes, including TI Corruption Perception Index. Starting from 2010, when the former President Yanukovych came to power, the situation in terms of addressing the issue of corruption changed for the worse. The President himself, key members of the Government, judges and senior officials used their posts for personal enrichment and building a political regime that could hardly be considered democratic. Although within the EU-Ukraine Association talks the former Government adopted some anti-corruption legal instruments, most of them were not enforced in practice, and cases of corruption uncovered by civil society activists and the media mostly went unsanctioned.

The Government's refusal to sign the EU-Ukraine Association Agreement in November 2013, widescale corruption and the authoritarian regime built by Yanukovych resulted in citizen protests known as the Revolution of Dignity which ended with Yanukovych's escape from the country and a change of Government in power. The deteriorated situation in the national economy, the annexation of Crimea by the Russian Federation and an undeclared war in Ukraine's East between the Government and armed separatists forced the Government to seek the support of Western democracies and major international financial institutions, such as the IMF. The latter connected their support to implementation of a number of reforms in the country, including comprehensive reforms of the various governance institutions and anti-corruption reform. Early presidential and parliamentary elections held in 2014 established preconditions for more effective anticorruption policy in the country.

While the legislature succeeded in adopting a number of important anti-corruption laws in the end of 2014, much work still has to be done to decrease the level of corruption in Ukraine. This work includes comprehensive constitutional reform to strengthen independence of law enforcement agencies and the judiciary and restriction of MP immunities, establishment of the National Anti-Corruption Bureau of Ukraine and National Agency for Prevention of Corruption, creation of an adequate environment for doing business and investment in the economy, reform of the Accounting Chamber and comprehensive political finance reform.

On behalf of Transparency International Ukraine, I am pleased to present the study on the National Integrity System of Ukraine, a comprehensive assessment of the

legal basis for and actual practice of the functioning of Ukraine's key institutions responsible for prevention of corruption. This study covers the period from the end of 2010 to the beginning of 2015 and aims to suggest precise and realistic proposals for comprehensive anti-corruption reform in Ukraine.

I would like to thank the authors who produced the NIS assessment report, as well as TI-Secretariat team who supervised implementation of the project, in particular, Andrew McDevitt, Giulia Sorbi and Emilija Taseva. Thanks also go to members of the advisory group who dedicated their time to ensure reliability and comprehensiveness of the NIS assessment and verified the NIS pillar scores, and interviewees who provided the authors with the information on the actual performance of the pillars covered by the NIS assessment. Last but not least, I would like to express my deep gratitude to the European Union for its generous support in funding this project.

## II. ABOUT THE ASSESSMENT OF THE NATIONAL INTEGRITY SYSTEM

The National Integrity System (NIS) comprises the principle governance institutions in a country that are responsible for the fight against corruption. These institutions include not only various public authorities (legislature, executive, public sector, judiciary and other), but also political parties, civil society, media, and business. When these governance institutions function properly, they constitute a healthy and robust National Integrity System, one that is effective in combating corruption as part of the larger struggle against abuse of power, malfeasance and misappropriation in all its forms. However, when these institutions are characterised by a lack of appropriate regulations and by unaccountable behaviour, corruption is likely to thrive, with negative ripple effects for the societal goals of equitable growth, sustainable development and social cohesion. Therefore, strengthening the NIS promotes better governance in a country, and, ultimately, contributes to a more just society overall.

The concept of the NIS has been developed and promoted by Transparency International (TI) as part of TI's holistic approach to combating corruption.<sup>1</sup> While there is no absolute blueprint for an effective anti-corruption system, there is a growing international consensus as to the salient aspects that work best to prevent corruption and promote integrity. The NIS assessment offers an evaluation of the legal basis and the actual performance of institutions ("pillars") relevant to the overall anti-corruption system. The NIS is generally considered to comprise of 13 pillars (the number may depend on specific country), which are based on a number of foundations in terms of people's rights, resources, values and voice.

The NIS is based on a holistic approach to preventing corruption, since it looks at the entire range of relevant institutions and also focuses on the relationships among them. Thus, the NIS presupposes that a lack of integrity in a single institution would lead to serious flaws in the entire integrity system. As a consequence, the NIS assessment does not seek to offer an in-depth evaluation of each pillar, but rather puts an emphasis on covering all relevant pillars and at assessing their inter-linkages.

TI believes that such a holistic "system analysis" is necessary to be able to appropriately diagnose corruption risks and develop effective strategies to counter those risks. This analysis is embedded in a consultative approach, involving the key anti-corruption agents in government, civil society, the business community and other relevant sectors with a view to building momentum, political will and civic pressure for relevant reform initiatives.

Since its inception in the late 1990s until January 2015, more than 130 NIS assessments have been conducted by TI<sup>2</sup>, many of which have contributed to civic advocacy campaigns, policy reform initiatives, and the overall awareness of the country's governance deficits.

The project on the Ukraine's NIS assessment was funded by the European Union and was launched in March 2014. The Ukraine's NIS assessment reviews the period from the beginning of 2011 to the mid-2015 and identifies key developments in the functioning of the NIS in the country after the release of the previous Ukraine NIS assessment in February 2011. Like the 2011 NIS assessment report<sup>3</sup>, the 2015 report is strictly based on the methodology provided by the TI Secretariat.

<sup>1</sup> For further information on the NIS Methodology see: http://archive.transparency.org/policy\_research/nis [accessed December 1, 2014].

<sup>2</sup> All NIS assessment reports produced so far are available at: http://archive.transparency.org/policy\_research/nis/nis\_reports\_by\_country [accessed December 1, 2014].

<sup>3 2011</sup> NIS Assessment for Ukraine can be found at: http://archive.transparency.org/content/download/60824/974071 [accessed December 1, 2014].

The content of some pillars is assessed as of the 1st quarter of 2015 (Anti-Corruption Agencies, Public Sector) with the aim of giving a relevant reflection of the most recent anti-corruption reforms. Adoption of the law On Prevention of Corruption, and its enactment in late April 2015 also influenced the evaluation of legislative provisions of integrity in practically all public and business institutions.

The implementation of the NIS assessment project comprised a series of methodological steps. In particular, during April – December 2014, the authors of the NIS assessment collected actual data and information for each of the NIS indicators for all pillars, as well as for the corruption profile, country profile and anti-corruption activities sections. The process of data collection was complicated by the fact that in 2014 two national elections (presidential in May 2014 and parliamentary in October 2014) were held, something that brought a certain level of instability in the functioning of the governance institutions and ultimately led to the establishment of the new Cabinet of Ministers in December 2014. Data collection included mainly desk research by the authors and key informant interviews. Unlike in 2010, the authors of the NIS assessment decided not to hold the field tests, as starting from early 2011 CSOs have been producing comprehensive reports on openness of the government institutions which identified the major problems in terms of transparency of public administration at both the central and local levels.

The preliminary results of the Ukraine's NIS assessment, as well as recommendations aimed to improve performance of each NIS pillar and pillar scores, were discussed and validated by the Advisory Group on December 12, 2014. The Advisory Group comprised 9 members representing major stakeholder groups, including civil society, media, business, and government. The NIS study was then updated to incorporate comments of the Advisory Group members and presented for discussion at the National Integrity Workshop, which was held on January 20, 2015. That workshop brought together experts from civil society, academia, representatives of the law enforcement agencies and other pillars to discuss the findings and recommendations of the NIS assessment, as well as to suggest proposals for further reforms in fight against corruption. Also amendments to the study based on the results of the National Integrity Workshop and TI Secretariat's feedback were made in the end of January 2015.

Overall, the assessment of the NIS in Ukraine evaluates the legal framework and actual performance of 13 pillars, in particular legislature, executive, judiciary, public sector, law enforcement agencies, electoral management body, ombudsman, supreme audit institution, anti-corruption agencies, political parties, media, civil society organisations, and business. However, a couple of major observations should be noted in this connection.

First, the legal framework and actual performance of the presidency generally have not been evaluated within the Ukraine's NIS assessment. In particular, in February 2014, Ukrainian Parliament reinstated the legal effect of the 2004 Constitution, which significantly restricts the powers of the President in terms of its influence on the executive branch of governance. While the President still may influence the Cabinet of Ministers in a number of ways [see: Executive], in fact the incumbent President Petro Poroshenko influences mainly the Cabinet policies related to national security and defence, as well as foreign policy of the state. His role in formulating and implementing anti-corruption policies remains limited, with major role played by the Cabinet of Ministers.

As in 2011, the pillar report on the Electoral Management Body (EMB) deals only with the Central Election Commission (CEC), and only with the legal framework and performance of the CEC as concerns national (but not local) elections. This can be explained by the fact that under the TI methodology EMB is defined as "the body [i.e. not the bodies] responsible for administering elections and responsible for honestly and impartially implementing the procedures specified in the electoral legal framework". The local elections are administered mainly by the Territorial Election Commissions rather than by the CEC.

# **III. EXECUTIVE SUMMARY**



(The table compares overall performance of all pillars studied in 2010 and 2015, where 0 is the lowest and 100 is the highest score in terms of integrity assessment)

## 1. GENERAL OVERVIEW

Ukraine's 2015 NIS assessment suggests that corruption in Ukraine continues to be a systemic problem at all levels of public administration. While in some areas the situation has improved since 2010, both petty and grand corruption are still flourishing. Political parties, the legislature, police, public servants and judiciary are still perceived by the citizens as highly corrupt. The level of tolerance to corruption within Ukrainian society has slightly decreased since 2010, but almost a third of Ukrainians still believe that corruption can be justified and view bribery as one of the easiest ways to solve their problemswith government institutions. Ukraine continues to receive low scores from international organisations on different corruption-related indicators and indices, such as TI's Corruption Perceptions Index, and the World Bank's and World Economic Forum's indicators.

After former President Yanukovych's escape from the country in late February 2014, the parliament and government started to act more actively to curb corruption. In particular, the Parliament managed to pass a number of important pieces of legislation aimed to more effectively counteract corruption in Ukraine, including the Law on Principles for Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2014 – 2017, the Law on Prevention of Corruption, and the Law on Amendments to Certain Legislative Acts of Ukraine Related to Identification of Ultimate Beneficiaries of Legal Persons and Public Figures. All these laws were adopted on October 14, 2014, and entered into legal force in 2015. The new Parliament, elected in early elections in October 2014, as well as the new Government installed in December 2014, seem to be willing to build on previous success. The Coalition Agreement signed by 5 major factions in the new legislature and Government Program of Action approved in December 2014 provide a list of precise measures to decrease the level of corruption in the country. Both CSOs and international donors have played an important role in the process, as many of the drafts adopted as laws in October 2014 were prepared in collaboration with NGOs supported by donor funding. The effective counteraction of corruption will enable the Government to receive extra funds from the EU and others needed to support the collapsing Ukrainian economy.

At the same time, the success of parliament and the government in setting up a comprehensive legal framework for combating corruption are to a significant extent limited by poor enforcement of the existing rules by the judiciary and law enforcement bodies, who often turn a blind eye to obvious cases of corruption and have so far failed to bring Yanukovych and his associates to account for their alleged corruption offences. This is one of the reasons why by the end of December 2014, 80% of citizens were convinced that the level of corruption in the country after Maidan had not changed at all or had even increased.

## 2. STRONGEST AND THE WEAKEST PILLARS OF THE NIS



#### Strongest pillars

Overall, the NIS has shown consistent, if somewhat limited, improvement since 2011, with 11 of 13 pillars having increased their scores (with the exception of law enforcement agencies and the Supreme Audit Institution). While in 2010, the strongest pillar of the NIS was the Supreme Audit Institution (SAI), through 2011-2015 the situation changed, and civil society, anti-corruption agencies and the executive have become the strongest pillars of the NIS. The list of other relatively strong NIS pillars in 2014 includes the Electoral Management Body, the Ombudsman and the Supreme Audit Institution (despite the fact that it has become less independent, transparent and accountable than before.)

The relative strength of civil society can be explained by a number of factors, in particular, by the legal framework which creates a conducive environment for NGO operations and protects them from undue external interference, an active CSO engagement in anti-corruption policy reforms, and an increased CSO role (compared to 2010) in holding government accountable. While there were numerous cases of government interference in NGO activities and prosecution of civil society leaders and activists in 2010 and earlier, from February 2014, NGOs are generally free from official harassment. However, the level of CSO transparency and accountability has not increased since 2010, thus decreasing the overall score for the pillar. Publication of narrative and financial reports by CSOs is not widespread, even though the overall number of the CSOs making their reports publicly available has increased. Only a limited number of organisations have adopted their own codes of ethics. The existing systems of governance within CSOs, as well as their internal decision-making procedures have very little in common with what is written in the CSO internal documents. Integrity

within the CSOs is promoted mainly by donor pressure rather than by CSOs themselves.

The reason for the strength of anti-corruption agencies is the institutional reconstruction that took part in the anti-corruption system due to the reform of October 2014. The legislation that has been adopted on the basis of anti-corruption standards allowed the creation of strong foundations for the proper functioning of the new anti-corruption agencies: the National Anti-Corruption Bureau (law enforcement body) and the National Agency for the Prevention of Corruption (preventive body). The key challenge now is to ensure adherence to legislative regulations when establishing the aforementioned agencies and in the process of their further functioning. Only in this case can those agencies work effectively.

#### Weakest pillars

The weakest pillars in the 2010 NIS assessment have also faced some changes, namely political parties, law enforcement agencies, and the public sector. While other pillars do play a role in combating corruption, their performance is moderated by limited capacity to function (judiciary, ACA, business), weak governance (legislature, judiciary, media, civil society and business) or limited role in the national integrity system (judiciary, EMB, ACA).

The reasons for weakness of political parties are the same as 2010 and are rooted mainly in a flawed legal framework. In particular, the legislation does not provide for public funding of political parties and does not restrict the value of donations to the parties, thus making them dependent on wealthy donors. Such dependence results in poor party role in aggregation and representation of societal interests and explains the score of 0 for effective internal democratic governance within the parties.IOne can hardly expect strong internal democracy in institutions completely dependent on private funding from limited sources and governed by the party leadership. Party transparency and accountability are ensured neither in laws, nor in practice.

As in 2010, the overall performance of the public sector is still undermined by imperfect legislation that fails to ensure its independence. Resources available to the public sector remain insufficient to enable it to effectively exercise its powers. While legislation governing the transparency and integrity of the public sector improved to a certain extent, some of the existing provisions are flawed and poorly implemented. Legislation governing public procurement has improved since 2010, but some important flaws in the previous procurement legislation have not yet been eliminatedand implementationhas proved to be problematic. Due to limited resources, the public sector plays no significant role in educating the public on its role in fighting corruption. Most of the public sector institutions (except for the Ministry of Justice) do not actively cooperate with NGOs and other stakeholders in preventing or addressing corruption, and their approach towards such cooperation is hardly proactive. In general, the public sector's performance has only slightly improved compared to 2010.

The weakness of the law enforcement agencies can be explained by a number of factors. The legal guarantees of independence of law enforcement agencies remain the same as 2010. Public prosecutors are almost entirely dependent on other branches of power of higher-level prosecutors. Although the legal provisions governing transparency and accountability of law enforcement agencies has somewhat improved since 2010, they contain a number of defects and do not ensure transparency and accountability of the respective agencies in practice. The legislation governing the integrity of law enforcement agencies is very much the same as for the public sector, however, there is insufficient actionin practice, and many prosecutors are involved in corruption scandals. Police and prosecutors have rather broad powers to detect and prosecute corruption, but they fail to effectively use the rights granted by law, especially when senior officials are concerned.

## 3. THE REASONS FOR THE WEAKNESS OF NIS PILLARS

The NIS temple graph demonstrates that the entire integrity system rests on shaky foundations. The political-institutional foundations are weakened by lack of respect for the rule of law and de facto absence of an independent judiciary to protect civil rights. The socio-political foundations of the NIS have strengthened since 2010 as Ukrainian society has consolidated. In 2014, CSOs became more active and effective in advocating for reforms in the country, while parties avoid emphasising cleavages in society as they did in the past. However, strong patronage networks in Ukrainian society weaken the socio-political foundations of the NIS. The collapsing national economy, social inequality, a large share of population living below the poverty line, and poor infrastructure are the key factors that make the social-economic foundations of the NIS have strengthened since 2010, but a low level of interpersonal trust among Ukrainians and high tolerance for corruption limit their influence in the NIS.

When society demonstrates a high level of tolerance for corruption, one can hardly expect that public officials, judges, police, prosecutors and others will not engage in corrupt practices once elected or appointed. The low level of interpersonal trust is transferred to specific pillars, such as media and business, which show no significant will to combine their efforts to counteract corruption with other NIS sectors and institutions or by adopting sector-wide codes of conduct. Lack of respect for the rule of law could be a good explanation for the undermined integrity of the law enforcement agencies, public sector, and judiciary, as well as for limited independence of some pillars (law enforcement agencies, judiciary, media and others) in combating corruption.

**1. Lack of financial, human and other resources.** Due to the on-going conflict in the east of the country and national currency depreciation, most of the pillars (in particular those funded from the State Budget of Ukraine) lack adequate resources. Public funding of many pillars has decreased, while in many institutions a certain percentage of public officials was fired to reduce salary and other bureaucratic expenses. As a result, the capacity of the pillars to function is undermined by a lack of adequate resources allowing them to carry out their activities in effective way. As in previous years, many institutions receive funding unevenly, with large proportions of funding allocated at the end of the year. Some institutions, such as the Government's Anti-Corruption Agent (ACA), do not have separate public funding at all, i.e. their budget is included into the overall budget of the Government. As regards political parties, they rely only on private funding (as the legislation provides for no direct public funding of political parties). As in the previous years, CSOs are funded mainly by international donors, while for some the access even to donor funds remains limited.

Insufficient funding has a negative impact not only on the capacity of the relevant institutions to function, but also on their internal governance and role within the overall integrity system. It restricts the possibility of conducting comprehensive training on integrity issues for employees of the public sector, judiciary, ombudsman, and SAI, and maintains the low level of integrity of the relevant pillars. A lack of public funding also decreases the role of EMB in elections administration, as well as the role of the ACA in educating citizens.

**2. Flawed legal framework.** Since 2010, the laws governing transparency and the integrity of public institutions (legislature, executive, judiciary, public sector and others) have to a certain degree improved, mainly due to the adoption of the Law on Access to Public Information and Law on Principles for Prevention and Counteraction to Corruption. Despite that, the laws governing the activities of specific institutions (such as the ombudsman, SAI, political parties) fail to specify which information on activities of those institutions must be made publicly available in addition to the information required by the Law on Access to Public Information. The Law on Principles for Prevention and Counteraction to Corruption failed to introduce effective mechanisms for regulating conflicts of interest, protection of whistle-blowers, and independent review of asset declarations submitted by public officials. These flaws are addressed in the most recent Law on Prevention of Corruption passed by the legislature in the October 2014 and enacted in late April 2015.

Imperfect legislation influences different dimensions of the NIS pillars. In particular, it affects the

capacity of the non-state pillars to function. In the business sector, the legislation on the operation and closing of businesses in Ukraine creates an unfavourable business environment and presents numerous regulatory barriers to economic development. In the case of political parties, the legal framework seeks to ensure the right to freedom of association, but contains gaps and deficiencies which might restrict this freedom. Legislation on media does not envisage effective mechanisms to promote effective competition between media, contributes to the concentration of media ownership, sets a number of requirements to be met by the printed media in order to be registered, thus failing to provide for an environment conducive to diverse independent media.

Flawed constitutional provisions, as well as defects in the laws and by-laws, also diminish the level of independence of a number of pillars, namely the judiciary, public sector, law enforcement, ACA, political parties, civil society organisations, and business. In particular, the constitutional provisions on procedure for the appointment of judges and composition of the High Council of Justice affect judicial independence, while the constitutional procedure for the appointment and dismissal of the Prosecutor General to a significant extent weakens the independence of law enforcement agencies. The Government Agent on Anti-Corruption Policy and its office are included in the structure of the Cabinet of Ministers and, therefore, cannot be considered independent. The laws on public service fail to clearly delineate between political and professional civil servants, while legislation on political parties, media and business contains a number of provisions increasing the risks of undue external interference with their activities.

The legal framework also decreases the level of accountability of many pillars. In a number of cases, the legislation does not oblige institutions to produce annual reports on their activities, thus impeding their accountability. For example, no annual reports are required from the legislature, public sector agencies, EMB or anti-corruption agencies. In cases where the pillars are legally obliged to prepare and present to certain bodies, the law often fails to set clear requirements as to the deadlines for submission, content of the respective reports, or fails to make them subject to mandatory discussion by the competent body, such as the legislature. These flaws are typical for laws governing the operations of the Ombudsman and political parties (as regards their annual financial reports). Accountability of certain pillars is also hampered by insufficient mechanisms to ensure effective public consultations (as regards the legislature), the legal provisions on broad immunity (which has a negative impact on accountability of the legislature and judiciary), the lack of effective and proportionate disciplinary/administrative sanctions (as concerns judiciary and public sector), the wide margin of discretion granted to officials (as concerns public sector) and other factors.

Holding parliamentary and most of the local elections based on a parallel electoral system does not create sufficient incentives for internal democratic governance within political parties. The integrity of media employees is diminished by the absence of codes of journalistic ethics and commissions on ethics in print media entities, while the integrity of those acting in the business sector is weakened by the absence of professional compliance officers in most businesses, as well as corporate codes of conduct in many small and medium enterprises.

Finally, legal deficiencies also decrease the role of certain pillars (the legislature, public sector, EMB, SAI, civil society) in supporting other NIS institutions and upholding the entire integrity system. In particular, the public sector's negligible cooperation with civil society and other stakeholders in preventing corruption to a large extent can be explained by imperfect regulation of public consultations and other mechanisms of stakeholder involvement in the sector's activities. Flaws in the public procurement legislation (despite certain improvements in this respect in 2014) are one of the reasons why the public sector plays a moderate role in reducing corruption risks in public procurement. The legislation fails to grant the EMB powers to effectively supervise the funding of political parties and election campaigns, therefore the role of the EMB in such supervision is not very high. As the ombudsman is not legally required to promote good governance, it does not promote it in practice. The Constitution significantly restricts the powers of the SAI in auditing public finances, thus decreasing the SAI's role in effective audits of public funds. The absence of clear criteria for selecting NGOs for consultations and for taking NGO's proposals into account in the official decision-making process does not promote engagement of civil society in anti-corruption policy reforms.

# **3. Lack of incentives for better performance and ineffective enforcement of the existing legal provisions.** In many cases the weak performance of NIS pillars derives from the lack of their own initiatives to improve the actual practice of their functioning, as well as by poor enforcement of current legal provisions. In the 2010 NIS assessment, SAI was scored as the strongest pillar of the NIS. Despite the fact that the legal framework at that time failed to ensure an appropriate level of SAI transparency, accountability and integrity, SAI managed to make public comprehensive information on its activities, delivered training to its staff on integrity issues, prepared comprehensive annual reports on its operations. As of 2014, the situation has changed for the worse: most SAI documents are not published (including its annual report for 2013), while trainings delivered to SAI employees cover mainly issues related to audits rather than anti-corruption issues. This case demonstrates that regardless of how comprehensive the legal framework is, actual performance of the institution by and large depends on its own will to improve. In 2014 NIS assessment, high scores were given to the ombudsman, as in its operations the pillar has gone far beyond of what was expected under the legislation governing its status and activities.

As in 2010 and before, public administration generally tends to follow the rules, which can explain why in a lot of cases actual practice of the pillars is scored the same as the legislation related to the respective indicators or even worse. For instance, nothing prevents the legislature and EMB from producing annual reports on their activities to ensure a better level of accountability and transparency than required by law, but as such reports are not required by law, they are not prepared at all.

The legal provisions in place are often not enforced even within the relevant institutions. For instance, the Constitution provides for personal voting by the MPs, but the legislators often violate the respective constitutional requirements and vote for their absent colleagues. While freedom of expression is guaranteed by law, provisions on editorial freedom are not effectively enforced. The actual practice of governance within the NGOs does not fully comply with corresponding requirements of their statutes and other internal documents.

In a number of cases, the pillars do not effectively use the powers and possibilities granted by legislation. Since the activities of media, civil society organisations, political parties and business sector due to their nature cannot be fully regulated by law (as comprehensive regulation can be considered as undemocratic interference with freedom of association, entrepreneurship or freedom of expression), their better performance is expected to be ensured through sector-wide self-regulation mechanisms and internal rules. However, although NGOs are able to make their financial reports transparent, as well as to adopt internal codes of ethics and ensure their enforcement, they demonstrate insufficient efforts in this regard. The number of media outlets which have signed sector-wide codes of ethics, especially as concerns print media, are not widespread. The existing legal provisions are not effectively used within the public administration either. The judiciary and law enforcement agencies could play an important role in prosecuting of corruption, but in fact they do not, thus contributing to the spread of impunity throughout government and public officials.

**4. Negative interactions across the pillars.** As in 2010, in a number of cases the weaknesses of the NIS pillars can be explained by negative inter-linkages between them. These negative inter-linkages are caused by deficient constitutional and legal framework governing the pillars' activities, the lack of a strong legal and political culture, widespread corruption within certain pillars, the lack of will to use the powers effectively, and other factors.

The legislature has failed to introduce public funding of political parties and open list proportional electoral system for parliamentary elections, something that could promote democratic decision-making within the parties and effective competition for elected office. This has resulted in the strong dependence of political parties on wealthy donors, centralised internal party decision-making, poor role of political parties in aggregation and representation of societal interests. These consequences, in their turn, have had a significant impact on the work of the legislature and government: although they have adopted a number of important anti-corruption pieces of legislation in 2014, they have yet to adopt a number of other important laws aimed to create a conducive environment for business activities, for operations of the Accounting Chamber, as well as an adequate legal framework to

strengthen the independence of the judiciary and law enforcement agencies. Highly centralised decision-making within the parties is reflected in a low scored integrity of the legislature, which is reflected in violations of the principle of personal voting at the plenary meetings, the lobbying of business interests through the Parliament, and cases of conflict of interest in activities of some MPs who de facto continue doing business while being members of the legislature.

Negative inter-linkages between political parties, legislature and executive also have negative impact on performance of other pillars. For instance, the level of Ombudsman's and SAI's independence has to a certain extent been hindered by appointments to the respective posts (i.e., Ombudsman and Chair of the Accounting Chamber) of persons affiliated with the ruling coalition in the Parliament. Political influence of the president and legislature on the judiciary and law enforcement agencies, derived from legal mechanisms for appointments and dismissals within the respective pillars, to a certain extent diminishes the accountability of the legislature and executive (since effective judicial review of the parliament's and government's actions is not ensured in practice due to the politicization of the courts), as well as the independence of the judiciary and law enforcement agencies. Such influence, amplified by the lack of proper funding, can be viewed as the one of the reasons for moderate role of the law enforcement agencies and judiciary in prosecuting corruption (in particular, as concerns corruption offences committed by high-ranking officials), as well as for moderate role of the judiciary in oversight of the executive. The executive is not strongly committed to and engaged in developing a well-governed public sector; the law enforcement agencies and judiciary do not effectively prosecute corruption, while the Ombudsman does not play any significant role in promoting good practice of governance. In practice, this results in weak levels of accountability and integrity within the public sector, as well as in the public sector's moderater role in safeguarding integrity in public procurement. Before 2014, law enforcement agencies interfered with the activities of NGOs, thus undermining their independence; however, now this tendency has changed. The role of the SAI in detecting and sanctioning the misbehaviour of public officeholders, as well as the role of media in investigating and exposing cases of corruption, is hampered by the fact that cases of corruption revealed by the media and SAI often are not taken in account by law enforcement agencies.

**5. Priorities for reform.** As has been mentioned above, the underperformance of many pillars is caused by imperfect legislation. The key role in its improvement could and should be played by the legislature and executive, which have committed themselves to anti-corruption reforms through the Coalition Agreement and Government's Program of Action. As the legislature is composed of representatives of political parties, whose overall performance remains poor, reform of the legislation governing the activities of political parties should be considered one of the key priorities in terms of overall improvement of performance of the NIS pillars, including the legislature, executive, judiciary and law enforcement agencies. In this connection, the legislature should introduce public funding of political parties, impose restrictions on private donations to political parties, provide for mechanisms to ensure the transparency of donations and effective independent monitoring of funding of political parties and election campaigns, as well as address other recommendations deriving from the GRECO Third Round Evaluation Report on the transparency of political funding.

Since the judiciary and law enforcement agencies play a key role in ensuring the rule of law and bringing those who have committed corruption offences to justice, the Constitution should be amended to ensure the independence of prosecutors and judges. Constitutional amendments should also increase the independence and role of SAI in the supervision of all public funds, regardless of whether they are included in the State budget of Ukraine.

Some laws, such as the Law on Judiciary and Status of Judges, the Law on Accounting Chamber, the Law on Public Service, which fail to ensure independence, transparency and accountability in the judiciary, public sector and SAI, should be adopted anew to address the flaws of the current versions of the respective laws.

#### To sum up, we recommend:

#### The Parliament:

- to implement comprehensive reform of the funding of political parties and electoral campaigns based on the provisions of the CM CoE Recommendation 2003(4) on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns;
- to introduce open list proportional system for parliamentary elections, which will create preconditions for ensuring accountability and integrity of political parties, as well as increase their role in aggregation and representation of the societal interest and commit the political parties to key reforms, including anti-corruption reform;
- to introduce amendments to the Constitution of Ukraine aimed to ensure independence of the prosecution service, judiciary and SAI in line with the international standards, as well as to adopt new versions of the laws governing the judiciary to align the respective legal framework with the international standards;
- to secure the status and independence of the National Anti-Corruption Bureau in the Constitution of Ukraine;
- to adopt without delay a law regarding unification and regulation of administrative procedures, as well as implement a complex public service reform aimed at clear division of politicians and professional public servants; increase of the level of expertise and integrity of officials and their protection from political interference, groundless dismissals and punishment; as well as at introduction of competitive and transparent staff work basing on public servant candidates' records, and stipulation of a clear and stable awarding system relevant to the amount of work performed;
- to reconsider the sphere of MP's untouchability (provided for by the Constitution) with the aim of allowing provision of evidences in cases when PMs commit grievous and extremely grievous crimes;
- to amend the legislative basis to secure obligatory consultations with the civil society in the process of consideration of bills in Parliamentary committees, and to secure the transparent work of Parliamentary committees and MPs. Particularly, the law shall stipulate publication of minutes and stenographs of open committee meetings, lists of assistants of MPs, amounts spent by the MP's office, and written reports on the MP's business trips. The law shall also clearly state that media have the right to be present at open committee meetings, and those meetings shall be broadcasted via the Internet;
- to introduce amendments in the Constitution of Ukraine in regards of strengthening the role of the Cabinet of Ministers within the executive branch of power. In particular, the Government shall have the authority to appoint heads of local administrations, and all members of the Government shall be appointed by the higher legislative body upon the recommendation of the Prime Minister;
- to introduce amendments to the law On the Cabinet of Ministers of Ukraine in regards of the Government's transparency. In particular, it shall stipulate the list of documents to be published on the website of the Cabinet of Ministers of Ukraine. All draft resolutions shall be made public prior to the Government's meetings;

- to adopt a new law on public service and service in local self-government bodies, therefore distinguishing political and administrative positions in the government;
- to introduce amendments in the Constitution of Ukraine to provide for narrowing the immunity of judges, increasing independence of the High Council of Justice (by means of securing the regulations to provide for forming its majority by judges), depoliticizing the process of judges' appointment; and to introduce correspondent changes in the legislation on judiciary;
- to reconsider constitutional norms concerning the place and authority of the supreme audit institution in regards to the external audit of public finances with the aim of authorizing audit functions of the Accounting Chamber over all state incomes and expenditures, local budgets and state enterprises;
- to introduce amendments in the Constitution with the aim of increasing independence of the SAI's head;
- to introduce amendments in the Constitution of Ukraine to provide for independence of the Prosecutor General and lower-level prosecutors from excessive external influence, as well as to limit prosecutors' authority in the sphere of criminal judiciary;
- to assume measures aimed at effective public money spending by law enforcement agencies, particularly by means of diminishing the number of law enforcement agencies on the ground level and increasing prosecutors' remuneration;
- the overall budget financing of the CEC shall be increased. The CEC activity financing shall provide for the opportunity for the CEC to hold information and educational events for voters, and to teach election committee members;
- to reconsider the order of appointment and dismissal of the CEC members to secure the CEC's independence from external influence. Particularly, it is reasonable to consider the opportunity to include not only political party representatives, but also independent experts in the sphere of electoral legislation in the CEC;
- to introduce amendments in the law On Political Parties in Ukraine and correspondent laws on elections with the aim of increasing the CEC's role in controlling political party and election campaign financing, as it was recommended by the Group of States Against Corruption (GRECO);
- legal regulation of political party financing and pre-election campaigning shall also comply with the GRECO recommendations and international standards in the correspondent sphere;
- the law On Ombudsman shall provide for the annual audit of his/her activity, including financial aspects;
- the law On Ombudsman shall clearly describe the list of cases when he/she is obliged to appeal to the Constitutional Court of Ukraine regarding constitutionality of normative and legal acts, grounds for accepting people's claims and their transferring to other bodies, as well as the order of explanation of people's ways of self-protection;
- to introduce amendments in the Constitution of Ukraine regarding the status and securities of independence of the National Anti-Corruption Bureau;

 to adopt the new version of the law that defines the status of the National Television and Radio Broadcasting Council of Ukraine. This law shall include international standards of work with media, as well as provide for independence, accountability and effectiveness of the regulator's work.

#### The Verkhovna Rada (Parliament) of Ukraine and the Cabinet of Ministers of Ukraine:

• to reconsider the mechanism of formation and activity of civic councils at public bodies to increase their effectiveness, improve the order of public consultations, provide for obligatory public consultations of Parliamentary committees, executive and local self-government bodies.

#### The Government:

- to provide for the transparent procedure of establishment of the National Agency for the Prevention of Corruption, and proper financial coverage of the Agency and the National Anti-Corruption Bureau;
- to comply the procedures of public consultations with the EU standards and best practices: the legislative base shall define clear criteria to choose draft decrees of ministries and other public bodies for public consultations. Executive bodies shall initiate communication with stakeholders and collect their feedback on draft legislative acts drafted by sorrespondent public bodies;
- to prepare and adopt a detailed road map to implement the Action Plan for 2015 2016, moreover that some anti-corruption actions described in the plan shall be clarified;
- to present a bill on regulating administrative procedures to the Verkhovna Rada for consideration. A number of international organizations insisted on the necessity to adopt it;
- together with the civil society provide for proper implementation of the law On Openness of Public Money Spending by means of fulfilling a detailed implementation plan;
- to develop the capacity of the State Financial Inspection by means of intensification of the risk-oriented approach to audits, and by means of orientation on detection of corruption and abuse cases;
- to reform the Ministry of Internal Affairs and the Security Service of Ukraine in correspondence with international standards and with the aim of their demilitarization, decentralization and reorienting for the rights and interests of people;
- to reconsider the existing evaluation system of law enforcement agencies' effectiveness using the indicators of crimes detection for ensuring people's trust to the work of law enforcement bodies;
- to organize proper institutional provision of the corruption prevention system by means of establishing local NAPC if necessary, and by means of strengthening the capacity within the network of correspondent anti-corruption departments in public bodies and local selfgovernment bodies; to provide for proper NAPC coordination and work;
- to consider liquidating the institute of the Government Agent for anti-corruption policy after the NAPC establishment;

- to speed up the process of state involvement reduction within media. Decision on the way of this reduction and securities for representatives of correspondent media, as well as resolution of other related issues shall be done in an open way and shall involve stakeholders in the process of drafting correspondent legislative initiatives;
- to ensure proper cooperation between state registrars and state tax service bodies with the aim of simultaneous solving the issues connected with NGO registering and non-profit code assigning ("single window" principle);
- NGO state and local budget financing shall be based on the principle of equal opportunities in finances gaining, as well as competitiveness between organizations in the process of budget money distribution; the practice of direct budget support of certain NGOs shall be stopped;
- to assume measures for liberalizing the business climate in Ukraine, especially via introduction of the administrative, tax and regulatory policy reforms;
- to ensure development and support of the business ombudsman, his/her involvement in solving actual business corruption-related problems;
- to organize a wide awareness campaign and provide methodological support for business to implement anti-corruption compliance;
- together with business representatives, entrepreneur and trade unions to develop the strategy to support anti-corruption standards' implementation in the private sector (OECD recommendations regarding better practices in the spheres of inner control, ethics and compliance with the legislation; Transparency International's anti-corruption business principles), and to assist the private sector's self-regulation development.

#### The Ministry of Economic Development and Trade:

• to constantly monitor the practice of application of the legislation on public procurement and to keep on improving it using the results of this monitoring; to make steps in legislative regulation and launch of the e-procurement system.

#### The National Agency for the Prevention of Corruption (after its establishment):

- to develop and implement the mechanisms of financial control, monitoring and application of the legislation on the conflict of interest prevention and resolution, and corruption whistleblower protection; to develop, approve and monitor the public servants' and municipal officials' code of conduct;
- to organize proper institutional support for the system of corruption prevention by means of creating local NAPCs if necessary, and by means of strengthening the capacity within the network of correspondent anti-corruption departments in public bodies and local selfgovernment bodies; to provide for proper NAPC coordination and work.

#### The Ministry of Justice:

• to hold the anti-corruption expertise of the law On Public Procurement.

#### The CEC:

- election procedure explanations and other key acts of the CEC shall be adopted long before the elections and shall take into account the result of stakeholder consultations;
- the CEC shall be obliged to prepare detailed reports on the election process after all elections. The reports shall describe main problems of elections' organization and possible solutions. The law On the Central Election Commission shall oblige the CEC to prepare annual reports on its activity.

#### The Ombudsman:

• organize annula integrity training of the Verkhovna Rada Secretariat's employees.

#### The Prosecutor General's Office:

• to ensure the launch of the Specialized Anti-Corruption Prosecutor's Office and to hold an open competition to appoint its management.

#### Civil society organizations:

- to introduce donor programmes for NGOs' staff capacity development by means of systemic trainings in important aspects of NGO activity (communication, fundraising, coalition development, strategic planning, monitoring, evaluation, reporting, policy analysis etc.);
- to introduce mechanisms of encouraging NGOs publicize their annual narrative and financial reports, including donors' provision of specific requirements for NGO financial support;
- to stimulate the introduction of standards of democratic governance and ethical conduct of NGOs, i.e. by means of encouraging to introduce these standards using donor support.

## IV. COUNTRY PROFILE – THE FOUNDATIONS FOR THE NATIONAL INTEGRITY SYSTEM

#### 1. Political-Institutional Foundations – Score 50 (2015, 2010)

To what extent are the political institutions in the country supportive to an effective national integrity system?

While there is a certain protection of civil and political rights of citizens in law and the basics of a democratic political process are guaranteed, violations of these rights and processes are frequent so that democracy is far from consolidated.

While the 2012 parliamentary elections were widely criticised for being far from democratic, major domestic and international election observation missions acknowledged the fact that the 2014 early presidential and parliamentary election were held generally in line with international standards, even though the integrity of the election process was to a certain extent marred by the difficult situation in the Eastern Ukraine and cases of vote-buying and other violations committed by MP candidates in the single mandate election districts.<sup>4</sup> In contrast to the 2006 and 2007 parliamentary elections that were held based on the closed list proportional system in the nationwide election district, under which independent MP candidates were not allowed to be registered for elections, the 2011 Parliamentary Election Law provided for the possibility of registration of independent candidates in elections.

The 2005 Code of Administrative Adjudication allows citizens to protect their rights from violations by public administration by challenging illegal decisions, action or inaction of public authorities and public officials through administrative courts. However, the possibilities of effective protection of civil rights remain limited for a number of reasons. In particular, citizens are not allowed to challenge the constitutionality of certain legal acts (including laws, presidential decrees and Government decisions) with the Constitutional Court of Ukraine, which is the only body that can recognize the respective legislation as unconstitutional. Second, the effectiveness of legal redress is impeded by deep flaws in the judiciary itself as "the country's justice system remains undemocratic and unreformed, lacking transparency and trust of the citizens"<sup>6</sup>. According to BTI 2014, "all citizens have the right to a fair, timely and open trial....[but]... for several reasons, this is not respected in practice", while judiciary's independence "is impaired".<sup>6</sup> [See Judiciary]

<sup>4</sup> See: OSCE/ODIHR, Ukraine. Parliamentary Elections 28 October 2012. OSCE/ODIHR Election Observation Mission Final Report, pp.2-3; OSCE/ODIHR, Ukraine. Early Parliamentary Elections 26 October 2014. OSCE/ODIHR Election Observation Mission Final Report, pp.2-5; OSCE/ ODIHR, Ukraine. Early Presidential Election 25 May 2014. OSCE/ODIHR Election Observation Mission Final Report, pp.2-4.

<sup>5</sup> Freedom House, Nations in Transit 2014, p.652.

<sup>6</sup> Bertelsmann Foundation, BTI 2014; http://www.bti-project.org/reports/country-reports/pse/ukr/index.nc#chap4 [accessed December 1, 2014].

While in 2014 civil rights were by large respected by public administration, in the previous years, the rights to freedom of assembly and the right to freedom of expression were systematically violated. <sup>7</sup> Support to democratic institutions by the key actors has increased in 2014, however under Yanukovych's rule all major institutions, including the Cabinet of Ministers, judiciary and law enforcement agencies were in fact controlled by the President and his "family". <sup>8</sup>

#### 2. Socio-Political Foundations – Score 50 (2015), 25 (2010)

To what extent are the relationships among social groups and between social groups and the political system in the country supportive to an effective national integrity system?

While there are some divisions among social groups, civil society and political actors are mostly able to overcome them in the political sphere. However, a number of deep conflicts which are not successfully integrated into the political sphere exist.

Ukrainian society treats corruption and means of its counteraction differently. Certain social groups have benefits from corruption, while others have a high level of intolerance to it.

Traditionally Ukrainian society has negative attitude to passive illegal gains, i.e. to an official who takes bribes is condemned more than those who give them.

Researches in Ukraine in 2011 allowed coming to the conclusion that:

- the less people trust their authorities at all levels, the higher level of corruption perception they have;
- the level of corruption perception is higher among people who think the authorities' activity is not enough in the sphere of corruption combatting;
- people who refuse to use corruption schemes for their advantage consider the society as less corrupt than the ones who justify corruption;
- people who think that the level of corruption has increased over the last two years have a higher level of corruption perception;
- the more corrupt the respondents believe public sector is, the more ready they are to defend their rights and to fight against corrupt officials;
- those who confess in their corruption experience are more sure that corruption is widespread in other spheres. Therefore, corruption perception depends on corruption experience;

<sup>7</sup> Bertelsmann Foundation, BTI 2014; http://www.bti-project.org/reports/country-reports/pse/ukr/index.nc#chap4 [accessed December 1, 2014].

<sup>8</sup> Bertelsmann Foundation, BTI 2014; http://www.bti-project.org/reports/country-reports/pse/ukr/index.nc#chap4 [accessed December 1, 2014].

• the level of corruption perception is a bit higher among middle-aged people with higher education, among those who have better incomes, and those who live in urban areas. It is partially explained by the fact that representatives of those social and demographic groups are a bit more experienced in corruption<sup>9</sup>.

A different study has shown that the level of corruption perception is significantly influenced by gender, education, age and sector of employment of a person.

According to this study, middle-aged women with higher education who are experts in different spheres were more progressive in understanding corruption.

The most functional and tolerant attitude to corruption is among middle-aged men with specialized secondary education, and young and middle-aged men working in different spheres, who believe corruption offences is a tradition. The most intolerant attitude to corruption is among elderly people with specialized secondary education, who are mostly retired or working in households. They often treat the actions that are not corrupt according to the legislation, as corrupt ones. The highest level of intolerance to corruption is among middle-aged women with specialized secondary education who work in different spheres. They treat corruption as violation of professional ethics and as immoral deeds<sup>10</sup>.

Paternalist ties within the Ukrainian society remain strong. For instance, in 2013 only 3% of citizens believed that their lives entirely depend on themselves, while 84% of citizens believed that their lives are somewhat or to a significant extent dependent on external factors/circumstances.<sup>11</sup> Further, in 2013 42% of the citizens were convinced that the state should have taken full responsibility for fulfilling the needs of a citizen.<sup>12</sup>

On a positive note, civil society has become stronger in 2014 – 2015 and started to play a role pushing forward urgent reforms [see: Civil Society; Anti-Corruption Activities]. In 2013, for the first time in the history of independent Ukraine, the share of those citizens who trusted NGOs exceeded the share of those who did not.<sup>13</sup> Major pro-EU parties (Petro Poroshenko Bloc, the People's Front, Samopomich, Oleh Liashko Radical Party and Batkivshchyna) included famous journalists and civil society activists on their lists in the 2014 parliamentary elections, and most of them were elected MPs.

#### 3. Socio-Economic Foundations – Score 25 (2015), 50 (2010)

To what extent is the socio-economic situation of the country supportive to an effective national integrity system?

Compared to 2010, the socio-economic situation in Ukraine has become less supportive to an effective national integrity system.

Due to the on-going to military operation in the country's East and conflict with Russian Federation, the economic situation in Ukraine during 2014 dramatically changed for the worse. In particular, the

<sup>9</sup> Status of corruption in Ukraine: comparative analysis of nationwide surveys: 2007-2009, 2011; http://kiis.com.ua/img/pr\_img/20110920\_korup/Corruption%20in%20Ukraine\_2007-2009\_2011\_Ukr.pdf

<sup>10</sup> Sociocultural context of corruption; Kharkiv institute of applied humanitarian research; http://www.iahr.com.ua/ukr/publications/

<sup>11</sup> http://gazeta.dt.ua/socium/irina-bekeshkina-diskreditaciya-ideyi-demokratiyi-v-krayini-bula-odniyeyu-z-prichin-prihodu-do-vladi-viktora-yanu-kovicha-\_.html [accessed December 1, 2014].

<sup>12</sup> http://www.dif.org.ua/ua/polls/2013-year/fmlfmvblmerlgmlermgljm.htm [accessed December 1, 2014].

<sup>13</sup> http://dif.org.ua/ua/commentaries/sociologist\_view/uevishila-nedoviru-.htm [accessed December 1, 2014].

nation's GDP in 2014 was down almost 5% from 2013 and economic growth is expected to worsen; the Ukrainian currency in 2014 lost half of its value (USD/UAH exchange rate increased from UAH 8 per 1 USD to 16 UAH per 1 USD in the end of 2014), while inflation rate (as of September 2014) exceeded 14%. Public debt levels have significantly grown as the Government attempted to keep the Ukrainian banking system afloat: according to Fitch Ratings, public debt to GDP has quadrupled since 2008, reflecting exchange rate depreciation, fiscal deficits, low growth and below-the-lines costs, such as recapitalisation of the banks.<sup>14</sup>

Meanwhile, social inequality and poverty in Ukraine remain pronounced.<sup>15</sup> Depending on the methodology used to assess poverty levels in a country, in 2013 the number of Ukrainians living below the poverty line varied from 2.9% (according to the absolute concept of poverty) to 26%.<sup>16</sup> It can be assumed that the share of such citizens has increased compared to 2013 given negative trends in the Ukraine's economic development. The draft National Report "Millennium Development Goals Ukraine: 2000 – 2015" (prepared by the National Academy of Sciences' Ptukha Institute of Demography and Social Studies and the Ministry of Economic Development and Trade with the support of the United Nations Development Programme in Ukraine) forecasted that the level of poverty according to the absolute criterion would be 3.5% in 2015<sup>17</sup>.

In 2012, almost 60% of Ukrainian citizens considered themselves as poor, while only 0.5% of the citizens said that they have funds to cover all their needs.<sup>18</sup>

Ukraine's social safety net consists of two main components: services and cash transfers. As in 2010, in 2012 and 2013 the social assistance system continued to suffer from important shortcomings that undermined its efficiency, burdened the budget, and impeded equality. According to BTI 2014, the authorities grant many categories of aid and benefits to a wide range of citizens, so that the total financial obligations exceed the country's means. Social protection expenditures accounted for about 22% of state budget expenditures in 2012 (7.8% of GDP).<sup>19</sup>

Global Competitiveness Report 2014-2015 ranks Ukraine's infrastructure 68th, on quality of roads Ukraine ranks 139th, on quality of air transport infrastructure - 99th, and on quality of port infrastructure – 107th (of 144 countries included into GCR 2014-2015). However, Ukraine is ranked relatively high on quality of railroad infrastructure (25th of 144).<sup>20</sup> These figures (except for air transport infrastructure, which have improved compared to assessments in GCR 2010-2011) generally remained the same as in 2010.<sup>21</sup>

Ukraine has a well-developed business sector [see: Business], but the country's standing in terms of ease of doing business remains weak (112th out of 189 economies covered by the World Bank Doing Business 2014), although in its the most recent edition of the Doing Business the World Bank acknowledged the fact that in 2014 Ukraine improved the most across three or more areas measured

<sup>14</sup> Walter Kurtz, Sober Look, Ukraine Is On The Brink of Total Economic Collapse, Business Insider, September 21, 2014; http://www.businessinsider.com/ukraine-is-on-the-brink-of-total-economic-collapse-2014-9 [accessed December 1, 2014].

<sup>15</sup> Bertelsmann Foundation, BTI 2014. Ukraine Country Report; http://www.bti-project.org/reports/country-reports/pse/ukr/index.nc#chap6 [accessed December 1, 2014].

<sup>16</sup> Mariya Homyak, Poverty in Ukraine in the light of social statistics, Methodology of Social Research, 2013, Issue 2 (3), p. 70.

<sup>17</sup> Draft National report "Millenium aims of development. Ukraine:2000-2015"; http://www.idss.org.ua/monografii/2015%20MDG%20Ukr%20 Report%20DRAFT.pdf

<sup>18</sup> http://www.kvpu.org.ua/uk/news/6/1791/bilshist-ukrainciv-vvazhayut-sebe-bidnimi [accessed December 1, 2014].

<sup>19</sup> Bertelsmann Foundation, BTI 2014. Ukraine Country Report.

<sup>20</sup> World Economic Forum, GCR 2014 – 2015; http://reports.weforum.org/global-competitiveness-report-2014-2015/economies/#economy=UKR [accessed December 1, 2014].

<sup>21</sup> World Economic Forum, GCR 2010 – 2011, p.19.

by Doing Business in 2012/2013.<sup>22</sup> Among the most problematic factors for doing business in Ukraine identified by the respondents are corruption (17.8% of responses), policy instability (14%), access to financing (13.9%), government instability/coups (10.5%), inefficient government bureaucracy (8.8%), inflation (8%), and tax rates (7.7% of responses).<sup>23</sup>

#### 4. Socio-Cultural Foundations – Score 50 (2015), 25 (2010)

To what extent are the prevailing ethics, norms and values in society supportive to an effective national integrity system?

Compared to 2010, the prevailing ethics, norms and values in society have become more supportive to an effective national integrity system. Overall, Ukrainian society is characterized by average levels of trust, public-mindedness and support for norms of integrity and ethical conduct. While mistrust, public apathy and lack of personal integrity is not uncommon, it is being challenged in the public sphere.

The readiness to actively disclose corruption is increasing gradually. PACT Uniter's poll "People's awareness of CSOs and their involvement in civic activity" (October 2014) showed that 13% of respondents are ready to inform law enforcement bodies about corruption, and 8% are ready to do this anonymously<sup>24</sup>.

In general it is a known fact that the key reason that brought people to mass protests in late 2013 – early 2014 and that lead to the change of authorities in the country was the high level of corruption. It is also proved by positive changes within the society.

<sup>22</sup> World Bank, Doing Business 2014, pp.3, 9.

<sup>23</sup> World Economic Forum, GCR 2014-2015, p.372.

<sup>24</sup> It is not hameful to whistleblow on corruption! Ukrainians are ready to report corruption; Transparency International Ukraine; http://ti-ukraine. org/en/news/oficial/5069.html

# V. CORRUPTION PROFILE

Compared to 2010, the corruption profile for Ukraine has not significantly changed, despite some positive developments in 2014 – 2015. The 2011 NIS Assessment concluded that "corruption remains one of the top problems threatening economic growth and development in Ukraine" and that "state and regulatory capture is one of the key reasons for widely spread corruption at all levels of public administration, including political institutions".<sup>25</sup>

According to the Group of States against Corruption (GRECO), corruption in Ukraine is a systemic phenomenon existing in all sections and at all levels of public administration, including law enforcement agencies, prosecution service and judiciary as well as local authorities.<sup>26</sup> Both petty and grand scale corruption are thriving in the country.<sup>27</sup> In its report on Ukraine, Freedom House stressed that "corruption has been a core characteristic of the Ukrainian political, economic and social systems, though the Euromaidan movement demonstrated the readiness of citizens to mount a real effort to combat the problem" and that "political and judicial systems are still considered the most corrupted parts of the state".<sup>28</sup> Certain positive changes in the anti-corruption legal framework during 2011-2013 were undermined by an apparent lack of political will to combat corruption, and overshadowed by evidence of illicit enrichment among the President Yanukovych' closest associates, including his son Oleksandr Yanukovych whose fortune has tripled under his father's rule and reached USD 510 million by November 2013, according to Forbes estimates.<sup>29</sup>

In accordance with the public opinion poll conducted in July 2013 by Rating Sociology Group, corruption and unemployment were considered top problems facing the country by the majority of the citizens (51 and 53%, respectively).<sup>30</sup> The 2014 IFES survey indicated that 21% of Ukrainians to a great extent agreed that corruption is a fact of life, while 35% of the citizens to some extent agreed with that. 28% of respondents also believed that paying a bribe could be justified.<sup>31</sup> Although the latter figure is a positive development compared to 2009 when 43.5% of the citizens were convinced that corruption could be justified in some cases,<sup>32</sup> the share of citizens justifying corruption still remains high.

Even though in 2014 the legislature and government succeeded in adopting important anti-corruption legal instruments, public attitudes towards the effectiveness of the government anti-corruption policy has not changed, as in the end of December 2014, 80% of the citizens were convinced that the level of corruption in the country after Maidan had not changed at all or had even increased.<sup>33</sup>

<sup>25</sup> National Integrity System Assessment: Ukraine 2011, p.34.

<sup>26</sup> GRECO, Joint First and Second Evaluation Rounds. Evaluation Report on Ukraine, adopted by GRECO at its 32nd Plenary Meeting (Strasbourg, 19-23 March 2007): 3-4.

<sup>27</sup> Civil Society against Corruption, Corruption in Ukraine. Report by Yemelianova Anna, 2010, p. 2.

<sup>28</sup> Freedom House, Nations in Transit 2014, p. 653.

<sup>29</sup> Freedom House, Nations in Transit 2014, p. 662.

<sup>30</sup> Rating Sociology Group, The Problems, Which Ukrainians are Concerned About, 2013; http://ratinggroup.com.ua/upload/files/RG\_IRI\_Public\_Opinion\_Ukraine\_072013.pdf [accessed December 1, 2014].

<sup>31</sup> IFES, Public Opinion in Ukraine 2014. Findings from the IFES 2014 survey in Ukraine; http://www.ifes.org/Content/Publications/Survey/2014/~/media/Files/Publications/Survey/2014\_Ukraine\_Survey\_Presentation\_Slides\_English.pdf [accessed December 1, 2014].

<sup>32</sup> Management Systems International, Kyiv International Institute of Sociology, Corruption in Ukraine. The Comparative Analysis of the 2007 - 2009 National Opinion Polls (in Ukrainian), 2009: 21.

<sup>33</sup> http://www.unian.ua/society/1026956-mayje-kojen-tretiy-ukrajinets-vvajae-scho-kraschiy-sposib-borotbi-z-koruptsieyu-tse-rozstril.html [accessed December 27, 2014].

The 2013 TI Global Corruption Barometer (GCB) suggests that political parties, legislature, police, public servants and judiciary are perceived by the citizens to be highly affected by corruption (see the Table 2 below). These findings correlate with the Razumkov Centre survey conducted in 2013 and are generally the same as in the 2010/2011 GCB, suggesting that public perception of the most corrupt institutions has not changed since 2011. In 2013, 43% of the citizens believed that over the last two years the level of corruption in the country had increased a lot, and 16% of the respondents said that it increased a little, while only 5% believed that the level of corruption in the country had to a certain extent decreased.<sup>34</sup>

 Table 2. Public Perception of Corruption in Institutions of the Country (according to TI Global Corruption Barometer)



Source: TI GCB 2010/2011, TI GCB 2013.

Scoring question for 2010/2011 GCB: To what extent do you perceive the following institutions in this country to be affected by corruption? (1: not at all corrupt, 5: extremely corrupt). Average score.

For 2013, GCB data indicate the percentage of respondents in Ukraine who felt that institution is corrupt or extremely corrupt.

## Table 3. Public Perception of Corruption in Institutions of the Country (according to 2013Razumkov Center Survey)

INSTITUTION	EXTREMELY CORRUPT	CORRUPTION IS WIDELY SPREAD	SOMEWHAT COR- RUPT	NO CORRUPTION
CSOs	15.8	23.3	18.1	14.4
Schools	20.9	31.8	29.3	10.1
Customs services	37.3	34.6	11.2	1.9
Armed Forces	19.6	27.2	22.8	8.1
Trade Unions	18.7	26.5	18.4	9.7
Security Service of Ukraine	30.4	27.6	14.3	3.2

<sup>34</sup> TI, GCB 2013; http://www.transparency.org/gcb2013/country/?country=ukraine [accessed December 1, 2014].

NATIONAL INTEGRITY SYSTEM ASSESSMENT

INSTITUTION	EXTREMELY CORRUPT	CORRUPTION IS WIDELY SPREAD	SOMEWHAT COR- RUPT	NO CORRUPTION
Local self-government	32.7	35.1	17.8	3.4
Economy and business	30.2	37.1	15.2	1.8
Higher education	31.5	45.9	13.4	2
Prosecution service	41.5	35.2	8.7	1.8
Tax authorities	41.3	35.3	9	1.5
Law enforcement agencies	45.4	38.6	8.5	1.5
Health care institutions	40.6	44	10.9	1.3
Political parties	38.3	37.7	11.6	1.4
Courts	47.3	36.1	7.7	1.8
Authorities in general	44.9	37.4	8.4	1.1
Political sphere in general	43.4	36.2	9.5	1.3

Source: Razumkov Centre, Perception of Corruption in Different Institutions of the Country, 2013 Survey Results; http:// www.razumkov.org.ua/ukr/poll.php?poll\_id=903 [accessed December 1, 2014].

TI GCB 2013 reveals that 49% of Ukrainians reported the payment of a bribe to police by someone in their households. The share of those who reported paying a bribe to the medical and health care services and to education services was also high (amounting to 41 and 33%, respectively).<sup>35</sup>

As in the previous years, Ukraine continues to be ranked low in TI's Corruption Perceptions Index (CPI): it was ranked 134 in 2010 and 142 in 2014, and had the same scores – 26 – in 2012 and 2014. Freedom House's Nations in Transit 2014 indicates that since 2010 Ukraine has made a regress in terms of the fight against corruption, mainly due to the lack of political will to combat corruption and engagement of the high-level officials, including the President and his associates, in corrupt practices (see above). The World Bank scores for Ukraine's governance indicators have remained low for years, and in terms of rule of law, control of corruption, political stability and regulatory quality have even decreased (see Table 4 below). World Economic Forum's GCR 2014 – 2015 ranks Ukraine low on indicators "Irregular Payments and Bribes" (118th of 144), "Burden of Government Regulation" (115th of 144), "Judicial Independence" (140th of 144), "Favouritism in Decisions of Government Officials" (116th of 144), "Transparency of Government Policymaking" (104th of 144).<sup>36</sup>

<sup>35</sup> TI GCB 2013.

<sup>36</sup> World Economic Forum, GCR 2014 – 2015; http://reports.weforum.org/global-competitiveness-report-2014-2015/economies/#economy=UKR [accessed December 1, 2014].

#### Table 4. Assessment of Corruption in Ukraine: Some Quantative Data

	2012	2013	2014
CPI, rank among the countries considered/Score on the scale of 100 (where 0 means perceived to be highly corrupt, and 100 is perceived to be highly clean)	144th of 176/ 26	144th of 177/ 25	144th of 177/ 25
Freedom House, Nations in Transit, "Corruption" Indicator, 1 – the highest level of democratic progress, 7 – the lowest	6	6	6.25
WB "Voice and Accountability" Indicator, percentile rank 0-100	39.8	37.0	-
WB "Political Stability" Indicator, percentile rank 0-100	42.2	21.3	-
WB "Government Effectiveness" Indicator, percentile rank 0-100	31.6	30.1	-
WB "Regulatory Quality" Indicator, percentile rank 0-100	28.7	28.7	-
WB "Rule of Law" Indicator, percentile rank 0-100	25.6	23.2	-
WB "Control of Corruption" Indicator, percentile rank 0-100	15.8	12.0	-

Sources: TI, CPI 2010-2014; Global Integrity, Global Integrity Index: Ukraine, 2011; Freedom House, Nations in Transit 2010-2014: 549; WB, Worldwide Governance Indicators for Ukraine 2010-2013.

According to the 2009 national opinion poll (no similar opinion polls have been held since 2009 so far), citizens considered corruption to be rooted in: intention of the politicians to use the power for personal enrichment (19.2%), lack of control of the public officials by law enforcement agencies (15.7%), lack of political will (14.1%), imperfect legislation (10.3%), citizens' habit of solving the problems through corruption (9.3%), lack of internal control within the public authorities (7.4%). It should be noted that the citizens generally do not consider low salaries of public officials and lack of clear procedures for the actions of public administration as main reasons for committing corruption offences.<sup>37</sup>

The 2014 IFES national survey indicated that those Ukrainians who believe that it is possible for ordinary people to live a life in Ukraine without corruption or bribery, see the most effective actions in achieving that goal in strict punishment for corruption (29%), increased transparency in the system of governance (26%), changing those in power to those who will fight corruption (10%), changes in legislation (10%), changing people's attitudes towards corruption (9%), banning corrupt officials from public service (7%), better salaries for public officials (5%) or other measures (9%).<sup>38</sup>

<sup>37</sup> Management Systems International, Kyiv International Institute of Sociology, Corruption in Ukraine. The Comparative Analysis of the 2007 - 2009 National Opinion Polls (in Ukrainian), 2009: 20.

<sup>38</sup> IFES, Public Opinion in Ukraine 2014. Findings from the IFES 2014 survey in Ukraine.

# **VI. ANTI-CORRUPTION ACTIVITIES**

Despite some positive legislative developments during 2011-2013 (such as adoption of the new Public Procurement Law, Law on Public Access to Information, National Anti-Corruption Strategy for 2011-2015 and State Program for Prevention and Combating Corruption for 2011-2015, as well as amendments to the anti-corruption legislation needed for signing EU-Ukraine Association Agreement), the public authorities were rather passive in formulating and implementing anti-corruption policies, while the high-ranking officials were themselves actively involved into corruption [see: Corruption Profile]. For that reason, anti-corruption activities of other stakeholders, including CSOs and journalists, were not very successful in changing the overall public perception of corruption.

Freedom House noted that "corruption scandals clouded preparations for and conduct of the European football championship, hosted jointly by Ukraine and Poland in June 2012"<sup>39</sup> and that "positive changes in the legal framework were undermined by an apparent lack of political will to combat corruption, and overshadowed by evidence of illicit enrichment among the president's closest associates".<sup>40</sup> On March 5, 2014, EU agreed to freeze assets of the ousted Ukrainian President Yanukovych and 16 other senior officials<sup>41</sup> based on the fact that they were subject to criminal proceedings in Ukraine connected to embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.<sup>42</sup>

#### Anti-corruption activities of public authorities

After the early parliamentary elections held in October 2014, 5 out 6 factions of the new Parliament signed a Coalition Agreement,<sup>43</sup> whereby they committed themselves to combat corruption and highlighted anti-corruption reforms as one of the key priorities for the new coalition.

The Coalition Agreement provides for a number of anti-corruption measures to be taken during 2015 and 2016, including establishment of the National Anti-Corruption Bureau and National Agency for Prevention of Corruption, annual independent anti-corruption audit of the public administration, elimination of "corrupt schemes" in public sector, permanent monitoring of the lifestyle of public officials to identify cases of illicit enrichment, amendments to the legislation governing party and election finance to address the GRECO Third Round Evaluation recommendations for enhancing transparency of political finance, introduction of open data standards and increasing transparency in public administration.<sup>44</sup> In addition to these specific anti-corruption measures, the parliamentary coalition also committed itself to comprehensive reforms of the judiciary, prosecution service and law enforcement agencies to align the legislation governing their statuses and operations with the international standards.

<sup>39</sup> Freedom House, Nations in Transit 2013, p. 594.

<sup>40</sup> Freedom House, Nations in Transit 2014, p. 662.

<sup>41</sup> http://www.telegraph.co.uk/news/worldnews/europe/ukraine/10679745/Ukraine-crisis-EU-agrees-sanctions-against-Viktor-Yanukovych-asleaders-hold-summit.html [accessed December 1, 2014].

<sup>42</sup> See: EU Council Regulation No 208/2014 of 5 March 2014 concerning restrictive measures against certain persons, entities and bodies in view of the situation in Ukraine; http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv:OJ.L\_.2014.066.01.0001.01.ENG [accessed December 1, 2014].

<sup>43</sup> Full text of the Coalition Agreement in Ukrainian language is available at: http://samopomich.ua/wp-content/uploads/2014/11/Koaliciyna\_ uhoda\_parafovana\_20.11.pdf [accessed December 1, 2014].

<sup>44</sup> See: Coalition Agreement, pp.10-11; http://samopomich.ua/wp-content/uploads/2014/11/Koaliciyna\_uhoda\_parafovana\_20.11.pdf [accessed December 1, 2014].

Based on the Coalition Agreement, the newly appointed Cabinet of Ministers prepared its Program of Actions that was approved by the Parliament on December 11, 2014.<sup>45</sup> Under that Program, the Government committed itself to enforcement of the new anti-corruption laws (see below), establishment of the National Anti-Corruption Bureau and National Agency for the Prevention of Corruption, permanent monitoring of the lifestyle of the public officials, reform of the Ministry of Interior, creation of the State Bureau of Investigations, reform of the judiciary, creation of the Unified Register of Asset Declarations, and ensuring public access to the property registers.

The 7th Parliament adopted a number of important anti-corruption laws aimed to address a number of important GRECO recommendations and improve the existing anti-corruption legal framework, including the Law on Principles for Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2014 – 2017, the Law on Prevention of Corruption, and the Law on Amendments to Certain Legislative Acts of Ukraine Related to Identification of Ultimate Beneficiaries of Legal Persons and Public Figures (all adopted on October 14, 2015).

The Anti-Corruption Strategy for 2014-2017 provides a list of measures to be taken by the Government during upcoming years to curb corruption in Ukraine. These measures include comprehensive political finance reform, regulation of lobbying, enhancing transparency in work of the public authorities (e.g., Parliament, local representative bodies), adoption of the new Law on Public Service, comprehensive conflict of interest regulation and introduction of effective mechanisms for whistle-blower protection, further improvement of the Public Procurement Law and coordination of anti-corruption policy development and implementation, reform of the judiciary and prosecution service in line with the Venice Commission recommendations, police reform, deregulation of business.<sup>46</sup> Some of these measures (such as comprehensive conflict of interest regulation, effective whistle-blower protection etc.) have already been implemented through adoption of the Law on Prevention of Corruption.

The Law on Prevention of Corruption replaced the existing Law on Principles for Prevention and Counteraction to Corruption. It provides for the establishment of the National Agency for the Prevention of Corruption (NAPC), that will analyse implementation of anti-corruption policy, develop Anti-Corruption Strategy and Action Plans needed to implement that Strategy, conduct corruption-related surveys, screen the asset declarations submitted by the public officials, deliver training to public officials on issues related to prevention of corruption, involve NGOs and public in the development, implementation and monitoring of anti-corruption policy. The Law also provides for a number of safeguards to ensure appropriate level of independence of the NAPC from undue external influences. Further, compared to the existing Law on Principles for Prevention and Counteraction to Corruption, the new Law effectively regulates conflict of interest, financial control of the public service, whistle-blower protection, as well as provides for more severe sanctions for corruption-related violations.<sup>47</sup>

The Law on National Anti-Corruption Bureau of Ukraine provides for the establishment of the National Anti-Corruption Bureau of Ukraine (NACBU), an independent law enforcement body tasked to identify, stop and investigate criminal corruption-related offences committed by the high-ranking public officials. The Law on NACBU entered legal force in January 2015.<sup>48</sup>

<sup>45</sup> VRU Resolution No 26-VIII, dated December 11, 2014.

<sup>46</sup> Law No 1699-VII on Principles for Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2014 – 2017, dated October 14, 2014; http://zakon4.rada.gov.ua/laws/show/1699-18/print1400073278169920 [accessed December 1, 2014].

<sup>47</sup> Law No 1700-VII on Prevention of Corruption, dated October 14, 2014; http://zakon3.rada.gov.ua/laws/show/1700-18/ print1400156599900376 [accessed December 1, 2014].

<sup>48</sup> Law No 1698-VII on National Anti-Corruption Bureau of Ukraine, dated October 14, 2014; http://zakon4.rada.gov.ua/laws/show/1698-18/ print1400073278169920 [accessed December 1, 2014].

The Law on Amendments to Certain Legislative Acts of Ukraine Related to Identification of Ultimate Beneficiaries of Legal Persons and Public Figures requires all the registered legal persons to disclose their ultimate beneficiaries, as well as introduces sanctions for failure to do so. It also requires that all the information in the State Register of Immovable Property will be available to any interested party, including law enforcement agencies and citizens.<sup>49</sup> The Law will enter legal force in February 2015.

In addition to the above important pieces of legislation, the parliament adopted a number of other laws related to combating corruption, such as new Public Procurement Law<sup>50</sup> (2014), new Law on Prosecution Service<sup>51</sup> (2014).

OECD/CAN recommended the Government to commission regular corruption surveys (both nationwide and sector-specific) with a focus on public trust and perception of corruption, to adopt the Administrative Procedure Code, to take further steps in ensuring transparency and discretion in public administration, to delineate external and internal audit of public finance, to implement reform of political party finance and to implement comprehensive reform of the judiciary. According to the OECD conclusions of the third Ukraine evaluation round in the scope of the Istanbul Anti-Corruption Action Plan (March 2015), the recommendations concerning researches haven't been fulfilled, and the recommendations concerning the Administrative and Procedural Code, transparency of political party financing, and judiciary reform have been partially fulfilled; the recommendation concerning internal and external audits has been fulfilled in general<sup>52</sup>. In March 2014, GRECO regretted that "the overall response to [its] recommendations is insufficient as a number of areas under review have been affected for years by lack of substantial progress" and that "the legal framework as regards such fundamental areas as the Prosecutor's Office, public administration and civil service reform is still not fixed, leading to a lack of legal security and rendering the necessary implementation measures difficult".<sup>53</sup> Despite all those measures a number of GRECO and OECD recommendations haven't been implemented yet.

While in 2014 the Parliament, the President and the Cabinet of Ministers have become rather active in introducing comprehensive changes to the existing anti-corruption legal framework, their success in the respective sphere still remains limited as the judiciary and law enforcement agencies fail to effectively enforce the existing rules. Failure to effectively investigate corruption offences committed by the former President, his associates and other senior officials,<sup>54</sup> as well as new offences reported by the media during 2014<sup>55</sup>, and granting public contracts to the companies engaged in corrupt practices in recent years<sup>56</sup>, clearly demonstrate the urgent need for comprehensive reform of the prosecution service, judiciary and law enforcement agencies in line with recommendations of the international organizations, such as OECD, GRECO, Venice Commission and others.

<sup>49</sup> Law No 1701-VII on Amendments to Certain Legislative Acts of Ukraine Related to Identification of Ultimate Beneficiaries of Legal Persons and Public Figures, dated October 14, 2014; http://zakon2.rada.gov.ua/laws/show/1701-18/print1400060072837360 [accessed December 1, 2014].

<sup>50</sup> Law No 1197-VII on Public Procurement, dated April 10, 2014; http://zakon4.rada.gov.ua/laws/show/1197-18/print1390503912974270 [accessed December 1, 2014].

<sup>51</sup> Law No 1697-VII on Prosecution Service, dated October 14, 2014; http://zakon2.rada.gov.ua/laws/show/1697-18/print1390316109400037 [accessed December 1, 2014].

<sup>52</sup> OECD Istanbul Action Plan Third round monitoring report; Anti-Corruption Network OECD; http://www.oecd.org/daf/anti-bribery/Ukraine-Round-3-Monitoring-Report-RUS.pdf

<sup>53</sup> GRECO, Joint First and Second Evaluation Round. Fourth Addendum to the Compliance Report on Ukraine, p. 14; http://www.coe.int/t/dghl/ monitoring/greco/evaluations/round2/GrecoRC1&2(2009)1\_FourthAdd\_Ukraine\_EN.pdf [accessed December 1, 2014].

<sup>54</sup> See, for instance: http://nashigroshi.org/2014/12/12/yarema-spyhnuv-rozsliduvannya-po-yuri-enakijivskomu-na-luhansku-prokuraturu-i-toj-mozhe-vyskochyty-z-pid-sanktsij-es/; http://24tv.ua/home/showSingleNews.do?mvs\_zakrilo\_spravu\_proti\_banku\_sina\_yanukovicha\_dokument&objectId=523020 [accessed December 31, 2014].

<sup>55</sup> http://hromadskeradio.org/2014/08/19/natalya-sedletska-pro-stari-novi-koruptsiyni-shemi-v-ukrayini/ [accessed December 1, 2014].

<sup>56</sup> http://www.epravda.com.ua/cdn/cd1/in\_exile\_victory\_yanukovych\_clan\_in\_2014/ [accessed January 5, 2014].
#### Anti-corruption activities of donors and international organisations

Given that previous anti-corruption programs implemented in Ukraine by international donors failed to produce many practical results,<sup>57</sup> donor anti-corruption activities in Ukraine during 2011-2013 were not very active compared to 2014, when the new pro-EU Government came to power in February 2014.

In April 2014, the European Commission adopted the new "State Building Contract" programme, worth EUR 355 million (complemented by a EUR 10 million programme aimed at supporting the civil society) to help the Government of Ukraine to address short-term economic stabilisation needs, and prepare for in-depth reforms in the context of the Association Agreement/Deep Comprehensive Free Trade Area through support to improved governance, the fight against corruption, judiciary reform and public administration reform. On June 13, 2014, the European Commission announced the first disbursement of the money from this contract, amounting to EUR 250 million. The second disbursement of EUR105 million will follow in the future (most likely, in 2015) and will be linked to progress in reforms in the areas of anti-corruption, public finance management, civil service, constitutional reform, electoral legislation and justice.<sup>58</sup>

Anti-corruption activities of civil society organisations are also traditionally supported by the International Renaissance Foundation (IRF, Ukrainian branch of the Soros Network). In 2014, IRF supported civic campaigns aimed to combat corruption in medical education institutions, creation of the Transparency Ranking for 316 high education institutions, provided mini grants for CSO institutional development, civic advocacy campaigns aimed to implement political finance reform, development of the proposals for reform of public administration. It also supported the activities of various expert groups, including groups working on E-Governance issues and reform of local self-government, functioning of the website Nashi Groshi (that uncovered the cases of violations/ corruption in public procurement), and anti-corruption awareness raising campaigns. The list of the IRF achievements also includes preparation of the draft law on ultimate beneficiaries of the legal persons and disclosure of the data from the State Register of Immovable Property (see above).<sup>59</sup>

A number of corruption related programs are implemented in Ukraine by the USAID. In particular, starting from 2011, USAID has been implementing "Fair, Accountable, Independent and Responsible (FAIR) Justice" program that strengthens the accountability and transparency of key judicial institutions; promotes Ukrainian legislative and regulatory compliance with international and European standards; bolsters the professionalism and effectiveness of the Ukrainian judiciary; and supports civil society organizations in advocating for and monitoring judicial reform. Anti-corruption activities are also supported by the USAID through «Strengthening Civil Society in Ukraine» (UNITER) project. The campaigns supported by UNITER coalition partners represent citizen interests on issues such as EU integration, anti-corruption, elections, civic responsibility and participation, youth engagement, human rights and inclusiveness. The UNITER program also supports anti-corruption and constitutional reform-oriented organizations, coalitions and campaigns that seek to build constituencies, mobilize public support, and engage in effective dialogue between citizens, civil society, government, the private sector and other key stakeholders in the reform process. USAID directly provides funding for awareness raising/advocacy campaigns to a number of Ukrainian NGOs, such as OPORA Civic Network, Ukrainian Centre for Independent Political Research and others.<sup>60</sup>

Starting from January 2013, UNDP has been implementing the "Democratisation, Human Rights and Civil Society Development Program in Ukraine", funded by the Danish Ministry of Foreign Affairs. It works to strengthen capacities of civil society organizations to be resilient and effective promoters

<sup>57</sup> OECD/ACN, Second Round of Monitoring. Monitoring Report on Ukraine, 2010, p.10.

<sup>58</sup> http://europa.eu/rapid/press-release\_MEMO-14-279\_en.htm [accessed December 1, 2014].

<sup>59</sup> See: http://www.irf.ua/grants/awarded\_grants/?program=33&years=0&region=0&query= [accessed December 1, 2014].

<sup>60</sup> Further information on USAID programs in Ukraine can be found at: http://www.usaid.gov/where-we-work/europe-and-eurasia/ukraine/democracy-human-rights-and-governance [accessed December 1, 2014].

of democratic values, support human rights actors to promote and defend human rights in Ukraine, as well as foster participatory and results-driven Government-CSO dialogue. Within the framework of this program, UNDP supported development of the methodology for conducting anti-corruption assessments, that was incorporated into the practices of the Parliamentary Committee on Fighting Organized Crime and Corruption, as well as increase of the Ombudsman's Office [See: Ombudsman] capacity to serve as an effective national human rights institution.<sup>61</sup>

The OSCE Project Co-ordinator runs pilot initiatives in several regions of Ukraine to introduce e-governance solutions that deliver administrative services more efficiently to citizens and improve accountability. To strengthen cooperation between authorities and civil society, the OSCE Project Co-ordinator also holds training seminars on administrative practices, such as the registration of NGOs. The Co-ordinator's activities to strengthen the rule of law and respect for human rights in Ukraine span the areas of legislative process; criminal, administrative, and constitutional justice; public awareness of human rights; and legal education. Also, the OSCE Project co-ordinator organizes professional discussions of law makers, lawyers, judges, and scholars on fair trial practices; offers training for judges on the interpretation of legislation and European legal instruments; and trains the judiciary on formulating judicial opinions.<sup>62</sup>

Other international organisations, such as the Venice Commission, OECD, GRECO, ODIHR and others are mainly focused on providing the Government/CSOs with expert opinions, advice and other similar assistance aimed to improve the quality of anti-corruption legal framework.

Overall, in contrast to 2010, donor activities in 2014 have produced a number of practical results, including development and adoption of the new anti-corruption legislation, implementation of effective advocacy/awareness raising campaigns and building of strong NGO coalitions to push the necessary reforms related to combating corruption in Ukraine.

#### Anti-corruption activities of civil society and business

Civil society organisations play an important role in advocating anti-corruption reforms in the country and monitoring how the adopted legislation is implemented in practice. In particular, during 2013 and 2015 CSOs participated in preparation or supported all major anti-corruption draft laws submitted to the parliament for consideration. The list of the CSO-supported/prepared laws includes 2011 Law on Access to Public Information and further amendments to that Law, 2014 Law on Principles for Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2014 – 2017, 2014 Law on Prevention of Corruption, 2014 Law on Amendments to Certain Legislative Acts of Ukraine Related to Identification of Ultimate Beneficiaries of Legal Persons and Public Figures, 2014 Law on National Anti-Corruption Bureau of Ukraine, 2014 Law on Prosecution Service, 2014 Law on Public Procurement.<sup>63</sup> During 2012 and 2014, CSOs also prepared opinions on the draft laws considered by the Parliamentary Committee on Fight Against Organised Crime and Corruption. All major anti-corruption CSOs participate in the "Reanimation Package of Reforms" Initiative that advocates for reforms in the various sectors of governance (medical reform, deregulation of economy, reform of energy policy, reform of public administration, reform of the law enforcement agencies and other reforms).

As in 2010, the business sector is not very active in carrying out anti-corruption activities. It is involved in formulation of anti-corruption recommendations, which are channelled mainly via business associations and NGOs specializing on anti-corruption policy issues. The number of companies adhering to UN Global Compact has not significantly changed since 2010 [see: Business].

<sup>61</sup> Further information on the program can be found at: http://www.ua.undp.org/content/ukraine/en/home/operations/projects/democratic\_governance/project\_sample11211.html [accessed December 1, 2014].

<sup>62</sup> Information on the OSCE projects in Ukraine is available at: http://www.osce.org/ukraine [accessed December 1, 2014].

<sup>63</sup> See: http://platforma-reform.org/?page\_id=448 [accessed December 1, 2014].

# VII. NATIONAL INTEGRITY SYSTEM

# 1. LEGISLATURE

# Summary

While the law generally provides the legislature with adequate resources, such access is not ensured in practice. Low MP salaries make the parliamentarians vulnerable to corruption. Independence of the legislature from other actors is not fully ensured by the Constitution, while in practice the legislative agenda is to a significant extent controlled by the Cabinet of Ministers. Lack of transparency in work of the parliamentary committees and individual MPs makes important aspects of the Parliament's work opaque. The parallel electoral system used to elect MPs, unrestricted immunity enjoyed by the members of the legislature, and lack of citizen's right to challenge the constitutionality of the legislation adopted by the Parliament, politicization of the Constitutional Court and lack of mandatory public consultations on the draft legislation decrease the level of the legislature's accountability. The legal framework fails to provide for independent review of the asset declarations submitted by the MPs, neither does it properly regulate lobbying and conflict of interests. Violations of integrity rules by MPs are not rare instances. Even though the Parliament has powers enabling it to effectively supervise the executive, the respective powers are not effectively used in practice. On a positive note, the Parliament's role in implementing legal reforms to counter corruption and promote integrity has significantly increased.

The table below presents a general evaluation of the legislature in terms of capacity, governance and role in national integrity system. The table is then followed by a qualitative assessment of the relevant indicators.

# LEGISLATURE

Overall Pillar Score (2015): 51.38 / 100

Dimension	Indicator	Law	Practice
Capacity	Resources	75 (2015, 2010)	25 (2015), 50 (2010)
50/100	Independence	50 (2015, 2010)	50 (2015), 25 (2010)
Governance	Transparency	50 (2015, 2010)	50 (2015), 75 (2010)
	Accountability	50 (2015, 2010)	25 (2015, 2010)
41.66/ 100	Integrity	50 (2015), 25 (2010)	25 (2015), 0 (2010)
Role	Executive Oversight	50 (2015, 2010)	
62.5/ 100	Legal reforms	75 (2015), 50 (2010)	

Overall Pillar Score (2010): 45.83 / 100

#### Structure and organisation

The legislature, the Verkhovna Rada of Ukraine (VRU), is the unicameral legislative body, comprising 450 MPs. The parliament is elected for a 5-year term. The MPs are elected based on the parallel electoral system, whereby 225 MPs are elected in the nationwide election district under proportional representation system with voting for the closed party lists, while the remaining MPs are elected in 225 single-mandate election districts based on the first-past-the-post. In the nationwide election district only those political parties, which managed to pass the 3% electoral threshold are awarded seats in the Parliament.

The most recent parliamentary elections were held on October 26, 2014, due to early dissolution of the Parliament by the President on August 26, 2014.

Based on the election results, 6 factions were established in the new Parliament, namely the faction of the Petro Poroshenko Bloc (149 MPs), faction of the People's Front Party (82 MPs), faction of the Opposition Bloc (40 MPs), faction of the Samopomich Party (32 MPs), faction of the Oleh Liashko's Radical Party (22 MPs), and Faction of the Batkivshchyna Party (19 MPs). 32 MPs belong to none of the factions, while independent MPs elected in the 2014 parliamentary elections established two MP groups, namely "Will of the People" Group (20 MPs) and "Economic Development" Group, comprising 18 MPs.<sup>64</sup> On November 21, 2014, the leaders of the five factions in the Parliament (all, but Opposition Bloc) established a coalition in the new Parliament and signed the Coalition Agreement that committed them to a number of reforms in the key sectors, including anti-corruption.

On December 4, 2014, the Parliament established 27 parliamentary committees<sup>65</sup> and the Special Controlling Commission for Privatization, as well as appointed leadership of the committees and committee members. The parliamentary committees are tasked to prepare the registered bills for consideration by the legislature, to preliminary consider other issues falling under the scope of the Parliament's competence, as well as to supervise the Executive.

The work of the Parliament is organized by its Secretariat that provides informational, legal, organizational and other support to the legislature. The employees of the Secretariat are public servants. The committees are assisted by their own secretariats, which provide support to the committees as bodies, as well as to the MPs appointed to the respective committees.

# Assessment

# Resources (Law) - Score 75 (2015, 2010)

To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?

Sine 2010, the legal framework aimed to ensure that the legislature receives adequate resources to effectively carry out its duties has not changed and generally allows the parliament to receive the needed resources.

The amount of annual funding of the VRU is determined by the Law on the State Budget of Ukraine for the respective year, and the parliament is funded separately from other bodies. Under the Constitution of Ukraine the Parliament is entitled to adopt its own Rules of Procedure (although subject to further approval by the President), to approve its own detailed budget of expenses, to appoint and discharge from office the Chair of the VRU Secretariat, to approve the Secretariat's structure, to elect the Speaker and his/her deputies and to discharge them from their offices, and to

<sup>64</sup> Data as of December 1, 2014.

<sup>65</sup> VRU Resolution No 22-VIII, dated December 4, 2014.

approve the list of the parliamentary committees and their composition.<sup>66</sup> The parliament's budget is approved when the legislature considers draft Law on State Budget of Ukraine in the second reading based on the proposals of the Parliament's Budget Committee and Committee on Rules of Procedure.<sup>67</sup> The Parliament independently decides on the number of the employees of the VRU Secretariat, as well as on tasks and duties of its Secretariat.<sup>68</sup>

While the budget of the Parliament constitutes an integral part of the State Budget of Ukraine, the State Budget of Ukraine is approved by the law, and all the laws passed by the Parliament can be vetoed by the President.<sup>69</sup> The procedures governing the work of the legislature are established by the Law on the Rules of Procedures for the Parliament, meaning that any amendments to the Rules of Procedure must be approved by the President before entering legal force. These two requirements to a certain extent restrict the legislature's powers in providing itself with necessary resources.

# Resources (practice) - Score 25 (2015), 50 (2010)

#### To what extent does the legislature have adequate resources to carry out its duties in practice?

Whereas legislature has some resources, significant resource gaps significantly reduce the effectiveness of its work. Given the situation in the Ukraine's economy and budget cuts, the resources available to the legislature have reduced compared to 2010.

In 2010, the parliament received UAH 822,152,500 [USD 103 million] from the State Budget of Ukraine, while in 2014 the funding of the Parliament's operations decreased to UAH 687,446,100 [USD 53 million].<sup>70</sup> In 2013, the monthly salary of an MP equalled as much as UAH 18,000<sup>71</sup>, while in 2014 the Parliament adopted changes to the State Budget of Ukraine for 2014, whereby the MP monthly salaries were decreased to UAH 6,500 to cut the overall budget expenses for the salaries of the high-ranking officials.<sup>72</sup> Some MPs criticized that decision stating that low salaries will make the MPs vulnerable to corruption and will not allow them to effectively fulfil their duties.<sup>73</sup> In 2014, the legislature also adopted changes to the Law on Status of MP aimed to eliminate a number MP privileges<sup>74</sup> funded from the State Budget of Ukraine and to reduce the MP business travel costs.<sup>75</sup>

The number of employees of some of the parliamentary committees (Committee on State Building and Local Self-Governance, Corruption Prevention Committee) does not allow them to effectively perform their duties,<sup>76</sup> and many committees involve international donor funding to support certain committee operations, including public discussions of the draft laws, preparation of the opinions on

<sup>66</sup> Art. 85, 88, 89 of the Constitution of Ukraine.

<sup>67</sup> Art. 7 of the VRU Rules of Procedure.

<sup>68</sup> Art. 7 of the VRU Rules of Procedure, VRU Resolution No 1944-VI, dated July 1, 2004.

<sup>69</sup> Art. 94 of the Constitution.

<sup>70</sup> Based on the UAH/USD exchange rates as of December 1, 2014.

<sup>71</sup> http://finance.bigmir.net/news/economics/27872-Zarplaty-deputatov--zhadnee-ukrainskih-tol-ko-ital-janskie--INFOGRAFIKA- [accessed December 1, 2014].

<sup>72</sup> http://nashigroshi.org/2014/07/31/ukrajina-zmenshyla-zarplaty-nardepiv-na-pivmilyarda-a-putin-nakyne-svojim-chynovnykam-462-milyardy-na-foni-zrostayuchoji-koruptsiji/ [accessed December 1, 2014].

<sup>73</sup> http://ipress.ua/news/udarivets\_chumak\_proty\_zmenshennya\_zarplaty\_deputatam\_92680.html; http://socportal.info/2014/10/29/mustafa-najyem-proti-znizhennya-zarplati-narodnim-deputatam.html [accessed December 1, 2014].

<sup>74</sup> http://www.day.kiev.ua/uk/news/120314-nabuv-chinnosti-zakon-pro-skasuvannya-deputatskih-pilg [accessed December 1, 2014].

<sup>75</sup> Law No 836-VII, dated February 28, 2014; Law No 1166-VII, dated March 27, 2014; Law No 1301-VII, dated June 3, 2014.

<sup>76</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014.

the draft legislation etc.<sup>77</sup> The maximum number of VRU Secretariat employees was approved in 2004 (1,115 employees<sup>78</sup>) and has not been reviewed since then, despite the increased workload of the VRU Secretariat.<sup>79</sup> In July 2014 the Government approved the plan to decrease the number of public servants employed by various authorities, including the President's Office, the Cabinet of Minister's Secretariat and VRU Secretariat. In accordance with the plan, almost 20% of the VRU Secretariat officials had to be fired by the end of 2014.<sup>80</sup>

The Parliament's library resources of the Parliament are sufficient, but many MPs and some employees of the VRU Secretariat and VRU committees do not know how to use them effectively.<sup>81</sup> The research resources of the Parliament are limited: some committees (Committee on State Building and Local Self-Governance, Corruption Prevention Committee) have established civic and expert councils to assist them in preparing opinions on the draft legislation, while the Institute for Legislation within the VRU Secretariat structure, which was supposed to be the leading source of expertise on a variety of issues and develop the most important draft laws, in fact fails to fulfil its tasks, with the latter being more effectively implemented by internal departments of the VRU Secretariat, secretariats of the committees and think-tanks.<sup>82</sup>

# Independence (law) - Score 50 (2014, 2010)

#### To what extent is the legislature independent and free from subordination to external actors by law?

While the legal framework provides for a number of mechanisms to ensure that the legislature is independent and free from subordination to external actors, certain provisions laid down in the Constitution of Ukraine decrease the level of the Parliament's independence.

Under the Constitution of Ukraine and Parliament's Rules of Procedure, the Parliament independently approves the schedule of its plenary meetings, its timetable, elects the Speaker, First Deputy Speaker and Deputy Speaker, establishes parliamentary committees, investigation commissions and ad hoc committees, appoints and dismisses their members, appoints and discharges from office the Chair of the VRU Secretariat, and approves the budget of expenses for the Parliament<sup>83</sup> [see also: Resources (law)]. The MPs are granted the right to prepare and submit the draft laws to the legislature for further consideration, and can do this independently of their factions and Government.<sup>84</sup>

Following the return to the 2004 Constitution in February 2014, the President's powers to dissolve the Parliament early have been expanded. In particular, under the previous Constitution, the President was only allowed to dissolve the legislature in one case, i.e., if during one month of the regular session, the Parliament is not able to hold its plenary meetings, while under the 2004 Constitution the President may also dissolve the Parliament if no party coalition within the legislature has been formed during a month following the previous coalition's collapse, or if no new Government has been

<sup>77</sup> Interview by the Chair of Secretariat of one of the parliamentary committees, with author, August 15, 2014.

<sup>78</sup> Resolution of the Head of the VRU № 1944-IV, 1 July 2004.

<sup>79</sup> VRU Committee on Rules of Procedure/PDP II/Westminster Foundation for Democracy, Ways for Improvement of Work of Parliamentary Secretariat: Priority Steps, 2010, p. 23, 24, 43; http://reglament.rada.gov.ua/vru\_reglament/document/39696/Way\_Vdoskonalennia\_WEB.pdf [accessed December 1, 2014].

<sup>80</sup> http://www.volynnews.com/news/economics/kabmin-zvilnyt-bilshe-22-tysiach-derzhsluzhbovtsiv-/ [accessed December 1, 2014].

<sup>81</sup> Interview by the Chair of Secretariat of one of the parliamentary committees, with author, August 15, 2014.

<sup>82</sup> Andriutsa M., Analytical Support Provided by VRU Secretariat to Legislative Process: Organisational and Legal Aspects, in: Collection of Scientific Works "Efficacy Public Administration", 2013, Issue 35, p. 77.

<sup>83</sup> Art. 85, 88, 89 of the Constitution of Ukraine, Art. 7, 20-23 of the VRU Rules of Procedure.

<sup>84</sup> Art. 93 of the Constitution of Ukraine.

formed in 60 days following the fall of the previous Government.85

Independence of the legislature is also limited by the constitutional provision requiring that the Parliament's Rules of Procedure and any changes to them must be approved by the law of Ukraine, while all the laws passed by the legislature can be vetoed by the President. Further, the President's veto can be overridden only if so decided by 300 MPs out of the constitutional composition of the legislature (i.e., 450 MPs)<sup>86</sup>.

# Independence (practice) - Score 50 (2015), 25 (2010)

#### To what extent is the legislature free from subordination to external actors in practice?

Although the level of the Parliament's independence has increased compared to 2010 when the legislature played the role of rubber stamp for the President and Cabinet of Ministers [see: National Integrity System Assessment: Ukraine 2011, p. 49], the independence of the legislature is still not properly ensured in practice.

On July 24, 2014, the factions of the Svoboda Party and UDAR decided to leave the coalition in the legislature to "create the grounds for early dissolution of the Parliament by the President".<sup>87</sup> Since the new coalition has never been established in the legislature, the President dissolved the Parliament on August 25, 2014, and early parliamentary elections were held in October 2014. In those elections, pro-President party, the Petro Poroshenko Bloc, received the highest number of seats (149), followed by the Peoples' Front led by the incumbent PM Arseniy Yatseniuk, with 82 seats. The election results allow the President and the Government to effectively influence the work of the Parliament, especially given considerably low number of the MPs in other factions [see: Structure and organisation].

Since February 27, 2014, when the Parliament appointed Arseniy Yatseniuk Prime Minister, the Cabinet of Ministers has submitted to the Parliament 169 draft laws, of which 45 were adopted and signed into laws by the President. During the same period, MPs registered 1,041 draft laws, of which only 65 have been adopted as laws.

Some of the important Government drafts, including amendments to the State Budget for 2014, Customs Code and Tax Code were adopted as the laws in the first and final reading in less then 10 days after registration in the Parliament.<sup>88</sup> For instance, the Government-sponsored draft Law on Sanctions (establishing the criteria and procedures for imposing sanctions on the natural and legal persons for actions against national interests of Ukraine, its territorial integrity, economic independence, occupation of the territory of Ukraine) was registered in the Parliament on August 8, 2014, included on the Parliament's agenda on August 12, approved in the first reading on the same day, and adopted in the second reading on August 14, 2014.<sup>89</sup> Some draft laws were adopted by the parliament into laws on the day when they were registered in the legislature.<sup>90</sup> The above data suggest that the legislative process is dominated by the Government and that Government can push the Parliament as urgently as needed. However, the cases when the parliament voted for or against

90 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\_1?pf3511=50277; http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\_1?pf3511=50437; http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\_1?pf3511=50828 [accessed December 1, 2014].

NATIONAL INTEGRITY SYSTEM ASSESSMENT

<sup>85</sup> Art. 90 of the Constitution of Ukraine.

<sup>86</sup> Part 4 of art. 94 of the Constitution of Ukraine; http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/page2[accessed December 1, 2014].

<sup>87</sup> http://www.unian.ua/politics/943295-udar-i-svoboda-vihodyat-z-parlamentskoji-koalitsiji-batkivschina-vistupae-za-dostrokovi-vibori.html [accessed December 1, 2014].

<sup>88</sup> http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\_1?pf3511=51334; http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\_1?pf3511=51734; http:// w1.c1.rada.gov.ua/pls/zweb2/webproc4\_1?pf3511=50560 [accessed December 1, 2014].

<sup>89</sup> http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\_1?pf3511=51915 [accessed December 1, 2014].

the drafts receiving hand signals from the MP Mykhailo Chechetov, one of the former coalition leaders, that was typical for the period under former President Yanukovych rule,<sup>91</sup> have not been revealed since Yanukovych escape from the country in 2014.

# Transparency (law) - Score 50 (2015, 2010)

# To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?

Compared to 2010, the legal provisions aimed to ensure transparent work of the legislature generally have not been changed and still contain some loopholes.

Transparency of the Parliament's work is one of the principles enshrined in the VRU Rules of Procedure.<sup>92</sup> The VRU plenary meetings are open, and the closed meetings can only be held if the Parliament made a decision to hold meeting behind the closed doors by the absolute majority of votes of all the MPs.<sup>93</sup> The most important information on the parliament's activities (laws, resolutions, agendas, transcripts of the sittings, draft laws, results of voting by each MP, etc.) has to be made public on the VRU website.<sup>94</sup>

The public service broadcasting companies (the National Television Company of Ukraine and the National Radio Company of Ukraine) are legally required to cover the Parliament's work and to broadcast in real time the key events in the VRU, such as parliamentary hearings, "questions and answers" hours with the Cabinet of Ministers, and other events if so required by the Parliament.<sup>95</sup> Media are allowed to cover the Parliament's activities without any restrictions and free or charge, while the Parliament's officials are required to provide information on the Parliament's work to the media, unless the cases when access to such information is restricted by the law.<sup>96</sup> Journalists are entitled to attend the plenary meetings of the Parliament and open committee meetings if they are accredited by the Press Service of the VRU Secretariat.<sup>97</sup> Since November 20, 2014, citizens are allowed to attend the open plenary meetings of the legislature based on an electronic request seeking to attend plenary meeting to be held on specific date.<sup>98</sup>

The Law on Access to Public information requires the VRU Secretariat to provide information upon requests for information (unless access to such information is restricted), as well as to make public on its website the main documents related to the Parliament's work, including the VRU budget, information on the VRU mission, functions and powers, reports, contact details of the officials, draft decisions, agendas of the open meetings.<sup>99</sup> The Law on Principles for Prevention and Counteraction to Corruption requires that asset declarations of the VRU Speaker and all the MPs must be published

<sup>91</sup> http://osvita.mediasapiens.ua/ethics/manipulation/maysterklas\_savika\_shustera\_yak\_ne\_nazivati\_rechi\_svoimi\_imenami/ [accessed December 1, 2014].

<sup>92</sup> Article 3 of the Rules of Procedure of the VRU, Article 3 of the Law on Committees of the VRU.

<sup>93</sup> Article 84.1 of the Constitution of Ukraine.

<sup>94</sup> See, for instance, Articles 3, 55, 61, 65, 66, 92, 137, 139, 203, 234, 236 of the Rules of Procedure of the VRU, Article 9 of the Law on Committees of the VRU, clause 5 of the Regulations on the Website of the VRU, approved by the Resolution of the Head of the VRU № 462, May 24, 2001

<sup>95</sup> VRU Resolution No 6-VIII, dated November 27, 2014.

<sup>96</sup> Article 2 of the Law on the Procedure of the Coverage of the Activities of State and Local Authorities by Media, № 539/97-BP, September 23, 1997.

<sup>97</sup> Clause 7 of the Procedure for accreditation of the journalists and media technical staff at the Parliament, approved by the VRU Resolution No 1549-VII, dated July 1, 2014.

<sup>98</sup> http://www.unian.ua/politics/1011604-turchinov-pidpisav-rozporyadjennya-pro-dostup-gromadyan-na-vidkriti-zasidannya-radi.html [accessed December 1, 2014].

<sup>99</sup> Art. 15, 20 of the Law on Access to Public Information.

on the VRU website, except for the data on location of the declared property, tax payer number and passport data.<sup>100</sup>

However, the law does not require to make public the list of the assistants to MPs, the amounts spent to cover operation of the MP offices, funds reimbursed to MPs in relation to exercising their duties (such as business travel costs, accommodation in hotels) or written reports on the business trips. While the legislation provides for the principle of transparency in the work of the parliamentary committees, it fails to clearly explain which committee documents and which information on the committee must be made public.<sup>101</sup> Further, there is no explicit requirement in the laws that each committee must establish its own website to publish information related to its activities. Art.9 of the Law on the Parliamentary Committees provides that the journalists can be invited to the committee meetings, without saying explicitly that they can attend committee meetings if they wish to do so. There is no provision in place that the transcripts and minutes of the open committee meetings must be published on Internet or in the media, neither does the legislation require to stream committee meetings online or produce audio or video records of the committee meetings. Therefore, transparency of important aspects of the Parliament's work is not properly ensured.

#### Transparency (practice) – Score 50 (2015), 75 (2010)

To what extent can the public obtain relevant and timely information on the activities and decisionmaking processes of the legislature in practice?

Comparing the situation with 2010, it is worth mentioning that though access to information on the work of the legislature as a body is generally ensured, many important areas of the Parliament's and MP's work remain opaque.

The activities of the Parliament are extensively covered by the Parliament's TV Channel Rada and on the Parliament's website. The VRU website provides access to the transcripts of the plenary meetings, agendas of the plenary meetings, detailed voting results for each decision made by the Parliament, all the registered draft laws and supporting documents (comparative tables, explanatory notes, committee and VRU Secretariat' opinions on the drafts), adopted legislation, brief information on each MP (membership on the committees and other bodies created by the parliament, introduced bills, speeches at the plenary meetings, attendance statistics).

According to OPORA Civic Network, the websites of the parliamentary committees in the previous Parliament elected in 2012 regular parliamentary elections were created by 22 out of 29 committees. As the current laws fail to specify which information on the work of the committees is a subject to mandatory publication on the committee website, content of the committee sites differs from one committee to another. In 2013, only two committees published information on attendance of their meetings by the members of the committees, while only 9 committees published agendas of the forthcoming committee meetings and most of the committees did not publish the information on the their work on the draft legislation.<sup>102</sup> Public participation in the committee work remains limited, as in 2013, 11 out of 29 committees never invited any members of the public (except for the representatives of public authorities) to attend the open committee hearings.<sup>103</sup>

In 2013, the VRU Secretariat refused to provide information on its internal structure, types of positions held by the Secretariat staff and their salaries requested by the OPORA Civic Network. It provided that information only based the court of appeals' decision obliging the Secretariat to make

<sup>100</sup> Art. 12 of the Law on Prevention and Counteraction to Corruption.

<sup>101</sup> Art. 9 of the Law on Parliamentary Committees.

<sup>102</sup> http://oporaua.org/articles/3956-sajty-komitetiv-vr-Itemnyj-lisr-internet-prostoru [accessed December 1, 2014].

<sup>103</sup> http://oporaua.org/news/4142-vlada-malo-dosluhajetsja-do-gromadjan [accessed December 1, 2014].

that information public.<sup>104</sup> In July 2013, the VRU Secretariat also refused to provide copies of the asset declarations submitted by MPs upon request for information received from one of the CSOs.<sup>105</sup> In the end of 2011, NGO "Media Law Instituted" applied to the VRU Secretariat to provide the lists of MP advisers and their salaries, something that is considered information with unrestricted access under the Law on Access to Public Information. The Secretariat, however, refused to provide the requested information and referred to the right to privacy to substantiate its refusal.<sup>106</sup> The asset declarations of the MPs were made public only when the Parliament's Speaker Oleksandr Turchynov instructed the Chair of the VRU Secretariat to do so.<sup>107</sup>

#### Accountability (law) - Score 50 (2015, 2010)

To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?

While the Constitution and other laws contain a number of provisions aimed to ensure that the legislature reports and can be made answerable for its actions, the existing provisions leave certain aspects of the Parliament's accountability uncovered.

The Constitution of Ukraine allows to challenge the constitutionality of the Parliament's decisions at the Constitutional Court of Ukraine,<sup>108</sup> while the legality of the actions, inaction or decisions of the Parliament can be challenged with the High Administrative Court of Ukraine.<sup>109</sup> However, citizens have no right to seek effective legal remedy at the Constitutional Court directly, as constitutionality of the adopted decisions can only be challenged by certain bodies and officials (no less than forty-five people's deputies of Ukraine, the Supreme Court of Ukraine, ombudsman, and the Verkhovna Rada of the Autonomous Republic of Crimea<sup>110</sup>). If the actions/inaction or the decisions made by the Parliament are challenged with the High Administrative Court of Ukraine (HACU), its decision are usually final and could not be further challenged, thus making review of HACU decisions in the disputes with the Parliament impossible. Only in March 2014, the Code of Administrative Adjudication was amended to introduce the possibility of challenging the HACU decisions with the Supreme Court of Ukraine.<sup>111</sup>

Under the Constitution of Ukraine, MPs enjoy almost unrestricted immunity, as they cannot be held criminally liable, detained or arrested without the consent the Parliament requiring a vote for lifting of immunity by 226 out of 450 MPs.<sup>112</sup>

The level of the Parliament's accountability is also decreased by the fact that half of all MPs are elected under the closed list proportional representation system that does not create any incentives for the MPs to build and maintain relations with the electorate.<sup>113</sup>

<sup>104</sup> http://chesno.org/news/1735/ [accessed December 1, 2014].

<sup>105</sup> http://www.radiosvoboda.org/content/article/25066271.html [accessed December 1, 2014].

<sup>106</sup> http://www.medialaw.kiev.ua/userimages/files/Court\_cases/Solomko\_Aparat\_VR/cassation\_solomko.doc [accessed December 1, 2014].

<sup>107</sup> http://www.ukrinform.ua/ukr/news/turchinov\_nakazav\_oprilyudniti\_deklaratsiii\_vsih\_deputativ\_1963458 [accessed December 1, 2014].

<sup>108</sup> Art. 150 of the Constitution of Ukraine.

<sup>109</sup> Art. 18 of the Code of Administrative Adjudication of Ukraine.

<sup>110</sup> Article 150 of the Constitution of Ukraine.

<sup>111</sup> Law No 887-VII, dated March 14, 2014.

<sup>112</sup> Article 80 of the Constitution of Ukraine.

<sup>113</sup> G.Zadorozhnia, The Imperative Mandate as a Form of Relations Between a Deputy and Voters (in Ukrainian), Yurydychnyi Visnyk, 2009, № 1 (10), 62.

Public consultations between the citizens, parliamentary committees and MPs may be held in the forms of parliamentary and committee hearings, involvement of the public into preliminary consideration of the bills by the committees, expert review of the bills upon committee initiative, work in advisory bodies (civic councils) formed by the committees.<sup>114</sup> However, it is left to the discretion of the Parliament, the committees and MPs to decide whether to hold any public consultations, as there is no explicit obligation in the laws requiring them to do so.

#### Accountability (practice) - Score 25 (2015, 2010)

#### To what extent do the legislature and its members report on and answer for their actions in practice?

The existing provisions governing the legislature's accountability are not effectively enforced in practice to ensure that the legislature and MPs have to report and be answerable for their actions.

The legal framework does not require the Parliament to produce any annual reports on its activities, and such reports have never been produced in practice. Those committees that created their own websites generally publish the reports on their work, but citizen's access to the reports produced by other committees is not ensured in practice.<sup>115</sup>

Since 2010, the Parliament has adopted two decisions to lift immunity from the MPs, namely from MPs Ihor Markov in 2013 and Oleh Tsariov in 2014.<sup>116</sup> In the latter case, despite Tsariov's public statements against Ukraine's territorial integrity and his active support to separatists fighting in the country's East (which constituted grounds for criminal liability), the parliament's draft decision on stripping off Tsariov's immunity received the required number of MP's votes only on the second attempt<sup>117</sup>, enabling the Prosecutor General's Office to proceed with his criminal prosecution. Following that untimely VRU decision, MP Tsariov first escaped to the Russia-occupied Crimea and further joined separatists.<sup>118</sup> The Prosecutor General's Office also instituted criminal proceedings against two other MPs, Volodymyr Oliynyk and Ihor Kaletnyk, who allegedly falsified voting results for the so-called "dictatorship laws" in the Parliament on January 16, 2014.<sup>119</sup> However, the Parliament failed to lift their immunity in time, allowing them to escape from the country. Both of them were declared nationally wanted by the Security Service of Ukraine on December 5, 2014.<sup>120</sup>

The Constitutional Court plays a limited role in ensuring accountability of the legislature as, in fact, it has turned into a political body whose decisions were used to legitimize the decisions adopted by the President, Government and Government-controlled legislature.<sup>121</sup> The administrative courts play the same role as many decisions in the disputes involving the Parliament were adopted to support the Parliament's position. In particular, in November 2014, the HACU upheld the VRU Secretariat's refusal to provide to the CSO activists the list of MPs registered at the Parliament's meeting held on April 4, 2013 since the MPs' signatures in the registration forms at that meeting were deemed

<sup>114</sup> Articles 93.4, 93.5, 103.3, 233-236 of the Rules of Procedure of the VRU, Article 29 of the Law on Committees of the VRU.

<sup>115</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014.

<sup>116</sup> http://zn.ua/POLITICS/protiv-careva-nachato-esche-odno-ugolovnoe-proizvodstvo-143401\_.html [accessed December 1, 2014].

<sup>117</sup> http://24tv.ua/home/showSingleNews.do?separatist\_i\_dali\_nedotorkaniy\_deputati\_ne\_zmogli\_pozbaviti\_tsarova\_nedotorkanosti&objectld=448651 [accessed December 1, 2014].

<sup>118</sup> http://gazeta.ua/articles/politics/\_carov-vtik-do-krimu-zmi/561754 [accessed December 1, 2014].

<sup>119</sup> http://ua.korrespondent.net/ukraine/3452329-henprokuratura-oholosyla-v-rozshuk-eks-nardepiv-oliinyka-ta-kalietnika [accessed December 1, 2014].

<sup>120</sup> http://www.pravda.com.ua/news/2014/12/5/7046591/ [accessed December 1, 2014].

<sup>121</sup> Ukrainian Helsinki Group for Human Rights, Hyman Rights in Ukraine 2013. Report by human rights organisations, 2014; http://helsinki.org. ua/index.php?id=1398046626 [accessed December 1, 2014].

"personal data".<sup>122</sup> In 2013, the administrative courts upheld the VRU Secretariat refusal to provide CSO activists with information from the MPs' asset declarations, although access to the asset declarations was not restricted by the Law on Access to Public Information.<sup>123</sup>

Only several committees in the Parliament organize public consultations with the experts and other stakeholders on a regular basis.<sup>124</sup> Some laws are adopted by the legislature on the days when they are registered in the Parliament [see: Independence (practice)]. Only a few parliamentary committees established advisory groups, civic or expert boards tasked to assist the committees in their work on legislation.<sup>125</sup> As of the end of 2013, 11 parliamentary committees established by the Seventh Parliament had never involved public in the work on draft legislation.<sup>126</sup>

# Integrity (law) - Score 50 (2015), 25 (2010)

To what extent are there mechanisms in place to ensure the integrity of members of the legislature?

Since 2010, the legislation aimed to ensure integrity of the MPs and VRU Secretariat staff has improved, however it still suffers from some flaws to be further addressed.

There is no specific Code of Conduct for the legislators. However, detailed rules of conduct for the MPs are laid down in the Parliament's Rules of Procedure and in the Law on Status of MPs. The Law on Prevention of Corruption establishes a number new rules for MPs concerning prevention of the conflict of interest. For instance, participation in the Verkhovna Rada plenary discussions has been limited when the conflict of interest is in place, and voting within the conflict of interest conditions became possible only after its public announcement. The rules of conduct for the civil servants employed by the VRU Secretariat are laid down in the Law on Prevention of Corruption.

The Parliament's Rules of Procedure prohibit MPs from using posters and loudspeakers at the Parliament's meetings, interrupting speeches made by their colleagues at the plenary meetings, offending other MPs, exceeding the time designated to their speeches.<sup>127</sup> These rules are enforced by the Speaker and the Parliamentary Committee on Rules and Ethics. In the case when MP offended any other MP or a faction, the Committee on Rules and Ethics is entitled to adopt a decision to prohibit the MP in question to attend up to 5 plenary meetings of the legislature.<sup>128</sup> Under the Constitution, the MPs must vote in person for the decisions considered and adopted by the legislature,<sup>129</sup> while the Law on Status of MPs (Art. 7, 24) requires the legislators to attend the plenary meetings, the meetings of the committees to which they are elected, as well as to maintain relations with the electorate.

Further, the legal framework prohibits combining their MP mandate with any other representative office, public service, business or any other paid work (except for scholar, scientific and creative work, as well as medical practice in the time free of the MP's work), as well as with membership on

<sup>122</sup> http://www.medialaw.kiev.ua/news/2799/ [accessed December 1, 2014].

<sup>123</sup> http://chesno.org/news/1638/ [accessed December 1, 2014].

<sup>124</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014.

<sup>125</sup> http://kompkd.rada.gov.ua/kompkd/control/uk/publish/category?cat\_id=45114; http://crimecor.rada.gov.ua/komzloch/doccatalog/document?id=52154 [accessed December 1, 2014].

<sup>126</sup> http://oporaua.org/news/4142-vlada-malo-dosluhajetsja-do-gromadjan [accessed December 1, 2014].

<sup>127</sup> Art. 51, 52 of the Parliament's Rules of Procedure.

<sup>128</sup> Art. 51 of the Parliament's Rules of Procedure.

<sup>129</sup> Art. 84 of the Constitution of Ukraine.

the governing or supervisory bodies of the business entities.<sup>130</sup> The Law on Prevention of Corruption explicitly prohibits any abuse of office/mandate, prohibits acceptance of the gifts/donations granted in relation to exercising the MP duties as well as gifts from their subordinates (gifts that are not connected with the MP's position are not allowed, if the value of the gift exceeds 50% of the minimum monthly salary [roughly UAH 1200 or USD 55].<sup>131</sup>

Within one year following termination of powers, MPs are forbidden from entering labour or any business agreements with natural or legal persons supervised by them at the time when they held MP mandates, from disclosing or using any information they became aware of while being in office, as well as from representing the interests of any persons in cases involving the Parliament as another party.<sup>132</sup>

MPs are also legally required to annually (by April 1 of the respective year) submit to the VRU Secretariat the asset declarations, subject to further publication by the VRU Secretariat on the Parliament's website within one month following the day when the declaration was submitted.<sup>133</sup>

However, lobbying is not specifically regulated in the laws, while MPs are not required to record and disclose their contacts with the lobbyists. The law On Prevention of Corruption introduces new rules of financial control for MPs; their declarations will be obligatory checked in full<sup>134</sup> [See Public Sector (Integrity (law)]. The legal framework also fails to establish any provisions to regulate the conflicts of interest in MP's work (even though it requires avoiding such conflicts and informing direct supervisors that conflicts of interest emerged).<sup>135</sup> The asset declarations submitted to the VRU Secretariat by the MPs are not subject to review by an independent public body.

#### Integrity (practice) - Score 25 (2015), 0 (2010)

#### To what extent is the integrity of legislators ensured in practice?

While there has been certain improvement in terms of ensuring the legislators' integrity since 2010, the overall level of MPs' integrity remain lows and needs to be further increased.

Given that the legal framework does not require the MPs to disclose their contacts with the lobbyists, such contacts are not disclosed in practice. Moreover, in the 2014 early parliamentary elections many MPs representing large businesses (including two dollar billionaires, Vadym Novinskyi and Kostiantyn Zhevago) were elected, and, therefore will be able to lobby their business interests directly.<sup>136</sup> Some MPs have been appointed to committees connected with their businesses, which increases the risk of the conflicts of interest.<sup>137</sup> 5 MPs suspected by CSO activists of being engaged in corruption before, have been appointed chairs of the parliamentary committees by the eighth legislature.<sup>138</sup>

While the number of cases of violation of the principle of personal voting at the Parliament meetings has reduced compared to the Seventh Parliament, the practice of voting for absent colleagues

<sup>130</sup> Art. 78 of the Constitution of Ukraine, Art. 3 of the Law on Status of MPs.

<sup>131</sup> Art. 6-8 of the Law on Principles for Prevention and Counteraction to Corruption.

<sup>132</sup> Art. 10 of the Law on Principles for Prevention and Combating Corruption.

<sup>133</sup> Art. 12 of the Law on Principles for Prevention and Combating Corruption.

<sup>134</sup> Art. 50 of the Law "On Prevention of Corruption"; http://zakon4.rada.gov.ua/laws/show/1700-18/paran313#n313

<sup>135</sup> Art. 14 of the Law on Principles for Prevention and Combating Corruption.

<sup>136</sup> http://expres.ua/news/2014/11/05/118433-vidomi-prizvyshcha-naybagatshyh-biznesmeniv-skladi-novoyi-vr [accessed December 1, 2014].

<sup>137</sup> http://www.pravda.com.ua/articles/2014/12/5/7046517/ [accessed December 5, 2014].

<sup>138</sup> http://chesno.org/news/2045/ [accessed December 5, 2014].

by MPs continued in the Eighth Parliament too.<sup>139</sup> In 2013, many MPs violated the incompatibility requirements in the Constitution and anti-corruption laws by combining their membership in the legislature with positions in business companies and executive bodies over the legally prescribed term (20 days),<sup>140</sup> which in some cases went unsanctioned, as the parliament failed to adopt decisions to terminate their powers.<sup>141</sup> For instance, one of the MPs, Iryna Sekh, has been combining her seat in the parliament with the position of the head of the regional administration for 5 months.<sup>142</sup>

The trainings for the VRU Secretariat, committee staff and MPs on integrity issues are not delivered in practice, although the civil servants employed by the VRU Secretariat undergo general training for all public officials on a regular basis to improve their overall qualifications.<sup>143</sup>

The asset declarations submitted by the MPs to the VRU Secretariat, were all made publicly available only after the Speaker instructed the VRU Secretariat to make them published on the Parliament's website on August 13, 2014. During the previous years, the VRU Secretariat generally refused CSOs in providing them with information from asset declarations [see: Transparency (practice)].

However, MPs' incorruptibility is not enough secured in practice. Many MPs keep on de facto combining their activity and business, lobbying private interests, and initiating resolutions in their favour.

#### Executive Oversight (law and practice) - Score 50 (2015, 2010)

#### To what extent does the legislature provide effective oversight of the executive?

While the Parliament has powers to effectively control the legislature, those powers are not effectively used in practice. Some laws that could potentially increase the effectiveness of the parliamentary oversight of the executive are missing.

The parliament can exercise executive oversight both directly (e.g., in the form of "questions and answers" hours to the Government, parliamentary hearings) and through the committees and commissions of inquiry. The MPs also have the right to address the Government via questions and requests, which supplement the existing forms of executive oversight. Parliamentary control of observance of human rights is exercised by the VRU Commissioner on Human Rights (ombudsman) who is appointed to office and discharged from office by the parliament, while the parliamentary oversight of budget incomes and expenses is exercised by the Accounting Chamber, whose Chair is appointed and dismissed by the Parliament [see: Ombudsman, Supreme Audit Institution]. The Budget Code of Ukraine provides the Parliament and the Accounting Chamber with sufficient powers to exercise control of allocation of budget funds.

The Parliament's role in scrutinizing appointments to the executive posts is limited as under Art.85 of the Constitution it appoints only the Prime Minister and members of the Cabinet of Ministers. In addition, the names of the ministers can be suggested only by the President (for the Minister of Defence and Foreign Minister) and Prime Minister (for other members of the Government). The

<sup>139</sup> http://ura-inform.com/ru/politics/2014/12/03/v-rade-pojavilis-novye-knopkodavy; http://www.svoboda.org.ua/diyalnist/komentari/055532/; http://chesno.org/news/2048/ [accessed December 13, 2014].

<sup>140</sup> http://chesno.org/post/102/ [accessed December 1, 2014].

<sup>141</sup> http://chesno.org/news/1889/ [accessed December 1, 2014].

<sup>142</sup> http://chesno.org/news/2036/ [accessed December 1, 2014].

<sup>143</sup> Interview by the Chair of Secretariat of one of the parliamentary committees, with author, August 15, 2014.

Parliament, however, can take a vote of no-confidence in the Government.<sup>144</sup> The right to initiate a vote of no-confidence with the Government is limited, as it cannot be initiated twice during the same session of the Parliament (if the first vote was not successful) and during one year following the adoption by the Parliament of the Cabinet of Ministers Program of Actions.<sup>145</sup>

While both the supreme audit institution (SAI) and ombudsman are legally required to produce annual reports on their operations subject to further approval by the legislature, since 2012 the Parliament has failed to adopt any decisions based on consideration of the SAI and ombudsman reports so far [See Ombudsman, SAI].

In 2013 and 2014, there have been a number of cases when the Prime Minister and/or the ministers ignored the "question and answers" hours held by the legislature or by parliamentary committees, or sent their subordinates to answer MPs' questions or report on Government policy implementation.<sup>146</sup>

The Constitution allows the legislature to establish commissions of inquiry to investigate issues of general importance or certain Government actions. The procedure for operations of the commissions of inquiry is not properly regulated as in 2009 the Law on Commissions of Inquiry, Special Commission of Inquiry and Temporary Special Commissions was recognized as unconstitutional by the Constitutional Court of Ukraine and has never been readopted by the Parliament. In the 7th Parliament, the opposition initiated the establishment of 34 commissions of inquiry (as of August 2013), but in fact only 3 commissions were established.<sup>147</sup> The representatives of the coalition on the commissions of inquiry often failed to attend the commissions' meetings and many of them were terminated because they failed to produce any reports on results of their investigations.<sup>148</sup>

The effectiveness of budget control performed by the legislature raises doubts, as the SAI identifies numerous cases of illegal or ineffective use of public funds which result in no prosecution of the officials who committed the respective violations [for further details see: Supreme Audit Institution].

#### Legal reforms (law and practice) - Score 75 (2015), 50 (2010).

# To what extent does the legislature prioritise anti-corruption and governance as a concern in the country?

In 2014, the Parliament started to implement comprehensive, concrete and effective legal reforms to counter corruption and promote integrity. However, most of the adopted laws entered legal force only in April 2015, and the overall impact of the reforms has yet to be seen.

The new Coalition Agreement signed by the five factions that created the coalition in the 8th Parliament committed the coalition to implement a number of anti-corruption reforms. The establishment of the National Anti-Corruption Bureau and National Agency for Prevention of Corruption, bringing the legislation governing political finance in line with the GRECO recommendations, introduction of open data standards, reform of the law enforcement and judiciary are all determined as the priority measures under the Coalition Agreement.<sup>149</sup>

<sup>144</sup> Art. 18 of the Law on Cabinet of Ministers.

<sup>145</sup> Art. 14 of the Law on Cabinet of Ministers.

<sup>146</sup> http://texty.org.ua/pg/news/newsmaker/read/55555/Rada\_strikenestrike\_zvilnyla\_ministra\_jekonomiky\_Sheremetu\_Bo; http://espreso.tv/ news/2014/09/04/heletey\_ne\_pryyshov\_na\_zakryte\_zasidannya\_rady; http://www.rbc.ua/ukr/news/politics/glava-minzdrava-otkazalsya-priyti-v-ra-du-soslavshis-na-20062014103200 [accessed December 1, 2014].

<sup>147</sup> http://opora.rv.ua/parlament/876-parlamentski-tymchasovi-slidchi-komisii-3-z-34-zapratsiuvaly.html [accessed December 1, 2014].

<sup>148</sup> http://www.niss.gov.ua/articles/1605/ [accessed December 1, 2014].

<sup>149</sup> http://samopomich.ua/wp-content/uploads/2014/11/Koaliciyna\_uhoda\_parafovana\_20.11.pdf [accessed December 1, 2014].

In 2014, the Parliament adopted a number of important anti-corruption laws [See VI. Anti-Corruption Activity].

Also, during 2013-2014 the Parliament several times amended the 2011 Law on Principles for Prevention and Counteraction to Corruption to eliminate its flaws and loopholes. On April 10, 2014, the Parliament adopted a new version of the Public Procurement Law targeted at narrowing the list of entities excluded from the general procurement procedures, to increase overall transparency of public procurement and to reduce the possibilities for misuse of public funds allocated for procurement. On October 14, 2014, the Parliament also adopted a new version of the Law on Prosecutors' Offices, which will be enaced (in whole) in mid July 2015.

# Key recommendations for the Verkhovna Rada of Ukraine:

To strengthen accountability of the MPs to their constituencies, the parallel electoral system for the parliamentary elections must be replaced by the open list proportional representation system.

The scope of MP immunities established in the Constitution should be narrowed so as to allow for securing evidence in situations where MPs are caught in the act of committing a serious or gravest crime.

The legal framework should be changed to provide for mandatory public consultations while considering draft laws by the parliamentary committees.

The laws aimed to ensure transparency in the work of the Parliament need to be amended to increase transparency of the work of the parliamentary committees and individual MPs. In particular, the laws should require mandatory publication of the minutes and transcripts of the open committee meetings, the lists of MP assistants, amounts spent to cover operation of the MP offices, and written reports on MP business trips. The law should also explicitly provide that the journalists have the right to be present at the open committee meetings, and that committee meetings must be streamed online.

# 2. EXECUTIVE

# Summary

The poor state of Ukraine's economy has decreased the Government's access to resources needed to effectively carry out its duties. The return to the 2004 Constitution has strengthened the level of independence of the Cabinet of Ministers from other branches of power, but its independence in practice is still impeded by the significant presidential influence with respect to the executive branch of government. The legislation governing transparency of the executive has improved since 2010; however, some important aspects of the Government's work still require more transparency (for example, it is necessary to provide transparency in the process of Governmental resolutions' drafting and adopting). The level of the Government's accountability is decreased by lack of effective parliamentary oversight of the executive and ineffective public consultations. While the existing legislation provides for a number of mechanisms aimed to ensure integrity of the members of the executive, not all of them are implemented in practice (for example, government officials are appointed on the basis of the personal devotion criteria; some governmental officials are close to oligarchs). The Government generally prioritises public accountability and the fight against corruption as a concern in the country, as well as initiates necessary anti-corruption reforms, but success of the executive in implementing the respective reforms has yet to be seen.

The table below presents a general assessment of the executive in terms of capacity, governance and role in national integrity system. The table is then followed by a qualitative assessment of the

#### relevant indicators.

EXECUTIVE

Overall Pillar Score (2015): 56.93 / 100							
Overall Pillar Score (2010): 50.69 / 100							
Dimension	Indicator	Law	Practice				
Capacity	Resources		50 (2015), 75 (2010)				
56.25/100	Independence	50 (2015), 25 (2010)	75 (2015), 50 (2010)				
Covernance	Transparency	75 (2015), 50 (2010)	50 (2015, 2010)				
Governance	Accountability	75 (2015, 2010)	50 (2015, 2010)				
62.5/100	Integrity	75 (2015), 25 (2010)	50 (2015), 25 (2010)				
Role	Public Sector Management	50 (2015, 2010)					
50/100	Legal system	50 (2015, 2010)					

#### Structure and Organisation

Under Ukraine's Constitution, the Cabinet of Ministers of Ukraine (the CMU or Government) is the highest decision-making body within the executive branch of government. The return to the 2004 Constitution in February 2014 significantly restricted the presidential powers in turms of influence over the executive. In addition, the President does not formally (under the Constitution) belong to the executive. Therefore, the below assessment does not focus on the powers and role of the President, both under the current legislation and in practice.

The Constitution provides that the CMU consists of the Prime Minister, the First Vice Prime Minister, Vice Prime Ministers, and misnisters. The new Government was appointed on November 27, 2014. At the time when this assessment was finalised, the CMU included the Prime Minister, 3 Vice Prime Ministers and 16 ministers. The Prime Minister (PM) is appointed by the legislature based on the President's proposal, which must be preliminarily agreed by the parliamentary coalition. All the ministers, except for the Minister of Defense and Foreign Minister, are appointed by the Parliament upon the PM's proposal. The right to suggest the names of the Foreign Minister and Minister of Defense is granted to the President, and the suggested names are considered and approved by the legislature.

Legal, operational, technical, and expert suport to the CMU is provided by the CMU Secretariat, headed by the Minister of the Cabinet of Ministers.

#### Assessment

#### Resources (Practice) - Score 50 (2015), 75 (2010)

To what extent does the executive have adequate resources to effectively carry out its duties?

While the executive has some resources, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.

The number of CMU Scretariat employees over the last six years decreased from 1,109 persons in 2008 to 664 in 2013.<sup>150</sup> In April 2014, to further reduce budget expenses on the CMU Secretariat, the Minister of the Cabinet of Ministers decided to fire 10% of its employess.<sup>151</sup> On March 1, 2014, the Government approved a number of measures to decrease expenses of the executive. In particular, it prohibited buying vehicles, payments for mobile services, and terminated a number of additional payments to public officials, including ministers.<sup>152</sup> Compared to 2013, the PM's salary in 2014 decreased from UAH 34,000 to UAH 18,000.<sup>153</sup> Despite those developments, human and technical resources available to the Cabinet of Ministers still generally allow it to carry out its duties.<sup>154</sup>

#### Independence (law) - Score 50 (2015), 25 (2010)

To what extent is the executive independent by law?

While return to to the 2004 Constitution generally increased the level of independence of the executive from other branches of government, the constitutional and legal framework still does not ensure that executive is entirely independent in its decision-making.

The Constitution of Ukraine provides that the Cabinet of Ministers is the highest body within the executive branch of the government.<sup>155</sup> The Government leads and coordinates the activities of the ministries and other government agencies, appoints and dismisses from offices their heads (except for the ministers), and creates and terminates ministries and other government agencies.<sup>156</sup>

However, the constitutional provisions significantly restrict the level of the executive's independence, given that the President of Ukraine has broad powers to influence the Government. According to Article 106 of the Constitution, the President is tasked to lead the foreign policy of the state, to hold negotiations and sign international treaties on behalf of Ukraine, as well as to coordinate policy implementation in the areas of national security and defence. The scope of the President's powers in foreign relations, national security and defense is not framed by the law, thus allowing the head of state to influence the government's activities in these three areas. Morover, while most members of the Government are appointed by the legislature upon the PM's proposal, the names of the Minister of Defense and Foreign Minister can be proposed only by the President, subject to further approval by the legislature. Therefore, the PM cannot influence those appointments. The President's decrees are binding for the Government, and most of them do not require countersigning by the PM or the

<sup>150</sup> CMU Resolution No 5, dated January 3, 2013.

<sup>151</sup> http://www.5.ua/Nova-vlada/kabmin-planuie-skorochennia-shtativ-rozprodazh-avtoparku-ta-likvidatsiiu-dusi-54871.html [accessed December 1, 2014].

<sup>152</sup> CMU Resolution No 65, dated March 1, 2014.

<sup>153</sup> https://news.pn/ru/money/111292 [accessed December 1, 2014].

<sup>154</sup> Interview by the representative of the CMU Secretariat, with author, July 10, 2014.

<sup>155</sup> Art. 116 of the Constitution of Ukraine.

<sup>156</sup> Art. 116 of the Constitution of Ukraine.

responsible minister to enter legal force.<sup>157</sup> The Government's ability to implement its policicies at the regional and local levels is also restricted, as the heads of the regional and local administrations (the local bodies of the executive) are appointed by the President.<sup>158</sup> The latter is also granted the right to suspend any Government decision if he/she believes that it is inconsistent with the Constitution, and to further challenge its constitutionality with the Constitutional Court of Ukraine.<sup>159</sup>

Certain powers to influence the executive are also granted to the Parliament. In particular, based on the President's proposal or one-third of all MPs (i.e., 150 MPs), the legislature can take of vote of no-confidence in the Cabinet of Ministers. However, a vote of no-confidence cannot be initiated twice during one session and within the year from the date of adoption of the CMU Program of Actions.<sup>160</sup>

#### Independence (practice) - Score 75 (2015), 50 (2010)

#### To what extent is the executive independent in practice?

While the executive is significantly independent from other actors in practice, it cannot be considered entirely free from influence exercised by the President and large businesses.

The Government appointed after the former President's excape from the country and following the return to the 2004 Constitution has become more independent from both the President and Parliament compared to the Government that was formed in 2010 based on the 1996 Constitution.<sup>161</sup> The latter granted the President wide powers related to the activities of the executive, including the right to terminate ministries and other government agencies, to fire ministers and to cancel the CMU decisions.

At the same time, the CMU influence on the policies related to foreign relations and defense is limited, since the positions of the Minister of Defense and Foreign Minister are held by the persons nominated by the President and, in fact, subordinated to the President.<sup>162</sup> The Government's ability to supervise how its policies are implemented at the regional and local levels is also restricted, mainly because the President decides independently of the Government as to whom to appoint the heads of regional or rayon state administrations and whether and when the persons occupying the positions of the heads of local administrations should be discharged from their offices.<sup>163</sup> The President also periodically issues direct instructions to the Vice Prime Ministers and ministers (including the Minister of Defense, Foreign Minister, Minister of Health) related to policy implementation and internal organizational issues.<sup>164</sup>

Further, the Government is not properly protected from the influence of the biggest business groups/ oligarchs. For instatnce, media repeatedly reported that many Government decisions, in fact, favor business activities of one of the biggest Ukrainian oligarchs, Ihor Kolomoiskyi, who has been holding the position of a regional administration head at the regional administration of Dnipropetrovsk, one of the biggest and most influential regions, from March 2014 till March 2015.<sup>165</sup>

163 http://www.pravda.com.ua/inozmi/bbc/2014/06/12/7028829/ [accessed December 1, 2014].

<sup>157</sup> Art. 106 of the Constitution of Ukraine.

<sup>158</sup> Art. 118 of the Constitution of Ukraine.

<sup>159</sup> Art. 106 of the Constitution of Ukraine.

<sup>160</sup> Art. 87 of the Constitution of Ukraine.

<sup>161</sup> Victor Tymoshchuk, expert of the Center for Political and Legal Reforms, interview with the author, July 11, 2014.

<sup>162</sup> http://versii.com/news/306267/; http://www.pravda.com.ua/rus/news/2014/06/10/7028605/ [accessed December 1, 2014].

<sup>164</sup> http://www.president.gov.ua/news/31460.html; http://tyzhden.ua/News/121690; http://ukr.segodnya.ua/politics/pnews/poroshenko-prikazal-uvolit-chinovnikov-minoborony-otvetstvennyh-za-obespechenie-voennyh-542366.html [accessed December 1, 2014].

<sup>165</sup> http://businessua.com/benzin/13647oprilyudneno-fakti-yaki-svidchat-szo-kabminom-kerue-kolomoiskii.html; http://forbes.ua/ua/business/1376262-kabmin-prograe-palivnim-lobistam [December 1, 2014].

# Transparency (law) - Score 75 (2015), 50 (2010)

To what extent are there regulations in place to ensure transparency in relevant activities of the executive?

Although the legal framework governing the Government's transparency has improved since 2010 and generally increases the transparency of the CMU work, some aspects of the Government's transparency remain uncovered by the legislation.

The principle of transparency is one of the key principles based on which the Cabinet of Ministers exercises its powers.<sup>166</sup> The Law on Access to Public Infromation requires the Cabinet of Ministers to provide information upon request and to make public on its website certain data, including data on its organizational structure, mission, functions, powers, available financial resources (including items of expenses, amounts allocated to fund those expenses and the procedure for utilizing the received funds), adopted legislation, as well as draft legal acts of the Government, which are subject to mandatory public consultations (see below). Also, the CMU must post on its website the list of services provided by the Cabinet of Ministers, templates of the documents required to receive those services, explanation of the procedure for filing requests for information to the Government, agendas of the CMU meetings and reports on the Government operations, including reports on how the requests for information were considered by the CMU Secretariat.<sup>167</sup> These provisions are largely the same as those governing access to information on activities of other public authorities.

The legislation also requires the Cabinet of Ministers to regularly inform the public on its activities, on decisions made by the Government, as well as to organize press conferences and distribute press releases to ensure that the citizens are informed on the Government activities. The CMU must publish monitoring reports on implementation of its decisions and hold public consultations in cases when they are mandatory.<sup>168</sup> (for example, in case of development and adoption of a regulatory act)

However, there are certain loopholes in the legal framework governing transparency of the executive. For instance, while the asset declarations annually submitted by the PM and other members of Government are subject to publication, the declarations submitted by the CMU Secretariat employees are not legally required to be published.<sup>169</sup> There is no independent monitoring body entitled to check the information included on the asset declarations.<sup>170</sup> In addition, the laws do not require the Government to make public all its draft resolutions: only the draft resolutions of "major public importance" and draft resolutions connected to the rights and obligations of the Ukraininan citizens must be published on the CMU website.<sup>171</sup> Agendas of the Government meetings must be published in advance of the meetings, but only 24 hours before the meeting. This short timeline makes it difficult fort he public to be aware of the isues to be decided by the CMU well in advance of the respective meetings.

#### Transparency (practice) – Score 50 (2015, 2010)

To what extent is there transparency in relevant activities of the executive in practice?

The improved legal framework pertaining to transparency of the executive resulted in increased

<sup>166</sup> Art. 3 of the Law on Cabinet of Ministers.

<sup>167</sup> Art. 15 of the Law on Access to Public Information.

<sup>168</sup> Art. 3, 49, 50, 52 of the Law on Cabinet of Ministers, paragraphs 28, 154, 155 of the CMU Rules of Procedure.

<sup>169</sup> Art.12 of the Law on Prevention and Counteraction to Corruption.

<sup>170</sup> Art.12 of the Law on Cabinet of Ministers.

<sup>171</sup> Art. 50 of the Law on Cabinet of Ministers.

transparency of the Government work in practice, especially if compared to 2010. However, lack of access to certain important information on activities of the Government and its members decreases overall transparency of the executive.

The CMU activities are extensivly covered on its website (http://www.kmu.gov.ua) and in media. In 2009, the Government launched a special website (http://civic.kmu.gov.ua) through which stakeholders can send the Government/ministries their feedback on the key draft legal acts to be approved by the Government, ministries or other executive bodies.

The CMU website provides access to asset declarations of each member of the Government, including the Prime Minister, presents the general structure of the CMU Secretariat and contact details of the directors of the Secretariat departments, agendas of the CMU meetings, procurement plans, and CMU decisions/regulations. Through May 2011 and November 2014, the Cabinet of Ministers received 7,686 requests for information, and the requested information was provided upon 2,552 requests (while the remaining requests were pending or forwarded to other executive bodies for consideration). Before 2014, when the revolution in Ukraine took place, the cases when the CMU refused to provide information upon requests from the citizens were not rare. For instance, in 2013, some journalists uncuccessfully tried to obtain from the CMU Secretariat information on the number of councilors to the PM and Vice Prime Ministers, and on the persons with whom the members of the CMU met during the official visits to other states.<sup>172</sup>

While access to information on Government activities has improved since 2010,<sup>173</sup> certain aspects of the CMU activities remain uncovered. In particular, agendas of the Government meetings sometimes are posted on the CMU website with delays, even after the meeting has been held.<sup>174</sup> Further, only the draft resolutions subject to mandatory public consultations are posted on the CMU website, as well as on the website devoted to public consultations (see above). Due to the fact that publication of the asset declarations filed by the CMU Secretariat employees is not mandatory, such declarations and minutes are not published in practice. Also, the Government has never translated procedures and regulations in plain language to make sure that average citizens understand them.

#### Accountability (law) - Score 75 (2015, 2010)

To what extent are there provisions in place to ensure that members of the executive have to report and be answerable for their actions?

There are detailed provisions in place to ensure that the members of the executive have to report and be answerable for their actions. However, the level of accountability of the CMU is decreased by loopholes in the legislation governing executive oversight, public consultations and procedures for consideration and adoption of the Government decisions.

In contrast to the MPs, the members of the Government enjoy no immunities and can be prosecuted under criminal, administrative or the civil law as any other citizens.

Ukraine's Constitution provides that the CMU is responsible to the President of Ukraine and accountable to the Parliament. The legislature is entitled to vote no-confidence in the Government, subject to ceratain constitutional restrictions [see: Independence (law)]. At the same time, the Parliament is not allowed to fire individual members of the Government on its own initiative.<sup>175</sup>

<sup>172</sup> http://uainfo.org/blogosphere/politika/102598-sergy-leschenko-top-sekreti-v-krayin-yanukovicha-blogi-ukrayinskoyi-pravdi.html [accessed December 1, 2014].

<sup>173</sup> Victor Tymoshchuk, expert of the Center for Political and Legal Reforms, interview with the author, July 11, 2014.

<sup>174</sup> http://www.kmu.gov.ua/control/uk/meetings/timeframe [accessed December 1, 2014].

<sup>175</sup> Art. 18 of the Law on Cabinet of Ministers.

Under the Parliament's Rules of Procedure, the Government must submit to the legislature a number of reports, including the report on execution of State Budget of Ukraine for the respective year, reports on implementation of the national programs of economic, social development and environment protection. If the Government Program of Action was approved by the legislature, the CMU also must annualy report to the Parliament on the results of its implementation. Upon request of no less than three parliamentary committees or request of 150 MPs, the Government is obliged to submit early reports on its operations. <sup>176</sup> In addition to these mechanisms of parliamentary oversight, the VRU Rules of Procedure also provide for "question and answer hours" meetings to question the CMU members on policy implementation issues.<sup>177</sup> The parliamentary committees have powers to supervise the activities of the executive, in particular, through committee hearings, analysis of law enforcement practice, sending requests for information to the Government, and inviting the CMU members to their meetings.<sup>178</sup> The Cabinet of Ministers also must cooperate with the SAI and ombudsman, in particular, by providing them requested information and addressing their recommendations for the executive bodies and Government in general.<sup>179</sup> The effectiveness of the executive oversight is to a certain extent decreased by the lack of a law governing the activitities of the commissions of inquiry [for further information see: Legislature (Executive Overisight (law and practice)].

The CMU Rules of Procedure contain a number of provisions aimed to ensure that the reasons for the CMU decisions are given, and that the drafts submitted to the Government for consideration were technically sound.<sup>180</sup> In particular, all the drafts submitted to the CMU for consideration must be accompanied by supporting documents and agreed on by other ministries, including the Ministry of Justice. However, even in the case of negative opinions on a draft from various ministries, the Government can pass a final decision on its approval. Therefore, some Government's decisions can be adopted without approval of correspondent ministries and central executive bodies beyond the general procedure. Such a possibility increases the risk of adopting CMU regulations which are not technically sound or are even inconsistent with the Constitution.<sup>181</sup>

The procedure for public consultations on the CMU draft legislation is established by a separate CMU resolution.<sup>182</sup> However, holding public consultations is mandatory for only specific draft legal acts, such as regulatory acts, legislation of major importance (i.e., legislation that affects the constitional rights, freedoms and obligations of the citizens, that provides for previleges or restrictions for the businesses or CSOs), and draft national programs of economic, social and cultural development.<sup>183</sup>

# Accountability (practice) – Score 50 (2015, 2010)

#### To what extent is there effective oversight of executive activities in practice?

While members of the executive have to report and be answerable for certain actions of theirs, the existing provisions are only partially enforced.

The Government generally provides necessary information to the parliament and parliamentary

<sup>176</sup> Art. 228 of the VRU Rules of Procedure.

<sup>177</sup> Art. 229 of the VRU Rules of Procedure.

<sup>178</sup> Art. 14, 24-29 of the Law on Parliamentary Committees.

<sup>179</sup> Art. 31, 32 of the Law on Cabinet of Ministers.

<sup>180</sup> See, for instance, paragraphs 34 – 54 of the CMU Rules of Procedure.

<sup>181</sup> See, for instance, paragraph 47 of the CMU Rules of Procedure.

<sup>182</sup> CMU Resolution № 996, dated November 3, 2010.

<sup>183</sup> Paragraph 2 of the CMU Resolution No 996, dated November 3, 2010.

committees, while the representatives of the committees attend the hearings held at the legislature.<sup>184</sup> Each Friday of the weeks when the parliament's plenary meetings are held, the members of the executive answer the MPs' questions during the "question and answer hours".<sup>185</sup> However, while the Law on Cabinet of Ministers requires presence of all the Government members at those meetings,<sup>186</sup> some of them do not attend "question and answer hours" or send other representatives of the respective ministries. There have been some cases when the "question and answer hour" were ignored even by the Prime Minister.<sup>187</sup> The executive oversight exercised by the SAI and ombudsman is not very effective, as their recommendations in many cases are ignored by the Government [see: SAI; Ombudsman]. Due to deadlocks in the work of the parliamentary commissions of inquiry, many of them end their work without producing any reports [see: Legislature (Executive oversight (law and practice)]. Overall, the parliamentary control of the executive is only partially effective, especially given that some important bills submitted to the legislature by the Government are not scrutinized and adopted just in few days following their registration in the Parliament (see: Legislature (Independence (practice).

The effectiveness of the public consultations has not significantly changed since 2010 and remains low. In this regard, the International Center for Policy Studies (ICPS) noted that "Ukraine already has a regulatory base for holding consultations with the interested parties based on the European standards, but the requirements and procedures for doing so are either paid lip service and no more – or are completely ignored". ICPS also noted that in Ukraine public consultations are held with unidentified "public", rather than with the stakeholder groups.<sup>188</sup> Citizens and other stakeholders generally are not active in submitting their proposal to the draft laws as most of their proposals are rejected by the ministries and other government agencies.<sup>189</sup>

While many members of the previous Government were accused of corruption both nationally and internationally [see: integrity (practice) below],<sup>190</sup> none of them has been brought to liability. This factor also decreases the level of the executive's accountability.

#### Integrity (law) - Score 75 (2015), 25 (2010)

To what extent are there mechanisms in place to ensure the integrity of members of the executive?

New legislation (The Law on Prevention of Corruption) has been adopted to provide for integrity of public officials, including members of the Government. [See Public Sector(Integrity (law)]

#### Integrity (practice) - Score 50 (2015), 25 (2010)

To what extent is the integrity of members of the executive ensured in practice?

While the existing legislation provides for a number of mechanisms aimed to ensure integrity of the

<sup>184</sup> Interview by the Chair of Secretariat of one of the parliamentary committees, with author, August 15, 2014.

<sup>185</sup> Art. 25 of the VRU Rules of Procedure.

<sup>186</sup> Art. 35 of the Law on Cabinet of Minisers.

<sup>187</sup> http://www.kievtv.com.ua/stn/item/12350-prem-ier-ministr-proihnoruvav-hodynu-zapytan-do-uriadu; http://www.unn.com.ua/uk/ news/1206436-m-azarov-proignoruvav-godinu-zapitan-do-uryadu; http://tyzhden.ua/News/80382 [accessed December 12, 2014].

<sup>188</sup> International Center for Policy Analysis, Democratic Governance: how to establish an effective mechanism for public consultations: Policy Brief, 2013, p.12-13; http://icps.com.ua/pub/files/112/81/Public\_Cons\_ENG.pdf [accessed December 1, 2014].

<sup>189</sup> See, for instance, the Ministry of Justice' reports on results of public consultations held in 2013; http://www.minjust.gov.ua/discuss [accessed December 1, 2014].

<sup>190</sup> http://www.bakermckenzie.com/files/Uploads/Documents/RussiaSanctionsBlog/EU%20Impl%20Reg%20381%202014.pdf [accessed December 1, 2014].

memebrs of the executive, not all of them are implemented in practice.

In general cases of violations committed by the members of the executive were not uncommon before. In particular, in violation of the Constitution and the Law on the Principles for Prevention and Counteraction to Corruption<sup>191</sup>, the First Vice Prime Minister Vitaliy Yarema (appointed in February 2014) had been combining his position with the MP mandate for almost three months (until May 13, 2014, when his MP mandate were terminated early by the legislature), thus violating the legal requirement providing that a member of the Government must terminate any activities inconsistent with his/her position at the Government within 20 days.<sup>192</sup> Some other ministers of that Government were also combining their posts longer than allowed by the anti-corruption legislation.<sup>193</sup> The members of the Mykola Azarov Government (that was in power until February 2014), also often combined their positions in Government with MP mandates.<sup>194</sup>

The cases of corruption and embezzlement of public resources by Government members were widespread during 2010-2013, and the EU even imposed personal sanctions on certain members of the Azarov Cabinet that worked until February 2014. <sup>195</sup> However, none of those members of the executive who were accused of corruption and were widely covered by investigations in the media, has ever been brought to account. On a positive note, there have been no reported cases of corruption of Government members since February 2014.

The practice of leaving business to work in the Government and returning back to business (the revolving door) is not uncommon in Ukraine. In the Government lead by Mykola Azarov, many ministers, including Vice Prime Ministers, did not sell their businesses and returned to doing business once their powers were terminated in February 2014.<sup>196</sup> Businessmen have also been appointed to some Government positions in December 2014.<sup>197</sup>

#### Public Sector Management (law and practice) - Score 50 (2015, 2010)

To what extent is the executive committed to and engaged in developing a well-governed public sector?

The executive is generally committed to development of the well-governed public sector, but its powers are limited to implement that commitment.

The Government commitment to developing a well-governed public sector is highlighted in the CMU Program of Action, approved by the Parliament on December 11, 2014<sup>198</sup>. In particular, the Program of Action provides for introduction of electronic governance, creation of the National Agency for Prevention of Corruption, permanent monitoring of the lifestyles of public officials to identify cases of illicit enrichment, reform of the Ministry of Interior, and reform of the judiciary.

However, given that constitutional powers of the Government in the overall system of governance

<sup>191</sup> Art. 120 of the Constitution of Ukraine, Art. 7 of the Law on Prevention and Counteraction to Corruption

<sup>192</sup> Art. 7 of the Law on Cabinet of Ministers.

<sup>193</sup> http://blogs.pravda.com.ua/authors/andrushko/5322229589538/view\_print/ [accessed December 1, 2014].

<sup>194</sup> http://www.pravda.com.ua/articles/2010/07/20/5234350/ [accessed December 1, 2014].

<sup>195</sup> http://www.bakermckenzie.com/files/Uploads/Documents/RussiaSanctionsBlog/EU%20Impl%20Reg%20381%202014.pdf; http://tsn.ua/ politika/statki-ministriv-azarova-rostut-shalenimi-tempami-ta-perevischili-2-mlrd.html [accessed December 1, 2014].

<sup>196</sup> http://www.pravda.com.ua/news/2011/03/16/6020301/ [accessed December 1, 2014].

<sup>197</sup> http://podrobnosti.ua/power/2014/12/02/1005645.html [accessed December 1, 2014].

<sup>198</sup> VRU Resolution No 26-VIII, dated December 11, 2014.

in the country are limited [see: Independence (law)], the role of the executive in developing a wellgoverned public sector is also limited, especially at the regional and local levels (as the heads of the local administrations are appointed and discharged from office by the President). Ministers cannot effectively supervise the staff of the respective ministries for a number of reasons. First, the deputy ministers are appointed and dismissed by the Cabinet of Ministers upon the PM's proposal, meaning that the ministers have limited influence on the senior staff of the respective ministries.<sup>199</sup> Disciplinary sanctions can be imposed on the deputy ministers only by the CMU, rather than by ministers.<sup>200</sup> Second, any appointment of the chair of the territorial branch of the ministry requires approval by the respective local state administration, meaning that the ministers cannot independently decide on whom to appoint the chair of the body which will implement the ministry's policy at the regional and local level. Third, specialized anti-corruption units within the ministries and other government agencies (which are in charge of prevention of corruption within the respective ministries, identifying the cases of the conflict of interests, reviewing the asset declarations) are subordinated not to the ministers, but to the Government Agent for Anti-Corruption Policy, employed by the CMU Secretariat.<sup>201</sup> Fourth, the roles of the ministers within the respective ministries are duplicated by the respective departments of the CMU Secretariat, thus limiting the role of the ministers in directing work of their subordinates.202

#### Legal System (law and practice) – Score 50 (2015, 2010)

To what extent does the executive prioritise public accountability and the fight against corruption as a concern in the country?

The Government generally prioritises public accountability and the fight against corruption as a concern in the country, as well as initiates necessary anti-corruption reforms, but commitment of the executive in implementing the respective reforms remains limited.

Good governance and fight against corruption are among the key priorities for the Government policy for 2015 and 2016. The CMU Program of Action provides for a number of measures in this regard [see: Public Sector Management (law and practice)].

Out of 8 draft laws considered by the parliamentary committee on fight against corruption and organised crime and adopted as law, 4 draft laws (and the most important ones) were initiatiated by the Government. These include Law on Principles for Anti-Corruption Policy in Ukraine (Anti-Corruption) Strategy for 2014 – 2017, Law on Prevention of Corruption, and Law on Amendments to Certain Legislative Acts of Ukraine to Identify Ultimate Beneficiaries of Legal Persons and Public Figures [for further information on the laws see: Legislature (Legal reforms (law and practice)]. Some of the adopted laws contained loopholes and required further changes.<sup>203</sup> While the Government failed to submit to the Parliament any draft amendments to the adopted legislation to address those flaws, the respective amendments were proposed by MPs.<sup>204</sup> Some ministers, including the former Minister of Economy and the former Minister of Health Protection critised the Government formed in February 2014 for lack of action in terms of fight against corruption and even accused the Government and PM of pushing the interests of oligarchs through the Government policies.<sup>205</sup>

<sup>199</sup> Art. 21 of the Law on Cabinet of Ministers.

<sup>200</sup> Art. 20 of the Law on Cabinet of Ministers.

<sup>201</sup> Paragraphs 3, 10 of the Regulation on Authorized Units (Officials) on Prevention and Detection of Corruption, approved by the CMU Resolution No 706, dated September 4, 2014.

<sup>202</sup> http://www.pravda.com.ua/articles/2010/12/13/5667670/view\_print/ [accessed December 1, 2014].

<sup>203</sup> See: http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=52875&pf35401=319552 [accessed December 11, 2014].

<sup>204</sup> See: Draft Law No 1406, dated December 11, 2014; http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\_1?pf3511=52875 [accessed December 11, 2014].

<sup>205</sup> http://ua.korrespondent.net/ukraine/politics/3426343-prohrav-systemi-yak-zvilnialy-oleha-musiia [accessed December 1, 2014].

Indeed, as has been stated above [see: Independence (practice)], some Government decisions adopted during 2014 favored certain financial groups.

#### Key recommendations

# For the Verkhovna Rada of Ukraine:

The Constitution of Ukraine should be amended to strengthen the role of the Cabinet of Ministers within the exetive branch of government. In particular, the Government should be granted the right to appoint the heads of local administration, while all the members of Government should be appointed by the legislature based on the Prime Minister's proposals.

The Law on Cabinet of Ministers should be amended to increase transparency of the Government. In particular, it should provide for the list of documents that must be posted on the CMU website. All the draft Government decisions should be made public in advance of the CMU meetings.

The procedures for public consultations should be aligned with the EU standards and best practices. The legal framework should provide for clear criteria based on which the drafts prepared by the ministries and other government agencies are selected for public consultations. The executive bodies should be encouraged to proactively seek feedback from stakeholder groups on the draft legislation prepared by the respective bodies.

There should be a clear delineation between the political and administrative positions within the Government. Work of the CMU Secretariat should be coordinated by public officials (e.g., CMU State Secretary) rather than a political appointee (i.e., Minister of the Cabinet of Ministers).

#### For the Cabinet of Ministers of Ukraine:

The Government should prepare and adopt a detailed road map as to how its Program of Action will be implemented in 2015 and 2016, especially given that some anti-corruption measures enlisted in the Program of Action need further clarification.

# 3. JUDICIARY

# Summary

The law seeks to provide the judiciary with adequate resources needed to effectively exercise its powers. However, the respective legal provisions are only partially implemented, meaning that important needs of the Ukrainian courts will not be covered in 2015. The Constitution fails to provide for effective instruments to ensure independence of the courts and judges. As a result, independence of the judiciary is not ensured in practice. Transparency of the judiciary is mainly impeded by the fact that most of the courts at the lower level do not have their own websites. Even though certain accountability mechanisms are provided in the laws, they are not implemented properly in practice. Legislation aimed to ensure integrity of the judiciary has improved to a certain extent over the last years, but it still contains some flaws. In practice, misbehaviour of judges mostly goes unsanctioned, undermining the integrity of the judiciary in practice. Being politicized, the judiciary fails to ensure effective executive oversight, while corruption in the judiciary and poor performance of the law enforcement agencies significantly decrease the role of judiciary in prosecution of corruption, which remains negligible.

The table below presents a general evaluation of the judiciary in terms of capacity, governance and role in national integrity system. The table is then followed by a qualitative assessment of the relevant

#### indicators.

JUDICIARY

Overall pillar score (2015): 43.75/100						
Overall Pillar Score (2010): 40.28/100						
Dimension	Indicator	Law	Practice			
Capacity	Resources	75 (2015, 2010)	25 (2015), 0 (2010)			
50/100	Independence	50 (2015, 2010)	25 (2015, 2010)			
Courses	Transparency	75 (2015, 2010)	50 (2015, 2010)			
Governance 45.83/100	Accountability	50 (2015, 2010)	25 (2015, 2010)			
45.83/100	Integrity	50 (2015, 2010)	25 (2015, 2010)			
Role	Executive oversight	50 (2015, 2010)				
37.5/100	Corruption prosecution	25 (2015, 2010)				

#### Structure and Organisation

Judiciary is one of the branches of state power in Ukraine, which according to the Constitution includes general jurisdiction courts and the Constitutional Court of Ukraine. By law, justice is administered by professional judges, lay assessors and jurors. General jurisdiction courts are specialised in civil, criminal, administrative and economic (commercial) matters. A comprehensive judicial reform was passed in July 2010 reshaping all major elements of the judicial system in Ukraine.<sup>206</sup> Besides, there's the Higher Council of Justice in Ukraine; it is authorized to recommend on appointment of judges or their dismissal; to decide on judges' violation of requirements regarding inconsistency, and to perform disciplinary proceedings in relation to judges. The Higher Council of Justice consists of 20 members. The Verkhovna Rada of Ukraine, President of Ukraine, Council of Judges of Ukraine, Council of Attorneys of Ukraine, and Council of Representatives of Law Universities appoint three members each to the Higher Council of Justice. The Higher Council of Justice also includes the Head of the Supreme Court of Ukraine, Minister of Justice of Ukraine, and Prosecutor General. The Higher Council of Justice is formed in the way that its majority consists of judiciary representatives.

Besides, there is the Higher Qualification Committee of Judges of Ukraine that consists of 14 members. Major functions of this body are as follows:

- recording the number of judges' positions in courts of general jurisdiction, including vacancies;
- selecting candidates who will be appointed judges for the first time, including special check-

<sup>206</sup> Law on the Judicial System and Status of Judges, № 2453-VI, 7 July 2010.

ups in correspondence with the law, and qualification tests;

- introducing recommendations to the Higher Council of Justice on appointment of judge candidates for further recommendations to the President of Ukraine;
- providing recommendations for termless appointment of judges, or refusing to provide it;
- disciplinary proceedings in regards of local courts and courts of appeal;
- judges' qualification assessment

# Assessment

# Resources (law) – Score 75 (2015, 2010)

To what extent are there laws seeking to ensure appropriate tenure policies, salaries and working conditions of the judiciary?

Ukrainian legislation on the judiciary generally provides for sufficient legal guarantees of judicial tenure, salaries and working conditions.

The Law on the Judicial System and Status of Judges determines remuneration of judges in clear terms by providing that it is composed of the basic salary and additional payments for years of judicial experience, holding an administrative position in the court, academic degree, state secrets clearance.<sup>207</sup> Basic rates of the judge's salary are defined directly in the law (in the amount of minimum state guaranteed salaries). This precludes possible influence of the executive on the level of judicial remuneration and also allows for its adjustment in the light of changes in the country's economic development. The provisions on judicial remuneration have significantly increased salaries of the lower courts justices and increased the level of remuneration of appellate and higher court justices (by up to 100%) compared to 2010 and previous years). There is no distinction in the remuneration system for first-time judges (appointed for initial 5-year term) and judges in permanent posts.

The Constitution and the Law the Judicial System and Status of Judges guarantee budgetary financing of the judiciary sufficient to administer justice in an impartial and full manner. According to the Law, each court acts as an administrator of budget allocations and they have a separate line in the State Budget Law expenses. Preparation of the draft judicial budget is carried out by the State Court Administration (SCA), a body subordinated to the judiciary. However, decision on allocations to the judiciary, which are included in the draft State Budget Law submitted by the Government to the Parliament, is made by the executive (Ministry of Finance and the Cabinet of Ministers). SCA is authorised to present judicial budget at the parliamentary hearing on State Budget Law for the relevant year. There is, however, no requirement in the law that a certain part of the state budget should be allocated to the judiciary [see: Independence (law)].

# Resources (practice) - Score 25 (2015), 0 (2010)

To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

<sup>207</sup> Art. 29 of the Law on the Judicial System and Status of Judges

Similarly to other public authorities, the judiciary has some resources, but deteriorated economic situation in the country does not allow the judiciary to cover all its needs.

Overall the amount of funding allocated to the judiciary under the 2015 State Budget Law was comparable to amounts transferred to the judiciary in 2011-2012. However, certain expenses of the courts will be limited in 2015. The courts will be able to use no more than one car each; they will not be allowed to buy computers, pay for mobile services or buy furniture. The levels of salaries paid to judges are rather high even at the lowest level courts (approximately 10 minimum monthly wages),<sup>208</sup> however salaries paid to the staff (i.e. court employees who are not judges) are as small as the salaries of civil servants.<sup>209</sup> Overall amount of funds allocated to each of the appellate courts will constitute only 60% of the amount allocated in 2013.<sup>210</sup>

#### Independence (law) - Score 50 (2015, 2010)

#### To what extent is the judiciary independent by law?

Although the legal framework provides for certain guarantees of independence of the judiciary, the respective legal provisions should and could be further strengthened to exclude the risks of interference of other actors with work of the courts.

The Constitution of Ukraine and the Law on the Judicial System and Status of Judges provide for security of judicial tenure as one of the guarantees of the judicial independence. Judges are appointed for permanent terms, except for Constitutional Court judges and judges appointed to the office of judge for the first time (initial appointment). Legislation provides for a closed list of grounds for early dismissal of a judge.<sup>211</sup> A judge cannot be transferred to another court without his/her agreement. First-time judges are appointed for a 5-year term by the President of Ukraine upon submission of the High Council of Justice. Judges are elected for permanent terms by the Parliament upon proposal of the High Qualification Commission of Judges of Ukraine. Justices of the Constitutional Court of Ukraine are appointed by the President of Ukraine, the parliament of Ukraine and the congress of judges of Ukraine (each appoints 6 justices).

From the standpoint of international standards on judicial independence, initial short-term appointments of judges raises problems.<sup>212</sup> It allows authorities to refuse confirmation of a judge in a permanent post and therefore undermines independence of the judiciary. Revision of these provisions requires constitutional amendments, which have not been made until now. The Law<sup>213</sup> does not provide for a list of objective criteria that allow the High Qualification Commission of Judges not to recommend a judge for permanent term.

Election of judges to the permanent posts involves final decision-making by the Verkhovna Rada of Ukraine, which politicises the process and undermines judicial independence,<sup>214</sup> as the final decision on the election of a judge is to be made by the parliament, a political body, – a problem that can be

<sup>208</sup> Interview by Mykhailo Smokovych, judge of the Higher Administrative Court of Ukraine, with author, July 26, 2014.

<sup>209</sup> Interview by Roman Kuybida, expert at the Center for Political and Legal Reforms, with author, July 27, 2014.

<sup>210</sup> http://zib.com.ua/ua/113942-dsau\_otrimala\_groshey\_menshe\_nizh\_3\_roki\_tomu\_a\_robota\_vsih\_.html [accessed December 1, 2014].

<sup>211</sup> Art. 126 of the Constitution of Ukraine; Art. 52, Chapter VII of the Law of Ukraine on the Judicial System and Status of Judges.

<sup>212</sup> Venice Commission, Opinion No. 401/2006 on the Draft Law on the Judiciary and Draft Law on the Status of Judges of Ukraine, March 2007, §§24-26, http://www.venice.coe.int/docs/2007/CDL-AD(2007)003-e.asp [accessed December 1, 2014].

<sup>213</sup> Art. 76 of the Law on the Judicial System and the Status of Judges.

<sup>214</sup> Venice Commission, Opinion No. 401/2006 on the Draft Law on the Judiciary and Draft Law on the Status of Judges of Ukraine, March 2007, §§24-26, http://www.venice.coe.int/docs/2007/CDL-AD(2007)003-e.asp [accessed December 1, 2014].

solved only through amendments in the Constitution. In addition, the legal framework<sup>215</sup> provides that the candidates for judges must be preliminarily considered by the Parliamentary Committee of Legal Policy, comprised of MPs, which similarly to the Parliament can hardly be considered independent from political influence.

Grounds for early dismissal of judges are provided for in the Constitution of Ukraine (Art. 126), the Law on the Judicial System and the Status of Judges and the Law on the High Council of Judges. In 2010-2012, the Law on the High Council of Judges was amended to define acts that constitute a breach of the judge's oath, which is one of the constitutional grounds for dismissal of judge. However, the new provisions lack clarity ("commission of actions that degrade the title of judge and may raise doubts about his/her impartiality and independence", "violation of moral and ethical principles of judge's oath and not ensuring legal certainty in this matter.

The main problems with judicial independence in terms of procedures for appointment and dismissal of judges and their disciplining lies with the status and composition of the High Council of Justice (HCJ). The latter is a constitutional body that consists of 20 members, appointed by the legislature, President of Ukraine, congress of judges of Ukraine, congress of attorneys of Ukraine, congress of legal universities and academic institutions (each appoint three members of the Council), and national conference of prosecutors (which appoints two members). The Supreme Court President, Minister of Justice and the Prosecutor General are members of the HCJ ex officio. Current composition of the Council does not comply with the European standard requiring the majority of its members to be judges elected by their peers.<sup>217</sup>

Independence of judges is also undermined by the provisions of the Law on the HCJ (Art.25) that authorise the latter to demand from courts copies of unfinished court cases and establishes liability for failure to comply with such demand. Such authority of the High Council of Justice, along with its current composition, runs contrary to the constitutional guarantees of judicial independence by allowing direct influence/pressure on judges and court decisions in specific cases.

The highest judicial authority in the system of general jurisdiction courts is the Supreme Court of Ukraine, as provided in Art.125 of the Constitution of Ukraine. Despite its constitutional status, the Supreme Court's position has been severely diminished by Art. 38 of the Law on the Judicial System and the Status of Judges.<sup>218</sup> According to the latter, the Supreme Court is generally not entitled to consider cases in cassation and has limited authority.

# Independence (practice) – Score 25 (2015, 2010)

To what extent does the judiciary operate without interference from the government or other actors?

Judicial independence is not sufficiently guaranteed in practice.

There are no clear objective merit-based criteria currently used for selection of judges. In particular, par. 8.12 of the Procedure for Passing Tests by Candidates for Judges provide that the candidates for judges who cannot be recommended to be appointed judges due to their "personal and moral qualities" cannot be appointed regardless of the scores received at the exams. In previous years,

<sup>215</sup> Art. 74 of the Law on the Judicial System and Status of Judges.

<sup>216</sup> Article 32 of the Law on the High Council of Justice.

<sup>217 §1.3</sup> of the European Charter on the statute for judges; Consultative Council of European Judges, The Council for the Judiciary at the Service of Society, Opinion No. 10.

<sup>218</sup> Venice Commission, Joint Opinion No. 550/2009 on the Draft Law on the Judicial System and the Status of Judges of Ukraine, March 2010, §§24-26, http://www.venice.coe.int/docs/2010/CDL-AD(2010)003-e.asp [accessed 29 December 2010].

many judge candidates criticized the procedure for appointment of judges for lack of transparent and objective selection.<sup>219</sup> Media also reported that in many cases the tests for initial appointments to the courts were successfully passed by family members of the incumbent judges, prosecutors and public officials, while other candidates failed to pass the exams.<sup>220</sup> According to one of the interlocutors interviewed within the framework of this assessment, judges are not effectively protected from arbitrary dismissals or political pressure, which was especially evident when the former President Yanukovych was in power.<sup>221</sup>

Analysis of judicial cases in the previous years having to do with prosecution of political opposition figures or with civic liberties in general clearly indicate that the judiciary was politically controlled.<sup>222</sup> In 2014, interference of other actors with the activities of the judiciary continued, as civic activists in some cases prevented the congresses of judges from being held<sup>223</sup>, while the parliament discharged from office judges of the Constitutional Court, High Administrative Court and some other courts based on questionable grounds (for instance, by cancelation of the resolutions on their appointments or for "violation of oath"). Some of those parliament's decisions were then successfully challenged with courts.<sup>224</sup> In 2014, only 46.38% of the citizens believed that the courts considered their cases in an independent and impartial manner, - a significant decrease compared to 2012 when 56.3% of the citizens believed so.<sup>225</sup>

#### Transparency (law) - Score 75 (2015, 2010)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?

While the Law on Access to Public Information includes a number of provisions aimed to ensure transparency in work of public administration and courts, the legal framework still contains some provisions impeding access to information on activities and decision-making processes of the judiciary.

The Law on Access to Public Information requires to provide information upon requests for information, as well as to publish information on the structure, mission, functions, budgets, contact details of the senior staff, adopted decisions of the respective public authorities, including courts. This law is also applicable to the HCJ.

The principle of openness of judicial proceedings and their fixation by technical means is stipulated in Art. 129 of the Constitution of Ukraine. The general rule is that all court cases are heard openly, except when a hearing in camera is ordered by the court according to procedural law. Participants of the court proceedings and others persons attending the hearing are allowed by law to use portable audio recording devices. Photo- and video recording, as well as live transmission, require court decision and consent of participants of the court proceedings. All court proceedings are supposed to be documented by technical means.

#### Access to a court decision should be granted directly at the court premises to persons whom the

<sup>219</sup> http://www.radiosvoboda.org/content/article/24401349.html [accessed December 1, 2014].

<sup>220</sup> http://www.pravda.com.ua/news/2011/07/1/6347730/; http://imk.it-me.com.ua/news/info/smejnij\_pdrjad\_v\_ukrajinskomu\_pravosudd\_abo\_ chomu\_mantju\_vdjagajut\_nevipadkov\_ljudi\_ [all accessed December 1, 2014].

<sup>221</sup> Interview by Roman Kuybida, expert at the Center for Political and Legal Reforms, with author, July 27, 2014.

<sup>222</sup> Bertelsmann Foundation, BTI 2014. Ukraine Country Report.

<sup>223</sup> http://intvua.com/news/politics/87714-na-porlika-blokuyut-zyizd-suddv-foto.html [accessed December 1, 2014].

<sup>224</sup> http://www.pravda.com.ua/news/2014/06/26/7030179/ [accessed December 1, 2014].

<sup>225</sup> http://court.gov.ua/userfiles/file/DSA/Attaches/CJS\_monitoring2014.pdf [accessed December 1, 2014].

decision concerns. The 2005 Law on Access to Court Decisions provides for the right of everyone to access court decisions. This is ensured by publication of the court decisions on the official judicial web-portal and their inclusion in the Unified State Register of Court Decisions. However, the list of the court decisions to be published is a subject to approval by the Council of Judges of Ukraine and State Court Administration.<sup>226</sup> Wide margin of discretion given to these two bodies in terms of deciding on which decisions should be made public to a certain extent decreases the accessibility of the court decisions.

The Law on the Judicial System and the Status of Judges includes a number of provisions ensuring transparency during selection and appointment of judges (publication of information on vacancies and results of qualification exams) and in the work of the High Qualification Commission of Judges. The Law on the High Council of Justice, however, lacks provisions on transparent operation of the Council. Meetings of the HCJ are in general open, but can be held in camera if majority of its members decide so.

# Transparency (practice) – Score 50 (2015, 2010)

#### To what extent does the public have access to judicial information and activities in practice?

While the public can obtain relevant information on the organisation and functioning of the judiciary, on decisions that concern them and how these decisions were made, it is usually a difficult and cumbersome process.

The activities of the judiciary are covered on a special website (http://court.gov.ua/) which provides general information on court proceedings, procedures for filing lawsuits and appeals/cassations, structure of the judiciary, contact details of judges and employees of the court secretariats, and cases scheduled for consideration. However, the respective contact details, templates of the lawsuits and other procedural documents, and schedules of court hearings are not available for all courts.<sup>227</sup> In addition, in many cases the respective information is outdated and does not serve its purposes. The analysis of the website suggest that citizens mainly have adequate access to information on activities of the higher-level courts (High Administrative Court of Ukraine, High Specialized Court for Consideration of the Criminal and Civil Cases, courts of appeals), while information on activities of the courts at basic level, even in the capital city of Kyiv, is limited to court's contact details.

Access to court decisions via Unified State Register of Court Decisions remains problematic, as only a small part of judicial decisions is included in the register and available on the web-site, while many decisions are included into the database with delays. Searching court decisions through the Register is not an easy task.<sup>228</sup>

Access to court hearings is generally ensured in practice, except in some cases (when, for example, despite direct contradiction with the law, a case is considered in a judge's chambers which can hardly accommodate even the parties to the case). <sup>229</sup> Before 2014, there were a number of cases when police prevented journalists from entering the court premises, thus making it impossible to be present at the court hearings.<sup>230</sup>

<sup>226</sup> CMU Resolution No 740, dated May 25, 2006.

<sup>227</sup> http://lb.zt.court.gov.ua/sud0613/ [accessed December 1, 2014].

<sup>228</sup> Interview by Roman Kuybida, expert at the Center for Political and Legal Reforms, with author, July 27, 2014.

<sup>229</sup> Interview by Roman Kuybida, expert at the Center for Political and Legal Reforms, with author, July 27, 2014.

<sup>230</sup> http://tyzhden.ua/News/25913; https://uk-ua.facebook.com/vgo.kupr/posts/736747526382772; http://gazeta.ua/articles/politics/\_berkutivci-ta-grifonivci-vishtovhali-iz-sudu-10-nardepiv/482317 [accessed December 1, 2014].

#### Accountability (law) - Score 50 (2015, 2010)

To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?

Legislation of Ukraine provides for sufficient mechanisms of judicial accountability, but the respective mechanisms contain some flaws.

Court decisions should be made public and should contain detailed reasoning behind them. According to the Law on the Judicial System and the Status of Judges, every person has a right to file a complaint on the judge's behaviour directly with the relevant disciplinary body. The High Qualification Commission of Judges (HQCJ) conducts disciplinary proceedings against judges of local and appellate court, while the High Council of Justice – against judges of higher specialised courts and judges of the Supreme Court. As a result of the disciplinary proceedings, if a violation is established, the judge can be reprimanded or a recommendation can be made to the HCJ to dismiss the judge if the relevant grounds are present. Decision on the disciplinary punishment should be announced on the official judicial web-portal and include a full copy of the formal decision. The judge can file an appeal against the decision imposing a disciplinary punishment with the HCJ or an administrative court.

Disciplinary proceedings against a local or appellate court judge are carried out by a member of the HQCJ, who is picked randomly by an automated system. Relevant member of the HQCJ must recuse him/herself if there are doubts with regard to his impartiality in the specific disciplinary case. The Law also provides for the special officers, disciplinary inspectors, who according to an instruction by the HQCJ member analyse and review complaints against judge's behaviour, prepare draft decisions related to disciplinary proceedings.

While the Law on the Judicial System and the Status of Judges regulates in sufficient detail disciplinary procedure against judges conducted by the High Qualification Commission of Judges, it refers regulation of the relevant proceedings carried out by the High Council of Justice to the Law on the HCJ. The latter, however, does not provide for adequate disciplinary procedures that guarantee impartiality of the HCJ members and legal protection of judges. In particular, impartiality of disciplinary procedures in the HQCJ and HCJ is undermined the fact that a member of the HQCJ or HCJ who reviews the disciplinary case and presents it to the full composition of the HQCJ or HCJ can also take part in decision making and thus act at the same time as a 'prosecutor' and a 'judge'.<sup>231</sup>

The Law on the Judiciary and the Status of Judges does not ensure availability of proportionate and effective disciplinary sanctions, because only one sanctions is possible - a reprimand.

Accountability of judges is impeded by the broad judicial immunity, as according to Art. 126 of the Constitution a judge cannot be detained or arrested without prior assent by the parliament, unless a guilty verdict is delivered by court. This precludes apprehension of a judge even if he is caught in flagrante delicto, regardless of the type of crime.<sup>232</sup> Judicial immunity is also not functional, that is it is not limited to cases when the judge performs his official duties.

<sup>231</sup> Venice Commission, Opinion No. 401/2006 on the Draft Law on the Judiciary and Draft Law on the Status of Judges of Ukraine, March 2007, §44; http://www.venice.coe.int/docs/2007/CDL-AD(2007)003-e.asp [accessed 29 December 2010].

<sup>232</sup> GRECO, Evaluation Report, Joint First and Second Evaluation Rounds, March 2007; http://www.coe.int/t/dghl/monitoring/greco/evaluations/ round2/GrecoEval1-2(2006)2\_Ukraine\_EN.pdf [accessed 29 December 2010].

# Accountability (practice) - Score 25 (2015, 2010)

To what extent do members of the judiciary have to report and be answerable for their actions in practice?

Despite the fact that the law provides for a number of mechanisms to ensure accountability of the judiciary, the respective provisions are poorly enforced in practice.

HQCJ and HCJ for a long time have remained politically dependent bodies which were used by the former President and his associates to control the work of judiciary and, if needed to prosecute judges.<sup>233</sup> Most of the judges who adopted illegal decisions against Maidan protesters in November 2013 – January 2014 have never been brought to liability for violation of oath.<sup>234</sup> In 2014, the HQCJ imposed administrative sanctions on only 13 judges (in 2013, only 9 judges were prosecuted), despite the fact that judiciary is widely perceived as an institution highly affected by corruption.<sup>235</sup> The number of adopted decisions imposing disciplinary sanctions on judges is rather modest compared to the overall numbers of complaints against judges: during 2011 and 2012, for example, the HQCJ received 28,839 complaints against judges, while the decisions were adopted based on only 287 of them.<sup>236</sup>

#### Integrity (law) - Score 75 (2015, 2010)

To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?

The legal mechanisms aimed to ensure integrity of the judges are laid down in the laws, but they still need to be further improved.

According to the procedural codes<sup>237</sup>, the judge should be recused if his/her impartiality is affected by various factors (e.g. previous participation in the case under consideration, direct interest in the case outcome, relative of the party or litigation participant). Litigants or the judge himself can initiate a motion for recusal. The judge himself or the panel of judges including the judge whose recusal is requested decide on the recusal. Decision to refuse the requested recusal cannot be separately appealed and can be challenged only together with the judgement on merits of the case.

The Law on Prevention of Corruption provides for new mechanisms aimed to ensure integrity of the public authorities, including judges [see: Public sector (Integrity (law)].

In 2013, the Congress of Judges of Ukraine adopted the Code of Ethics for Judges. The provisions of the Code are rather general and mainly duplicate the existing provisions in the procedural codes, Law on Principles for Prevention and Counteraction to Corruption, and in the Law on Law on the Judiciary and the Status of Judges.<sup>238</sup> In February 2009 the Council of Judges of Ukraine approved

<sup>233</sup> See, for instance: Bertelsmann Foundation, BTI 2014. Ukraine Country Report. http://intvua.com/news/politics/87714-na-porlika-blokuyut-zy-izd-suddv-foto.html [accessed December 1, 2014].

<sup>234</sup> http://www.pravda.com.ua/columns/2014/10/17/7041076/ [accessed December 1, 2014].

<sup>235</sup> http://www.vkksu.gov.ua/ua/distsiplinarno-provadjennya/informatsiya-pro-prityagnennya-suddiv-do-distsiplinarnoi-vidpovidalnosti/informatsiya-pro-prityagnennya-suddiv-do-distsiplinarnoi-vidpovidalnosti-rishennya-za-2014-rik/ [accessed December 1, 2014].

<sup>236</sup> Center for Political and Legal Reforms, Disciplinary Liability of Judges: Monitoring Results, 2012, p.1-2.

<sup>237</sup> Articles 75-80 of the Criminal Procedure Code, Articles 20 and 24 of the Civil Procedure Code, Article 27 and 31 of the Code of Administrative Adjudication, Article 20 of the Economic Procedure Code.

<sup>238</sup> http://court.gov.ua/userfiles/Kodex%20sud%20etiki%281%29.pdf [accessed December 1, 2014].

Rules of Conduct for the court (non-judicial) staff.<sup>239</sup> The Rules are part of the official duties of the court staff members and, therefore, their violation can trigger disciplinary sanctions and dismissal.

#### Integrity (practice) - Score 25 (2015, 2010)

#### To what extent is the integrity of members of the judiciary ensured in practice?

As in 2010 and previous years, the existing provisions aimed to ensure integrity of the judiciary are not effectively enforced in practice, and misconduct of the judges mostly goes unsanctioned.

As mentioned above [see: Accountability (practice)] none of the judges who passed illegal decisions against participants of the mass protests in 2013-2014 has been brought to account. In 2013, according to the Ministry of Justice, only 1 judge was brought to administrative liability for a corruption offence, while only 3 judges were convicted for corruption-related crimes.<sup>240</sup> Journalists identified numerous cases when the lifestyle of judges was disproportionate to their salaries,<sup>241</sup> however no investigations have been launched to check the origin of the respective assets.

#### Executive oversight (law and practice) – Score 50 (2015, 2010)

To what extent does the judiciary provide effective oversight of the executive?

The Judiciary has powers to provide effective oversight of the executive, but the respective powers are not effectively used in practice.

Specialised administrative courts have jurisdiction to review actions, omissions and decisions of the public authorities. The procedure for such review is determined by the Code of Administrative Adjudication. During 2013 (2014 data are not available) administrative courts at the first instance considered 372,026 cases, while the administrative courts of appeal considered 785,500 cases involving public authorities or their officials as parties.<sup>242</sup>

The effectiveness of the judiciary in terms of the executive oversight remains limited, as administrative courts are not adequately protected from external influence.<sup>243</sup> Before 2014, the courts adopted a number of questionable decisions in favor of those in power, including decisions to strip the mandates of the MPs Baloha and Dombrovskyi,<sup>244</sup> on cancellation of the President's decrees awarding orders to certain figures, and others.<sup>245</sup> In 2013, the Higher Administrative Court of Ukraine issued guidance for the administrative courts as to how implement the Law on Access to Public Information, which significantly narrowed the meaning of the legal provisions governing access to information available to public authorities.<sup>246</sup>

#### Corruption prosecution (practice) – Score 25 (2015, 2010)

<sup>239</sup> http://pv.te.court.gov.ua/sud1912/pravyla/pratsivnyka [accessed December 1, 2014].

<sup>240</sup> Ministry of Justice of Ukraine, Report on Implementation of Measures Related to Prevention and Counteraction to Corruption in 2013; http:// www.minjust.gov.ua/file/36531 [accessed December 1, 2014].

<sup>241</sup> http://www.pravda.com.ua/rus/news/2013/02/24/6984215/; http://news.volyninfo.com/ukraine/48464-ukrayinski-suddi-polyublyayut-ganyati-na-mercedes-i-bmw-yihni-diti-na-lamborghini [accessed December 1, 2014].

<sup>242</sup> http://court.gov.ua/sudova\_statystyka/Oglyad34/ [accessed December 1, 2014].

<sup>243</sup> Interview by Roman Kuybida, expert at the Center for Political and Legal Reforms, with author, July 27, 2014.

<sup>244</sup> http://tyzhden.ua/Politics/72327 [accessed December 1, 2014].

<sup>245</sup> http://www.unian.ua/politics/447308-nasha-ukrajina-vlada-zdiysnyue-demonstrativniy-tisk-na-sud.html [accessed December 1, 2014].

<sup>246</sup> Resolution of the Plenum of the Higher Administrative Court of Ukraine No 11, dated September 30, 2013.

To what extent is the judiciary committed to fighting corruption through prosecution and other activities?

Similarly to the law enforcement agencies, judiciary is insufficiently committed to fighting corruption by delivering dissuasive sanctions for corruption offences.

According to the Ministry of Justice of Ukraine, in 2013 the Ministry of Interior launched investigation of 9,970 cases of corruption, of which 1,754 cases were forwarded to courts. The courts, however, brought to liability only 1,228 officials, among them 666 for illegal gains, i.e. 51.7% of all officially accused of committing corruption offences.<sup>247</sup> Only 10% of officials found guilty of committing corruption-related crimes were sentenced to prison terms. Also, one of the interviewees stated that judiciary is barely involved in suggesting anti-corruption measures/reforms.<sup>248</sup>

# Key recommendations for the Verkhovna Rada of Ukraine:

The Constitution of Ukraine should be amended to restrict the scope of immunity of judges, to ensure independence of the High Council of Justice by requiring it to be comprised mainly of judges. The constitutional provisions should be also reviewed to decrease political influence of the legislature on appointments and to introduce correspondent ammendments to the judiciary legislation.

# 4. PUBLIC SECTOR

# Summary

Overall performance of the public sector has not changed since 2010, and it still remains one of the weakest pillars of the national integrity system. The resources available to public sector are insufficient to allow it to effectively exercise its duties. The laws governing public service are deeply flawed and cannot ensure independence of public sector in practice. As a result, public sector employees are not adequately protected from external influences (for example, political influence over an official). The problems of public service professional level, changes in public servants' remuneration approach, transparent and objective mechanisms of public servants' selection remain thorny. The Government has initiated the public service reform aimed to change the existing state of affairs. Therefore, it is crucial to finalize the legislative provisions of the reform and implement it properly. The legislation aimed to ensure transparency, accountability and integrity of the public sector, even though it has improved in the recent years, its practical implementation is still needed. At the same time, the issue of unification and proper regulation of administrative procedures remains unsolved, even though this necessity has been discussed for around 10 years. The public sector generally is not pro-active in cooperating with business and civil society on anti-corruption issues, while its limited resources does not allow it to play a role in public education on anti-corruption policies and integrity issues. The legislation on public procurement was significantly improved in 2014, but some flaws still remain to be addressed. Despite that improvement, legislation governing public procurement is not effectively enforced in practice.

The table below presents a general evaluation of public sector in terms of capacity, governance and role in national integrity system. The table is then followed by a qualitative assessment of the relevant indicators.

<sup>247</sup> Ministry of Justice of Ukraine, Report on Implementation of Measures Related to Prevention and Counteraction to Corruption in 2013; http:// www.minjust.gov.ua/file/36531 [accessed December 1, 2014].

<sup>248</sup> Interview by Roman Kuybida, expert at the Center for Political and Legal Reforms, with author, July 27, 2014.
<b>Overall Pillar Score</b>	(2015): 35.41/100
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Dimension	Indicator	Law	Practice
Capacity	Resources	25 (2015, 2010)	
18.75 / 100	Independence	25 (2015, 2010)	0 (2015, 2010)
Governance	Transparency	75 (2015, 2010)	25 (2015, 2010)
	Accountability	50 (2015, 2010)	25 (2015, 2010)
54.16/100	Integrity	75 (2015, 2010)	50 (2015, 2010)
	Public Education	25 (2015, 2010)	
Role 33.33 /100	Cooperation with public institutions, CSOs and private agencies in preventing/ addressing corruption	25 (2015, 2010)	
	Reduction of Corruption Risks by Safeguarding Integrity in Public Procurement	50 (2015, 2010)	

### Overall Pillar Score (2010): 31.22/100

#### Structure and organisation

In Ukraine, the public sector comprises ministries, various central executive bodies (including Anti-Monopoly Committee, National Commission for Security Papers and Stock Market, state agencies and state inspections which deliver administrative services), as well as local executive bodies (local branches of the ministries, regional and rayon state administrations) and local self-government bodies. The full list of administrative services providers is available at: http://poslugy.gov.ua/.

As of January 2014, there were 335,270 civil servants and 97,999 officials employed by local selfgovernment bodies, i.e. 433,269 public officials overall.<sup>249</sup> 21.4% of the civil servants and 18.2% of the local self-government officials have been holding their positions for 15-20 years. Civil service is governed by the 1993 Law on Civil Service, while service at local self-government bodies is regulated by the 2001 Law on Service at Local Self-Government Bodies. In November 2011, the legislature adopted a new version of the Law on Civil Service, which has never entered legal force. Although it is expected that the Law will enter legal force in 2016, the Government considers new versions of both laws governing civil service and service at local self-government bodies.

Correspondent bills have been introduced by the Government to the Parliament of Ukraine and are now in the process of preparation to the second reading. The positive aspects of the key bill On Public Service include public service depoliticization, differentiation of political and administrative positions, decreasing the variative part in the structure of public officials' remuneration, widening competitive approach to appointments.

Overall administration of the civil service in the country is carried out by the National Agency for Civil Service (NACS), whose chair is appointed and discharged from office by the Cabinet of Ministers

<sup>249</sup> National Agency for Civil Service, Civil Service in Figures 2014, 2014, p.2.

based on the Prime Minister's proposal. NACS is subordinated to the Cabinet of Ministers, and it is in charge of taking measures aimed to prevent corruption among the public officials, drafting legislation on civil service, investigating violations of the legislation on civil service, coordinating training and educational programs targeted at civil servants.

#### Assessment

#### Resources (Practice) - Score 25 (2015, 2010)

To what extent does the public sector have adequate resources to effectively carry out its duties?

The poor situation in the national economy does not ensure that public sector has adequate resources to effectively carry out its duties.

According to Kostiantyn Vashchenko, Head of the National Agency for Public Service<sup>250</sup>, in early 2015 after the latest reduction 300 thousand public officials remained, and 40 thousand of them received a minimum wage: UAH 1218 (around EUR 52), and the average wage of public officials was around UAH 3500 (around EUR 150). At the same time the average Ukrainian wage in January – May 2015 was UAH 3788 (around EUR 162)<sup>251</sup>. Interlocutors interviewed within the framework of this assessment also agreed that human and financial resources available to the public sector are insufficient to allow it to effectively carry out its duties.<sup>252</sup>

#### Independence (law) - Score 25 (2015, 2010)

#### To what extent is the independence of the public sector safeguarded by law?

As in 2010, the legal framework generally fails to ensure independence of the public sector, even though some mechanisms aimed to ensure impartiality of the public servants and protect them from undue external interference are in place.

The Law on Civil Service of Ukraine lays down a number of provisions targeted to protect civil servants from undue external interference. In particular, any illegal instructions to the civil servants are prohibited, while illegal discharge from office can be challenged with court.<sup>253</sup> The same law also provides for a number of benefits for public officials, including salary increases, prolonged vacations (compared to other categories of employees), increased pensions.<sup>254</sup> Civil servants and officials employed by local self-government bodies must adhere to the principles of political neutrality, rule of law and objectiveness.<sup>255</sup>

However, the laws contain a number of flaws that significantly reduce the level of independence of the civil servants and officials employed by the local self-government bodies. In particular, the legislation provides that only medium and lower level positions (categories of positions Nos 4-7) at public authorities are open for competitive recruitment, meaning that appointments to the highest positions within the public administration are left to discretion of the directors of respective

<sup>250</sup> Head of the National Agency of Ukraine on Civil Service Kostiantyn Vashchenko interview to online media "Glavkom" on January 12, 2015; Government portal; http://www.kmu.gov.ua/control/publish/article?art\_id=247866400

<sup>251</sup> Avarage monthly salary by types of economic activity from the beginning of 2015; State Statistics Service; http://www.ukrstat.gov.ua/

<sup>252</sup> Victor Tymoshchuk, expert of the Centre for Political and Legal Reforms, interview with the author, July 30, 2014.

<sup>253</sup> Art.11, 32 of the Law on Civil Service.

<sup>254</sup> Art. 34 - 36 of the Law on Civil Service.

<sup>255</sup> Art. 6, 8, 10 of the Law on Rules of Ethical Behaviour.

executive/local self-government bodies or even the higher bodies (such as the legislature, President, government, ministry), if such a higher-level body exists within the respective system of administration.<sup>256</sup> The legal framework does not provide for a special institution (other than court) tasked to protect public sector employees from arbitrary dismissals or political interference. Further, the legislation fails to provide for clear delineation between political and administrative positions, thus leading to politicizing of the public service. The list of grounds for discharge public officials is very broad and includes general grounds listed in the Labour Code of Ukraine, as well as specific grounds envisaged in the Law on Civil Servants and Law on Service at Local Self-Government Bodies, such as violation of oath by the public official, a ground too broad to exclude its arbitrary application.<sup>257</sup>

Independence of the lower level servants in decision-making is not ensured, as the decision-making process in the executive and local self-government bodies is centralised, while the grounds for application of the disciplinary sanctions (including discharge from office) are not clearly defined in law, something that increases the risk of arbitrary imposition of disciplinary sanctions.<sup>258</sup> Engagement of the public servants into political activities is not prohibited, and the civil servants can even participate in political campaigning during the elections (except for the working hours).

#### Independence (practice) – Score 0 (2015, 2010)

To what extent is the public sector free from external interference in its activities?

Public sector is not protected from external interference with its activities, while other actors severely and regularly interfere with its activities.

Overall, only 46.4% positions of the civil servants are filled through open competition, while at the local self-governance bodies this share constitutes 64.2% of all positions.<sup>259</sup> As most public servants are employed on uncompetitive basis, they depend on those who appointed them. Each local and national elections are followed by termination of offices of the high-ranking officials, such as heads of local state administrations, chiefs of the central executive bodies, who, once having been appointed, replace their subordinates by loyal persons or their close associates (although in 2014 most of the replacements affected only chiefs of the public sector agencies and their deputies rather than medium and low level officials).<sup>260</sup> For instance, following his election as President of Ukraine in May 2014, Petro Poroshenko issued 305 decrees to discharge from office heads of the rayon state administrations. In fact, that means that almost half of the heads were replaced after the election.<sup>261</sup> The Cabinet of Ministers formed in December 2014, during December 2014 and January 2015 fired 50 high-ranking officials of the CMU Secretariat, ministries and other central executive bodies/government agencies. Independence of public officials is also impeded by the fact that HR departments within the executive and local self-government bodies are de facto subordinated to the heads of the respective bodies who significantly influence HR management within the respective institutions. 262

During the elections, engagement of the public officials in political activities, including election campaigning of specific candidates or parties, is not uncommon, although the level of abuse of

<sup>256</sup> CMU Resolution No 169, dated February 15, 2002.

<sup>257</sup> Art. 30 of the Law on Civil Service.

<sup>258</sup> UPAC/ Centre for Political and Legal Reforms, Technical Document "Analytical Report on Corruption Risks in Administrative Services Delivery, Control and Supervisory Activities of Public Administration in Ukraine"; http://www.guds.gov.ua/control/uk/publish/article?art\_id=198893&-cat\_id=255109 [accessed December 1, 2014]. See also: SIGMA, Ukraine Governance Assessment, 2006: 51.

<sup>259</sup> National Agency of Ukraine for Civil Service, Civil Service in Figures 2014, 2014, p. 21.

<sup>260</sup> Victor Tymoshchuk, expert of the Centre for Political and Legal Reforms, interview with the author, July 30, 2014.

<sup>261</sup> Data are based on analysis of the respective presidential decrees posted on the Parliament's website.

<sup>262</sup> Victor Tymoshchuk, expert of the Centre for Political and Legal Reforms, interview with the author, July 30, 2014.

administrative resources during the 2014 parliamentary and local elections was not as high as in previous national elections.<sup>263</sup> Involvement of the public officials in the political process also contributes to a high level of dependence of public sector from political actors.

# Transparency (law) - Score 75 (2015), 50 (2010)

To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?

Despite improvements in legislation governing access to public information, the legal framework still contains a number of flaws, which limit transparency of the public sector.

In 2011, the Parliament adopted the Law on Access to Public Information that was aimed to improve access to public information stored by authorities. The Law simplified the procedure for preparing and sending requests for information to public authorities and reduced terms for consideration of requests to 5 days, with no more than 20 days for consideration of requests seeking for large amount of information.<sup>264</sup> It also obliges the public authorities to publish certain information and documents on their websites within 5 days from the day when the respective documents/data were produced. This information includes information on organizational structure, mission, functions, powers, detailed budgets, adopted legislation, draft legal acts subject to mandatory public consultations, terms for delivery of services provided by the respective institution, templates of the documents needed to receive those services, schedules and agendas of the open meetings, reports (including reports on the results of consideration of the requests for information), list of positions opened for competition, contact details of the senior staff (chairs, deputy chairs, directors of internal units within the respective body). This list is incomplete, as the Law on Access to Public Information also requires making publicly available any other information subject to mandatory publishing under the legislation.<sup>265</sup>

The Law on Public Procurement contains a number of provisions aimed to increase the level of transparency in public procurement [see: Reduction of Corruption Risks by Safeguarding Integrity in Public Procurement].

Another important step became the March 2014 adoption of the law of Ukraine On Amendment of Some Legislative Acts of Ukraine Due to Adoption of the Law of Ukraine 'On Information', and the law of Ukraine On Access to Public Information, which approved amendments of a number of legislative acts with the aim of their correspondence with the aforementioned laws.

In addition to the existing liability for illegal refusal to provide information; late or not complete information; untruthful information, the amendments provide for liability for:

- failure to disclose information that is necessary to be disclosed according to laws of Ukraine On Access to Public Information and On Grounds of Corruption Prevention and Counteraction;
- groundless consideration of information as restricted (when replying information requests);

<sup>263</sup> See: OSCE/ODIHR, Ukraine. Parliamentary Elections 28 October 2012. OSCE/ODIHR EOM Final Report, p. 2; OSCE/ODIHR, Ukraine. Early Parliamentary Elections 26 October 2014. OSCE/ODIHR EOM Final Report, p. 3.

Art. 19, 20 of the Law on Access to Public Information.

<sup>265</sup> Art. 15 of the Law on Access to Public Information.

 illegal refusal to accept and consider a request; other violations of the legislation on citizens' appeals.

It is also stipulated that Parliamentary control over securing the right on access to public information is performed by the Ombudsman; it also provides for citizens' access to Parliamentary plenary meetings and meetings of local councils; access to information on towns' / cities/ general plans; free access to statistics; revision in view of the correspondence to the law On Access to Public Information in respect of the documents For Official Use Only; a number of other important amendments<sup>266</sup>.

The law On Prevention of Corruption provides for openness of information on public officials' property, as well as prohibits refusing to provide individuals or legal entities with the information that is allowed to be provided according to the law; providing untimely, untruthful and incomplete information that is to be disclosed according to the law.

Besides, it is also stipulated that the following information cannot be restricted:

1) amount and type of charitable or other aid to individuals or legal entities, public officials, public or municipal bodies;

2) amount and type of remuneration, material aid or any other budget payment to public officials, payment for legal acts that are due to obligatory public registration, as well as gifts regulated by this law;

3) assignment of enterprises and corporate rights to correspondent individuals in the order stipulated by this law;

4) public officials' conflicts of interest and measures for its regulation<sup>267</sup>.

The law On Amendments to Some Legislative Acts of Ukraine on Identification of Beneficial Owners of Legal Entities and Public Persons as of October 14, 2014 provides for access to the data of the State Registry of Rights to Real Estate and disclosure of information on final beneficiaries of legal entities<sup>268</sup>.

A significant step forward became the Parliament's adoption of the law On Openness of Usage of Public Funds<sup>269</sup> on February 17, 2015, which provided for online access to information on budget spending. The aforementioned law was developed in cooperation with civic experts of the Centre for Political Studies and Analysis, and Public Finances group of the Reanimation Package of Reforms civic initiative.

It is important to mention the adoption of the law On Amendments to Some Legislative Acts on Access to Public Information in Open Data Format on April 9, 2015, which provides for disclosure of public information in the open data format at a correspondent unified website<sup>270</sup>.

<sup>266</sup> Law "Om Amendments to Some Legislative Acts of Ukraine because if Adoption of Law of Ukraine "On Access to Public Information" and Law of Ukraine "On Information"; http://zakon4.rada.gov.ua/laws/show/1170-18

<sup>267</sup> Art. 60 of the Law "On Prevention of Corruption"; http://zakon4.rada.gov.ua/laws/show/1700-18

<sup>268</sup> Law "On Amendments to Some Legislative Acts of Ukraine on Identification of Beneficial Owners of Legal Entities and Public Persons"; http://zakon4.rada.gov.ua/laws/show/1701-18

<sup>269</sup> Law "On Openness of Usage of Public Funds"; http://zakon4.rada.gov.ua/laws/show/183-19

<sup>270</sup> Law "On Amendments to Some Legislative Acts on Access to Public Information in Open Data Format"; http://zakon4.rada.gov.ua/laws/ show/319-19

Nevertheless, a number of important aspects of the public sector's activities remain opaque. Transparency of appointments within the public sector is not adequately ensured, as only medium and lower level positions of public servants are filled through open competition [see: Independence (law)].

The institutional mechanism of public control over implementation of the law On Access to Public Information hasn't been properly introduced yet. Here it is important to mention that in January 2015 the State Committee for Television and Radio Broadcasting of Ukraine publicised a bill On Amendments to Some Legislative Acts of Ukraine on State Control over Information Owners' Provision of Access to Public Information that suggests authorising the State Committee for Television and Radio Broadcasting of Ukraine of Access to Public Information that suggests authorising the State Committee for Television and Radio Broadcasting of Ukraine with state control over provision of access to public information. However, this approach is doubtful in the context of independence of the body with these authorities.

# Transparency (practice) - Score 50 (2015), 25 (2010)

To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?

Since 2010, the level of transparency in financial, human resource and information management in the public sector has not significantly improved, and many aspects of the public sector's activities still suffer from lack of transparency.<sup>271</sup>

According to "Transparent Bureaucracy" website, in none of the regions the work of public authorities can be considered "entirely transparent" (as of November 2014). Most local authorities are "minimally transparent" or entirely opaque, i.e. do not provide information upon requests, provide irrelevant information or information of a general nature.<sup>272</sup> On December 10, 2014, Regional Press Development Institute published its annual ranking of openness of the websites of the central executive bodies (55 central executive bodies/government agencies were covered by the ranking). The ranking suggests that websites of the central executive bodies in 2014 presented more information on the work of the respective bodies, however, not all information required by the law is actually published. For instance, 18 out of 55 bodies failed to publish detailed information on use of budget resources, on use of property and on results of public procurement.<sup>273</sup> The level of transparency of websites of 25 central executive bodies (i.e., almost half of the bodies covered by ranking) does not exceed 50%.<sup>274</sup>

Local self-government bodies and local executive bodies often fail to publish their draft decisions within 20 days before their adoption, hide information on successful bidders and plans for urban development, fail to publish the adopted decisions.<sup>275</sup>

The Law on Public Procurement provides for publication of important information on public procurement [see: Reduction of Corruption Risks by Safeguarding Integrity in Public Procurement], but certain aspects of public procurement could benefit from increased transparency. In particular, the Law does not require that composition of the tender committees must be published, fails to

<sup>271</sup> Victor Tymoshchuk, expert of the Centre for Political and Legal Reforms, interview with the author, July 30, 2014.

<sup>272</sup> For further details see: http://access-info.org.ua/map [accessed December 1, 2014].

<sup>273</sup> For further details see: http://irrp.org.ua/news/rpdi/3426-pres-konferencya-vdkritst-ukrayinskoyi-vladi-rezultati-montoringu-veb-saytv-centralnih-organv-vikonavchoyi-vladi-ukrayini-2014.html [accessed December 1, 2014].

<sup>274</sup> Ranking is available at: http://irrp.org.ua/rating-2014.html [accessed December 1, 2014].

<sup>275</sup> Victor Taran, Daria Slyskonis, Non-transparent Access, 2013; http://www.pravda.com.ua/articles/2013/05/15/6989817/ [accessed December 1, 2014].

introduce clear criteria for bid evaluation, as well as register of the natural and legal persons engaged in misconduct during procurement or implementation of procurement agreements.<sup>276</sup>

In practice, the appointments in public sector are not transparent, as not positions are publicly advertised [see: Independence (law)].

According to transitional provisions of the law On Openness of Public Spending, it shall be enacted on September 12, 2015. Therefore, in mid-September people could receive an access to a huge amount of information (copies of contracts, acts, information on payments for contracts etc.) on all public expenditures, and could be able to analyse it. However, the process of creation of this webportal has stopped. It is still argued who will be in charge of implementation of this legislation, who will draft the order of the web-portal administration and the order of publication of information on transactions on the web-portal. The delay of the decision resulted into uncertainty of further actions for all participants of the process; failure to implement norms of the law and to understand the fact that in September 2015 the web-portal won't be launched.

At the same time, access to public registers is gradually opening, for example access to the State Registry of Rights to Real Estate. Besides, the National Open Data Portal has been launched: http:// data.gov.ua/.

#### Accountability (law) - Score 50 (2015, 2010)

To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?

The legal framework provides for a number of mechanisms to ensure that public sector employees have to report and be answerable for their action, but these mechanisms contain a number of flaws.

The Code of Administrative Offences and Criminal Code of Ukraine provide for administrative and criminal liability for corruption-related offences, including abuse of power/office and abuse of influence, active and passive bribery, bribe provocation, illicit enrichment, violations of incompatibility requirements, restrictions on gifts, rules on conflict of interests and on asset disclosure.<sup>277</sup> The corruption-related crimes are investigated by the investigators attached to the prosecutor's offices and by police (if they are committed by lower level officials).<sup>278</sup> Once the National Anti-Corruption Bureau (NACB) starts to operate, corruption crimes committed by the highest-level officials will be investigated by the NACB investigators, while the rest of the cases of corruption will be investigated by the police and by the State Bureau of Investigations (once it is established).<sup>279</sup>

In addition to criminal and administrative liability, the legal framework governing public service also provides for disciplinary sanctions, such as reprimand, termination of office, suspension of appointment to the higher position for one year, announcement of warning for failure to meet the requirements to the position occupied.<sup>280</sup> Cases of misconduct by civil servants are investigated by NACS (in exceptional cases, for instance, if investigation was launched upon initiative of the public official accused of misconduct or upon initiative of the PM or other "highest officials") or by special investigation commissions created by the chiefs of the institutions which employ the official

<sup>276</sup> Andriy Marusov, expert on public procurement issues, interview to Vesti newspaper, November 13, 2014.

<sup>277</sup> Art. 172-4 - 172-9 of the Code of Administrative Offences; Art. 364-370 of the Criminal Code of Ukraine.

<sup>278</sup> Art. 112 of the 1963 Criminal Procedure Code of Ukraine. See also Art. 216 of the Criminal Procedure Code of Ukraine.

<sup>279</sup> OECD/ACN, Istanbul Anti-Corruption Action Plan. Third Round of Monitoring. Ukraine. Progress Updates, 2014, p. 19.

<sup>280</sup> Art. 14 of the Law on Civil Service.

in question.<sup>281</sup> Decisions to impose disciplinary sanctions can be adopted only by the chiefs of the respective institutions, meaning that the powers of investigation commissions are rather limited. The level of independence of those commissions is also decreased by the fact that they are formed by the chiefs of the respective executive bodies. In general, one of the interlocutors agreed that the legal framework governing disciplinary investigations fails to ensure that disciplinary investigations are independent, unbiased and effective.<sup>282</sup>

The new law On Prevention of Corruption has improved the regulation of corruption whistleblower protection. First of all, the rule of whistleblower protection from negative influence of employers is clearly regulated: criminal liability is stipulated for a whistleblower's firing. Secondly, the bodies are obliged to create favourable conditions for whistleblowing. Thirdly, the NAPC is authorized to monitor application of the legislation on whistleblower protection, and to participate in whistleblowers' defending their cases in court<sup>283</sup>.

There are no provisions in place requiring the public sector agencies to submit reports to the legislature. The Parliament only considers reports on implementation of the Government Program of Action and State Budget Law for the respective year, as well as the CMU information on specific issues (during the "Questions and Answers" hours), both presented at the plenary meetings by the Government.<sup>284</sup> However, the heads of the public sector agencies are required to provide information upon MP requests.<sup>285</sup> The Law on Central Executive Bodies provides that each ministry and government agency (central executive body) must produce an annual report on in implementation of its working plans.<sup>286</sup> However, the requirements to these reports are not specified, which also do not contribute to a better accountability of the respective agencies.

Decisions made by the public sector agencies can be challenged with administrative courts in accordance with the procedure laid down in the Code of Administrative Adjudication.<sup>287</sup> The procedure for filing administrative complaints against decisions made by public sector agencies is not properly regulated as the Parliament failed to adopt Code of Administrative Proceedings, whose draft contained a number of provisions aimed to unify approaches towards considering complaints filed against decisions made by the public officials and various agencies by the higher-level bodies and officials.

Due level of accountability in public sector is also hindered by the wide margin of discretion granted to public sector agencies. The legal provisions on administrative procedures are dispersed across the laws and secondary legislation, which in many cases leave space for abuses.<sup>288</sup>

In 2013, the Ministry of Justice of Ukraine adopted the Procedure for anti-corruption screening of the draft and adopted legislation. However, anti-corruption screening is performed within the course of a general legal screening, while not all the draft laws and by-laws are subject to screening.<sup>289</sup>

# Accountability (practice) – Score 25 (2015, 2010)

<sup>281</sup> Procedure for Conduct of disciplinary investigations against public officials, approved by the CMU Resolution No 950, dated June 13, 2000.

<sup>282</sup> Victor Tymoshchuk, expert of the Centre for Political and Legal Reforms, interview with the author, July 30, 2014.

<sup>283</sup> Art. 53 of the Law "On Prevention of Corruption"; http://zakon4.rada.gov.ua/laws/show/1700-18/stru/paran658#n658

<sup>284</sup> Art. 229 of the VRU Rules of Procedure.

<sup>285</sup> Art. 15 of the Law on Status of MPs.

<sup>286</sup> Art. 8, 10, 18 of the Law on Central Executive Bodies.

<sup>287</sup> Art. 15, 23 of the Law on Central Executive Bodies.

<sup>288</sup> OECD/ACN, Second Round of Monitoring. Monitoring Report on Ukraine, 2010, pp. 54, 55.

<sup>289</sup> See paragraphs I and II of the Procedure for anti-corruption screening by the Ministry of Justice, approved by the Order of the Ministry of Justice No 1608/5, dated August 5, 2013; http://zakon4.rada.gov.ua/laws/show/z1325-13 [accessed December 1, 2014].

To what extent do public sector employees have to report and be answerable for their actions in practice?

Since the legal framework governing accountability of the public sector institutions is flawed, public sector employees are not generally answerable for their actions in practice.

In 2013, the World Bank ranked the Government's effectiveness in controlling corruption with the percentile rank of 12, a significant decrease from 2010, when control of corruption in Ukraine received a score of 17.1.<sup>290</sup>

Given that the Law on Principles for Prevention and Counteraction to Corruption failed to ensure effective whistle-blower protection, public servants generally did not report to the higher-level officials on the cases of corruption.<sup>291</sup>

In practice, judicial review of the actions, decisions and inaction of the public sector agencies, as well as executive, is not very effective due to politicization of the judiciary [see: Judiciary (Independence (practice)].

Misbehaviour and corruption within the public sector mostly goes unsanctioned and focuses on prosecution of the lower-level officials. According to the Ministry of Justice, in 2013 only 379 civil servants and officials of the local self-government bodies were brought to account for administrative corruption offences, of which 163 were civil servants and 216 were officials of the local self-government bodies. 83.4% of those civil servants (62.5% of the officials of the local self-government bodies) occupied lower-level positions (categories 5 - 7 for civil servants and category 4 for local self-government officials). In 2013, 123 civil servants (with 90% of the servants occupying positions referred to categories 5 - 7) and 92 officials of the local self-government bodies (of whom 64% held the lowest-level positions) were found guilty of committing corruption-related criminal offences. These considerably low figures explain why public sector is widely believed to be highly or extremely corrupt. According to TI GCB for 2013, 82% of the respondents in Ukraine felt that public officials and civil servants were corrupt or extremely corrupt.<sup>292</sup>

Although the Law requires the ministries and other executive bodies to produce annual reports on implementation of their working plans, many of them, according to the results of NGO monitoring, fail to do so at all or publish reports with significant delays. Due to lack of requirements as to the content of the reports, their content and structure are not unified across the different agencies.<sup>293</sup>

The annual Ministry of Justice' reports indicate that the central executive bodies and NACS generally check the information on wrongdoing by their officials and impose disciplinary sanctions, but the respective measures are limited mainly to reprimand and similar measures,<sup>294</sup> and could hardly change the overall perception of the public sector institutions as corrupt.<sup>295</sup>

The effectiveness of public control of use of budget funds by public sector agencies raises doubts as in 2014 the Parliament restricted the possibilities for carrying out checks/audits of use of public funds by institutions and enterprises, including those under the Government's control [see: Accountability

<sup>290</sup> World Bank, Worldwide Governance Indicators. Country Data Report for Ukraine, 1996-2013.

<sup>291</sup> Victor Tymoshchuk, expert of the Centre for Political and Legal Reforms, interview with the author, July 30, 2014.

<sup>292</sup> TI, 2013 Global Corruption Barometer; http://www.transparency.org/gcb2013/country/?country=ukraine [accessed December 1, 2014].

<sup>293</sup> Regional Press Development Institute, Ranking of openness of websites of central executive bodies, p. 60.

<sup>294</sup> Ministry of Justice of Ukraine, Report on Implementation of Measures Related to Prevention and Counteraction to Corruption in 2013; http:// www.minjust.gov.ua/file/36531 [accessed December 1, 2014].

<sup>295</sup> Victor Tymoshchuk, expert of the Centre for Political and Legal Reforms, interview with the author, July 30, 2014.

(law)]. At the same time the moratorium on check-ups in January – June 2015 that was extended by the law On Amendments to and Revoking of Some Legislative Acts of Ukraine of December 28, 2014, No. 76-VIII, does not include State Financial Inspection any more<sup>296</sup>.

The State Financial Inspection in the period from January to February 2014 held 23 802 check-ups (in 2013 they were 6460, i.e. 3.6 times less); 4128 violations detected (5595 in 2013, i.e. around 1500 more) for the total sum of UAH 7.58 billion (UAH 3.69 billion in 2013), including UAH 3.88 billion of illegal expenditures (2.06 billion in 2013); 2182 cases were transferred to law enforcement bodies. 1465 pre-trial investigations were started on the basis of those cases (2659 in 2013); 359 persons received notifications of suspicion (461 persons in 2013)<sup>297</sup>.

Therefore, even though the number of violations detected is less, their amounts are higher. The criminal and legal responding resulted in the decrease of the number of cases initiated and in slight decrease of the number of persons who received notifications of suspicion.

Recently there was a corruption scandal in regards of the State Financial Inspection. In early March Mykola Hordiienko, Head of Inspection, was suspended from the office; and an official investigation ordered by the Prime Minister Arsenii Yatseniuk has started in regard of him. The investigation found out the improper performance of his duties, formal fulfilment of his tasks, lack of effective indicators of implementing the Cabinet of Ministers' Decree of June 25, 2014 No. 214 On Certain Measures of Financial Control Over Business Entities of the Public Sector of Economy. For example, the social investigation commission came to the conclusion that Mr. Hordiienko did not properly react on violations at Antonov State Enterprise, did not properly implement orders of the Prime Minister of Ukraine concerning the effective use of funds for implementation of the Complex Program of Wind-Driven Power-Stations in 2006 – 2007 and 9 months of 2008; orders regarding other controlling measures. Taking into account the results of the official investigation the Government has made a decision to dismiss Mykola Hordiienko from his office due to violation of the Public Official's Vow, and to transfer the materials of the official investigation the Prosecutor General's Office<sup>298</sup>.

Mykola Hordiienko after his dismissal made a strong-worded public statement about significant embezzlements that even increased during Arsenii Yatseniuk's Government. Disclosure of those facts became the reason for his suspension and dismissal. For example, Mr. Hordiienko has mentioned that audit of Enerhoatom State Enterprise has just started, and already found out the embezzlement over UAH 500 million.<sup>299</sup>

To respond on those statements, the Verkhovna Rada of Ukraine created a working group to investigate corruption within the Government. Therefore, the issue of the Government's abuse of public funds was extended into the political sphere. However, according to V. Huzyr's (Prosecutor General's Deputy) statement of May 15, 2015 the prosecution hasn't found any proofs of the information about the Government's corruption for that date<sup>300</sup>.

Despite the fact there are no final conclusions, it is obvious that the problem of public fund abuse

<sup>296</sup> Law on Amendments to and Revoking of Some Legislative Acts of Ukraine;

<sup>297</sup> Report on activity of State Financial Inspection and its local divisions in 2014; State financial Inspection; http://www.dkrs.gov.ua/kru/uk/pub-lish/article/106505

<sup>298</sup> Government has taken decision on dismissal of Mykola Gordienko; Government portal; http://www.kmu.gov.ua/control/publish/article?art\_id=248071232

<sup>299</sup> Mykola Gordienko: New government seals twice more than Yanukovich; Podrobnosti; http://podrobnosti.ua/2023727-mikola-gordnko-novijurjad-krade-vdvch-blshe-za-janukovicha.html

<sup>300</sup> There are no evidences of corruption in the Government – Deputy Prosecutor General- . 5 channel http://www.5.ua/polityka/Dokaziv-koruptsii-u-Kabmini-znaity-ne-vdalosia--zastupnyk-henprokurora-80453.html#

keeps on being actual in Ukraine and it needs an urgent solution due to the current economic situation.

#### Integrity (law) - Score 50 (2015, 2010)

To what extent are there provisions in place to ensure the integrity of public sector employees?

The new law On Prevention of Corruption has significantly improved the legal regulation of the rules of integrity for public officials. Key regulations are the following:

the legislation sets clear rules of prevention and regulation of a real or potential conflict of interest (an obligation to inform the superior officer about the conflict of interest; prohibition to act or make decisions within conflict of interest etc.);

new rules of financial control over the property conditions of public officials (submission of electronic declarations, declarations' audit in several stages; publication of declarations in an open register; obligation for officials to inform about opening foreign currency accounts abroad, and about significant changes of property conditions; monitoring officials' lifestyles);

a separate chapter of the law defines key rules of ethical conduct for officials (public and local officials are to adhere to the requirements of the Constitution and laws of Ukraine; respect human rights; adhere to the principle of political impartiality; and be objective);

combination of the main activity with other paid activity has been limited, as well as the work together with close persons, work in the private sector after termination of his service, receiving gifts (for example, it is prohibited to accept gifts when they are presented because of the public officials' holding office, or when they are given by subordinates)<sup>301</sup>.

The aforementioned rules are mostly related to all categories of public officials. Certain rules of integrity are in the laws On Public Service, and On Service in Local Self-Government Bodies, as well as in various legislative acts.

Some public bodies have codes of professional conduct, but all of them need to be reconsidered in accordance with the law On Prevention of Corruption. For example, the Order of Chief Administration of the Public Service of Ukraine No. 214 of August 4, 2010 adopts the General Rules of Public Officials' Conduct.

The civil servants and officials of the local self-government bodies must respect the Constitution, other laws and human rights; observe the principle of political neutrality; be objective; annually submit at the place of their employment declarations of assets, incomes, expenses and financial obligations (asset declarations); report on the conflict of interests to their direct supervisors once the conflict of interest occurred; abstain from abusing their offices in private interests as well as from combining their positions with business activities or other paid work (with some exceptions, such as academic work or lecturing). <sup>302</sup> They are prohibited from accepting gifts granted in relation to exercising their powers as well as gifts from their subordinates or gifts from any other persons, if the value of the gift(s) over a year exceeds(s) 50% of the minimum monthly salary [roughly UAH 600 or USD 40]. They are also not allowed to have their close persons (such as family members or persons connected by mutual rights and obligations) as subordinates or direct supervisors. Within one

<sup>301</sup> Art. 23-25, 27, 28, 37-52 of the Law "On Prevention of Corruption"; http://zakon4.rada.gov.ua/laws/show/1700-18/stru/paran658#n658

<sup>302</sup> Art. 10, 13, 16-1 of the Law on Civil Service, Art. 6-9, 12 of the Law on Principles for Prevention and Combating Corruption, Art. 6-16 of the Law on Rules of Ethical Behaviour.

year following termination of employment, public officials are forbidden from entering labour or any business agreements with natural or legal persons supervised by them at the time when they held their positions, from disclosing or using any information they became aware of while exercising their powers, as well as from representing the interests of any persons in cases involving the bodies which employed the officials as another party.<sup>303</sup>

As regards integrity in public procurement, the current legislation provides for certain rules in the aspect of integrity of public procurement participants<sup>304</sup> [see also: Reduction of Corruption Risks by Safeguarding Integrity in Public Procurement].

### Integrity (practice) - Score 50 (2015, 2010)

To what extent is the integrity of civil servants ensured in practice?

Although a number of provisions exist to ensure integrity of the civil servants and officials of the local self-government bodies exist, they are not effectively implemented in practice.

As has been mentioned above [see: Accountability (practice)], public sector is generally perceived to be one of the most corrupt institutions, while misbehaviour of public officials mainly goes unsanctioned. Prosecution for corruption offences is focused on the mid and lower levels of public service.

As the law until recently did not provide for independent review of the asset declarations and comprehensive conflict of interest regulation, the respective legal provisions were not effectively enforced.<sup>305</sup> Although public service is perceived as extremely corrupt, in 2013 from all the officials whose employment was terminated (53,092 persons overall) only 0.1% of the civil servants and 0.4% of the local self-government officials were fired for committing a corruption offence, meaning that prosecution of corruption is not very effective.<sup>306</sup>

Effectiveness of introduction of new rules of officials' integrity is closely connected with the institutional support of this process, which will be performed by the NAPC. Therefore, its immediate launch is needed [See Anti-Corruption Agencies].

During 2013, NACS delivered trainings on various aspects of the anti-corruption policy to 53,887 officials, of whom 20,411 were civil servants.<sup>307</sup> Given the number of officials employed (433,269 public officials in 2014) these trainings do not seem to significantly contribute to ensuring integrity of the public officials. The expert interviewed within the framework of this assessment agreed that trainings for public servants are not very effective as the chairs of the public sector institutions do not have any influence on curricula and content of training, while the trainings are to short to cover all the important issues.<sup>308</sup>

<sup>303</sup> Art. 10 of the Law on Principles for Prevention and Combating Corruption.

<sup>304</sup> Articles 22, 40 of the Law on Public Procurement.

<sup>305</sup> Victor Tymoshchuk, expert of the Centre for Political and Legal Reforms, interview with the author, July 30, 2014.

<sup>306</sup> National Agency for Civil Service, Civil Service in Figures 2014, 2014, p.24.

<sup>307</sup> Ministry of Justice of Ukraine, Report on Implementation of Measures Related to Prevention and Counteraction to Corruption in 2013; http:// www.minjust.gov.ua/file/36531 [accessed December 1, 2014].

<sup>308</sup> Victor Tymoshchuk, expert of the Centre for Political and Legal Reforms, interview with the author, July 30, 2014.

#### Public Education (practice) – Score 25 (2015, 2010)

To what extent does the public sector inform and educate the public on its role in fighting corruption?

While the public sector agencies generally inform the public on dangers of corruption and its impact, there are no specific programs within the public sector aimed to educate public on corruption and how to curb it.

The 2014 annual report of the Ministry of Justice on implementation of anti-corruption measures suggests that the activities of public sector in terms of educating public on anti-corruption issues are limited to posting information on uncovered cases of corruption on their websites, printing leaflets on the respective issues, interviews of the chairs of the public sector agencies in media on corruption-related issues.<sup>309</sup> Given that almost one-third of the citizens view corruption as an acceptable solution to certain problems<sup>310</sup>, negligible effectiveness of the measures taken by the public sector to educate public on its role in combating corruption is obvious.

# Cooperation with public institutions, CSOs and private agencies in preventing/ addressing corruption (practice) – Score 25 (2015, 2010)

To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?

The cases of cooperation between the public sector agencies with other agencies within the state, CSOs and private agencies in preventing the corruption are not widespread.

As in previous years, the examples of cooperation include involvement of CSOs in drafting the proposals aimed at combating corruption, as well as draft laws, participation in the work of the public councils established by the executive bodies. However, in many cases public councils proved to be ineffective or exist only on paper, especially after the change of Government in 2014.

The Ministry of Justice is one of the most active public sector agencies in terms of cooperation with the CSOs. In particular, CSOs significantly contributed to preparation of the new Law on Prevention of Corruption, Law on Ultimate Beneficiaries of the Legal Persons and Public Figures, Law on National Anti-Corruption Bureau, some of which were prepared by the Ministry of Justice in cooperation with the CSOs. In 2013, CSOs came up with proposals for review on the National Anti-Corruption Program of Action for 2011 – 2015, and many CSO proposals were addressed by the Ministry of Justice. However, cooperation with public sector is initiated by CSOs rather than by public sector institutions, and, apart from the Ministry of Justice, other public sector institutions do not actively cooperate with business and NGOs on anti-corruption matters.<sup>311</sup>

At the same time, civil society is more actively involved in the process of legislation development and implementation. CSO representatives join selection commissions that take decisions on staff members of different public institutions, which proves people's lack of trust to those institutions. There is both positive and negative experience of cooperation with civil society.

<sup>309</sup> Ministry of Justice of Ukraine, Report on Implementation of Measures Related to Prevention and Counteraction to Corruption in 2013; http:// www.minjust.gov.ua/file/36531 [accessed December 1, 2014].

<sup>310</sup> IFES, Public Opinion in Ukraine 2014. Findings from the IFES 2014 survey in Ukraine; http://www.ifes.org/Content/Publications/Survey/2014/~/media/Files/Publications/Survey/2014/2014\_Ukraine\_Survey\_Presentation\_Slides\_English.pdf [accessed December 1, 2014].

<sup>311</sup> Ministry of Justice of Ukraine, Report on Implementation of Measures Related to Prevention and Counteraction to Corruption in 2013; http:// www.minjust.gov.ua/file/36531 [accessed December 1, 2014].

According to the law of Ukraine On Prevention of Corruption legal entities are obliged to apply inner anti-corruption measures. For some of them it is obligatory to have anti-corruption programs and staff assigned to implement them (for private companies that participate in big procurement and for big state enterprises<sup>312</sup>.

# Reduction of Corruption Risks by Safeguarding Integrity in Public Procurement – Score 50 (2015, 2010)

To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?

While the comprehensive legal framework is in place to ensure integrity in public procurement, it still requires certain improvements, while in practice the existing rules are not effectively enforced.

The new Law on Public Procurement was adopted in April 2014. While the previous version of this Law provided for 44 exceptions from application of the general procurement rules, the new Law restricted the number of the exceptions by 11 cases. The law also provides for a number of mechanisms to ensure transparency and integrity in the public procurement, as well as aligns the legal framework governing procurement with certain EU standards (for instance, in terms of types of the bidding procedures).<sup>313</sup>

At the same time, the Law contains some flaws. For instance, it fails to set clear criteria for bids evaluation, regulate conflict of interest in work of the members of the tender committees, provides for high fees to be paid to be eligible to file complaint against violations during the procurement, fails to provide for black listing of companies who violated procurement procedures/contracts in the past. The Law also fails to address a number of practical issues, such as lack of competition in procurement, lack of professional training for participants of the procurement process, cumbersome procedures applied regardless of the bid value, formalistic approach towards considering documents submitted by perspective bidders and others.<sup>314</sup>

The Ministry of Economic Development and Trade publicizes quarterly reports on the analysis of implementation of the public procurement system. However, it is not known whether civil society and business is involved in the process, and the reports use a number of public information resources for analysis.

Main tendencies and indicators highlighted in the 2014 report<sup>315</sup> are as follows:

according to the public procurement web-portal half of the posts are related to the results of singleparticipant procurements / negotiated procurements (it is explained by the fact that their majority is procurement of communal or postal services). On the other hand, having analyzed procurement contracts, one can see the tendency of decreasing uncompetitive procedures (for over 10%);

decrease of the general sum of procurement contracts;

<sup>312</sup> Art. 61, 62 of the Law "On Prevention of Corruption"; http://zakon4.rada.gov.ua/laws/show/1700-18/stru/paran159#n159

<sup>313</sup> Analysis of the Law is available at: http://svitprava.com.ua/uk/korisne/publikatsiji/223-nova-redaktsiya-zakonu-pro-derzhavni-zakupivli.html [accessed December 1, 2014].

<sup>314</sup> http://www.slideshare.net/dlubkin/ss-37047667 [accessed December 1, 2014].

<sup>315</sup> Report of the Ministry of Economy and Trade on analysis of public procurement system functioning in 2014; http://www.me.gov.ua/Documents/List?lang=uk-UA&tag=Zviti

State Treasury bodies sent 305 warnings due to violations of procurement. Mostly they are connected with absence of documents required by legislation, or with their improper preparation;

The State Financial Inspection has detected violations of legislation in the public procurement sphere for the amount of UAH 327.32 million; 27.26 million of them lead to the loss of public resources. Major violations are connected with avoiding the procedures stipulated by law when performing public procurement; with failure of public bids' committee head to specify functions of the committee members, and with failure to appoint deputies; groundless single-participant procurements / negotiated procurements; violations in documenting bids; participation of bidders who do not meet the requirements specified in bidding documents, and as a result failure to make a decision about cancellation of procurement procedure;

The Security Service of Ukraine in January – December 2014 detected over 10 700 crimes; 6 075 of them were connected with the state budget money, and 4 613 – with local budgets. Controlling measures showed that 1 256 crimes were committed in the process of procurement procedure preparing and holding, including the following:

- 342 facts of bidders providing untruthful information to gain advantages;
- 287 facts of violations when preparing bidding documents;
- 163 facts of providing untruthful information for application of uncompetitive bidding procedures;
- 159 facts of falsifying documents on procurement procedure;
- 142 facts of pointless preferences to one of the participants;
- 137 facts of dividing purchase items with the aim of avoiding procurement procedures
- 100 facts of collusion of participants.

Besides, the Security Service of Ukraine has detected the facts of violations on the stage of implementation of contractual obligations. In 2014 1 954 crimes were detected, i.e.:

- 1 532 facts of incomplete implementation of contractual obligations;
- 308 facts of supply of the material resources that do not comply with technical requirements;
- 199 facts of contract amendments with the aim of increasing its price, changing the subject of procurement.

Cases against 4 498 persons who committed wrongdoings were opened, including 1 216 members of bidding committees and 3 075 officials who are made liable in accordance with Ukrainian laws.

Besides, January – September 2014 report of the Ministry of Economic Development mentioned that according to the data of the Security Service of Ukraine main public procurement legislative offences were related to items of purchase dividing with the aim of avoiding procurement procedures, and recognizing specific participants as winners; collusions between subjects of procurement procedure on the state of forming budget expenditures and when submitting proposals for bids; discriminative

approach of evaluation of bidding proposals; violation of the legislation protecting economic competition by means of groundless single-participant procurements;

Anti-Monopoly Committee data:

Appealing body information on the number of appeals and resolutions in 2014 and their comparison with 2013

INFORMATION ON APPEALS	NUMBER	
	JANUARY – DECEMBER 2013	JANUARY – DECEMBER 2014
Appeals submitted	1 182	930
Appeals taken to consideration	1 024	766
Appeals denied (including the appeals received in previous periods)	341	241
Appeals upheld (in full or partially) (including the appeals received in previous periods)	467	379
Appeals returned without consideration according to the decision of the Panel, including the appeals received in previous periods	122	133
Consideration terminated	96	145

According to the Anti-Monopoly Committee, typical violations are:

First category of violations – procurement customers' drawing up bidding documents with violations of basic principles of public procurement that are stipulated by law, in particular:

setting unclear and non-transparent technical and qualification requirements in bidding documents;

artificial enlargement of the procurement item (groundless joining goods/services in one procurement item);

artificial narrowing of the procurement item (exceeding specification of a procurement item);

mistakes in bidding documents (non-correspondence of bidding documents' annexes with basic requirements to bidding documents; wrong terms for submission of bidding proposals etc.);

Second category of violations – procedural violations by procurement customers, in particular:

violations of the order for providing clarifications in response for stakeholders' information;

violations of the order of procurement information publication;

illegal rejections of bidding proposals;

admission of participants who do not meet the requirements of bidding documents to the evaluation of bidding proposals;

drawing up procurement contracts with violation of terms specified by law (including the procedure of disputes).

Other schemes, beside the ones mentioned in the report of the Ministry of Economic Development, are also widespread. For example, procurements for artificially high prices, when related companies participate in the procurement process, still take place.

The Accounting Chamber states that the law On Public Procurement No. 1197 of April 10, 2014 does not fully correspond with international standards. Corruption is not completely removed from the sphere, as far as the public procurement procedure hasn't been simplified, electronic bids haven't been introduced, and no liability has been set for officials who committed violations, and therefore the aforementioned does not contribute to the transparent, effective and rational public spending<sup>316</sup>.

Therefore, in practice, adoption of the new Public Procurement Law has had a limited impact on procurement as it remains one of the most corrupt spheres.<sup>317</sup>

At the same time, the anti-corruption legislation has set the rules to determine integrity requirement for participants of bids. Therefore, lack of anti-corruption programs and officers in charge of their implementation at private companies who participate in public procurement, in case the price of a good (goods) or service (services) equals or exceeds UAH 1 million, and the price of work equals or exceeds UAH 5 million, can be a reason of refusal for those companies to participate in procurement. It is also the same (despite the procurement type or price) for legal entities who are in the State Registry of Persons Who Committed Corruption or Corruption-Related Offences, and who were prosecuted for corruption<sup>318</sup>.

#### Key recommendations:

# For the Verknovna Rada of Ukraine

The Parliament should adopt new versions of the Law on Civil Service and Law on Service at Local Self-Government Bodies to provide for clear delineation between political and administrative positions, to ensure independence of public servants, appropriate level of integrity and competitive remuneration schemes.

#### For the Cabinet of Ministers of Ukraine

It is recommended for the Verkhovna Rada of Ukraine to consider a draft law on regulation of administrative procedures, as has been recommended by international organisations.

#### For the Ministry of Economic Development and trade:

<sup>316</sup> Information on consideration of results of public procurement status analisys by the Accounting Chamber Collegium http://www.ac-rada.gov. ua/control/main/uk/publish/article/16744884

<sup>317</sup> http://www.slideshare.net/dlubkin/ss-37047667 [accessed December 1, 2014].

<sup>318</sup> Point 11, part 1 art.17 of the Law "On Conduction of Public Procurement"; http://zakon1.rada.gov.ua/laws/show/1197-18/paran288#n288

to constantly monitor the practice of application of the legislation on public procurement and to keep on improving it using the results of this monitoring; to make steps in legislative regulation and launch of the e-procurement system.

For the National Agency for the Prevention of Corruption (after its establishment)

to develop and implement the mechanisms of financial control, monitoring and application of the legislation on the conflict of interest prevention and resolution, and corruption whistleblower protection; to develop, approve and monitor the public servants' and municipal officials' code of conduct;

#### For the Ministry of Justice:

to hold the anti-corruption expertise of the law On Public Procurement.

#### For the Cabinet of Ministers of Ukraine:

together with the civil society provide for proper implementation of the law On Openness of Public Money Spending by means of fulfilling a detailed implementation plan;

to develop the capacity of the State Financial Inspection by means of intensification of the riskoriented approach to audits, and by means of orientation on detection of corruption and abuse cases;

# 5. LAW ENFORCEMENT AGENCIES

# Summary

Law enforcement agencies in Ukraine are ineffective and weak institutions in law and practice, despite certain improvements in the legislation aimed to ensure their transparency and integrity. Although overall funding of law enforcement agencies increased in recent years, the deteriorated situation in the national economy has affected capacity of those agencies to function effectively in 2014. The Constitution does not ensure independence of law enforcement agencies, including prosecutors, and they are not independent from external influence in practice. The cases of misbehaviour within the law enforcement agencies mostly go unsanctioned, while the level of public trust in prosecutors and police remains low. Access to information on the work of the prosecutors, especially at the lower level, is not ensured in practice. Investigation of corruption offences is mainly focused on low-level offenders and administrative misconduct.

The table below presents a general evaluation of the law enforcement agencies in terms of capacity, governance and role in national integrity system. The table is then followed by a qualitative assessment of the relevant indicators.

#### LAW ENFORCEMENT AGENCIES

Overall Pillar Score (2015): 38.19/100

#### Overall Pillar Score (2010): 39.58/100

Indicator

Dimension

Law

Practice

LAW ENFORCEMENT AGENO	IES		
Capacity	Resources	50 (2015), 25 (2010)	
43.75/100	Independence	50 (2015, 2010)	25 (2015, 2010)
0	Transparency	50 (2015, 2010)	25 (2015, 2010)
Governance	Accountability	75 (2015, 2010)	25 (2015, 2010)
45.83/100	Integrity Mechanisms	50 (2015), 25 (2010)	0 (2015), 25 (2010)
Role			
25/100	Corruption Prosecution	25 (2015), 50 (20	10)
25/100			

#### Structure and Organisation

There are a number of law enforcement agencies in Ukraine, the main ones being the police, public prosecutors, the Security Service (which, in addition to intelligence functions, is also authorised to detect and investigate certain crimes). Criminal investigations are carried out also by the tax police, although most of the crimes under the new Criminal Procedure Code of Ukraine are investigated by police. Various specialised units within existing law enforcement agencies deal with separate crime types, e.g. organised crime and corruption offences. Public prosecutors are specialised according to stages of criminal procedure and functions of the public prosecution in Ukraine. There is no specialisation based on the type of specific crimes, e.g. corruption cases. Responsibility for corruption cases based on the "procedural specialisation" is therefore divided among investigators attached to the prosecutor's office who conduct pre-trial investigation, prosecutors who oversee the legality of investigations (including those conducted by investigators attached to the prosecutors who later support accusation in courts. There are also prosecutors who oversee law enforcement agencies that perform operative and search activities, in particular in corruption cases. Investigators attached to the prosecutor's office who the prosecutor's office have an exclusive jurisdiction to investigate corruption-related criminal offences.

#### Assessment

#### Resources (practice) – Score 50 (2015), 25 (2010)

To what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

While the law enforcement agencies have some recourses and availability of those resources has increased compared to 2010, certain resource gaps still exist and affect the effectiveness of the law enforcement agencies in carrying out their duties.

In 2012 and 2013 the funding of the Ministry of Interior, Prosecutor General's Office and other law enforcement agencies increased. In particular, in 2013 the Prosecutor General's Office received UAH 3.2 billion (around USD 145.6 million) (i.e. almost 120% of what was allocated to it in 2012), while the amounts allocated to the Security Service of Ukraine and Ministry of Interior in 2013 increased by 5% and 10%, respectively, compared to 2012. The Government explained the increase in funding by need to raise effectiveness of the anti-terrorist measures (as regards increase in funding of the Security Service of Ukraine) and to ensure implementation of the new Criminal Procedure Code of Ukraine passed by the legislature in 2012. As regards the Ministry of Interior, increase in funding was

officially explained by increased expenses on printing of bio passports.<sup>319</sup> Similar levels of funding were envisaged in the Law on State Budget of Ukraine for 2015. At the same time, depreciation of the national currency from 8 UAH for 1 USD to 16 UAH for 1 USD means that overall level of funding of the law enforcement agencies has decreased. Further, according to Kharkiv Human Rights Group, over the recent years police received only 40% of funds provided by the laws, while the number of police in the country (261,000 of employees) significantly exceeded the average number of police in the Europe (300 police per 100,000 of citizens).<sup>320</sup>

In 2014, the Government introduced restrictions on the salaries in public sector, as well as cancelled a number of privileges for public officials, including prosecutors and police. While the respective provisions will be applicable to civil servants in 2015, the State Budget Law for 2015 made an exemption for prosecutors and increased their salaries from UAH 2000 in 2014 (around USD 91) to roughly UAH 12,000 (around USD 546) in 2015, as well as reinstated some social benefits of the prosecutors, such as pensions equalled to 70% of a prosecutor's monthly salary.<sup>321</sup> During 2012 and 2013, the number of employees of the prosecutor's offices increased in all the regions, but one (Mykolaiv oblast).<sup>322</sup> However, by the end of 2014 almost 2,500 (or roughly 10%) of the prosecutor's offices employees were fired to cut expenses on law enforcement. According to the Prosecutor General, decrease in the number of employees of the prosecutor's offices will result in increased burden on the prosecutors in terms of investigation of crimes.<sup>323</sup>

#### Independence (law) - Score 50 (2015, 2010)

#### To what extent are law enforcement agencies independent by law?

The legal framework aimed to ensure independence of the law enforcement agencies has not significantly changed since 2010 and only partially ensures independence of the respective agencies from external influence. In October 2014, the Parliament adopted a new version of the Law on Prosecution Service which is expected to enter legal force in April 2015. This Law will to a certain extent increase the level of independence of the prosecutors in the country.

The Law on the Prosecution Service prohibits any interference in the work of prosecutors by state and local self-government authorities, their officials, mass media and CSOs. Any address by an official regarding specific cases or materials considered by the prosecutor's office should not contain any instructions or demands concerning results of its consideration.<sup>324</sup> Prosecutor is supposed to carry out his authority in criminal proceedings independently from any bodies or officials, in accordance with the requirements of the Criminal Procedure Code<sup>325</sup> (CPC).

The public prosecution service is established by the Law on Prosecution Service as a uniform and centralised system, with prosecutors at different levels in a hierarchical subordination ultimately responsible to the Prosecutor General of Ukraine. The entire system is based on the principle of subordination of the lower-level public prosecutors to higher ones.<sup>326</sup>

326 Art. 6 of the Law on the Prosecution Service.

<sup>319</sup> http://www.kmu.gov.ua/control/publish/article?art\_id=245865305 [accessed December 1, 2014].

<sup>320</sup> http://www.khpg.org/index.php?id=1411470323 [accessed December 1, 2014].

<sup>321</sup> http://www.pravda.com.ua/articles/2014/12/12/7051829/ [accessed December 1, 2014].

<sup>322</sup> http://www.ac-rada.gov.ua/control/main/uk/publish/article/16744223; http://www.epravda.com.ua/publications/2013/12/6/407104/view\_print/ [accessed December 1, 2014].

<sup>323</sup> http://17tv.com.ua/yarema-skorotit-5-tisyach-prokuroriv/ [accessed January 16, 2014].

<sup>324</sup> Art. 7 of the Law on Prosecution Service.

<sup>325</sup> Art. 36 of the CPC.

Under the 2004 Constitution of Ukraine, the Prosecutor General is appointed and dismissed by the President of Ukraine with consent of the Parliament. The Parliament can, by absolute majority of all MPs (i.e., no less than 226 out of 450 MPs), dismiss Prosecutor General through a noconfidence vote.<sup>327</sup> The term of office of the Prosecutor General and subordinate public prosecutors is five years.<sup>328</sup> In this connection, the Venice Commission recommended that "professional, non-political expertise be involved in the process [of appointments]". In addition, the Venice Commission concluded that provisions on tenure of public prosecutors (short term of office combined with the possibility of reappointment) does not guarantee their independence.<sup>329</sup> Appointment (and re-appointment) of the Prosecutor General by the President and the Parliament and possibility of no-confidence vote by a political body undermine independence from political interference. The law does not establish rules on merit-based appointment and promotion of prosecutors. Such rules, as well as on the dismissal of prosecutors, are set by the Prosecutor General and are not based on transparent and objective criteria.<sup>330</sup> The same concerns appointment, promotion and dismissal of staff in the interior bodies and the Security Service of Ukraine.

Independence of the prosecutors in the criminal proceedings is not properly ensured in the law, as the higher-level prosecutors are entitled to cancel any decisions made by the lower-level prosecutors or by investigators, as well as to amend, change or refuse to support appeals or cassation appeals of the prosecutors. In the case of "ineffective" pre-trial criminal investigation, the higher-level prosecutor may authorize another investigation body or higher-level investigation unit to carry out crime investigation.<sup>331</sup>

Although the CPC generally provides investigators with certain level of autonomy while investigating crimes,<sup>332</sup> the level of their independence is hampered by wide scope of powers granted to the prosecutors (who lead investigation) and directors of the bodies where the investigators work. Art. 40 of the CPC provides that written instructions of the prosecutors are binding for the investigators and that failure to implement them can be sanctioned. The directors of the pre-trial investigation bodies are also entitled to give instructions to the investigators (however, the instructions cannot be inconsistent with the prosecutor's instructions), as well as to refer investigation to another investigator, either upon prosecutor's instruction or on his/her own initiative.<sup>333</sup>

According to the law On General Prosecutor's Office prosecutor's independence will be ensured by:

- the specific order of his / her appointment / dismissal, bringing to disciplinary responsibility;
- the order of performing duties defined by Procedural and other codes;
- the prohibition of illegal influence, pressure or interference with prosecutors' authorities;
- the legally defined order of financing and organizational provision of prosecutor's office work;
- the proper material, social and pension provisions of the prosecutor;

NATIONAL INTEGRITY SYSTEM ASSESSMENT

<sup>327</sup> Art. 122 of the Constitution of Ukraine.

<sup>328</sup> Art. 2 of the Law on Prosecution Service.

<sup>329</sup> Venice Commission, Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine, 2012, para.33.

<sup>330</sup> Who and how can manipulate a prosecutor in independent Ukraine, article by Oleksandr Shynalsky, former Deputy Prosecutor General of Ukraine, http://www.uap.org.ua/ua/journal/2\_8.html?\_m=publications&\_t=rec&id=15401 [accessed December 1, 2014].

Art. 36 of the CPC.

<sup>332</sup> Art. 40.5 of the CPC.

<sup>333</sup> Art. 39 of the CPC.

- the functioning of prosecutor's governance bodies;
- the legally defined measures of the prosecutor's personal safety, safety of his family and property, as well as other means of their legal defense.

#### Independence (practice) – Score 25 (2015, 2010)

#### To what extent are law enforcement agencies independent in practice?

Law enforcement agencies and their officers to a large extent are still dependent on their superiors and the political authorities.

Strictly hierarchical systems of the prosecution and the interior bodies having politically dependent Prosecutor General and the Minister of Interior on top makes all levels of these law enforcement bodies susceptible to illegal influence. During 2010 - 2013, there were numerous cases of undue influence on law enforcement agencies and on active investigations, including from the highest political level. The cases of politically motivated prosecutions included prosecutions of the opposition leaders Yuriy Lutsenko, Yulia Tymoshenko, members of the Yulia Tymoshenko Government and Tymoshenko's close associates;<sup>334</sup> the so-called "Tax Maidan" case (i.e., criminal prosecution of the protesters against the new Tax Code in 2011);<sup>335</sup> and criminal prosecution of journalists and civil society activists, especially during the protests between November 2013 – February 2014.<sup>336</sup> The fact that the prosecutors and other officials of the law enforcement agencies were used as "an instrument of political influence" was recognized by the Deputy Prosecutor General in April 2014.337 While there have been no cases of politically motivated criminal prosecutions in 2014, other branches of Government still continue to interfere with activities of the Prosecution Service and other law enforcement agencies. For instance, in October 2014, the President of Ukraine Petro Poroshenko instructed the Minister of Interior and Prosecutor General to fire their deputies, despite the fact that both the Interior Minister and Prosecutor General are not subordinated to the President.<sup>338</sup> The President also influenced on the course of specific investigations.<sup>339</sup>

Appointments within the law enforcement system in practice are not carried out based on clear professional criteria and arbitrary dismissals are frequent. Each change of the Prosecutor General, the Head of the Security Service of Ukraine or the Minister of Interior is usually followed by early termination of offices of the senior staff, heads of regional and local departments of the respective bodies.<sup>340</sup>

<sup>334</sup> http://khpg.org/en/index.php?id=1324248582; http://www.nytimes.com/2011/10/15/opinion/selective-prosecution-in-ukraine.html?\_r=0 [accessed December 1, 2014].

<sup>335</sup> http://www.unian.ua/politics/460459-pidpriemnitskiy-maydan-noviy-obert.html [accessed December 1, 2014].

<sup>336</sup> http://tsn.ua/politika/u-prokuraturi-vidzvituvali-pro-zakrittya-pershih-kriminalnih-sprav-proti-aktivistiv-334877.html [accessed December 1, 2014].

<sup>337</sup> Interview by Mykola Holomsha, First Deputy Prosecutor General, April 25, 2014; http://zib.com.ua/ru/81971-golomsha\_nam\_nuzhno\_naglyadno\_pokazat\_chto\_mi\_hotim\_ochistit.html [accessed December 1, 2014].

<sup>338</sup> http://www.pravda.com.ua/news/2014/10/22/7041623/ [accessed December 1, 2014].

<sup>339</sup> For further details see: http://espreso.tv/news/2015/01/06/poroshenko\_doruchyv\_rozsliduvaty\_dtp\_z\_nachvardiycyamy\_specialniy\_komisiyi; http://nashigroshi.org/2014/10/18/poroshenko-doruchyv-yaremi-porushyty-karnu-spravu-proty-zhurnalista-yakyj-rozkopav-nezakonnyj-prodazh-zbroji/ [both accessed January 6, 2015].

<sup>340</sup> Interview by Mykola Holomsha, First Deputy Prosecutor General, April 25, 2014.

#### Transparency (law) - Score 50 (2015, 2010)

To what extent are there provisions in place to ensure that the public can access the relevant information on law enforcement agency activities?

Although the legal framework aimed to ensure transparency of the law enforcement agencies has improved since 2010, it still contains a number of flaws.

Under the Law on Access to Public Information, all the law enforcement agencies, similarly to any other public authorities, must provide information upon requests for information (accept for the information access to which is restricted by the law), as well as make public certain documents, including information on its organizational structure, mission, functions, budgets, reports, adopted legislation, names and contact details of the senior officials.<sup>341</sup> A general requirement on providing information and Law Enforcement Agencies.<sup>342</sup> According to the Law on Prosecution Service, the prosecution service must function openly and report to the state authorities and the public on the situation with "legality" in the country.<sup>343</sup> The Prosecutor General must submit an annual report to the Parliament,<sup>344</sup> while regional prosecutors are also supposed to present a report twice a year at the sessions of the respective local councils.<sup>345</sup> Security Service of Ukraine reports annually to the President and the Parliament, and also informs them regularly on its activities.<sup>346</sup>

While many provisions on transparency of law enforcement agencies exist, they are not sufficiently comprehensive and contain a certain loopholes. For instance none of the laws requires all the law enforcement agencies to create websites to make public information required by the laws. The laws governing activities of the law enforcement agencies contain no provisions as to the content of the annual reports of the respective agencies. Also, the current legislation does not require the asset declarations of the prosecutors and officials of the law enforcement agencies to be published (except for the Prosecutor General, his/her deputies, Minister of Interior and his/her deputies, and Head of the Security Service of Ukraine and his/her deputies).<sup>347</sup>

Rights of crime victims are guaranteed by the Criminal Procedure Code of Ukraine, including the right to access the case file after the pre-trial investigation is finalised and to take part in court hearings.<sup>348</sup> However, acknowledgment of the status of a crime victim requires a special decision by the investigator or prosecutor. The right of the victim of a crime to access a case file that was closed by the investigator is not explicitly provided in the law. Also, the Criminal Procedure Code fails to oblige the investigator/prosecutor to explain to the victim the procedure for challenging a decision to close the criminal case.<sup>349</sup> Legal limitations on the access to case files by victims of crime and their representatives undermine the legal standing of the victim in criminal proceedings. It can also be exploited by the investigative authority and public prosecution to conceal illegal actions or inaction, in particular induced by corruption, by arbitrarily denying access to a case-file and thus concealing

<sup>341</sup> Art. 15 of the Law on Access to Public Information.

<sup>342</sup> Art. 19, 20 of the Law on Democratic Civil Oversight over Military Organisation and Law Enforcement Agencies.

<sup>343</sup> Art. 6 of the Law on Prosecution Service.

<sup>344</sup> Art. 2 of the Law on Prosecution Service.

<sup>345</sup> Art. 51-1 of the Law on Prosecution Service.

<sup>346</sup> Art. 31, 32 of Law on Security Service of Ukraine.

<sup>347</sup> Art. 12 of the Law on Principles for Prevention and Counteraction to Corruption.

<sup>348</sup> Art. 55, 56 of the Criminal Procedure Code of Ukraine.

<sup>349</sup> Art. 284 of the Criminal Procedure Code of Ukraine.

#### possible indications of misconduct.350

According to the new law On General Prosecutor's Office prosecution bodies not less than twice a year shall inform the society on their activity via sharing this information in media. The information on the prosecutor's office activity has to be publicised in national and local printed media and on websites of prosecution bodies.

Prosecution bodies will be also obliged to publicize their normative and legal acts concerning Ukrainian prosecution organization and activity in the order specified by law.

#### Transparency (practice) - Score 25 (2015, 2010)

To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?

Since 2010, the level of transparency of the prosecution service and other law enforcement agencies has not significantly improved and remains low.

Experts generally agree that lack of transparency in operations of the law enforcement agencies and prosecutors, as well as opaque procedures of their appointments are among the key problems to be addressed by reform of the law enforcement agencies.<sup>351</sup> For example, Prosecutor General's Office has published on its web-site annual activity reports only for 2012 and earlier years, while the reports for 2013 and 2014 have never been made publicly available. Information on the appointments to the positions at the Prosecutor General's Office is not made public on the Prosecutor General's website. Media also reported that illegal refusals to provide information upon requests for information are not uncommon the prosecutor's offices and other law enforcement agencies.<sup>352</sup>

According to the information published by the Prosecutor General's Office, during the first half of 2014, prosecutor's offices at all levels provided information upon only 59% of the received requests for public information.<sup>353</sup> Most prosecutor's offices at the local level do not have their own websites, which significantly impedes access to information on their work. While the Prosecutor's General Office and regional prosecutor's offices have their websites, not all information required by the Law on Access to Public Information is made public on those websites. In particular, many regional prosecutor's offices do not publish their detailed budgets, information on their internal organizational structure, contact details of the senior staff, adopted decisions.<sup>354</sup>

As none of the laws requires to make public the asset declarations of the prosecutors and law enforcement officials, their declarations are not published in practice, except for the declarations subject to mandatory publication [see: Transparency (law)].

<sup>350</sup> http://irbis-nbuv.gov.ua/cgi-bin/irbis\_nbuv/cgiirbis\_64.exe?C21COM=2&I21DBN=UJRN&IMAGE\_FILE\_DOWN-LOAD=1&Image\_file\_name=PDF/aymvs\_2013\_2\_24.pdf [accessed December 1, 2014].

<sup>351</sup> Borys Malyshev, Reform of Prosecutor Offices: Last Step, 2014; http://www.pravda.com.ua/articles/2014/10/13/7040568/ [accessed December 1, 2014].

<sup>352</sup> See, for instance: https://news.pn/ua/politics/118611 [accessed December 1, 2014].

<sup>353</sup> http://www.gp.gov.ua/ua/dostup.html?\_m=publications&\_t=rec&id=141409 [accessed December 1, 201].

<sup>354</sup> See, for instance: http://od.gp.gov.ua/ua/structure.html; http://vol.gp.gov.ua/ua/guidance.html

#### Accountability (law) - Score 75 (2015, 2010)

To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?

Overall, the legal framework aims to ensure that law enforcement agencies have to report and be answerable for their actions, however some legal provisions on accountability of law enforcement agencies need to be further clarified.

By law, a complaint against misconduct by the police and other law enforcement officials can be filed with the higher-level officials within the respective law enforcement agencies, with the prosecutor's office, court or Ombudsman. This means that citizens generally have a number of avenues to challenge illegal decisions, actions or omissions of the law enforcement officials. Another positive feature of the existing laws in terms of accountability of the law enforcement agencies is that the law enforcement officials are not immune from the criminal prosecution. The rights of the victims of crimes are guaranteed by the Criminal Procedure Code but with a number of limitations, including those related to recognition of the status of victim [see: Transparency (law)]. One of the important rights guaranteeing access to justice is the right of victim to support accusation and request prosecution of the indicted even after the public prosecutor decided to drop charges.

As has been mentioned above [see: Transparency (law)] Prosecutor General must submit annual report to the Parliament, while regional prosecutors are also supposed to present a report twice a year at the sessions of the respective local councils. Security Service of Ukraine must annually report to the President and the Parliament, and also informs them regularly on its activities. However, the respective legal provisions fail to specify which information must be presented in the annual reports.

Ukrainian criminal law is based on mandatory prosecution principle, whereby there is no discretion on behalf of the prosecutor or investigator regarding instigating criminal proceedings when there are sufficient indications of a crime.<sup>355</sup> If such indications exist, the prosecutor/investigator is obliged to start criminal proceedings and to enter information on a criminal offence into the Unified Register of Pre-Trial Investigations. Failure to do so, as well as other decisions, action or inactions of the prosecutors and investigators related to pre-trial investigations, can be challenged in courts. However, complaints against decisions made within the course of pre-trial investigations can be considered only after the end of pre-trial investigations, i.e. they cannot be suspended before the investigation has been completed.<sup>356</sup>

According to the new law On General Prosecutor's Office, the Prosecutor General of Ukraine is obliged to report on plenary meetings of the Verkhovna Rada of Ukraine on activity of prosecution bodies via presentation of general statistics and analysis.

Heads of regional and local prosecutor's offices on correspondent councils' plenary meetings where media is invited, and which are held not less than twice a year, shall inform the people of the correspondent administrative territory on the results of their activity on this territory via presentation of general statistics and analysis.

#### Accountability (practice) - Score 25 (2015, 2010)

To what extent do law enforcement agencies have to report and be answerable for their actions in practice?

<sup>355</sup> Art. 214 of the Criminal Procedure Code of Ukraine.

<sup>356</sup> Art. 303-306 of the Criminal Procedure Code of Ukraine.

While a number of provisions aimed to ensure that the law enforcement agencies have to report and be answerable for their actions exist, they are not effectively implemented in practice. In this regard, no progress has been made since 2010.

In particular, the Prosecutor General's Office failed to make publicly available the annual report for 2013 on the situation with "legality" in the country. Even though the laws allow to challenge the decisions, actions or inaction of the prosecutors and investigators with courts, the later in many cases uphold the decisions of the prosecutors and investigators, even if legality of the respective decisions raises doubts.<sup>357</sup> After one year following the adoption of the Criminal Procedure Code of Ukraine in 2012, the number of non-guilty verdicts constituted only 0.4% of all verdicts, while under the previous Criminal Procedure Code the share of such verdicts equalled to 0.2% of all the court decisions in criminal cases. The new provisions in the Criminal Procedure Code requiring to institute criminal proceedings in all cases where the signs of crimes were identified resulted in increased burden on investigators and prosecutors and, as a result, decreased quality of investigations.<sup>358</sup>

Due to lack of anti-corruption specialisation and existing performance evaluation system in law enforcement based on statistics of detected/uncovered cases the accountability of the law enforcement agencies remains weak.<sup>359</sup> While the law enforcement officials do not enjoy de jure immunity, in practice the level of de facto immunity among law enforcement officials is high, especially among the senior staff.<sup>360</sup> In particular, none of the riot police officials was brought to liability for excessive use of violence during Maidan protests in the end of 2013.<sup>361</sup> Investigation of corruption-related offences by police investigators creates conflict of interest and cannot be considered effective, as they are dependent on directors of the respective institutions and prosecutors while conducting investigations [see: Independence (law)].

#### Integrity (law) - Score 75 (2015), 25 (2010)

#### To what extent is the integrity of law enforcement agencies ensured by law?

The prosecutors and officials of other law enforcement agencies are covered by the Law on Prevention of Corruption. [for further details see: Public Sector (Integrity (law)].

In addition to the general provisions on integrity of the law enforcement agencies applicable to all public officials, the Ministry of Interior and Prosecutor General's Office adopted their own codes of ethical behaviour. However, the respective codes generally duplicate the existing provisions laid down in the Law on Police, Law on Prosecution Service, Law on Civil Service, Law on Rules of Ethical Behaviour, and the Law on Principles for Prevention and Counteraction to Corruption (the last two have already lost their validity).<sup>362</sup> The Security Service servicemen are covered by the Disciplinary Statute of the Armed Forces, applicable also to the military staff and border guards.

<sup>357</sup> See, for instance: http://document.ua/uzagalnennja-sudovoyi-praktiki-oskarzhennja-rishen-dii-chi-b-doc153155.html; [accessed December 1, 2014].

<sup>358</sup> Vitaliy Kulakov, Enforcement of the new Criminal Procedure Code of Ukraine: Problems and Prospects, 2013; http://yurincom.com/ua/ legal\_practice/analitychna\_yurysprudentsiia/Zastosuvannya-norm-novogo-KPK---publication/ [accessed December 1, 2014]

<sup>359</sup> Interview by Mykola Khavroniuk, expert of the Center for Political and Legal Reforms, with author, 12 December 2014.

<sup>360</sup> Dmytro Tkachuk, Sad Statistics: Impunity of Law Enforcement Officials, 2013; http://zhzh.info/publ/17-1-0-6201 [accessed December 1, 2014].

<sup>361</sup> http://tsn.ua/blogi/themes/law/zvirstva-i-bezkarnist-v-ukrayini-395404.html [accessed December 1, 2014].

<sup>362</sup> Rules of Conduct and Professional Ethics for Police, approved by the Order of the Ministry of Interior No 155, dated February 22, 2014; http://zakon1.rada.gov.ua/laws/show/z0628-12/print1400143107213159; Code of Professional Ethics and Rules of Conduct for Employees of Prosecutor's Offices, approved by Order of the Prosecutor General No 123, dated November 28, 2012; http://www.gp.gov.ua/ua/file\_downloader. html?\_m=fslib&\_t=fsfile&\_c=download&file\_id=182040 [all accessed December 1, 2014].

#### Integrity (practice) - Score 0 (2015), 25 (2010)

#### To what extent is the integrity of members of law enforcement agencies ensured in practice?

While a number of provisions aimed to ensure integrity of the law enforcement agencies exist, they are not implemented in practice, and the cases of misbehaviour of the law enforcement staff go mostly unsanctioned. Following the former Prosecutor General escape from the country in February 2014, civil society activists and journalists entered his dwelling and detected that his lifestyle definitely failed to comply with his earnings.<sup>363</sup> Media also reported that the incumbent Prosecutor General also owns expensive mansion, whose price, allegedly, fails to comply with his earnings on positions at various law enforcement agencies.<sup>364</sup> Some of the deputies of the incumbent Prosecutor General, according to the media, were also engaged into corruption schemes or their lifestyle did not match their earnings as prosecutors.<sup>365</sup>

According to the 2013 public opinion polls, only 1% of the citizens completely trusted police, and only 8% completely trusted prosecutors.<sup>366</sup> In 2013, the former deputy Minister of Interior Hennadiy Moskal stated that the law enforcement agencies prosecute only those their employees who decided not to share received bribes with the senior officials of the respective bodies.<sup>367</sup> From amongst 1,696 officials brought to administrative liability for corruption offences in 2013, only 140 represented various law enforcement agencies.<sup>368</sup> These data suggest that despite the fact that most citizens believe the law enforcement agencies and courts to be among the institutions highly affected by corruption, the cases of prosecution of misbehaviour are not widespread.

#### Corruption prosecution (law and practice) – Score 25 (2015), 50 (2010)

#### To what extent do law enforcement agencies detect and investigate corruption cases in the country?

While the law enforcement agencies have sufficient legal means to detect and investigate corruption cases, the respective powers are not effectively used in practice, and corruption is prosecuted mainly at the lower level of the governance institutions.

In order to verify allegation of a criminal corruption offence and detect it, operative units of the law enforcement agencies can conduct secret investigations, which are regulated the Criminal Procedure Code of Ukraine. The respective measures include tapping and recording, arrest of correspondence and its studying, copying information from transport telecommunication systems, from electronic information networks, inspection of private space, accommodation and other tenancies of the person under investigation, shadowing over a person or place, monitoring bank accounts, audio or video control over a place etc.<sup>369</sup> One such special measure is control over the crime, including controlled bribe-giving that can be carried out by law enforcement agencies if an information was filed about

<sup>363</sup> See: http://fakty.ua/177349-dom-pshonki-shokiroval-roskoshyu-foto [accessed December 1, 2014]

<sup>364</sup> http://censor.net.ua/video\_news/306575/ploschad\_10\_tysyach\_kvadratov\_sobstvennye\_ozera\_na\_territorii\_avtomayidan\_pokazal\_ roskoshnoe\_imenie [accessed December 1, 2014].

<sup>365</sup> See, for instance, http://censor.net.ua/photo\_news/306453/semya\_skandalnogo\_zamgenprokurora\_danilenko\_postroila\_v\_tsentre\_kieva\_ chetyrehetajnyyi\_fontan\_i\_kontroliruet; http://blogs.pravda.com.ua/authors/leschenko/54beb798c8d5e/; https://www.youtube.com/watch?v=IVGs-DYd\_dK0 [all accessed January 20, 2015].

<sup>366</sup> http://tsn.ua/ukrayina/pravoohoronci-zasmucheni-nedoviroyu-ukrayinciv-ale-inkognito-ziznayutsya-pro-svoyi-grihi-298194.html [accessed December 1, 2014].

<sup>367</sup> http://ua.korrespondent.net/journal/1563706-korrespondent-strah-poryadku-dovira-ukrayinciv-do-miliciyi-vpala-majzhe-do-nulya [accessed December 1, 2014]

<sup>368</sup> Ministry of Justice of Ukraine, Report on Implementation of Measures Related to Prevention and Counteraction to Corruption in 2013; http:// www.minjust.gov.ua/file/36531 [accessed December 1, 2014].

<sup>369</sup> Art. 246 of the Criminal Procedure Code of Ukraine.

possible corrupt transaction (usually by the person from whom a bribe was solicited). To prevent abuse of this secret investigation the Criminal Code envisages responsibility for bribe provocation (Article 370).

Although the law enforcement agencies have broad powers to detect and investigate corruption and the CSOs provided the Prosecutor General's office with evidence of corruption offences committed by members of the Yanukovych team, neither the former President, nor the members of the Government and senior law enforcement officials have been brought to criminal liability for alleged embezzlement of public resources and corruption so far. Moreover, the Prosecutor General's Office has failed to institute any criminal proceedings against officials obviously engaged incorruption, despite the evidence received and despite the fact that it was required to launch investigations under the Criminal Procedure Code of Ukraine.<sup>370</sup>

Law enforcement agencies are mainly focused on administrative corruption and offences committed by low- and mid-level public officials. According to the Ministry of Justice of Ukraine, in 2013 none of the members of the Government and MPs was brought to administrative liability for corruption offences. Only one judge was prosecuted for administrative corruption offences 136 held lower-level positions at the executive bodies. In 2013, prosecutor's offices forwarded to courts for consideration 2,345 corruption-related criminal cases, with only 799 persons convicted for those crimes. Again, most of the criminal cases were opened against lower-level public officials.<sup>371</sup> In 2014, the situation in terms of prosecution of corruption has not improved: overall, law enforcement agencies opened 10,456 corruption-related criminal cases in 2014, but only in 2,531 cases investigations were completed by official accusations, while in the remaining cases investigations were closed.<sup>372</sup>

### Key recommendations

#### For the Verkhovna Rada of Ukraine:

The Constitution of Ukraine should be amended to ensure independence of the Prosecutor General and lower level prosecutors from undue external influence, as well as to restrict the powers of the prosecutors to the areas related to criminal justice. The powers of the prosecutors in the criminal proceedings should also be restricted.

The Parliament should consider measures aimed to ensure effective use of public funds allocated to the law enforcement agencies and prosecutor's offices, in particular, by decreasing the number of local offices of the respective agencies and by increasing the level of salaries paid to the officials employed by law enforcement bodies.

# The Cabinet of Ministers of Ukraine:

The Ministry of Interior should be reformed in line with the European standards to ensure that it is demilitarized, depoliticized, decentralized and serves the interests of the citizens.

The existing performance evaluation system in law enforcement based on statistics of detected/ uncovered crimes should be reviewed so as to ensure that the work of law enforcement agencies is assessed by the level of public trust to the respective institutions.

<sup>370</sup> http://blogs.pravda.com.ua/authors/shabunin/548ae0c450f01/ [accessed December 12, 2014].

<sup>371</sup> Ministry of Justice of Ukraine, Report on Implementation of Measures Related to Prevention and Counteraction to Corruption in 2013

<sup>372</sup> See: Prosecutor's General Office, Report on Criminal Offences in Ukraine during January – December 2014, Chapter II.

# 6. ELECTORAL MANAGEMENT BODY

# Summary

The Electoral Management Body (EMB), or the Central Election Commission (CEC), has some financial, human and technical resources, but resource gaps lead to certain degree of CEC ineffectiveness in carrying out its duties. Training of the lower level election commissioners and voter education programs are funded mainly by the international donors, rather than by CEC. The legislation aimed to ensure independence, transparency and accountability of the CEC has not significantly changed since 2010. CEC independence is impeded mostly by the procedure of appointment of its members. Whereas the legal framework generally seeks to ensure CEC transparency, the practice of holding preparatory CEC meetings behind closed doors to agree on controversial issues before the official open meetings, restriction of access to the documents submitted to the CEC by election contestants, and the limited role of CEC in enhancing transparency and independent monitoring of political and election campaign finance decrease the level of CEC transparency in practice. The level of CEC's accountability remains low since the legislation does not require the CEC to produce annual and post-election reports on its activities. While the legal framework governing integrity of public service was significantly improved in October 2014, it has yet to enter into legal force. The CEC reactive approach to ensuring the integrity of the CEC members and staff of the CEC Secretariat does not help to increase integrity of the EMB in practice.

The table below presents a general assessment of EMB in terms of capacity, governance and role in the national integrity system. The table is followed by a qualitative assessment of the respective indicators.

#### **ELECTORAL MANAGEMENT BODY**

Overall Pillar Score (2015): 53.47/100

#### Overall Pillar Score (2010): 50/100

Dimension	Indicator	Law	Practice
Capacity	Resources		50 (2015, 2010)
56.25/100	Independence	75 (2015, 2010)	50 (2015), 25 (2010)
Governance	Transparency	75 (2015, 2010)	75 (2015, 2010)
	Accountability	25 (2015, 2010)	25 (2015, 2010)
54.16/100	Integrity	75 (2015), 50 (2010)	50 (2015, 2010)
Role	Campaign regulation	50 (2015, 2010)	
50/100	Election administration	50 (2015, 2010)	

#### Structure and organisation

The parliamentary and presidential elections in Ukraine are administered by a three-tier electoral administration comprising the Central Election Commission (CEC), district election commissions (DECs) and precinct election commissions (PECs). The CEC is the highest-level commission with respect to all lower-level commissions, and therefore can be viewed as Electoral Management Body within the framework of this assessment. The legal status and powers of the CEC are determined by the Law on CEC, the laws governing parliamentary, presidential and local elections, and the Law on State Register of Voters. Since the key role in administering the local elections is played by the

territorial election commissions (TECs) rather than by the CEC, this report is focused on the national elections, in which the CEC plays a leading role.

The CEC comprises 15 members, who are appointed and discharged from office by the Parliament upon the President's proposal. The Law on CEC requires that the President consult the leaders of the parliamentary groups before suggesting names of the CEC members to the legislature. All the CEC members are appointed for a 7-year term. Following their appointment, the CEC members elect from among themselves Chair, two Deputy Chairs, and the Secretary of the CEC. The CEC Secretariat provides organizational, legal, expert and other support to the CEC. The work of the CEC Secretariat is led by its Chief, who is appointed and discharged from office by the CEC Chair.<sup>373</sup> The State Register of Voters is administered by a special internal unit within the CEC structure, the Service of Administrator of the State Register of Voters. Its Chair and other staff members are appointed and dismissed by the CEC Chair.<sup>374</sup>

The Law on CEC provides for the establishment of the CEC Secretariat local branches in each of 27 regions of Ukraine. However, those branches have never been established.

#### Assessment

#### Resources (practice) - Score 50 (2015, 2010)

To what extent does the EMB have adequate resources to achieve its goals in practice?

As in 2010, the CEC has financial, human and technical resources, but some resource gaps lead to certain degree of the CEC ineffectiveness in carrying out its duties.

The annual funding of the CEC operational costs has increased from roughly USD 5.7 million in 2011 to USD 8.6 in 2014. However, the exchange rates in 2014 dropped significantly, therefore in fact UAH 68,472,200 allocated to the CEC under the 2014 State Budget Law (as of December 1, 2014) translates in only USD 4.6 million, i.e. even less than in 2011.

Despite that decrease in funding, most interlocutors agreed that budget funds available to CEC still allow it to achieve most of its goals in practice.<sup>375</sup> At the same time, the interviewees stressed that some CEC needs have remained underfunded, including business trips of the CEC members and CEC Secretariat, as well as and needs related to holding major election-related public events (international conferences etc.).<sup>376</sup> As in 2010, the CEC does not have sufficient funds to train the lower level election commissioners and to organize voter education programs; therefore the respective activities are funded mainly by the international donors [for further details see: Election Administration (law and practice)].

During the previous years, the CEC was often under threat of not receiving funding needed to

<sup>373</sup> See Statute of the CEC Secretariat, approved by the CEC Resolution No 73, dated April 26, 2005; http://zakon4.rada.gov.ua/laws/show/ v0073359-05 [accessed December 1, 2014].

<sup>374</sup> See Statute of the Service of Administrator of the State Register of Voters, approved by the CEC Resolution No 34, dated May 26, 2007; http://zakon4.rada.gov.ua/laws/show/v0034359-07 [accessed December 1, 2014].

<sup>375</sup> Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, June 15, 2014; Andriy Mahera, CEC Deputy Chair, interview with author, July 15, 2014.

<sup>376</sup> Andriy Mahera, CEC Deputy Chair, interview with author, July 15, 2014.

organise elections in time<sup>377</sup> (in particular, in 2012 and 2013, when the parliamentary regular and by-elections were held), but finally the parliament adopted last minute decisions to allocate funds requested by the CEC. In 2014 early parliamentary elections, the parliament failed to adopt changes to the State Budget Law to allocate funds for the elections, and the elections were funded from the Government's special fund, which is used for urgent/extraordinary purposes. In 2014 early presidential elections held in May 2014, the DECs received budget funding with delays<sup>378</sup>, while in some cases the bodies responsible for voter registration, Register of Voters Maintenance Bodies, did not receive adequate funding at all.<sup>379</sup> In the same elections, some lower level commissions lacked adequate premises and equipment needed for their operations.<sup>380</sup> The interlocutors also stressed that the salaries paid from the state budget to the lower-level commissioners are too low to create any incentive to work effectively during the elections and should be increased.<sup>381</sup>

The human and technical resources available to the CEC are generally adequate to ensure it achieves its goals<sup>382</sup> but could and should be further improved. The CEC Secretariat employs 239 members of staff,<sup>383</sup> who have all acquired knowledge and skills needed to effectively perform their functions<sup>384</sup>. Some experts interviewed within the framework of this assessment stressed that capacity of some units/employees of the CEC Secretariat should be further improved. In particular, during the 2014 elections the CEC failed to take effective measures to protect its electronic system from hacker attacks on the days preceding the elections and the election day itself<sup>385</sup> (even though those measures should have been taken not only by the CEC Secretariat staff, but also Security Service of Ukraine), while the resolutions adopted by the CEC tend to duplicate the provisions of the election laws rather than to clarify those provisions where more clarity is needed<sup>386</sup>.

#### Independence (law) - Score 75 (2015, 2010)

#### To what extent is the electoral management body independent by law?

Since 2010, the legal provisions aimed to ensure independence of the CEC from external influence have not changed and they mostly provide for sufficient guarantees for EMB independence.

The legal framework provides for a number of guarantees aimed to ensure CEC independence.

<sup>377</sup> National Institute for Strategic Research at the President of Ukraine, Analytical paper on preparations to the parliamentary elections scheduled for October 2012; http://www.niss.gov.ua/articles/803/; http://ua.korrespondent.net/ukraine/politics/1312763-golova-cvk-nedofinan-suvannya-parlamentskih-viboriv-skladae-400-mln-grn; http://gazeta.ua/articles/politics/\_u-cvk-poskarzhilisya-scho-na-parlamentski-vibori-gro-shej-ne-vistachaye/430938; http://ipress.ua/news/na\_provedennya\_vyboriv\_u\_problemnyh\_okrugah\_ne\_vystachaie\_groshey\_tsvk\_27507.html [all accessed December 1, 2014].

<sup>378</sup> OSCE/ODIHR Election Observation Mission, Ukraine. Pre-Term Presidential Elections, 25 May 2014. Final Report, 2014: 10; http://oporaua. org/vybory/vybory-prezydenta-2014/article/5317-tyzhden-do-vyboriv-finansuvannja-do-okruzhnyh-vyborchyh-komisij-hersonskoji-oblasti-ne-postupaje [accessed December 1, 2014].

<sup>379</sup> http://oporaua.org/vybory/vybory-prezydenta-2014/article/4547-na-volyni-v-organiv-derzhrejestru-vyborciv-vynykajut-problemy-z-finansuvannjam [accessed December 1, 2014].

<sup>380</sup> Committee of Voters of Ukraine, Presidential Election, 25 May 2014. Final Election Observation Report; http://www.cvu.org.ua/nodes/view/ type:news/slug:431 [accessed December 1, 2014].

<sup>381</sup> Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, June 15, 2014; Andriy Mahera, CEC Deputy Chair, interview with author, July 15, 2014.

<sup>382</sup> Andriy Mahera, CEC Deputy Chair, interview with author, July 15, 2014.

<sup>383</sup> Annex 1 to the CEC Resolution No 35, dated February 17, 2011; http://www.cvk.gov.ua/pls/acts/getd?id=37227&ptext [accessed December 1, 2014].

<sup>384</sup> Andriy Mahera, CEC Deputy Chair, interview with author, July 15, 2014.

<sup>385</sup> Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, June 15, 2014.

<sup>386</sup> OPORA Civic Network, Early Presidential Election 2014. Final Election Observation Report; http://oporaua.org/news/5802-pidsumkovyj-zvit-za-rezultatamy-gromadskogo-sposterezhennja-opory-pid-chas-pozachergovyh-vyboriv-prezydenta-ukrajiny-2014-roku [accessed December 1, 2014]; Volodymyr Kovtunets, Expert on election issues, interview with author, June 13, 2014.

It explicitly prohibits undue external interference with the CEC activities, provides that the CEC members are appointed by the Parliament upon the President's proposal, for a fixed (i.e., 7-year term) that exceeds the term of office of both the President and legislature (for further details see: National Integrity System Assessment: Ukraine 2011, p. 106).

However, the key factor decreasing independence of the CEC is the procedure for appointment of its members: they are approved by the absolute (not qualified) majority of MP votes, while the MPs themselves cannot suggest the names of the prospective CEC members to the Parliament directly (it is only the President who is entitled to suggest the names of the CEC commissioners). If the President is affiliated with the coalition in the Parliament, such a procedure for appointments obviously leads to overrepresentation of the ruling party/parties on the CEC.

#### Independence (practice) - Score 50 (2015), 25 (2010)

#### To what extent does the electoral management body function independently practice?

While through 2010 – 2013 the CEC in fact represented the interests of the ruling Party of Regions and its allies, after the former President's escape from the country it started to act more independently of external interference<sup>387</sup>. However, legal provisions governing the CEC appointments [see: Independence (law)] still leave enough space for undermining independence of the EMB. External interference with the CEC activities is non-institutionalized, <sup>388</sup> i.e. is exercised in an unofficial manner rather than through intimidation or obvious pressure.

During 2010 – 2013, many CEC decisions were politically motivated and made along the ruling party's lines<sup>389</sup>. At that time, the CEC was strongly dependent on the ruling Party of Regions, and even the opposition minority in the CEC often changed its positions on specific issues/cases.<sup>390</sup> By 2013, the Party of Regions and their allies in the Parliament, which at that time already controlled the majority on the CEC, had further increased their representation in the CEC by replacing one of the CEC members whose term of office expired, with the commissioner (Oleksandr Kopylenko) whom the opposition believed to be the "president's man".<sup>391</sup> While suggesting the name of that new commissioner, the President held no consultations with the opposition parties, even though the Law on CEC explicitly required him to do so. Also, during the 2012 elections there were some attempts<sup>392</sup> to terminate early the powers of the two CEC members representing minority parties, namely Andriy Mahera, the CEC Deputy Chair, and Valeriy Sheludko, CEC member. However, those attempts were not successful.

Most experts interviewed within the framework of this assessment believe that the procedure for appointments of the CEC commissioners is the key factor making the CEC vulnerable to external influence, from both the President's Office and the legislature.<sup>393</sup> In June 2014, the terms of office of most of the CEC members expired, but those CEC members have not been replaced so far. As a

<sup>387</sup> Yuriy Kluchkovskyi, President of the NGO "Election Law Institute", interview with author, July 15, 2014.

<sup>388</sup> Volodymyr Kovtunets, Expert on election issues, interview with author, June 13, 2014; Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, June 15, 2014.

<sup>389</sup> Volodymyr Kovtunets, Expert on election issues, interview with author, June 13, 2014.

<sup>390</sup> Volodymyr Kovtunets, Expert on election issues, interview with author, June 13, 2014.

<sup>391</sup> http://gazeta.ua/articles/politics/\_ocholit-centrviborchkom-ohendovskij-a-kopilenko-bude-ryadovim-chlenom-cvk-ekspert/500684?mobile=true [accessed December 1, 2014].

<sup>392</sup> http://jeynews.com.ua/news/d0/72924 [accessed December 1, 2014].

<sup>393</sup> OPORA Civic Network, Early Presidential Election 2014. Final Election Observation Report; http://oporaua.org/news/5802-pidsumkovyj-zvit-za-rezultatamy-gromadskogo-sposterezhennja-opory-pid-chas-pozachergovyh-vyboriv-prezydenta-ukrajiny-2014-roku [accessed December 1, 2014]; Volodymyr Kovtunets, Expert on election issues, interview with author, June 13, 2014; Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, June 15, 2014.

result, early parliamentary elections held in October 2014 were administered by the CEC members with expired terms in office. This case also demonstrates dependence of the CEC on the Parliament and the President: if the latter fails to suggest names of the commissioners, the CEC members with expired terms can work for uncertain periods of time until the new members are appointed.

On the eve of the 2012 general parliamentary elections (September and October 2012) the level of citizen confidence with the CEC was almost the same as the level of non-confidence with the CEC (40.3% of confidence vs. 36.6% of non-confidence, with 23.1% of those who hesitated and could not say clearly).<sup>394</sup> The situation improved in 2014, when almost 58% of Ukrainians fully or somewhat trusted the CEC, while 32% did not trust it fully or to some extent<sup>395</sup>.

The major election observation missions concluded that during the 2014 early presidential election the CEC worked free of external interference and without bias towards candidates or parties.<sup>396</sup> Following the 2014 early parliamentary elections held on October 26, 2014, the OSCE/ ODIHR concluded that the CEC "operated independently and collegially overall and met all legal deadlines".<sup>397</sup>

#### Transparency (law) - Score 75 (2015, 2010)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB?

Since 2010, the provisions governing access to information on the CEC activities have not been significantly changed. The legal framework generally ensures that the public can obtain information on the activities and decision-making processes of the CEC. However, the role of the CEC in ensuring transparency of political finance remains limited.

The Law on CEC, the laws governing national elections and the Law on Access to Public Information include a number of provisions aimed at ensuring transparency in the CEC work. Overall, the principle of transparency is one of the key principles guiding CEC operations. The Law on CEC requires that the CEC meetings must be open, that complainants, respondents and other parties concerned must be invited to the CEC meetings at which the complaints are considered, and that all CEC decisions are made by open, rather than secret, vote.<sup>398</sup>

Under Art.15 of the Law on Access to Public Information, CEC is obliged to make public on its website general information on its organizational structure and activities, including information on its mission, powers, goals, budget, schedule and agendas of the open meetings, contact details of its members, adopted decisions and reports. The CEC is also required to provide information upon requests for information, unless access to such information is restricted by law.

Under the Parliamentary Election Law, MP candidates, their proxies, authorized representatives of political parties, NGO observers, international observers and journalists are allowed to attend the CEC meetings without CEC invitations or CEC consent. This Law also requires the CEC to

NATIONAL INTEGRITY SYSTEM ASSESSMENT

<sup>394</sup> Democratic Initiatives Foundation, "2012 Parliamentary Elections: Do citizens feel confidence with the elections? Are they ready to protest? What can force them to protest?" Survey Results; http://dif.org.ua/ua/polls/2012-year/madjani-ivi.htm [accessed December 1, 2014].

<sup>395</sup> http://tsn.ua/ukrayina/maizhe-polovina-ukrayintsiv-ne-virit-u-chesni-vibori.html [December 1, 2014].

<sup>396</sup> OSCE/ODIHR Election Observation Mission, Ukraine. Pre-Term Presidential Elections, 25 May 2014. Final Report, 2014: 9; Committee of Voters of Ukraine, Presidential Election, 25 May 2014. Final Election Observation Report; http://www.cvu.org.ua/nodes/view/type:news/slug:431 [accessed December 1, 2014].

<sup>397</sup> OSCE/ODIHR Election Observation Mission, Ukraine. Early Parliamentary Elections, 26 October 2014. Statement of preliminary findings and conclusions, 2014: 2.

<sup>398</sup> Art. 2, 4, 12 of the Law on CEC.

make public on its website own decisions and decisions of the DECs, lists of election districts and election precincts, summarized information on results of consideration of complaints by the DECs and PECs, minutes of the DEC and PEC meetings, election programs of parties and candidates in the parliamentary elections, asset declarations of MP candidates (except for early elections, as candidates in early elections are not required to submit their asset declarations to the CEC), general information on MP candidates competing in the elections (name, date of birth, place of employment, place of residence, party membership), information on electoral rights, on procedure for voter registration, on voting procedures and locations of the PECs, liability for violation of the election legislation, as well as information on the number of ballot papers produced for each election district, on the number of voters on the voter lists before start and end of voting, on the number of voters who voted at the places of their stay, on the voting results at each election precinct.<sup>399</sup> The same requirements to publication of election-related information are also included into the Presidential Election Law.<sup>400</sup>

The role of EMB in ensuring transparency of political finance remains limited. Annual party financial reports (property statement and financial reports on incomes and expenses) are subject to publication by political parties themselves, and parties are not required to submit them to any public authority for review.<sup>401</sup> Under the Parliamentary Election Law, the CEC is required to publish preliminary and final financial reports on the receipt and use of election funds of the parties and MP candidates, respectively, before and after the Election Day,<sup>402</sup> while the Presidential Election Law obliges the CEC to make public on its website information on total amount of donations to the election funds of the presidential candidates, as well as on expenses covered from the election funds.<sup>403</sup> However, the legal framework governing the parliamentary and presidential elections does not require disclosing the identity of donors and amount of each donation to election funds. Lack of the respective requirements decreases transparency of election campaign finance, as voters cannot identify major donors and value of donations given to the respective election funds.

In 2014, the OSCE/ODIHR recommended that "provisions regulating campaign financing should be further strengthened to enhance the transparency of campaign funds",<sup>404</sup> while in 2013 the OSCE/ODIHR suggested to review the system of regulation of party and campaign financing "so as to increase transparency and accountability", as well as to consider "full disclosure of sources and amounts of contributions and the types and amounts of campaign expenditure".<sup>405</sup>

#### Transparency (practice) – Score 75 (2015, 2010)

#### To what extent are reports and decisions of the electoral management body made public in practice?

In general, public is able to readily obtain information on the organisation and functioning of the EMB, on decisions that concern them and how these decisions were made. Nevertheless, transparency of certain aspects of the CEC work could be further enhanced.

All the interlocutors interviewed within the framework of this assessment agreed that the CEC work related to preparation of the elections is transparent and the CEC publishes in its website (www.cvk.

<sup>399</sup> Art. 13, 18, 23, 27, 29, 31, 32, 35, 54, 55, 57, 58, 59, 63, 64, 81, 84, 85, 94 of the Parliamentary Election Law.

<sup>400</sup> Art. 13, 19, 20, 23, 28, 43, 51, 56-1, 56-2, 72, 75, 76, 82, 83 of the Presidential Election Law.

<sup>401</sup> Art. 17 of the Law on Political Parties in Ukraine.

<sup>402</sup> Art. 49 of the Parliamentary Election Law.

<sup>403</sup> Art. 43 of the Presidential Election Law.

<sup>404</sup> OSCE/ODIHR Election Observation Mission, Ukraine. Pre-Term Presidential Elections, 25 May 2014. Final Report, 2014: 18.

<sup>405</sup> OSCE/ODIHR Election Observation Mission, Ukraine. Parliamentary Elections, 28 October 2012. Final Report, 2014:18-19.

gov.ua) all the information subject to mandatory publication,<sup>406</sup> including CEC decisions, detailed information on conduct of voting, turnout, preliminary and final election results, information needed to exercise voting rights, party and candidate's financial reports, DEC decisions transmitted to the CEC through its online system, and asset declarations of the CEC members.

However, some problems in terms of the CEC transparency still remain. For instance, due to the hacker attacks on the CEC website during the 2014 presidential election, the CEC website could not be accessed on the Election Day and subsequent days, that resulted in delays with making public important information on the conduct of voting and election results<sup>407</sup> [for further details see: Election administration (law and practice)]. While the election laws provide that access to information on registration documents (including biographies) of MP candidates cannot be restricted, the CEC in a number of cases refused to provide copies of biographies to some candidates and CSOs upon their requests for information.<sup>408</sup> One of the interlocutors also complained that searching for information on the CEC website is uneasy task<sup>409</sup>. Indeed, as of December 1, 2014, the "search" button on the CEC website did not work for unknown reasons, making a search through the CEC decisions rather difficult. As in 2010, in 2014 national elections the CEC continued the practice of holding its "preparatory" meetings behind closed doors to discuss and agree on the issues subject to further consideration at the CEC open meetings where the observers, candidates and party representatives were allowed to be present. The OSCE/ODIHR and others criticized this practice as it decreases the level of transparency of the CEC work.<sup>410</sup> Some interlocutors also suggested amending the election laws to require the CEC to make public the list of all NGO observers registered by the DECs<sup>411</sup> as well as information on the number of voters registered at each and every election precinct.<sup>412</sup> The CEC has not established any call centres for queries so far.413 Due to lack of disclosure provisions in the election laws [see: Transparency (law)], party and candidate reports in the national elections published on the CEC website do not disclose identity of donors and the value of each donation transferred to the party and candidate election funds.414

#### Accountability (law) - Score 25 (2015, 2010)

To what extent are there provisions in place to ensure that the EMB has to report and be answerable for its actions?

Certain provisions ensuring that the CEC is answerable for its actions exist in the current legal framework, but they have not changed since 2010 and provide no effective guarantees that the CEC is answerable for all its actions.

<sup>406</sup> OSCE/ODIHR Election Observation Mission, Ukraine. Pre-Term Presidential Elections, 25 May 2014. Final Report, 2014: 10; Volodymyr Kovtunets, Expert on election issues, interview with author, June 13, 2014; Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, June 15, 2014.

<sup>407</sup> OSCE/ODIHR Election Observation Mission, Ukraine. Pre-Term Presidential Elections, 25 May 2014. Final Report, 2014: 10.

<sup>408</sup> See, for instance, CEC Resolution No 1877, dated October 17, 2014; CEC Resolution No 2166, dated November 17, 2014.

<sup>409</sup> Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, June 15, 2014.

<sup>410</sup> European Network of Election Monitoring Organizations (ENEMO), Interim report on early parliamentary elections in Ukraine for the period between September 10 and October 10, 2014, 2014:4; OSCE/ODIHR Election Observation Mission, Ukraine. Pre-Term Presidential Elections, 25 May 2014. Final Report, 2014:10.

<sup>411</sup> OPORA Civic Network, Early Presidential Election 2014. Final Election Observation Report; http://oporaua.org/news/5802-pidsumkovyj-zvit-za-rezultatamy-gromadskogo-sposterezhennja-opory-pid-chas-pozachergovyh-vyboriv-prezydenta-ukrajiny-2014-roku [accessed December 1, 2014].

<sup>412</sup> Volodymyr Kovtunets, Expert on election issues, interview with author, June 13, 2014.

<sup>413</sup> Volodymyr Kovtunets, Expert on election issues, interview with author, June 13, 2014; Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, June 15, 2014.

<sup>414</sup> See the campaign finance reports at: http://www.cvk.gov.ua/vnd\_2014/konsolid\_zvity/ostatochny\_svity.pdf; http://www.cvk.gov.ua/vnd\_2014/konsolid\_zvity/perelik\_zvity.htm; http://www.cvk.gov.ua/vnd\_2014/finance/ [accessed December 1, 2014].

Being an institutionally independent body within the national system of governance, the CEC is not legally required to produce any reports on its activities, including activities related to preparation and holding of the elections, to consideration of election-related complaints and other similar types of activities. The CEC, however, is required to prepare and submit to the Accounting Chamber (SAI) financial reports on expenses related to preparations and holding of the national elections and referendums within three months following the official establishment of the election/referendum results.<sup>415</sup> The CEC decisions, actions or inaction related to establishment of the election results can only be challenged with the Higher Administrative Court of Ukraine (HACU), whose decision is final and cannot be further challenged. All other actions, decisions and inactions of the CEC or its members can be challenged with the Kyiv Administrative Court of Appeal, whose decisions in the respective cases can be challenged through the HACU.<sup>416</sup>

#### Accountability (practice) - Score 25 (2015, 2010)

#### To what extent does the EMB have to report and be answerable for its actions in practice?

Given the lack of regulation aimed to ensure that the EMB is answerable for its actions, the level of CEC's accountability since 2010 has remained low in practice.

The CEC prepares and submits its financial reports on election-related expenses to the Accounting Chamber in a timely manner. The reports are available on the CEC website, as well as on the Parliament's legal database (www.rada.gov.ua). <sup>417</sup> As before 2010, the CEC also issues annual reports on execution of its budget, which are also available online. <sup>418</sup> The CEC has never prepared reports on its activities, given that there is no requirement in the legislation obliging the EMB to do so.

The effectiveness of the election dispute resolution by the CEC, as well as its role in addressing electoral irregularities remains low.<sup>419</sup> Art. 16 of the Law on Central Election Commission states that if the CEC receives information on violation of the election laws from the media or any other sources, it can initiate investigation and adopt the respective decision to stop the violation. However, the CEC in fact has rarely used this power.<sup>420</sup> In 2014, the OSCE/ODIHR concluded that the right to an effective remedy is sufficiently guaranteed in the election law; however, the election law allows for the rejection of complaints based on minor deficiencies in complaint format. In this connection, the OSCE/ODIHR also noted that in the 2014 presidential election the CEC received 23 complaints, but did not consider the merits of any of those complaints because formal requirements to the complaint format were not met by complainants.<sup>421</sup> In 2012 parliamentary elections, the CEC processed complaints in a timely manner, but with limited or no debate during its official sessions, which, according to the OSCE/ODIHR EOM, negatively affected the transparency of the process. Furthermore, the limited factual information or legal reasoning of many CEC resolutions put into question their justification, while the formalistic and at times contradictory approach left the aggrieved parties without due consideration of their claims, contrary to the OSCE commitments.<sup>422</sup>

<sup>415</sup> Art. 23.6 of the Law on Central Election Commission.

<sup>416</sup> Art. 172, 176 of the Code of Administrative Adjudication of Ukraine.

<sup>417</sup> See, for instance, http://zakon4.rada.gov.ua/laws/show/v0031359-13; http://www.cvk.gov.ua/pls/acts/ShowCard?id=35454&what=0 [accessed December 1, 2014].

<sup>418</sup> http://www.cvk.gov.ua/info/koshty\_CVK\_2010.pdf; http://www.cvk.gov.ua/info/koshty\_CVK\_2011.doc; http://www.cvk.gov.ua/info/koshty\_CVK\_2012.doc; http://www.cvk.gov.ua/info/koshty\_CVK\_2013.pdf [all accessed December 1, 2014]

<sup>419</sup> Volodymyr Kovtunets, Expert on election issues, interview with author, June 13, 2014; Yuriy Kluchkovskyi, President of the NGO "Election Law Institute", interview with author, July 15, 2014.

<sup>420</sup> Volodymyr Kovtunets, Expert on election issues, interview with author, June 13, 2014; Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, June 15, 2014.

<sup>421</sup> OSCE/ODIHR Election Observation Mission, Ukraine. Early Presidential Election, 25 May 2014. Final Report, 2014: 23.

<sup>422</sup> OSCE/ODIHR Election Observation Mission, Ukraine. Parliamentary Elections, 28 October 20012. Final Report, 2012: 25.
In 2014 presidential elections, courts generally proved themselves to be an effective mechanism for election dispute resolution, however, pressure on the court system resulting from adoption of so-called "lustration" legislation targeted at judges made some judges "express hesitation" to adjudicate specific election-related cases.<sup>423</sup>

During the elections, the CEC maintains close relations with the representatives of political parties and candidates, who are allowed to be present at the meetings where the CEC decisions are made.<sup>424</sup> However, communications with the media remain limited as the CEC only informs the media on its activities, meeting agendas and adopted decisions.<sup>425</sup> It is not common practice for the CEC to initiate consultations with domestic experts on electoral matters, including NGO representatives; the CEC mainly cooperates with national experts on election-related issues within the framework of technical assistance programs implemented by the international donors, or participates in the public discussions initiated by NGOs.<sup>426</sup>

## Integrity (law) - Score 75 (2015), 50 (2010)

To what extent are there mechanisms in place to ensure the integrity of the electoral management body?

Since 2010, the legal provisions aimed to ensure integrity of the EMB has improved to certain extent, however they still fail to cover some aspects related to integrity of the CEC members and employees of the CEC Secretariat.

Both the CEC members and employees of the CEC Secretariat are civil servants and therefore fall under the scope of anti-corruption provisions binding for all the civil servants. While there is no specific Code of conduct for the CEC members and CEC Secretariat staff, the existing legal framework provides for comprehensive rules to ensure their integrity. Under the current legislation civil servants must respect the Constitution, other laws and human rights; observe the principle of political neutrality; be objective; annually submit at the place of their employment declarations of assets, incomes, expenses and financial obligations; report on the conflict of interests to their direct supervisors once the conflict of interest occurred; abstain from abusing their offices in private interests as well as from combining their positions at the CEC with business activities or other paid work (with some exceptions, such as academic work, lecturing, creative and medical practice, instructor or coach activity in sport). All civil servants are also prohibited from accepting gifts granted in relation to exercising powers as well as gifts from their subordinates; gifts canbe accepted only when they are not connected with official activities, if the value of the gift(s) over a year does not exceedone minimum monthly salary [roughly UAH 1200 or USD 55]. They are not allowed to have their close persons (such as family members or persons connected by mutual rights and obligations) as subordinates or direct supervisors. Within one year following termination of employment at the CEC, its members and the staff of Secretariat are forbidden from entering labour or any business agreements with natural or legal persons supervised by them at the time when they worked at the CEC, from disclosing or using any information they became aware of while exercising their powers at the CEC, as well as from representing the interests of any persons in cases involving the CEC as another party.<sup>427</sup> The Law on Central Election Commission provides that the CEC members are not allowed to combine membership of the CEC with any representative mandate, membership of other election commissions, positions at the executive or local self-government bodies, to be candidates in

<sup>423</sup> OSCE/ODIHR Election Observation Mission, Ukraine. Early Presidential Election, 25 May 2014. Final Report, 2014: 24.

<sup>424</sup> Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, June 15, 2014; Yuriy Kluchkovskyi, President of the NGO "Election Law Institute", interview with author, July 15, 2014.

<sup>425</sup> Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, June 15, 2014.

<sup>426</sup> Volodymyr Kovtunets, Expert on election issues, interview with author, June 13, 2014; Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, June 15, 2014.

<sup>427</sup> Art. 10 of the Law on Principles for Prevention and Combating Corruption.

elections, their proxies or authorized representatives of political parties. CEC members are required to suspend their membership of political parties for the period of membership on the CEC.<sup>428</sup>

The rules of integrity listed in the new law On Prevention of Corruption are applied to members and employees of the CEC Secretariat [See more: Public Sector (Integrity (law)]

Most of these problems will be eliminated by Law on Prevention of Corruption (adopted on October 14, 2014) (which entered legal force on April 26, 2015). This Law, in particular, provides for detailed rules for conflict of interest regulation, establishes a separate independent body (the National Agency for Corruption Prevention) to check the asset declarations, broadens the requirements to the content of asset declarations (in particular, asset declarations will be required to present detailed information on all past and current employment, something which is not required under the current laws). Enforcement of these new rules requires not only the entry of the Law on Prevention of Corruption into legal force, but also establishment of the National Agency for Corruption Prevention, which has yet to happen.

## Integrity (practice) - Score 50 (2015, 2010)

#### To what extent is the integrity of the electoral management body ensured in practice?

EMB's integrity in practice has not changed compared to 2010, and it is limited to a piecemeal and reactive approach to ensuring the integrity of the EMB members.

Through 2010 and 2014 there have been no cases when the CEC members or CEC Secretariat staff violated the legal framework governing EMB's integrity or committed corruption offences.<sup>429</sup> Given the loopholes in the legislation governing EMB's integrity, this does not necessarily mean that no violations have been committed in fact.

There are no specific trainings for the CEC members and Secretariat staff devoted to integrity issues.<sup>430</sup> As the case was before 2010, they are only trained on general public service issues, similarly to all other public servants employed by the Government [for further details see: National Integrity System Assessment: Ukraine 2011, pp. 111-112].

#### Campaign regulation (law and practice) – Score 50 (2015, 2010)

#### Does the EMB effectively regulate candidate and political party finance?

Compared to 2010, the EMB role in supervising party finance has not significantly changed and remains weak.

Following the 2014 early presidential elections, the OSCE/ODIHR recommended that "the legal framework should provide for independent oversight and monitoring of campaign financing, including the possibility of effective, proportionate and dissuasive sanctions for violations of campaign finance regulations".<sup>431</sup> Given that campaign finance rules in the Presidential Election Law and Parliamentary Election Law are very much the same, this OSCE/ODIHR recommendation can also be applied to campaign finance provisions in the Parliamentary Election Law.

<sup>428</sup> Art. 7 of the Law on Central Election Commission.

<sup>429</sup> Volodymyr Kovtunets, Expert on election issues, interview with author, June 13, 2014.

<sup>430</sup> Andriy Mahera, CEC Deputy Chair, interview with author, July 15, 2014.

<sup>431</sup> OSCE/ODIHR, Ukraine. Early Presidential Election 25 May 2014. Final Report, 2014: 18.

In the parliamentary elections, the CEC is entitled to supervise receipt and registration of donations to the election funds of political parties whose candidates are running in the nationwide election district, as well as use of the election funds, while the DECs exercise control of the receipt and use of the election funds by MP candidates registered in the respective single mandate election districts. In the presidential elections, the receipt and use of the presidential candidates' election funds are supervised by the CEC.<sup>432</sup> The CEC and other election commissions do not have any powers to supervise political finance both before the start of the election period and after establishment of the election results. The laws governing national elections explicitly prohibit funding of the election campaigns through non-election fund bank accounts, in particular by cash or in other similar ways. Such funding, depending on the value of donations illegally transferred to political parties or candidates or accepted by them, can be considered a criminal offence under Art. 159-1 of the Criminal Code or administrative offence under Art. 212-15 of the Code of Administrative Offences. However, the CEC and DECs are not allowed to investigate such offences: if they receive any information on the violations subject to sanctions provided for by the Criminal Code or Code of Administrative Offences, they must forward such information to police for further investigation<sup>433</sup>.

That said, the CE C, in fact, can effectively supervise only the receipt and use of donations to the election funds of the parties and candidates in the national elections, while other areas of political finance fall beyond the scope of CEC controlling powers.

#### Election administration (law and practice) - Score 50 (2015, 2010)

Does the EMB effectively oversee and administer free and fair elections and ensure integrity of the election process?

While the CEC role in administering the national elections in Ukraine has somewhat increased compared to 2010, its success remains limited due to failures in implementing existing legal provisions.

The laws governing the national elections provide for a number of safeguards against fraud, including detailed procedures for delivery, accounting for and use of the ballot papers, voter lists, vote counting and tabulation protocols and other sensitive materials. In contrast to 2010 presidential elections, when the domestic NGO observers were not allowed to observe the elections, all the election laws now allow domestic NGOs to register at the CEC in advance of the elections to have their observers deployed in the election districts where the elections are held. The NGOs, candidates and party observers have the same legal status in terms of scope of their rights and obligations and are entitled to attend election commission meetings, to challenge election-related violations with courts or respective election commissions, to take photos and videos, and to observe voting, vote counting and tabulation of the election results.

The CEC is not required to inform each voter on the day, time and place for voting, as this task is assigned to the respective PECs (polling stations). Once having received the preliminary voter list from the respective Voter Register Maintenance Body (VRMB), each PEC must make it available for public scrutiny on the day following the day when the voter list was received, as well as to send each voter registered within the territory of precinct a personal invitation to vote, specifying the number of voter on the voter list, date and time of voting, location of the polling station where the voter would be able to exercise his/her voting rights. In all the elections, voters are entitled to check their names on the voter lists and to challenge any inaccuracies, non-inclusions or wrong inclusions on the voter lists on behalf of themselves or any other voters, as well as to challenge inaccuracies with VRMBs, courts or PECs.

<sup>432</sup> Art. 43.10 of the Presidential Election Law, Art. 50.9 of the Parliamentary Election Law.

<sup>433</sup> Art. 61.6 of the Parliamentary Election Law, Art. 56.6 of the Presidential Election Law.

Since 2010, the overall quality of the voter lists has been improving.<sup>434</sup> While in 2012 domestic observers identified a number of problems in terms of voter list quality (such as dead voters on the lists, incorrect names, missing voters on the lists),<sup>435</sup> in 2014 elections the situation improved and inaccuracies on the voter lists were single instances.<sup>436</sup>

The laws governing national elections require the CEC to supervise enforcement of the electoral legislation and to ensure its unified implementation. While in 2012 parliamentary elections the CEC failed to effectively administer the key aspects of the election process,<sup>437</sup> in 2014 the overall administration of the early presidential and parliamentary elections by the CEC has improved and, in general, was assessed positively by domestic and international observers.<sup>438</sup>

Nevertheless, some aspects of administration of the 2014 early parliamentary and presidential elections proved to be problematic. In particular, during the 2014 early presidential election the CEC adopted the regulations and clarifications needed to implement the Presidential Election Law during all the election process, and some problematic provisions in that Law have never been clarified by the CEC to the lower level commissions.<sup>439</sup> Further, in 2014 presidential elections the CEC failed to effectively protect its on-line information system used for transmitting the vote counting and tabulation protocols to the CEC from external interference and hacker (DDoS) attacks. As a result, DECs faced problems with sending the precinct and district results to the CEC through the on-line system, while the CEC website could not be accessed on the Election Day and subsequent days.<sup>440</sup>

For early parliamentary elections held on October 26, the CEC managed to adopt necessary clarifications of the Parliamentary Election Law well in advance of the elections and took steps to protect its information system from external interference. However, it did not manage MP candidates' registration in a satisfactory manner. Overall, 6,668 MP candidates were registered by the CEC and 809 MP candidates were refused registration, mainly for formalistic/technical reasons (for instance, because the date on application for registration did not match date of submission of the registration documents with CEC, or because applicant's election program submitted to the CEC exceeded legally required number of printed characters, or because candidate's photo submitted to the CEC was larger in format than was required by the Parliamentary Election Law). 48 rejected candidates successfully challenged the CEC rejections and finally were registered by the CEC two weeks after the deadline for adopting decisions on registration or refusal of registration of MP candidates.<sup>441</sup>

439 OSCE/ODIHR Election Observation Mission, Ukraine. Pre-Term Presidential Elections, 25 May 2014. Final Report, 2014: 10.

<sup>434</sup> OSCE/ODIHR Election Observation Mission, Ukraine. Pre-Term Presidential Elections, 25 May 2014. Final Report, 2014: 13; Committee of Voters of Ukraine, Presidential Election, 25 May 2014. Final Election Observation Report; http://www.cvu.org.ua/nodes/view/type:news/slug:431 [accessed December 1, 2014].

<sup>435</sup> Committee of Voters of Ukraine, Report on observation of the voting during the Parliamentary Elections held on October 28, 2012; http:// www.cvu.com.ua/ua/view.php?id=705; OPORA Civic Network, Report on observation of the voting during the Parliamentary Elections held on October 28, 2012; http://oporaua.org/news/news/3373-zvit-gromadjanskoji-merezhi-opora-za-rezultatamy-sposterezhennja-v-den-golosuvannja-na-vyborah-narodnyh-deputativ-28-zhovtnja-2012-roku [all accessed December 1, 2014].

<sup>436</sup> Committee of Voters of Ukraine, Presidential Election, 25 May 2014. Final Election Observation Report; http://www.cvu.org.ua/nodes/view/ type:news/slug:431 [accessed December 1, 2014].

<sup>437</sup> OSCE/ODIHR Election Observation Mission, Ukraine. Parliamentary Elections, 28 October 2012. Final Report, 2012: 9.

<sup>438</sup> Committee of Voters of Ukraine, Presidential Election, 25 May 2014. Final Election Observation Report; http://www.cvu.org.ua/nodes/view/ type:news/slug:431; OPORA Civic Network, Early Presidential Election 2014. Final Election Observation Report; http://oporaua.org/news/5802-pidsumkovyj-zvit-za-rezultatamy-gromadskogo-sposterezhennja-opory-pid-chas-pozachergovyh-vyboriv-prezydenta-ukrajiny-2014-roku [all accessed December 1, 2014].

<sup>440</sup> OPORA Civic Network, Early Presidential Election 2014. Final Election Observation Report; http://oporaua.org/news/5802-pidsumkovyj-zvit-za-rezultatamy-gromadskogo-sposterezhennja-opory-pid-chas-pozachergovyh-vyboriv-prezydenta-ukrajiny-2014-roku [accessed December 1, 2014].

<sup>441</sup> ENEMO (2014). Ukrainian Early Parliamentary Elections 2014. Interim Report, p. 7.

As in 2010 presidential election, the CEC role in educating voters remains limited.<sup>442</sup> Most voter awareness raising campaigns are conducted by the CEC in cooperation with international donors due to lack of budget funding of those expenses.<sup>443</sup> No voter awareness raising activities are carried out by the CEC outside of the election period.<sup>444</sup>

CEC trains the members of the DECs and PECs through the series of cascade trainings, issuing the handbooks on the election procedures, clarifications of the laws governing the elections, producing training videos for election commissioners. <sup>445</sup> Again, all these activities (except for issuing clarifications of the provisions laid down in the election laws) are conducted with financial support of international donors, such as IFES and OSCE/ODIHR.<sup>446</sup> Given permanent changes to the composition of the lower level commissions (the Parliamentary Election Law and Presidential Election Law allow parties/candidates to replace their members on the commission at any time, including Election Day), the effectiveness of the training delivered to DEC and PEC members remains limited.<sup>447</sup>

Overall, despite some positive developments in 2014, the CEC role in administering elections could and should be increased.

#### Key recommendations

#### For the Verkhovna Rada of Ukraine:

Funding of the CEC activities should be increased to allow it to train lower level election commissioners and to carry out effective voter education programs.

The existing provisions governing appointments and discharge of the CEC members from office should be reviewed to strengthen CEC independence from any undue external influence. In particular, CEC should be formed not only from representatives of political parties, but also from independent election experts.

The Law on Political Parties in Ukraine and the laws governing national elections should be reviewed to strengthen the CEC role in monitoring of political finance, as recommended by Group of States Against Corruption (GRECO).

The overall system of political finance regulation should be alligned with the GRECO recommendations and international standards.For the CEC:Clarifications of the election procedures and other important CEC regulations on electoral matters should be adopted well in advance of the

<sup>442</sup> Volodymyr Kovtunets, Expert on election issues, interview with author, June 13, 2014; Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, June 15, 2014; Yuriy Kluchkovskyi, President of the NGO "Election Law Institute", interview with author, July 15, 2014.

<sup>443</sup> Committee of Voters of Ukraine, Presidential Election, 25 May 2014. Final Election Observation Report; http://www.cvu.org.ua/nodes/view/ type:news/slug:431 [accessed December 1, 2014]; Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, June 15, 2014; Volodymyr Kovtunets, Expert on election issues, interview with author, June 13, 2014.

<sup>444</sup> Volodymyr Kovtunets, Expert on election issues, interview with author, June 13, 2014.

<sup>445</sup> Interview by the CEC Secretariat representative, with author, July 20, 2014.

<sup>446</sup> Volodymyr Kovtunets, Expert on election issues, interview with author, June 13, 2014; Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, June 15, 2014.

<sup>447</sup> OPORA Civic Network, Early Presidential Election 2014. Final Election Observation Report; http://oporaua.org/news/5802-pidsumkovyj-zvit-za-rezultatamy-gromadskogo-sposterezhennja-opory-pid-chas-pozachergovyh-vyboriv-prezydenta-ukrajiny-2014-roku [accessed December 1, 2014]; Volodymyr Kovtunets, Expert on election issues, interview with author, June 13, 2014; Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, June 15, 2014; Yuriy Kluchkovskyi, President of the NGO "Election Law Institute", interview with author, July 15, 2014.

elections in consultations with the key stakeholders.

After each election administered by the CEC, the CEC should issue comprehensive reports on preparations for, and holding of, the elections, problems identified, and further actions to be taken to improve overall administration of the elections. The Law on CEC should be amended to require the CEC to produce annual reports in its activities.

## 7. OMBUDSMAN

## Summary

Compared to 2010, the overall level of the Ombudsman's performance has increased and it has become one of the strongest pillars of the national integrity system. The resources available to Ombudsman still remain limited, however they allow the Ombudsman to more or less effectively exercise its powers. The legislation governing independence and accountability of the Ombudsman generally remained the same as in 2014 – 2015, while certain improvements have been made to the legal provisions aimed to ensure transparency and integrity of the Ombudsman. While in the past, the independence of the Ombudsman from external influence raised doubts, in 2014 its independence has strengthened. In practice, the Ombudsman proactively seeks to ensure transparency and accountability in its work, but some aspects of its operations need more transparency, while independent annual audits and additional reporting requirements could help to increase the level of the Ombudsman's accountability. The legislation governing the Ombudsman's dealing with citizen complaints generally remains the same as in 2010 and needs to be further improved while the Ombudsman plays almost no role in promoting standards of ethical behaviour among the citizens and public administration.

The table below presents a general assessment of the Ombudsman in terms of capacity, governance and role in national integrity system. The table is then followed by a qualitative assessment of the relevant indicators.

## OMBUDSMAN

Overall Pillar Score (2015): 55.55/ 100

Overall Pillar Score (	(2010)	: 46.52 / 100
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Dimension	Indicator	Law	Practice
Capacity	Resources	50 (2014, 2010)	
62.5/100	Independence	75 (2015, 2010)	75 (2015), 50 (2010)
Governance	Transparency	75 (2015), 50 (2010)	75 (2015), 50 (2010)
66.66/100	Accountability	50 (2015, 2010)	75 (2015), 25 (2010)
	Integrity	50 (2015, 2010)	50 (2015, 2010)
Role	Investigation	50 (2015, 2010)	
37.5/100	Promoting good practice	25 (2015, 2010)	

#### Structure and organisation

Under the Constitution of Ukraine, the Ombudsman (Parliament's Commissioner on Human Rights, or Commissioner, or Ombudsman) is in charge of exercising parliamentary oversight over observance of the constitutional rights and freedoms of the individuals.<sup>448</sup> The Constitution does not provide for specialised Ombudsmen, authorised to supervise the observance of the rights of specific groups of citizens, for instance, the rights of a child, military servants etc. The Commissioner is appointed and discharged from office by the parliament. His legal status is determined by a special Law on the Parliament's Commissioner on Human Rights, adopted in 1997 (further – the Law on Ombudsman). The Ombudsman is assisted by its Secretariat that provides organizational, information, legal and other support to the Commissioner. At the regional level, the Commissioner is assisted by its regional representatives. Whereas the law does not restrict their number, the Commissioner has appointed three representatives and four civic representatives tasked to assist Ombudsman on unpaid basis.

#### Assessment

#### Resources (practice) - Score 50 (2015, 2010)

#### To what extent does an Ombudsman or its equivalent have adequate resources to achieve its goals?

The deteriorated situation in the national economy in 2014 to a certain extent affected the Ombudsman resources. However, the negative impact of the economic situation has been counterweighted by more active use of external support by the Ombudsman, including support from human rights NGOs and international donors.

Since 2010, the powers of the Ombudsman have been expanded as the Commissioner was tasked to exercise parliamentary supervision of implementation of the Law on Access to Public Information,<sup>449</sup> to protect personal data,<sup>450</sup> to prevent discrimination of the citizens on various grounds (such as age, gender, place of residence etc.) and protect the citizens from the direct or indirect discrimination.<sup>451</sup> The Commissioner was also assigned functions of the national preventive mechanism under Optional Protocol to the UN Convention against Torture.<sup>452</sup>

The Ombudsman has broad rights, including the right to challenge constitutionality of the laws and some other legal acts at the Constitutional Court of Ukraine, the right to apply to the Constitutional Court of Ukraine for official clarification of the Constitution and the laws of Ukraine, the right to attend public authorities and penitentiary/detention institutions, the right to obtain any necessary information from the public authorities.<sup>453</sup>

The amount of financial resources available to the Ombudsman over the last years slightly decreased from UAH 21,335,100 [USD 2,667,000] in 2010 to UAH 20,155,300 [USD 2,519,000] in 2013.<sup>454</sup> In 2012, the Accounting Chamber stated that State Budget funds were transferred to the Ombudsman

<sup>448</sup> Article 101 of the Constitution of Ukraine.

<sup>449</sup> Law on Amendments to Certain Legislative Acts of Ukraine Due to Adoption of Law on Information and Law on Public Access to Information.

<sup>450</sup> Law on Amendments to Certain Laws of Ukraine Related to Ombudsman Activities in Field of Protection of Personal Data.

<sup>451</sup> Art. 10 of the Law on Prevention and Counteraction to Discrimination in Ukraine.

<sup>452</sup> Law on Amendments to the Law on Ombudsman Concerning National Preventive Mechanism.

<sup>453</sup> Art. 13 of the Law on Ombudsman.

<sup>454</sup> Laws on State Budget of Ukraine for 2010 and 2013.

in unequal parts, with larger parts of funding allocated at the end of the year.455

Assigning the Ombudsman new functions during 2012 and 2013 (see above) increased burden on the Commissioner's Secretariat and resulted in an increase in the number of the Ombudsman's staff to 275 persons in March 2013. Given that amendments to the 2014 State Budget Law required all the public authorities to fire up to 10% of their employees to cut overall amount of expenses for public administration, the number of the Commissioner's Secretariat employees decreased to 247 in 2014.<sup>456</sup>

Human rights CSOs, however, reported that in 2013 the Ombudsman actively participated in the projects implemented by international donors (for instance, by OSCE Project Coordinator in Ukraine, International Renaissance Foundation, Friedrich Ebert Foundation, UNDP and others) to increase capacity of the Ombudsman and to strengthen the mechanisms for protection of specific human rights.<sup>457</sup> The Commissioner also extensively used assistance of NGOs to more effectively exercise its powers.

## Independence (Law) - Score 75 (2015, 2010)

#### To what extend is the Ombudsman independent by law?

The legal framework aimed to ensure independence of the Ombudsman has not changed since 2010 and generally ensures high level of the Commissioner's independence. Nevertheless, the procedure for the Ombudsman's appointment could be reviewed to make sure that it is supported by both the coalition and opposition in the legislature.

The Law on Ombudsman provides that Commissioner is independent from any other public authorities while exercising its powers. The Ombudsman is appointed for a five-year term by the legislature, with the possibility of being reappointed for new terms. In addition, election of the new Parliament does not automatically results in early termination of the Ombudsman's powers. To be elected, the candidate for the Ombudsman's post needs to receive support of 226 MPs, i.e. more than half of all the MPs.<sup>458</sup> The Commissioner is not allowed to hold any representative mandate, be a member of political party, combine his/her post with any positions at public authorities, or do any other work, either on a paid or unpaid basis (except for teaching, academic and creative work).<sup>459</sup> The Law on Ombudsman also provides that the State Budget funds are allocated to the Commissioner separately from other authorities. <sup>460</sup> Also, the Ombudsman is given a wide margin of discretion in deciding on its internal organisational issues (including appointments/dismissals of the members of the Secretariat staff, designing the internal structure of its Secretariat, etc.). <sup>461</sup> The grounds for early termination of the Ombudsman's powers are limited to violations of oath and incompatibility requirements, termination of citizenship and failure to exercise his/her powers for four months for health reasons.<sup>462</sup> In addition, if the grounds for early termination of the Commissioner's powers exist,

462 Art. 9 of the Law on Ombudsman.

<sup>455</sup> http://www.ac-rada.gov.ua/control/main/uk/publish/article/16740139 [accessed December 1, 2014].

<sup>456</sup> Expert Group for Monitoring of the Ombudsman's Activities, Effectiveness of Performance the Ombudsman's Secretariat. 2013 Report, 2014, p.45.

<sup>457</sup> Expert Group for Monitoring of the Ombudsman's Activities, Effectiveness of Performance the Ombudsman's Secretariat. 2013 Report, 2014, pp.229-230.

<sup>458</sup> Art. 4, 5 of the Law on Ombudsman.

<sup>459</sup> Art. 8 of the Law on Ombudsman.

<sup>460</sup> Art. 12 of the Law on Ombudsman.

<sup>461 14</sup> Art. 10, 11 of the Law on Ombudsman.

it is only the Parliament that is entitled to adopt the respective decision. 463

However, given that the Ombudsman is elected by the absolute, rather than by qualified majority of votes of the MPs, his/her appointment is influenced by the coalition of the party groups in the legislature and increases the risk that the opposition interests will be ignored by the majority while deciding on whom to appoint to that position. In this regard, it should be noted that the Paragraph 7 (iii) of the PACE Recommendation 1615 (2003) recommends the Ombudsman be appointed and dismissed by the qualified majority of the MP votes.<sup>464</sup>

#### Independence (practice) – Score 75 (2015), 50 (2010)

#### To what extend is the Ombudsman independent in practice?

While in 2014 the Ombudsman was free from external interference with its operations, in previous years its independence has raised doubts.

The incumbent Ombudsman Valeria Lutkovska was appointed by the Parliament on April 24, 2012.<sup>465</sup> The pro-Government factions who supported her appointment viewed the Ombudsman's post as something not important at all, while the opposition factions did not agree with the appointment and tried to initiate the Commissioner's discharge from office in 2013.<sup>466</sup> In June 2013, the legislature also refused to adopt any decisions on the 2013 Ombudsman's annual report. While the Ombudsman stated that Government did not interfere with its activities in 2012 and 2013, in fact the Commissioner was very cautious when it came to the "sensitive" interests of the former Government and political parties that backed it. In particular, the Ombudsman turned a blind eye to the conditions of imprisonment of the ex-PM Yulia Tymoshenko (even though she visited imprisoned Tymoshenko several times), who was sentenced to a lengthy prison term based on a politically motivated court decision. She also did not comment on or address other politically motivated prosecutions.<sup>467</sup>

However, in contrast to the previous Ombudsman Nina Karpachova, the incumbent Commissioner has never participated in general or local elections as a candidate while holding the position, neither did she carry out any political activities compromising Ombudsman's objectiveness and neutrality. While the new Ombudsman has not been very active in addressing the issues related to politically motivated prosecution or selective justice through 2012 and 2013, she was very active in other areas related to human rights, including prevention of torture and inhuman/degrading treatment, protection of the rights of the imprisoned/detained, development and implementation of the anti-discrimination policy, protection of the privacy and enforcement of the Law on Public Access to Information.<sup>468</sup> During 2012 and 2013, the Ombudsman started to build close relations with human rights defenders and NGOs specializing on human rights, as well as with the parliamentary committees and various government agencies. CSOs assessed her efforts in this respect in positive terms.<sup>469</sup>

<sup>463 18</sup> Art. 9 of the Law on Ombudsman.

<sup>464 16</sup> PACE Recommendations 1615 (2003) The institution of Ombudsman, para 7 (iii);http://assembly.coe.int/main.asp?Link=/documents/ adoptedtext/ta03/erec1615.htm [accessed December 1, 2014].

<sup>465</sup> VRU Resolution No 4660-VI, dated April 24, 2012.

<sup>466</sup> Expert Group for Monitoring of the Ombudsman's Activities, Effectiveness of Performance the Ombudsman's Secretariat. 2013 Report, 2014, pp. 16-17.

<sup>467</sup> Expert Group for Monitoring of the Ombudsman's Activities, Effectiveness of Performance the Ombudsman's Secretariat. 2013 Report, 2014, pp. 8-11.

<sup>468</sup> Expert Group for Monitoring of the Ombudsman's Activities, Effectiveness of Performance the Ombudsman's Secretariat. 2013 Report, 2014, pp. 11-12.

<sup>469</sup> Center for Civil Liberties, Results of Surveying of CSOs on cooperation with the Ombudsman's Secretariat, 2013, pp. 1-9.

### Transparency (law) - Score 75 (2015), 50 (2010)

To what extend are there the provisions in place to ensure that the public can obtain relevant information on the activities and decision- making processes of the Ombudsman?

Since 2010 the legal framework aimed to ensure transparency of the Ombudsman's activities has improved, mainly due to adoption of the Law on Public Access to Information. However, certain aspects of the Ombudsman's transparency still remain uncovered by the laws.

The Law on Access to Public Information requires the Ombudsman to provide information upon requests for information and to make public on its website a number of documents, including organizational structure, mission, functions, powers, detailed budget, adopted legal acts. The Commissioner must publish on its website the list of services provided by the Ombudsman, templates of the documents required to receive those services, explanation of the procedure for filing requests for information to the Ombudsman and reports on his/her activities, including reports on how the requests for information were considered by the Commissioner.<sup>470</sup>

The Law on Ombudsman also provides for publication of the Commissioner's annual and special reports. The annual report must present information on observance of human rights and freedoms by the public authorities, officials, civic associations, institutions and organisations, as well as information on shortcomings in legal framework governing the protection of human rights, on measures taken by the Commissioner to address them, on the results of checks carried out by the Ombudsman within the period covered by the report, on key findings and recommendations for improvement in the field of human rights. <sup>471</sup> As regards special reports, the Law on Ombudsman fails to set any clear requirements to their content, stating only that the special reports have to cover specific issues connected to exercising human rights. The legal framework does not establish any deadlines for making both annual and special reports available to public.

The Law on Principles for Prevention and Counteraction to Corruption states that the asset declarations annually submitted by the Ombudsman are subject to mandatory publication on its website.<sup>472</sup> Once the new system of declaration, provided for by the law On Prevention of Corruption, is established, declarations are to be published in a unified registry.

The Law on Ombudsman allows the Commissioner to create an advisory council, composed of persons with work experience in human rights protection, to provide the Ombudsman with consultations, academic expertise and comments/proposals for improvements in the area of human rights protections. However, the Law leaves to the Ombudsman's discretion to decide on whether to establish that council or not.<sup>473</sup>

Under Art. 14 of the Law on Ombudsman, the Commissioner is required to maintain confidentiality in his/her operations, in particular as concerns securing privacy of complainants and other persons concerned. No requirements as to the scope of information to be treated as "confidential" are in place.

<sup>470</sup> Art. 15 of the Law on Access to Public Information.

<sup>471</sup> Art. 18 of the Law on Ombudsman.

<sup>472</sup> Art. 12 of the Law on Principles for Prevention and Counteraction to Corruption.

<sup>473</sup> Art.10 of the Law on Ombudsman.

### Transparency (practice) - Score 75 (2015), 50 (2010)

# To what extent is there transparency in the activities and decision-making processes of the Ombudsman in practice?

Since 2010, the level of the Ombudsman's transparency has significantly increased. The Ombudsman generally even goes beyond the legal requirements and makes public information that is not a subject to mandatory publication.

The Ombudsman's website (www.ombudsman.gov.ua) presents comprehensive information on the structure of the Ombudsman's Secretariat, contact details of the directors of the Secretariat departments, asset declarations of the senior staff submitted in 2014, detailed information on the activities of the Ombudsman, statutes of each Secretariat department (except for three departments), all the annual and special reports prepared by the Ombudsman, information on the Advisory Board and Expert Boards established by the Ombudsman to assist the Commissioner in exercising its duties, Ombudsman's communication policy, information on the Ombudsman's international relations, different documents produced by the Commissioner while exercising her duties (e.g., constitutional petitions filed with the Constitutional Court of Ukraine), clarifications of the legal provisions on human rights, court decisions related to protection of human rights and freedoms.

The Ombudsman's annual reports present comprehensive data on the key results of the Ombudsman's work (such as number of citizen requests with regional breakdown, summarized results of their consideration, and other similar data). However, detailed Ombudsman's budgets for 2014 and other years are not posted on its website. Also, the Commissioner could cover in more detail the information on its internal activities related to functioning of its Secretariat<sup>474</sup> (see below).

### Accountability (law) - Score 50 (2015, 2010)

To what extent are there provisions in place to ensure that the Ombudsman has to report and be answerable for its actions?

Since 2010, the legal framework aimed to ensure that the Ombudsman has to report and be answerable for its actions has slightly improved, but it still fails to cover all aspects of the Ombudsman's accountability.

The Law on Ombudsman requires the Commissioner to annually submit to the parliament its annual report on observance of human rights in Ukraine and, if necessary, special report on specific issues related to observance and protection of the human rights [for further information on the requirements to the content of these reports see: Ombudsman (transparency (law)].

The legal framework does not impose on the Commissioner the obligation to reflect in its reports information on internal functioning of the Ombudsman's Secretariat, such as information on the Secretariat's performance, on available human and financial resources, on organisation of Ombudsman's work, on interaction between different structural units of the Secretariat, on the use of funds, on international cooperation, on measures taken by the Ombudsman to prevent corruption within its Secretariat.

It is left to the parliament's discretion to decide on whether to hold debates on the reports presented by the Ombudsman or not. In general, the accountability of the Ombudsman to the parliament is limited to submission of the annual and special reports.

<sup>474</sup> See, for instance, Ombudman's Annual Report for 2014; http://www.ombudsman.gov.ua/files/Dopovidi/dopovid\_2014b.pdf [accessed December 1, 2014].

The Law on Public Access to Information ensures an appropriate level of the Ombudsman's finical accountability, as ombudsman must make public its detailed budget on the Commissioner's website [see: Transparency (law)]. In addition, since the Ombudsman's operations involve funding from the State Budget, its financial operations and overall management can be audited by the bodies, entitled to supervise the legality and effectiveness of the use of the budget funds, such as SAI and State Financial Inspection.

The actions, inaction or decisions of the Commissioner can be challenged in administrative courts under the same procedures as decisions/actions or inaction of any other government agency.<sup>475</sup> The legal framework does not provide for the effective mechanisms of the whistle-blower protection, including the employees of the Ombudsman's Secretariat.<sup>476</sup> However, such mechanisms are improved by the new Law on Prevention of Corruption (adopted in October 2014), which entered legal force in April 2015, as this Law provides for effective measures to protect whistle-blowers.<sup>477</sup>

## Accountability (practice) – Score 75 (2015), 25 (2010)

To what extent does the Ombudsman have to report and be answerable for its actions in practice?

The level of the Ombudsman's accountability through 2012 and 2015 has significantly increased.

Since 2010, there have been no cases when the decisions, actions or inaction of the ombudsman have been challenged with the administrative courts.

While the previous Commissioner Nina Karpachova submitted to the legislature only 6 annual reports out of 14 required by the Law on Ombudsman, the incumbent Ombudsman publishes all its reports on the Commissioner's website.<sup>478</sup>

The content of reports meets the requirements of Art.18 of the Law on Ombudsman.<sup>479</sup> In addition to the annual reports, Ombudsman has also produced four special reports covering specific issues related to protection of the human rights, such as report on violation of human rights during the Maidan protests in November 2013 – February 2014, report on the results of monitoring of detention centres, report on implementation of the national preventive mechanism, and report on exercising the right to medical assistance at pre-trial detention centres. In 2013, the Ombudsman presented in the Parliament her annual report, however, the legislature failed to adopt any decision on it. CSOs forwarded to the Parliament a petition asking to adopt a decision on the report, but the legislature ignored it.<sup>480</sup> Notwithstanding that, the parliamentary committees positively assessed the Ombudsman's work in 2013: on the scale of 10, transparency of the Ombudsman received the score of 8.5, while accessibility of the Ombudsman received score of 7.5.<sup>481</sup> Human rights organisations also reported that parliamentary committees summon the Ombudsman to their meetings to receive

<sup>475</sup> Art. 17 of the Code of Administrative Adjudication.

<sup>476</sup> Art. 20 of the Law on Principles for Prevention and Counteraction to Corruption.

<sup>477</sup> Art. 53 of the Law on Prevention of Corruption.

<sup>478</sup> http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/ [accessed December 1, 2014].

<sup>479</sup> See Ombudsman's Annual Report for 2014; http://www.ombudsman.gov.ua/files/Dopovidi/dopovid\_2014b.pdf [accessed December 1, 2014].

<sup>480</sup> Expert Group for Monitoring of the Ombudsman's Activities, Effectiveness of Performance the Ombudsman's Secretariat. 2013 Report, 2014, pp. 16-17.

<sup>481</sup> Expert Group for Monitoring of the Ombudsman's Activities, Effectiveness of Performance the Ombudsman's Secretariat. 2013 Report, 2014, p. 20.

its feedback on the issues considered by the committees.482

Nevetheless, the level of the Ombudsman's accountability is to a certain degree decreased by the fact that the Commissioner does not undergo annual independent financial audit of its operations. The Accounting Chamber audited the financial operations of the Ombudsman in 2010 and 2012.<sup>483</sup> Further, as has been mentioned above [see: Transparency (practice)], the Ombudsman's annual reports do not present a detailed account of its internal operations, such as the number of trainings delivered to the Secretariat employees and other similar information.

### Integrity (law) - Score 75 (2015, 2010)

To what extent are there provisions in place to ensure the integrity of the Ombudsman?

Since both the Ombudsman and its staff are public servants, the legislation governing their integrity is the same as the legal provisions aimed to ensure integrity of the public servants, and contain the same flaws [for further information see: Public sector (Integrity (law)].

#### Integrity (practice) - Score 50 (2015, 2010)

To what extent is the integrity of the Ombudsman ensured in practice?

The approach to ensuring the integrity of the Ombudsman and the employees of its Secretariat remains limited to enforcement of existing rules governing integrity of the civil servants.

Since 2010, there have been no cases when Ombudsman or its staff violated any legal provisions related to prevention and counteraction to corruption or provisions governing integrity of the civil servants. In 2013, MP Oleksandra Kuzhel accused the Ombudsman Valeria Lutkovska of having been appointed to her position through "corrupt means" and "close family relations" with the former Minister of Justice Oleksandr Lavrynovych. However, the Ombudsman challenged the allegations with the court, and the court obliged Oleksandra Kuzhel to refute untruthful information.<sup>484</sup>

Neither Ombudsman, nor the members of its staff are delivered any training on integrity issues. In general, they improve their qualifications as public servants within the framework of the programs targeted at civil servants in general. For instance, in 2013, the employees of the Ombudsman's Secretariat participated in 20 training seminars on human rights issues, while some employees studied abroad from two weeks to two months under the programs related to protection of human rights.<sup>485</sup>

#### Investigation (law and practice) - Score 50 (2015, 2010)

To what extend is the Ombudsman effective in dealing with complaints from the public?

The legislation governing the Ombudsman's dealing with citizen complaints generally remains

<sup>482</sup> Expert Group for Monitoring of the Ombudsman's Activities, Effectiveness of Performance the Ombudsman's Secretariat. 2013 Report, 2014, p. 19.

<sup>483</sup> http://helsinki.org.ua/index.php?id=1341311879; http://www.ac-rada.gov.ua/control/main/uk/publish/article/16740139 [all accessed December 1, 2014].

<sup>484</sup> http://dt.ua/POLITICS/ombudsmen-lutkovska-vigrala-sud-u-kuzhel-121172\_.html [accessed December 1, 2014].

<sup>485</sup> Expert Group for Monitoring of the Ombudsman's Activities, Effectiveness of Performance the Ombudsman's Secretariat. 2013 Report, 2014, p. 46.

the same as in 2010 and needs to be further improved. In practice, the responsiveness of the Commissioner to the violations of human rights has somewhat increased, but its approach towards addressing violations of human rights in some cases proved to be more reactive than proactive.

Under the Law on Ombudsman, the right to file complaints with the Commissioner is granted to the citizens of Ukraine, foreign citizens and persons without any citizenship. Anonymous complaints, as well as complaints repeatedly lodged to the Ombudsman by the same persons and raising the same issues, are not allowed. The effectiveness of addressing the issues raised in complaints by the Ombudsman is limited by the provisions in the Law on Ombudsman. First, complaints must be submitted not later than within a year after the violation (this term can be prolonged by the Ombudsman, but not more than up to 2 years). Second, the Ombudsman fails to clearly explain in which cases the Ombudsman is required to accept complaint and start investigation, and in which cases the Ombudsman can forward the complaint for consideration to another body or institution entitled to settle the issues raised by complainant [for further details see: National Integrity System Assessment: Ukraine 2011, p.124].

In 2013, the Ombudsman received 17,050 complaints from 59,016 persons seeking protection of their rights. That number was lower as compared to 2012 (92,743 complainants), and human rights NGOs explained that decrease by lack of public trust in Ombudsman (while the Ombudsman Secretariat explained that in 2012 Secretariat received one complaint signed by 38,000 citizens).<sup>486</sup> Based on 7,184 complaints received in 2013, the Ombudsman started investigations, while 277 complaints were forwarded to the competent authorities for further consideration or action. 1,070 complaints were rejected.<sup>487</sup> Despite that human rights NGOs reported that the Ombudsman's effectiveness in dealing with complaints somewhat increased in 2013, althoguh the Commissioner was rather passive in addressing politically motivated prosecutions, including prosecution of the opposition leaders, as well as in dealing with the cases of violence during the Maidan protests in December 2013 [see: Independence (practice)]. Human rights NGOs believed that delayed or moderate reaction of the Ombudsman in those cases was one of the key factors that decreased public confidence with the Commissioner.<sup>488</sup>

On a positive note, in 2013, the Ombudsman expanded cooperation with the parliamentary committees and most of the ministries compared to the previous years. Such cooperation resulted in increased demand for the Ombudsman's opinions on the draft legislation and overall Government responsiveness to violations of human rights. By the end of 2013, the number of NGOs cooperating with the Ombudsman increased from 110 to 200.<sup>489</sup> At the same time, active cooperation with the Ombudsman did not prevent the Parliament from adopting undemocratic laws in 2013, including the Law on National Referendum and the Law on Single Demographic Register.<sup>490</sup> Overall, further progress in relations between the Ombudsman, Parliament, public administration, and law enforcement agencies has yet to be seen.

Another positive development in the Ombudsman's work is that its website presents a precise explanation of the procedure for filing complaints to the Commissioner, as well as grounds for their admission or rejection. Each complainant is enabled to track his/her written or electronic complaint

<sup>486</sup> Expert Group for Monitoring of the Ombudsman's Activities, Effectiveness of Performance the Ombudsman's Secretariat. 2013 Report, 2014, pp.47-48.

<sup>487</sup> Ombudsman, 2014 Annual Report, p.540.

<sup>488</sup> Expert Group for Monitoring of the Ombudsman's Activities, Effectiveness of Performance the Ombudsman's Secretariat. 2013 Report, 2014, p. 9-11.

<sup>489</sup> Expert Group for Monitoring of the Ombudsman's Activities, Effectiveness of Performance the Ombudsman's Secretariat. 2013 Report, 2014, p. 23.

<sup>490</sup> Expert Group for Monitoring of the Ombudsman's Activities, Effectiveness of Performance the Ombudsman's Secretariat. 2013 Report, 2014, p. 13.

directly through the Ombudsman's website.491

#### Promoting good practice (law and practice) - Score 25 (2015, 2010)

To what extent is the Ombudsman active and effective in raising awareness within government and the public about standards of ethical behaviour?

Since 2010, the role of the Ombudsman in promoting good practice of governance and standards of ethical behaviour has not changed and remains limited.

The Commissioner's jurisdiction covers the relations involving, on the one hand, Ukraine's nationals (regardless of the country of their residence), stateless persons residing in Ukraine and foreigners, and, on the other hand, any public authority.<sup>492</sup> In practice, the Ombudsman receives complaints against various bodies and institutions, including the Parliament, the Cabinet of Ministers, ministries and other government agencies, courts, local self-government bodies and local administrations, public enterprises, banks and other institutions. In 2013, the largest numbers of complaints were filed against the courts (18.6%), the Ministry of Interior and police (14.7%), prosecutor offices (10.6%), and Parliament (7.5%).<sup>493</sup>

Given that the Ombudsman is not required to consult any agency or person before criticising it, as well as to allow the criticised to reply, such consultations has never been carried out. In fact, if the Ombudsman identifies any violation of human rights and freedoms, it applies to the body or institution that violated the right with the request to eliminate the violation, subject to mandatory consideration by the respective entity within one month.<sup>494</sup> In 2013, the Commissioner filed 62 such requests, with most of them sent to the ministries (20), the Cabinet of Ministers (14), and Prosecutor General Office (4).<sup>495</sup>

In 2013, the Ombudsman organized a series of awareness raising events, however, most of them were connected to the human rights issues rather than to the standards of ethical behaviour. Those events covered a wide scope of issues, such as implementation of the new Law on Civic Associations, counteraction to discrimination in education, advertising and other areas, prevention of home violence, development of legal education, and implementation of the European standards in media. In this regard, the civil society organizations stressed that most of those awareness-raising events were organized on an ad hoc basis, rather than based on comprehensive vision of the goals to be achieved.<sup>496</sup> The lack of the Commissioner's attention to raising awareness within government and the public about standards of ethical behaviour can be explained by the fact that Ombudsman is not legally required to promote such standards. At the same time, these standards (respect to human rights, prevention of corruption) are indirectly advocated for through the Ombudsman's requests for elimination of the violated rights.

<sup>491</sup> http://www.ombudsman.gov.ua/ua/page/applicant/procedure-for-submission/ [accessed December 1, 2014].

<sup>492</sup> Art. 2 of the Law on Ombudsman.

<sup>493</sup> Ombudsman, 2014 Annual Report, p.543.

<sup>494</sup> Art. 15 of the Law on Ombudsman.

<sup>495</sup> Ombudsman, 2014 Annual Report, p.547.

<sup>496</sup> Expert Group for Monitoring of the Ombudsman's Activities, Effectiveness of Performance the Ombudsman's Secretariat. 2013 Report, 2014, pp. 229-230.

### **Key recommendations**

## For the Verkhovna Rada of Ukraine:

The Law on Ombudsman should be amended to specify information related to the Ombudsman's performance subject to mandatory publication, as well as to clearly state that the Ombudsman must include into its annual reports information on functioning of its Secretariat (detailed budget and report on its execution, number of staff employed, annual staff flow, measures taken to improve staff qualifications), as well as information on relations with the stakeholders (such as the Government, parliamentary committees, NGOs, international organisations).

The Law on Ombudsman should provide for annual independent audit of the Ombudsman's performance and funding.

The Law on Ombudsman should clearly list the cases when the Commissioner must apply to the Constitutional Court of Ukraine to challenge constitutionality of the legislations, as well as the grounds for forwarding citizen complaints to other authorities, for accepting the complaints and for instructing a complainant on the measures to be taken to protect his/her rights.

#### For the Ombudsman:

The Commissioner should organise annual training of its staff on integrity issues.

# 8. SUPREME AUDIT INSTITUTION

## Summary

In the 2011 NIS Assessment, the Supreme Audit Institution was acknowledged as the highest rated institution of the NIS in terms of its capacity, governance and role in the National Integrity System. Since then, its overall performance has changed for the worse. While the legislation governing the SAI activities has generally remained the same (except for the provisions on integrity of the public officials, which were significantly improved in 2014), the overall level of independence, transparency, accountability and integrity of the SAI has decreased. While the SAI has certain resources to exercise its duties, its financial and human resources are limited. Appointments of the SAI senior staff are dependent on the will of the parliamentary coalition, while financial and operational independence of the SAI are not properly ensured in practice. Since 2012, when the new SAI Chair was appointed by the legislature, the overall level of the SAI's transparency decreased: the SAI fails to publish its audit reports as it did before 2010, while some documents/information subject to mandatory publication is not in fact being published. The SAI has never released its annual report for 2013, while the level of SAI integrity is impeded by lack of training on integrity issues. The limited mandate of the SAI restricts its capacity to carry out effective financial audits, while misbehaviour detected by SAI mostly goes unsanctioned due to lack of evidence in the audit reports and lack of effective response to the violations by law enforcement agencies. SAI's role in improving financial management is also limited.

The table below presents a general assessment of SAI in terms of capacity, governance and role in the national integrity system. The table is followed by a qualitative assessment of the respective indicators.

## SUPREME AUDIT INSTITUTION

#### Overall Pillar Score (2015): 53.47/100

Overall Pillar Score (2010): 65.97/100			
Dimension	Indicator	Law Practice	
Capacity	Resources	50 (2015), 75 (2010)	
56.25/100	Independence	75 (2015, 2010)	50 (2015), 100 (2010)
Governance	Transparency	50 (2015, 2010)	25 (2015), 75 (2010)
	Accountability	75 (2015, 2010)	50 (2015), 75 (2010)
54.16/100	Integrity	75 (2015), 50 (2010)	50 (2015), 75 (2010)
	Effective Financial Audit	50 (2015, 2010)	
Role 50/100	Detection and Sanctioning Misbehaviour	50 (2014, 2010)	
	Improving financial management	50 (2014), N/A (2010)	

#### Structure and organisation497

In Ukraine, external audit of public finances is carried out by the Accounting Chamber, the body established based on Art.98 of the Constitution of Ukraine. Its constitutional mandate is limited to supervising State Budget incomes and expenses on behalf of the legislature. The Chair and other members (First Deputy Chair, Deputy Chairs and chief inspectors) of the SAI are appointed and dismissed by the Parliament. The Accounting Chamber's Secretariat is in charge of providing legal, technical and other support to the SAI's Board. Organisational structure and list of members of the Secretariat's staff are subject to approval by the Board of the Accounting Chamber upon proposal of the Chamber's Chair. The Board (which includes the SAI members appointed by the Parliament) plans and organises the work of the SAI, approves audit reports and other documents governing the SAI's internal operations. In 2004, the Accounting Chamber formed its regional offices, <sup>498</sup> which cover most regions of Ukraine (as of December 1, 2014, there were 7 regional offices of the Accounting Chamber).

The status, powers, general procedures for operation of the SAI are determined by the Law on Accounting Chamber and Budget Code. They also regulate relations of the SAI with other public authorities, including the Parliament, it's committees, MPs, Government, law enforcement and government agencies.

#### Assessment

## Resources (practice) - Score 50 (2015), 75 (2010)

<sup>497</sup> On July 2, 2015 the Verkhovna Rada of Ukraine has adopted a new law On Accounting Chamber, but for the moment of preparation of the report the President hasn't signed it yet

<sup>498</sup> Resolution of the Cabinet of Ministers of Ukraine on Establishment of the Regional Offices of the Accounting Chamber of Ukraine, 18 November 2004, № 1577.

To what extent does the audit institution have adequate resources to achieve its goals in practice?

Although SAI has certain financial, human and technical resources, some resource gaps in financial and human resources lead to certain degree of ineffectiveness in the SAI carrying out its duties.

The overall level of SAI funding in the national currency increased from UAH 70,419,600 (or USD 8.8 million, based on the exchange rate at that time) in 2010 to UAH 98,898,600 in 2014. However, due to significant changes in currency exchange rates, the amount of funding available to the Accounting Chamber in 2014 translates into only USD 6.6 million (as of December 1, 2014), meaning that the overall funding of the SAI, in fact, has decreased.

Over the last several years, in some cases the funds have been allocated to the Accounting Chamber with delays, while certain types of SAI expenses remained underfunded. In particular, in 2010 the Cabinet of Ministers introduced changes to the State Budget of Ukraine (further approved by the Parliament) aimed to decrease funding of the Accounting Chamber needs by UAH 3 million, which impeded effective audit planning and public procurement of goods and services at the expense of the funds allocated to the Accounting Chamber.<sup>499</sup> The same year, the Government refused to increase funding of the SAI costs related to international relations with SAIs of other states (such as, business trips of Ukraine's SAI members abroad, participation in international events and discussions), as well as underfunded expenses related to development of the Accounting Chamber's internal information system.<sup>500</sup> In 2011, the activities of the Accounting Chamber were again underfunded, while the funds allocated to SAI under the State Budget Law for the respective year were transferred with delays.<sup>501</sup> Delays in funding also continued during the next years.<sup>502</sup>

Human resources of the Accounting Chamber are generally stable, although since 2008 the number of full time employees has been decreasing. For instance, in 2008 SAI employed 500 members of staff (the largest number in the SAI's history), while during the next years that number has been decreasing, first to 479 in 2009, then to 464 in 2010<sup>503</sup>, 458 in 2011<sup>504</sup> and, finally, to 454 in 2012 (less than 90% of the actual needs).<sup>505</sup> Overall, in 2012 the number of persons working for the SAI was even lower than in 2007 (461 employees). The share of employees working at the Accounting Chamber for more than 5 years increased from 48.6% in 2010 to 64% in 2012.<sup>506</sup>

Finally, while Ukraine's administrative system includes 25 regions (without Crimea and Sevastopol occupied by Russian Federation since March 2014), SAI has only 7 regional offices, and this number has not increased since 2004 to ensure that each office covers one region [see: Structure and organisation].

#### Independence (law) - Score 75 (2015, 2010)

To what extent is there formal operational independence of the audit institution?

The legal framework governing SAI operational independence has not changed since 2010. In

<sup>499</sup> Accounting Chamber, 2010 Annual Report, 2011: 194.

<sup>500</sup> Accounting Chamber, 2010 Annual Report, 2011: 194.

<sup>501</sup> Accounting Chamber, 2011 Annual Report, 2012: 165.

<sup>502</sup> Accounting Chamber, 2012 Annual Report, 2013: 187.

<sup>503</sup> Accounting Chamber, 2010 Annual Report, 2011: 186.

<sup>504</sup> Accounting Chamber, 2011 Annual Report, 2012: 159.

<sup>505</sup> Accounting Chamber, 2012 Annual Report, 2013: 181.

<sup>506</sup> Accounting Chamber, 2012 Annual Report, 2013: 182.

general, it provides for a number of mechanisms aimed to ensure SAI independence, but some of the respective provisions have yet to be harmonized with the international standards to strengthen SAI independence.

The Law on Accounting Chamber seeks to ensure SAI independence and includes a number of provisions to protect it from undue external influence. The law explicitly prohibits interference with the SAI operations; tenure of the SAI members exceeds the Parliament's term and equals to 7 years; the Chair and other members of the Accounting Chamber are appointed by the legislature through the secret ballot. The Law also provides for incompatibility of the membership in the Chamber are appointed to office based on the Chamber's Chair proposal, something that can be viewed as an additional mechanism to prevent appointments from political interference. Moreover, the Law sets an exhaustive list of grounds for pre-term termination of office of the SAI members, provides for a separate item in the State Budget to fund the Chamber's needs.<sup>507</sup> The Law on the Accounting Chamber provides for the possibility of re-electing the SAI Chair for the new term, while the Chair is entitled to independently decide on any internal appointments of the personnel, as well as to resolve any issues connected to auditing.<sup>508</sup>

At the same time, the provisions aimed to ensure the SAI independence are laid down in the Law on Accounting Chamber, rather than in the Constitution, which is contrary to the Lima Declaration of Guidelines on Auditing Percept, <sup>509</sup> the main international document outlining the key principles of external audit of public finance. The Accounting Chamber's Chair and other members of the SAI are appointed by absolute (i.e., not qualified or 2/3) majority of votes of all the MPs, that to some extent leads to SAI dependence on the parliament's coalition [see: Independence (practice)]. Further, under Article 15 of the Law on the Accounting Chamber, SAI is obliged to include in its activity/audit plans the proposals of not less than 150 MPs and audits appointed by the Parliament, while Article 32 of the same Law provides for the right of the legislature to direct the activities of the Chamber in order to fulfil the SAI tasks determined by the legislation (for further details see: National Integrity System Assessment: Ukraine 2011, p. 131). All these provisions to some extent decrease the level of SAI independence.

#### Independence (practice) - Score 50 (2015), 100 (2010)

To what extent is the audit institution free from external interference in the performance of its work in practice?

While the Accounting Chamber has certain level of independence from the executive and legislature, the procedure for appointment of its members, dependence on the Parliament in terms of audit planning, as well as funding issues, all decrease the level of the SAI independence in practice.

The previous Accounting Chamber's Chair Velentyn Somynonenko was discharged from office on July 7, 2011 due to expiration of his term in office.<sup>510</sup> After that, the Chair's position remained vacant until April 12, 2012 (i.e., almost one year), when the new Accounting Chamber's Chair, Roman Mahuta, was appointed.<sup>511</sup> The representatives of the opposition criticized this appointment as their interests were ignored by the ruling majority in the legislature while making the decision on whom to

<sup>507</sup> Articles 10, 37, 38 of the Law on the Accounting Chamber.

<sup>508</sup> Article 10 of the Law on the Accounting Chamber.

<sup>509</sup> Section 5 of the Lima Declaration of Guidelines on Auditing Percepts; http://www1.worldbank.org/publicsector/pe/befa05/LimaDeclaration. pdf [accessed December 1, 2014].

<sup>510</sup> Parliament's Resolution No 3602-VI, dated July 7, 2011.

<sup>511</sup> Parliament's Resolution No 4632-VI, dated April 12, 2012.

appoint to the vacant position.<sup>512</sup> Some journalists also claimed that the key task of the new Chair of the Accounting Chamber was to "conceal" information on the real situation in public finances from the opposition and journalists, as the overall level of transparency in SAI's work had decreased following Mahuta's appointment<sup>513</sup> [for further details see: Transparency (practice)].

Financial independence of the Accounting Chamber is not fully ensured in practice. Although the budget of the Accounting Chamber constitutes a separate item in the State Budget of Ukraine and is not included into budget of any public authority, the Ministry of Finance directly decides on the amount to be annually allocated to the Accounting Chamber to cover its operational costs (even though such decision is subject to further approval by the Government, legislature, and, ultimately, by the President of Ukraine who signs State Budget Law for the respective year). In practice, this decreases the level of financial independence of the SAI: for instance, in 2012 the Government made a decision to stop funding of the development of the SAI internal information system.<sup>514</sup> The cases when the Accounting Chamber receives funding with delays are not rare instances. <sup>515</sup>

Operational independence of the SAI to certain extent is impeded by the provisions in the Law on Accounting Chamber (Art.15 of the Law) requiring the Chamber to include in its operational plans audits appointed by the legislature or audits requested by 150 MPs. As a result, legislature, parliamentary committees and individual MPs influence the SAI audit plans.<sup>516</sup>

### Transparency (law) - Score 50 (2015, 2010)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the SAI?

Compared to 2010, the legislation aimed to ensure transparency of the SAI has not changed and still contains rather broad requirements as to which information on the SAI activities must be published.

Like other public authorities, SAI is obliged to make public on its website general information on its organizational structure and activities, including information on its mission, powers, goals, budget, schedule and agendas of the open meetings, contact details of its Chair and his/her deputies (as well as contact details of the directors of the SAI internal units), adopted decisions and reports, general rules for operations.<sup>517</sup> SAI is also required to provide information upon requests for information, unless access to such information is restricted by law.<sup>518</sup>

Under the Law on Accounting Chamber, SAI must annually submit to the Parliament a report on its activities, which, after having been approved by the legislature, is to be published on the Accounting Chamber website. SAI is also required to publish information on its activities in the media. However, the legislation fails to specify which information (in addition to annual reports and the information subject to mandatory for publication under the Law on Access to Public Information), when and in which media should be published<sup>519</sup> (see also: National Integrity System Assessment: Ukraine 2011, p. 132-133).

<sup>512</sup> See transcript of the meeting of the Parliament, at which the candidate for the Accounting Chamber Chair was discussed at: http://static. rada.gov.ua/zakon/skl6/10session/STENOGR/12041210\_27.htm

<sup>513</sup> Kriukova Svitlana, Chamber No 6; http://www.epravda.com.ua/rus/columns/2013/05/31/377512/ [accessed December 1, 2014].

<sup>514</sup> Accounting Chamber, 2012 Annual Report, 2013: 187-188.

<sup>515</sup> Accounting Chamber, 2012 Annual Report, 2013: 187-188.

<sup>516</sup> See, for instance: Accounting Chamber, 2012 Annual Report, 2013: 22-23.

<sup>517</sup> Art.15 of the Law on Access to Public Information.

<sup>518</sup> Art. 20 of the Law on Access to Public Information, Art. 40 of the Law on Accounting Chamber.

<sup>519</sup> Art. 35, 40 of the Law on Accounting Chamber.

### Transparency (practice) - Score 25 (2015), 75 (2010)

#### To what extent is there transparency in the activities and decisions of the audit institution in practice?

Since 2010, the level of transparency of SAI operations significantly decreased and public access to information on the SAI work has become restricted.

In particular, the most recent annual report on the SAI activities was published in 2013 and covered the Accounting Chamber's activities during 2012, while the report for 2013 has never been published.<sup>520</sup> In violation of the Law on Access to Public Information, the Accounting Chamber website presents no contact details of the SAI Chair, his deputies and directors of the departments, neither does it contain detailed budget of the SAI and report on responses to requests for information for 2013.<sup>521</sup> The Accounting Chamber internal regulations restrict access to SAI decisions and other documents related to internal activities of the Accounting Chamber, as well as activities connected to audits of public finance (such as documents related to planning, organization and carrying out the audits of public expenses).<sup>522</sup> The only internal regulation made public so far is its Procedure for preparations to and holding of the audits, approved in 2004.<sup>523</sup> Audit reports approved by the SAI are not made publicly available: out of 58 auditing reports approved by the Accounting Chamber in the first half of 2014 none has been published.<sup>524</sup> While most of the quarterly working plans are made public on the SAI website in advance, as of December 1, 2014, the working plan for the 4th quarter of 2014 has not been published.

Nevertheless, SAI publishes on its website and in media general information on audits performed and their results on a regular basis.<sup>525</sup>

#### Accountability (law) - Score 75 (2015, 2010)

To what extent are there provisions in place to ensure that the SAI has to report and be answerable for its actions?

The legal framework includes extensive provisions aimed to ensure that the Accounting Chamber is answerable for its actions. However, lack of legal requirements providing for mandatory audit of economic and financial activities of the Accounting Chamber to some extent decreases the level of accountability of the SAI.

Under Article 35 of the Law on the Accounting Chamber, the SAI is obliged to submit its written annual report to the parliament by 1 December. The report must present the results of implementation of the parliament's decisions, performed audits, expenses for the relevant activities.

SAI also must inform the legislature on the results of audits and checks, detected violations of the legal provisions, as well as to prepare, upon the parliament's requests, expert opinions on the draft State Budget Law, draft laws in the areas of fiscal, financial, monetary and credit policy, draft

<sup>520</sup> All the Accounting Chamber reports made public so far are available at: http://www.ac-rada.gov.ua/control/main/uk/publish/category/32826 [accessed December 1, 2014].

<sup>521</sup> See, for instance, http://www.ac-rada.gov.ua/control/main/uk/publish/article/16739205; http://www.ac-rada.gov.ua/control/main/uk/publish/ article/89962; http://www.ac-rada.gov.ua/control/main/uk/publish/article/16740769 [all accessed December 1, 2014].

<sup>522</sup> List of data referred to information with restricted access is available at http://www.ac-rada.gov.ua/control/main/uk/publish/article/16738654 [accessed December 1, 2014].

<sup>523</sup> http://www.ac-rada.gov.ua/control/main/uk/publish/category/121 [accessed December 1, 2014].

<sup>524</sup> http://www.ac-rada.gov.ua/control/main/uk/publish/category/412 [accessed December 1, 2014].

<sup>525</sup> See, for instance: http://www.ac-rada.gov.ua/control/main/uk/publish/category/411 [accessed December 1, 2014].

national programs and international agreements requiring public expenses for their implementation. The Accounting Chamber also has the right to submit to the parliament proposals for improvement of legislation in the areas of the fiscal, financial and other similar policies.<sup>526</sup> However, it is at the parliament's discretion to decide on whether to hold discussion of the Accounting Chamber's reports and opinions or not.

There is no requirement in the laws that SAI's financial management or operations are subject to any mandatory, regular and independent audit. However, the possibility of performing such audits by State Financial Inspection (SFI), which is in charge of supervising the public expenditures on behalf of the executive, is not excluded. In any case, the audits performed by the SFI cannot be considered independent, as SFI is the government's agent subordinated to and directed by the Cabinet of Ministers through the Minister of Finance.<sup>527</sup>

## Accountability (practice) – Score 50 (2015), 75 (2010)

#### To what extent does the SAI have to report and be answerable for its actions in practice?

Since 2010, the level of accountability of the Accounting Chamber has to certain extent decreased, while the existing provisions aimed to ensure that the SAI is answerable for its actions are partially implemented.

In 2012 and 2013, the Accounting Chamber submitted to the legislature detailed reports on its activities covering 2011 and 2012 (respectively), and those reports were published in full on the SAI website. The information in those reports went even beyond what is required by the Law on Accounting Chamber. In particular, the annual reports for 2011 and 2012 covered the issues related to internal SAI functioning (human resources, training activities), SAI relations with the Parliament, various government agencies and law enforcement bodies, media, SAIs of other states, and international donors implementing public finance-related projects in Ukraine. The reports also presented in-depth account of all the audits undertaken by the Accounting Chamber, as well as their results, including estimates for detected misuse of the State Budget funds or ineffective use of public money. The reports also suggested some changes to the legislation governing public finance management and status of the Accounting Chamber within the overall governance system.<sup>528</sup>

In addition to the annual reports, the Accounting Chamber also provides the parliamentary committees and MPs with the reports and opinions required by the current legislation, including opinions on draft State Budget Laws and execution of the State Budget for the respective years, opinions on the draft legislation related to public finance (such as draft legislation on fiscal, monetary, credit policy), as well as reports on the audits carried out by the Chamber. The interlocutor from the parliamentary committee staff confirmed that the Accounting Chamber delivers its documents in a timely manner and to the extent required by the existing legal framework.<sup>529</sup> In 2012, the Accounting Chamber distributed among the MPs 7 information bulletins, while the overall number of the documents delivered to the Parliament was as many as 113. In the same year, 87 SAI's auditing reports were submitted to the Government, 11 were submitted to the Ministry of Finance, while various law enforcement agencies received 13 auditing reports for further investigation of ineffective use of the budget funds.<sup>530</sup>

As before 2010, the level of the Accounting Chamber's accountability is decreased by lack of

<sup>526</sup> Articles 26, 27, 30 of the Law on the Accounting Chamber.

<sup>527</sup> Statute of the State Financial Inspection, approved by the Cabinet of Ministers' Resolution No 310, dated August 6, 2014.

<sup>528</sup> See: Accounting Chamber, 2011 Annual Report; Accounting Chamber, 2012 Annual Report.

<sup>529</sup> Representative of the Secretariat of one of the parliamentary committees, interview with author, August 21, 2014.

<sup>530</sup> Accounting Chamber, 2012 Annual Report, 2013: 23-24.

independent financial audit of its own activities. In addition, the Accounting Chamber failed to produce its 2012 annual report on its activities during the year of 2013 and annual report required under the Law on Public Access to Information (i.e., the report on results of consideration of requests for information received by the Accounting Chamber). Therefore, legal requirements governing the SAI's accountability are only partially implemented.

#### Integrity (law) - Score 75 (2015), 50 (2010)

#### To what extent are there mechanisms in place to ensure the integrity of the audit institution?

Since 2010, the legal provisions aimed to ensure integrity of the SAI has been significantly improved by the legislature, however they still fail to cover some aspects related to SAI's integrity.

All the SAI employees are civil servants<sup>531</sup> and therefore fall under the scope of anti-corruption provisions governing the status and activities of the civil servants [See in more detail: Public Sector (Integrity (law)].

In January 2008, the Accounting Chamber adopted the Rules of Professional Ethics for the Accounting Chamber's Officials, most of provisions of which are based on the INTOSAI Code of Ethics<sup>532</sup>. The Ethics Commission, formed within the Accounting Chamber, is in charge of the enforcement of the Rules of Professional Ethics.

## Integrity (practice) - Score 50 (2015), 75 (2010)

#### To what extent is the integrity of the audit institution ensured in practice?

In general, the approach towards ensuring integrity of the SAI staff remains piecemeal and reactive, and it is limited to enforcement of the existing rules.

Since 2010, there have been no identified cases of corruption offences or other misbehaviour among the SAI staff.<sup>533</sup> There are no specific trainings for the Accounting Chamber's employees devoted to integrity issues: Staff trained mainly on auditing of public finances, accounting standards and other similar issues. In 2012, the Accounting Chamber organized 30 training activities on these matters, bringing together 270 members of the SAI staff (or 63% of all the staff employed by the Accounting Chamber).<sup>534</sup>

#### Effective financial audits (law and practice) - Score 50 (2015, 2010)

#### To what extent does the audit institution provide effective audits of public expenditure?

The Accounting Chamber is active in auditing public expenses, however its mandate is limited and does not allow to effectively supervise all public incomes and expenses.

<sup>531</sup> Art. 31 of the Law on Accounting Chamber.

<sup>532</sup> International Organization of Supreme Audit Institutions, Code of Ethics; http://www.issai.org/media/12926/issai\_30\_e.pdf [accessed December 1, 2014].

<sup>533</sup> Representative of the Secretariat of one of the parliamentary committees, interview with author, August 21, 2014.

<sup>534</sup> Accounting Chamber, 2012 Annual Report, 2013: 183.

As before 2010, SAI continues to carry out both legality and performance audits.<sup>535</sup> In particular, out of 20 auditing reports approved by the Accounting Chamber during the first quarter of 2014, 26 were reports on performance audits.<sup>536</sup> Audit reports of the SAI are comprehensive, and SAI submits them to the Parliament or the respective parliamentary committees for consideration while taking decisions on the draft laws or formulating policies on the issues in question.<sup>537</sup>

The Ukraine's governance assessment carried out in 2006 by SIGMA, pointed out that the Accounting Chamber at that time did not carry out regularity audits, in the sense of audits aimed at attesting the finances of each budget-spending unit, together with an opinion on the financial statements of the unit, or the financial accountability of the government as a whole. Moreover, there was no special annual audit aimed at issuing an overall opinion on the state accounts and based on examination of the accounts of all main users of the state budget.<sup>538</sup> No significant progress in this regard has been made since 2006 so far.<sup>539</sup>

While the 2013 amendments to the Constitution of Ukraine empowered the Accounting Chamber not only supervise the use of State Budget funds, but also State Budget incomes, certain areas of public finances do not fall under the scope of the SAI mandate. The Lima Declaration requires that all public financial operations, regardless of whether and how they are reflected in the national budget, be a subject to audit by SAI, and excluding parts of financial management from the national budget should not result in these parts being exempted from audit by SAI. The Accounting Chamber does not have any powers to supervise/audit local budget funds, as well as funds from the state owned enterprises and their subsidiaries, something that the Accounting Chamber has been advocating for over the last several years.<sup>540</sup> Further, although Art. 98 of the Constitution was amended in 2013 to empower the SAI to supervise State Budget revenues, the respective constitutional provision has never been further specified in the laws. According to the Law on Accounting Chamber of Ukraine, the powers of the SAI in this respect are still limited to obtaining and analysing information on the State Budget incomes from different state agencies (such as the Ministry of Finance, State Fiscal service), which can hardly be considered sufficient enough to make that supervision effective and to avoid duplication of the activities undertaken by the government agencies.

Director of the Accounting Chamber's Department for Defence and Law Enforcement Policy, Vasyl Nevidomyi,<sup>541</sup> also believes that SAI working plans are still oriented on checks/audits of specific budget programs and Government agencies, as well as on detection of violations and ineffective use of public funds, rather than on specific goals to be achieved based on the SAI audit results.

#### Detecting and sanctioning misbehaviour (law and practice) - Score 50 (2015, 2010)

#### Does the audit institution detect and investigate misbehaviour of public officeholders?

Although the Accounting Chamber does have broad powers to detect illegal or ineffective use of

<sup>535</sup> See: http://intosaiitaudit.org/mandates/writeups/ukarine.htm [accessed December 1, 2014].

<sup>536</sup> http://www.ac-rada.gov.ua/control/main/uk/publish/article/16743378 [accessed December 1, 2014].

<sup>537</sup> Representative of the Secretariat of one of the parliamentary committees, interview with author, August 21, 2014; see also: http://www. ac-rada.gov.ua/doccatalog/document/16741939/Selo\_2015.pdf [accessed December 1, 2014].

<sup>538</sup> SIGMA, Ukraine Governance Assessment, 2006: 120.

<sup>539</sup> Vasyl Nevidomyi, Modernization of the competence and legal status of the Accounting Chamber in the context of SAI legitimizing, Philosophy and Methodology Issues of the Law, 2014, Issue 1, p.128.

<sup>540</sup> International Monetary Fund, Government of Ukraine Report on Diagnostic Study of Governance Issues Pertaining to Corruption, the Business Climate and the Effectiveness of the Judiciary, 2014: 14; https://www.imf.org/external/pubs/ft/scr/2014/cr14263-a.pdf [accessed December 1, 2014].

<sup>541</sup> Vasyl Nevidomyi, Modernization of the competence and legal status of the Accounting Chamber in the context of SAI legitimizing, Philosophy and Methodology Issues of the Law, 2014, Issue 1, p.126.

the State Budget funds, and in fact detects numerous violations of the laws by public administration and officials, its powers to investigate and sanction the detected violations are limited, while the law enforcement agencies are not effective in bringing those who committed violations to liability based on the SAI reports.

The Law on the Accounting Chamber provides the SAI with extensive powers allowing it to detect misbehaviour and maladministration, in particular the right to obtain necessary information and documents from any agencies, the right to involve in audits specialists/auditors from other controlling agencies or independent institutions, as well as to analyse detected violations.<sup>542</sup> In 2012, the Accounting Chamber detected illegal or inefficient use of public funds amounting to as much as roughly UAH 13 billion (almost USD 1.5 billion).<sup>543</sup>

However, the SAI is not entitled to investigate the detected violations of the laws and to impose sanctions for violations of legislation. If the SAI reveals any facts of misbehaviour that might result in criminal or administrative liability, it is obliged to submit its findings to the law-enforcement agencies and to inform the legislature on the detected violations. The SAI may also submit the audit findings to the directors of the audited institutions.<sup>544</sup> In 2013, the Accounting Chamber acknowledged the fact that although some of its recommendations were not implemented by the audited agencies, many of them were taken into account, especially by the legislature.<sup>545</sup> In 2012, the Accounting Chamber forwarded to the prosecutor offices 13 auditing reports and other documents requested by prosecutors within the framework of criminal investigations. In most cases the prosecutor offices failed to institute any criminal proceeding against officials suspected of committing crimes, mainly due to lack of evidence in the SAI audit reports.<sup>546</sup> One expert stated that "one of the key problems the Accounting Chamber faces is that identified violations in use of public funds do not result in any prosecution: the citizens are only informed of those violations".<sup>547</sup>

## Improving financial management (law and practice) - Score 50 (2015), N/A (2010)

#### To what extent is the SAI effective in improving the financial management of government?

In all its audit reports, SAI comes up with a number of recommendations for improvement of financial management within the audited institutions, but in many cases the respective recommendations are not specific enough to be effectively implemented.

For instance, in 2012, the SAI recommended the Ministry of Finance to increase the share of local budget funds in consolidated budget of Ukraine, while in another case the Cabinet of Ministers was recommended to "strengthen" supervision of implementation of the IBRD project "Modernization of the State Tax Service of Ukraine -1".<sup>548</sup> These requirements can hardly be specific enough to be properly implemented. Some experts also agree that SAI recommendations should be more precise and realistic.<sup>549</sup>

The Accounting Chamber is entitled to supervise how and to which extent its recommendations are

<sup>542</sup> Articles 18 and 21 of the Law on the Accounting Chamber.

<sup>543</sup> Accounting Chamber, 2012 Annual report, 2013: 25.

<sup>544</sup> Article 26 of the Law on the Accounting Chamber.

<sup>545</sup> Accounting Chamber, 2012 Annual report, 2013: 65.

<sup>546</sup> Accounting Chamber, 2012 Annual report, 2013: 161-163.

<sup>547</sup> Dmytro Boyarchuk, Executive Director at CASE-Ukraine, interview with Mirror of the Week newspaper, September 19, 2013.

<sup>548</sup> Accounting Chamber, 2012 Annual report, 2013: 101, 117.

<sup>549</sup> See, for instance: Oleh Shevchuk, Accounting Chamber of Ukraine: current state and problems in performance, Herald of the Banking University of the National Bank of Ukraine, 2013: 231.

addressed by the audited institution, in particular by sending to the respective institution requests for information on implementation of its recommendations, through on site checks of implementation of recommendations (which are carried out no earlier than 6 months after the initial audit has been performed, but no later than one year after the initial audit), or through repeated audit of the institution concerned to identify changes in public finance management system.<sup>550</sup>

While SAI generally monitors how its recommendations are implemented, such monitoring is carried out mainly through analysis of requests for information on implementation of the recommendations by the audited institutions. The cases of repeated checks/audits are rather isolated cases than a common practice. Implementation of the SAI recommendations based on audit results remains week, while the Accounting Chamber considers strengthening control of implementation of its recommendations as one of the priorities.<sup>551</sup>

## Key recommendations

## For the Verkhovna Rada of Ukraine:

The constitutional provisions on the SAI role and powers related to external audit of public finances should be reviewed by the legislature to allow the Accounting Chamber to supervise all public incomes and expenses, local budgets, and public enterprises. Further, the Constitution should be changed to strengthen independence of SAI Chair. The list of possible options includes filling the Chair's vacant position through open competition with the winner to be selected based on precise and objective criteria, appointment of SAI Chair by another independent body/commission.

## For the Accounting Chamber:

The Accounting Chamber should organise trainings on integrity issues for its staff on a regular basis to cover (at least in a mid-term) all the employees holding the positions vulnerable to corruption risks.

# 9. ANTI-CORRUPTION AGENCIES

## Summary

On October 14 2014, within the framework of the anti-corruption reform, the Verkhovna Rada of Ukraineadopted the Law of Ukraine "On Prevention of Corruption" which particularly provides for the new institutional basis to form and implement anti-corruption policy, to conduct preventive anti-corruption work.ImplementingArt. 6 of the United Nations Convention against Corruption, this Law establishes a new body with relevant competence called the National Agency for the Prevention of Corruption (NAPC). The new Law provides for the basis of effective fulfilling of its duties by the new Agency in accordance with international standards. This refers both to the protection of the Agency's independence and scope of its authority and mechanisms of the implementation of the latter.

Despite the fact that the aforementioned Law came into force on April 26, 2015 NAPC creation process is rather slowto be raising well-grounded doubts concerning its transparency and impartiality.

Besides, in October 2014 the President of Ukraine established the National Council for Anti-

<sup>550</sup> Section 5.2 of the Procedure for preparations to and holding of the audits, approved by the Accounting Chamber's Board on December 27, 2004.

<sup>551</sup> Accounting Chamber, 2012 Annual report, 2013: 189.

corruption Policy<sup>552</sup> which is an advisory body at the Administration of the Head of the State. Among its tasks are systemic analysis of the corruption prevention and fight in Ukraine, developing suggestions for the anti-corruption policy. In fact this body still hasn't start its activities.

Until NAPC begins to function the Ministry of Justice of Ukraine has authority in some aspects of anti-corruption sphere. Mainly, they deal with developing draft laws, international cooperation, and explanatory work. The Ministry of Justice also performs some preparatory activities for the start of NAPC work.

Some functions to prevent corruption are also given to the GovernmentAgentfor Anti-corruption Policy whose office is vacant now. The respective functions are not performed except some formal decisions with no practical influence on corruption. When NAPC starts its activities there will be no objective need for this office anymore.

While the Ministry of Justice of Ukraine is a separate central body of executive power enjoying rather high level of its independence the office of the Government Agent for Anti-corruption Policy has been allocated within the Secretariate of the Cabinet of Ministers of Ukraine, an auxiliary agency involved into organizing of the Government's work.

The legislation doesn't provide for any special requirements concerning transparency, accountability, and integrity of the aforementioned anti-corruption institutions which already exist. They also do not paly any considerable riole in corruption cases investigation because they do not have respective authority. At the same time NAPC can boast of authorities to detect, establish and providing facts to courts concerningminor offences in relation to corruption for which administrative liability is provided.

Also, a network of internal corruption prevention and figh departments (offices) has been created for central and local bodies of executive power, but its work isn't efficient due to the lack of proper coordination.

In what refers to corruption fight by law enforcement means the key event was the creation of the specialized law enforcement agency for investigating of corruption crimes which have high level of social danger. The agency is called the National Anti-corruption Bureau which is actually commencing its activities now.

Creation of the Specialized Anti-corruption Prosecutor's Office which is provided for by the new Law of Ukraine "On General Prosecutor's Office" and which will run the procedure and support of the state prosecuting party in cases investigated by the National Anti-corruption Bureau of Ukraine is also very important. In practice, formation of this Prosecutor's Office hasn't started yet due to the organizational problems which delay the overall reform of the prosecutor's offices. So, the main part of the respective law will become effective only on July 15, 2015.

#### **ANTI-CORRUPTION AGENCIES**

Overall Pillar Score (2015): 57.5 / 100

Overall Pillar Score (2010)	II Pillar Score (2010): 42.36 / 100		
Dimension	Indicator	Law	Practice

<sup>552</sup> Decree of the President of Ukraine on October 14 2014 No 808 "On the National Council on Anti-Corruption Policy"; http://zakon2.rada.gov. ua/laws/show/808/2014[accessed July 1, 2015].

ANTI-CORRUPTION AGENCIES	3		
Capacity	Resources	75 (2015),0 (2010)	50 (2015, 2010)
62.5/100	Independence	75 (2015)25 (2010)	50 (2015, 2010)
Governance	Transparency	75 (2015),50 (2010)	50 (2015), 75 (2010)
	Accountability	75(2015), 50 (2010)	50 (2015, 2010)
60/100	Integrity Mechanisms	50 (2015), 25 (2010)	
Role	Prevention	75 (2015),50(2010)	
	Education	25 (2015), - (2010)	
	Investigation	50 (2015), - (2010)	

#### Structure and Organisation

Current Ukrainian legislation provides forthe creation of the specialised, independent public body of a durable nature with a specific mission to fight corruption through implementation of preventive and repressive measures in respect of minor corruption offences. According to the Law of Ukraine "On Prevention of Corruption", this mission has been assigned to the National Agency for the Prevention of Corruption, a central body of executive power which can boast of special status<sup>553</sup>.

The peculiar feature of this body is its composition of 5 members who are appointed by the Government on the basis of competitive selection process. The ageny's activities will be managed by its executive personnel. The regulation of the NAPC personnel, its structure as well as the regulation covering independent structural departments of the executive personnel will be approved by the agency. Boundary number of the agency's personnel will be approved by the Cabinat of Ministers of Ukraine upon the recommendation of the Head of the agency. The head of the executive personnel and his/her deputies will be appointed and discharged by the agency<sup>554</sup>.

During consideration of the draft law "On Prevention of Corruption" by the Verkhovna Rada of Ukraine the estimate number of the NAPC personnel was established as 250 persons<sup>555</sup>.

Legislation also provides for the possibility to create territorial branches of NAPC in case positive decision of the Government.

The National Council for Anti-corruption Policy at the Administration of the President of Ukraine still hasn't started its activities. The Council is a collegiate body which includes 9 governmental representatives and 9 members of the civil society, local government, and businesson a parity basis<sup>556</sup>.On April 27, 2015 the Administration of the President of Ukraine called to the civil society and business entities for proposals regarding nominees to the National Council for Anti-corruption Policy.

<sup>553</sup> Chapter II of the Law "On Preventtion of Corruption";http://zakon2.rada.gov.ua/laws/show/1700-18 [accessed July 1, 2015].

<sup>554</sup> Art. 8 of the Law "On Preventtion of Corruption"; http://zakon2.rada.gov.ua/laws/show/1700-18 [accessed July 1, 2015].

<sup>555</sup> Explanatory note to the draft Law on Prevention of Corruption; page of the draft Law on Prevention of Corruption (Registration No.5113 on 30.09.2014); http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\_1?pf3511=52247[accessed July 1, 2015].

<sup>556</sup> Point 7 of the Regulations on National Council on Anti-Corruption Policy approved by the Decree of the President of Ukraine on October 14 2014 No 808 "On the National Council for Anti-Corruption Policy"; http://zakon2.rada.gov.ua/laws/show/808/2014 [accessed July 1, 2015]

Since then no other activities have been undertaken.

In respect of other structures one has to note that following the adoption of the previous basic anticorruption Law on Principles for Prevention and Counteraction to Corruption (of April 7, 2011), the Ministry of Justice of Ukraine was given the powers of a specially authorised body on issues of anti-corruption policy. The Ministry of Justice was tasked to coordinate overall anti-corruption programimplementation, to conduct anti-corruption screening of the adopted and prospective legislation, to annually prepare and make public a report on measures taken to prevent and fight corruption.<sup>557</sup>

In 2014 the Ministry of Justice created a separate Department for Anti-corruption Policy whose staff was made up of 21 persons, but this unit lasted for only about half a year. During another reorganization be Department was dismissed. The anti-corruption issues are now dealt with by 7 persons who make up a new subdivision of the Department for Anti-corruption Legislation.

The standing legislation also provides for creation of the special units within all executive power bodies which will be authorized to prevent and detect corruption. (In case if the creation of this unit is viewed as unpractical an office of the agent for corruption prevention and detection is introduced.) The units will be authorized to provide interpretations of the anti-corruption laws, control of the laws requirements fulfilment in what refers to the prevention of the conflict of interests, development of measures to prevent corruption in respective agencies, control of the laws requirements fulfilment in what refers to the corruption and fight in general<sup>558</sup>.

In July 2013, the Government restored the position of the Government Agent for Anti-Corruption Policy Issues (hereinafter – Agent or Government Agent) which was abolished in February 2011. At first the Government Agent was named to beresponsible for development and implementation of the state anti-corruption policy within the bodies of the executive. The Agent was to facilitate the Cabinet of Ministers in coordination of the executive bodies anti-corruption activities. At the same time in 2014 the Government made amendments to the acts which regulated Agent's activities aimed at expanding Agent's authority. In particular, s/heprepares and submits to the Cabinet of Ministers for consideration proposals for development and implementation of anti-corruption policy, identifies corruption risks in the draft legislation submitted to the CMU Secretariat for consideration, cooperation with GRECO and other international organisations, approval of appointing and dismissing heads of authorized units to prevent and fight corruption as well as their structure, number of personnel and operating plans. The Government Agent's team provides theactivities and constitutes a separate structural unit of the Secretariate of the Cabinet of Ministers of Ukraine.<sup>559</sup>

In 2014 the Government Agent Tetiana Chornovol resigned and her post still remains vacant. At the same time in March 2015 the head of the Government Agent's team was obliged to fulfil the aforementioned duties of the Government Agent. The efficiency of such a decision can be hardly regarded positively because the institution's activities got actually limited to formal approvals. The amount of the Agent's duties has proved that his/herposition abolishment will be practical when the National Agency for the Prevention of Corruption starts its activities.

The National Council for Anti-corruption Policyis a collegiate body which includes 9 governmental representatives and 9 members of the civil society, local government, and business on a parity basis. Its composition is approved by the President of Ukraine who also appoints the Chairperson of the

<sup>557</sup> Art. 5, 14, 18 of the Law on Prevention and Counteraction to Corruption.

<sup>558</sup> Template Regulation for Anti-Corruption Unit (Official), approved by CMU Resolution No 706, dated September 4, 2014; http://zakon4.rada. gov.ua/laws/show/706-2013-%D0%BF/print1422265597398959 [accessed December 1, 2014].

<sup>559</sup> Regulation on the Government Agent for Anti-Corruption Policy Issues, approved by the CMU Resolution No 949, dated December 4, 2014; http://zakon4.rada.gov.ua/laws/show/949-2013-%D0%BF/print1422265597398959 [accessed December 1, 2014].

Council. The Executive Secretary of the Council is the Deputy Head of the Administration of the President of Ukraine by virtue of the position and who is in charge of anti-corruption<sup>560</sup>.

Prosecution of corruptionunder criminal procedure is a primary task of the prosecutor's offices, law enforcement agencies, National Anti-Corruption Bureau. These bodies detect, stop and investigate corruption-related crimes [see also: Law Enforcement Agencies].

Among these bodies National Anti-corruption Bureau is a specialized anti-corruption institution which is responsible for investigating corruption crimes by or related to top public officers as well as corruption offences in which considerable amounts of improper advantage or damage appear or active methods of either international or foreign top officials bribery.

As of the date when this report was made the Bureau was still undergoing its formation stage. Its Director and his deputies have been already appointed. The selective procedure for the personnel has been in its active phase. Generally speaking the National Anti-corruption Bureau structure envisages that several main departments will be created: for detecting and investigating of corruption offences (detectives and analysts), for law enforcement (operational and executive work, security of the Bureau staff and cooperative persons), auxiliary one (personnel office, accounting, IT). No more than seven territorial branches can be optionally created. The maximum total number of the staff cannot exceed 700 persons including no more than 200 of the Bureau's top officers<sup>561</sup>.

Still under construction is the Specialized Anti-corruption Prosecutor's Office which is provided for by the new Law of Ukraine "On General Prosecutor's Office" and which will function as a separate structural unit responsible for keeping supervision over law compliance during pre-trial inquiry held by the National Anti-corruption Bureau of Ukraine, support of the state prosecution during respective trials, representing interests of the citizens or the state (in case there are grouds for this) while considering corruption or corruption-related offences. The Specialized Prosecutor's Office will be led by the specific Deputy Prosecutor General. It will will have the head office and territorial branches hosted by the same cities with the territorial branches of the National Anti-corruption Bureau of Ukraine<sup>562</sup>.

#### Assessment

## Resources (law) - Score 75(2015), 0 (2010)

To what extent are there provisions in place that provide the ACA with adequate resources to effectively carry out its duties?

The new Ukrainian anti-corruption legislation provides for a scope of guaranties of proper resources allocation and maintenance of the anti-corruption bodies.

In respect of NAPC the Law "On Prevention of Corruption" stipulates for its financing at the expense of State Budget of Ukraine. Financing the National Agency at the expense of any other sources is forbidden except the cases established by the international agreements approved by the Verkhovna Rada of Ukraine or by the projects of the international technical aid. It has been established that the Agency is a main owner of budget money allocated for its financing and respective costs are stipulated in the State Budget of Ukraine as a separate line. The respective money supply has to be performed on the proper level to provide full-fledged fulfilment of Agency's duties, by means of

<sup>560</sup> Point 7 of the Regulations on National Council on Anti-Corruption Policy approved by the Decree of the President of Ukraine on October 14 2014 No 808 "On the National Council on Anti-Corruption Policy"; http://zakon2.rada.gov.ua/laws/show/808/2014 [accessed July 1, 2015]

<sup>561</sup> Art. 5 of the Law "On the National Anti-Corruption Bureau of Ukraine"; http://zakon4.rada.gov.ua/laws/show/1698-18[accessed July 1, 2015]

<sup>562</sup> Art. 8 and 81 of the Law "On General Prosecutor's Office";http://zakon4.rada.gov.ua/laws/show/1697-18[accessed July 1, 2015]

proper material resource, equipment, and other property necessary for the performing of official activities. The NAPC expenditures have to include money allocated for holding corruption situation research, information campaigns and training for corruption prevention and fight. The Head of the National Agency presents this public body at the meetings of the Cabinet of Ministers of Ukraine, Parliamentary committees or during plenary sessions of the Verkhovna Rada when Agency's financial issues are considered.

For the sake of proper NAPC personnel provision the law stipulates the norm that the salary of the Agency's employees has to provide them proper material conditions for fulfilling office duties with regard to nature of their work, its intensive character and danger. Slalaries amount laso have to provide the choice selection of qualified personnel for permanent positions in the Agency, create incentives for excellent results of office activities, and compensate for expenditure of intellectual energy. The NAPC wage-and-salary structure has also been well established and makes 19.5 minimum wagesby December 2015 which equals to UAH 23,700 or EUR 1,000. Besides, official rates of pay of the NAPC employees are the same with the ones of the Cabinet of Ministers of Ukraine's Secretariate officials<sup>563</sup>.

The Law provides for clear-cut requirements to the NAPC candidate employees such as age (no less ythan 35 years old), higher education, official language proficiency and proper manageras well as moral qualities, educational, professional, and health levelall of these allowing diligent fulfilment of office duties. Also some characteristics forbidding to take such positions have been provided for. They are previous conviction, legal incapability etc. Apart from the mentioned above the Law has no other special requirements to the candidate employees.

The NAPC members are to be appointed by the Government according to the results of the open and transparent selection process broadcast online. The selection process is held by the Commission formed on a parity basis from the representatives of the civil society and public officials proposed by public agencies<sup>564</sup>. Also the Government has approved the Regulation of the Selective Competition of the NAPC Candidate Employees as well as the Rules of the Selection Panel Work<sup>565</sup>.

With no special requirements the Agency candidate employees (apart from auxiliary staff) will be selected on the general basis defined by the standing legislation on public service, i.e. via competition process or by means of transfer from other public agencies.

The Agency executive staff will be obliged to take obligatory further training on a regular basis, at least once for two years<sup>566</sup>.

The existing legal framework does not provide for sufficient resources for the Government Agent on the Anti-Corruption Policy Issues to carry out its functions. There are no special budgetary allocations to fund the Government Agent and/or his office; relevant funding is a part of the general budget of the CMU Secretariat. Accordingly, the actual resources received by the Government Agent and his office depend on the discretion of the Government and, in particular, the minister of the Cabinet of Ministers, who chairs the CMU Secretariat. Since the Agent and his office are not instituted as a separate entity (e.g. as a separate executive agency), they have very limited, if any, possibilities in suggesting and defending the amount of budgetary funding.

The law provides the Ministry of Justice with sufficient funding, but that funding covers general

<sup>563</sup> Art. 16 and 17 of the Law "On Prevention of Corruption"; http://zakon2.rada.gov.ua/laws/show/1700-18 [accessed July 1, 2015]

<sup>564</sup> Art. 5 and 10 of the Law "On Preventtion of Corruption"; http://zakon2.rada.gov.ua/laws/show/1700-18 [accessed July 1, 2015]

<sup>565</sup> Government Decree No 170, March 25, 2015 "On Some Issues of Selection of the National Agency on Corruption Prevention Members"; http://zakon2.rada.gov.ua/laws/show/170-2015-%D0%BF [accessed July 1, 2015]

<sup>566</sup> Part 4 of Art. 8 of the Law "On Preventtion of Corruption"; http://zakon2.rada.gov.ua/laws/show/1700-18 [accessed July 1, 2015]

expenses of the Ministry of Justice rather than specific anti-corruption activities carried out by the Ministry of Justice. The internal structure of the Ministry of Justice includes Department for Anti-corruption Legislation, Justice and Security, which generally has the same status as any other departments of the Ministry.

Internal anti-corruption units of the executive bodies are not provided with separate funding either, as their budgets are included into the general budget of the respective executive body.

The Regulation of the National Council for Anti-corruption Policy doesn't stipulate any peculiarities of the resource provision for its activities. This is also true for other consultative bodies at the Administration of the President of Ukraine. The Council members take part in its work on a voluntary basis. Organizational and analytical support of the National Council is provided by the Administration of the President of Ukraine and State Department of General Affairs (within the scope of their competence). Scientific support of the National Council activities is provided by the National Institute for Strategic Studies<sup>567</sup>.

The Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" stipulates a range of provisions which secure proper activities of the Bureau. Thus, the Bureau is secured with full and timely budgeting to the extent necessary for fulfilling its proper activities. Apart from the State Budget of Ukraine the Bureau can bi financed at the cost of international technical aid and in some other cases provided for by the international agreements signed by Ukraine. Also there are provisions for the creation of the Investigation and Search Operations Fund (particularly, secret inquiry operations). According to the Law, the National Anti-Corruption Bureau is provided by necessary material means, equipment, other property for performing its duties. At he same time such kind of assistance is forbidden to be provided at he cost of local budgets or any other sources apart from the State Budget of Ukraine and any international technical aid<sup>568</sup>.

According to the amendments to the Budget Code of Ukraine which were made simultaneously with the adoption of the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" the latter has been awarded the status of a main budget owner<sup>569</sup>.

Another important aspect of the National Anti-Corruption Bureau of Ukraine is its high salaries for employees if compared with the workers of other public bodies, particularly law enforcement agencies. The Law provides for the wage-and-salary structure of the Bureau's employees and the official rate of pay (apart from which some bonuses are stipulated). E.g. the Bureau Director's rate of pay makes 60 minimum wages by December 2015 which equals to UAH 60,900 or EUR 2,600, and the Bureau detective rate of pay makes 19 minimum wages by December 2015 which equals to UAH 23,700 or EUR 1,000.

The Law establishes a range of requirements to a candidate Director of the Bureau openly elected on a competitive basis such as higher legal education, at least 10-years-long employment record in law, management experience in public agencies, including foreign ones or international agencies, official language proficiency, and proper manager as well as moral qualities, educational, professional, and health level all of these allowing diligent fulfilment of office duties<sup>570</sup>.

The qualification requirements to the Bureau employees are stipulated by the Bureau Director. Thus

<sup>567</sup> Points 7 and 11 of the the Regulations on National Council on Anti-Corruption Policy approved by the Decree of the President of Ukraine on October 14 2014 No 808 "On the National Council on Anti-Corruption Policy"; http://zakon2.rada.gov.ua/laws/show/808/2014 [accessed July 1, 2015]

<sup>568</sup> Art. 24 and 25 of the Law "On the National Anti-Corruption Bureau of Ukraine"; http://zakon4.rada.gov.ua/laws/show/1698-18 [accessed July 1, 2015]

<sup>569</sup> Art. 22 of the Budgetary Code of Ukraine; http://zakon4.rada.gov.ua/laws/show/2456-17/paran458#n458[accessed July 1, 2015]

<sup>570</sup> Art. 6 of the Law "On the National Anti-Corruption Bureau of Ukraine"; http://zakon4.rada.gov.ua/laws/show/1698-18 [accessed July 1, 2015]

a candidate employee needs to have higher legal education and at least 2-years-long employment record in law. Their selection process is completed on a competitive basis except the offices of Deputy Directors whose positions are not obligatory competitive by the Law requirements.

Due to the lack of proper counter-corruption of the law enforcement agencies and according to the law the National Anti-Corruption Bureaucannot employ persons who worked or served in specially authorized anti-corruption units of the Prosecutors' Offices, Ministry of Internal Affairs of Ukraine, fiscal police, Security Service of Ukraine, Military Law and Order Service at the Armed Forces of Ukraine and customs agencieswithin recent five years prior to the day when the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" came into force (i.e. within te period from January 25, 2010 till January 25, 2015)<sup>571</sup>.

The Bureau executive staff are obliged to take obligatory further training on a regular basis, at least once for two years<sup>572</sup>.

In accordance with the Law of Ukraine "On General Prosecutor's Office" the material provision of the Specialized Anti-Corruption Prosecutor's Office is the same with the provisions regulation of other prosecuting agencies in general [see also: Law Enforcement Agencies]. It also refers to the qualification requirements for the head and employees of the aforementioned prosecutor's office. Their selection is done by means of open competition.

Similarly to the case of the National Anti-Corruption Bureau, the Specialized Anti-Corruption Prosecutor's Office cannot employ who worked or served in specially authorized anti-corruption units of the Prosecutors' Offices, Ministry of Internal Affairs of Ukraine, fiscal police, Security Service of Ukraine, Military Law and Order Service at the Armed Forces of Ukraine and customs agencies within recent five years prior to the day when the Law of Ukraine "On the General Prosecutor's Office" came into force (i.e. within te period from July 15, 2010 till July 15, 2015)<sup>573</sup>.

Special checks verifying possibility to take office are held in respect of candidates to all of the aforementioned agencies apart from the National Council for Anti-Corruption Policy as well as in respect of the Bureau's detectives and prosecutors after their appointment. During the checks candidates are verified for the purpose of establishing any facts of criminal or administrative liability, earlier convictions, and any profit participation rights. The assets declarations of the candidates, their health level, particularly, any psychiatry or narcology records, military history, if any, and official secrets access are also checked.

A separate component of the special checks is verification of the candidate in the view of the provisions of the Law of Ukraine "On Lustration", including occupation of top public offices during the regime of Yanukovych, taking of illegitimate decisions respect of the participants of the mass protest actions in late 2013 – early 2014, any relation to the KGB and Communist Party agencies of the USSR<sup>574</sup>.

There are some aspects of the NAB candidates assets declarations check-up. Apart from overall verification performed by the State Fiscal Service of UkraineNAPC and Bureau's internal security units will also conduct similar verification.

<sup>571</sup> Point 61of the Chapter II "Final Provisions" to the Law "On the National Anti-Corruption Bureau of Ukraine"; http://zakon2.rada.gov.ua/laws/ show/1698-18/page3 [accessed July 1, 2015]

<sup>572</sup> Part 7 of Art. 10 of the Law "On the National Anti-Corruption Bureau of Ukraine"; http://zakon4.rada.gov.ua/laws/show/1698-18 [accessed July 1, 2015]

<sup>573</sup> Point 1 of the Chapter XII "Final Provisions" to the Law "On General Prosecutor's Office"; http://zakon1.rada.gov.ua/laws/show/1697-18/ page4http://zakon2.rada.gov.ua/laws/show/1698-18/page3 [accessed July 2, 2015]

<sup>574</sup> Art. 56 of the Law "On Prevention of Corruption"; http://zakon2.rada.gov.ua/laws/show/1700-18 [accessed July 1, 2015]

## Resources (practice) - Score 50 (2015, 2010)

#### To what extent does the ACA have adequate resources to achieve its goals in practice?

Due to the fact that the National Agency for the Prevention of Corruption hadn't been created by the time this assessment was finalized there is no actual possibility to establish if its supply of resources is enough. The NAPC membership competition was on its initial stage. Still it is necessary to note that the State Budget of Ukraine for 2015 has envisaged NAPC expenditures totalling UAH 112,520,600 including payments of salaries up tp UAH 61,805,300<sup>575</sup>. Respective expenditures have been provided for the State Budget particularly due to the wide public response produced by MPs and civil society members in respect of absence of money for these aims in the draft Budget. Generally speaking, NAPC is just starting its activities, selection process for its membership is currently running, and the Government has formed the Selection Panel<sup>576</sup>.

The information on the financing amount for the Government Agent for Anti-Corruption Policy Issues is absent. The activities of the Government Agent Tetiana Chornovol was provided by a number of the Cabinet of Ministers of Ukraine Secretariate, and the status of this official didn't allow any financing different from the general resources allocation.

As regards the Ministry of Justice, the available financial resources generally allow it to effectively carry out its duties related to anti-corruption policy within its competence, although anti-corruption staff reduction doesn't promote any efficiency and strengthening of the personnel potential.

The expenditures for the National Anti-Corruption Bureau appeared in the draft version of the State Budget of Ukraine for 2015 only after related public statements of some politicians and civil society activists. Their fixed amount totals to UAH 249,000,000 (nearly EUR 106,500,000), including salaries extending up to UAH 160,650,000 (nearly EUR 69,000,000).

The Bureau has its own premises. At the same time it enjoys donors' aid and international technical aid projects.

On completion of the open competition which was broadcast online the Director of the Bureau. The Selection Panelrecommended two candidates to the President of Ukraine one of whom has been actually appointed. The Director appointed three Deputies and has commenced the competition to select Bureau personnel. The competition is chatacterized with considerable openness of information, candidates interviews which are broadcast online, and the selection panels have the representatives of the Council of Civic Control at the Bureau.

At the time of assessment the Specialized Anti-Corruption Prosecutor's Office hasn't been yet created, so researching the practical aspect of its resource supply is impossible.

### Independence (law) - Score 75(2015), 25 (2010)

To what extent is the ACA independent by law?

The Standing legislation secures range of guaranties of the NAPC independence:

<sup>575</sup> Annex 3 to the Law "On the State Budget of Ukraine for 2015"; http://zakon4.rada.gov.ua/laws/show/80-19/page2http://zakon4.rada.gov.ua/ laws/show/2456-17/paran458#n458 [accessed July 1, 2015]

<sup>576</sup> Government Edict "On Approval of Composition of the Panel to Select the National Agency on Corruption Prevention Members"; http://zakon3.rada.gov.ua/laws/show/581-2015-%D1%80[accessed July 1, 2015]

Special status of the Agency has been well defined by the effective laws. It is a specialized preventive anti-corruption body which is represented by its Head in the Government, i.e. activities of the Agency are directed and coordinated directly by the Cabinet of Ministers without any proxy appointed by the Government which is the norm for the majority of central bodies of the executive power (apart from Ministries).

The Agency has been delegated all the functions in the sphere of anti-corruption which is, particularly, the demand of the UN Convention against Corruption, UNDP Methodology for Assessment of the Anti-Corruption Body Capacity to Perform Preventive Functions.

Special transparent procedure of the NAPC members selection (the Government appoints members selected by the panel).

Limited terms of service for the Agency members lasting four years and with no possibility to serve more than two terms in a row.

Immunity to illegal dismissal of the NAPC members: the list of early dismissal causes has been clear-cut by law and exhaustive (e.g. reaching 65-year-old limit, termination of Ukrainian citizenship, coming into force of guilty verdict by the court which has established facts of systemic violation of the Law "On Prevention of Corruption").

Plenipotentiary powers for the NAPC members, particularly in respect of obtaining necessary information, access to the premises of the executive power bodies, issuing instructions of binding nature, applying to courts of justice, initiating administrative or criminal liability.

NAPC is secured from illegal interference, particularly by mechanisms of criminal proceedings (e.g. the suspicion of commiting a criminal crime can be notified to an NAPC member only by the (Acting) Prosecutor General of Ukraine).

NAPC members and executive employees, their close relatives, and property are secured by legal and social protection. The Agency's members and executive employees' terms of payment are considerably higher than the ones among other similar categories of public servants.

Special order of financing and material supply of NAPC has been established by law.

Transparent NAPC activity base has been established, particularly by means of annual reporting on its activities, civil society control over Agency's ways which will be performed by the Civil Council with plenipotentiary powers<sup>577</sup>.

In what concerns the Government Agent for Anti-Corruption Policy and Ministry of Justice it is necessary to point out that their independence isn't secured by laws.

The Government Agent is appointed and dismissed by the Cabinet of Ministers of Ukraine upon proposal of the Prime Minister. It is subordinated to the Cabinet of Ministers directly.<sup>578</sup> There are no provisions in place on competitive selection of the Agent, or on the tenure of the Government Agent and protection against his arbitrary removal. It is thus at the political discretion of the Prime Minister and the Cabinet of Ministers whom to appoint as Government Agent. Regulation on the Government Agent is approved by the Cabinet of Ministers of Ukraine. A the Secretariat of the Agent is structural unit of the CMU Secretariat, the Government Agent cannot independently decide on whom to appoint

<sup>577</sup> Art. 4 -17 of the Law "On Preventtion of Corruption"; http://zakon2.rada.gov.ua/laws/show/1700-18 [accessed July 1, 2015]

<sup>578</sup> Regulation on the Government Agent for Anti-Corruption Policy Issues, approved by the CMU Resolution No 949, dated December 4, 2014.

to open positions within the Agent's Secretariat, or whom to dismiss – all the respective issues are decided by the Minister of the Cabinet of Ministers of Ukraine.Although the Government Agent has been charged with authority to submit proposals, i.e. candidates to be appointed his/her deputies and executive personnel, initiate their dismissal, encouragement, and bringing to accountability, and approve the structure and staff size<sup>579</sup>.

Also laws don't secure independence of the Department for Anti-Corruption Legislation, Justice, and Securityof the Ministry of Justice. It is not ensured by the Law as the Department and its employees generally have the same legal status as all other internal units/employees of the Ministry, meaning that all the key issues related to functioning of the Department (appointment of the Department director, his/her discharge from office, termination/reorganization of the Department) are decided on by the Minister of Justice.<sup>580</sup> Bright example of such actions is the abolishment of the separate Department for Anti-Corruption Policy as a structural unit of the Ministry.

At the same time, the legal framework provides for some guarantees of independence of the anticorruption units of the executive bodies. In particular, their establishment is mandatory, while the appointment of the unit's director by the head of the respective executive body must be agreed by the Government Agent for Anti-Corruption Policy Issues, a provision that protects director of the unit from arbitrary dismissal. Also, the legislation makes it clear that the director of the unit is accountable to the Government Agent, rather than to the head of the respective executive body.<sup>581</sup> Nevertheless, as far as the budgets of the anti-corruption units constitute integral part of the budgets of the respective executive bodies, their independence is still in doubt.

After its start the NAPC adopts the mission to coordinate, provide methodology and analyze the activities efficiency of authorized units.

The Status of the National Council for Anti-Corruption Policy Issues as a consultative body at the Administration of the President of Ukraine doesn't envisage any additional guaranties of independence, though having considerable representation of the civil society and business is aimed at facilitation of objective decisions to be taken by this body.

The current legislationsecures a number of guaranties for the National Anti-Corruption Bureau among which are the following:

The Bureau status has been legally secured and defined (law enforcement agency which doesn't belong toany of the branches of power and is not subordinated directly either to the President, or public agencies).

Wide range of Bureau's powers is necessary for effective detection, stopping, and investigation of corruption crimes.

Selection process for the position of the Bureau's Director is specific (the President appoints one of the three candidates selected by the Panel).

Limited term of service for the Bureau's Director which can last for seven years with no right of second term. And the list of causes for early dismissal is exhaustive (e.g. in case of election or appointment to another office, incapability to perform official duties due to health condition in

<sup>579</sup> Paragraph 4.15 of the Regulation on the Government Agent for Anti-Corruption Policy Issues.

<sup>580</sup> Paragraphs 8.19, 14 of the Regulation on the Ministry of Justice, approved by CMU Resolution No 228, dated July 2, 2014; http://zakon1. rada.gov.ua/laws/show/228-2014-%D0%BF/print1422382774700068 [accessed December 1, 2014].

<sup>581</sup> Paragraphs 3, 12 of the Template Regulation for Anti-Corruption Unit (Official), approved by CMU Resolution No 706, dated September 4, 2014.
accordance with medical commission conclusion, coming into force of guilty verdict by the court in Director's respect, obtaining another nationality etc.).

The basis for selection of other National Bureau's personnel is competitive. The Bureau's staff enjoy special property and social protection, proper payment conditions.

Financing and material and technical supply order of the National Bureau has been legally established.

The personal safety of the National Bureau's staff, their close relatives, and property has been provided by the law.

The National Bureau cannot be involved and used in any party, group or personal interests as well as it cannot take part in political parties activities.

The illegal interference of the public bodies, local governments, their officials and public servants, political parties, civil societies, other natural persons or legal entities with the Bureau's activities is forbidden.

The Bureau's activity base is transparent, aprticulalry by means of annual reporting on its activities and civil society control over them which will be conducted by the Council of Civil Control with plenipotentiary powers<sup>582</sup>.

Nevertheless, the procedure for the appointment and dismissal of the Director of the National Anti-Corruption Bureau was the subject of political discussion at the Parliament while making amendments to the Law "On the National Anti-Corruption Bureau of Ukraine". It actually hindered the adoption of the respective draft law which envisaged some improvements to the anti-corruption legislation. The main subject for discussions was the role of the President and Verkhovna Rada in solving staff issues concerning the head of the Bureau. The process made it obvious that politicians desired to be able to influence the appointed person. As the result the President of Ukraine managed to preserve his/her sole right to appoint the Director of the Bureau, though being limited up to the three candidates instead of one who are recommended to him by the selection panel. The Parliament got its authority to dismiss the Bureau's Director in specific cases by two thirds of vote<sup>583</sup>.

Thus, some legislative guaranties of the National Anti-Corruption Bureau have been narrowed.

For the sake of preventing such attempts in future as well as securing full legal certainty the National Anti-Corruption Bureau status and independence guaranties need to be defined by the Constitution of Ukraine.

The law also contains some independence guaranties of the Specialized Anti-Corruption Prosecutor's Office, particularly:

Organizational autonomy (The Specialized Prosecutor's Office is a separate unit of the GeneralProsecutor's Office of Ukraine which is geographically located in the National Anti-Corruption Bureau or on other premises apart from Prosecutor General's Office. The head of the Specialized Prosecutor's Office represents it in relations with other agencies, civil society and international

<sup>582</sup> Art. 1, 4-6, 16,17, 30, 31 of the Law "On the National Anti-Corruption Bureau of Ukraine"; http://zakon4.rada.gov.ua/laws/show/1698-18 [accessed July 1, 2015]

<sup>583</sup> Law "On Amendments to Some Legislative Acts of Ukraine on Ensuring Activity of the National Anti-Corruption Bureau of Ukraine and the National Agency for Corruption Prevention"

organizations.).

Special order of appointment of the head and other leadership of the Specialized Prosecutor's Office by means of open competition.

Ban on the Specialized Prosecutor's Office head or his/her deputies transfer to another General Prosecutor's Office unit or any regional or local prosecutor's office within the term they were appointed for (five years for the Specialized Prosecutor's Office head) without their consent<sup>584</sup>.

### Independence (practice) - Score 50 (2014, 2010)

#### To what extent is the ACA independent in practice?

Despite the fact the NAPC formation process is on its initial stage well-grounded doubts have arisen in respect of executive power agencies' (Government's in the first place) desire to secure true independence of the new anti-corruption body. The problem became obvious during formation of the selection panel to choose NAPC members in the wake of action groups meeting which elected 4 candidates representing civil society. As it turned out neither selected candidates, nor organisations that promoted them were active anti-corruption activists. Besides, actually no one of the active anticorruption NGO members has been selected. During the meeting itself anti-corruption experiences of the present NGOs and their promoted candidates weren't discussed.

Such results caused well-grounded doubts concerning transparency of the conducted competition which were expressed by the civil society representatives in public not once<sup>585</sup>. Besides, some of the NGOs applied for the copies of the NGOs' documents whose candidates were selected to the Commission.

Studying belated documents civil society actually established the fact that a number took cross references from each other while provingtheir own anti-corruption experience. A number of NGOs had one and the same legal address, leaders or even submitted identical descriptions of their anti-corruption experience and list of anti-corruption events<sup>586</sup>.

It means that the Secretariate of the Cabinet of Ministers of Ukraine failed to properly verify submitted respective documentation. As the result of the approach taken conducted voting for sivil society representatives election to the selection panel cannot be considered a just and transparent one.

The aforementioned facts led to litigation of the Governmental decision to approve the composition of the Selection Panel by the Transparency International Ukraine which also litigated the Cabinet of Ministers of Ukraine's Secretariate delay in presenting information and documents related to the conduction of the aforementioned action groups meeting upon the request.

In its turn the Committee on Corruption Prevention and Counteraction of the Verkhovna Rada of Ukraine appealed to the General Prosecutor's Office with the request to check the legitimacy of the action groups meeting<sup>587</sup>, and the Representative of the President of Ukraine in the Parliament

<sup>584</sup> Art. 81 of the Law "On General Prosecutor's Office"; http://zakon4.rada.gov.ua/laws/show/1697-18 [accessed July 2, 2015]

<sup>585</sup> Government of Ukraine manipulated composition of the panel that will select members of the National Corruption Prevention Agency; Transparency International Ukraine; http://ti-ukraine.org/news/oficial/5256.html[accessed July 2, 2015]

<sup>586</sup> In violation of the law, the Cabinet of Ministers of Ukraine creates a 'puppet' Anti- Corruption commission. Transparency International Уκραїнα;http://ti-ukraine.org/sites/default/files/u/1093/docs/page1.jpg[accessed July 2, 2015]

<sup>587</sup> Prosecutor-General's office is requested to verify the legitimacy of the "Hreba Civic Election"; Reanimation Package of Reforms; http://www. rpr.org.ua/en/news/2015-06/0/298[accessed July 2, 2015]

announced the break he tookfrom the Selection Panel activities until the settlement of the problematic issues of its formation<sup>588</sup>.

Regardless of all these events the first meeting of the Selection Panel took place. The Panel decided to announce a recess in its session till June 25 and requested the Verkhovna Rada to delegate its representative candidate to the Panel.

The Prime Minister of Ukraine Arsenii Yatseniuk made his public statement concerning this situation only on June 22, 2015 pointing out that he is ready to substitute Government's representative in the Selection Panel, particularly by means of appointment of the civil society representative.

In connection with this the Reanimation Package of Reforms made a public statement concerning further steps to be taken by the Government which would help to settle the NAPC formation situation<sup>589</sup>.

Obviously, such a start of the NAPC formation procedure cannot be regarded as just and transparent one, that't why the selection panel competition has to be restarted. Otherwise, there appears a trueto-life danger that NAPC members will be chosen by the Selection Panel with improper experience, and non-transparent method of panel formation causing doubts even now raises questions on the intentions to provide NAPC with real independence already discrediting this agency.

Lack of competitive selection, the absence of protected tenure and clear grounds for dismissal of the Government Agent for Anti-Corruption Policy Issues undermine in practice the independence of this office. For instance, in 2010, the Government appointed the Government Agent, but after the change of Government the post of the Government Agent was terminated, and the powers of the incumbent Government Agent were terminated either. However, in the subsequent years cases of interference with their activities are unknown.

The Government Agent is placed relatively high in the system of executive authorities and has direct access to the Government meetings. Therefore, in practice the Government Agent can exercise a high level of autonomy vis-à-vis ministries and other executive agencies. The Government Agent has no authority or influence over law enforcement agencies, but can refer detected allegations of corruption to the latter and receive from them information on the results of verification of such allegations.

Given that the positions of the Department for Anti-Corruption Policy, Justice, and Securityof the Ministry of Justice are vulnerable to political interference [see: Independence (law)], the level of independence of their employees form the Minister of Justice is low. On a positive note, the incumbent Director of the Department, regardless of numerous structural changes in the Ministry, has been holding his position for many years.

The activities of the National Council for Anti-Corruption Policy haven't started yet which makes it impossible to assess their practical aspects in respect of improper influences on its work.

According to the results of the conducted competition the President of Ukraine was recommended two candidates for the office of the Director of the National Anti-Corruption Bureau one of which was supported by him. In general, there are no facts witnessing any interference with the contest

<sup>588</sup> Poroshenko's Representative "took a brake" because of scandal in Anti-Corruption Agency; Ukrainska pravda;http://www.pravda.com.ua/ news/2015/06/10/7070843/[accessed July 2, 2015]

<sup>589</sup> Open statement of Reanimation Package of Reforms regarding possible government's activities in changing the panel to select members of National Agency for the Prevention of Corruption; Reanimation Package of Reforms. http://www.rpr.org.ua/ua/news/2015-06/0/304[accessed July 2, 2015]

committee activities. Although, sometimes it was criticized by the civil society for the attemts to delay the selection procedure.

A positive aspect in the conducted competition was a new possibility to follow all the stages of the competition online.

At the moment this assessment was fimalized the Specialized Anti-Corruption Prosecutor's Office formation process hadn't started yet. Nevertheless, the issue of influence on this body has become the subject of discussions among politicians. The debatable question is constituted by specific components of the selection procedure to choose candidates to be appointed head and to other administrative offices in the Specialized Prosecutor's Office (commission composition, possibility of independent appointment of deputies by the Specialized Prosecutor, number of candidates to be recommended to the General prosecutor for appointment). The debate was held within the framework of the legal amendments initiated by a number of MPs which are necessary for the further prosecution sphere reform. Civil activists stood their ground to provide for the independence of the Specialized Anti-Corruption Prosecutor, minimization of his/her dependence of the General Prosecutor<sup>590</sup>.

Finally, there weresuccessful efforts to stipulate the amended provision to the Law of Ukraine "On the General Prosecutor's Office" that the selection commission majority will be made up from the persons delegated by the Verkhovna Rada (7 persons) and only 4 persons will be delegated by the General Prosecutor/

# Transparency (law) - Score 75(2015), 50 (2010)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ACA?

The new anti-corruption legislation provides for norms ensuring transparency of the anti-corruption institutions.

In respect of NAPC its key transparency guaranties are these:

Public competition for the candidates striving for NAPC membership (including online broadcast, publication of information on candidates).

Publication of the National Report on Implementation of the Anti-Corruption Policy Framework prepared by NAPC.

Publication of annual reports on NAPC activities approved by the Civil Council at the Agency.

Publication of all the records of the meetings and decisions of NAPC.

Introduction of the open United State Register of the Assets Declarations of Persons Authorized to Perform Functions of State or Local Government.

Introduction of the open United State Register of the Persons who Committed Corruption or

<sup>590</sup> Activists Brought a Two-Meter Toilet to the Parliament to "Flush" the Criminal Cases Against Top Corrupt Officials; Anti-Corruption Action Center; http://antac.org.ua/en/2015/06/activists-brought-a-two-meter-toilet-to-the-parliament-to-flush-the-criminal-cases-against-top-corrupt-officials/[accessed July 2, 2015]

#### Corruption-Related Offences.

Concerning the transparency of the Ministry of Justice and Government Agent for Anti-Corruption Policy activities effective legislation doesn't provide for any special features in relation to their functions transparency apart from the fact that currently the Ministry of Justice actually runs the United State Register of the Persons who Committed Corruption Offences.

Nevertheless, these institutions as well as all other public agencies are covered by the Law "On Access to Public Information" that requires to publish information on the structure, mission, budget of the respective institutions, adopted decisions and contact details of directors of the structural units of the CMU Secretariat and Ministry of Justice [see: Public Sector (Transparency (Law)]. They are also required to provide information upon requests for information in a timely manner. The Government Agent is also legally required to inform public on implementation of anti-corruption policy of the state, as well as to place in the media materials on prevention and counteraction to corruption.<sup>591</sup> However, the legislation fails to specify which information/materials are expected to be published/released.

The Regulation of the National Council for Anti-Corruption Policy stipulates some provisions on transparency of its activities. Thus, the activities of the National Council for Anti-Corruption Policy is open and public.

Their transparency is achieved by means of providing conditions for attending its meetings to the mass media representatives (unless the meeting is closed). The publicity is also provided by publication of information on the National Council activities, decisions and their draft versions that were made and posted on the official web page of the President of Ukraine. The National Council informs society on its activities on a regular basis. There is also a possibility to hold closed meetings of the National Council if its Head chooses so<sup>592</sup>.

According to the legal norms and standards the key transparency guaranties of the National Anti-Corruption Bureau are these:

Public competition for the selection of candidates who run for the office of the Director of the National Anti-Corruption Bureau of Ukraine (including online broadcast, publication of the information on candidates).

Publication of semiannual accounts of the National Bureau together with the conclusion of the Council of Civil Control.

Publication of the annual conclusion of the independent external audit of the National Bureau's activities.

The National Bureau regularly informs the society on its activities via mass media, web page as well as other forms.<sup>593</sup>

The legislation doesn't provide for any specific aspects for the transparency of the Specialized Anti-Corruption Prosecutor's Office activities if compared to other prosecutors' offices in general. The only exception is that the competition for the candidates running for the positions of the Specialized

<sup>591</sup> Paragraph 4 of the Regulation on the Government Agent for Anti-Corruption Policy Issues.

<sup>592</sup> Point 10 of the Regulations on National Council on Anti-Corruption Policy approved by the Decree of the President of Ukraine on October 14 2014 No 808 "On the National Council on Anti-Corruption Policy"; http://zakon2.rada.gov.ua/laws/show/808/2014 [accessed July 1, 2015]

<sup>593</sup> Art. 7, 26, 30 of the Law "On the National Anti-Corruption Bureau of Ukraine"; http://zakon4.rada.gov.ua/laws/show/1698-18 [accessed July 1, 2015]

Prosecutor's Office head and his/her deputies is open.

# Transparency (practice) - Score 50 (2015), 75 (2010)

To what extent is there transparency in the activities and decision-making processes of ACA in practice?

As NAPC hasn't started its activities it's impossible to assess the practical aspect of its activities transparency to the full extent. At the same time problematic issues of the failure to secure transparency while holding competition to form the Agency have been described in a different chapter [see: Anti-Corruption Agencies (Independence (practice)].

While transparency the Ministry of Justice' activities aimed to prevent corruption is ensured in practice, many important aspects of work of the Government Agent remain opaque.

Comprehensive information on activities of the Ministry of Justice and its Department for Anti-Corruption Legislation, Justice, and Security (as well as anti-corruption structural units which preceded it) is available on the Ministry of Justice website. In particular, website presents information on public events organised by the Ministry, draft legislation subject to public consultations, contact details of the key members of staff. Asset declaration of the Director of Department is also made publicly available. The Ministry of Justice adheres to the legal requirements obliging it to make public annual report on measures taken to prevent and counteract corruption, and all the respective reports are available on the Ministry's website. Also the reports of the Group of States against Corruption (GRECO) have been publicized.

The activities of the Government Agent (when the respective position was occupied by Tetiana Chornovol) were not covered by the Government website. However, the latter presents comprehensive information on activities of the previous Government Agent Andrii Bohdan, who left his post in the beginning of 2014. The last Government Agent, Tetiana Chornovol, who was discharged from office in September 2014, tended to cover her activities in her blog and on the Facebook, focusing mainly on tensions with civil society activists and certain officials, as well as result of previous investigations of corruption.

The activities of the National Council for Anti-Corruption Policy are not publicized because this body doesn't function.

The National Anti-Corruption Bureau informs the society about its activities via its own web site. As its main activities is concentrated on the personnel selection now, so considerable amount of information is covering this process. Particularly, all the lists of persons who passed or failed another stage of competition are constantly posted. The samples of questions covering proficiency in law and used during tests, competence profiles for specific positions, general conditions of the competition also can be found on the web site. Considerable assistance in dissemination of information on competition is delivered by the Council of Civil Control at the Bureau which publishes all competition committees' meetings online as well as sittings of the Bureau itself. The Council has its Facebook page. The Bureau's leadership is giving interviews on a regular basis. They cover current and scheduled activities in the Bureau. The only drawback is low functionality and serviceability of the web site.

The Specialized Anti-Corruption Prosecutor's Office hasn't started its activities, so their transparency cannot be possibly assessed.

# Accountability (law) - Score 75 (2015), 50 (2010)

To what extent are there provisions in place to ensure that the ACA has to report and be answerable for its actions?

The standing legislation provides for the requirements regarding accountability of the new anticorruption bodies.

So, NAPC as the body responsible for the anti-corruption policy frameworking prepares annual National Report on Implementation of the Anti-Corruption Policy Framework which includes detailed information on the results the law enforcement agencies activities, generalized results of the legal acts anti-corruption expertise as well as of the darft laws, information on the results of executive bodies wich fulfilled measures to prevent and fight corruption (including international cooperation), generalized analysis of the corruption situation, report on Anti-Corruption Strategy implementation results, conclusions and recommendations.

Draft report developed by NAPC is to be considered and approved by the Government and then the National Report is presented to the Verkhovna Rada of Ukraine for approval and publication<sup>594</sup>.

The civil control over NAPC activities is provided by the Civil Council at the Agency which is created and formed by the Cabinet of Ministers of Ukraine out of 15 persons selected on the competitive basis.

Respective competition is to be held by means of preferential voting during constituent assembly on the civil society representatives<sup>595</sup>.

The Civil Council hears the information on the National Agency activities, plans and tasks fulfillment, approves annual reports on the National Agency's activities, provides conclusions on the results of NAPC draft acts expertise, delegates its representative to take part in the Agency's meetings without a right to vote.

NAPC prepares annual reports on its activities which are published on its official web site subsequently to its approval by the Civil Council at the National Agency<sup>596</sup>.

The Ministry of Justice is accountable to the legislature through the procedures of the parliamentary oversight, while the Government Agent is accountable to the Cabinet of Ministers through procedures of appointment/dismissal of the Agent.

Until recently when the Law "On Prevention of Corruption" became effective the Ministry of Justice had had to prepare annual reports on the measures taken to prevent and counteract corruption, as well as to publish such reports by April 15 of the year, following the year under report. The Law "On Principles for Prevention and Counteraction to Corruption" of April 7, 2011 which lost validity on April 26, 2015 had earlier provided for a list of requirements the report had to comply with. In particular, the report had to present information on the number of persons brought administrative liability for corruption offences, on the number of persons convicted for having committed corruption offences, on results of anti-corruption, on surveys conducted by government agencies and independent polling institutions, on results of implementation of the anti-corruption strategy. Some of these requirements, such as "measures taken by public authorities" were too broad to be effectively enforced and needed to be further specified.

<sup>594</sup> Art. 18, 20 of the Law "On Prevention of Corruption"; http://zakon2.rada.gov.ua/laws/show/1700-18 [accessed July 1, 2015]

<sup>595</sup> Rules of organization and conduction of competitionto form Public Board under the National Agency for Corruption Prevention, approved by the Governmental Decree No 140, dated March 25, 2015; http://zakon4.rada.gov.ua/laws/show/140-2015-%D0%BF

<sup>596</sup> Art. 18, 20 of the Law "On Prevention of Corruption"; http://zakon2.rada.gov.ua/laws/show/1700-18 [accessed July 1, 2015]

There is no requirement in the laws that the Government Agent or the Ministry of Justice must be audited by independent auditors on annual basis.

Standing legislation also provides for the proper accountability rules for the National Anti-Corruption Bureau.

NAB activities are under control of the Verkhovna Rada of Ukraine Committee which is in charge of fighting corruption and organized crime (Committee on Corruption Prevention and Counteraction).

The Director of the Bureau is obliged to:

Inform the President of Ukraine, Verkhovna Rada of Ukraine, and the Cabinet of Ministers of Ukraine on the main issues in the activities of the National Anti-Corruption Bureau and its units in respect of fulfilling tasks, compliance with the legislation, rights and freedoms of persons;

Submit semiannual reports on Bureau's activities to the President of Ukraine, Verkhovna Rada of Ukraine, and the Cabinet of Ministers of Ukraine every half a year.

Written reporting includes information on the statistical data concerning Bureau's activities, its cooperation with other agencies, business entities, institutions, organizations, cooperation with foreign nations competent authorities, international and foreign organizations and agreements which are made with them, Bureau representation abroad, qualification and experience of its staff, their further training, Bureau's internal control department activities, number of reports on offences committed by the Bureau staff, results of their consideration, brining of the National Bureau staff members to accountability, National Bureau cost accounting and its fulfillment, other information related to the results of the National Bureau activities and fulfillment of its duties<sup>597</sup>.

Besides, the Council of Civil Control is being created at the National Anti-Corruption Bureau which will not only hear the information on the Bureau's activities, but also consider semiannual reports and provide its own conclusion. The Council of Civil Control will consist of 15 persons who will be selected on a competitive basis<sup>598</sup>. The respective competition will be conducted by means of preferential Internet-voting of persons residing in the territory of Ukraine<sup>599</sup>.

Another accountability instrument of the National Anti-Corruption Bureau is annual independent assessment (audit) of its activities efficiency, its operational and institutional independence, particularly via audit of selected criminal proceedings whose pre-trial inquiry was conducted and completed by the National Anti-Corruption Bureau.

The aforementioned assessment (audit) is to be conducted by the external control commission made up of three persons appointed by the President of Ukraine, Verkhovna Rada of Ukraine, and the Cabinet of Ministers of Ukraine (1 person per institution) from the selection of persons who can boast of considerable experience of work in pre-trial inquiery agencies, prosecutors' offices, courts abroad or international organizations, who have perfect business reputation and enough proficiency and skills to conduct such an assessment (audit).

<sup>597</sup> Art. 26 of the Law "On the National Anti-Corruption Bureau of Ukraine"; http://zakon4.rada.gov.ua/laws/show/1698-18 [accessed July 1, 2015]

<sup>598</sup> Art. 31 of the Law "On the National Anti-Corruption Bureau of Ukraine"; http://zakon4.rada.gov.ua/laws/show/1698-18 [accessed July 1, 2015]

<sup>599</sup> Point 2 of the Regulations on Rules of the Public Control Board formation, approved by the Presidential Decree No 272, dated May 15, 2015; http://zakon4.rada.gov.ua/laws/show/272/2015

If independent external control commission arrives to the conclusion about inefficiency of the National Anti-Corruption Bureau's activities and inadequate fulfillment of duties by its Director it can constitute a relevant cause for Director's early dismissal.

In combination with the right the Parliament enjoys to initiate respective dismissal this aspect, as well as formation of the commission by the politicians, establishes a risk of improper political influence of the Bureau's Director and the agency in whole.

The legislation doesn't provide for any peculiar aspects of the Specialized Anti-Corruption Prosecutor's Office accountability if compared to other prosecutors' offices in general. The head of the Specialized Anti-Corruption Prosecutor's Office is subordinated directly to the General Prosecutor.

As it is in the case of other executive power bodies decisions, actions and deficient performance of all the abovementioned institutions can be challenged in administrative courts (apart from law enforcement agencies decisions which are challenged in accordance with the order established by the Criminal Procedural Code of Ukraine).

Anti-corruption agencies do not have any special mechanism for whistleblowers protection. They are covered by general requirements to the legislation [see: Public Sector (Integrity (law)].

# Accountability (practice) – Score 50 (2014, 2010)

To what extent does the ACA have to report and be answerable for its actions in practice?

Though standing legislation provides for the requirements regarding accountability of the new anticorruption bodies they haven't started functioning as the bodies themselves are still in their initial stage of formation.

Nevertheless, the Council of Civil Control at the National Anti-Corruption Bureau has been formed already. Its representatives are included into commissions selecting staff. The process of the Council formation was characterized by some organizational difficulties. Due to the technical problems the first Internet voting didn't secure any objective character of the process as a candidate could be voted for numerous times via one and the same IP address. After the problem got obvious and the surge of public uproar<sup>600</sup> the Bureau Director announced another voting which was technically supported by the civil society. It ran smooth.

Until and including 2013 the Ministry of Justice, in line with the legal requirements, annually published its report on measures taken to prevent and combat corruption. The reports were consistent with the legal requirements. As the legal framework aimed to ensure accountability of the Government Agent was insufficient, its accountability could hardly be ensured in practice.

# Integrity (law and practice) - Score 50 (2015, 2010)

To what extent are there mechanisms in place to ensure the integrity of members of the ACA(s) and to what extent such mechanisms are implemented in practice?

The legislation doesn't provide any specific norms aimed at the NAPC executive staff, although persons who run their candidacy for the positions of the Agency members need to meet some requirements. In order comply with the office demands candidates cannot have any conviction

<sup>600</sup> Epic fail! Voting for council of public control failed; Transparency International Ukraine; http://ti-ukraine.org/en/news/oficial/5271.html

record, established criminal liability record in respect of the corruption or corruption-related offences even in case of expunged or expired criminal record. To avoid any political influence on the NAPC members the aforementioned position cannot be taken by a person who was participating in any political party leadership agencies within one year before applying for participation in the selection procedure<sup>601</sup>.

In respect of the candidates running for the position of the Director of the National Anti-Corruption Bureau requirements are more strict. This office cannot be held by a person who was participating in any political party leadership agencies or had any labor or other contractual relationships with political parties within two years before applying for participation in the selection procedure<sup>602</sup>.

Another peculiarity of the personnel selection procedure mechanism is a double verification of declaration: general, within the framework of special check-up, and specific which is performed by the internal control department for the sake of detection any false information in the assets declaration concerning any property (assets), revenues, expenditures, and financial commitments whose amount cannot exceed 50 minimum salaries (UAH 60,900 or nearly USD 2,770)<sup>603</sup>.

In general the internal control department is charged with the task to control and monitor the Bureau's staff compliance with integrity requirements (assets declarations verification, monitoring mode of life, employee investigation, whistleblowers protection etc.). The Law also provides for control department authority to check personnel for their integrity, but this mechanism hasn't been regulated legally<sup>604</sup>.

Both the Government Agent and staff of the Ministry of Justice Department for Anti-Corruption Policy are civil servants. Therefore they are covered by the general integrity rules applicable to all the civil servants. There are also no special provisions for specialized prosecutors (if compared to other prosecutors) and members of the National Council for Anti-Corruption Policy [see: Public Sector (Integrity (law)].

# Prevention (law and practice) - Score 75 (2015), 50 (2010)

# To what extent does the ACA engage in preventive activities regarding fighting corruption?

NAPC is a specialized agency responsible for preventive anti-corruption work and lodged with a wide range of plenipotentiary powers for its effective implementation. In the sphere of corruption prevention NAPC has the powers of:

Monitoring and control over compliance with legal acts on ethical behavior, prevention and regulation of conflicts of interests in public servants' activities.

Coordination and providing methodological assistance in the detection of corruption-generating risks by public bodies in their own activities; implementation of measures to remove them, particularly their anti-corruption programs preparation and fulfilment.

Control and verification of the assets declarations submitted by persons who are authorized to perform functions of state or local government, keeping and publication of these declarations,

<sup>601</sup> Part 9 of art.5 of the Law "On Prevention of Corruption"; http://zakon2.rada.gov.ua/laws/show/1700-18 [accessed July 1, 2015]

<sup>602</sup> Part 2 of Article 6 of the Law "On the National Anti-Corruption Bureau of Ukraine"; http://zakon4.rada.gov.ua/laws/show/1698-18 [accessed July 1, 2015]

<sup>603</sup> Point 8 of part 1 of art. 13 of the Law "On Prevention of Corruption"; http://zakon2.rada.gov.ua/laws/show/1700-18 [accessed July 1, 2015]

<sup>604</sup> Part 2 of art. 27 of the Law "On the National Anti-Corruption Bureau of Ukraine";

monitoring the mode of life of persons who are authorized to perform functions of state or local government.

Maintaining of the United State Register of the Assets Declarations of Persons Authorized to Perform Functions of State or Local Government and United State Register of the Persons who Committed Corruption or Corruption-Related Offences.

Approving of the state servants ethical behavior rules and analyzing efficiency of the of the activities of the authorized units for prevention and detection of corruption.

Providing explanatory work, methodological and consultative assistance in respect of legal acts implementation for the issues of ethical behavior, prevention and regulation of the conflicts of interests in the public servants' activities.

NAPC has right to issue obligatory instructions and has access to the public agencies databases.

The legal framework gives certain powers pertaining to prevention of corruption in the hands of the ACAs, but flaws in the legislation do not allow to effectively use those powers.

Before NAPC started its activities the role of the Ministry of Justice in prevention of corruption was in fact limited to anti-corruption screening of the current and prospective legislation, as well as to annual publishing of the reports on measures taken to prevent and counteract corruption. The Ministry of Justice published all the reports required by the Law "On Principles for Prevention and Counteraction to Corruption". As regards anti-corruption screening, during 2013, the Ministry of Justice conducted screening of 4,604 draft legal acts. The corruption-prone provisions were identified in only 19 draft legal acts. The effectiveness of the anti-corruption screening also raised doubts, because many drafts are not subject to mandatory anti-corruption screening under the Law on Principles for Prevention and Counteraction to Corruption.

As regards the role of the Government Agent in prevention of corruption, it is difficult to assess it as the Agent resigned in September 2014, and its position has been remaining vacant since then. But his/her powers included participation in taking personnel-related and organizational decisions related to the units for corruption prevention and detection in public bodies.

The National Anti-Corruption Bureau performs analytical work and information dissemination for the sake of establishing reasons and conditions facilitating corruption offences as well as removing them.

The Specialized Anti-Corruption Prosecutor's Office hasn't been lodged any special preventive competences, that's why it can only prevent corruption among its personnel or within supervisory authority in criminal cases.

The National Council for Anti-Corruption Policy Issues also doesn't have any special preventive functions, that's why within its scope of authority it provides analysis, monitoring, situation assessment, including the sphere of corruption prevention, and takes part in developing draft laws etc.

Preventive anti-corruption activities within executive power bodies and agencies are directly performed by their authorized units for corruption prevention and detection which prepare, provide, and control performing measures of corruption prevention, provide methodological and consultative

assistance concerning anti-corruption legislation compliance etc<sup>605</sup>. In regard to the lack of proper coordination, generalized information on their work efficiency is also unavailable.

# Education (law and practice) - Score 25 (2015), N/A (2010)

To what extent does the ACA engage in educational activities regarding fighting corruption?

According to the law NACP is charged with fulfillment of measures aimed at formation of nontolerance to corruption with wide public. But this institution doesn't function.

Legal education is also the sphere of responsibility of the Ministry of Justice component of which is activities related to anti-corruption issues. As a rule the education work is limited to the explanatory work of implementing anti-corruption legislation, but no specialized information campaigns are held.

In majority of cases educational work is aimed mostly at public servants, local government officials, and much less at common people.

In 2013 the Ministry of Justice prepared and published Methodological Recommendations "Prevention and Counteraction to Corruption in State and Local Self-Government Bodies" <sup>606</sup>.

At the same time the Order № 642-p of the Cabinet of Ministers of Ukraine of July 6, 2011 "On Advanced Training of Civil Servants and Local Self-Government Officials on Prevention and Counteracting to Corruption in Civil and Local Self-Government Service" establishes tasks for the National Agency of Ukraine on Civil Service to organize further education courses for public servants and local government officials in respect of corruption prevention and counteraction<sup>607</sup>.

The Decree № 40 of March 27, 2014 issued by the National Agency of Ukraine on Civil Service has established the order of the advanced training of civil servants and local self-government officials on prevention and counteracting to corruption in civil and local self-government service. According to this order advanced training of civil servants and local self-government officials on prevention and counteracting to corruption is run in compliance with professional programs developed by the National Academy of Internal Affairs and approved by the National Agency of Ukraine on Civil Service. The persons mentioned above undergo professional advanced training if necessary, but no less than every five years.

Other public servants and local government officials undergo other types of advanced training and in case of necessity defined by the agency employing them they also undergo professional programs of advanced training.

According to the Report on Implementation of Measures Related to Prevention and Counteraction to Corruption in 2013<sup>608</sup> that year 53,887 persons took advanced education courses on prevention and counteracting to corruption. Among them 20,411 persons were trained at the cost of state budget and 33,476 – at the cost of local budgets. Still more detailed information on the issue is not available.

<sup>605</sup> Points 4 and 5 of the Model Regulations on Authorizes Unit (Person) on Prevention and Detection of Corruption apporoved by the Governmental Decree on September 4, 2013, no 706; http://zakon2.rada.gov.ua/laws/show/706-2013-%D0%BF

<sup>606</sup> Guidelines "Prevention and counteraction to corruption in state and local self-government bodies"; Ministry of Justice of Ukraine

<sup>607</sup> Governmental Edict "On Advanced Training of civil servants and local self-government officials on prevention and counteracting to corruption in civil and local self-government service"; http://zakon4.rada.gov.ua/laws/show/642-2011-%D1%80

<sup>608</sup> Ministry of Justice of Ukraine, Report on Implementation of Measures Related to Prevention and Counteraction to Corruption in 2013; http:// www.minjust.gov.ua/file/36531 [accessed December 1, 2014].

The Report provides information on constant consultations and methodological assistance provided by the Ministry of Justice executive staff on implementation of anti-corruption legislation, filling of assets declaration forms, revenues, expenditures, financial commitments, conflicts of interests detection and prevention as well as concerning public servant behavior ethics.

Also a number of events took place within reporting period. They aimed at providing of anti-corruption legislation explanatory work, formation of zero tolerance to corruption including:

- 20 lectures (attended by 855 persons);
- 12 seminars (attended by 396 persons)

In general the efficiency of such kind of educational measures isn't assessed which needs further correction.

Civil society is actively assisting the state in mastering of anti-corruption legislation provisions by public servants. It provides numerous training workshops on various aspects of prevention and counteracting to corruption. This work just needs further development and support, constant improvement of the courses content and quality. One needs to note that mostly such activities result from the civil society initiative and are not derived from state bodies.

One example of such work is the information human rights campaign "They Wouldn't be Silent" initiated by Transparency International Ukraine supported by the Ministry of Information Policy of Ukraine, Social Advertising, and Ukraine National Initiatives to Enhance Reforms (UNITER)<sup>609</sup>.

# Investigation (law and practice) - Score 50 (2015), N/A (2010)

# To what extent does the ACA engage in investigation regarding alleged corruption?

NAPC has powers only to make reports on administrative offences related to corruption. In case if any constituent elements of a criminal corruption or corruption-related offence is detected NAPC approves a well-grounded conclusion and sends it to other specially authorized agencies for anti-corruption<sup>610</sup>.

According to the Law "On Prevention of Corruption" the specially authorized agencies for anticorruption are prosecutors' offices, law enforcement agencies of the Ministry of Internal Affairs of Ukraine, National Anti-Corruption Bureau of Ukraine<sup>611</sup>.

The Bureau is responsible for investigating crimes provided for by Art. 191 (Misappropriation, embezzlement or conversion or property by malversation), Art. 2062(Illegal appropriation of property of an enterprise, institution or organization), Art. 209 (Legalization (laundering) of criminally obtained money and other property), Art. 210 (Violation of law on budget system of Ukraine), Art. 211 (Making of regulations or directives that modify budget revenues and expenses contrary to the procedures prescribed by law), Art. 354 (Receiving of illegal benefits by an employee of a state enterprise, institution or organization – in respect of public law legal persons personnel), Art. 364 (Abuse of authority or office), Art. 368 (Acceptance of proposal, promise or receiving improper advantage by a public officer), Art. 3682 (Unlawful Enrichment), Art. 369 (Proposal, promise or receiving improper

<sup>609 &</sup>quot;They wouldn't silent". The campaign on whistleblowers protection starts in Ukraine; Transparency International Ukraine; http://ti-ukraine.org/ news/media-about-us/5403.html

<sup>610</sup> Part 3 of art.12 of the Law "On Prevention of Corruption"; http://zakon2.rada.gov.ua/laws/show/1700-18 [accessed July 1, 2015]

<sup>611</sup> Art. 1 of the Law "On Prevention of Corruption"; http://zakon2.rada.gov.ua/laws/show/1700-18 [accessed July 1, 2015]

advantage by a public officer), Art. 3692(Abuse of Influence), Art. 410 (Stealing, appropriation, extortion or fraudulent obtaining of weapons, ammunitions, explosive or other warfare substances, vehicles, military or special enginery, or other munitions, or abuse of office, by a military serviceman) of the Criminal Code of Ukraine in case if even a single condition is met:

Crimes have been committed by top officials (e.g. MP, a Minister, General Prosecutor of Ukraine, military service person belonging to the senior officers staff of the Armed Forces of Ukraine, public servant belonging to Category 1 or 2).

The target of crime or damage done equals or exceeds 500 minimum salaries (UAH 609,000 or USD 27,719).

The crime provided for by Art. 369, Art. 3692 Part 2 (active form of abuse of influence) has been committed against a foreign national official or international organization officer.

Other corruption or corruption-related crimes are investigated by the officials of prosecutors' offices and of the Ministry of Internal Affairs. Besides, after creation of the State Bureau of Investigations its detectives will investigate a part of corruption or corruption-related crimes.

The Specialized Anti-Corruption Prosecutor's Office has been charged with the following duties and functions:

1) Surveillance over compliance with laws while pre-trial inquiries held by the National Anti-Corruption Bureau of Ukraine.

2) Support of state prosecution in respective proceedings.

3) Representation of the interests of a person or state at court in cases provided for by the Law "On General Prosecutor's Office" with respect to corruption and corruption-related offences.

The Bureau's detectives enjoy the whole range of plenipotentiary powers in relation to investigation and undisclosed search activities for cases of specific category. They are provided access to the public agencies databases if such decision is taken by the Director of the National Bureau or a Deputy Director, approved by the prosecutor. Detectives enjoy their right to obtain information concerning operations, accounts, deposits, acts by physical and legal persons from the banks, depositing, financial and other institutions regardless of their form of property if this information is necessary for the National Bureau to fulfill its duties.

The National Council for Anti-Corruption Policy, Ministry of Justice of Ukraine, and Government Agent for Anti-Corruption Policy are not lodged with any law enforcement powers.

The Government Agent and the Ministry of Justice do not have any authority to conduct criminal investigation/prosecution of corruption offences.

# Key recommendations

The Government should expedite the creation of the National Agency for Prevention of Corruption by means of transparent competition, including selection panel formation providing it with necessary resources, particularly financial ones.

The Government has to provide National Anti-Corruption Bureau of Ukraine with finances and resources which are necessary for its effective functioning.

The General Prosecutor's Office has to provide the start of the Specialized Anti-Corruption Prosecutor's Office and conduct transparent competition to appoint its leadership.

The National Agency for Prevention of Corruption (after its start) has to organize proper institutional maintenance of the corruption prevention system by way of creating NAPC territorial branches in case of necessity as well as to strengthen the potential of the authorized anti-corruption units network covering public agencies and local governments providing its proper NAPC coordination.

The Government has to consider the issue of abolishing the position of the Government Agent for Anti-Corruption Policy after NAPC starts its activities.

The Verkhovna Rada of Ukraine has to make amendments to the Constitution of Ukraine concerning independence guaranties of the National Anti-Corruption Bureau of Ukraine.

# **10. POLITICAL PARTIES**

# Summary

Since 2010, the legislation governing the establishment and activities of political parties has not significantly changed. The legal framework generally provides for a conducive environment for the establishment and operations of political parties, but some provisions fail to comply with international standards. Overall, funds available to the main political parties allow for effective political competition, but almost all major parties are strongly dependent on funding provided by wealthy donors due to lack of direct public funding of political parties. Legal safegurds to prevent unwarranted external interference with party activities are weakened by the possibility to deregister political parties if they fail to establish the required number of local organisations or fail to participate in the elections over certain period of time. In practice, the level of independence of political parties has improved since 2010-2013, but the possibililities of external interference with their operations have not been entirely eliminated. Due to legal flaws that have not been properly addressed by the legislature, public access to financial information of parties has not improved since 2010. Legal provisions governing financial oversight of political parties remain weak, while in practice such oversight has proved to be ineffective. Due to lack of public funding of political parties and some other factors, parties play no role in interest aggregation in representation and mainly represent the interests of their funders. Anticorruption issues are reflected in party programs and speeches of political leaders, but many parties' promises in this regard have yet to be implemented.

The table below presents a general assessment of political parties in terms of capacity, governance and role in the national integrity system. The table is followed by a qualitative assessment of the respective indicators.

# **POLITICAL PARTIES**

Overall Pillar Score (2015): 34.02 / 100

Overall Pillar Score (2010): 27.77 / 100				
Dimension	Indicator	Law	Practice	
Capacity	Resources	50 (2015, 2010)	75 (2015, 2010)	
56.25 / 100	Independence	50 (2015, 2010)	50 (2015), 25 (2010)	

POLITICAL PARTIES					
Governance 20.83 / 100	Transparency	25 (2015, 2010)	25 (2015, 2010)		
	Accountability	25 (2015, 2010)	25 (2015, 2010)		
	Integrity	25 (2015, 2010)	25 (2015, 2010)		
Role	Interest aggregation and representation (practice)	0 (2015, 2010)			
25 / 100	Anti-corruption commitments	50 (2015), 25 (2010)			

# Structure and organisation

As of December 1, 2014, there were 235 registered political parties in Ukraine,<sup>612</sup> 6 of which passed the electoral threshold in the most recent 2014 parliamentary elections held in October 2014.<sup>613</sup> Parties are subject to mandatory registration, i.e. unregistered parties are prohibited. Parties are registered by the State registration service (the body subordinated to the Ministry of Justice). The activities of political parties are supervised by the State registration service, CEC (which supervises the activities of the parties which participate in the national elections) and tax authorities (which supervise whether political party respects the provisions laid down in legislation governing taxation).

In the 2014 parliamentary elections, 52 parties nominated at least one MP candidate<sup>614</sup>, while 29 of those 52 parties nominated candidate lists in the nationwide election district under the parallel system used to elect MPs<sup>615</sup>. Amongst 21 presidential candidates registered in 2014 early presidential election, only 9 were members of political parties, and 2 of them nominated themselves as independent candidates.<sup>616</sup> The number of local party organisations depends on a party: while almost 30 parties have more than 1,000 local organisations, some parties have less than 30 organisations (e.g., party "Mist", Party of Cossacks of Ukraine, Nash Dim Party).<sup>617</sup>

The activities of political parties are governed mainly by the 2001 Law on Political Parties, election laws, and Tax Code of Ukraine. The Law on Civic Associations used to be applicable to political parties (in particular, it determined the sources of party funding), but since 2013 it governs the activities of CSOs only.

# Assessment

# Resources (law) - Score 50 (2015, 2010)

To what extent does the legal framework provide a conducive environment for the formation and operations of political parties?

The legal framework governing formation and operations of political parties has generally remained

<sup>612</sup> Register of political parties; http://www.drsu.gov.ua/party [accessed December 1, 2014].

<sup>613</sup> See: http://www.cvk.gov.ua/pls/vnd2014/wp300?PT001F01=910 [accessed December 1, 2014].

<sup>614</sup> See: http://www.cvk.gov.ua/pls/vnd2014/wp501?PT001F01=910 [accessed December 1, 2014].

<sup>615</sup> See: http://www.cvk.gov.ua/pls/vnd2014/wp400?PT001F01=910 [accessed December 1, 2014].

<sup>616</sup> See: http://www.cvk.gov.ua/pls/vp2014/wp001 [accessed December 1, 2014].

<sup>617</sup> Liliya Ganiukova (2014). Political parties in Ukraine: the current state and prospect for development, pp. 9-10; http://www.dif.org.ua/modules/pages/files/1401884574\_3067.pdf [accessed December 1, 2014].

the same as in 2010. It contains some flaws, which constitute an impediment to forming parties and their operations.

In particular, some international organisations, such as the European Commission for Democracy through Law (Venice Commission), have criticised the provisions in the Law on Political Parties, requiring that parties can be established only with national status (i.e. regional parties are not allowed) and that 10,000 voters signatures must be collected in two-thirds of all regions of Ukraine (providing that in each of the respective regions signatures were collected in two-thirds of all rayons of the respective region) to register a political party. Further, the procedure for consideration of the party registration documents is not adequately regulated in law, giving the authorities a wide margin of discretion while making decisions on registration/refusal of registration does not provide for direct public funding of political parties, neither does it restrict the value of private donations to parties [for further details see: National Integrity System Assessment: Ukraine 2011, pp. 147-148].

# Resources (practice) - Score 75 (2015, 2010)

# To what extent do the financial resources available to political parties allow for effective political competition?

Overall, there have been no significant changes in resources available to political parties since 2010. While the key political parties do have access to financial resources, all the parties still strongly depend on "wealthy donors" due to absence of direct public party funding and lack of restrictions on the value of private donation to parties.

The number of parties which have adequate access to financial resources to carry out their day-today activities and effectively compete in the elections remains low compared to the overall number of registered parties.<sup>618</sup> Party abilities to access funds depend not on party status and role (whether party is new, opposition or small), but rather on personal ties of the party leadership with donors – both opposition and pro-government parties are able to have access to sufficient private funds.<sup>619</sup> Party statuses and roles also has no influence on access to financial resources during the elections, as the key precondition for availability of funds to participate in the elections is oligarchs' interests in funding certain parties, regardless of whether they are pro-government, opposition, small or new.<sup>620</sup> In 2010-2013, when the former President Yanukovych was in power, cases of prosecution of donors supporting opposition parties were widespread, however such a practice came to an end once the Yanukovych regime was overthrown.<sup>621</sup>

Due to lack of public funding of political parties, the lion's share in the party budgets still belongs to donations granted by wealthy donors.<sup>622</sup> Share of membership fees in the party budgets remains insignificant.<sup>623</sup>

<sup>618</sup> Liliya Ganiukova (2014). Political parties in Ukraine: the current state and prospect for development, p.2.

<sup>619</sup> Andriy Meleshevych, professor, dean of the Law Department of the National University "Kyiv Mohyla Academy", interview with author, July 10, 2014; Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, July 30, 2014; Svitlana Kononchuk, Head of the Program for Democratisation of Political Institutions, Ukrainian Independent Centre for Political Research, with author, August 1, 2014.

<sup>620</sup> Yuriy Kluchkovskyi, President of the NGO "Election Law Institute", interview with author, July 15, 2014.

<sup>621</sup> Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, July 30, 2014.

<sup>622</sup> Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, July 30, 2014; Svitlana Kononchuk, Head of the Program for Democratisation of Political Institutions, Ukrainian Independent Centre for Political Research, with author, August 1, 2014.

<sup>623</sup> Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, July 30, 2014; Svitlana Kononchuk, Head of the Program for Democratisation of Political Institutions, Ukrainian Independent Centre for Political Research, with author, August 1, 2014.

# Independence (law) - Score 50 (2015, 2010)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?

The legal safeguards to prevent unwarranted external interference in the activities of political parties have generally remained the same as in 2010, and they suffer from a number of legal flaws.

In particular, there is a risk of interference with party activities as they are supervised by the Ministry of Justice through the State Registration Service of Ukraine subordinated to the Ministry, which, in turn, is subordinated to the Cabinet of Ministers and cannot be considered politically independent body. The controlling powers of the State registration service are not clearly framed by the law, thus creating the possibility of selective checks of the parties and arbitrary imposing of sanctions on them. Party registration can be cancelled if it fails to establish the legally prescribed number of local branches, something that falls short of democratic standards, which provide that enforced dissolution of political parties can only be justified in the case of parties which advocate the use of violence or use violence as political means to overthrow the democratic constitutional order.<sup>624</sup> As in 2010, the politically dependent body (i.e., the State Registration Service of Ukraine) supervises compliance of parties' activities not only with the legal requirements, but also with party statutes, meaning that such a body is granted the possibility of interfering with internal party activities and decision-making [for further details see: National Integrity System Assessment: Ukraine 2011, p.149].

In 2012 and 2014 the laws governing national elections were amended to eliminate the provisions on the possibility of presence of the representatives of the Central Election Commission at party congresses, where the presidential and MP candidates are nominated. The respective requirement, however, still exists in the 2014 Local Election Law. Regardless of whether the provisions on the presence of the commission members at the party congresses exist in the laws or not, they do not affect party independence as they are targeted at ensuring the observance of legal/internal party requirements to holding party congresses rather than at interfering with the internal party activities.

# Independence (practice) - Score 50 (2015), 25 (2010)

# To what extent are political parties free from unwarranted external interference in their activities in practice?

In general, compared to 2010, the level of independence of political parties from undue external interference in 2014 has increased. However, the pro-government (ruling) parties still have wide possibilities to put pressure on opposition parties, in particular, by abusing administrative resources.<sup>625</sup>

Following the election of Victor Yanukovych the president of Ukraine in 2010, the opposition parties started to face more harsh pressure on them. Former Government officials, including the opposition leaders Yulia Tymoshenko and Yuriy Lutsenko, were prosecuted and sentenced to imprisonment terms under politically motivated reasons,<sup>626</sup> while some other opposition leaders and family members of imprisoned opposition leaders had to leave Ukraine under fear of being arrested and

<sup>624</sup> See: Venice Commission, Guidelines on prohibition and dissolution of political parties and analogous measures (Guideline 3); http://www. venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF%282000%29001-e [accessed December 1, 2014].

<sup>625</sup> Liliya Ganiukova (2014). Political parties in Ukraine: the current state and prospect for development, p. 10.

<sup>626</sup> See: PACE Resolution 1862 (2012). The functioning of democratic institutions in Ukraine; http://assembly.coe.int/ASP/XRef/X2H-DW-XSL. asp?fileid=18068&lang=EN; US Government on Investigation of Ukrainian Opposition Politicians, 30 December 2010; http://ukraine.usembassy. gov/oposition-statements.html; White House Press Secretary Statement on Ukraine, October 11, 2011, http://ukraine.usembassy.gov/tymoshenko-sentencing.html [all accessed December 1, 2014].

convicted.<sup>627</sup> In 2013, some opposition MPs as well as newly elected independent MPs who refused to join the majority in the parliament, were striped of their mandates by court decisions.<sup>628</sup> Overall, the practice of politically motivated prosecution/pressure of opposition leaders by the authorities became a trend from 2010-2013.<sup>629</sup> According to the 2011 national survey conducted by the Razumkov Centre, 59.1% of the respondents believed that law enforcement agencies treated opposition more harshly compared to the pro-government parties, while only 2.3% of the respondents were of the opposite opinion.<sup>630</sup> In 2012, the Ministry of Justice of Ukraine continued to file lawsuits with courts seeking to deregister political parties on the grounds that they failed to participate in elections over last 10 years or failed to establish the legally prescribed number of local branches.<sup>631</sup>

Following the change of the government in February 2014, there have been no cases of politically motivated prosecution of the opposition leaders. Criminal proceedings were initiated against some opposition MPs, but the main reason for that was their engagement in the separatist movement in the country's East.<sup>632</sup> In the first half of 2014, two political parties, namely Russian Block and Russian Unity were dissolved by court decisions upon lawsuits filed by the Ministry of Justice on the grounds that they publicly called for overthrowing the constitutional order and violation of the territorial integrity of Ukraine, something that constitutes legal grounds for enforced dissolution of political parties.<sup>633</sup> On the same grounds, the Ministry of Justice filed a lawsuit against the Communist Party of Ukraine (as of June 1, 2015, the case was still pending in court). Many experts believe that these cases of dissolution of parties should not be considered politically motivated prosecution.<sup>634</sup>

## Transparency (law) - Score 25 (2015, 2010)

To what extent are there regulations in place that require parties to make their financial information publicly available?

The legal framework governing transparency of party and electoral funding has not significantly changed since 2010, and it still fails to meet a number of international standards, including Committee of Ministers of the Council of Europe Recommendation (2003) 4 on Common rules

<sup>627</sup> See: http://www.kyivpost.com/content/ukraine/danylyshyn-granted-political-asylum-by-czech-repub-94709.html; http://www.kyivpost.com/ content/ukraine/avakov-may-seek-asylum-in-italy-129069.html; http://www.theguardian.com/world/2012/jan/06/yulia-tymoshenkos-husband-asylum-czech [all accessed December 1, 2014].

<sup>628</sup> See: http://khpg.org/en/index.php?id=1362150842; http://www.unn.com.ua/en/news/1262335-ya-tombinski-pozbavlennya-deputativ-mandativ-cherez-sud-superechit-printsipam-demokratiyi [all accessed December 1, 2014].

Razumkov Centre (2011), Opposition in Ukraine: state, conditions for operations, relations with government, prospects for improvement, p. 25; http://www.razumkov.org.ua/upload/Przh\_June\_2011\_Opozytsiya.pdf; E.Zakharov and B.Zakharov (2011), Political prosecutions in Ukraine: 2010-2011, pp. 27-29; http://khpg.org/files/docs/1321886057.pdf; http://interfax.com.ua/news/political/58272.html; Human rights in Ukraine 2012: Report by human rights organisations (Edit. by Yevhen Zakharov), 2012, pp. 13-14; Human rights in Ukraine 2013: Report by human rights organisations (Edit. by Yevhen Zakharov), 2014, pp. 24-26; see also news:http://helsinki.org.ua/files/docs/1362676567.pdf; http://www.donetskie.com/ novosti/2012/06/%2012/pravohraniteli-sobirayut-dose-na-donetskih-oppozitsionerov; http://www.donetskie.com/novosti/2012/%2006/13/militsiya; http://maidanua.org/vybory2012/reports/view/1373; http://maidanua.org/monitor/reports/view/303; http://helsinki.org.ua/files/docs/138017200.pdf; http://ua.interfax.com.ua/news/press-conference/173026.html; http://udarkm.com.ua/videogallery/153/pol-tichnii-tisk-chi-adm-nresurs-v-d; http:// narodna.org.ua/news/2013/2/11/6832/ [all accessed December 1, 2014].

Razumkov Centre (2011), Opposition in Ukraine: state, conditions for operations, relations with government, prospects for improvement, p. 49.

<sup>631</sup> Human rights in Ukraine 2012: Report by human rights organisations (Edit. by Yevhen Zakharov), 2012, pp. 187-188; the examples of the respective court decisions in Ukrainian can be accessed at: http://www.reyestr.court.gov.ua/Review/27479915; http://www.reyestr.court.gov.ua/Review/23548579; http://www.reyestr.court.gov.ua/Review/26441654 [accessed December 1, 2014].

<sup>632</sup> See, for instance: http://weather.tsn.ua/politika/u-lugansku-proti-carova-porushili-kriminalnu-spravu-345627.html [accessed December 1, 2014].

<sup>633</sup> See: http://m.24tv.ua/home/showSingleNews.do?minyust\_hoche\_zaboroniti\_partiyi\_rosiyskiy\_blok\_i\_ruska\_yednist&objectId=433190; http:// www.5.ua/ukrajina/politika/item/383774-partiia-ruskyi-blok-zaboronena-v-ukraini; http://politic.kiev.ua/politika/6735v-ukraini-zaboronili-partiyu-russkoe-edinstvo.html [accessed December 1, 2014].

<sup>634</sup> http://www.ucipr.kiev.ua/publications/zaborona-prorosiiskikh-partii-v-ukraiini-bilshe-koristi-chi-shkodi [accessed December 1, 2014].

against corruption in the funding of political parties and electoral campaigns.635

In particular, there are no legal requirements in place on the content of the annual party financial reports and their property statements, including requirements to disclose the value of each donation, identity of donors who made donation exceeding certain level. The legal framework does not require these reports be submitted to any public authorities (except for the reports related to taxation of the party operations which are submitted to the respective tax authorities) for review. Further, party reports are not required to include financial reports of their local branches with legal person status. Donations in-kind are not regulated and are not required to be included in annual financial reports [for further details see: National Integrity System Assessment: Ukraine 2011, p.151].

As regards transparency of electoral funding, the 2013 changes to the Parliamentary Election Law addressed some recommendations<sup>636</sup> related to improvement of election campaign finance put forward by the international organisations, including GRECO, OSCE/ODIHR and the Venice Commission. In particular, political parties and single-mandate candidates were required to submit to the Central Election Commission and relevant district election commissions not only post-election financial reports, but also pre-election reports, while the respective election commissions were obliged to analyse the received reports. All these reports are subject to publishing in the official gazettes and posting on the CEC website.

However, these new amendments failed to bring more transparency to campaign finance.<sup>637</sup> First, while the legal framework requires to disclose to the respective election commissions donors' identities and value of each donation to election fund of a party or candidate, such information is not a subject to mandatory publication. Second, the financial reports must present only information on incomes and expenses incurred at the election funds, while the election campaigns are mostly funded from hidden sources (through donations in-kind, in cash or through so-called "third persons").638 Third, the pre-election reports cover only a limited period before the elections (e.g. starting from the date when the election fund was opened and ending on 32nd day before the day of voting (in case of parties) or on 22nd day before the day of election (for single-member district candidates) and do not reflect donations and expenses incurred after the end of the reporting period. Fourth, although the legislation provides that party and candidate reports must present information on total amounts of donations to the political party or candidate to the party/respective candidate's election fund, it does not require disclosing origin of funds transferred by parties and candidates to their election funds as their own donations. Fifth, the existing rules provide no liability for failure to submit reports, untimely submission of the reports or presentation of untruthful information in them, thus failing to create any incentive to adhere to the legal requirements governing election finance reporting.

# In terms of ensuring transparency of election finance, the laws governing the presidential and local

OECD/ACN, Istanbul Anti-Corruption Action Plan, Ukraine. Progress Update, 2014: 29; http://www.oecd.org/corruption/acn/UkraineProgressUpdateApril2014ENG.pdf; Chebanenko, Olena, Expert Position on Political Finance Reform Issues: Survey Results, 2013: 2-3; OSCE/ ODIHR Election Observation Mission, Ukraine.Parliamentary Elections, 28 October 2012. Final Report, 2012: 18; http://www.osce.org/uk/odihr/ elections/98746?download=true; GRECO, Third Evaluation Round, Compliance Report on Ukraine. Incriminations. Transparency of Party Funding, 2013: 16-17; GRECO, Third Evaluation Round, Evaluation Report on Ukraine. Transparency of Party Funding, 2011: 20, 22-23, 25; http://www. coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2011)1\_Ukraine\_Two\_EN.pdf [all accessed December 1, 2014].

<sup>636</sup> OSCE/ODIHR, Venice Commission, Joint Opinion on Draft Amendments to Legislation on the Election of People's Deputies of Ukraine, adopted by the Venice Commission at its 96th Plenary Session, Venice, 10-11 October, 2013:10; http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)026-e)[accessed December 1, 2014]; OSCE/ODIHR Election Observation Mission, Ukraine. Parliamentary Elections, 28 October 2012. Final Report, 2012: 35; GRECO, Third Evaluation Round, Evaluation Report on Ukraine. Transparency of Party Funding, 2011: 22-23.

<sup>637</sup> Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, July 30, 2014; Svitlana Kononchuk, Head of the Program for Democratisation of Political Institutions, Ukrainian Independent Centre for Political Research, with author, August 1, 2014.

<sup>638</sup> Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, July 30, 2014; Svitlana Kononchuk, Head of the Program for Democratisation of Political Institutions, Ukrainian Independent Centre for Political Research, with author, August 1, 2014.

elections are even weaker compared to the Parliamentary Election Law. In addition to the flaws listed above, they do not provide for pre-election disclosure of campaign finance. The Local Election Law states that the financial reports for local elections must be published by the respective district election commissions in local media chosen by commissions themselves, thus making search of the reports for civic activists and media a difficult task.

# Transparency (practice) - Score 25 (2015, 2010)

## To what extent do political parties make their financial information publicly available?

The level of financial transparency of political parties and election campaigns has not changed since 2010: not only citizens, but even party members have no proper access to information on party incomes and expenses<sup>639</sup>, while finding information subject to mandatory publication is complicated.<sup>640</sup>

Many parties do not publish their annual financial/property reports at all.<sup>641</sup> Those parties which make financial and property reports public, mostly disclose information on total book value of property, total amount of all donations and total amount of party expenses, meaning that citizens generally cannot understand from which sources the party received its funds, in what amount and what expenses were covered.<sup>642</sup> The Law on Political Parties fails to explicitly list the newspapers in which the party annual reports must be published. As a result, parties publish annual reports in the party newspapers, which have limited circulation and are not available to broad public.<sup>643</sup>

It is also difficult to receive information on party funding upon requests for information submitted based on the Law on Access to Public Information. In particular, at the end of 2013, one Ukrainian NGO, the Centre for Political Studies and Analysis, sent requests to all the registered political parties seeking data on their funding (share of membership fees, expenses on salaries, share of donations from legal persons and natural persons etc.). Only two parties (which are not represented in the legislature) provided some of the requested data.<sup>644</sup>

Access to information on electoral funding is restricted too.<sup>645</sup> One of the main reasons is weak regulation [see: Transparency (law) and Accountability (law)]. In particular, due to lack of legal provisions, information presented in the reports and made public fails to specify donors, value of each donation, and origin of own party and candidate donation(s) to election funds. In the 2014 parliamentary elections, party election finance reports, as well as the results of their analysis, were posted on the CEC website, but they provided only general data: total amount of party's

Andriy Meleshevych, professor, dean of the Law Department of the National University "Kyiv Mohyla Academy", interview with author, July 10, 2014; Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, July 30, 2014; Yuriy Kluchkovskyi, President of the NGO "Election Law Institute", interview with author, July 15, 2014; Svitlana Kononchuk, Head of the Program for Democratisation of Political Institutions, Ukrainian Independent Centre for Political Research, with author, August 1, 2014.

<sup>640</sup> GRECO, Third Evaluation Round, Evaluation Report on Ukraine. Transparency of Party Funding, 2011: 22-23.

<sup>641</sup> Yuriy Kluchkovskyi, President of the NGO "Election Law Institute", interview with author, July 15, 2014.

<sup>642</sup> Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, July 30, 2014; Svitlana Kononchuk, Head of the Program for Democratisation of Political Institutions, Ukrainian Independent Centre for Political Research, with author, August 1, 2014.

<sup>643</sup> See: http://oporaua.org/news/3743-4-z-5-parlamentskyh-partij-tyho-opryljudnyly-finansovi-zvity [accessed December 1, 2014].

<sup>644</sup> Olena Chebanenko, presentation made at the roundtable "Funding of political parties and election campaigns" hosted by the Ministry of Justice of Ukraine on November 14, 2013; http://www.minjust.gov.ua/news/44516 [accessed December 1, 2014].

Andriy Meleshevych, professor, dean of the Law Department of the National University "Kyiv Mohyla Academy", interview with author, July 10, 2014; Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, July 30, 2014; Svitlana Kononchuk, Head of the Program for Democratisation of Political Institutions, Ukrainian Independent Centre for Political Research, with author, August 1, 2014; GIR Ukraine: 2011.Political Financing Transparency; https://www.globalintegrity.org/global/report-2011/ukraine/ [accessed December 1, 2014].

own donation to its election fund, total amount of all donations granted by citizens, breakdown of expenses for different purposes (TV advertising, production of posters etc.).<sup>646</sup> As has been mentioned above [see: Transparency (law)], a significant part of the election-related expenses are covered not from election funds, but from hidden sources (which constitute so-called "shadow funding"), and parties and candidates do not include information on those expenses in their reports.<sup>647</sup> Last but not the least, it is sometimes impossible to download the party financial reports from the CEC website because many links to those reports are broken.<sup>648</sup>

# Accountability (law) - Score 25 (2015, 2010)

To what extent are there provisions governing financial oversight of political parties?

The legal provisions governing financial oversight of political parties have not significantly changed since 2010 and remain weak<sup>649</sup>.

The only two changes made to the respective legislation were aimed at vesting the powers of the Ministry of Justice in terms of supervising party activities in the State Registration Service (which is subordinated to the Ministry of Justice) and obliging the Central Election Commission (in the national elections) and respective district election commissions (in the local elections) to analyse the election-related financial reports submitted by parties and candidates, as well as to deliver information on violations detected while analysing those reports to the law enforcement agencies for further legal action.<sup>650</sup>

These two changes in fact have not improved regulation of financial oversight of political parties. First, the State Registration Service is not a politically independent body and its rights, powers and responsibilities in terms of financial oversight of political parties are not listed in the laws, which was also the case with the Ministry of Justice that used to supervise party activities. Second, the analysis of election-related financial reports by the Central Election Commission and district commissions is in fact limited to comparison of the numbers and other data specified in the reports with information on transactions received from the banks<sup>651</sup>, i.e. such an analysis is a formalistic exercise and can result in detecting irregularities only if they were made in reports by omission/mistake.

In addition to lack of investigating powers in the hands of the State Registration Service and election commissions, effective financial oversight of political funding is impeded by a number of other legal flaws. For instance, there is no a standard format for the party annual financial and property statements, as well as requirements to the information the party annual reports must present. As has been mentioned above [see: Transparency (law)], party annual reports are not submitted to any public authority – they are just published in the national media. Also, the legislation provides for no liability for failure to publish party annual reports [for further details see: Transparency (law) and National Integrity System Assessment: Ukraine 2011, p. 153].

<sup>646</sup> http://www.cvk.gov.ua/vnd\_2014/konsolid\_zvity/ostatochny\_svity.pdf [accessed December 1, 2014].

<sup>647</sup> Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, July 30, 2014; Svitlana Kononchuk, Head of the Program for Democratisation of Political Institutions, Ukrainian Independent Centre for Political Research, with author, August 1, 2014.

<sup>648</sup> Central Election Commission, Reports on the receipt and use of election funds of the parties whose candidates were nominated in the nationwide election district;http://www.cvk.gov.ua/metod/formy/konsolid\_zvity/perelik\_zvity.htm [accessed December 1, 2014]; see also: http://www. cvk.gov.ua/visnyk/pdf/2013\_2/Visnik2\_2013\_st\_6.pdf [accessed December 1, 2014].

<sup>649</sup> Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, July 30, 2014; Svitlana Kononchuk, Head of the Program for Democratisation of Political Institutions, Ukrainian Independent Centre for Political Research, with author, August 1, 2014; Olena Chebanenko (2013), Expert Position on Political Finance Reform Issues: Survey Results, p. 3.

<sup>650</sup> Art. 18 of the Law on Political Parties in Ukraine, Art.49 of the Parliamentary Election Law, Art.63 of the Local Election Law.

<sup>651</sup> See, for instance: CEC Resolution No 448, dated April 30, 2014; http://zakon4.rada.gov.ua/laws/show/v0448359-14/print1390274548101716 [accessed December 1, 2014].

# Accountability (practice) - Score 25 (2015, 2010)

#### To what extent is there effective financial oversight of political parties in practice?

Due to significant legal loopholes, which have yet to be eliminated, the effectiveness of financial oversight of political parties remains low and has not changed since 2010. Political finance generally remains in the shadows<sup>652</sup>.

While assumedly party annual financial reports are reliable as they are based on the party reports to tax authorities,<sup>653</sup> it is almost impossible to assess their truthfulness and completeness, especially given that they present very little information on party finance, and parties do not submit them to any public authorities [see: Transparency (law) and Accountability (law)]. In addition, party reports present information on incomes and expenses incurred at their bank accounts, while the major part of party funding remains in the shadows<sup>654</sup>.

Party headquarters and local party organisations with legal person status submit reports as nonprofit organisations (with some exceptions; see below) to different tax authorities throughout the country, but tax authorities, similarly to parties, do not consolidate all the reports within each party. While analysing party reports, tax authorities pursuant to legal requirements only check the consistency between the figures related to incomes and expenses, therefore reviewing the reports is quite a formalistic exercise. Serious irregularities can be revealed only during in-site checks, but tax authorities perform them only in exceptional cases given that parties do not pay VAT and corporate income tax and, therefore, are not "interesting" to tax inspectors.<sup>655</sup>

As in 2010 and before, many local party organisations still fail to submit reports as non-profit organisations to tax authorities<sup>656</sup>. Since the legislation fails to provide for any sanctions for violation of the party reporting requirements, parties are never brought to liability for failure to publish their reports or submit them to tax authorities (as regards reports submitted by parties as non-profit organisations).

Election campaign finance reports are checked by the respective election commissions, but, as has been mentioned above, such checks are pure formality, and there have been no cases when parties or candidates were prosecuted for late submission of the reports or inclusion of the untruthful information into them. The main reason for this is the lack of provisions in the legal framework on liability for those violations. During 2012 parliamentary elections almost two-thirds of the MP candidates failed to submit their campaign finance reports to the Central Election Commission in time.<sup>657</sup> In 2014 parliamentary elections, many candidates also failed to submit their reports to

<sup>652</sup> Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, July 30, 2014; Svitlana Kononchuk, Head of the Program for Democratisation of Political Institutions, Ukrainian Independent Centre for Political Research, with author, August 1, 2014; GRECO, Third Evaluation Round, Evaluation Report on Ukraine. Transparency of Party Funding, 2011: 21-22.

<sup>653</sup> Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, July 30, 2014; Svitlana Kononchuk, Head of the Program for Democratisation of Political Institutions, Ukrainian Independent Centre for Political Research, with author, August 1, 2014.

Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, July 30, 2014; GRECO, Third Evaluation Round, Evaluation Report on Ukraine. Transparency of Party Funding, 2011: 25.

<sup>655</sup> Svitlana Kononchuk, Head of the Program for Democratisation of Political Institutions, Ukrainian Independent Centre for Political Research, with author, August 1, 2014.

<sup>656</sup> See, for instance: Decision by Kherson District Administrative Court dated 10 September 2012 in the case upon a lawsuit against local organisation of political organisation of the Party "Democratic Union"; http://www.reyestr.court.gov.ua/Review/25926967; Decision of Donetsk District Administrative Court dated 23 October 2012 in the case upon a lawsuit against local organisation of the Party "Working Ukraine"; http:// www.reyestr.court.gov.ua/Review/27010683 [all accessed December 1, 2014].

<sup>657</sup> OSCE/ODIHR Election Observation Mission, Ukraine.Parliamentary Elections, 28 October 2012. Final Report, 2012: 18; see also: http:// pravo-znaty.org.ua/eks-kandidati-ivanenko-ta-kravets-ne-prozvituvati-do-tsvk-pro-vikoristannya-viborchih-fondiv/ [accessed December 1, 2014].

the respective election commissions.<sup>658</sup> As with party annual reports, campaign finance reports present information on only transactions from the election fund accounts, while donations in-kind, donations in cash and third-party funding and some expenses (such as expenses on hidden political advertising) are not covered by the reports. The OPORA Civic Network, which monitored campaign expenses in three selected election districts in the 2012 parliamentary elections concluded that actual expenses of some candidates running in those districts were significantly higher compared to expenses reflected in their campaign finance reports<sup>659</sup>. This information have never been addressed by either Central Election Commission (which in fact lacks power to investigate/prosecute for campaign finance violations) or law enforcement agencies.

# Integrity (law) - Score 25 (2015, 2010)

To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?

Organisational regulations on internal democratic governance of the main political parties have not changed since 2010 and they fail to ensure democratic decision-making within the parties.

In line with international standards, the legal framework does not interfere with internal party decision-making and governance procedures. The Civil Code of Ukraine and the Law on Political Parties only provide for the principles of the procedure of decision-making related to termination of political parties, set general requirements to the system of internal governing bodies and lay down some basis requirements to the party statutes.

The statutes of the main political parties contain some provisions aimed to introduce certain standards for internal democratic governance. In particular, the key decisions within the parties (on adoption of party program and changes to statutes, on election of party leader and other party officials/bodies, on nomination of candidates in the elections etc.) are made by party congresses. The party leaders hold their positions on a temporary basis, i.e. can be replaced by congress decision. However, statutes of many parties contain provisions undermining democratic governance. In particular, under the Batkivshchyna statute, a party congress must be convened at least once in 5 years, meaning that all day-to-day activities of that party are governed by the party leader elected for a 5-year term and Political Council (or even more narrow circle of party officials), whose members are proposed to the congress by the party leader. The statute of the Communist Party of Ukraine provides that party congress must be convened at least once in three years, while the statutes of the Party of Regions, Svoboda and UDAR Party allow to convene congresses once in two years. It is common practice in all the parties that only political council/board or similar body is entitled to call party congresses, as well as decide on representation issues at those congresses. In most parties central governing bodies are allowed to adopt decisions on termination of membership in the political party, on cancellation of decisions made by local party organizations, on termination of local party organisations etc.<sup>660</sup> Therefore organisational regulations in main parties are insufficient to ensure democratic governance within the parties.

# Integrity (practice) - Score 25 (2015, 2010)

To what extent is there effective internal democratic governance of political parties in practice?

<sup>658</sup> http://www.cvk.gov.ua/pls/vnd2014/wp019?PT001F01=910 [accessed December 1, 2014].

<sup>659</sup> OPORA Civic Network, Final Report on Results of Monitoring of Campaign Expenses by MP candidates in 2012 elections: election districts Nos 42, 73 and 222.

<sup>660</sup> Statute of the Batkivshchyna Party; http://batkivshchyna.com.ua/storage/article/userfiles/files/statyt\_partii.doc; Statute of the Communist Party of Ukraine; http://www.kpu.ua/ru/page/statute; Statute of UDAR Political Party; http://klichko.org/about/statut/; Statute of the Party of Regions; http://www.pr.dn.ua/pages/9.html; Statute of Svoboda Party; http://www.svoboda.org.ua/pro\_partiyu/statut/[all accessed December 1, 2014].

Since 2010, nothing has improved in terms of internal democratic governance within the parties and internal party democracy remains extremely weak.

All major political parties in Ukraine are strongly dependent on their leaders.<sup>661</sup> Parties are formed primarily not around platforms, but around personalities.<sup>662</sup>

As has been mentioned above, the statutes of many political parties contain provisions strengthening the role of party leadership in internal decision-making.<sup>663</sup> In most political parties internal democracy has yet to emerge and election of party leaders, governing bodies of political parties, and nomination of candidates for elections can hardly be considered democratic, while many decisions (including election of leaders, nomination of candidates in the elections etc.) are made without any discussions among the party members.<sup>664</sup>

These problems are rooted in lack of legal requirements to party democratic governance procedures, flaws in the party charters, parallel electoral system used in the parliamentary elections, strong dependence of political parties on wealthy donors, lack of interest/demand within the society for introducing instruments of internal democratic decision-making, and lack of interest of the party members in changing the existing practice of governance.<sup>665</sup>

As in 2010, the candidates for elections are not nominated in a transparent manner. For instance, in the 2014 early presidential elections some political parties did not inform the media about their congresses to nominate presidential candidates, while some parties restricted access of the journalists to their congresses.<sup>666</sup>

## Interest aggregation and representation (practice) - Score 0 (2015, 2010)

To what extent do political parties aggregate and represent relevant social interests in the political sphere?

As in 2010, political parties generally fail to aggregate and represent relevant social interests in the political sphere.

There are no clear distinctions between the platforms of political parties in Ukraine (except for some parties, such as right-wing Svoboda and left-wing Communist Party of Ukraine), while the parties generally fail to represent interests of broad groups of society.<sup>667</sup> In most cases, before elections parties try to identify the key problems the voters are concerned about (in particular, through public opinion polls), and reflect those problems and some measures to address them in their election

Andriy Meleshevych, professor, dean of the Law Department of the National University "Kyiv Mohyla Academy", interview with author, July 10, 2014; Yuriy Kluchkovskyi, President of the NGO "Election Law Institute", interview with author, July 15, 2014; Razumkov Centre (2011), Opposition in Ukraine: state, conditions for operations, relations with government, prospects for improvement, p. 7.

<sup>662</sup> Liliya Ganiukova (2014). Political parties in Ukraine: the current state and prospect for development, p.2.

<sup>663</sup> Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, July 30, 2014.

Andriy Meleshevych, professor, dean of the Law Department of the National University "Kyiv Mohyla Academy", interview with author, July 10, 2014; Yuriy Kluchkovskyi, President of the NGO "Election Law Institute", interview with author, July 15, 2014; Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, July 30, 2014; Svitlana Kononchuk, Head of the Program for Democratisation of Political Institutions, Ukrainian Independent Centre for Political Research, with author, August 1, 2014.

<sup>665</sup> Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, July 30, 2014; Svitlana Kononchuk, Head of the Program for Democratisation of Political Institutions, Ukrainian Independent Centre for Political Research, with author, August 1, 2014.

<sup>666</sup> Committee of Voters of Ukraine (2014). Early Presidential Elections 25 May 2014. Final Election Observation Report; http://www.cvu.org.ua/ nodes/view/type:news/slug:431 [accessed December 1, 2014].

<sup>667</sup> Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, July 30, 2014.

programs, meaning that less important issues find no reflection in party programs.<sup>668</sup> Overall weakness of parties and their ideologies result in parties' failure to come up with alternative policy proposals and to substantiate their proposals to the electorate.<sup>669</sup>

The parties also do not represent the whole political spectrum – the niche of left-centrist parties remains unfilled.<sup>670</sup> Further, while certain distinctions between party programs exist, no such distinctions can be found in actual party activities, in particular as regards their work in the legislature.<sup>671</sup> In some cases lack of such distinctions can be explained by the need to reach consensus on certain political issues,<sup>672</sup> but in many other cases it can be explained by political corruption and strong party dependence on wealthy donors/lobbyists.<sup>673</sup> Cases of pro-government and opposition parties being funded by the same oligarchs are not uncommon in Ukraine.<sup>674</sup> Some parties that emerged in 2013-2014, however, are an exception to this rule as they seek to rely on funding of citizens rather than oligarchs, but the number of such parties is insufficient.<sup>675</sup>

Clientalistic relationships between parties and narrow groups/donors are very strong.<sup>676</sup> The ordinary party members view parties as nothing more than a vehicle for career growth and election to the parliament and local representative bodies.<sup>677</sup>

Weakness of the party role in interest aggregation and representation results in low level of citizens' confidence with political parties. The number of members of political parties varies from 2 to 5 per cent of the population. During the elections, citizens interact with the parties more actively, but this can be explained rather by the possibility to raise funds by working for party headquarters, participating in paid rallies, than by increased support to specific party ideologies.<sup>678</sup> According to the Razumkov Centre opinion poll results, the level of full confidence with political parties during April 2011 – March 2013 never exceeded 3% of the respondents, while the level of complete mistrust

Andriy Meleshevych, professor, dean of the Law Department of the National University "Kyiv Mohyla Academy", interview with author, July 10, 2014; Yuriy Kluchkovskyi, President of the NGO "Election Law Institute", interview with author, July 15, 2014; Svitlana Kononchuk, Head of the Program for Democratisation of Political Institutions, Ukrainian Independent Centre for Political Research, with author, August 1, 2014; Liliya Ganiukova (2014). Political parties in Ukraine: the current state and prospect for development, p. 5.

<sup>668</sup> Andriy Meleshevych, professor, dean of the Law Department of the National University "Kyiv Mohyla Academy", interview with author, July 10, 2014.

Razumkov Centre (2011), Opposition in Ukraine: state, conditions for operations, relations with government, prospects for improvement, p. 7.

<sup>670</sup> Andriy Meleshevych, professor, dean of the Law Department of the National University "Kyiv Mohyla Academy", interview with author, July 10, 2014; Evhen Radchenko, Expert on election issues, Development Director at Internews-Ukraine, interview with author, July 30, 2014; Svitlana Kononchuk, Head of the Program for Democratisation of Political Institutions, Ukrainian Independent Centre for Political Research, with author, August 1, 2014.

<sup>672</sup> Svitlana Kononchuk, Head of the Program for Democratisation of Political Institutions, Ukrainian Independent Centre for Political Research, with author, August 1, 2014.

Andriy Meleshevych, professor, dean of the Law Department of the National University "Kyiv Mohyla Academy", interview with author, July 10, 2014; Yuriy Kluchkovskyi, President of the NGO "Election Law Institute", interview with author, July 15, 2014; Svitlana Kononchuk, Head of the Program for Democratisation of Political Institutions, Ukrainian Independent Centre for Political Research, with author, August 1, 2014; OSCE/ ODIHR Election Observation Mission, Ukraine.Parliamentary Elections, 28 October 2012. Final Report, 2012: 18; GRECO, Third Evaluation Round, Evaluation Report on Ukraine. Transparency of Party Funding, 2011: 20; Razumkov Centre (2011), Opposition in Ukraine: state, conditions for operations, relations with government, prospects for improvement, p. 7.

Razumkov Centre (2011), Opposition in Ukraine: state, conditions for operations, relations with government, prospects for improvement, p. 7.

<sup>675</sup> Andriy Meleshevych, professor, dean of the Law Department of the National University "Kyiv Mohyla Academy", interview with author, July 10, 2014.

<sup>676</sup> Svitlana Kononchuk, Head of the Program for Democratisation of Political Institutions, Ukrainian Independent Centre for Political Research, with author, August 1, 2014.

<sup>677</sup> Liliya Ganiukova (2014). Political parties in Ukraine: the current state and prospect for development, p. 4; GRECO, Third Evaluation Round, Evaluation Report on Ukraine. Transparency of Party Funding, 2011: 20.

<sup>678</sup> Liliya Ganiukova (2014). Political parties in Ukraine: the current state and prospect for development, p. 2.

during the same period varied from 34.1% to 48.5% of the surveyed citizens. Importantly, the lowest level of mistrust was identified in September 2012, i.e. before the parliamentary elections.<sup>679</sup> The Institute of Sociology data suggest that in 2013, 68.3% of the citizens mostly did not have confidence in political parties, while the share of those who mostly felt confidence in parties was 6.6% of the respondents.<sup>680</sup> Overall, the level of confidence with the parties decreased compared to 2010.

Relations between the parties and CSOs remain weak. Parties generally try to use CSOs as their "pocket" organisations or engage them in specific ad hoc party activities (such as research on specific issues).<sup>681</sup>

# Anti-corruption commitment (practice) – Score 50 (2015), 25 (2010)

To what extent do political parties give due attention to public accountability and the fight against corruption?

As in 2010, parties give attention to public accountability and the fight against corruption in their programs.

The party statutes emphasize the need to combat corruption at the higher levels of governance, suggest to cancel privileges enjoyed by officials<sup>682</sup>, to introduce mandatory checks of civil servants by polygraphs (lie detectors) to identify whether they were involved in corruption, to adopt special laws to scrutinise expenses of public officials and their family members<sup>683</sup>, to introduce clear delineation between political and administrative positions in the system of governance, to introduce conflict of interest regulations, to improve legislation governing civil service, to establish new specialised anti-corruption body<sup>684</sup>;to combat corruption in public procurement, licensing and medical care, to combat corruption in media<sup>685</sup>.

In 2014, the anti-corruption provisions of their election programs started to turn into reality, as in October 2014 Parliament succeeded in adopting a number of important anti-corruption laws [for further details see: Legislature (Legal reforms (law and practice)]. However, many of the reforms agreed on by the parties that formed the coalition in the newly elected legislature still have yet to be implemented. In March 2015 the Deputy Head of the Administration of the President of Ukraine Dmytro Shymkiv announced that only 5 % of the coalition agreement have been fulfilled<sup>686</sup>.

<sup>679</sup> Razumkov Centre, Do you trust political parties? Survey (changes during 2001-2013); http://www.razumkov.org.ua/ukr/poll.php?poll\_id=82) [accessed December 1, 2014].

<sup>680</sup> Institute of Sociology of Ukrainian Academy of Science (2013). Ukrainian society in 1992-2013. The state and dynamics of changes/ Edit.by V.Vorona and M.Shulga, p.483; http://i-soc.com.ua/institute/soc-mon-2013.pdf) [accessed December 1, 2014].

<sup>581</sup> Yuriy Kluchkovskyi, President of the NGO "Election Law Institute", interview with author, July 15, 2014; Svitlana Kononchuk, Head of the Program for Democratisation of Political Institutions, Ukrainian Independent Centre for Political Research, with author, August 1, 2014.

<sup>682</sup> Program of the Communist Party of Ukraine; http://www.kpu.ua/ru/page/programmakpu [accessed December 1, 2014].

<sup>683</sup> Program of the Svoboda Party; http://www.svoboda.org.ua/pro\_partiyu/prohrama/ [accessed December 1, 2014].

<sup>684</sup> Program of UDAR Political Party; http://klichko.org/about/programma/ [accessed December 1, 2014].

<sup>685</sup> Program of the United Opposition "For Motherland!";http://batkivshchyna.com.ua/storage/article/userfiles/files/ZAprog.pdf [accessed December 1, 2014].

<sup>686</sup> Only 5% of the Coalition Agreement is realized, Mirror Weekly; http://dt.ua/POLITICS/koaliciyna-ugoda-vikonana-lishe-na-5-168409\_.html

# Key recommendations:

# To the Verkhovna Rada of Ukraine

the legal framework governing political finance should be brought in conformity with the international standards, including Recommendation 2003(4) of the Committee of Ministers of the Council of Europe on Common rules against corruption in the funding of political parties and electoral campaigns; the legislation on political finance should also address GRECO recommendations for Ukraine deriving from its Third Evaluation Round Report; and

to promote internal competition between party representatives during elections and foster democratic governance within political parties, the Parliament should introduce open list proportional system for the parliamentary elections.

# 11. MEDIA

# Summary

While the legal framework generally allows establishment and operation of media entities, the large number of legal requirements to establish a media entity and the number of restrictions on media activities hamper their operations. Provisions aimed to prevent unwarranted external interference with the activities of the media do not cover all aspects of media independence. As in previous years, media still strongly depend on their owners, while the cases of external interference and pressure are not uncommon in practice, although their number has reduced in 2014 compared to the previous years. Themechanisms for ensuring media accountability and integrity are weak. Despite the fact that the parliament adopted legislation aimed to ensure transparency of media ownership, its impact has yet to be seen, as in practice true donors are still hidden. Informing public on a broad spectrum of issues by media is complicated by the absence of reforms pertaining to privatisation of media outlets owned by the state and local self-government bodies and failure to establish independent public broadcasting, close political connections of media owners, lack of professionalism among the journalists, low respect to freedom of speech by public officials, and lack of public demand for covering a number of important issues. Media are active in investigating corruption cases and informing the public on coruption. However, these activities rarely result in any prosecution of those involved. Informing public on governance issues is often biased and incomplete.

The table below presents a general evaluation of media in terms of capacity, governance and role in national integrity system. Afterwards, a qualitative assessment of the relevant indicators is presented.

# MEDIA

Overall Pillar Score (2015): 43.75 / 100

Overall Pillar Score (2010): 42.36 / 100					
Dimension	Indicator	Law	Practice		
Capacity	Resources	50 (2015, 2010)	50 (2015, 2010)		
43.75/100	Independence	50 (2015, 2010)	25 (2015, 2010)		

MEDIA			
Governance	Transparency	50 (2015), 25 (2010)	25 (2015, 2010)
37.5/100	Accountability	50 (2015, 2010)	25 (2015, 2010)
51.51100	Integrity	50 (2015, 2010)	25 (2015, 2010)
Dela	Investigation and exposure of the cases of corruption	50 (2015, 2010)	
Role 50/100	Informing public on corruption and its impact	50 (2015, 2010)	
	Informing public on governance issues	50 (2015, 2010)	

# Structure and organisation

As of January 1, 2013, there were 34,000 registered print media outlets in Ukraine, of which 14,427 were distributed locally, while 19,575 were distributed nationally and regionally or abroad.<sup>687</sup> By December 31, 2014, the National Broadcasting Council had registered 1,631 TV and radio stations.<sup>688</sup>

There are no state bodies to regulate the activities of the press and Internet media. Broadcast media are overseen by the National Broadcasting Council (NBC), which is also in charge of issuing licenses to broadcasters. The NBC is composed of eight members, four elected by the parliament and four appointed by the president for 5 year terms.

The interests of owners of private media entities are represented by the Independent Association of Broadcasters, Television Industry Committee, Ukrainian Association of Press Publishers, Association of Independent Regional Publishers of Ukraine and others. The rights of journalists are protected by a number of trade union organizations, in particular by the Independent Media Trade Union of Ukraine, the Kyiv Independent Media Trade Union, the National Union of the Journalists of Ukraine, as well as by civil society organizations. The disputes of ethical and profesional nature are settled by the Commission on Journalist Ethics. This self-regulatory body was initially created by 80 journalists in 2001, and on the 5th of March, 2003, the Commission was registered with the Ministry of Justice of Ukraine as a civic association (NGO).

<sup>687</sup> http://www.drsu.gov.ua/show/10592 [accessed December 1, 2014].

<sup>688</sup> National Broadcasting Council, 2014 Annual Report, p. 26.

# Assessment

## Resources (law) - Score 50 (2015, 2010)

To what extent does the legal framework provide an environment conducive to a diverse independent media?

In general, the legal framework provides an environment conducive to a diverse independent media<sup>689</sup> in Ukraine as well as state-owned and municipal. It has not significantly changed since 2010.

The entry into the journalistic profession in Ukraine is free.<sup>690</sup> Under the law, different types of media can be set up: private, state, and municipal media.

The establishment of broadcast media entities generally is not restricted by law. The only restriction in this regard is the prohibition of establishment of broadcasting companies by legal persons registered abroad, foreigners, persons without citizenship, political parties, trade unions, religious organisations and persons who founded them, and persons sentenced by court of law to imprisonment or incapacitated based on a court ruling.<sup>691</sup> Broadcasting is subject to licensing. A broadcasting license can be granted only on a competitive basis (with a few exceptions from this rule),<sup>692</sup> but the licensing criteria are not clear and transparent<sup>693</sup> [see: Independence (Law)]. However, a decision on refusal to grant a license can be appealed in a court.<sup>694</sup>

Printed media can be established by the citizens of Ukraine and other states, stateless persons, legal entities registered either in Ukraine or in other states, employees of enterprises, institutions and organisations.<sup>695</sup> Printed media are registered by the State Registration Service or respective local branches of the Ministry of Justice (depending on the area of distribution of media outlet).<sup>696</sup> The Law on Press grants the respective registration bodies the right to refuse to register print media outlet if its title coincides with the titles of already registered print media outlets, if an application for registration was submitted within a year from the date of prohibition of the media outlet on the basis of court decision, or if the title or aims of outlet failed to comply with requirements of Articles 3 and 4 of the Law on Press.<sup>697</sup> Articles 3 and 4 of the Law on Press prohibit use of obscene language in media, the use of media to propagate war and violence, unlawful seizing power, forceful change of the constitutional order, violating Ukraine's sovereignty and territorial integrity, inciting inter-ethnic, racial or religious hatred, committing crimes, spread of pornography, intrusion in private life of individuals. A decision on refusal of registration can be challenged with court.

Current legislation does not provide for the effective mechanisms to promote competition between media. First, state-owned and municipal media receive subsidies from state and local budgets,

<sup>689</sup> IREX, Media Sustainability Index 2014, p.209.

<sup>690</sup> IREX, MediaSustainabilityIndex 2010, p. 204.

<sup>691</sup> Article 12 of the Law on Broadcasting.

<sup>692</sup> Articles 23 of the Law on Broadcasting.

<sup>693</sup> IREX, MediaSustainabilityIndex 2010, p. 199.

<sup>694</sup> Art. 55 and 124 of the Constitution of Ukraine, Article 30 of the Law on Broadcasting.

<sup>695</sup> Art. 8 of the Law on Press.

<sup>696</sup> Art. 11oftheLawonPress; CMU Resolution № 1287onStateRegistrationofPrintMedia andNewsAgenciesandonAmountsofRegistrationFees,dated 17 November 1997.

<sup>697</sup> Art. 15 of the Law on Press.

something that distorts competition.<sup>698</sup> In addition, journalists employed by state and municipal media have civil servant status and therefore are assured of steady increases in salaries and pensions, while journalists employed by private media entities do not have this status.<sup>699</sup> Second, even though there are certain restrictions on media concentration (e.g. control of more than 5 % of print outlets or 35 % of national, regional and local radio and television market by natural or legal person is prohibited<sup>700</sup>), lack of clear definitions of the relevant markets in which control is exercised, as well as lack of transparency of media ownership, create a trend towards concentration of media ownership.<sup>701</sup>

# Resources (practice) - Score 50 (2015, 2010)

## To what extent is there a diverse independent media providing a variety of perspectives?

As in 2010 and before, Ukraine has a large variety of media operating both in and outside the capital, but media generally do not cover the entire political and social spectrum.

Ukraine has both effective and ineffective media companies, and the market leaders are generally managed effectively.<sup>702</sup>The economic crisis in the country is reflected in media revenues and the level of their independence, and prospective investors chose to invest into less risky businesses.<sup>703</sup> Availability of financial resources to the media generally depends on whether the media is public or private, as well as on the type of media. In general, the advertising market is a kind of oligopoly in Ukraine, controlled by a limited number of companies.<sup>704</sup> State-owned broadcasters and print media outlets have limited access to resources, as budget subsidies to those media have decreased in the recent years due to budget deficits. The level of professionalism of the journalists remains low, while media fail to represent the entire political spectrum, as well as societal interests, including the interests of minorities [see also: Independence (practice)].<sup>705</sup>

## Independence (law) - Score 50 (2015, 2010)

# To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?

The legal safeguards to prevent unwarranted external interference with media activities exist, but the flaws in the respective legal provisions do not allow ensuring sufficient independence of media.

The right to freedom of thought and speech, as well as to free expression of views and beliefs is enshrined in the Constitution.<sup>706</sup> Ukraine is also a signatory to the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>707</sup> The principle of editorial freedom of media is legally

<sup>698</sup> IREX,MediaSustainabilityIndex 2014: 222; Art. 13 of the Law on Broadcasting.

<sup>699</sup> Art. 14 and 16 of the Law on State Support of Media and Social Protection of the Journalists.

<sup>700</sup> Art. 8 of the Law on Broadcasting and Art.10 of the Law on Press.

<sup>701</sup> IREX,MediaSustainabilityIndex 2009:206

<sup>702</sup> IREX,MediaSustainabilityIndex 2014, p. 222.

<sup>703</sup> IREX,MediaSustainabilityIndex 2014, p. 222.

<sup>704</sup> IREX,MediaSustainabilityIndex 2014, p. 223-224.

<sup>705</sup> Interview by Evhen Radchenko, development director at Internews Ukraine, with author, 14 July 2014.

<sup>706</sup> Art.34 of the Constitution of Ukraine.

<sup>707</sup> Law on Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols № 1,2,4,7, and 11 to the Convention.

recognized, while the censorship is prohibited.<sup>708</sup> Interference with the professional activities of journalists is treated as a crime and entails criminal liability.<sup>709</sup> Libel is exclusively a civil issue.<sup>710</sup>

However, certain provisions in the legal framework do not ensure an adequate level of media independence. The rights of the journalists employed by the broadcasting companies are not specified in the laws. The Law on Protection of Public Morality provides for the establishment of the National Commission for Protection of Public Morality, which was traditionally viewed as the body that institutionalised state censorship. The legislation governing the operations of the state and municipal media provided for a number of obligations for those media as to coverage of the activities of public authorities and officials<sup>711</sup>[for further details see: National Integrity System Assessment. Ukraine 2011, p. 162-163].

# Independence (practice) – Score 25 (2015, 2010)

## To what extent is the media free from unwarranted external interference in their work in practice?

Despite the fact that the legal framework provides for a number of provisions to ensure independence of the media, the respective provisions are poorly implemented in practice.<sup>712</sup>

In 2013, attacks on the journalists have become more and more frequent, with little effort to punish violations and those who prevented journalists from doing their jobs.<sup>713</sup> Through January toSeptember 2014, the number of attacks on the journalists hadbeen decreasing, but in October 2014, the Institute of Mass Information (IMI) identified an increase in number of attacks once again. Overall, during the first 10 months of 2014, 7 journalists were killed, 281 were attacked, while in 137 journalists faced attempts to prevent them from exercising their duties. Over the same period, IMI has identified 130 cases of censorship.<sup>714</sup>

In 2013 and previous years, the journalists criticized the Broadcasting Council on its total loyalty to the Government and use of licensing as a tool of political pressure.<sup>715</sup> The IREX-interviewed experts stressed that it was impossible for the channel that was beyond the influence of pro-government forces to obtain a license. The Broadcasting Council was also accused of unfair distribution of frequencies to newly set-up companies, as well as selective inspections and punishments.<sup>716</sup> Once the new composition of the new Broadcasting Council hadbeen appointed in 2014, the Council demonstrated afairer attitude towards the broadcasters, however, it still failed to perform some its functions, such as monitoring of hidden political advertising on TV and Radio.<sup>717</sup>

Another problem threatening the independence of the media is that journalist associations unite a relatively insignificant number of journalists and fail to solve the problems between the journalists,

<sup>708</sup> Art. 45 of the Law on Information, Art.2 of the Law on Press, Art.5 of the Law on Broadcating.

<sup>709</sup> Art.171 of the Criminal Code of Ukraine.

<sup>710</sup> IREX, MediaSustainabilityIndex 2010: 203.

<sup>711</sup> Law on the Procedure for Coverage of the Activities of State and Local Authorities by Media, № 539/97-BP, 23 September 1997.

<sup>712</sup> IREX,MediaSustainabilityIndex 2014, p. 209.

<sup>713</sup> IREX, MediaSustainabilityIndex 2014, p. 209.

<sup>714</sup> http://tyzhden.ua/News/122963 [accessed December 1, 2014].

<sup>715</sup> IREX,MediaSustainabilityIndex 2014, p. 210.

<sup>716</sup> IREX,MediaSustainabilityIndex 2014, p. 210.

<sup>717</sup> http://vybory.mediasapiens.ua/2014/10/09/viktoriya-syumar-natsrada-ne-hoche-porahuvaty-kilkist-politychnoji-dzhynsy/ [accessed December 1, 2014].

owners and managers, if such problems arise.718

Many journalists and artists criticized the activities of the National Commission for Protection of Morality due to its interference with the freedom of expression. In January 2015, they applied to the Cabinet of Ministers to adopt a decision on termination of the Commission. In previous years, the Commission was accused of censorship as it recognized the lyrics of some music bands as inconsistent with public morality, prohibited broadcasting of foreign films and cartoons, and accused famous novels of being a kind of "pornography".<sup>719</sup> On January 14, 2015 the parliamentary committee for freedom of expression considered a draft law providing for termination of the Commission, but the draft has yet to be adopted by the legislature.

While the cases of censorship are not rare in Ukraine, the scale of censorship has somewhat decreased compared to the previous years. However, private media strongly depend on their owners and fail to represent all the spectrum of the societal interests, while many important topics remain uncovered by the media.<sup>720</sup> State print and broadcast media are not independent at all as they are funded from the State or local budgets. The only media which can be considered more or less independent and represent various interests within the society are Internet media.<sup>721</sup> The problem of self-censorship within the media, as well as the problem of so-called jeansa(hidden political advertising or paid-for stories) remains pronounced for both national and local media.<sup>722</sup>

There is a tradition of defamation claims in Ukraine, but, on a positive note, the number of defamation cases won by the media increased in the recent years, even though court decisions delivered upon defamatory lawsuits still remain unpredictable.<sup>723</sup> Access of the media to official information is not ensured in practice in many cases [see: Legislature (transparency (practice); Public Sector (transparency (practice); EMB (transparency (practice)].

## Transparency (law) - Score 50 (2015), 25 (2010)

#### To what extent are there provisions to ensure transparency in the activities of the media?

Since 2010, the rules governing transparency of the media has improved but they still contain some important gaps.

In October 2014, the Parliament adopted the Law on Identification of Ultimate Beneficiaries of Legal Persons and Public Figures, which requires all legal persons to disclose their ultimate beneficiaries. Such information will be available to citizens upon request. Also, in July 2013, the Parliament adopted the Law on Amendments to Certain Legislative Acts of Ukraine Aimed to Ensure Transparency of Media Ownership. However, that Law ultimately allows for the true owners to remain hidden.<sup>724</sup>

The NBC is legally required to make public all its decisions (including decisions on awards of

<sup>718</sup> Interview by Evhen Radchenko, development director at Internews Ukraine, with author, 14 July 2014.

<sup>719</sup> http://povin.com.ua/amoralna-komisiya-top-5-skandaliv-povyazanix-iz-nackomisiyeyu-iz-zaxistu-suspilno%D1%97-morali-video-094015/ [accessed January 15, 2014].

<sup>720</sup> Interview by Kateryna Myasnikova, executive director of the Independent Association of the Broadcasters, with author, 14 July 2014; Interview by Evhen Radchenko, development director at Internews Ukraine, with author, 14 July 2014.

<sup>721</sup> Interview by Evhen Radchenko, development director at Internews Ukraine, with author, 14 July 2014.

<sup>722</sup> Interview by Evhen Radchenko, development director at Internews Ukraine, with author, 14 July 2014; IREX, MediaSustainabilityIndex 2014, p. 215.

<sup>723</sup> IREX, MediaSustainabilityIndex 2014, p. 213.

<sup>724</sup> IREX,MediaSustainabilityIndex 2014, p. 220.

licenses) within one day following the day when they were adopted.<sup>725</sup> In accordance with the Law on Press, only general information on media is a subject to mandatory disclosure, such as information on a title of a print outlet, name of a founder and publisher, total circulation.<sup>726</sup> Every TRB is legally obliged to make public its editorial statute (which, in turn, defines the principles of editorial policy of a broadcaster), as well as to disclose certain information on an entity while applying for a broadcasting license.<sup>727</sup> The information presented in the documents submitted with application for a license has to be reflected in the State register of broadcasting entities.<sup>728</sup> The Law, however, leaves at the discretion of the NBC to decide on what information from the Register to make publicly available.

The rules of self-regulation do not require media to make public any information on their internal activities – these rules deal only with journalist ethics and regulate interaction between owners, managers and journalists.<sup>729</sup>

# Transparency (practice) – Score 25 (2015, 2010)

## To what extent is there transparency in the media in practice?

As in 2010 and in previous years, transparency of the media is not ensured in practice.

Transparency of media ownership remains poor and true owners of the media are mostly hidden behind offshore companies, even though the parliament adopted two laws aimed to ensure transparency of media ownership<sup>730</sup> [see: Transparency (law)]. Print media do not disclose any information on their internal activities, in particular on staff, editorial policy and reports to public authorities.<sup>731</sup> The editorial policies (principles of journalist ethics) of the broadcasters are specified in their editorial statutes which are available on the broadcasters' websites; however, the information on their internal activities.

# Accountability (law) - Score 50 (2015, 2010)

# To what extent are there legal provisions to ensure that media outlets are answerable for their activities?

The existing regulation contains some gaps which do not ensure that media outlets are answerable for their activities.

The law ensures the right to refutation,<sup>732</sup> the right to reply<sup>733</sup>, as well as procedure for exercising these rights. Under the law, there are no state bodies entitled to regulate the activities of the press and Internet media. The activities of the broadcasting entities are regulated mainly by the NBC. Some kinds of TRB activities can be regulated by other state bodies, such as the Anti-Monopoly

<sup>725</sup> Art. 17 of the Law on the National Broadcasting Council.

<sup>726</sup> Art.32 of the Law on Press.

<sup>727</sup> Art.24 and 57 of the Law on Broadcasting.

<sup>728</sup> Clause 1.5.of the Rules on Administering the State Register of Broadcasting Entities, approved by Decision of the National Broadcasting Council № 1709, 28 November 2007.

<sup>729</sup> See, for instance: http://www.1plus1.ua/watch/programs/about\_tsn/policy\_full; http://www.rivne1.tv/Articles/070201\_statut/ [accessed December 1, 2014]

<sup>730</sup> IREX, MediaSustainabilityIndex 2014, p. 220.

<sup>731</sup> Interview by Evhen Radchenko, development director at Internews Ukraine, with author, 14 July 2014.

<sup>732</sup> Art. 37 of the Law on Press, Article 64 of the Law on Broadcasting.

<sup>733</sup> Art.65 of the Law on Broadcasting.

Committee of Ukraine, the National Commission for Communications and other bodies.<sup>734</sup> The NBC supervises compliance of TRB activities with legal requirements, ensures enforcement of the legislation pertaining to broadcasting, protection of public morality, advertising, cinematography (as regards quotas for national films), elections; licenses broadcasting and exercises control over observance of license conditions by broadcasting entities; imposes sanctions for violations.<sup>735</sup>

In 2001, 80 journalists signed the Code of journalist ethics and established the Commission on journalist ethics to ensure enforcement of the Code. Two years later, the Commission was registered with the Ministry of Justice as civic association. The Commission deals with disputes of ethical and professional nature; on the basis of their consideration it can adopt decisions in the forms of recommendations, statements, and reproaches.<sup>736</sup> Media do not have any specific bodies or ombudsmen entitled to consider complaints, and all the complaints are usually considered by chief editors.<sup>737</sup>

# Accountability (practice) - Score 25 (2015, 2010)

To what extent can media outlets be held accountable in practice?

In practice, the possibility of holding media accountable for their actions is significantly restricted.

The activities of the Broadcasting Council as a regulator proved to be ineffective in the previous years due to politicization of the institution, its strong dependence on the Government and selective approach towards treatment of the various broadcasters. In 2014, the situation started to improve, but some aspects of work of the body were still ineffective [see: Independence (practice)].

Unlike many other countries, there are no press councils in Ukraine. A number of professional media/ journalist associations exist, and the journalism community is mighty compared to other professional communities, but associations work rather nominally and lack real tools of influence.<sup>738</sup>

The right to refutation and the right to reply is not effectively exercised as the majority of the media do not refute untruthful information or ensure the right to reply until a court decision obliging them to do so comes into legal force.<sup>739</sup>

The Commission on journalist ethics has NGO status, therefore some journalists believe that it has no right to resolve disputes involving jornalists who are not members of the Commission (i.e. the journalists who did not sign the Code of journalist ethics).<sup>740</sup> One of the interlocutors stressed that the procedures for filing complains with the Commission, as well as the procedure for consideration of those complaints and delivery of decisions are cumbersome processes, and therefore the Commission is not very effective in ensuring accountability of the media. Its decisions do not create any incentives for the journalists to adhere to the standards of the journalist ethics.<sup>741</sup>

Any natyral person or leghal entity unsatisfied with content of the materials published by media

<sup>734</sup> Art.70 of the Law on Broadcasting.

<sup>735</sup> Art.70 of the Law on Broadcasting; Art.13-15 of the Law on the National Broadcasting Council.

<sup>736</sup> http://www.cje.org.ua/ [accessed December 1, 2014].

<sup>737</sup> Interview by Evhen Radchenko, development director at Internews Ukraine, with author, 14 July 2014.

<sup>738</sup> IREX, MediaSustainabilityIndex 2014, p. 225.

<sup>739</sup> Interview by Evhen Radchenko, development director at Internews Ukraine, with author, 14 July 2014.

<sup>740</sup> http://www.timeofchange.com.ua/index.php?lang=ru&section=useful&sub=countries&id=923[accessed December1, 2014].

<sup>741</sup> Interview by Evhen Radchenko, development director at Internews Ukraine, with author, 14 July 2014.

(publication or program) can file an application to the Commission of Journalism Ethics. The application has to contain the name of the applicant or the name of the organization, media name, substance of the applicant's claim, proofs that support the the applicant's claim (copy of the publication or the program record). The majority of the decisions by the Commission have been made as the result of the officials and third parties' applications. Only several cases of ethical controversies were considered upon the journalists' application. The number of decisions made by the Commission upon the cases consideration is insignificant: from March 2013 till December 2014 only 10 decisions were made.

# Integrity (law) - Score 50 (2015, 2010)

## To what extent are there provisions in place to ensure the integrity of media employees?

The mechanisms aiming to ensure the integrity of media employees are in place in Ukraine, but they do not cover all the issues connected to integrity and contain some gaps.

The standards of journalist ethics are set by the Code of journalist ethics (adopted by the Commission on journalist ethics) and the Code of professional ethics of Ukrainian journalist (adopted by National Union of Journalists of Ukraine). The provisions of these two codes are generally in line with codes of ethics of international professional associations.<sup>742</sup> Namely, they provide for the principles of the freedom of speech, respect to privacy, presumption of innocence in coverage of judicial matters, the right to withhold the sources of information, clear separation between facts, opinions and assumptions, representation of the variety of opinions, as well as prohibition of plagiarism, all forms of discrimination and remuneration for publications, etc.<sup>743</sup>

As regards individual media outlets, they do not have their own codes of journalist ethics. The commissions on ethics have been created in some media, but their number is insufficient.<sup>744</sup> In broadcast media entities, the equivalent of codes of journalist ethics are editorial statutes, which are legally required to be adopted and made public by all broadcasting entities. The supervision of implementation of the editorial statutes is exercised by editorial councils, the establishment of which is mandatory.<sup>745</sup>

# Integrity (practice) - Score 25 (2015, 2010)

#### To what extent is the integrity of media employees ensured in practice?

The actions aimed to ensure integrity of the media employees are insufficient and media standards are generally ignored by the journalists.

The compliance of Ukrainian journalists with ethical standards remains weak.<sup>746</sup> There is a widespread practice of publishing pre-paid information or hidden (i.e., not marked as such) advertising , also known in Ukraine as jeansa [see: Independence (practice)].

<sup>742</sup> Kateryna Tsetsura, Anastasia Grynko, 'An Explanatory Study of Media Transparency in Ukraine', Public Relation Journal, Vol.3, 2009, № 2, 7; http://www.prsa.org/SearchResults/download/6D-030205/0/An\_Exploratory\_Study\_of\_the\_Media\_Transparency\_in [accessed December 1, 2014].

<sup>743</sup> Code of Ethics of Ukrainian Journalists, adopted by the Ukrainian Ethics Commission in 2002.

<sup>744</sup> Interview by Evhen Radchenko, development director at Internews Ukraine, with author, 14 July 2014.

<sup>745</sup> Art. 57 of the Law on Broadcasting.

<sup>746</sup> Interview by Evhen Radchenko, development director at Internews Ukraine, with author, 14 July 2014; IREX, MediaSustainabilityIndex 2014, p. 214-215.
Only a few media outlets practice fact checking, but even they publish minor factual mistakes; plagiarism is widespread, and the overall quality of journalism has been declining over the recent years.<sup>747</sup>

# Investigation and exposure of the cases of corruption (practice) - Score 50 (2014, 2010)

To what extent are the media active and successful in investigating and exposing cases of corruption?

The media are generally active in investigating corruption cases, but their activities in this respect rarely result in any criminal convictions.

Since 2010, media (Svidomo Investigative Bureau, ZIK, Nashi Groshi, Ukrainska Pravda and others, including freelancer journalists) have investigated a number of cases of high-profile corruption, including the cases of illicit enrichment of the former President Yanukovych and members of his family, corruption during 2012 European Football Championship, embezzlement of public funds by senior officials and violations of the legislation governing public procurement. The respective materials of investigative journalism were sent to law enforcement agencies, but in most cases no investigations have been launched and no one whose illegal activities were investigated has ever been brought to legal liability. Therefore, the activities of the media aimed to bring corruption into the spotlight arenot supported by the law enforcement agencies.

Informing public on corruption and its impact (practice) – Score 50 (2015, 2010)

To what extent are the media active and successful in informing the public on corruption and its impact on the country?

Compared to 2010, the role of the media in informing the public on corruption and its impact has not increased. The key role in this regard is played by the public authorities and law enforcement bodies, as well as by CSOs rather than by media. Media generally investigate involvement of officials into corrupt practices, report on revealed cases of corruption, on proceedings launched against persons who committed corruption offences, as well as on criminal convictions, but they play a little role in explaining the impact of corruption to the citizens.<sup>748</sup>

#### Informing public on governance issues (practice) – Score 50 (2015, 2010)

To what extent are the media active and successful in informing the public on the activities of the government and other governance actors?

Media are generally active in informing the public on the activities of the government and other governance actors, but information on those activities in many cases is biased and of low quality.

The activities of the public authorities are extensively covered in the state press (such as Holos Ukrainy and Uriadovyi Kuryer newspapers,various state broadcasters), numerous talk shows on national channels (e.g.,Shuster Live, Svoboda Slova, Pravo na Vladu), and Internet media (e.g.,Ukrainska Pravda, Livyi Bereh, Correspondent). However, coverage of these activities (especially in state media and talk shows) is often of a low quality, incomplete and biased due to the

<sup>747</sup> IREX, MediaSustainabilityIndex 2014, p. 215.

<sup>748</sup> Interview by Evhen Radchenko, development director at Internews Ukraine, with author, 14 July 2014.

practice of presentation of only limited opinions on the subject.749

# Key recommendations:

# To the Verkhovna Rada of Ukraine

To adopt a new version of the law regulating the status of the National Television and Radio Broadcasting Council of Ukraine. This law has to take the international standards into account as well as provide for independence, accountability, and efficiency of the regulator's activities. To the Verkhovna Rada of Ukraine

To the Cabinet of Ministers of UkraineTo expedite measures aimed to privatize the existing publicly owned printed media outlets. The respective draft law should be prepared in open and inclusive manner.

# 12. CIVIL SOCIETY

# Summary

Compared to 2010, the conditions for operations of the civil society organizations in Ukraine have generally improved. The Parliament adopted new Law on Civic Associations, which strengthened CSO independence and simplified the procedure for their registration and operations. Overall, CSOs have better access to financial and human resources to function effectively, however availability of resources to local CSOs in a number of cases changed for the worse. Since the beginning of 2014, no external interference with the CSO activities has been identified. At the same time, the level of CSO transparency and accountability has not increased. Publication of narrative and financial reports by CSO is not widespread, even though the overall number of the CSOs making their reports publicly available has increased. Only few organizations have adopted their own codes of ethics. The existing systems of governance within the CSOs, as well as their internal decision-making procedures have very little in common with what is prescribed by the internal CSO regulations. Integrity within the CSOs is promoted mainly by donor pressure rather than by CSOs themselves. The CSOs role in holding government accountable for its actions and in initiating anti-corruption policy development has increased in the recent years.

The table below presents a general assessment of the CSOs in terms of capacity, governance and role in the national integrity system. The table is followed by a qualitative assessment of the respective indicators.

# **CIVIL SOCIETY**

Overall Pillar Score (2015): 58. 3 / 100

Overall Pillar Score (2010): 42.36 / 100

Dimension Indicator

Law

Practice

<sup>749</sup> Interview by Evhen Radchenko, development director at Internews Ukraine, with author, 14 July 2014.

Capacity	Resources	75 (2015), 50 (2010)	50 (2015, 2010)
62.5 / 100	Independence	75 (2015), 50 (2010)	50 (2015), 25 (2010)
Governance	Transparency	50 (2015, 2010)	
	Accountability	25 (2015, 2010)	
37.5 / 100	Integrity	50 (2015, 2010)	25 (2015, 2010)
Role	Hold government accountable	75 (2015), 50 (2010)	
75 / 100	Engagement into anti-corruption policy reform	75 (2015), 50 (2010)	

# Structure and organisation

In March 2012 the Parliament adopted new Law on Civic Associations (the Law)<sup>750</sup>, which entered into legal force on January 1, 2013. Under this Law, non-governmental organisations (CSOs) are registered by the registration units of the local (city, rayon and city district) branches of the Ministry of Justice of Ukraine. In contrast to the previous version of the Law on Civic Associations, which limited the activities of the local CSOs to the regions where they were registered, the current Law provides that both local and national CSOs can operate either at local and national levels. Currently, the only difference between the national and local CSOs is that national CSOs must have registered local branches in most of the regions of Ukraine. CSOs can be terminated through self-dissolution or through dissolution by the court decision. The latter can be adopted only if a CSO pursues undemocratic goals or uses undemocratic means to achieve its goals.

According to the State Service of Statistics, as of July 1, 2014, there were 73,625 registered NGOs (including local branches of the NGOs with the national status), 24,673 religious organisations, and 14,689 charitable foundations in Ukraine.<sup>751</sup>

# Assessment

# Resources (law) - Score 75 (2015), 50 (2010)

To what extent does the legal framework provide an environment conducive to civil society?

The existing legal framework provides for better conditions for CSO operations compared to 2010.

The new Law on Civic Associations has created a conducive environment for the establishment and operations of the CSOs, in particular, as regards funding and use of CSO financial resources<sup>752</sup>. Among other things, the Law has simplified the procedure for registration of the CSOs as legal persons.<sup>753</sup> While the previous legislation required that CSOs with national status had to be founded

<sup>750</sup> Law on Civic Associations; http://zakon4.rada.gov.ua/laws/show/4572-17 [accessed December 1, 2014].

<sup>751</sup> See: http://www.ukrstat.gov.ua/edrpoy/ukr/EDRPU\_2014/ks\_opfg/ks\_opfg\_0714.htm [accessed July 28, 2014].

<sup>752</sup> Human rights in Ukraine 2013: Report by human rights organisations (Edit. by Yevhen Zakharov), 2014, p.199; http://helsinki.org.ua/files/ docs/1398017200.pdf [accessed December 1, 2014]; Freedom House, Nations in Transit 2013:588-589 (http://www.freedomhouse.org/sites/default/files/NIT13\_Ukraine\_1stProof.pdf) [accessed December 1, 2014]; Freedom House, Nations in Transit 2014:615. (http://www.freedomhouse. org/sites/default/files/Ukraine\_Proof2\_upload.pdf) [accessed December 1, 2014]

<sup>753</sup> Maksym Latsyba, Anastasia Shymchuk and Anstasia Krasnosilska (2014), Conditions for operations of the civic associations. Implementation of the Law on Civic Association and regional programs for the civil society development in 2013, p.4. (http://www.ucipr.org.ua/userfiles/ NGO\_activity2013(2).pdf) [accessed December 1, 2014].

by 42 persons, the new Law provides that CSOs with national status can be founded by 2 persons. Also, the timelines for adopting decision on registration of CSO have been narrowed from 30 to 7 working days, while the Law provides for no payment for administrative services connected to CSO registration. Further, the list of the grounds for refusal of CSO registration, as well as the list of documents required for application for registration, are now exhaustive. The bodies in charge of CSO registration only check whether the CSO charters comply with the Constitution and some laws of Ukraine, while under the previous regulations they also checked consistency of the charters with the by-laws. Registration of the offices of the international NGOs in Ukraine is also governed by the Law, and the amount of the fee to be paid for such a registration has been decreased from USD 500 to USD 40.

In July 2012, the Parliament also adopted a new Law on Charitable Activities and Charitable Organisations<sup>754</sup>. This Law provides for simplified procedures for registration of the charitable organisations. In particular, the timelines for their registration was decreased to 3 working days following the day when the registration documents were submitted to the state registrar, and registration is now governed not by specific regulations, but by the general provisions laid down in the Law on State Registration of Legal Persons and Private Entrepreneurs<sup>755</sup>.

All these legal developments have resulted in decrease in the number of refusals of CSO registration from 30-50% to 10% of the total number of submitted applications for registration in 2013.<sup>756</sup> Currently, CSOs face no significant problems in terms of their official registration.<sup>757</sup> Some other problems, however, still remain. In particular, interaction between different public bodies responsible for CSO registration (state registrars, tax authorities etc.) is not fine-tuned.<sup>758</sup>One can face difficulties with finding contact details of registration offices on Internet, as the respective information is dispersed among different web sites.<sup>759</sup>

The Law on Civic Associations also allows legal persons to found the CSOs and provides that CSOs are entitled to protect not only the rights and interests of their members (as was prescribed by the previous legislation), but also the rights and interests of other persons, including interests of the society as a whole. These new provisions should also be welcomed.

Under the Law on Civic Associations, the CSOs are entitled to carry out business activities and receive income from those activities, something that was missing in the previous version of this Law. This new provision will bring the legal framework in line with the Civil Code of Ukraine, which explicitly states that civic associations, in addition to their main activities, are allowed to carry out business activities on condition that the later serve the purpose which associations pursue and allow them to achieve the goals of association. Nevertheless, the provisions in the Law on Civic Associations have yet to be aligned with the requirements of the Tax Code of Ukraine, which does not specifically entitle CSOs to carry out business activities. In practice, the CSOs have to choose between doing business and retaining their non-profit status as in many cases tax authorities apply the provisions laid down in the Tax Code to CSOs rather than provisions in Law on Civic Associations and, thus, deprive them of the non-profit status, which results in taxation of all the CSO income by corporate income tax.

<sup>754</sup> http://zakon4.rada.gov.ua/laws/show/5073-17 [accessed December 1, 2014].

<sup>755</sup> http://zakon4.rada.gov.ua/laws/show/755-15 [accessed December 1, 2014].

<sup>756</sup> Maksym Latsyba, Anastasia Shymchuk (2013), How to understand the new Law on Civic Associations?, p.5, http://www.ucipr.org.ua/ userfiles/new\_law\_NGO2013(1).pdf) [accessed December 1, 2014]; USAID, Counterpart Creative Union (2014), 2013 NGO Sustainability Index: 2. (http://ccc-tck.org.ua/storage/books/2013\_ukraine\_ukr.pdf) [accessed December 1, 2014].

<sup>757</sup> Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.

<sup>758</sup> Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.

<sup>759</sup> Maksym Latsyba, Anastasia Shymchuk and Anstasia Krasnosilska (2014), Conditions for operations of the civic associations. Implementation of the Law on Civic Association and regional programs for the civil society development in 2013, p.5.

CSOs are allowed to choose simplified taxation regimes, whereby they pay a single income tax amounting to 3-10% of the total quarterly incomes. They may also chose whether to pay VAT or not (VAT is not paid if CSO selected 10% single tax but is mandatory for those CSOs who chose to pay 3% single tax). Donations made to CSOs by natural and legal persons are partially tax exempt. However, in practice neither legal persons nor citizens make donations to CSOs due to complicated tax reporting rules and ambiguities in the legal framework governing taxation.<sup>760</sup>

# Resources (practice) – Score 50 (2015, 2010)

To what extent do CSOs have adequate financial and human resources to function and operate effectively?

In practice, CSOs have slightly better access to resources compared to 2010, but the available resources only partially allow NGOs to work effectively.

In general, CSO dependence on a single donor or project in 2014 has decreased: the most dependent on the limited number of donors are small organisations which do not implement ambitious projects<sup>761</sup>, as well as CSOs implementing specific projects which can only be funded by one donor<sup>762</sup>. In many regions, CSOs receive local budget funds within the framework of regional public programs targeted to promote development of the civil society<sup>763</sup>.

Starting from 2013, the role of domestic donors in funding CSOs has increased. Through the end of 2013 and beginning of 2014, the CSOs started to raise more funds from the citizens.<sup>764</sup> The number of private charitable foundations is increasing, but most of them carry out their own programmatic activities rather than give grants to CSOs.<sup>765</sup>The 2013 research produced by the Counterpart Creative Centre indicated that domestic funding constitutes almost 50% of the CSO budgets.<sup>766</sup>Many CSOs still chose not to apply for public funding as in previous years it was allocated in arbitrary and politically motivated manner, i.e. to the NGOs connected to the Government or supported by it.<sup>767</sup> The level of CSO participation in public procurement remains low, which is caused by the flaws in procurement legislation and poor enforcement of the existing procurement rules.<sup>768</sup>

As in 2010 and earlier, membership fees play little role in CSO funding.<sup>769</sup>In addition, in the recent years donors have cut funding to the regional CSOs, which has resulted in termination of activities of

<sup>760</sup> USAID, Counterpart Creative Union (2014), 2013 NGO Sustainability Index: 2.

<sup>761</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014.

<sup>762</sup> Oleksiy Orlovsky, Democratic Practice Program Initiative Director, International Renaissance Foundation, interview with author, July 30, 2014.

<sup>763</sup> Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.

<sup>764</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014; USAID, Counterpart Creative Union (2014), 2013 NGO Sustainability Index: 4.

<sup>765</sup> USAID, Counterpart Creative Union (2014), 2013 NGO Sustainability Index: 4.

<sup>766</sup> USAID, Counterpart Creative Union (2014), 2013 NGO Sustainability Index: 4.

<sup>767</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014; Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.

<sup>768</sup> Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.

<sup>769</sup> Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014; Oleksiy Orlovsky, Democratic Practice Program Initiative Director, International Renaissance Foundation, interview with author, July 30, 2014; USAID, Counterpart Creative Union (2014), 2013 NGO Sustainability Index: 4.

many CSOs working at local level.770CSO incomes from business activities remain insufficient.771

As in 2010, CSOs still do not have access to diversified sources of funding.<sup>772</sup>Funding by international donors still remains the primary source of CSO incomes.<sup>773</sup>However, overall amount of international donor spending on domestic CSOs has decreased (especially at the regional and local levels)<sup>774</sup>, while the structure of donor funding has changed.<sup>775</sup> First, international donor funding is allocated for specific purposes/projects and in larger amounts, but funds are given to a smaller number of CSOs.<sup>776</sup>Second, compared to 2010, international donors have become more concerned about strategic planning and institutional development of Ukrainian CSOs and started to provide funding for those purposes.<sup>777</sup>Third, practice of direct funding of the domestic CSOs without engagement of foreign/international intermediaries in relations between the main donor and recipient, as well as practice of supporting organizations whose chairs are appointed by donors, has become more and more popular.<sup>778</sup>

In 2013-2014, support to non-institutionalized associations (i.e., existing as group of individuals without official registration as CSO) significantly increased. Such financial support was utilised for specific purposes or projects, such as medical assistance to protesters injured during Maidanin January and February 2014 or financial support to Ukraine's Armed Forces during military operation in the country's East.<sup>779</sup>

During 2012-2013, human resources available to CSOs decreased, as many organisations with limited financial means could not employ staff on a permanent basis.<sup>780</sup>Although in general the ability of CSOs to attract skilled professionals as staff has not increased in the recent years<sup>781</sup>, in 2014 some organizations are able to employ skilled staff.<sup>782</sup>CSOs generally do not have professionals on their staff responsible for fundraising, public relations, reporting to donors, project monitoring and evaluation.<sup>783</sup>The CSOs' ability to attract professional staff depends on availability of financial

<sup>770</sup> Oleksiy Orlovsky, Democratic Practice Program Initiative Director, International Renaissance Foundation, interview with author, July 30, 2014.

<sup>771</sup> Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.; USAID, Counterpart Creative Union (2014), 2013 NGO Sustainability Index: 4.

<sup>772</sup> Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.; USAID, Counterpart Creative Union (2014), 2013 NGO Sustainability Index: 4.

<sup>773</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014; Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.

<sup>774</sup> USAID, Counterpart Creative Union (2014), 2013 NGO Sustainability Index: 4.

<sup>775</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014.

<sup>776</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014.

<sup>777</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014; Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014; USAID, Counterpart Creative Union (2014), 2013 NGO Sustainability Index: 3.

<sup>778</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014.

<sup>779</sup> Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.

<sup>780</sup> Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.; USAID, Counterpart Creative Union (2014), 2013 NGO Sustainability Index: 3; USAID, Counterpart Creative Union (2012), 2012 NGO Sustainability Index: 5-6 (http://ccc-tck.org.ua/storage/books/ukraine\_usaid\_si\_report.pdf) [accessed December 1, 2014].

<sup>781</sup> Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.

<sup>782</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014.

<sup>783</sup> Kazhmyrkevych P. And Bekeshkina I. (2012), Supporting Civil Society in Ukraine: various perspectives: 12, http://dif.org.ua/modules/pages/ files/1384287023\_1842.pdf [accessed December 1, 2014].

#### resources.784

The practice of involving volunteers in the CSO work is slowly becoming a trend<sup>785</sup>. However, more active engagement of volunteers is impeded by complicated legal requirements for volunteers. For instance, the respective legislation requires that the activities of the volunteers must be licensed, while the volunteers must be officially registered. Therefore, many CSOs tend to involve volunteers into their operations unofficially<sup>786</sup>.

The material resources available to CSOs remain limited due to lack of effective planning of needs and future expenses, as well as by lack of donors' will to fund purchase of equipment, reimburse/ cover office rent.<sup>787</sup>

# Independence (law) - Score 75 (2015), 50 (2010)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?

Compared to 2010, the current legal framework provides for better legal guarantees of the CSO independence. Despite attempts to introduce a number of restrictions on the right to freedom of association, these have been repealed by the legislature due to strong opposition.

The right to freedom of association is enshrined in Article 36 of the Ukraine's Constitution. Any restrictions of this right can be imposed only by law in the interests of national security or public safety, for the protection of health, rights and freedoms of other people. Ukraine ratified the European Convention on Human Rights, which also provides for the right to freedom of assembly and association (Art.11).

Art. 37 of the Constitution and new Law on Civic Associations prohibits establishment and operations of only those CSOs, which pursue undemocratic goals, use undemocratic means to achieve their goals, or create paramilitary groups. State interference with the CSO activities is explicitly prohibited, except for the cases provided for by laws (for instance, state can interfere in CSO operations if it violates legislation on taxation or carries out activities aimed to undermine national sovereignty or territorial integrity of the country).<sup>788</sup>CSO can be prohibited (dissolved) only if it pursues undemocratic goals or uses undemocratic means to achieve its goals (these goals and means are listed in Articles 36 and 37 of the Constitution and Art. 4 of the Law on Civic Associations). Also, CSO can be prohibited only based on the court decision.<sup>789</sup>

In contrast to the previous version of the Law on Civic Associations, the current Law does not grant the Ministry of Justice and its regional branches the right to supervise the activities of the CSOs or to check whether the CSOs act pursuant to the rules laid down in their charters. Hence, the procedures for public supervision of the CSO activities are the same as the procedures established for any other legal person. None of the laws provide for state membership on CSO boards and mandatory attendance of the CSO meetings.

<sup>784</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014; Oleksiy Orlovsky, Democratic Practice Program Initiative Director, International Renaissance Foundation, interview with author, July 30, 2014.

<sup>785</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014.

<sup>786</sup> Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.; http://gurt.org.ua/articles/23076/ [accessed December 1, 2014].

<sup>787</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014.

<sup>788</sup> Art. 3, 4, 22 of the Law on Civic Associations.

<sup>789</sup> Art. 28 of the Law on Civic Associations.

On January 16, 2014, the Parliament adopted changes to the legal framework governing CSO activities<sup>790</sup>. Those changes provided for a number of restrictions of the right to freedom of association, including mandatory registration of CSOs receiving funding from abroad as "foreign agents", cancellation of tax exemptions for "foreign agents", criminalization of libel etc. On January 26, 2014, those changes were repealed by the legislature due to pressure from opposition parties and Maidan protesters.

# Independence (practice) - Score 50 (2015), 25 (2010)

To what extent can civil society exist and function without undue external interference?

Undue external interference with the CSO operations was common between 2010 and 2013.<sup>791</sup> Although after the Maidan protests and escape of the ex-President Viktor Yankovych from the country CSOs started to operate with no perceptible interference.

Most of the experts interviewed within the framework of this assessment also agreed that in the first half of 2014 no serious cases of external interference with the CSO activities have been identified.<sup>792</sup> The only exception to this is the Eastern part of Ukraine, namely, the territories controlled by armed separatists, where many CSOs and activists have not been able to work since spring 2014.

However, in 2010-2013, cases of undue interference with the CSO activities were widespread. For instance, many NGOs and charitable foundations were repeatedly checked by the prosecutor offices and security service, while the law enforcement agencies initiated a number of criminal cases against civil society activists based on far-fetched or politically motivated grounds.<sup>793</sup>Prosecution and intimidation of the civil society activists was a common practice in 2011<sup>794</sup>, 2012<sup>795</sup> and 2013<sup>796</sup>.

# Transparency (practice) – Score 50 (2015, 2010)

To what extent is there transparency in CSOs?

Since 2010, the level of transparency in CSOs has not increased.

As in 2010, the information on the composition of the governing bodies of the registered CSOs is

<sup>790</sup> Law No 721-VII, dated January 6, 2014; http://zakon2.rada.gov.ua/laws/show/721-18/print1390316109400037 [accessed December 1, 2014].

<sup>791</sup> Freedom House, Nations in Transit 2014:614.

<sup>792</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014; Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.

<sup>793</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014.

<sup>794</sup> Human Rights in Ukraine 2011. Politically motivated prosecution, available at: http://helsinki.org.ua/index.php?id=1332311408 [accessed December 1, 2014]; see also: http://www.khpg.org/index.php?id=1325325877 [accessed December 1, 2014]; http://www.civicua.org/news/view. html?q=1741231 [accessed December 1, 2014]

<sup>795</sup> Human rights in Ukraine 2012: Report by human rights organisations (Edit. by Yevhen Zakharov), 2013, pp.15-16; http://helsinki.org.ua/ files/docs/1362676567.pdf; [accessed December 1, 2014]; FreedomHouse, NationsinTransit 2013: 588-589; USAID, Counterpart Creative Union (2012), 2012 NGO Sustainability Index: 2-3; see, for instance: http://ukranews.com/uk/news/ukraine/2012/03/14/66163 [accessed December 1, 2014]; http://www.pravda.com.ua/news/2012/03/30/6961824/ [accessed December 1, 2014]; http://aub.org.ua/index.php?option=com\_content&tas k=view&id=6913&menu=119&Itemid=113 [accessed December 1, 2014]; http://www.civicua.org/news/view.html?q=1818924 [accessed December 1, 2014].

<sup>796</sup> Human rights in Ukraine 2013: Report by human rights organisations (Edit. by Yevhen Zakharov), 2014, pp.13-30; USAID, Counterpart Creative Union (2014), 2013 NGO Sustainability Index: 2; see also: http://www.pravda.com.ua/news/2013/07/10/6993938/ [accessed December 1, 2014].

made public by the Ministry of Justice on the website of the State Register of Civic Associations.<sup>797</sup> However, the information published on that website is sometimes out-dated, as the local bodies of State Registration Service (SRS) transmit it to the SRS with delays.<sup>798</sup>

Any person concerned has the right to receive information on a registered CSO (address, name, founders, etc.) from the State Register of Legal Persons and Private Entrepreneurs upon request for the respective information.<sup>799</sup> The CSO activities are also covered on their websites, in media, as well as on Hromadskyi Prostir website<sup>800</sup>. In 2012, the Government updated its website "Civil Society and Government"<sup>801</sup>, which provides access to the draft legislation prepared by the ministries and other government agencies, being publicly discussed (in particular, through public consultations held on-line) with the stakeholders, including CSOs. The experience of on-line consultations through the "Civil Society and Government" website has proved that CSOs do not actively participate in those consultations.<sup>802</sup>

As in 2010, reporting by CSOs on their activities, while becoming more widespread, has yet to become a trend in the CSO operations<sup>803</sup>. Narrative and financial reports are mostly not available to general public; they are mainly posted on the CSO websites or presented to donors.<sup>804</sup>Hromadskyi Prostir website has a special page created for publishing the CSO reports. While the number of the published narrative and financial reports has increased compared to 2010 (from 25 to 59), the number of the published reports still remains insignificant in comparison to the number of registered CSOs.<sup>805</sup>

#### Accountability (practice) - Score 25 (2015, 2010)

To what extent are CSOs answerable to their constituencies?

In general, CSO boards and members are only partially effective in providing oversight of CSO management decisions.

The level of transparency of internal management procedures (including informing on the governance structure and composition of the CSO governing bodies) within the CSOs remains low.<sup>806</sup> In some cases CSO websites present out-dated information on the composition of the boards and other governing bodies.<sup>807</sup>The CSO members generally fail to effectively supervise the activities of

<sup>797</sup> Available at: http://rgo.informjust.ua/ [accessed December 1, 2014].

<sup>798</sup> Maksym Latsyba, Anastasia Shymchuk and Anstasia Krasnosilska (2014), Conditions for operations of the civic associations. Implementation of the Law on Civic Association and regional programs for the civil society development in 2013, p. 5.

<sup>799</sup> Order №1846/5 by the Minister of Justice of Ukraine, dated December 14, 2012, on approval of the Procedure for delivery of the data from the State Register of Legal Persons and Private Entrepreneurs, http://zakon4.rada.gov.ua/laws/show/z2105-12/print1390503912974270 [accessed December 1, 2014].

<sup>800</sup> www.civicua.org [accessed December 1, 2014].

<sup>801</sup> http://civic.kmu.gov.ua/consult\_mvc\_kmu/news/article [accessed December 1, 2014].

<sup>802</sup> Counterpart Creative Union (2012), 2012 NGO Sustainability Index:: 8.

<sup>803</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014; Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.

<sup>804</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014; Oleksiy Orlovsky, Democratic Practice Program Initiative Director, International Renaissance Foundation, interview with author, July 30, 2014.

<sup>805</sup> http://www.civicua.org/library/viewbycat.html?folder=4092&p=1 [accessed December 1, 2014]

<sup>806</sup> Oleksiy Orlovsky, Democratic Practice Program Initiative Director, International Renaissance Foundation, interview with author, July 30, 2014; Kazhmyrkevych P. And Bekeshkina I. (2012), Supporting Civil Society in Ukraine: various perspectives: 11-12.

<sup>807</sup> Oleksiy Orlovsky, Democratic Practice Program Initiative Director, International Renaissance Foundation, interview with author, July 30, 2014.

the CSO governing bodies, while the governing bodies often consider internal governance rules as formality (in particular, they compile the minutes of their meetings as prescribed by law or internal regulations, but those meetings in fact have never been held). In many cases, the general meetings of the CSO members and meetings of the governing bodies are not convened at all or convened/held with delays.<sup>808</sup>

At the same time, CSOs have started to pay more attention to more effective supervision of their internal activities. Organisations expecting to receive significant donor funding, including institutional support, in most cases should be audited by independent institutions. Based on the audit results, they develop internal regulations aimed to bring the system of internal governance, decision-making process and internal supervision of the governing bodies in line with the standards of democratic governance.<sup>809</sup>Such a practice is limited mainly to strong organisations operating in Ukraine's capital Kyiv.<sup>810</sup>In addition, in those CSOs which introduced the systems of democratic governance, decision-making and accountability, new rules are still treated as formalities and have no much in common with the real day-to-day operations of the respective CSOs.<sup>811</sup>

# Integrity (law) - Score 50 (2015), Score 25 (2010)

To what extent are there mechanisms in place to ensure the integrity of CSOs?

The existing mechanisms to ensure the integrity of CSOs remain the same as in 2010. In particular, the practice of adopting the codes of ethics by separate organisations remains not widespread, while the adopted codes are too general to ensure integrity of the CSOs [for further details see: National Integrity System Assessment: Ukraine 2011, p. 176].

# Integrity (practice) - 25 (2014, 2010)

To what extent is the integrity of CSOs ensured in practice?

In general, CSOs remain not very active in ensuring the integrity of their staff and board. Nevertheless, the cases of unethical behaviour among the CSOs are singular instances.

The Code of Ethics for Civil Society Organisations that was signed by roughly 100 CSOs<sup>812</sup> has never been widely implemented.<sup>813</sup>Overall, the practice of adopting codes of ethics or other similar instruments by CSOs still remains not widespread.<sup>814</sup>Since 2012, the number of CSOs which, based on the independent auditing results, drafted and approved their codes of ethics or included ethical provisions into their statutes have increased, but the respective internal instruments or provisions

<sup>808</sup> Oleksiy Orlovsky, Democratic Practice Program Initiative Director, International Renaissance Foundation, interview with author, July 30, 2014.

<sup>809</sup> Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.; USAID, Counterpart Creative Union (2014), 2013 NGO Sustainability Index: 3; USAID, Counterpart Creative Union (2012), 2012 NGO Sustainability Index: 5.

<sup>810</sup> Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.; USAID, Counterpart Creative Union (2014), 2013 NGO Sustainability Index: 3.

<sup>811</sup> Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.

<sup>812</sup> Draft Code of Ethics for CSOs, available at: http://www.experts.in.ua/baza/analitic/index.php?ELEMENT\_ID=29193&PAGEN\_2=2 [accessed December 1, 2014].

<sup>813</sup> Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.

<sup>814</sup> Oleksiy Orlovsky, Democratic Practice Program Initiative Director, International Renaissance Foundation, interview with author, July 30, 2014.

implemented in practice formalistically.<sup>815</sup>In most cases, the CSO codes of ethics are not available to general public.

The cases of unethical behaviour among the CSOs are singular instances, limited to only plagiarism<sup>816</sup>and reporting on the events, which actually have not been organised<sup>817</sup>. Due to complicated legal requirements governing CSO taxation, financial resources in most CSOs are not administered in a transparent manner.<sup>818</sup>Signing memoranda of cooperation between different CSOs has yet to become a trend in CSO operations.<sup>819</sup>

# Hold government accountable (law and practice) - Score 75 (2015), 50 (2010)

To what extent is civil society active and successful in holding government accountable for its actions?

CSOs are very active and generally successful in holding government to account for its actions, but a number of factors to some extent decrease the effectiveness of the CSO advocacy efforts.

Compared to 2010, CSO capacity to implement effective advocacy campaigns has increased<sup>820</sup>. In particular, CSOs have become more effective in their interaction with the media, with other CSOs, developing contacts with international and domestic politicians.<sup>821</sup>At the local level, however, the effectiveness of CSOs in implementing advocacy campaigns has not changed compared to 2010.<sup>822</sup> The list of factors decreasing the overall effectiveness of advocacy efforts includes lack of political will to implement reforms, low level of accountability of politicians, low level of effectiveness of public consultations.<sup>823</sup>In addition, effectiveness of the advocacy is decreased by high level of competition among the CSOs. Creation of two civic coalitions for freedom of assembly, standing for opposite goals (one coalition advocated for adoption of the law on freedom of assembly, while another advocated for no legal regulation) can serve as a good example of such a competition.<sup>824</sup>

The list of cases of effective CSO advocacy efforts includes adoption of the Law on Access to Public Information (Freedom of Information Act), civic monitoring of its enforcement which resulted in

<sup>815</sup> Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014; Oleksiy Orlovsky, Democratic Practice Program Initiative Director, International Renaissance Foundation, interview with author, July 30, 2014; USAID, Counterpart Creative Union (2012), 2012 NGO Sustainability Index: 11.

<sup>816</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014; Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.

<sup>817</sup> Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.

<sup>818</sup> Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.

<sup>819</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014.

<sup>820</sup> Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014; Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014; Oleksiy Orlovsky, Democratic Practice Program Initiative Director, International Renaissance Foundation, interview with author, July 30, 2014; Kazhmyrkevych P. And Bekeshkina I. (2012), Supporting Civil Society in Ukraine: various perspectives: 16.

<sup>821</sup> Michael Andersen, Danish journalist, interview to Ukrainian Weekly, №23(343), June 5, 2014, http://tyzhden.ua/World/111590[accessed December 1, 2014]; Olga Aivazovska, Election Programs Coordinator, OPORA Civic Network, interview with author, July 7, 2014.

<sup>822</sup> Oleksiy Orlovsky, Democratic Practice Program Initiative Director, International Renaissance Foundation, interview with author, July 30, 2014.

<sup>823</sup> Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.; Oleksiy Orlovsky, Democratic Practice Program Initiative Director, International Renaissance Foundation, interview with author, July 30, 2014.

<sup>824</sup> Oleksiy Orlovsky, Democratic Practice Program Initiative Director, International Renaissance Foundation, interview with author, July 30, 2014.

development and approval by the Parliament of the further changes to that Law, adoption of the Law on Civic Association, Law on Charitable Activities and Charitable Organisations, new Law on Public Procurement, preliminary approval by the Government of the draft Law on Anti-Corruption Strategy for 2014-2017 [see: Engagement into anti-corruption policy reform (law and practice)],etc.<sup>825</sup>

During 2010-2014, there has been an increase in the number of civic campaigns aimed to mobilise citizens. CHESNO civic movement<sup>826</sup>, that was aimed to enhance transparency of 2012 parliamentary elections, forced politicians to disclose more information on their activities.<sup>827</sup> The Reanimation Package of Reforms Civic Initiative<sup>828</sup> advocates for a number of key reforms in Ukraine and works closely with both Parliament and Government.

Overall, civil society has played an important role in setting democratic principles and practices in Ukraine, especially in 2013, when the Euromaidan Civic Movement was established, which then demonstrated unprecedented level of citizen mobilization, self-organisation, as well as make well-known new civic activists.<sup>829</sup>

# Engagement into anti-corruption policy reform – Score 75 (2015), 50 (2010)

#### To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?

Civil society is actively engaged in policy reform initiatives on anti-corruption, but its success in this regard is to certain extent limited due to ineffective public consultations or lack of the Government's response to all the CSO initiatives related to anti-corruption policy issues.

Since 2010, the number of avenues to influence public policy development for CSOs has increased. In particular, in 2012 the President approved the Strategy for public policy to facilitate development of civil society in Ukraine<sup>830</sup>. The President also created<sup>831</sup> Coordination Council for civil society development as advisory body to the President of Ukraine<sup>832</sup>, which was viewed as a forum for interaction between the CSOs and public officials and an instrument to facilitate civil society participation in public policy development. The Coordination Council was quiet active during the first year after its creation, however in 2014 it has not held any meetings.<sup>833</sup> Further, the Ombudsman also established Advisory Council<sup>834</sup> to more actively engage CSOs into protection of human rights. The CSOs specializing in human rights protection assessed the activities of that Council positively<sup>835</sup>.

<sup>825</sup> Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.

<sup>826</sup> http://chesno.org/ [accessed December 1, 2014].

<sup>827</sup> Freedom House, Nations in Transit 2012:581; Freedom House, Nations in Transit 2013:589.

<sup>828</sup> http://platforma-reform.org/?page\_id=33 [accessed December 1, 2014].

<sup>829</sup> Bohdan Yaremenko, Ukrainian diplomat, interview to Ukrainian Weekly, №15 (335), dated April 10, 2014, http://tyzhden.ua/Society/107261) [accessed December 1, 2014]; Freedom House, Nations in Transit 2014:615.

<sup>830</sup> Presidential Decree No 212/2012, dated March 24, 2012, on Approval of Srategy for Public Policy to Promote Development of Civil Society in Ukraine and Urgent Measures to Implement It, available at: http://zakon2.rada.gov.ua/laws/show/212/2012, [accessed December 1, 2014].

<sup>831</sup> Presidential Decree No 32/2012, dated Junuary 25, 2012, on Promoting Development of Civil Society in Ukraine, available at: http://www. president.gov.ua/documents/14412.html [accessed December 1, 2014].

<sup>832</sup> http://civil-rada.in.ua/ [accessed December 1, 2014].

<sup>833</sup> Maksym Latsyba, Head of the Program for CSO Development, Ukrainian Independent Center for Political Research, interview with author, July 15, 2014.

<sup>834</sup> http://www.ombudsman.gov.ua/index.php?option=com\_content&view=article&id=1850:2012-07-10-08-09-59&catid=27:2010-12-08-14-17-05&Itemid=37 [accessed December 1, 2014]

<sup>835</sup> Human rights in Ukraine 2013: Report by human rights organisations (Edit. by Yevhen Zakharov), 2014, pp. 27-28.

At the same time, civic councils established at the bodies of the executive (at both central and local levels) during 2011-2014 were not very effective in assisting the respective bodies to develop and implement public policy, that was caused by both legal flaws and poor implementation of the existing rules governing the activities of those councils.<sup>836</sup> Other mechanisms for public consultations remain ineffective<sup>837</sup>. Ukraine also joined the Open Government Partnership<sup>838</sup> and approved Action Plan for its implementation.<sup>839</sup>, which provided for the Government's obligation to involve general public into public policy development and implementation. This Action Plan resulted in the development of the adequate legal basis for civil society participation in public policy development.<sup>840</sup>

The number of mechanisms to facilitate civil society engagement in anti-corruption policy reform has increased compared to 2010. In 2011, the Parliament adopted the Law on Principles for Prevention and Counteraction to Corruption<sup>841</sup>, which provided for civil society engagement into measures aimed to prevent and combat corruption. In particular, CSOs and their representatives were granted the right to carry out and initiate civic anti-corruption screening of the draft legislation, to come up with recommendations for the respective government agencies for improvement of the respective draft legislation based on the screening results, to submit proposals to the subjects of legislative initiative regarding improvement of anti-corruption legislation, to conduct anti-corruption research, as well as to monitor overall implementation of the anti-corruption policy. In 2013, the Parliamentary Committee on Anti-Corruption Policy and Fight Against Organised Crime established a Civic Council<sup>842</sup>comprising 27 civic experts<sup>843</sup>. Through January – July 2014, Civic Council prepared expert opinions on roughly 100 bills, which were subject to consideration by the Committee<sup>844</sup>.

Anti-corruption reform<sup>845</sup> remains one of the key priorities for the Reanimation Package of Reforms Initiative. One of the achievements of this Initiative was adoption of the Law on Anti-Corruption Strategy for 2014-2017, the Law on Prevention of Corruption, and the Law on National Anti-Corruption Bureau of Ukraine by the legislature<sup>846</sup>. Among the other achievements of the civil society are development of the anti-corruption amendments to the Criminal Code of Ukraine, new version of the Law on Public Procurement, improvement of the legislation on access to public information.

In general, the OECD ACN highlighted in its report on Ukraine the progress made towards implementation of the OECD ACN recommendation for more active cooperation between the CSOs and government in prevention and counteraction to corruption.<sup>847</sup>

<sup>836</sup> BritishCouncil-EU, CitizenParticipationintheLocalDecision-MakingProcess, Guide, 2012: 29-30 (http://www.britishcouncil.org.ua/sites/britishcouncil.ua/files/how\_to\_guide.doc) [accessed December 1, 2014]; FreedomHouse, NationsinTransit 2014: 615; Secretariat of the Cabinet of Ministers of Ukraine (2013), Information on Establishment and Activities of Civic Councils Established at the Bodies of the Executive, as well as on Interaction of Civic Councils with Government of Ukraine,http://civic.kmu.gov.ua/consult\_mvc\_kmu/news/article/print\_show/1463 [accessed December 1, 2014].

<sup>837</sup> Freedom House, Nations in Transit 2012:580; Freedom House, Nations in Transit 2013:589; Freedom House, Nations in Transit 2014:615.

<sup>838</sup> http://ogp.gov.ua/ [accessed December 1, 2014].

<sup>839</sup> Cabinet of Ministers Resolution No 220-p, dated April 5, 2012, on approval of Action Plan for Implemantation of Open Government Initiative in Ukraine, http://zakon2.rada.gov.ua/laws/show/220-2012-%D1%80 [accessed December 1, 2014].

<sup>840</sup> Open Government Partnership (2013), Civic Assessment of OGP Implementation in Ukraine for 2013: 5; http://ogp.gov.ua/sites/default/files/ monitoring/First%20year\_cs\_19\_07\_2013.pdf [accessed December 1, 2014].

<sup>841</sup> http://zakon2.rada.gov.ua/laws/show/3206-17 [accessed December 1, 2014].

<sup>842</sup> http://crimecor.rada.gov.ua/komzloch/doccatalog/document?id=52600 [accessed December 1, 2014].

<sup>843</sup> http://crimecor.rada.gov.ua/komzloch/doccatalog/document?id=52320 [accessed December 1, 2014].

<sup>844</sup> Report on the activities of the Parliamentary Committee on Anti-Corruption Policy and Fight Against Organised Crime for January – July 2014, available at: http://crimecor.rada.gov.ua/komzloch/doccatalog/document?id=54401 [accessed December 1, 2014].

<sup>845</sup> http://platforma-reform.org/?p=1 [accessed December 1, 2014].

<sup>846</sup> http://platforma-reform.org/?p=187 [accessed December 1, 2014].

<sup>847</sup> OECD/ACN, Istanbul Anti-CorruptionAction Plan, Ukraine. Progress Update, 2014: 5.(http://www.oecd.org/corruption/acn/UkraineProgressUpdateApril2014ENG.pdf) [accessed December 1, 2014].

# Key recommendations

# To the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine:

To revise the mechanisms of forming civil councils at the public agencies and their activities for improving their efficiency, amendment of public consultations order, provision for compulsory public consultations by Parliamentary committees, executive power bodies and local governments.

# To the Cabinet of Ministers of Ukraine:

consideration should be given to ensuring more effective interaction between the state registrars and tax authorities to make sure that all issues related to registration of CSOs as legal persons and granting the CSOs non-profit status are resolved simultaneously through a single-window system;

funding of CSOs from the state and local budgets should be based on the principles of equal opportunities in receiving such funding, as well as competitiveness among CSOs in distribution of public funds; the practice of providing direct budget support to certain CSOs should be eliminated;

# To the institutes and organizations of the civil society:

to pay more attention to strengthening human resources of CSOs, in particular through training of the CSO staff/members on coalition building, fundraising, communications with media and stakeholders, strategic planning, project monitoring and evaluation, reporting, drafting policy analysis documents etc.;

to introduce mechanisms to encourage CSOs to make publicly available their annual narrative and financial reports, in particular, through making publication of such reports a precondition for providing financial support (grants) to the respective CSOs;

to introduce standards of democratic governance and internal rules for ethical behaviour, in particular, through making publication of such reports a precondition for providing financial support (grants) to the respective CSOs; and

# 13. BUSINESS

# Summary

The business environment in Ukraine is not conducive to free entrepreneurship. Numerous and often conflicting regulations, policy instability, excessive discretion of public officials and arbitrary application of laws create serious barriers for running and closing of businesses and discourage investment. Government interference with business operations is frequent, both through individual actions and special interest legislation. Property rights protection remains weak. Integrity mechanisms in the private sector are not widespread and business plays limited role in the fight against corruption.

The table below presents the indicator scores which summarise the assessment of the business sector in terms of its capacity, internal governance and its role within the national integrity system. The remainder of this section presents the qualitative assessment for each indicator.

# BUSINESS

# Overall Pillar Score (2015): 37.5 / 100

Dimension	Indicator	Law	Practice
Capacity	Resources	25 (2015, 2010)	25 (2015, 2010)
37.5 / 100	Independence	50 (2015, 2010)	50 (2015), 25 (2010)
Governance	Transparency	75 (2015), 50 (2010)	50 (2015, 2010)
	Accountability	50 (2015, 2010)	25 (2015, 2010)
50 / 100	Integrity	75 (2015, 2010)	25 (2015, 2010)
Role	AC policy engagement & Support for/ engagement with	25 (2015, 2010)	
25 / 100	civil society		

# Overall Pillar Score (2010): 31.25 / 100

#### Structure and organisation

The private sector in Ukraine is diverse. There are about 450,000 active enterprises-legal entities and about 1 million active individual entrepreneurs. There are about 30,000 joint stock companies (JSCs) including 9,600 publicly traded JSCs. Overall number of economic state entities is 4,100 including 3,800 state enterprises and 300 commercial partnerships in which the state owns more than 50%.<sup>848</sup> State ownership dominates in such sectors as defence, aircraft, energy, natural monopolies (railway, utilities), academic research, and social services (health protection, education, culture, etc.). There are about 2.5 million small and medium businesses, most of whom were individual entrepreneurs (there is no data, however, of how many of them are active businesses). There are a number of business associations and chambers of commerce representing both Ukrainian and foreign companies (e.g. European Business Association, American Chamber of Commerce, US-Ukraine Business Council, Ukrainian Committee of the ICC, Trade and Industry Chamber of Ukraine, Ukrainian Union of Industrialists and Enterpreneurs).

# Assessment

# Resources (law) - Score 25 (2015, 2010)

# To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?

Starting and running business is regulated by a great number of legal acts, both laws and by-laws. The Anti-Corruption Strategy for 2014-2017 establishes imperfect and unstable legislation adopted, particularly as the result of illegal lobbying of certain business interests, complicated procedures of business activities regulation as the problems facilitating corruption in private sector<sup>849</sup>.

<sup>848</sup> Ministry of Economy, http://www.me.gov.ua/file/link/153066/file/AnalizRP.doc [accessed December 1, 2014].

<sup>849</sup> Division 1 "Problem" of Chapter "Corruption prevention in private sector" of the Main Principles of State Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for the periof of 2014-2017, approved by the Law on October 14, 2014 № 1699-VII

Legislation on formation, operation and closing of businesses in Ukraine creates an unfavourable business environment and presents numerous regulatory barriers to economic development. Some positive steps have been taken recently to improve the legal framework, but they have not been fully implemented via relevant regulations and remain inadequate.

Important legislative reforms aimed at easing conditions for operating a business in Ukraine have been carried out in the recent years and overall scores of Ukraine on international ratings have improved to certain extent. However, their positive effect has been undermined by the lack of implementing regulations on the governmental and ministerial levels or slow alignment of by-laws with the new legislative provisions. Despite new laws, non-legislative regulations often extend powers of the control bodies and increase requirements to businesses, thus rendering legislative reforms ineffective.

The declarative principle (also called 'self-certification'), according to which a business entity is not required to obtain permits, but can simply notify relevant authority of such entity's compliance with legal requirements, has been properly implemented only by a few government agencies and it has had a limited impact so far.<sup>850</sup>Nearly 80% of safety and labour protection requirements were passed prior to 1992 and in many cases entrepreneurs must pay even to get access to the requirements.<sup>851</sup>

In a positive development, the minimum statutory capital required to set up a limited liability company was decreased 100 times in December 2009<sup>852</sup> (from 100 minimum salary rates, which at the end of 2009 was an equivalent of about USD 9,500 to 1 minimum salary rate).

In December 2009 amendments in the Law on the Permit System for Business Activity introduced a principle of an implied consent ('silence-is-consent') according to which a company is allowed to conduct business activity that requires a permit without such permit if it applied to the state authority and has not received the permit by the established deadline. The same law also excluded 6 items from the list of licensed business activities (after changes the list still contains 66 types of activities that comprise 2,268 types of works subject to licensing).

In late 2014 the Parliament adopted legislation which essentially limits capacities of the controlling bodies to inspect business entities.

The Law No. 76-VIII of Ukraine "On Amendments to Some Legislative Acts of Ukraine" of December 28, 2014 the moratorium on business entities inspection has been established<sup>853</sup>.

Also according to the Law No. 71-VIII of Ukraine "On Amendments to the Tax Code of Ukraine and Some Other Laws of Ukraine (Concerning Tax Reform)" in 2015 and 2016 the inspections of the enterprises, institutions, and organizations, sole proprietors whose revenue was under UAH 20 mln for the previous calendar year shall be conducted only upon the Cabinet of Ministers permission, business entity's applications on its inspection, court decision or pursuant to the norms of the Criminal and Procedure Code of Ukraine<sup>854</sup>.

<sup>850</sup> European Business Association, Overcoming Obstacles to Business Success, June 2009, 6-7; IFC, Investment Climate in Ukraine as Seen by Private Businesses, October 2009, 22-23, http://www.ifc.org/ifcext/eca.nsf/AttachmentsByTitle/Ukraine\_IC\_report\_2009/\$FILE/Ukraine\_IC\_report\_2009\_eng.pdf [accessed December 1, 2014].

<sup>851</sup> IFC, Investment Climate in Ukraine as Seen by Private Businesses, October 2009, 25.

Law on Amendments to Certain Legal Acts with a View to Simplify Conditions for Doing Business in Ukraine, № 1759-VI, 15 December 2009.

<sup>853</sup> Law "On Amendments to Some Legislative Acts of Ukraine";http://zakon4.rada.gov.ua/laws/show/76-19

<sup>854</sup> Law "On Amendments to the Tax Code of Ukraine and some other laws of Ukraine (concerning tax reform)"; http://zakon4.rada.gov.ua/laws/ show/76-19

Property rights for intellectual and physical property as well as financial assets are insufficiently protected in Ukraine. Ukrainian legislation on IPR is outdated and sometimes inconsistent.<sup>855</sup> Ukraine's WTO accession improved compliance with relevant standards, but relevant legislation has not been fully aligned with Ukraine's accession commitments. The Law on Joint Stock Companies improved protection of shareholder rights, but is not fully implemented as relevant legal acts have not to be enacted by the Securities and Stock Markets State Commission. Activities of limited liability partnerships are still governed by the outdated 1991 law. Conflicting and overlapping regulation of business activities by the Civil and Commercial Codes also adds to lack of legal certainty.<sup>856</sup>

In late 2014 the State Intellectual Property Service of Ukraine started working on the draft law on protection of the copyright and neighboring rights in Internet as well as on the draft law on collective management of the copyright proprietor property rights and neighboring rights<sup>857</sup>. Also the State Intellectual Property Service of Ukraine developed the draft version of the National Strategy of the Intellectual Property Sphere Developjment in Ukraine for the Period till 2020<sup>858</sup>.

The Law "On Joint Stock Companies" which was adopted in April 2009 and became effective the same year strengthened shareholders rights, although not all its provisions have been implemented, particularly due to the fact that the National Securities and Stock Market Commission hasn't approved necessary by-laws. The limited liability companies activities are still regulated by the outdated law which was adopted in 1991. One of the reasons for the lack of proper legal certainty are the controversies and doublings of provisions of the Civil and Commercial Codes of Ukraine which regulate commercial activities.

Registration of property over financial assets is ambiguous and this has led to cases of unresolved ownership of companies.<sup>859</sup> Registration of rights to physical property is complicated and is based on the principle of registration of legal acts (deeds). Land and buildings on it are considered as separate immovable objects and are registered by different agencies.<sup>860</sup> In February 2010 the parliament adopted a new Law on State Registration of Property Rights and Restrictions on Immovable Property whereby it introduced the system of registration of legal titles on the real estate and established registration of relevant rights by a single institution – the Ministry of Justice. The Law, however, fails to establish the state's responsibility for registering and guaranteeing real estate titles and also does not provide for open public access to the registry.

Decisions on refusal to issue a business licence or permit can be appealed in court. There are, however, no legislative provisions regulating the procedure of an administrative appeal.

# Resources (practice) - Score 25 (2014, 2010)

To what extent are individual businesses able in practice to form and operate effectively?

858 Announcement for civil society; State Service on Intelectual Property; http://sips.gov.ua/ua/news.html?\_m=publications&\_ t=rec&id=2797&fp=201

<sup>855</sup> European Business Association, Overcoming Obstacles to Business Success, June 2009, 55-56.

<sup>856</sup> OECD, Economic Assessment of Ukraine, 2007: 69; http://www.usubc.org/reports/OECD\_Ukraine07.pdf [accessed December 1, 2014]. See also 2007 EBRD assessment of the Ukrainian commercial laws, http://www.ebrd.com/downloads/sector/legal/ukraine.pdf [accessed December 1, 2014].

<sup>857</sup> For civil society: initiative group is ectablishing; State Service on Intelectual Property; http://sips.gov.ua/ua/news.html?\_m=publications&\_ t=rec&id=2815&fp=191

<sup>859</sup> World Economic Forum, The Ukraine Competitiveness Report 2008: 49-50; http://www.weforum.org/pdf/Global\_Competitiveness\_Reports/ Reports/Ukraine.pdf [accessed December 1, 2014].

<sup>860</sup> Human Rights Protection NGOs, Annual Human Rights Report 2008, http://helsinki.org.ua/index.php?id=1245859763 [accessed December 1, 2014].

Despite some positive developments in the legal framework for doing business in Ukraine they have yet to result in any significant changes in the business environment in practice. It remains extremely difficult to run or close business in Ukraine (see the paragraphs below for further information). Reform initiatives so far have not brought significant changes in practice where businesses still face excessive regulation, frequent changes in rules and their inconsistent interpretation by enforcing authorities.

In practice closing a business remains very burdensome due to a complicated procedure and ineffective work of numerous public agencies involved.

According to the IFC, the total number of permits and other approvals in Ukraine has significantly reduced. Only 29% of business firms indicated that business licensing and permits was not a problem.

One of the main problems for business operation is tax administration, which in Ukraine is marred by overly complicated legal provisions on taxation, frequent and sometimes retroactive changes and arbitrary behaviour of tax officials.<sup>861</sup> World Bank's Index Doing Business, despite some improvements, places Ukraine as the 108th country in the world as regards paying taxes (with 5 payments per year and 350 hours spent per year).<sup>862</sup>

According to the results of the study Corruption Perception by Business that Transparency International Ukraine held together with PrivatBank, GfK and PricewaterhouseCoopers in early 2015, tax service is the most corrupt (25.9% of respondents faced corruption in tax service)<sup>863</sup>.

According to the Economic Freedom Index of Heritage Foundation Ukraine is 162nd (in 2011 it was 164th) among 178 countries of the world. The organization concludes that unstable economic operations complicate the things<sup>864</sup>.

Property rights are not protected in practice and often become an object of illegal takeovers with facilitation of corrupted government officials and judges. In 2006 only 20% of company managers believed in the ability of courts to enforce their contract rights.<sup>865</sup> However, Ukraine ranks fairly high on the indicator of contracts enforcement in the Doing Business Index (43rd with 378 days to resolve commercial sale dispute before court, 46.3% of claim value as attorney, court and enforcement costs, and 30 steps to file the claim, obtain judgment and enforce it). But when challenging a public authority's decision/inaction complaints mechanisms are ineffective and it is almost impossible for a private entity to win a court case against local self-government body. Also enforcement of court decisions is ineffective.

# Independence (law) - Score 50 (2014, 2010)

To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?

The legal framework provides certain legal safeguards to prevent undue external interference with activities of private business, but they contain some loopholes.

<sup>861</sup> OECD, Economic Assessment of Ukraine, 2007: 71.

<sup>862</sup> http://www.doingbusiness.org/economyrankings [accessed December 1, 2014].

<sup>863</sup> Survey Level of Corruption Perceprion. How business looks at it ?; http://corruption-index.org.ua/

<sup>864 2015</sup> Index of Economsc Freedom, Ukraine, http://www.heritage.org/index/country/ukraine

<sup>865</sup> Institute for Economic Research and Policy Consulting, Quarterly Enterprise Survey, Special Issue No. 3 (6), Kyiv, October 2006; www.ier. kiev.ua/English/qes/special\_qes6\_eng.pdf [accessed December 1, 2014].

There are a number of laws which are intended to limit possibilities of government interference in business activity (for instance, Law on Principles of State Regulatory Policy in Business Activity, Law on Permit System for Business Activity, Law on Basic Principles of State Supervision (Control) over Business Activity, Law on State Registration of Legal Persons and Individual Entrepreneurs, Law on State Tax Service, Customs Code). They, however, often delegate detailed regulation of relevant regulatory, control, etc. activities to legal acts of the government or government agencies (ministries) and leave too much discretion in the hands of public officials. This causes an unstable legal framework prone to frequent changes and arbitrary implementation of legislative provisions to the detriment of unhindered activity of private businesses. Businesses can complain through administrative appeals procedures established by relevant government authorities or in administrative courts. Draft law on regulation of administrative procedures, which should regulate administrative complaints procedure on legislative level, has not been considered by the Parliament. The bill of the Ministry of Justice On Administrative Procedure was opened for public discussion on December 11, 2014<sup>866</sup>, but no recommendation came to the Ministry of Justice as of January 12, 2015<sup>867</sup>. There is no information concerning further transferring of the draft to the Parliament.

In case of undue state interference businesses can file an appeal with administrative courts requesting compensation of damages together with the request to quash relevant decision of the state authority or with civil courts requesting civil compensation of damages.

In 2104 the European Bank for Reconstruction and Development initiated introduction of the institute of Business Ombudsman in Ukraine, whose main task is advocating the interests of business within authorities. It resulted from the Memorandum of Understanding to Support Ukrainian Anti-Corruption Initiative of May 12, 2014 between the Cabinet of Ministers of Ukraine, European Bank for Reconstruction and Development, Organization of Economic Cooperation and Development, American Chamber of Commerce in Ukraine, European Business Association, Employer's Federation of Ukraine, Ukrainian Chamber of Commerce, and Ukrainian Union of Entrepreneurs.

The Cabinet of Ministers' Order of 26 November 2014, No. 691, set the Regulations on Business Ombudsman's Council – consultative body headed by the Business Ombudsman at the Government that considers the issues that are in the Business Ombudsman's competence.

The major task of the Business Ombudsman is elimination of corruption barriers for business, consideration of complaints of entrepreneurs regarding corruption barriers.

In December 2014 Algidras Semeta was appointed as Business Ombudsman, but for now there's no information concerning the results of his activity.

# Independence (practice) - Score 50 (2015), 25 (2010)

To what extent is the business sector free from unwarranted external interference in its work in practice?

The private sector in Ukraine is only partially free from undue external interference.

Before 2014, there were a number of cases of external interference with business activities. For example, groundless audits of entrepreneurs by controlling and law-enforcement bodies took place, as well as check-ups of statutory documents, and raider attacks by means of court decisions. Such interference pursued certain policies of the Government or was aimed to obtain personal gains

<sup>866</sup> Section "Discussion of Draft Laws". Officcial web-page of the Ministry of Justice of Ukraine; http://www.minjust.gov.ua/discuss

<sup>867</sup> Report on making public draft law on administrative procedure; http://www.minjust.gov.ua/50351

by public officials. Since 2010, the number of cases of interference with business activities has decreased. According to EBA, the number of raider attacks in 2014 decreased, while the Government introduced a ban on checks of private enterprises – any checks by the existing controlling agencies can be performed only on condition that they are allowed by the Cabinet of Ministers.

Despite certain improvements in the legislation governing taxation, the tax burden still remains significant. The existing legal avenues to complain against arbitrary decisions and illegal interference with business activities are ineffective, as their review is delayed and they impose additional significant expenses in legal costs and illegal payments.

Complaints in courts are reviewed slowly, government agencies appeal the decisions which are unfavourable to them up to the last possible judicial instance and even if the final decision is in favour of the business its enforcement may also take long time. During the period until they are overturned by final court decision, restrictions imposed by state authorities disrupt company's business activities and can lead to irreversible damages.

# Transparency (law) - Score 75 (2015), 50 (2010)

To what extent are there provisions to ensure transparency in the activities of the business sector?

The legal framework aimed to ensure transparency in the activities of the business sector has improved since 2010, but it still fails to ensure adequate level of transparency in this regard.

In October 2014, the Ukrainian Parliament adopted the Law on Identification Ultimate Beneficiaries of the Legal Persons and Public Figures, which requires that all ultimate beneficiaries of the enterprises be disclosed.

Financial auditing and reporting standards are rather weak. On strength of auditing and reporting standards Ukraine ranked only 124th in the Global Competitiveness Report 2013-2014, meaning that access to reliable and high quality financial information is not ensured.

Since 2010, Ukraine has been gradually introducing International Financial Reporting Standards (IFRS), in particular, in banks and insurance companies (2012), in companies providing financial services (2013), and companies providing additional services in the field of financial mediation and insurance (2014). Similarly, International Accounting Standards (IAS) have been gradually incorporated in the national accounting regulations since 1999<sup>868</sup>.

Ukrainian Federation of Professional Accountants and Auditors adheres to the Code of Ethics of Professional Accountants by the International Federation of Accountants. Ukraine adopted International Standards on Auditing (ISA) in 2004.<sup>869</sup>

Ukrainian companies are required to disclose their financial reports only nine months after the end of the fiscal year, which does not give shareholders the opportunity to familiarize themselves with the financial situation before the shareholders' meeting that usually takes place about six months after the end of the fiscal year. The law also does not require assets to be valued at market prices before being sold or acquired. This opens the door to asset stripping, particularly in companies dominated

<sup>868</sup> McGee, Robert W. and Preobragenskaya, Galina G., Accounting Reform in Transition Economies: A Case Study of Ukraine, February 2005, http://ssrn.com/abstract=686430 [accessed December 1, 2014].

<sup>869</sup> McGee, Robert W. and Preobragenskaya, Galina G., Accounting Reform in Transition Economies: A Case Study of Ukraine, February 2005, http://ssm.com/abstract=686430 [accessed December 1, 2014].

by a few shareholders.<sup>870</sup> The new Law on Securities of 2006 introduced important restrictions, like the ban on insider trading and requirement to disclose direct owners of 10% or more of the shares of publicly traded companies to the State Securities and Stock Markets Commission, which is required to make the information public.

According to the Law on Joint Stock Companies an annual external audit is required for companies whose shares are traded publicly. Also the new law on JSCs preserves outdated provisions on "revisionary commissions", instead of replacing them by external auditors. According to the 1991 Law on Commercial Partnerships all other partnerships (including limited liability companies) are obliged to ensure annual audit of their financial reports. National Bank conducts annual inspections of banks.

The National Securities and Stock Market Commission on December 30, 2014 registered a resolution On Amending the Regulation Concerning Disclosure of Information by Security Paper Issuers in the Ministry of Justice of Ukraine.

According to the decision of March 1, 2015 issuers have to disclose their information according to the new rules of the amended Regulation.

Commission members state that key norms of implementation of innovations are amendments concerning publication of obligatory regular and irregular information by public joint-stock companies at their official websites<sup>871</sup>.

# Transparency (practice) – Score 50 (2015, 2010)

#### To what extent is there transparency in the business sector in practice?

While some information on companies and their ownership structure is publicly available (see below), it does not allow access to information on ultimate ownership – only nominal shareholders are known, while ultimate owners can hide behind privately held companies or off-shore intermediaries.<sup>872</sup> The situation might, however, be changed once the new Law on Identification of the Ultimate Beneficiaries of the Legal Persons and Public starts to be effectively enforced.

Data on registered companies contained in the State Register of Legal Persons and Individual Entrepreneurs is available for public access upon request (with some exceptions regarding personal data) and on the Internet. Information on joint stock companies, including their financial reports and major shareholders, is available on the Internet.<sup>873</sup> Basic information on non-banking financial institutions (insuring companies, pension funds, etc.) is available on the web-site of the State Commission on Regulation of Financial Service Markets. Even in the Ukraine's bank sector, which is considered to be one of the most developed and compliant with international standards, the level of transparency (including ownership structure, shareholder rights, governance structure, financial and operational transparency) remains low, at barely half the leading international financial organizations' quantitative transparency scores. There is no requirement in the law to disclose any information in relation to countering corruption. Large international corporations represented in Ukraine often provide information on corporate responsibility and compliance programmes, as well as some

<sup>870</sup> World Economic Forum, The Ukraine Competitiveness Report 2008: 54.

<sup>871</sup> National Securities and Stock Market Commission reminds about new rules of disclosure of information by securities issuers; http://nssmc. gov.ua/press/news/nkcpfr\_nagadueh\_pro\_novi\_pravila\_rozkrittya\_informaciyi\_emitentami\_cinnikh\_paperiv\_

<sup>872</sup> World Bank, Corporate Governance, Report on the Observance of Standards and Codes, October 2006, http://www.worldbank.org/ifa/ rosc\_cg\_ukr.pdf [accessed December 1, 2014].

<sup>873</sup> http://smida.gov.ua [accessed 4 August 2010]; http://www.stockmarket.gov.ua [accessed December 1, 2014].

#### Ukrainian companies.874

# Accountability (law) - Score 50 (2015, 2010)

To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?

Legislative provisions on corporate governance have improved with the adoption of the Law on Joint Stock Companies. However, other types of commercial partnerships, including limited liability companies, are still regulated by the outdated 1991 Law on Commercial Partnerships and two codes – Civil and Commercial Codes which overlap and conflict in many provisions. Businesses report to tax authorities regarding taxation and social payments. In addition, financial institutions report, respectively, to the National Bank of Ukraine and State Commission on Regulation of Financial Service Markets; institutions of securities market – to the Securities and Stock Market State Commission. Joint stock companies submit annual reports to the Securities and Stock Market State Commission. Entities providing financial services and some other types of businesses (e.g. intermediaries in real estate transactions, lawyers, notaries, auditors in certain cases) are obliged to submit money laundering and financing of terrorism suspicious transaction reports to the Financial Monitoring State Committee. Commercial partnerships also report to their founders/shareholders and governing bodies.

On efficacy of corporate boards Ukraine ranked 86th in the Global Competitiveness Report 2013-2014, because of the very weak legal basis for control of management by supervisory boards. The Law on Joint Stock Companies has significantly improved regulations on supervisory boards in JSCs and considerably strengthened the legal protections for minority shareholders. The supervisory board is authorized to approve transactions between related parties and prohibits those parties from participating in the process. The law introduces detailed requirements for disclosing conflicts of interest to the supervisory board, increasing the transparency of the company's activities. Duties of supervisory board members and their liability are established by the law.

# Accountability (practice) - Score 25 (2015, 2010)

To what extent is there effective corporate governance in companies in practice?

The existing legal framework has facilitated a large number of corporate governance abuses including share dilution, asset stripping, and dubious transfer pricing.<sup>875</sup> The assessment by the EBRD of how corporate governance legislation is enforced showed that in terms of disclosure (a minority shareholder's ability to obtain information about their company), redress (remedies available to a minority shareholder whose rights have been breached) and the institutional environment (capacity of a country's legal framework to effectively implement and enforce corporate governance legislation) Ukraine scored low. The survey revealed that a minority shareholder has, by law, access to different avenues to seek disclosure from the company, but all actions are deemed quite complex and lengthy as it is quite easy for the defendant to delay the proceedings. The difficult enforcement and the weak institutional environment add to the complexity of the actions.<sup>876</sup>

# Integrity (law) - Score 75 (2015), 25 (2010)

<sup>874</sup> See, for instance, Siemens Ukraine http://web2.siemens.ua/upload/File/pdf/COP\_Siemens\_Ukraina\_08-09.pdf, Telenor Ukraine http://www. telenor.ua/ua/corporate-responsibility/, Obolon http://www.obolon.ua/ukr/corporate-responsibility/social-reporting/, MTS http://company.mts.com. ua/ukr/corp\_social\_resp.php, SCM http://www.scm.com.ua/uk/publish/category/3778, Kyivstar http://www.kyivstar.net/responsibility/, DTEK http:// www.dtek.com/ua/social\_responsibility [all accessed December 1, 2014].

<sup>875</sup> World Bank, Corporate Governance, Report on the Observance of Standards and Codes, October 2006.

<sup>876</sup> EBRD, Assessment of Commercial Laws of Ukraine, 2007, http://www.ebrd.com/downloads/sector/legal/ukraine.pdf [accessed December 1, 2014].

To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

There are no sector-wide codes of conduct. Some professions (auditors, accountants, attorneys) have codes of conduct (ethics).<sup>877</sup>

A new Law "On Prevention of Corruption" has much improved legal regulation of the integrity in private sector.

According to the Law official and executive persons of the legal entities who perform activities and are in the labor relations with legal entities are obliged to:

1) do not commit or take part in corruption offences related to the legal persons activities;

2) keep off the behavior patterns which can be considered as readiness to commit corruption offences related to the legal persons activities;

3) to urgently inform official person who is charged with corruption prevention on the activities of the legal person, legal person head or founder (participant) on cases of instigation corruption offences related to the legal persons activities;

4) to urgently inform official person who is charged with corruption prevention on the activities of the legal person, legal person head or founder (participant) on cases of corruption or corruption-related offences related to the legal persons activities;

5) to urgently inform official person who is charged with corruption prevention on the activities of the legal person, legal person head or founder (participant) on rising of real, potential conflict of interests.

The Law also stipulates that private companies are obliged to develop and implement preventive anti-corruption measures. The Law provides for compulsory adoption of anti-corruption programs and appointment of official persons authorized to fulfil them in:

big state and municipal enterprises (in which the state or municipal share exceeds 50 %) with the average reported number of employees of the reported (financial year) is over 50 persons and total income of selling products (goods and services) for the same period is over UAH 70 mln (nearly USD 326,000);

both state and private companies which take part in state procurement if the cost of goods, services purchase equals or exceeds UAH 1 mln (nearly USD 48,000) and cost of works equals or exceeds UAH 5 mln (nearly USD 240,000) <sup>878</sup>.

There are no provisions on whistleblowing in the private sector.<sup>879</sup> Public procurement legislation has no requirements for bidders to have any ethics or anti-corruption programmes. Corporate codes of conduct are frequent among large corporations. Professional compliance officers are rare.<sup>880</sup> In 2003

<sup>877</sup> Auditors and accountants adher to relevant international ethics standards (http://apu.com.ua/files/reestr/1153207448.doc, http://www.ufpaa. org/ua/about). Rules on Attorneys' Ethics were approved by the Higher Qualification Commission of Attorneys in 1999 (http://search.ligazakon. ua/l\_doc2.nsf/link1/MUS128.html). [all accessed December 1, 2014].

<sup>878</sup> Art. 61, 62 of the Law "On Prevention of Corruption"; http://zakon4.rada.gov.ua/laws/show/1700-18/paran658#n658

<sup>879</sup> World Bank, Corporate Governance, Report on the Observance of Standards and Codes, October 2006.

<sup>880</sup> Review by the author of web-sites of selected companies.

the State Securities and Stock Market Commission approved Principles of Corporate Governance in accordance with the relevant OECD Principles. The 2003 Principles are intended for open JSCs with publicly traded shares, but they are not mandatory. 2005 Survey by the IFC showed that board members in 30% of companies surveyed have a "fairly deep knowledge" of the mentioned Corporate Governance Principles; and almost 50% board members have a "basic knowledge". 13.2% of companies surveyed were ready to disclose complete information on their compliance with the standards established by the Corporate Governance Principles.<sup>881</sup>

# Integrity (practice) - Score 25 (2015, 2010)

#### To what extent is the integrity of those working in the business sector ensured in practice?

There are no integrity pacts signed by companies. Concern for integrity inside the private sector has been slowly rising, which can be seen from the number of corporate responsibility provisions and corporate codes of conduct applied by businesses. Their impact, however, remains limited and only few companies, mainly large corporations and/or those listed on stock exchange, pay adequate attention to these issues. Trainings on integrity and compliance issues are more often. According to the EBRD survey of firms, corruption was not a problem for only 16% of companies. 27% of firms indicated that unofficial payments are frequent; 26% of firms stated that bribery is frequent in dealing with tax authorities, 13% that bribery is frequent in dealing with customs and 16% with courts. Among firms who reported bribery "bribe tax" amounted to 3.2% of annual sales.<sup>882</sup>

A number of workshops supported by the Center for International Private Enterprise within the USAID project "Confident Business – Wealthy Community" to provide practical help to the average Ukrainian companies in development and implementation of the anti-corruption compliance implementation<sup>883</sup>.

At the same time institutional support of the anti-corruption compliance implementation has been charged upon the National Agency for Preventing Corruption (NAPC) which is currently undergoing its formation. [see: Anti-Corruption Agencies] NAPC will particularly develop typical anti-corruption program for business, provide methodological support to the companies in their own programs development.

On corporate ethics of businesses (ethical behavior in interactions with public officials, politicians, and other enterprises) Ukraine ranked 98st in the Global Competitiveness Rating 2013-2014. The TI's 2013 Global Corruption Barometer noted a perception that private sector in Ukraine is highly affected by corruption.

# AC policy engagement and support for / engagement with civil society (law & practice) – Score 25 (2015, 2010)

To what extent is the business sector active in engaging the domestic government on anticorruption? To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?

Problems of corruption are often raised by business associations in their contacts with the government. However, it mainly concerns unfriendly regulatory environment and red tape, which fosters corruption and hinders business development. Problems of deregulation and elimination

<sup>881</sup> World Bank, Corporate Governance, Report on the Observance of Standards and Codes, 2006.

<sup>882</sup> The EBRD-World Bank, Business Environment and Enterprise Performance Survey (BEEPS) 2008, http://siteresources.worldbank.org/ INTECAREGTOPANTCOR/Resources/704589-1267561320871/Ukraine\_2010.pdf [accessed December 1, 2014].

<sup>883</sup> USAID Project starts number of workshops for business on how to develop anti-corruption compliance; Small and Middle Business Platform; http://msb.enarod.org

of conditions for corruption are often cited in the public reports and statements by business associations. Roughly 100 Ukrainian companies adhered to the UN Global Compact and only 10 of them were "non-communicating", i.e. failed to submit communication on progress.<sup>884</sup>

Businesses are involved in formulation of anti-corruption recommendations which are channelled mainly via business associations. However, there are no stand-alone initiatives of business and civil society on combating corruption, nor examples of business financial support to the anti-corruption initiatives known to the author.<sup>885</sup>

# Key recommendations

# To the Cabinet of Ministers of Ukraine

To take measures to liberalise business climate in Ukraine, in particular through implementation of comprehensive administrative, tax and regulatory reforms

To provide measures for th development and support of business ombudsman, involve him/her to the process of solving urgent business problems related to corruption

To organize extensive information campaign and provide methodological support of business concerning anti-corruption compliance.

To develop strategy of anti-corruption standards support in private sector (OECP recommendations concerning better practices in the sphere of internal control, ethics and legislation compliance practices, Transparency International business principles related to coutercorruption activities) facilitated by business representatives, business associations and professional unions as well as to promote self-regulation in private sector.

<sup>884</sup> http://www.unglobalcompact.org/participants/search [accessed December 1, 2014].

<sup>885</sup> See also http://www.business-anti-corruption.com/en/country-profiles/europe-central-asia/ukraine/initiatives/private-anti-corruption-initiatives/ [accessed December 1, 2014].

# VIII. CONCLUSION

Since 2010, the overall performance of the National Integrity System in Ukraine has improved, but only slightly, and Ukraine can generally still be characterized as a country with a weak National Integrity System.

Civil society and the Executive have become the strongest NIS pillars, followed by the EMB, SAI and Ombudsman. Overall performance of the legislature has also improved. The weakest pillars of the NIS are the public sector, law enforcement agencies, political parties and business.

As in 2010, many NIS pillars (such as Executive, EMB, SAI, ACA, and media) still only play a moderate role (scoring on average 50 out of 100) in upholding the integrity of the whole integrity system. In certain cases, for instance in the case of the legislature and civil society, the role of the pillars in upholding the NIS has increased compared to 2010, while in others (for instance, in the case of judiciary and law enforcement agencies) the pillars' roles have decreased.

Political parties poor role in upholding the national integrity system can be explained mainly by their failure to aggregate and represent social interests, as the case was in 2010. In 2014, the parties are more committed to the fight against corruption than they were in 2010, which translates into an increased role of the legislature and executive in implementing anti-corruption reforms. However, many of those party commitments have yet to be turned into reality. The key reasons for parties' failure to aggregate and represent societal interests is their heavy dependence on wealthy donors due to absence of any limits on private donations and annual public funding of political parties.

The role of business in the NIS is restricted by its insufficient engagement with government on issues of corruption prevention and lack of support to civil society as regards combating corruption. Its limited role in upholding the NIS should come as no great surprise, given the fact that many businesses themselves are involved in corrupt practices. As the legal framework does not oblige the ombudsman to promote good governance, its role in promotion of such a practice is low. The judiciary, which should be a key pillar of the NIS, plays a limited role in combating corruption as it fails to effectively prosecute corruption and to exercise effective executive oversight. Under the former President's rule, the judiciary became highly politicized and corrupt. These two factors are the major reasons for limited role of judiciary in supporting the NIS. For the same reasons law enforcement agencies play very little role in prosecution of corruption – most cases of corruption revealed by law enforcement agencies rarely end with real criminal convictions.

In terms of internal governance, the weakest pillars of the NIS are the legislature, law enforcement agencies, political parties, media, civil society and business, while the most successful are the executive, EMB, Ombudsman and SAI.

The strength of the executive, SAI, EMB and Ombudsman in terms of their internal governance can be explained by the adoption of the Law on Prevention of Corruption, which includes a number of comprehensive provisions aimed to ensure integrity of public officials, as well as the Law on Access to Public Information which simplified the procedure for sending requests to public authorities and required the authorities to pro-actively publish key information on their operations. While many pillars just follow these new rules, the Ombudsman seeks to expand its transparency beyond what is required by the legislation. It publishes comprehensive information on its operations, asset declarations of all the senior officials of its office, reports and even internal regulations for the staff and units of the Ombudsman's office.

Law enforcement agencies are weak in terms of their governance mainly because the existing legal provisions governing their integrity and accountability are widely ignored, and the prosecution

service is widely perceived to be one of the most corrupt institutions. Internal governance within political parties, media and civil society are very much the same – while the laws do not interfere with their internal operations, these pillars have done very little to introduce their own self-regulatory instruments to ensure their integrity and accountability. As a result of a lack of such internal regulations, accountability and integrity of the respective pillars is not ensured in practice.

Many, although not all, of the problems of the NIS can be explained by limited capacity of institutions to function. The weakest pillars in this regard are the public sector, law enforcement agencies, ACA and business, while the Ombudsman and Civil Society have the strongest capacity. The latter can be explained by a significant level of their independence both in law and in practice, as well as sufficient resources available to those pillars. In contrast to many other pillars, the Ombudsman manages its limited resources more effectively than other pillars, in particular, by using assistance of NGOs and international donors to assist in carrying out its functions. As in 2010, the public sector, ACA and law enforcement agencies still have limited capacity. In the cases of the public sector and ACA this can be explained by lack of resources needed to ensure effective performance of the pillars. In addition, public servants are not protected from undue influences in law and practice, while the ACA (represented by the Government Agent on Anti-Corruption Policy Issues and Ministry of Justice) is subordinated to the executive. Law enforcement agencies have better access to resources, but their independence is undermined. Strengthening independence of the law enforcement agencies requires constitutional amendments. Limited capacity of the media can be explained by numerous cases of attacks on journalists, interference with freedom of expression (especially, in the previous years), self-censorship and limited access to resources, especially at the local level.

The problems connected to access to resources, including financial resources, are typical for many pillars, especially those representing the branches of government. Due to limited budget resources, the executive (responsible for annual preparation of the draft budget laws) and the parliament fail to allocate appropriate amounts of funding to the judiciary, public sector, and law enforcement agencies, while EMB has encountered problems in terms of timeliness of fund allocation for administration of the elections. Insufficient funding significantly restricts the possibility of recruiting qualified staff, creates preconditions for committing corruption offences and weakens the overall capacity of underfunded pillars. It also restricts the possibility of conducting comprehensive training for employees of the public sector, law enforcement agencies and judiciary, thus maintaining the low level of integrity of the relevant pillars in practice. A lack of public funding also diminishes the role of EMB in administration of elections (since the existing level of funding of the EMB does not allow it to effectively implement voter education programs and to provide better guidance for the members of the lower-level commissions), as well as the role of the Government Agent on anti-corruption policy in educating citizens.

What explains the overall weakness of the NIS in Ukraine?

Here we need to look not only to the activities of separate NIS institutions and sectors which have a negative impact on performance of other NIS pillars, but also to the NIS foundations, in particular, the weak national economy which does not allow adequate funding of many budget programs (which is to some extent caused by corrupt pillars of the NIS), lack of respect for democratic values within society and among politicians, as well as high tolerance to corruption within society. Since the civil servants, judges, prosecutors and other officials are part of the society affected by corruption, perhaps we should not be surprised by their poor integrity.

Limited funding of the pillars also has certain negative impacts on the NIS foundations. For example, underfunded pillars employing low-paid officials are exposed to allure of corruption; they are not very effective in dealing with their duties, while corruption and inefficient use of public funds weakens the socio-economic foundations and undermines public trust to the relevant institutions, thus weakening socio-cultural foundations of the NIS.

Performance of some NIS pillars is also hindered by lack of legal culture, respect for human rights and freedoms, as well as democratic values, including the rule of law, among politicians,

businessmen and within the society in general. This is the specific case of the judiciary, political parties and media. Political parties are not legally prevented from developing internal democracy, however the level of integrity within the parties is insufficient due to highly centralized decision-making and other undemocratic internal practices. Parties also do not play any role in aggregation and representation of interests of the voters, thus weakening the socio-political foundations of the NIS and making social cleavages deeper.

The parliament supported the independence of the SAI, EMB and Ombudsman by adopting special laws on these institutions, which envisaged comprehensive mechanisms aimed to limit the possibilities for undue external influence on these pillars. However, the legislature appeared to be less supportive of other pillars in terms of their independence. For instance, independence of the judiciary, law enforcement agencies, public sector, political parties, media, and business requires constitutional amendments (as regards judiciary and law enforcement agencies), or adoption of the new versions of the existing laws (e.g. the Law on Prosecution Service, the Law on Public Service, the Law on Associations of Citizens and others), or review of the relevant legal provisions which impose restrictions on activities of the political parties and media. The legislature, however, has not made significant attempts to adopt/review these laws.

The level of accountability of the executive, judiciary, public sector, EMB, ombudsman, and political parties could be increased if the parliament managed to improve the mechanisms of parliamentary oversight, restricted the scope of judicial immunity, broadened the scope of anti-corruption screening, narrowed the margin of discretion granted to public servants by adopting the Code of Administrative Procedures, legally obliged the EMB to produce the reports on its activities, and introduced appropriate oversight of the funding of political parties. However, almost nothing has been done by the legislature to address these issues, while the executive is not very active in suggesting the relevant amendments to legislation.

Inactivity of the parliament and executive in terms of improvement of the legal framework also limits the role of a number of pillars in the NIS. For instance, strengthening of the role of EMB in campaign regulation requires granting it some additional powers to supervise funding of the electoral campaigns at the national level, while strengthening of the role of the SAI in effective finacial audits requires constitutional amendments empowering it to control all public expenses regardless of whether they are included in the state budget or not. Similarly, setting in the law clear criteria for selecting NGOs for consultations and for taking NGOs proposals into account in the official decision-making process could make civil society engagement in anti-corruption policy more active and effective.

In a number of cases, the pillars do not effectively use the powers and possibilities granted by legislation/regulations, thus weakening their own performance and affecting the performance of other pillars. For example, the legislature is able to provide itself with necessary resources, but has not significantly reviewed the number of employees of its Secretariat, which compromises its capacity. Although it is legally granted a certain degree of independence and powers to supervise the activities of the executive, the ombudsman and SAI, as well as the right to dismiss the judges for violations, the legislature does not effectively use these powers related to oversight and dismissals. This in turn weakens the level of accountability of the executive, ombudsman, SAI (whose reports are rarely discussed by the parliament), and the judiciary. The judiciary has adequate powers to fight corruption by delivering dissuasive sanctions for corruption offences, as well as to exercise oversight of the executive, but in reality it does not use these powers effectively, which decreases the level of accountability and integrity within the public sector, law enforcement agencies, and the judiciary itself. Media, political parties, CSOs and business are not prevented by law from introducing mechanisms aimed to ensure their internal integrity, however they generally have not succeeded in establishing such mechanisms.

Performance of some NIS pillars is further hampered by lack of mutual cooperation across different pillars. For example, media and SAI are rather active in detecting and exposing cases of corruption, however, the law enforcement agencies and high-ranking officials do not use information provided

to bring those who committed corruption offences to account. Whereas the legal framework contains provisions on public participation in decision-making, the executive and public sector are not very interested in close cooperation with civil society and business on integrity issues, while CSOs and business sector do not always effectively seize the opportunity of participation in decision-making and cooperation with each other.

In order to change these negative interactions between the pillars to positive ones, five major preconditions should appear: democratic values should be respected, the legislature jointly with the executive should implement necessary legal reforms aimed at strengthening capacity, governance and role of under-performing pillars; adopted laws should be effectively enforced; the pillars should use their powers more effectively and cooperate with each other more actively. Since major weaknesses of the pillars are caused by imperfect legislative framework, the review of the latter can be viewed as a key priority to ensure more effective performance of the National Integrity System as a whole.

# Key recommendations:

The Parliament should implement comprehensive reform of the funding of political parties and electoral campaigns based on the provisions of the Council of Europe's Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns;

The Government should establish without delay the National Anti-Corruption Bureau and National Agency for Prevention of Corruption, and ensure that they are able to exercise their powers by providing them with adequate resources;

The Parliament should adopt without delay a law regarding unification and regulation of administrative procedures, as well as implement a complex public service reform aimed at clear division of politicians and professional public servants; increase of the level of expertise and integrity of officials and their protection from political interference.

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