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## **Joint First and Second Rounds Evaluation**

### **Compliance Report on Ukraine**

Adopted by GRECO  
at its 42<sup>nd</sup> Plenary Meeting  
(Strasbourg, 11-15 May 2009)

## **I. INTRODUCTION**

1. GRECO adopted the Joint First and Second Round Evaluation Report on Ukraine at its 32<sup>nd</sup> Plenary Meeting (19-23 March 2007). This report (Greco Eval I-II Rep (2006) 2E) was made public by GRECO on 29 October 2007.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the authorities of Ukraine submitted their Situation Report (RS-Report) on the measures taken to implement the recommendations on 30 September 2008.
3. At its 40<sup>th</sup> Plenary Meeting (1-5 December 2008), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Cyprus and the United Kingdom to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Philippos KOMODROMOS on behalf of Cyprus and Mr Alastair BROWN on behalf of the United Kingdom. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The objective of the RC-Report is to assess the measures taken by the authorities of Ukraine to comply with the recommendations contained in the Joint First and Second Round Evaluation Report.

## **II. ANALYSIS**

5. It was recalled that GRECO in its Joint Evaluation Report addressed 25 recommendations to Ukraine. Compliance with these recommendations is dealt with below.

### **Recommendation i.**

6. *GRECO recommended to establish a body, distinct from the law enforcement functions, with the responsibility of overseeing the implementation of the national anti-corruption strategies and related action plans as well as proposing new strategies and measures against corruption. Such a body should represent public institutions as well as civil society and be given the necessary level of independence to perform an effective monitoring function.*
7. The authorities of Ukraine report that on 15 January 2008 the Ministry of Justice, in cooperation with the Council of Europe ("UPAC-project"), conducted a round-table discussion that centred on establishing an anti-corruption agency (models, specialisation and powers). Participants included representatives from public authorities, NGOs, the Council of Europe and other international organisations. Based on the conclusions from the round-table discussion the creation of an anti-corruption agency was put forward to the Cabinet of Ministers. On 1 February 2008, the President of Ukraine signed a Decree "*On Some Measures to Improve and Implement the State Anti-Corruption Policy*" which instructed the Government to consider the issue of entrusting the Ministry of Justice with the task of elaborating and implementing the anti-corruption policy. As a result, the Ministry of Justice submitted to the Cabinet of Ministers a draft Resolution "*On Certain Issues concerning the Realisation of the State Anti-Corruption Policy*" on 1 March 2008, containing a proposal to establish the Office of the Government Agent for Anti-Corruption Policy with tasks which would include the formulation of anti-corruption policy, the development of anti-corruption strategies and action plans, co-ordination between bodies involved in the execution of anti-corruption strategies and action plans, analyses and legal examinations; statistics gathering; cooperation with NGOs and enaction of public campaigns etc. The draft Resolution was subject to a round-table discussion on 22 April 2008, again organised by the Ministry of Justice in

cooperation with the Council of Europe (UPAC), which was attended by representatives of Parliament, ministries, international organisations and NGOs. The authorities also submit that the draft Resolution has been subject to expertise by, *inter alia*, international bodies and that it has received overall positive responses. On 4 June 2008, the Cabinet of Minister approved Resolution no. 532 on '*Certain Issues of Implementation of the State Anti-Corruption Policy*' establishing the post of *the Government Agent for Anti-Corruption Policy*. The Resolution foresees that ministers, heads of central agencies and heads of regional and local authorities are to appoint from among their deputies an official to cooperate with the Government Agent.

8. On 24 April 2009, the Government adopted a resolution on the Government Agent for Anti-Corruption Policy (No. 410) and appointed the Government Agent. According to the Resolution, the Government Agent is subordinate to the Cabinet of Ministers and will, *inter alia*, have the tasks to propose anti-corruption policies, to examine draft legislation and propose amendments to the Government, to analyse statistics and propose new draft legislation in the area of corruption prevention and control, to ensure interaction with central and local executive authorities, to cooperate with Parliament (Verkhovna Rada), to involve civil society in the anti-corruption policy and to provide for public awareness and media relations. Moreover, the Agent has the right to take part in ministerial board meetings, to involve expert staff of central and local authorities, to establish working parties for reasons, such as drafting legislation, and may refer cases of corruption to the relevant bodies (law enforcement) as well as to receive feedback from them. Furthermore, the Agent may take part in the meetings of the Cabinet of Ministers and is to participate in Ukraine's cooperation with GRECO, the Council of Europe and with other international organisations concerning anti-corruption policy.
9. The authorities also report that on 8 April 2008 the President approved, by decree, the Concept for the Reform of the Criminal Justice in Ukraine which states that a specialised anti-corruption body in the criminal justice system is to be introduced to ensure an effective anti-corruption policy with powers to conduct pre-trial investigation in corruption cases and to co-ordinate activities of other law-enforcement bodies in this sphere. This, in the view of the authorities, demonstrates the need to separate law-enforcement anti-corruption functions from those of prevention. The creation of such a specialised law-enforcement body is foreseen in the draft law *on the Anti-corruption Bureau of Ukraine*, which is pending before Parliament. In September 2008, the Parliamentary Committee on Fighting Corruption and Organised Crime recommended Parliament to adopt the draft law.
10. GRECO welcomes the information provided by the Ukrainian authorities. and notes that Ukraine with the establishment of the Government Agent for Anti-corruption Policy opens up for the development of a genuine anti-corruption policy based on preventive measures elaborated with a wide society support. Moreover, it appears that these functions are clearly distinct from law enforcement functions. This being said, it is also important that general corruption policies have a bearing also on the policies of the law enforcement agencies. GRECO is of the opinion that Resolution No. 410 provides the Government Agent with pertinent functions. These will require extensive cooperation with Parliament as well as with central and local authorities. The modalities of such cooperation are not clearly defined in the Resolution. Moreover, the Resolution provides that the Agent is competent to "*implement activities related to the involvement of civil society*" and to promote "*cooperation with such institutes on the part of executive authorities*". Although this also is a step in the right direction, GRECO is not fully convinced that civil society is/will be sufficiently represented in such a structure as requested by the recommendation. Moreover, the Agency has some monitoring functions, but its independence in this respect appears questionable as it is a government body which, furthermore, is to be assisted by the secretariat of

the Cabinet of Ministers. In conclusion, GRECO welcomes the positive developments in this area, which it believes have a potential of being a break through in the establishment of a broad anti-corruption authority in Ukraine. However, it remains to be seen to what extent the Resolution of the Government Agent for Anti-corruption Policy will be implemented in such a way as to result in an anti corruption body as foreseen in Recommendation i.

11. GRECO concludes that recommendation i has been partly implemented.

**Recommendation ii.**

12. *GRECO recommended to urgently develop a detailed plan of action for the implementation of the national anti-corruption strategy (Concept Paper of the President). The plan of action should preferably be subject to international expertise and, to the extent possible, take into account potential cooperation with and assistance from the international community.*
13. The authorities of Ukraine report that, on 15 August 2007, the Cabinet of Ministers approved by Order No. 657, an Action Plan on the Implementation of the Concept Paper of the President “*On the Road to Integrity*” for the period until 2010. Before its approval by the Government, the Action Plan had been subject to assessments by experts appointed by the Council of Europe. As a new Government took office at the end of 2007, a new Governmental Programme of Activities was adopted – “*Ukrainian breakthrough: For People, not for Politicians*” – one part of which is dedicated to the implementation of GRECO’s recommendations. The Ministry of Justice has proposed revising the Action Plan in order to add some new measures, providing for shorter deadlines and reviewing measures in the light of the changing situation in the country. The principal change of the Action Plan is reported to be a mechanism to co-ordinate its realisation, i.e. the establishment of the post of the Government Agent for Anti-corruption Policy. The draft revised Action Plan envisages that the Agent will coordinate the implementation of the Action Plan, report to the Cabinet of Ministers on its progress and make proposals for amending the Plan. In the preparation of a revised Action Plan, the Ministry of Justice, apart from consulting public institutions, invited non-governmental organisations to submit proposals to the draft. This process, the authorities state, meant that a large number of such proposals have been taken into account in the draft revised Action Plan. To further promote public discussion of the draft, it was posted on the official website of the Ministry of Justice. On 16 September 2008, the Government’s Committee for Legal Policy Issues approved the revised Action Plan and it is currently being prepared for final adoption by the Cabinet of Ministers.
14. GRECO takes note of the process towards the adoption of a final Action Plan on the Implementation of the Concept for Eradication of Corruption in Ukraine. However, the Action Plan is currently subject to revision and awaiting its final adoption by the Cabinet of Ministers. Even though Ukraine had previously adopted an action plan, GRECO cannot conclude that Recommendation ii has been fully complied with as the final version of the plan is currently undergoing revision. Furthermore, the details of the revised Action Plan have not been provided to GRECO.
15. GRECO concludes that recommendation ii has been partly implemented.

### **Recommendation iii.**

16. *GRECO recommended to review the system of administrative liability for corruption in order to clearly establish that cases of corruption are to be treated as criminal offences as a main rule, or, at the very least to establish a clear cut distinction between the requirements for applying these two distinct procedures.*
17. The authorities of Ukraine report that a draft law *On Amending some Legislative Acts of Ukraine concerning Liability for Corruption Offences* (No. 0875 of 23 November 2007) is pending before Parliament. The purpose of the draft law is to bring the criminal and administrative offences in line with the provisions of the UN Convention against Corruption (UNCAC) and the Council of Europe Criminal Law Convention on Corruption (ETS 173). The draft law is said to provide, *inter alia*, for the criminalisation of trading in influence and illicit enrichment; corruption in the private sector; extension of liability for corruption in respect of private auditors, notaries, experts, attorneys, arbitrators, foreign and international officials. Moreover, the draft law makes a distinction between criminal and administrative liability for corruption. The authorities submit that according to research almost 2/3 of all bribery cases in Ukraine involve bribes of approximately 20 to 100 Euros and the principle is that bribery involving relatively small sums are to be dealt with as administrative offences, which result in fines and dismissal from service, rather than imprisonment, which is foreseen for the criminal offences. Consequently, the distinction between administrative and criminal procedures is to be based on the amount of the undue benefit, i.e. benefits of less than five personal allowances, will be dealt with in the administrative process and those above in the criminal procedure.
18. GRECO takes note of the information provided. It maintains its previous position that corruption as a main rule should be treated as a criminal offence. However, the measures underway in Ukraine might provide for a somewhat clearer differentiation between administrative and criminal liability for corruption although certain situations of corruption may be serious even if only small values are involved. GRECO has therefore doubts that the measures reported will lead to a clear cut distinction between the requirements for applying either criminal or administrative procedures. Moreover, it is crucial that new criminal legislation will be fully in line with the Criminal Law Convention on Corruption (ETS 173). The relevant draft law *On Amending Some Legislative Acts of Ukraine concerning Liability for Corruption Offences* has not been adopted by Parliament.
19. GRECO concludes that recommendation iii has been partly implemented.

### **Recommendation iv.**

20. *GRECO recommended to strengthen the coordination between the various law enforcement authorities involved in the investigation of corruption offences and to enhance the compilation, analysis and dissemination of comprehensive statistics on all cases of corruption dealt with by the law enforcement agencies concerned, as well as information on the outcome of these cases.*
21. The authorities of Ukraine report with regard to the first part of the recommendation (strengthening the co-ordination between law enforcement authorities) that the President of Ukraine, by Decree No. 370 of 17 April 2008, established the Inter-agency Anti-corruption Task Force. According to the decree, this Task Force is an auxiliary body dealing with the development of proposals to improve interaction amongst the prosecutor's offices, the Security Service, the Ministry of Internal Affairs, the State Tax Administration, the Main Department of the Civil Service, the Ministry of Justice and other central and local executive authorities, in implementing

measures to counter corruption. A co-ordination and analysis centre has also been established in the Department of Corruption and Organised Crime of the Security Service to support the work of the Task Force. At its meeting in April 2008, the Task Force approved a plan of activities as instructed by the Presidential Decree, according to which the Task Force members are to meet regularly in plenary or in specialised working groups. The authorities state that, in May 2008, these groups as well as regional task forces, were provided with the necessary staff, i.e. five employees in the analysis centre. In addition, the Security Service is the headquarters of the Task Force and provides the Task Force with staff from its secretariat.

22. With respect to the second part of the recommendation (statistics and analysis) the authorities of Ukraine report that the Action Plan (see recommendation ii; currently under revision) for the implementation of the Concept Paper of the President ("*On the Road to Integrity*") for the period until 2010 provides for the creation of a unified law-enforcement database on corruption and other related cases. The authorities state that such a database is currently operated by the law-enforcement agencies. In addition, the Ministry of Internal Affairs maintains an automated database of administrative offences related to corruption which contains information concerning persons against whom administrative reports on corruption were drawn up and referred to courts, as well as on the court decisions. To improve the existing record keeping system, the Ministry of Internal Affairs has drafted a new recording instruction which was adopted on 29 October 2008 by a joint order (No.58/560/795/679/99) of the Ministry of the Interior, the Office of the Prosecutor General, the Security Service, the State Tax Administration and the State Court Administration. The instruction was enacted as of 1 January 2009.
23. GRECO takes note of the information provided. It observes that efforts have been made to strengthen the coordination between the various law enforcement authorities involved in the investigation of corruption offences; in particular with the establishment of the Inter-agency Anti-corruption Task Force. It also notes that the enhancement of comprehensive statistics on administrative cases and the new instruction adopted through a joint order further provides for a unified law-enforcement database on corruption cases, which since 1 January 2009 is operational.
24. GRECO concludes that recommendation iv has been dealt with in a satisfactory manner.

#### **Recommendation v.**

25. *GRECO recommended to enhance the independence of the Procuracy from political influence and to provide it with a clearer mandate focused on the leading of pre-trial criminal investigations and prosecutions.*
26. The authorities of Ukraine report that the President, by Decree of 8 April 2008, approved a "*Concept for the reform of the criminal justice system*". According to this decree, the constitutional powers and principles of the Prosecutor's Office are to correspond to the standards of states governed by the rule of law and in particular with those comprised in the Council of Europe Recommendation Rec (2000)19 on the Role of Public Prosecution in the Criminal Justice System. The authorities state, *inter alia*, that the Prosecutor's Office is to become the sole body responsible for supervision of law observance of pre-trial investigative bodies and over bodies that enforce criminal judgments as well as being in charge of the prosecution of individuals. Moreover, the prosecutors are to be guaranteed procedural independence from external influence (e.g. political) and from improper influence from superior prosecutors; the requirements for recruitment of prosecutors are to be defined in more detail; the procedure of appointments to the

Prosecution Service as well as the grounds for early termination are to be improved; rules of professional conduct are to be developed; a law on a competitive selection procedure for positions of prosecutors is to be established as well as for internal and external control over the functioning of the prosecution service; criteria for assessing performance and a procedure for bringing prosecutors to liability are to be set up, as is a system to protect prosecutors from illegal dismissal. On 27 August 2008, in order to ensure the realisation of the Concept, the Cabinet of Ministers approved the *Plan of Action to Implement the Criminal Justice Reform Concept*. On 8 September 2008, Parliament passed the Law amending the *Law on the Prosecutor's Office* which concerns the procedure for dismissal of the Prosecutor General. This Law establishes that the Prosecutor General is appointed and dismissed by the President with the consent of Parliament. In the authorities' view, this will help mitigate political influence on the work of the General Prosecutor's Office. Furthermore, according to the above Plan on Measures of the Criminal Justice Reform, a new draft law *on the Office of Public Prosecutor* is to be prepared. Such a law is to be drafted in coordination with the draft Code of Criminal Procedure and, on 5 March 2009, a working group was established for this purpose. On 10 March 2009, a draft Code of Criminal Procedure was submitted to the President for further submission to Parliament. On 31 March 2009, the President submitted a draft of the Constitution of Ukraine, concerning the Procuracy where its vast "supervision" in the current Constitution would be limited to criminal procedural functions.

27. GRECO takes note of the information provided. It is pleased that Ukraine has started reforms to modernise the Prosecutor's Office, in accordance, it would seem, with rule of law principles. GRECO recalls what is stated in the Evaluation Report on Ukraine (paragraph 86) that a modernised prosecution service based on European standards would be the natural investigation platform for corruption cases. GRECO is fully aware that such fundamental reforms of the prosecution service require a long term perspective and, furthermore, that these are to be implemented in a context much wider than that of efficient corruption fighting. It is therefore encouraging that substantial legal reforms, including constitutional amendments, appear to be underway. Moreover, it is understandable that no major parts of the anticipated reforms have yet materialised in the form of constitutional or legislative amendments, except in respect of the appointment and dismissal of prosecutors. In this context, GRECO wishes to stress the importance of maintaining close cooperation with international bodies with the pertinent expertise in the reform process, such as the Council of Europe, which may provide legal assistance on issues related to the rule of law and the prosecution service. Ukraine is encouraged to vigorously pursue the reform process in this area.
28. GRECO concludes that recommendation v has been partly implemented.

**Recommendation vi.**

29. *GRECO recommended that the law enforcement staff and prosecutors are provided uniform training on a regular, rolling and permanent basis with regard to detecting and investigating corruption offences and to establish specialised training for those directly involved in the fight against corruption.*
30. The authorities of Ukraine refer to various training initiatives for special law enforcement staff who are directly involved in detecting corruption. This includes on-going training for militia (police) personnel carried out by the Academy of the Ministry of Internal Affairs and the Education and Research Institute of the Kyiv National University of Internal Affairs. Moreover, the authorities report that special courses and training have been introduced into the curriculum of the

professional development courses for operative police officers. These include legislative support for the fight against corruption and for the practice of application of anti-corruption legislation. In addition, staff of law-enforcement bodies take regular professional development training at the Training Centre of the State Financial Monitoring Department. In June 2008, according to an agreement between the Ministry of Internal Affairs of Ukraine and the Federal Ministry of the Interior of Germany, the Academy of the Ukrainian Ministry of Internal Affairs hosted an international workshop on the detection and investigation of corruption offences. The Workshop was led by officers of the German criminal police and attended by practitioners from specialised anti-corruption divisions of the Ministry of Internal Affairs.

31. As regards training of prosecutors, the Ukrainian authorities state that the Institute of Personnel Education of the National Academy of Prosecution of Ukraine teaches the special course “*Legal measures of counteracting corruption*”, which includes 36 hours of theory and practice. Following graduation from the Academy, 140 people, annually, are then assigned to jobs at the Prosecutor's Office. In addition, the Institute of On-going Training of the National Academy of Prosecution regularly holds round-table discussions and practical seminars on the topic of prosecutorial supervision over observance of the Law on Combating Corruption.
32. Moreover, the authorities refer to a large number of conferences/seminars organised together with international organisations, such as the Council of Europe (UPAC), the OECD and the International Association of Anti-corruption Authorities (IAACA), often in cooperation with particular projects funded by international organisations and individual countries. In March 2008, the National Academy of Prosecution hosted an international training seminar for prosecutors from all the regions of Ukraine who supervise observance of legislation by the law-enforcement bodies combating corruption (OECD Project “Strengthening the Capacity to Investigate and Prosecute Corruption in Ukraine”); in September 2008, the Ministry of Justice, with the assistance of the Council of Europe and France, hosted a round-table discussion on *Search, Seizure and Confiscation of Proceeds from Corruption Offences*; in October 2008, the Prosecutor's General Office and the National Academy of Prosecution Service, in cooperation with the OECD, conducted an international expert seminar to discuss the issue of introducing anti-corruption specialisation for public prosecutors based on the experience of some Council of Europe member States; in April and May 2009, the UPAC, the OECD and the Basel Institute of Governance together with the Ukrainian Academy of Prosecution is organising training for regional prosecutors on detection and investigation of corruption, which is supposed to be followed by a presentation of a training manual. Furthermore, in March 2009, the Ministry of the Interior with the support of UPAC, organised an international training seminar on corruption fighting. Moreover, the National Academy of Prosecution has organised special training courses on the investigation of cases of abuse of powers for more than 140 students in 2008. The authorities also report that more than 900 persons attend prosecutor's training courses on specialised matters relating to corruption. The authorities refer to a number of foreseen training courses for 2009 to be organised in cooperation with different international organisations. The authorities have added that the curricula of the various law enforcement agencies are to be amended, following guidelines developed by Council of Europe appointed experts in respect of training in the detection and investigation of corruption offences.
33. GRECO notes that a large number of training initiatives have been carried out, many of which have been arranged in cooperation with international organisations. GRECO observes that international events, such as many of those reported by Ukraine, to a great extent serve the purpose of providing information based on foreign experience. Such experience, valuable as it is, needs to be translated into the Ukrainian context and may lead to structural changes in the

curricula for the domestic law enforcement training. GRECO recalls that in the Evaluation Report, it was, *inter alia*, concluded that there was a need for further specialisation in the detection of corruption not linked to organised crime, and that there was a need for massive training based on a new curriculum in this respect. Although the training reported by Ukraine, which covers both militia staff and prosecution staff, is to be welcomed and is certainly important, further efforts are clearly necessary in order to fully comply with the recommendation which calls for “*uniform training on a regular, rolling and permanent basis*”. In particular, GRECO expects the authorities to focus to a greater extent on the development of specialised permanent training curricula on detection and investigation of corruption for the police and prosecutorial staff concerned.

34. GRECO concludes that recommendation vi has been partly implemented.

**Recommendation vii.**

35. *GRECO recommended that the independence of the judiciary is further enhanced and that the transparency of the judicial recruitment process is increased; that the independence of the High Council of Justice vis-à-vis the executive and legislative powers is strengthened and that it be composed of a higher proportion of judges; and that improvements to the material conditions of judges, including fair remuneration, necessary to provide for their independence and compatible with their level of responsibility, are considered.*
36. The authorities of Ukraine report that draft laws on amending *the Law on the Judiciary of Ukraine* (registration No. 0916) and *the Law on the Status of Judges* (registration No. 0917) are pending before Parliament<sup>1</sup>. Generally, the draft amendments aim at improving the quality of the future judges in Ukraine, reforming the court system and creating appropriate conditions for the administration of justice. The measures aim, for example, at the introduction of a transparent, competitive selection procedure of judges on the basis of clear objective criteria and a qualification examination upon appointment. The amendments also comprise a list of grounds for disciplinary liability of judges, as well as the establishment of a separate permanent judicial body (Disciplinary Commission) to deal with the examination of cases of disciplinary responsibility. In order to ensure that the matters of disciplinary liability of judges are examined more expeditiously and effectively, it is proposed to introduce judicial inspectors<sup>2</sup> to investigate infringements by judges, institute disciplinary proceedings against judges and, ultimately, refer cases to the Commission. Moreover, the authorities state that the draft also contains amendments in respect of judges’ remuneration, based on certain criteria.
37. The authorities also report that a draft law on amending the law *on the High Council of Justice* - concerning the structure of the Council and designed to raise the professionalism of its members (registration No. 1320-1 of 23.01.2008) was, on 4 September 2008, rejected by Parliament. Moreover, on 31 March 2009, the President presented to Parliament draft amendments to the Constitution, according to which the High Council of Justice will have the power to recruit and dismiss judges; the High Council would consist of 16 members of which eight are to be judges appointed by the Congress of Judges and the others would be appointed by the President (4) and the Senate (4).

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<sup>1</sup> Currently the draft laws are awaiting approval by the Parliament in the second reading, having been approved by the Parliament’s Committee on the Judiciary on 18 March 2009.

<sup>2</sup> Judicial inspectors are foreseen to be appointed by, and accountable to, the High Council of Justice to deal with disciplinary matters against judges.

38. GRECO acknowledges that reforming the judiciary in order to enhance its independence is a long term project. It takes note of the legislative amendments reported, which appear to be important and necessary in Ukraine, as their overall aim is to improve the quality of judges. GRECO is particularly pleased that it is proposed to improve the selection and appointment procedure of judges and to provide for more adequate remuneration for judges. Also noteworthy is the proposed increase in the proportion of judges in the High Council from 4:20 to 8:16, thus increasing the High Council's independence from the executive power. In conclusion, although some progress has been reported, none of the proposed amendments has yet been approved by Parliament. On the basis of the above and the fundamental importance of an independent judiciary, GRECO encourages Ukraine to employ considerable efforts in the implementation of this recommendation.
39. GRECO concludes that recommendation vii has been partly implemented.

#### **Recommendation viii.**

40. *GRECO recommended to further develop the operation of the Justice Academy and that a training curriculum for judges, comprising theoretical as well as practical modules, including ethics and topics relevant for dealing with corruption issues, be introduced shortly after appointment as well as part of judges' ongoing career development.*
41. The authorities of Ukraine report that the Concept for the Improvement of the Judiciary to Promote Fair Trial in Ukraine according to European Standards (approved by the Presidential Decree no. 361 in May 2006) provides for the expansion of the Academy's staff as from January 2008. The total number of staff, including in the regions, has been reported as 380. In addition, the funds allocated for training at the Academy of Judges in the State Budget for 2008 increased 2.1 times over 2007. As a result of this, it is reported that the Justice Academy now provides professional on-going training to judges, court managers of general courts, and to staff of the State Court Administration (SCA) in Kyiv and 7 regional branches. In 2007, the Academy offered 106 professional development activities to judges, court managers and staff of the SCA territorial administrations. Furthermore, the Academy has developed bilateral co-operation projects with judicial training institutions of other countries and established ties with international organisations, such as the Council of Europe, the European Commission, the United Nations, the OSCE and the World Bank. It has also been involved in major international projects aimed at the transformation of the judiciary.
42. The authorities also indicate that on-going training of judges and court managers, conducted by experts in the field is provided by the Academy of Judges and includes courses on topics such as ethics and disciplinary liability of judges. The training of judges and other categories of judicial staff is said to have focused on the issue of judicial ethics and compliance with the requirements of the law "on Combating Corruption" - a topic that is covered during regular two-week training courses for judges and one-week training for other categories of judicial staff. Overall, 1252 persons are reported to have undergone in-service training in 2008. In addition, a series of training seminars on the selection of judicial staff and disciplinary responsibility of judges, supported by the USAID project "Ukraine: the Rule of Law", were held for heads of the qualifying commissions of judges. As from 2009, the Academy of Judges has prepared a draft regulation on study courses at the Academy relating to judges' ethics, anti-corruption legislation and international standards. A course on counteracting corruption was held in March 2009. Several hundred judges have participated in the courses in 2009 which were held in Kyiv and some regions. The authorities have also reported that the Academy has introduced special courses for

all categories of students and that all newly appointed judges take courses on corruption issues and ethics. In 2008 366 newly appointed judges and 311 acting judges reportedly took such courses and during the first quarter of 2009, such courses were organised for 30 newly appointed judges and 141 acting judges.

43. GRECO takes note of the information provided. It welcomes that the operation in general and the training in particular provided for by the Justice Academy is improving, in respect of in-service training as well as for the newly appointed judges.
44. GRECO concludes that recommendation viii has been implemented satisfactorily.

#### **Recommendations ix and x.**

45. *GRECO recommended to consider introducing measures to ensure the securing of evidence in situations where persons enjoying immunity are caught in the act of committing a serious crime, including corruption (recommendation ix).*
46. *GRECO recommended to consider reviewing the system of immunities in such a way as to provide for speedier decisions on the lifting of immunities (recommendation x).*
47. The authorities of Ukraine report that on 1-2 July 2008, the Ministry of Justice, within the framework of the Project "Support to Good Governance: Project against Corruption in Ukraine" (Council of Europe, UPAC), organised a conference devoted to the prevention of political corruption. The Conference adopted recommendations addressed to the Cabinet of Ministers proposing the exclusion from the scope of immunities, the carrying out of investigative and other legal actions that do not restrict the right of a member of Parliament to his/her freedom of movement, as well as in any case where an MP or a judge is detained *in flagrante delicto*, including in the commission of corruption-related crimes. On 20 March 2008, Parliament requested an opinion from the Constitutional Court concerning the constitutionality of the draft law on amending the Constitution, regarding the restriction of parliamentary immunity (registration No. 1375 of 18 January 2008), in particular to abolish the requirement that MPs enjoy immunity and that without prior consent of Parliament they may not be prosecuted, detained or arrested. On 16 September 2008, the Constitutional Court delivered an opinion that such an amendment would be constitutional and thus opened up possibilities to change the Constitution in this respect. The authorities report, however, that these amendments of the Constitution have been taken off the agenda of Parliament. Furthermore, it is reported that the President on 31 March 2009 presented Parliament with a new draft of the Constitution, according to which Parliamentarians could not be brought to responsibility without the approval of the Chamber of Deputies or the Senate.
48. In respect of recommendation x, the authorities defend the appropriateness of the current system which is aimed at assisting Parliament to take a decision to lift immunity as fast as possible and, *inter alia*, that the entire process would not take more time than 32 days in total.
49. GRECO deals with recommendations ix and x together as they are interlinked. It appears that Ukraine has entered into processes to amend the Constitution and that the issues of maintaining or abolishing parliamentary immunity are under consideration in Parliament. GRECO recalls that recommendation ix and x did not require more than to *consider* the issue of securing evidence in situations where persons enjoy immunity and to provide for speedier decisions on the lifting of immunities. Ukraine has substantiated that it is in the process of amending the Constitution which may affect both recommendations - thus has considered this matter - but the results of this

process is still an open question. GRECO would welcome substantial progress concerning this matter and Ukraine may wish to keep GRECO informed of further developments in respect of this issue.

50. GRECO concludes that recommendations ix and x have been dealt with in a satisfactory manner.

#### **Recommendations xi and xii**

51. *GRECO recommended to introduce regulations with respect to confiscation and seizure of proceeds from crime which would make it possible to apply measures with regard to direct as well as indirect (converted) proceeds, the value of the proceeds and in respect of proceeds held by a third party in conformity with the Criminal Law Convention on Corruption (ETS 173) (recommendation xi).*
52. *GRECO recommended to introduce regulations on the management of seized property, which can be applied in a flexible way in order to sufficiently preserve the value of such property (recommendation xii).*
53. The authorities of Ukraine report that the Ministry of Justice has prepared a draft law to amend the Criminal Code (CC) and the Criminal Procedure Code (CPC) concerning confiscation. With regard to recommendation xi, the draft contains amendments in respect of the proceeds of crime and instrumentalities. The authorities refer in particular to the possibility to confiscate the proceeds of crime as well as property generated out of the proceeds or property into which they have been fully or partially converted. The draft law also provides for the possibility of confiscating the proceeds of crime if such property was joined to other property obtained in a lawful manner or when such property was transferred to a third party. In addition, the draft law envisages the possibility to apply a special confiscation procedure in cases where the holder of the proceeds is not subject to, or is freed from, criminal responsibility. In respect of recommendation xii, the draft envisages amendments to Articles 79 and 80 of the CPC on the handling of seized property, according to the Authorities. It appears that the draft amendment to the CPC in respect of the improvement of the seizure procedure is pending before Parliament (Reg. No. 3642 of 22 January 2009).
54. GRECO takes note of the information provided, which suggests that Ukraine is at an advanced stage of amending the criminal process in respect of the shortcomings raised in the recommendations.
55. GRECO concludes that recommendations xi and xii have been partly implemented.

#### **Recommendation xiii.**

56. *GRECO recommended to establish an overall strategy with clear objectives for future reforms of the public administration in Ukraine in order to provide a common understanding for the necessity of change and to make this known to the wider public through awareness campaigns.*
57. The authorities of Ukraine report that, on 20 September 2007, the President signed a Decree on “*Measures to Reform the Civil Service of Ukraine and Ensure Protection of Constitutional Rights of Civil Servants*”. The Decree instructs the Cabinet of Ministers, *inter alia*, to amend the *Law on Civil Service* in order to systematically regulate all types of civil service, carry out post classification, separate political and administrative posts, establish an independent state body to

manage the civil service, improve the recruitment, remunerations, promotion and training of civil servants, establish uniform protection of the constitutional rights of civil servants and define disciplinary offences etc. On 16 January 2008, the Government approved its Programme of Activities "*The Ukrainian Breakthrough: for People, but not for Politicians*" which, in particular, envisages reform of the public administration and the establishment of a system of public administration to ensure high quality of public services to citizens in line with European standards. In March 2008 the Cabinet of Ministers created a working group for the elaboration of a draft Concept on the Public Administration Reform and a round table discussion was held on the same subject in December 2008. The Group comprises representatives from the executive authorities, Parliament and academia. On 4 June 2008, the Cabinet of Ministers created the Centre for Adaptation of the Civil Service to the Standards of the European Union, the main function of which is to participate in the reform process of the public administration, to provide expertise in the drafting of new legislation, to provide consultative support to state bodies and to participate in the process of cooperation between Ukraine and international bodies which aim to reform the public administration in Ukraine. The authorities furthermore report on measures aiming at public awareness in respect of the reforms, *inter alia*, numerous articles in newspapers during 2008 and 2009.

58. GRECO takes note of the information provided. It welcomes the positive developments reported in respect of the planned reforms of the public administration. While recognising that reforming public administration in Ukraine is subject to political turbulence which makes it very difficult to establish a clear and foreseeable reform process, GRECO is of the opinion that this recommendation, although general in its character, through the measures reported has been given a meaningful follow-up and, under the circumstances, has been handled in an adequate manner. GRECO also welcomes the assistance of several international organisations in this demanding task.
59. GRECO concludes that recommendation xiii has been dealt with in a satisfactory manner.

**Recommendation xiv.**

60. *GRECO recommended to adopt a clear set of rules governing the administrative process and decision making as well as clear guidelines with regard to the hierarchy of different legal norms and standards governing public administration.*
61. The authorities of Ukraine report that on 18 July 2008 the draft Administrative Procedure Code - prepared by the Ministry of Justice - was submitted to Parliament (registration no. 2789) for adoption. The draft Code regulates the procedure for processing administrative cases by the executive power, local government, officials and civil servants. This, the authorities state, means that the draft Administrative Procedure Code would become the overarching legal act to ensure a legislative regulation for procedures of administrative activity and protection of rights and legitimate interests of the wider public in its relation with the authorities. In addition, the Ministry of Justice prepared a draft law *on the Normative Legal Acts*, in order to define the system, types and hierarchy of normative legal acts and the procedure for their adoption, publication, entering into force, application and registration, as well as requirements to law-drafting techniques and means of solving conflicts between legal acts. In 2007, this draft was submitted for consideration to the Government; however due to the change of Government it was withdrawn. On 16 September 2008, Parliament approved in a first reading another draft law *on the Normative Legal Acts*, submitted by a Member of Parliament (registration no. 1343-1). The authorities state that this draft was adopted by Parliament on 1 October 2008; however, it has been vetoed by the

President. The authorities also refer to the current Constitution and claim that it makes the hierarchy of legal norms in Ukraine absolutely clear.

62. GRECO takes note of the information provided, which indicates that the administrative process has not yet been adequately regulated in law. The current situation appears confusing and the reasons for the veto of the President have not been reported to GRECO. However, the draft legislation on the matters addressed in this recommendation seems to be at a rather advanced stage.
63. GRECO concludes that recommendation xiv has been partly implemented.

**Recommendation xv.**

64. *GRECO recommended to enhance the public's right to access to official information; to introduce less cumbersome request procedures; to emphasise the authorities' obligation to assist the public in obtaining information within a reasonable time and to consider the introduction of an independent special (pre-court) review mechanism for decisions refusing access to official information.*
65. The authorities of Ukraine report that, in November 2007, the Cabinet of Ministers approved a general concept on the promotion of the interaction between the Executive Authorities and the Civil Society through transparency and access to information. In order to implement the Concept, the Government approved a plan to this end, on 28 March 2008, by Regulation No. 784. Among the main measures foreseen is the drafting of a new law on access to information. In July 2008, the Cabinet of Ministers approved a concept for the drafting of a law on access to information, *inter alia*, that such a law was to contain the basic principles of access to information, that it was to determine the order of information promulgation on web-sites; that it would establish procedures for requesting information and basic principles for establishing fees for providing information as well as for liability in respect of violations of the legislation etc. A draft law on access to information was submitted to Parliament on 18 February 2009; however, it was rejected by Parliament as an identical draft law on access to public administration was already pending before Parliament, submitted by a Parliamentarian (Reg. No. 2763 of 11 July 2008). The Authorities also report that the Ministry of Justice, since the end of 2008, provides legal assistance and services to the public free of charge in all its regional divisions.
66. GRECO takes note of the somewhat confusing developments reported in order to provide for new legislation on access to information in Ukraine. GRECO has not seen the various drafts referred to, but it cannot disregard the information that a draft law is pending before Parliament. Moreover, it welcomes the fact that the Ministry of Justice has established a service to provide the public with advice free of charge, covering all regions of Ukraine.
67. GRECO concludes that recommendation xv has been partly implemented.

**Recommendation xvi.**

68. *GRECO recommended to implement a functional administrative justice system as provided for in law.*
69. The authorities of Ukraine report that in accordance with the Decree of the President of 16 November 2004 (№1417) *on the Setting up of Local and Appeal Courts, Adoption of their*

*Network and Quantitative Composition*, administrative Courts of Appeal and regional/local (Oblast) administrative courts have been established. In June 2008, the Sumy and Kyiv regional administrative courts were established. The authorities also report that budgets and staffing matters in respect of these administrative courts have been approved by the authorities concerned. On 2 March 2009, two more administrative district courts became operational (Mykolayiv and Chemivtsy regions) which, according to the authorities, completes this reform. The system of administrative courts now consists of the High Administrative Court, seven appeal administrative courts and 27 local district courts.

70. GRECO takes note of the information provided and concludes that recommendation xvi has been implemented satisfactorily.

**Recommendation xvii.**

71. *GRECO recommended to enhance the competencies of the staff of the Accounting Chamber to be better prepared to detect instances of corruption in the course of their ordinary work.*
72. The authorities of Ukraine report that in accordance with the Decree of the Cabinet of Ministers of 14 July 1999 (№1262) *on Provisioning Finance for the Preparation and Increase of Professional Skills of Employees of the Bodies of Executive Power, Local Government and Bodies of Military Management of the Armed Forces*, the Accounting Chamber is obliged to ensure that its staff develops their professional skills. In accordance with this Decree, a group of employees of the Chamber attended a seminar on the prevention of corruption on 23-27 June 2008. In addition, the Accounting Chamber has signed a Memorandum of cooperation with the Ministry of Justice in order to increase the professional skills of employees of the Chamber and the Ministry by holding joint meetings, conferences and seminars, including training, exchange of international experience in the field of prevention and detection of corruption and fraud in respect of state resources.
73. GRECO takes note of the actions taken. It welcomes the fact that some training on corruption prevention has taken place and welcomes the efforts undertaken to strengthen the cooperation between the Accounting Chamber and the Ministry of Justice, which appear to be a longer term project.
74. GRECO concludes that recommendation xvii has been implemented satisfactorily.

**Recommendation xviii.**

75. *GRECO recommended that the external independent audit of local authorities be extended to cover all their activities and that such an audit is built on the same principles of independence, transparency and control which apply to the Accounting Chamber.*
76. The authorities of Ukraine report that as the mandate of the Accounting Chamber is defined in the Constitution, the extension of its powers would accordingly require changes in the Constitution. Therefore, amendments to Article 98 of the Constitution enabling the Accounting Chamber to exercise control over the budget of local authorities were foreseen in the Government's Plan of Action for the implementation of the Concept Paper of the President ("*On the Way to Integrity*") for the period until 2010. However, taking into account the complicated procedure of enacting amendments to the Constitution, the Government resorted to a number of other actions, such as various legislative initiatives on budget discipline. The authorities report that, on 4 April 2008, the

Parliament registered the draft law *On Amendments to the Law on the State Control and Revision Service of Ukraine and some other legislative acts of Ukraine* (Reg. No. 2359 of 10 April 2008). This draft law, which reportedly envisages the strengthening of the powers of the control and auditing service, including the authority to control the financial discipline of local government, was approved in a first reading by Parliament on 17 March 2009.

77. GRECO takes note of the information provided. It welcomes the fact that some changes to widen the audit of local authorities appear to be underway. However, the initiatives taken have not as yet produced tangible results in line with the recommendation.
78. GRECO concludes that recommendation xviii has been partly implemented.

**Recommendation xix.**

79. *GRECO recommended that public procurement legislation be thoroughly reviewed in order to bring it into compliance with European norms and standards in respect of policy, accountability and transparency.*
80. The authorities of Ukraine report that as the result of criticism, the law on *Recognising as Invalid the Law on Procurement of Goods, Works and Services for Public Funds* was adopted by Parliament on 20 March 2008. Instead of the repealed law, temporary provisions for the procurement of goods, works and services for public funds were approved by decision of the Cabinet of Ministers on 28 March 2008 (№ 274). On 12 May 2008, the Cabinet of Ministers submitted to Parliament a new draft law on *Purchase of Goods, Works and Services for Public Funds* (№ 2263-1), which was adopted in a first reading on 20 May 2008. The authorities state that this draft law envisages simplification of the process of public procurement, creation of conditions for transparency and accessibility to information on public procurements on the basis of European standards, concentration of all regulatory and controlling functions pertaining to public procurements to an authorised body, elimination of restrictions for the participation in procurement procedures of market participants and the establishment of a committee dealing with complaints and procurement monitoring to operate under the authorised body, in particular, for the consideration of complaints submitted by procurement participants. In November 2008, the draft law was amended by the Ministry of Economy with the support of the World Bank and, following approval by the Cabinet of Ministers, referred to Parliament. The draft is at present awaiting a second reading in Parliament.
81. GRECO takes note of the information provided. It welcomes the abolition of the former law on procurement and the initiated process for new legislation in this area.
82. GRECO concludes that recommendation xix has been partly implemented.

**Recommendation xx.**

83. *GRECO recommended to introduce a reform process covering an appropriate range of all public officials – and not only civil servants – following the principles foreseen with respect to civil service reforms.*
84. The authorities of Ukraine report that currently a draft law on *the Civil Service* is pending before Parliament, aiming at, *inter alia*, separating political from administrative posts, reforming the management of the civil service, improving the payment of civil servants and determining the

procedure of appointment to positions and promotion of civil servants. In addition to this, the authorities refer to other draft legislation underway, also aimed at modernising public administration and public officials and other employees who are not necessarily civil servants, for example, draft *amendments to the law on Service in Local Government*, draft law on *Integrity of Behaviour of the Persons Authorised to Perform Functions of the State and Local Government*, draft law on *State Financial Control Over Declaring of Income and its Expenditure by the Persons Authorised to Perform the Functions of the State, Members of their Families and Close Relatives* as well as some draft amendments to other laws relating to public servant status of medical, pedagogical and scientific employees.

85. GRECO takes note of the information provided. It welcomes the various measures reported which indicate that not only civil servants are covered by the massive reforms underway in Ukraine. However, none of the many draft laws reported has been adopted by Parliament.
86. GRECO concludes that recommendation xx has been partly implemented.

#### **Recommendation xxi.**

87. *GRECO recommended to introduce clear rules/guidelines for all public officials to report suspicions of corruption and to introduce protection of those who report in good faith (whistle-blowers) from adverse consequences.*
88. The authorities of Ukraine report that the Cabinet of Ministers, on 10 April 2008, submitted to Parliament the draft law on *Integrity of Behaviour of Persons Authorised to Perform Functions of the State and Local Government* for consideration. This draft envisages that a public official, who becomes aware of actions or inactions of other persons who work with him/her, has an obligation to inform his/her superior, or the superior of the other person. The superior who was informed of such actions or inactions shall, to the extent possible, take measures to terminate these actions. If actions of a person contain evidence of corruption, the superior is required to immediately inform any state body which is fighting corruption. Moreover, the draft stipulates that the reporting person cannot be dismissed from his/her position or be forced to resign or be persecuted in any way for having provided information on wrongful acts or inactions of other subjects relating to integrity-based behaviour. The Authorities add that both oral and written reports would be acceptable according to the draft law. On 20 March 2009, the draft law was voted in Parliament, but it did not receive enough support for being adopted and the Minister of Justice has therefore requested a second vote to take place. The authorities also submit that a draft law on conflicts of interest in the public sector was on 29 April 2009 sent to Parliament by a group of Parliamentarians.
89. GRECO takes note of the information provided and welcomes the fact that the draft law on *Integrity of Behaviour of Persons Authorised to Perform Functions of the State and Local Government*, which is currently pending before Parliament, apparently covers both aspects of the recommendation but recalls that it has not been adopted by Parliament.
90. GRECO concludes that recommendation xxi has been partly implemented.

#### **Recommendation xxii.**

91. *GRECO recommended to establish a new model code of conduct/ethics for public administration to strengthen the education and instruction of public officials on their obligations and related*

*appropriate behaviour with regard to their service, in particular, with respect to reporting suspected corruption, conflicts of interest and properly assisting the public. To enhance the regular rolling training for public officials on anti-corruption measures and ethical conduct in public life as provided for in law, regulations and policy (soft law).*

92. The authorities of Ukraine report in respect of the first part of the recommendation (to establish a model code of conduct/ethics), that there are a number of different codes of conduct in place in Ukraine (e.g. on public servants (2000), police/militia (2000), judges (2002) and to staff of tax administration (2006): Moreover, on 10 April 2008 the Cabinet of Ministers submitted a draft law on *Integrity of Behaviour of the Persons Authorised to Perform the Functions of the State and Local Government* to Parliament. The draft aims at establishing some general requirements of integrity-based behaviour of public officials/employees of the state and local government in the course of performing their official duties. The draft also defines moral standards of behaviour and in order to establish guidelines for the professional conduct of public officials/employees who perform functions in areas which are prone to corruption. Moreover, the draft is said to contain a number of other provisions, including a section which regulates the prevention of conflicts of interest, in particular in the course of appointments to a post as well as in respect of promotion and dismissal. The authorities furthermore submit that a draft law on conflicts of interest in the public sector was submitted to Parliament on 29 April 2009 by a group of parliamentarians (No. 4420).
93. The authorities report in respect of the second part of the recommendation (to enhance regular rolling training), that the Main Department of the Civil Service, which is responsible for implementing action for the prevention of corruption among civil servants and officials of local government (programme of development of civil service for 2005-2010), implements measures to improve the professional level of public servants and officials of local government at the Kyiv National University of Internal Affairs. Almost 600 persons per year have been trained in 2007 and 2008 and the civil servants' training is planned to cover some 1000 students in 2009. The authorities also report that short seminars and round tables on, *inter alia*, corruption prevention take place at the Centre for Retraining and Improvement of Professional Skills of Justice Personnel under the Ministry of Justice and a number of other bodies. The Centre for Legal Reform and Law-Creation under the Ministry of Justice, has started a course of lectures on the prevention of corruption risks when developing draft laws and the detection of such risks when checking draft legal acts. In the first quarter of 2009, 616 students participated in this course.
94. GRECO takes note of the information provided. As regards the first part of the recommendation (establishing a model code), GRECO recalls that some specific codes of conduct/ethics are in place since well before the evaluation report was adopted and that the preparation of draft legislation in this area appears to be underway. This being said, GRECO is doubtful as to the effectiveness of using legislation for establishing codes of conduct as such instruments are rather aimed at being a complement to the law in order to guide public officials/employees in a more comprehensible manner and, in particular situations, where advisable conduct may depend on several different circumstances. The regulation of ethical conduct is therefore difficult to capture in a comprehensible way in legislation and the use of so-called "soft law" may instead be a more appropriate way forward. GRECO has previously stated that codes of conduct should be "living" instruments as good conduct may change over time. GRECO is therefore not convinced that legislation is a sufficient tool in order to establish norms for ethically acceptable conduct. In any event, the model code of conduct/ethics for the public administration has not yet been enacted. Turning to the second part of the recommendation (enhancing the training), Ukraine has reported some progress; however, it is obvious that the authorities still lack a comprehensive approach in

order to establish a regular rolling training on anti-corruption measures that would apply to public officials/employees in a systematic way.

95. GRECO concludes that recommendation xxii has been partly implemented.

**Recommendation xxiii.**

96. *GRECO recommended to record and gather reliable statistics on the use of disciplinary proceedings and sanctions in public administration.*
97. The authorities of Ukraine report that, on 30 November 2007, the Main Department of the Civil Service signed an agreement with an external software provider ("MKKU-network Ltd") according to which the existing "Kartka" software is to be revised to show data on civil servants who are subject to administrative and other (criminal) responsibility. Within this agreement, the "Kartka" is to contain further information on civil servants who commit corrupt acts or other related breaches of the law. The software is also meant to allow for the compiling and processing of such information while preparing statistical reports. Currently, the Main Department of the Civil Service is preparing a new module in order to further simplify the procedure of preparing statistical reports in the "Kartka".
98. GRECO takes note of the information provided and welcomes the progress reported in respect of developing statistical data on disciplinary proceedings in public administration. Moreover, facilitating access to information on the civil service via the Internet is also a positive development. The information submitted clearly suggests that the initiatives taken are fairly advanced and seem to go in the direction intended by the recommendation.
99. GRECO concludes that recommendation xxiii has been dealt with in a satisfactory manner.

**Recommendation xxiv.**

100. *GRECO recommended to introduce liability of legal persons for corruption offences, including effective, proportionate and dissuasive sanctions, and to consider establishing a registration system for legal persons which would be subject to corporate sanctions.*
101. The authorities of Ukraine report that a draft law *on Responsibility of Legal Entities for Committing Corruption Offences* has been pending before Parliament (Reg. No. 0877) since 23 November 2007 and has been subject to a first reading. The draft law was developed in connection with the need to bring the legislation into conformity with several international instruments of the United Nations and the Council of Europe. Reportedly, the draft contains the basis for criminal responsibility of legal persons and the sanctions foreseen are a fine, prohibition to engage in certain activities and the dissolution of the legal entity. In addition, the authorities refer to another draft law pending before Parliament (*on Basic Principles of Prevention and Counteracting Corruption in Ukraine*) (No. 0876 of 23.11.2007), which, *inter alia*, envisages that legal entities which have been held responsible for corruption offences, be barred from business with public authorities, participation in public procurements etc for a period of five years (from the moment that the court decision comes into force), and that a data base listing barred legal persons is foreseen in the draft law. Currently, the draft is awaiting a second reading in Parliament.
102. GRECO takes note of the information provided. It concludes that recommendation xxiv has been partly implemented.

### **Recommendation xxv.**

103. *GRECO recommended to take adequate measures, including of a legal/regulatory nature, in order to actively involve accountants and auditors in detecting/reporting money laundering offences.*
104. *The authorities of Ukraine report that, on 19 August 2008, the Government submitted a draft law on Amendments to Some Laws of Ukraine Related to Prevention of Legalisation of Revenue Received in a Criminal Manner, or for Financing Terrorism (Reg. № 3062) to Parliament. The draft expands the list of the subjects involved in primary financial monitoring and includes, amongst others, auditors, audit firms and subjects of entrepreneurial activity who provide book keeping services. According to the authorities, if the law is adopted, it will ensure more involvement by accountants and auditors in the detection of money laundering. The draft law was subject to a first reading by Parliament on 25 September 2008 and is currently being prepared for a second reading.*
105. GRECO takes note of the information provided and concludes that recommendation xxv has been partly implemented.

### **III. CONCLUSIONS**

106. **In view of the above, GRECO concludes that Ukraine has implemented satisfactorily or dealt with in a satisfactory manner less than a third of the recommendations contained in the Joint First and Second Round Evaluation Report.** Recommendations viii, xvi and xvii have been implemented satisfactorily and recommendations iv, ix, x, xiii and xxiii have been dealt with in a satisfactory manner. Recommendations i-iii, v-vii, xi, xii, xiv, xv, xviii-xxii, xxiv and xxv have been partly implemented.
107. The recommendations addressed to Ukraine cover all areas of the Joint First and Second Evaluation Round and several of these recommendations require fundamental legislative - sometimes constitutional - changes which require a rather long term approach. Moreover, the turbulent political environment in Ukraine does not make the necessary adjustments easy. Against this background, it is understandable that Ukraine has not managed to implement more than a small part of the recommendations for the moment. That said, it is encouraging that most, if not all, recommendations have been addressed in one way or another. The large majority of the measures taken by Ukraine relate to the adoption of draft legislation, which is currently pending before Parliament. GRECO wishes to stress that several of the recommendations also require implementation in practice of the new legislation. In this connection, the paramount importance of the swift establishment of an overall anti-corruption body - which needs to represent public authorities as well as civil society and be given a necessary level of independence - cannot be overstated. This issue is closely related to the adoption of a plan of action for the implementation of the National Anti-corruption Strategy. GRECO welcomes the fact that Ukraine has established close cooperation with several states as well as international organisations, including the Council of Europe, the European Commission, the OECD, World Bank etc. This cooperation is valuable for bringing in foreign experience and support. However, international events are not a substitute for a determined reform process at domestic level, including for example the provision of proper training of law enforcement staff or civil servants. Ukraine will need to make sustainable efforts in order to fully comply with the recommendations issued in GRECO's Joint First and Second Round Evaluation Report. This requires strong, political commitment that goes far beyond the elaboration of draft legislation. The best way forward is ultimately a matter for the Ukrainian

authorities, however, GRECO sees Recommendation i as foundational for making co-ordinated, prioritised and effective progress; thus the establishment of the body contemplated in that Recommendation and making it operational appears to be a matter of high priority.

108. GRECO invites the Head of the Ukrainian delegation to submit additional information regarding the implementation of recommendations i-iii, v-vii, xi, xii, xiv, xv, xviii-xxii, xxiv and xxv by 30 November 2010.
109. Finally, GRECO invites the authorities of Ukraine to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.