BUILDING INTEGRITY SELF-ASSESSMENT

AND

PEER REVIEW REPORT

UKRAINE

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BUILDING INTEGRITY

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EXECUTIVE SUMMARY

1.   The Building Integrity (BI) Programme is part of NATO's commitment to strengthening good governance in the defence and related security sector. It is focused on providing practical assistance with defence and related security reforms and helping nations meet their anti-corruption obligations within the UN, European and other frameworks. It promotes good practices and provides countries with tailored support – at strategic and institutional level and with capacity building assistance at operational and tactical levels in order to strengthen the transparency and accountability of defence and security institutions. In this context, focus is placed on personal and institutional integrity through which institution's norms and values become part of the person's own norms and values. Goal-oriented work to reinforce an institution's integrity, therefore, is a question of institutionalising the norms and values that the institutions stand for, as well as a question of internalising these norms and values among the institution's personnel[1].

2.   BI is part of NATO defence reforms efforts established in November 2007 in support of the Partnership Action Plan on Defence Institution Building (PAP-DIB) agreed at the Istanbul Summit in 2004. The NATO Building Integrity Self-Assessment and Peer Review Process is a part of the practical tools developed in the framework of the Building Integrity Programme. Its objective is to help countries assess the risk of corruption in their defence and related security sector. The Self-Assessment Questionnaire (SAQ) is a diagnostic tool designed to provide nations with a snapshot of current procedures and practices in several areas, among which the democratic control of the armed and security forces, national anti-corruption laws, anti-corruption policy in the defence and related security sector, personnel, procurement. The subsequent NATO-led Peer Review helps authorities to confirm areas of good practices and those that may require further efforts.

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[1] NATO Building Integrity Policy, definition of Integrity endorsed at the NATO Heads of State and Government Summit of Warsaw, July 2016, paragraph 3.

3.   Ukraine has been participating in NATO BI since the inception of the BI initiative. As such, it volunteered to be part of the experimentation trail in 2008. Hereafter, Ukraine completed twice the NATO BI Self-Assessment Questionnaire. Series of Peer Review visits led to the development of Peer Review Reports respectively in 2010 and 2013 [2]. Kyiv has developed considerable experience in participating in NATO BI and through international good governance programmes offered by other international, regional and bilateral programmes of cooperation. Today, Ukraine is not only a beneficiary of NATO BI but is also able to share experience in contributing to educational activities led by NATO BI[3].

4.   Ukraine re-submitted the completed Self-Assessment Questionnaire (SAQ) to NATO's International Staff in April 2017. Preparatory meetings and consultations took place prior to handle the new completion of the SAQ and Peer Review. It includes notably an expert and peer-to-peer seminar held in Kyiv on 23 September 2016 and the first NATO BI Executives Day on 13 September 2018 under the auspices of Ms Ivana Klympush-Tsintsadze, Deputy Prime Minister for European and Euro-Atlantic Integration, and Ambassador Alejandro Alvargonzalez, NATO Assistant Secretary General for Political Affairs and Security Policy.

5.   Eight defence and security sector ministries and agencies participated in the BI process. Six of them formally completed the SAQ and participated in the Peer Review's interviews: Ministry of Defence (MOD), the Armed Forces of Ukraine (AFU), Ministry of Internal Affairs (MOIA), Security Service of Ukraine (SSU), National Guard of Ukraine (NGU), National Police of Ukraine (NPU), and State Border Guard Service of Ukraine (SBGS). The State Emergency Service of Ukraine (SESU) and State Special Transport Service of Ukraine (SSTSU) were engaged in comprehensive discussions with the Peer Review Team. The reply to the SAQ and Peer Review interviews provided an overall, detailed, and broad scope of the legal arrangements, organisations and procedures in place, depending on the participating institutions. Each of the institutions will find an overview of their answers as well as related recommendations.

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[2] The official hand-over of the results of the 2014 NATO BI Self-Assessment and Peer Review Report was provided in 2015, the process was delayed due to the crisis. The 2014 BI Peer Review Report was made available on the website of the National Security and Defence Council in English and Ukrainian languages as recommended by NATO BI.

[3] At the international level, the engagements include the participation of Deputy Prime Minister Ivanna Klympusch-Tsintsadze at the 2019 NATO BI bi-annual Conference held in Washington DC, USA (5-7 March 2019); the contribution to a NATO BI Peer-to-Peer seminar held for the Jordanian Armed Forces by the Point of Contact within the Cabinet of Minister (January 2019, Amman, Jordan) and the participation of representative of an NGO focusing on communication in NATO BI courses. At the national level, representatives of the Ministry of Defence for procurement and internal audit participated in NATO BI courses organised for the military and security academies.

6.   It is also noteworthy to mention that other actors engaged in the fight against corruption in Ukraine *inter alia* the National Anti-Corruption Bureau of Ukraine (NABU), the National Agency for Corruption Prevention (NACP), representatives of the parliamentary Committee on National Security and Defence and Committee on Corruption Prevention and Counteraction anti-corruption also participated in the Peer Review visits [4]. The NATO Peer Review Team shared the opinion that, though the participation and openness among all institutions are not equal, there is nevertheless a general commitment to participating in this specific process. Such engagement demonstrates an overall will and determination to support reforms on integrity and good governance further.

7.   Compared to the previous NATO BI Self-Assessment and Peer Review Process, the current completed SAQ reflects a new momentum and new stand of the current leadership of defence and security organisations against corruption and other forms of fraud. From 2014 through 2017 and currently, the Ukraine authorities, assisted by an intensive civil society engagement and international actors, has shown a bold attitude towards the fight against corruption introducing major legal acts, approving anti-corruption strategies, policies, and plans, and establishing specialised investigation bodies.

8.   The Peer Review visits provided a confidential platform to validate the SAQ findings, identify good practices, lessons learned and develop practical steps to strengthen the transparency, accountability and integrity of the nation's defence and related security sector. The visits were tailored to the Ukraine specifics and include subject matter experts drawn from the NATO International Staff, governmental administrations, and partner nations. However, the professional "asking of questions" and the openness of the answers made the Peer Review a process that allows for a more rigorous evaluation defence of and security policy and management.

9.   The first Peer Review visit (4 – 8 February 2019) was mainly dedicated to the Defence Sector[5] and started with a kick-off meeting led by the State Secretary for Defence Oleksandr Dublyan and was reported accordingly on the Ministry of Defence's website. Such official opening is new and noteworthy. It could have nevertheless offered an opportunity for an in-depth discussion with the top leadership of the Ministry of Defence, which did not take place. To the contrary, and following the transfer of responsibilities towards the coordination of NATO BI institutions and capacity building activities from the National Security and Defence Council (NSDC) to the Cabinet of Ministers (CabMin), the NATO BI Team had a bilateral meeting

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[4] See Annex for the list of individuals interviewed during the peer review visits.
[5] The NATO BI Team also interviewed the Security Service of Ukraine as well as representatives of the Ukrainian Parliament Verkhovna Rada.

with Deputy Prime Minister Ivanna Klympusch-Tsintsadze and extensive consultations with her Team. The NATO BI Peer Review Team noted the different approach. This meeting provided additional information on the current corruption prevention activities undertaken by the Cabinet, which could not be covered in the SAQ due to its early completion (before the transfer of responsibility). The level of engagement and commitment with the CabMin was notable.

10.   The second Peer Review visit (12 – 17 May 2019) was focused on the Ministry of Internal Affairs (MOIA) and its law enforcement agencies and militarised formations. The participation of the Deputy Minister of MOIA, Ms. Tetiana Kovalchuk, the senior chiefs of services and a large number of Heads of Departments that perform different functions in anti-corruption and integrity development programmes have given a detailed discussion not only on the SAQ responses but also on the latest developments in the current year. The NATO BI Peer Review Team took note of the thorough preparation of the participants and their desire to provide comprehensive answers to the questions. In most of the cases, the discussions provided more data and better explanations than some answers to the SAQ.

11.   The third Peer Review visit (15 – 19 July 2019) included comprehensive interviews with the leadership and key executives of two organisations that did not complete the SAQ – State Emergency Service of Ukraine and State Special Transport Service of Ukraine. The visit also aimed to finalise the observations and conclusions about the implementation of integrity and good governance reforms and the relevant recommendations.

12.   The commitment, energy, and drive to develop further its anti-corruption initiatives and sustain this effort are seen from the SAQ answers and the following direct discussions. The positive response from political officials, heads of Services and professionals demonstrate that many key decision-makers have embraced the strong anti-corruption message from the civil society and international partners of Ukraine. However, despite that further reduction of corruption in the defence and related security sector is highly demanded, the Peer Review Team noted the following examples of good practices that meet international benchmarks including:

a.   The on-going enactment of the broader understanding of the role and value of democratic civilian control goes hand-in-hand with continuing regulation of functions and responsibilities throughout the defence and security sector. The introduction and empowerment of a civilian Minister of Defence as the senior civilian defence adviser to the President, Prime Minister, and Verkhovna Rada on defence policy and single administrative authority for the Armed Forces of Ukraine is the benchmark for the overall sectorial reforms.

b. Along with the defence transformation, the Police reform is one of the most striking elements of what the new Ukraine law enforcement sector might look like. The new Patrol Police and the State Border Guard Service are introducing advanced NATO countries standards and practices in their work.

c. Development of anti-corruption strategies and second in row plans by the Government and all security sector organisations, based on unified risk assessment methodology provided by NACP, is a particular achievement. Enhancement of the evidence - and analysis-based institutional programmes might be indicators for the desire for effectiveness and sustainability in building integrity. They provide challenge and recommendations and will review change programmes but have to be authorised to enforce changes.

d. The establishment of a comprehensive and potentially authoritative anti-corruption architecture, which includes laws, regulations, and bodies for detection, prevention, and response to corruption challenges, such as NABU, NACP, the Specialised Anti-Corruption Prosecutor Office (SAPO), the State Investigation Bureau (SIB), the National Agency of Ukraine for finding, tracing and management of assets derived from corruption and other crimes (known as Asset Recovery and Management Agency or ARMA), as well as the establishment of a High Anti-Corruption Court (HACC) according to the international good practices and recommendations. The 38 members of the HACC were selected in March-April and later also the Chairperson. It is expected the HACC become operational on 5 September 2019.

e. A considerable achievement is the Government (through the National Agency on Corruption Prevention) focuses on raising the general awareness on corruption, bribery and other forms of non-ethical behaviour. Several campaigns and activities across the defence and security sector organisations aimed primarily at creating intolerance to corruption among uniformed personnel and civilian servants. An essential component of the anti-corruption awareness-raising campaign is the expanded transparency of defence and internal security policies, primarily through the published White Books and the Strategic Defence Bulletin, regular annual public reports on anti-corruption activities, new institutional websites with anti-corruption sub-sites with whistleblowing phone numbers and web address for reporting on violations of rules and poor behaviour. Furthermore, various codes of conduct for military and law enforcement personnel and civil servants have been developed in each security sector organisation. Knowledge and understanding of their value reportedly are provided through a comprehensive set of training courses, methodological guides, pamphlets, advertising videos, and others. This had not yet been independently audited to gauge effectiveness.

f. The human resource management of defence and related security sector undertakes considerable efforts to prevent the appointment of

candidates inclined to corruption in the state authorities, the Armed Forces of Ukraine, other military units, law enforcement and intelligence agencies, state special-purpose bodies with law enforcement functions, civil security forces. In particular, a polygraph survey was introduced during the recruitment and certification of employees, the verification of electronic declarations, the audit of individuals within the framework of the "cleaning the government" policy, and other measures aimed at creating an environment of inadmissibility and intolerance to corruption.[6]

g.   Although many of the internal audit functions within the organisations reviewed are still rooted in auditing financial processes and compliance checking (and this limits their effectiveness in tackling corruption risks), there is a direction of travel towards improved independence and increased professionalism following international internal auditing standards. There were also some convincing examples of audits having a positive impact on reducing corruption risks. At the forefront of transformation is the Internal Audit unit of the MOD who has been changing its methodology to be more risk-based, has direct access to the leadership (including a Deputy Minister), and have been assessed by international experts as being broadly compliant with the Standards of the international Institute of Internal Auditors. Progress towards this transformation across the organisations reviewed was quite variable, there would be considerable benefit in developing a shared vision for the future with central support and guidance. More proactive networking amongst audit professionals, the promulgation of good practice, and sharing successes can assist this.

h.   Despite that audit committees do not yet exist effectively within the organisations reviewed, the intention in the MOD (formalised in December 2018) to establish an Audit Committee is an essential first step towards improved transparency and accountability.

i.   The launch of the assets e-declarations is an important measure to prevent corruption and conflict of interest. The analysis of those declarations is a matter of transparency and accountability. The work on establishing reliable validation is in progress, and the overall effect on state servants' integrity is expected high.

j.   The introduction of both centralised and de-centralised online e-procurement platform ProZorro and the building of a collaborative environment that ensures open access to public procurement tenders in

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[6] The Peer Review Team sees these as "achievements" at the initial stage of establishing the building integrity system. However, the polygraph could be easily corrupted, the e-declarations have value on if are made transparent and validated, the audits' recommendations are useless if they are not made obliged for all institutions, units and authorities.

Ukraine. Throughout the reviewed period, the ProZorro system showed encouraging results saving billions hryvnia from the amount of the State budget.

k.   The introduction of a web-based *Unified State Register of Persons who have Committed Corruption or Corruption-Related Offenses* seems to be a unique achievement. It illustrates how strong the public demand for effective anti-corruption policy and practice is, and the growing institutional will to start breaking the corruption loop.

l.   The continuing unique engagement of civil society volunteers in the anti-corruption and democratic reforms, e.g., the establishment of Public Council of the Ministry of Defence with Committee No.10 "Prevention of Corruption, Civil Service, Appointment and Dismissal of Company Managers, and the Activities of Agencies Belonging to the MOD".

13.   However, the NATO BI Peer Review Team realises that most of the Ukrainian anti-corruption laws and normative acts, as well as investigative and judicial bodies, established since the 2014 political change, began working effectively mostly in 2018. "Birthmarks" are inevitable during such complex and intensive moves. It is realistic to expect the next several years of better prevention, more successful investigations, and effective convictions for the cases of corruption, both at low and high levels of administration and political authority.

14.   Defence, law enforcement, and domestic security agencies are judged by their capability to respond effectively to threats in any form. In the interest of the quality of Ukrainian democracy and governance, they should also be evaluated by their ethical performance, respect to human rights and citizens freedoms, and transparency and accountability to the public and the national security stakeholders. Effectiveness and integrity are interlinked and mutually reinforcing. From this perspective, the Peer Review Report offers the following policy-level sectoral recommendations that are expected to have cross-cutting effects on integrity and performance of the defence and security institutions (elaborated further in the detailed findings and comments):

a.   Maintain the strategic direction of fighting corruption through sustainable democratisation and the iron rule of law. Transparency and accountability of the security sector authorities, openness and clarity of the government decisions, and accountability and political responsibility of the Ukrainian leadership are the most critical levers of defeating corruption.

b.   Continue to improve the quality of anti-corruption policy and the programmes' implementation with strong political will and power. Ukraine defence and security authorities recognise corruption as a critical problem for national security, combat readiness, and social cohesion. The corruption risks

involved are given intense attention – a wide range of laws, regulations, and bodies address corruption problems. A clear and robust leadership message has been delivered yet that corruption will not be tolerated. However, the effectiveness of the existing system is recognised as being limited in the routine application of laws, unclean addictions, insufficient professionalism, and mainly due to some unreformed sectors as the judicial. There are too many instructions, requirements, orders, plans, programmes that are not enough specialised and functionally completed. These deficits should be addressed through an evidence-based integrity building policy, rules making and training.

c.   Hone the effective democratic control and oversight of the law enforcement agencies and special services. A complex application of the Parliamentary Assembly of the Council of Europe (PACE) recommendations 1402 (1999) and 1713 (2005) across the sector's institutions and binding them with the Rada parliamentary control and Prosecutor General and Supreme Court judicial control might help build a not only better internal security environment but also improve the quality of the Ukrainian democracy.

d.   Broaden the scope of monitoring, provide specialised training, and increase the effectiveness of investigations to prevent corruption and poor behaviour among the high-ranking public officials, including defence and security sector leaders. The ongoing pre-trial investigations signal a growing capacity and effectiveness despite the existing gaps in the investigation-sanction loop.

e.   Close the loop of anti-corruption planning, implementing, monitoring, and adjusting regulations, policy, and programmes. Create a hierarchical governance structure that address all aspects and anti-corruption bodies with clears terms of reference, authorities, responsibilities and accountabilities. There is a process by which the security sector authorities shall assess corruption risks, adopt anti-corruption programmes, and submit the programmes to the NACP for approval. They are obliged to take the NACP's recommendations into consideration within 30 days and provide feedback about the undertaken or not measures. However, NACP may provide recommendations and challenge the institutional risk assessments and programmes but still have no authority to enforce changes, as sanctions are not foreseen for not taking the NACP's recommendations into account.

f.   Cut the knot of the policy of benefits among the defence and security sector organisations. MOD and MOIA and their subordinated institutions are neither real estate agencies nor business entities. Being at the same time between the primary sources of corruption risks, the delivery of houses and financial benefits should not to focus most of the political, public and professional attention. As this is a nation-wide problem that could not be

solved with a single act, make everything related to the additional payments transparent to all (as a motivating factor and corruption anti-dot) and limited to the level of 15-20 % of the basic remuneration, as the first direct step.

g.   Continue to improve the defence and security sector procurement system limiting the non-competitive, secret, and extraordinary procedures. In terms of capability acquisitions, all military weapons and equipment, other than consumables, the procurement decisions and actions are considered to be a state secret. Furthermore, a new law on procurement introduced in 2019 permits that any capability which is on the state secret list can be procured as a sole source contract, this restricts competitiveness, and may increase corruption risks. Therefore, it is strongly recommended that a review of both the state secrets list and sole source contracting be reviewed with urgency to avoid continued risk in defence procurement. The SAQ responses and following discussions confirmed procurement as a high-risk area, despite that several new regulations and innovations have been put in place to reduce corruption risks. The unnecessary secrecy, mechanism of the State Defence Order, monopolism, and emergency procurement was estimated the most prone to decisions that might undermine vitally needed defence and security capabilities. As long as public tenders are running, they might be confidential, but never after. This is a critical point in fighting procurement and contracting corruption within the defence and security sector. Assurance within the procurement system should also be improved, strengthening the independence of performance audits. A key step in this is ensuring auditors are not involved in any aspects of the contracting process.

h.   Prepare the ground for introducing a long-term defence and security acquisition system. The current procurement system has a short horizon that could hardly serve to the wide-ranging defence and security modernisation needs of Ukraine. The effective use of the country's comprehensive research, development and production capacity needs of a modern acquisition system. A strategic review of the "capability requirements – research and development – technology and production – maintenance the life cycle" nexus can provide an evidence-based framework for a comprehensive long-term planning and acquisition reform.

i.   Ensure that those enterprises that provide goods and services through the State Defence Order have and strictly follow the code of proper behaviour. The security sector agencies and organisations' relationships with the state-owned defence economic sector is seen as an enormous corruption risk factor. Introduce Defence Procurement Integrity Pacts and Common Industry Standards during major equipment delivery, empowered with increased civil society oversight, expanded e-tendering, improved follow up monitoring and quality/delivery checks, and primarily technical training on the tendering process to reduce further corruption risk and enhance value for money.

j.   Proceed further for final cleaning the military and law enforcement operations from any signs of corruption and improper behaviour. The Joint Force Operation is not only vital for the Ukraine national security but also very sensitive from corruption perspective. Clean definitely the JFO from corruption opportunities. The JFO conditions are different (than those envisaged by the laws) and more dynamic than the bureaucratic system may reflect. However, there are enough comprehensive lessons to learn from and improve the integrity preparation, performance, and control. The recently undertaken measures on the operation field may have some interim impacts, but the problems signals it is time to make the integrity issue as an element of the military doctrine, strategic and operational planning, and command and control.

k.   Improve the quality, professionalism and autonomy of internal audit, coalescing this around a shared vision for the future adopting international audit standards. This function can be a strong force to tackle corruption if it is adequately resourced, trained and give sufficient status and independence within organisations. Build a professional community of interest amongst the internal audit units to leverage the professional development of the Internal Auditors teams, which has benefitted from external assistance. Resist the temptation to involve internal audit in executive functions, particularly in the procurement process so that they can independently assess control effectiveness.

l.   Ensure accepted audit recommendations receive sufficiently high level attention in all institutions and establish a follow-up mechanism of reporting and oversight, to improve transparency and accountability.

m.   Adopt more extensive use of non-executive chaired audit committees as a mechanism for improved democratic and independent oversight and to enhance transparency.

n.   Review the current regulations on presenting, analysing and reflecting on whistle-blowers signals and improve them in line with the European standards and good practices. Consider better rules and practice for providing essential protection to all sources of information. Consolidate the hotlines, improve publicity, and analysis of the data produced and assessment of their success. Ensure the quality of expertise for working with signals through professional training and consulting.

o.   Challenge strongly and effectively the use of secrets to avoid transparency and accountability. The currently growing openness, especially of the MOD and the Armed Forces, the MOIA and its organisations, is encouraging and should be turned into regular strategic communications with all national defence and security stakeholders and international partners.

Introduce institutional strategic communications to empower further the role of civil society activists and media as engines of the anti-corruption reforms and the use of the Internet and social networks as both sources of information and tools for influence.

p.   Continue to expand and improve the education and training on integrity using evidence, social studies, and a system of learning lessons lessons to build a civilian and military integrity ethos that counters corruption. Both civilian and military staff should start receiving routinely not only fundamental but also applied knowledge relevant to particular defence processes. Special consideration should be given to pre-deployment anti-corruption training for real missions, conditions, and functions. Political appointees, as well as senior administrators and commanders, should not be excluded from the building integrity training system.

q.   Develop an Integrity Plan, a road map with objectives, actions, timelines, focal points and criteria of measurement, to facilitate the implementation of the recommendations provided in this Report and the ensuing assessment of those reforms. Such Integrity Plan could be a consolidated document for all participating institutions or each institution could have its own plan. Such Integrity Plan should nevertheless be connected to the next National Anti-Corruption Strategy.

15.   The Ukrainian authorities may consider how to address the observations, comments, and recommendations from this report. However, the progress in building integrity depends on the constructive interaction and mutual reinforcement between them, the Ukrainian vibrant civil society, and the international partners – this coalition and the roles of its components must be preserved and further improved. The NATO Building Integrity experts could be requested to return for any follow-on action as necessary, to review the progress or to provide other assistance as coordinated with NATO.

NATO BUILDING INTEGRITY SELF ASSESSMENT AND PEER REVIEW REPORT – UKRAINE

Operating framework

16.	This part of the Report is aimed at analysing the general operational framework of the seven defence and related security institutions having completed the NATO BI Self-Assessment Questionnaire and participating in the Peer Review visits. It summarises the NATO BI team observations and recommendations on building integrity policy, goals, norms, procedures and training for the defence and related security sector and individually, for each participating ministry and organisation. The emphasis is placed on the progress made and the necessary changes in view to achieve better results through the application of international standards and good practices.

Democratic control and engagement

17.	Establishment of an effective "democratic civilian control" [7] of the armed forces, law enforcement agencies and the other security sector organisations is between the core priorities of the overall reform process in Ukraine. The SAQ provides comprehensive information on the established legal framework of democratic civilian control and offers some self-assessment on how effective is the established mechanism of control and what improvements are demanded. The operational framework for control and oversight includes state-level policy and programmes ("road-maps"), parliamentary power and instruments of control and oversight, wider role of the civilians across the security sector, enhanced executive transparency, and essential engagement of the civil society. However, despite the declared ambitions and some visible results, the democratisation aspect of the Ukrainian defence and related security sector reform is far from establishing a "citizens in uniform" environment. The human rights in militarised formations were discussed mostly in a "wartime" context. Gender equality is still seen mainly as an issue of numbers and percentages though the changed mindset to equality is ongoing which is noteworthy. Full-spectrum democratic control is preferably seen as "monitoring."

18.	Verkhovna Rada authority over security and defence policy includes to set out principles and priorities; to oversight the legality and legitimacy of security and defence management decisions; to approve budgets and control spending, including of extra-budgetary sources; to oversight the policy

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[7] Law of Ukraine *On Democratic Civilian Control of State Military Organisation and Law Enforcement Bodies* (2003) has established the term "democratic civilian control."

implementation; to keep the political authorities accountable for policy directing, managing, performance, and integrity. Regarding the military structures of MOD and MOIA – the Armed Forces of Ukraine (AFU), NPU, NGU, and SBGS are governed by the new Law of National Security which prescribes the key roles and functions of the defence and security sector. Moreover, the Parliament has the responsibility to approve their general structure and manpower. Rada is provided with exclusive power to appoint and remove from the office the Chairman of the SSU upon the recommendation made by the President of Ukraine.

19.   To perform the duty of control, Rada has most of the traditional parliamentary instruments: legislative initiatives; legal obligation of the executives to provide performance reports; hearings; inquiries; visits of military and law enforcement units; experts' support and analysis. To control and oversight the defence and related security sector agencies and organisations performance and integrity, two committees have been constituted: Parliamentary Committee on National Security and Defence (NSD Committee) and the Parliamentary Committee on Corruption Prevention and Counteraction.

20.   The stature of the NSD Committee (established in 2014) includes all aspects of national defence and security policy and defence and related security sector organisations. To fill its responsibilities, the Committee has 17 members of whom 30 per cent have been serving the security sector organisations. Recently, one female sits in this Committee (about 6 %). The Committee is organised in six sub-committees: National Security; Military Security and Defence; Defence Industry and Military/Technical Cooperation; Social Security and Legal Protection of Servicemen and their Families; Security of the Public Information Systems; and Efficient Budget Spending.

21.   The competencies of Parliamentary Committee for Corruption Prevention and Counteraction are well defined and include development and implementation of anti-corruption policies; anti-corruption examination of draft laws; preventing and combating corruption and conflicts of interests; the rules of ethical conduct in public service, including the law enforcement agencies; government protection of corruption whistle-blowers; and others. The Committee has 24 members organised in sub-committees along the following functions: monitoring compliance with the legislation on preventing and combating corruption by legal entities; monitoring compliance with the legislation on preventing and combating corruption by the central and local government; international cooperation and implementation of anti-corruption legislation; interaction with civil society on issues of legislative support to preventing and combating corruption; anti-corruption policy; legal support and

monitoring the work of specialised agencies in the field of preventing and combating corruption. Only one female[8] sits in this Committee (about 4%). The SAQ replies do not provide detail on how does the parliamentary control work and how effective it is in practice. However, the answers underline two critical problems. Firstly, a relatively small number of deputies have sizable issues to know, understand and follow. Secondly, the resource constraints hamper the quality of parliamentary oversight – the parliamentary committees need substantial support (both national and international) to develop their competencies and more supporting experts to help them to perform the mandate properly. As the answers correctly underlined, an incapable parliament becomes a voting machine.

22.   The replies to the SAQ estimated the *Law On Democratic Civilian Control of State Military Organisation and Law Enforcement Bodies* as out-dated. For 15 years since it has been in force, the law not only did not contribute to building a quality system of democratic control but also itself become a problem for the defence and related security sector reform. For example, the term "transparency" is used without defining who, to whom, of what should provide information, while "accountability" is not used at all; the intelligence and counterintelligence organisations and the military police are unconditionally excluded from the democratic civilian control; the role of media is seen as a public relations mean instead of a robust civil oversight tool.

23.   The answers briefly touch the parliamentary control of one of the most important and widely discussed security sector organisations – the Security Service of Ukraine (SSU). The provided information is a citation of the *Law on Security Service of Ukraine* (amended in 2010) and does not explain how effectively the Verkhovna Rada exercised monitoring of SSU activities and compliance with the laws of Ukraine.

24.   During the NATO BI Peer Review visit was announced that the new *Law On National Security* introduces civilian control over the law enforcement agencies as well as makes it mandatory for these agencies to report in the Verkhovna Rada. Accordingly, a new parliamentary committee will oversight law enforcement and intelligence agencies (until the conclusion of this report, such committee has not been established). Regarding the democratic control problematic, the new law introduces several essential elements:

– The President nominates civilian defence minister, first deputy minister

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[8] In the current Parliament (Verkhovna Rada), women hold 12.3% of the seats. According to the Inter-Parliamentary Union, the proportion of positions held by women in national parliaments is almost 24%, while in the European Union it is 30.5%. Source https://data.worldbank.org/indicator/SG.GEN.PARL.ZS?locations=EU&name_desc=false

and deputy ministers, and the Verkhovna Rada approves the nominations.

- A new national military chain of command is established headed by the President, the Minister of Defence and the Commander-in-chief of AFU (a new position, different from the Chief of the General Staff) and Commander of Joint Forces, as the senior operational commander.

- The President of Ukraine, Verkhovna Rada, National Security and Defence Council, Cabinet of Ministers, and the executive authorities – ministers and chiefs of services, exercise civilian control.

- The defence and security strategy-level planning will include National Security Strategy, Military Security Strategy, Public Security and Civil Protection Strategy (developed by the MOIA), Military-Industrial Complex Development Strategy (not so clear which responsibility is) and the National Intelligence Programme (probably under NSDC co-ordination). The planning horizon is shortened from twelve to five years.

- The National Guard of Ukraine will be a law enforcement agency under MOIA management during peacetime while, with the introduction of martial law, will be subordinated to the Minister of Defence.

- The Law eliminates the corruption-fighting function of the Security Service of Ukraine.

25.   Regarding the access to defence and security information, the SAQ provides answers based mostly on the existing legislation. The *Law On National Security* stipulates that transparency involves full disclosure of financial information on the functioning of the defence and related security sector to ensure the effective use of financial resources. However, this statement can turn into practice only if several other laws, first of all, the *Law of Ukraine On State Secrets*, would be appropriately amended.

26.   The SAQ answers provide detailed information about the normative status of the defence and related security organisations. Notwithstanding the status and structures of these organisations are not topics of this report, the main question arises regarding the growing number of independent military structures. In most of the cases (the National Guard of Ukraine excluded), these formations have been established not as an operational need regarding the current armed conflict. Building more military or militarised organisations may have different consequences as expanding the overall defence budget, misbalancing the structure of expenditure, growing the personnel cost, and tremendously increases the number of veterans with special privileges. However, from a democratic control perspective, having militarised formations with law enforcement functions is a serious challenge from political, legal, and human rights aspects. These formations are more under "command" than

political control. Special laws used to limit transparency and accountability. Secrecy covers most of the decisions and operations. Specific human rights and civil freedoms are particularly at risk for military personnel – right to life; freedom of expression; freedom of association; freedom of thought, conscience, religion, or belief; and equality, tolerance, and non-discrimination.

27.   Clarity of the roles and responsibilities concerning defence and security is essential for the national chain of command and capabilities development, as well as for the democratic control. The reading of the SAQ answers signals some overlapping and insufficient precision that is not only issues of proper use of specific terms. Although changes to defence team management processes between the MOD and the AFU and NGU are being considered, they need to reflect clear governance and oversight to ensure that there is a definite functional distinction of authorities, responsibilities and accountabilities (ARA) between shared roles and responsibilities. Consequently, if policy formulation and implementation are not adequately defined, the democratic control could have limited meaning as neither sufficient transparency nor effective accountability would be provided.

28.   Since 2014, the Ukraine authorities systematically built a new defence and security policy and strategy environment. A number of strategic documents were introduced, including *Strategic Security and Defence Review* (2014-15), *National Security Strategy* (2015); *Defence Doctrine of Ukraine* (2015); *Strategic Defence Bulletin* (2016); *State Programme for Armaments and Military Equipment* till 2020; the *Law on National Security of Ukraine* (2018). Such systematic approach, based on comprehensive reviews and assessments, performed with NATO and the allied countries methodological support, helped to overcome the traditional practice of reforming pieces of the defence and related security sector without reaching its fundamentals. From the building integrity perspective, the set of principle legal acts and strategic documents provides clarity on who should ensure transparency and be accountable for what as well as ability to track the policy-making and implementation processes to identify the integrity risks. Anti-corruption efforts could have minimal effect if defence decision-making is based not on well-established and traceable procedures but on "reporting notes" – a practice is known from the Warsaw Pact time. However, some answers signal about thinking that if there is a document, it is the policy.

29.   Very encouraging is the information provided for the work of the Accounting Chamber – the auditing arm of Verkhovna Rada. The Chamber's focus on "effectiveness of using the state budget" directly corresponds with the issue of "institutional integrity." That is to say, if the effective use of the budget is compromised, the cause might be either corruption in any form or reckless management. For example, the work of the Chamber and the

Committee on Corruption Prevention and Counteraction with the MOD and AFU has turned into a real integrity-building instrument with immediate effects: 83 corruption offences[9] committed at the MOD and the Armed Forces of Ukraine have been included in the Unified Register of Pre-trial Investigations. Besides, disciplinary charges have been brought against 702 officials in 2016. The Chamber has performed audits in 2018 for the MOIA and Police.

30.   The Ukraine authorities began an intensive reform of the internal control and risk management mechanisms in line with the European Union standards. The new internal audit system could assist in the mapping and assurance of corruption risks and other integrity challenges, especially in, but not limited to the defence capabilities delivery. This potential has yet to be realised. Furthermore, internal audit can be a strong actor in tackling risks of corruption if it is adequately resourced, trained and independently positioned within the respective organisations. We observed varying degrees of maturity across the organisations visited. As an essential part of the governance and internal control framework, internal audit should be more than an inspection or finance function and should be positioned outside of these activities. It must have free-reign to examine any activities within the organisation, thereby improving transparency and accountability. There is already a move towards this, but greater emphasis needs to be placed on non-financial, risk-based performance audits especially of key controls thought to be mitigating corruption risks (e.g., the use or ProZorro and the application of polygraph testing or the establishment of independent standing procurement bodies comprising all stakeholders at the parliamentary level for major defence procurements to name two areas).

31.   The Peer Review Team noted, the internal audit functions are engaged in activities which should be performed by management (such as contract price confirmations, contract document checks, and reviewing land plot sales), as such this has the potential to compromise the function's independence, The absence of other managerial controls in these areas would be a concern. Releasing the internal audits from this work would release auditor resources to undertake more risk-based audits. The programmes of work for internal audit in the MOD, AFU, and the other participating organisations include operational elements in the JTO. At the time of the peer review, no audits of ethics or standards of conduct had been undertaken, nor of the effectiveness

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[9] The *Anti-Corruption Law* distinguishes between a "corruption offence" and a "corruption-related offence." A "corruption offence" is the deliberate act of corruption, for which the Law establishes criminal, disciplinary or civil law liability. A "corruption-related crime" is a wrongdoing that does not fall under the characteristics of corruption but violates the requirements, prohibitions and limitations imposed by the Law. However, the SAQ answers do not provide separated data about the two cases.

of the hotline process. The concept of "Audit Committees" is understood and there are plans to introduce them to some organisations, but as yet there are no working examples.

32. Amendments to the Budget Code of Ukraine, adopted by the Parliament in December 2018, aimed at approximating of internal audit towards international standards, in December 2018 the Minister of Defence of Ukraine approved the concept of the MOD Audit Committee. In December 2018, the Cabinet of Ministers issued a resolution recommending ministries and other government agencies to set up audit committees, but at the time of the February 2018 experts' visit, the committee had not yet been formally implemented. NATO may provide substantial support to this initiative and collaborate for the implementation of the intent in case of sustainable will for local ownership.

33. During the NATO BI Peer Review visit, information was provided that in the MOD, in 2018, 24 persons have been convicted for corruption offences while in 2018 the number is more than doubled – 57 have been placed in the *Unified State Register of Pre-Trial Investigations* for committed crime in the Armed Forces. In the National Police, 64 persons have been included into the Register, and 38 administrative corruption offences were registered in 2017.

Recommendations:

a. Develop further the democratic civilian control as the primary source of checks and balances between divided powers and society. It is historically proven that any political system and large organisation left without checks and balances slightly rotten and degraded. Effective democratic control is the most powerful instrument for improving the quality of democracy, governance, and societal inclusiveness. In that regard, laws related to the democratic control could be updated.

b. Establish a synergy approach between democratic control, effectiveness, and integrity to build consolidated democratic defence and security institutions. Democratic consolidation of defence and security organisations of Ukraine could not be achieved only by introducing new laws, strategies, and institutions. Instead, well-established defence and security policy process, high-level political integrity, internal and external checks and balances, professional expertise, transparency, and accountability are necessary. The engagement of the vibrant Ukrainian civil society should be supported further as one of the critical drivers of reforms and guarantor of its sustainability.

c. Take radical measures to clean Verkhovna Rada' public image and build confidence and respect. Develop, approve, and implement a legislative code of ethical behaviour to start building a political culture based on

democratic values and integrity. Ensure independent monitoring and enforcement of the parliamentarians' ethical behaviour.

d.   Strengthen Verkhovna Rada security and defence institution building awareness, reform knowledge and capacity and ability to engage in strategic level discussions and decisions. Rada needs of total review and comprehensive programme for capacity building and experts support to make the democratic control a factor for security and defence reforms and integrity building.

e.   Clarify further the security and defence roles and responsibilities, keeping the line, established by the *Law On National Security of Ukraine*. Clear roles, authorities, responsibilities and accountabilities are essential for the quality of both democratic control and building integrity. The path of reform, established by the new Law is right, but it is known that the implementation in Ukraine is often the stumbling stone. The value of the Law depends on the ability to redraft a good number of other bills and normative documents.

34.   Since 2014, the Ukrainian authorities are under permanent and convincing pressure from both society and international partners to make and maintain anti-corruption policies and activities high in the policy agenda. As the SAQ answers emphasised, the country is now a member of the most influential international agreements on anti-corruption: the UN Convention against Corruption (UNCAC), the Group of States against Corruption (GRECO), Anti-Corruption Network of the OECD for Eastern Europe and Central Asia. Direct impact on integrity also has the realisation of the EU Visa Liberalisation Action Plan and the EU-Ukraine Association Agreement. Implementing these agreements, various international instruments for tackling corruption, especially in international procurement, were transposed into the domestic legislation. A special place among the anti-corruption measures has Ukraine' comprehensive relations with NATO, notably the NATO BI Policy to which Ukraine contributed to and associated itself, the Annual National Plan (ANP) and the Planning and Review Process (PARP).[10]

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[10] The PARP itself is a voluntary two-year process open to PfP partners and obliged for membership candidates before obtaining a Membership Action Plan. The partners and NATO agree to a package of Partnership Goals in even-numbered years and the PARP Assessment in odd-numbered years. The Annual National Program is the systemic, strategic document in the sphere of Euro-Atlantic Integration, providing transition of the security and defence sector to the NATO principals and standards. Under the auspices of the Ukraine-NATO Commission, the 2019 ANP was harmonized with the key strategic documents of Ukraine, including the Law of Ukraine "On National Security," the Strategy for Sustainable Development of Ukraine-2020 and others. Sources: https://www.nato.int/cps/ie/natohq/topics_68277.htm and https://www.kmu.gov.ua/en/news/uryad-shvaliv-proekt-ukazu-prezidenta-pro-zatverdzhennya-richnoyi-nacionalnoyi-programi-pid-egidoyu-komisiyi-ukrayina-nato-na-2019-rik

National anti-corruption laws and policy

35.   The current anti-corruption approach encompasses anti-corruption normative acts, anti-corruption strategy and programmes, specialised bodies, and implementation reporting and assessment. These four components are presumably bound in a system under the overall Verkhovna Rada control.

36.   The legal acts that might be used as instruments in corruption prevention and response are impressive as for their number and scope. The National Anti-corruption Bureau of Ukraine (see-below - NABU) uses 29 laws and codices (seven of them have been approved since 2014) as a legal basis for anti-corruption operations. The SAQ underlined that some of these acts have been effective, as the introduction of a very comprehensive e-declaration system that pushed around 1,000 judges to resign voluntarily. All militaries and MOD civilian staff filled their electronic declarations in April 1 2017, as well as in 2018 and 2019.

37.   The principal anti-corruption legal act, the *Law On Prevention of Corruption* (dated 2014, but is in power since 2015):

−   Defines corruption and corruption offence and distinguishing a corruption-related offence;

−   Labels the unjustified benefit and a gift (but bypass the category "bribery");

−   Determines the subjects of accountability for corruption offences, sets out ethical behaviour rules for certain groups of officials, and hardens the financial control arrangements;

−   Formulates rules for blocking unjustified benefits and gifts;

−   Regulates the protection of the whistle-blowers;

−   Secures transparency, determining the content of the annual reports and rules of information dissemination; and

−   Establishes legal lines to the Criminal Code and the Administrative Offences Code.

38.   The Ukrainian system of assets disclosure, risks assessment, and pre-trial investigation, launched on 1 September 2016, is comparable with other European countries both in terms of the scope of the information declared and its publicity. At the time of the 2018 conduct of the Peer Review Process, Ukrainian officials and civil servants would have been through the fourth cycle of declaring assets. On 3 June 2019, there were registered more than 1,295 million users; more than 4 million electronic documents have been submitted

and have been in free online access, including approximately 3,5 million electronic declarations, approximately 412 000 corrected electronic declarations, and approximately 152 000 notifications about substantial changes in assets. It is expected that a new law NACP will have access to the 16 domains covered by the declarations of assets instead of the three as initially foreseen. During the period of the conduct of the Peer Review Process, it was reported to the NATO BI Team that 320 declarations categorised as having the highest risks of corruption were checked, including of several belonging to senior officers.[11]

39.   According to SAQ answers, the anti-corruption bodies established after 2014 as "national" include the following institutions:

a. *The National Anti-Corruption Bureau of Ukraine (NABU)*

The National Anti-Corruption Bureau of Ukraine is the law enforcement agency charged with counteraction of corruption offences committed by senior public officials authorised to perform the functions of the state or local power and pose a threat to national security. The Bureau is the anti-corruption arm of Verkhovna Rada as it reports directly to the parliamentary Committee on Corruption Prevention and Counteraction. NABU has direct access to the automated information and reference systems, registers and data banks, the holders (administrators) of which are state authorities or local self-governments, uses state communication channels, including governmental ones, special communication networks, as well as other technical means. Since its inception, NABU has been devoting considerable part of its work to develop its personnel and embrace the prevention dimension of the fight against corruption. In this regard, NABU staff participated in NATO BI educational activities.[12] A Code of Ethics of Employees of the National Anti-Corruption Bureau of Ukraine was established in 2016 together with an online course made available firstly for the NABU staff. It was reported during the NATO BI Peer Review visit that this online course would be made available publicly to all. Another good practice established by NABU is the inclusion of the ISO 37001:2016 – NABU is the first law enforcement agency in Ukraine and one of the first in Europe that confirmed the full compliance of its anti-bribery management systems with the requirements of this international standard. The certification audit has been carried out by PECB Group Inc. (Canada) on the initiative of the NABU executives and with the support of the European Union Anti-Corruption Initiative in Ukraine. The Certificate has been

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[11] For further reference, see paragraph 40 b.

[12] Mainly courses conducted for and in the defence and security academies in Kyiv and throughout the country and in the NATO Defence Leadership in BI course.

delivered in April 2019 and is valid for three years[13]. The establishment of new anti-corruption bodies added to the existing ones legitimately lead to some overlapping and competition. It was diplomatically reported to the NATO BI Peer Review Team that the new law for the Security Service of Ukraine would trigger positive competition instead of creating any overlap and that the artificial established areas of responsibilities between NABU and SSU could turn into advantages. The implementation of the SSU Law would *de facto* fine-tune the disposition of each institution. Secondly, this element is reinforced by the structural approach. Indeed NABU is under the control of the Verkhovna Rada to which it reports every sixth month. Such frequent reporting procedure is unique for such state governmental institution and demonstrates NABU's accountability. As far as the interaction between the NABU and MOD is concerned, the cooperation sounds, at present, more delicate especially regarding investigations of corruption cases in Joint Force Operation (JFO, the former Anti-terrorist Operation – ATO). The interaction of NABU with the Specialised Anti-Corruption Prosecutor's Office is currently seen by the discussants as prompt and effective especially regarding the pre-trial investigations of all criminal proceedings. The functional relationships between NABU and SSU were reported as more competitive than cooperative. The monopoly of using special investigation assets by SSU was explained as one of the critical problems, especially if the SSU leadership is suspected in corrupted activities. Regarding the collaboration with NACP, NATO BI Peer Review Visit was informed that, based on the *Memorandum of Cooperation and Exchange of Information between the NACP and the NABU* (2017), NACP provides the NABU staff with protected access to all submitted documents that are in the Register of Declarations in the NACP (about 35-40 times annually). Concerning the development of the Bureau' professional capacity, NABU is currently facing technical difficulties while analysing the declaration of assets. It was also reported that since 2015, no NABU employee has been related to a corruption case. The leadership recognised that along with the precise selection of candidates and intensive anti-corruption training, the increased staff salaries[14] had played an essential role in bettering the institutional and individual integrity. However, the remuneration challenge remains, as the salary calculation has been changed for 2019 – certain categories of NABU employees (including detectives) are paid currently less than specified in the special law.

b. The National Agency on Corruption Prevention (NACP)

NACP is the main instrument for developing anti-corruption strategy, policy,

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[13] https://nabu.gov.ua/en/novyny/anti-bribery-management-system-nabu-meets-requirements-iso-370012016-standard
[14] NABU staff' salary has not been a subject to indexation for the past two years contrary to other agencies.

and programmes, as well as for validation of the personal assets declarations. The Agency develops methodological guidance for the ministerial anti-corruption programmes based on risks analyses and proposes specific measures, reviews and approves programmes. This way, both methodologically and formally the Council controls the anti-corruption policy and practice of the administration. However, as the NACP does not control the implementation of programmes, the loop remains not closed. The establishment of an overarching national anti-corruption strategy, as recommended by the International Community, is the primary mission of NACP. The first strategy was developed and adopted by the Verkhovna Rada for the period from 2014 to 2017. However, in 2018, the legislative authorities did not succeed in establishing the following document. It is also noteworthy that there is not a parliamentary procedure (for example, through an amendment procedure) to extend the prerogatives of the previous strategy. If such gap does not pre-empt respective governmental institutions to have their strategy and continue to fulfil their obligations, this denotes a lack of political compromise and absence of actions on a national and international recognised threat to Ukraine. Thus, according to some interviewees during the NATO BI Peer Review Process, the initial draft presented in spring 2017 has not been satisfactory enough, and the NATO Team noted that members of the Parliament did not convey again to address this issue with institutions in charge. It was reported in the course of the Peer Review series of interviews that in 2018 125 anti-corruption programmes were approved by the NACP and published on the website of the Agency, while each institution remain in the lead for their respective implementations. Consecutively with strategy development, the validation of about three million documents by NACP requires tremendous capacity, time and other specific resources. For this reason, the agency does not apply a regular rotation of those specialists that work on sensitive positions – it is a risk area itself. To help overcome the personnel problem, the UNDP has assisted the National Agency on Corruption Prevention of Ukraine specialised software for automatic verification of e-declarations[15]. The software (Logical and Arithmetical System – LAC) is able to verify 100 thousand e-declarations in 15 min. The risk in every e-declaration is measured using 137 indicators, based on the verification rules set by the NACP[16]. However, as many other organisations also participate in the e-declarations validation, NACP pays attention to those about 3200 of them with the highest risk level. The Peer Review Team was informed that since February 2017 (since the corresponding rules of procedure for carrying out verifications of declarations came into force), NACP

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[15]   Information: https://www.rbc.ua/ukr/news/napk-provela-polnye-proverki-590-deklaratsiy-1547135590.html

[16]   http://www.ua.undp.org/content/ukraine/en/home/presscenter/pressreleases/2018/undp-transfers-software-for-the-automatic-verification-of-e-decl.html

has commenced 2294 comprehensive verifications of e-declarations (including 1020 e-declarations with the highest-ranked LAC System scores), and approved 1614 decisions on the results rooted from these comprehensive verifications of e-declarations (including 607 decisions on e-declarations selected by the LAC System). Board of five NACP Commissioners decides by the majority of votes on which of them to initiate "full investigation." *Rules of Procedure for Carrying out Oversight (control) and Comprehensive Verification of Declarations* provides the ground for carrying out NACP' verification work. Likewise NABU, NACP reports to the Verkhovna Rada Committee on Corruption Prevention and Counteraction.

c. *High Anti-Corruption Court (HACC)*[17]

The decision, upon the recommendation of the Venice Commission on 6 October 2017, to establish an independent High Anti-Corruption Court [18] is noteworthy. Some of the interviewees saw the adoption of the *Law on High Anti-Corruption Court* on 7 June 2018 by a substantial majority of 317 votes as a significant step towards closing the loop between identification, investigation, bringing charges, and sentencing. The purpose of this Court is to shorten the way between identification of corruption at the amount around 30 000 EUR[19] and the legal trail and sanction. However, the enforcement of the law encountered several serious difficulties[20]. The main between them was the recruitment of judges and in particular, how to ensure their integrity and proficiency. To overcome the selection problem, a joint mechanism was established that included among the members of the High Qualification Commission of Judges (the body of judicial self-governance) also the Public Integrity Council and the Public Council of International Experts. The former is a civil society initiative established to assist the High Qualification Commission of Judges in assessing the integrity and professional ethics of judges while the later is an opportunity to include (six) independent international experts provided by the Law on HACC - some of the interviewees qualified this as a unique case in the history of Ukraine. According to the provided information, about 37 per cent of the candidates has failed to meet the proficiency and integrity criteria.[21] However, on the date of inauguration of HACC – 11 April 2019, 38 judges have been selected. It is

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[17] Not met during the peer Review Visit – information and analysis gathered by expert.
[18] Information completed during the conduct of the Peer Review visits due the early submission date of the SAQ.
[19] The jurisdiction of the court is crime that caused damage in the sum of at least 500 times higher than the subsistence minimum for able-bodied persons.
[20] A late amendment changing the initial disposition that ordinary appeal courts instead of the HACC's Appeal Chamber would consider those cases.

expected the Court to be fully operational and begin working during the first week of September 2019. During the visit, the hosting experts also discussed some contradictions in the legal arrangements regarding the relations between NABU and HACC.

d. *Specialised Anti-Corruption Prosecutor's Office (SAPO)*

The Prosecutor General of Ukraine formed the Specialised Anti-Corruption Prosecutor's Office on 22 September 2015. Its mission is to oversee how laws are observed during pre-trial investigations conducted by the National Anti-Corruption Bureau.

e. *The National* Council *for Anti-Corruption Policies (NCAP)*

NCAP was established in 2014 as a high-level advisory body under the President of Ukraine to provide advice on anti-corruption policy, coordinate developing, updating and improving the Anti-Corruption Strategy, and monitor the implementation of recommendations provided by the Ukraine international partners. It is composed of representatives of the Government, Verkhovna Rada and the judicial branch, as well as experts from civil society organisations, academia, local self-government, businesses, and the Business Ombudsman of Ukraine. Information on the Councils activities was not provided.

f. *Authorised departments (persons) for prevention and detection of corruption* have been introduced in 2009 at the ministries, other central executive authorities, the Autonomous Republic of Crimea, districts - Kyiv and Sevastopol city, and local state administrations.

g. *The Cabinet of Ministers' Department on Corruption Prevention.* This structure is aimed at promoting the fight against corruption by raising awareness measures including improving the cooperation with the whistleblowers, and by initiating disciplinary inspections to assess individual misconduct.

40. The SAQ reports an intensive campaign of drafting anti-corruption strategies and programmes across the security and defence organisations. An essential aspect since 2015 is that anti-corruption is bounded with the overall structural reforms across the government and the defence and related security sector, particularly. The framework is provided by the *Sustainable Development Strategy "Ukraine 2020"* that sets the objectives and performance indicators, as well as the development course and priorities. As reported, the " Strategy 2020" comprises 62 reforms, of which the defence and security system reform, government "cleansing" and combating corruption, the judicial and law enforcement reforms are among the eight priorities.

41.   The strategy-based policy of anti-corruption is a promising approach, as the Ukrainian authorities have been widely criticised for the inability to transfer the legislation into practices that produce significant and sustainable results. In 2014-15, a sound and well-formulated Anti-Corruption Strategy for 2014-2017 was developed and approved by Rada as a law, and a State Program for Its Implementation was set out as a governing policy document in four key areas: development and implementation of state anti-corruption policy, prevention of corruption, punishment for corruption, and awareness raising. As the State Programme has a list of expected results under each area, they can serve as a sound basis for the next period lessons learned and evidence-based Strategy. However, the interlocutors informed the NATO BI Peer Review Team that the new Strategy had not been approved in Rada, and the expected gap would be about two years. The NATO BI Team sees such a perspective as a very confusing that may compromise some of the recent achievements.

42.   In most cases, as reported, the development of implementation plans has been preceded by a corruption risk assessment, using a unified *Methodology for Assessing Corruption Risks in the Public Authorities Activities*. The guideline has been developed by the National Agency for Prevention of Corruption and introduced on 02 December 2016. The process of assessing the corruption risks is recommended as a mandatory component of the anti-corruption programmes and includes the following main steps: organisation and preparation for risk assessment; identification (detection) of corruption risks; assessment of corruption risks; drawing up a report on the results of the evaluation of corruption risks. By categories, corruption risks can be: external[22] (the probability of occurrence of corruption risks is not related to the execution of functions and tasks); internal (the likelihood of occurrence of corruption risks is directly related to organisational and managerial activities). By types, the corruption risks can be normative-legal (lack, contradiction or fuzzy regulations of functions and tasks); organisational (uncertainty or unclear definition of procedures for the implementation of functions and tasks by the authority); personnel; financial and economical; administrative; control and supervision, and others. Corruption risks are assessed according to the likelihood of occurrence and possible consequences (damages) as "low," "medium," and "high."

43.   Nevertheless, the *Methodology for Assessing Corruption Risks in the Public Authorities Activities* was eventually communicated to NATO BI[23]. During the discussions on its practical implementation with representatives of some organisations, the Peer Review Team identified some simplification in

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[22] "External" does not include "exterritorial," as it is, e.g., in the relevant U.S. and U.K. legal acts.
[23] https://zakon.rada.gov.ua/laws/show/z1718-16

the mapping of corruption risks and estimating their importance and priority. For example, dealing primarily with corruption cases that have already taken place is a necessary but very insufficient method given the high dynamics of both the Ukrainian legislation in this area and the reforms and operations in the defence and related security sector organisations.

44.   An essential element of the anti-corruption plans and programmes are the intra-institutional and public communication campaigns. The SAQ answers provide information for a promising comprehensive approach in targeting various defence and security stakeholders, materials and services providers, family members, youth, and others. Senior servants and military officers have participated in a significant number of briefings, press conferences, interviews, and working meetings regarding the counter-corruption measures. State, private, and institutional TVs and media have been engaged, as well as private public relations and communications companies. It is crucial to keep the communication aspect of the anti-corruption policy sustainable and flexible to cope with any new challenges. Contrary to other institutions participating in the NATO BI Self-Assessment and Peer Review Process, the MOD is particularly well assisted. Among the support provided to the MOD, there are bilateral programmes of cooperation (among them the UK Defence Academy and the Ministry of Defence of Norway through the Centre for Integrity in the Defence Sector - CIDS), national and international NGOs (for example Centre for Strategic Communications StratCom Ukraine, Transparency International, and others) as well as the Independent Defence Anti-Corruption Committee (NAKO). [24] This cooperation led to the development of various brochures ('information bulletin") and other publications. However, it was acknowledged at the highest level that the society is still not well informed about the international support provided to Ukraine since 2014 nor the specific programmes of cooperation focused on good governance reforms in the defence and related security sector.

45.   Furthermore, as a result of the cooperation with the international community, the National Defence University of Ukraine "Ivan Chernyakhovsky" launched, based on the NATO-week model, an anti-corruption week in 2015 This annual event evolved from a conference type model to a more capacity building event for the MOD and General Staff personnel. In 2017, with the assistance of NATO BI, this event also involved regional participants. Furthermore, the anti-corruption week is currently taking up to providing the MOD leadership with concrete recommendations on the fight against corruption.

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[24] NAKO was initiated trough bilateral programme of cooperation with the UK Defence Adviser and the defence chapter of Transparency International (UK based). It is not an NGO by the Ukrainian law.

46.   Concluding the current section, the NATO BI Peer Review Team pointed out three principle developments during the SAQ reporting period. First of all, an intensive and productive whole-of-government work with the overall engagement of civil society experts and international partners reflected the demands of the people for radical measures against corruption. The strategy, policy, and institutional development based on surveys, unified risk assessment methodology, and established international practices are very promising achievements. For the SAQ period of reporting, Ukraine succeeded to create the necessary legal and organisational arrangements for sustainable and fruitful integrity building. The inevitable weaknesses and omissions in the planning and regulating could be compensated on evidence basis and through learning lessons. Second, the Review Team noted the continuing difficulties with plans and programmes implementation. It seems that more steam is used for planning than for the engine of changes. The established monitoring and reporting mechanisms seem not working well. At the implementation stage, the role of the civil society begins to fade. Third, due to other unreformed components of the governance system (the SAQ explicitly mentions the judicial system, "The corrupt judicial system remains the country's most dramatic problem. We must frankly admit that the judiciary system failed to go through a real change"), the achievements in particular areas have limited impact on the corruption environment.

Recommendations:

a.   Move the ministerial and organisational action plans from "measures" towards a reliable and sustainable building-integrity *policy*. Approving laws and establishing organisations are policy-making elements, but alone, they will rarely remove the corruption. Building integrity is wider than the anti-corruption itself. Building integrity is a crosscutting issue bounded with transparency, accountability, professionalism, ethics, values, human rights, gender equality, and many others. A policy of systematic education and successful practices are necessary to turn the anti-corruption measures into a culture of integrity.

b.   Secure the anti-corruption strategy' continuity. Make the initial impulse and current anti-corruption achievements irreversible. Intensify the collaboration of the military ministries with the National Agency for Prevention Corruption in the field of identification of corruption risk areas, considering in a timely manner Agency's feedback and experts' recommendation for further development of the Anti-corruption Programmes. The conflict of interests control, assets declarations validation, hotlines for signalling, legal protection and encouragement of whistle-blowers, integrity training, annual reports, special anti-corruption websites, and others should get permanent attention, support, and resources. Any gaps and delays, the lack of systematic implementation monitoring, and missed flexible reaction to changing

conditions may cause back-thinking and reverse practices.

c.   Focus on the quality. The quality of laws, institutions, planning, procedures, training, communicating, and monitoring might be the focus of the next anti-corruption strategy. Ensure that the following strategic documents are evidence and surveys-based, developed across the defence and security stakeholders, and adequately inter-agency coordinated.

d.   Keep and use the civil society activists and media as the engines of the anti-corruption reform**.** As the building of Ukrainian' anti-corruption system seems to be finalised regarding laws and organisations, its functioning will determine the sustainable strategic success. As it is widely examined, the civil society organisations and some media have a vital role in keeping the policy direction right and reforms alive.

e.   Develop national and institutional strategic communications on integrity building. The anti-corruption strategy needs strategic communications to create, strengthen, or preserve conditions favourable for sustainable advancement of the building integrity objectives. The various initiatives to foster the inter-agencies cooperation need strategic communications that reflect the multidisciplinary character of integrity building. The enhancement of the on-going international cooperation for military and security capacity and integrity building should get more publicity for raising the public and politicians awareness. Notably, the developments of a specific strategy of communication throughout the country since some international capacity building programmes are directly targeting military and security regional academies should be established at the highest level to publicise the existing cooperation. Due to the various initiatives to foster the cooperation inter-agencies, those strategies should reflect the multidisciplinary character of those supports as well.

f.   Create a better mechanism of timely and accurate handling of the assets declarations. The launch of the e-declarations is an important measure to prevent corruption and conflict of interest. The analysis of those declarations is a matter of transparency as well as accountability. The access to the information is therefore essential, and involved institutions should be adequately assisted to guaranty their liability. Thus, the speed of handling those declarations should deserve adequate actions.

g.   Fostering interagency cooperation is a leitmotiv for sustainable and successful integrity reforms. Such collaboration is also recommended for NABU and NACP since there is no competition between them. Therefore, those two institutions should consider further cooperation in the domain of education, training and professional development programmes for their own

respective employees as well as other institutions.[25]

–   Due to the complexity of analysing declaration of assets, additional training could be made available for the NACP staff.

–   Related to the analysis of declaration of assets, it appears that *the Rules of Procedure for Carrying out Oversight (control) and Comprehensive Verification of Declarations* serves as unified methodology. However, take measures to ensure that verification is carried out orderly and without illegal external meddling, especially by the institutional leadership, politicians, commanders and other high-level officials.

–   By all mean, NACP could be more suspicious and less confident to the non-permeability of the institution especially related to the analysis of the e-declarations.

–   To overcome the challenge of rotating skilled staff at sensitive position, and constantly ensure that staff remain honest, NACP could enhance, including in cooperation with other actors, national and or/international, the examination of its personnel with more systematic tests such as polygraph tests which to be really efficient, should be conducted randomly.

–   As a matter of consideration, the NATO BI Peer Review Team highlights the strengthening NACP's capacity in analysis of declarations in terms of quality and reliability as a critical factor for performing its core mission – corruption prevention.

–   As addressed at paragraph 23, the issue of increasing salary as a guaranty of higher honesty could be evocated for NACP, which has the lowest average of incomes for its employees.

h.   The personnel of the CabMin' Department for Corruption Prevention could consider participating in national and international trainings to enhance skills and knowledge. It could also be considered that the Department participates in national coordination meetings with /alike all governmental corruption prevention structures to align policies and reforms.

Anti-corruption policy in defence and security

47.   The difference from the previous NATO Self-Assessment and Peer Review Process is that the recent SAQ reports the on-going comprehensive defence reform that takes place on three levels: political leadership and directing, integrated defence resource management, and military strategic and

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[25] NATO BI provides only generic recommendations to NABU and NACP, as they do not belong to the SAQ/PRR process.

operational command. Since the first radical change, initiated with the Strategic Defence Bulletin (2016), and the current reform decisions, a new framework of national defence is gradually establishing. The BI Peer Review Process founded that this frame provides benchmark-based conditions for democratic civilian control, quickly strengthens the AFU's combat readiness and creates a new environment for professional realisation and ethical behaviour of the Ukrainian militaries. As reported, the defence reform and anti-corruption programme reinforce each other to build an entirely different defence institution, staffed with professional, ethical, and dedicated militaries.

48.   As reported, the anti-corruption systems at the security and defence sector' ministerial level have yet to put in place mechanisms that consider risk identification, programmes and action plans, specialised anti-corruption bodies, and performance reporting are accordingly established and (initially) functionally consolidated. The SAQ provides arguments that the integrity problem in the Ukrainian defence and law enforcement agencies is correctly framed, the approach to cope with the problems is adequately defined and permanently adjusted, and there are visible and promising results. The NATO Peer Review Team expects that during the next planning period (until 2020 and beyond) the focus would be placed on the programmes quality, inter-agency collaboration and mutual reinforcement, and professional development on integrity building.

49.   The MOD's Anti-corruption Programme transfers the objectives and approaches of the *National Anti-corruption Programme* 2014-2017. The NATO Peer Review Team noted that the MOD authorities, supported by the civil society volunteers, has settled-out the most relevant objective of the anti-corruption programme – to win (again) the public trust and confidence in the Ukraine military and the defence institution, in their ability to do the right military job in an honest and professional manner. Such an objective is effect-oriented and may have a much broader impact on the individual and institutional integrity than the individual anti-corruption measures.

50.   In the MOIA, the anti-corruption problematic is a part of the overall Strategy for Development of the Ministry of Internal Affairs' System until 2020 (developed with the support of the EU Advisory Mission and approved in 2017). The Strategy stipulates various priorities for creating a safe environment for life of the citizens through maintaining public safety and order, combating crime, human rights maintenance, integrated border management, quality and accessibility of services, good governance, transparency and accountability and development of personnel potential and social protection of workers. The ministerial anti-corruption programmes are developed, implemented, and reported on annual basses. Comparatively to the MOD, the programme sets out process-oriented objectives: the establishment of an effective system of prevention and counteraction of

corruption; ensuring the creation and coordination of anti-corruption systems in the MOIA' subordinated organisations; further implementation of mechanisms of transparency, integrity, reduction of corruption risk. Such approach provides opportunity to establish more concrete and better measurable outcomes, but requires both principle and operational coordination within the ministry and across the subordinated organisations.

51. Regarding risk identification, the *Methodology for Corruption Risk Assessment in the Government Agencies*, provided by the National Agency for Prevention of Corruption in 2016, has been used accordingly to the MOD and MOIA specifics. A special Commission for Evaluation of Corruption Risks has been established in both ministries with obligatory engagement of internal auditors and open procedures for engagement of civil society experts (including studies, roundtables, and questioners). This way, the comprehensive and shared corruption risk assessment provides ground for two planning tracks – of the overall anti-corruption strategy and operational (annual) plan and the respective internal audit plans. The risks assessments have been reported to NACP. The identified corruption risks reflect the most severe problems:

− In the MOD: the procurement of defence capabilities, management of MOD-owned land, [26] building and distribution of houses, personnel management and additional payments delivery, MOD's property management, and use of public funds.

− In the MOIA and subordinated organisations: delivery and spending the budget, hosing of the military personnel, personnel management including additional payments delivery and university education, procurement, licensing and permissions, healthcare services, repairmen works and services, administrative services to the business and people.

52. The SAQ indicates the following components of the current unified ministerial system of anti-corruption bodies:

− The First Deputy Minister is responsible for coordinating the Anti-corruption Programme development and implementation.

− Commission for Assessing Corruption Risks and Monitoring the Implementation of the Anti-Corruption Programme (chaired by the First Deputy Minister and includes directors of some departments, the head of the Internal Audit of MOD, as well as civil society experts).

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[26] According to NAKO, after the collapse of the USSR, Ukraine's MOD inherited approximately 600 000 hectares of land. Since then, it has lost effective control of over 100 000 hectares. Source https://nako.org.ua/en/news/volodymyr-zelensky-s-answers-to-nako-s-questionnaire/

− Department for Prevention and Detection of Corruption.

− Departments for Internal Audit of MOD and its territorial units.

− The heads of departments, directorates and sections of the ministries and subordinate bodies of military management, commanders of military units and heads of state-owned enterprises are responsible for implementing the measures envisaged by the Anti-Corruption Programme.

53.   The Ministry of Defence uses for anti-corruption purposes also:

− Military Law Enforcement Service [27]

− Scientific Centre for Prevention of Corruption in the Security and Defence Sector, established at the National Defence University "Ivan Chernyakhovsky" (NDU) in 2014 as Building Integrity Training Centre (BITEC) in cooperation with the British partners to conduct research and provide training on building integrity and preventing corruption.

− The MOD and AFU Reform Committee and Working Group 5 "Improving the effectiveness of anti-corruption bodies and independent supervisory institutions." This is a volunteer initiative, formalised within the MOD, to coordinate and monitor reforms in procurement, logistics, material and food supply, finance, housing, and management of public enterprises. Following the invitation to fully be part of the Working Group 5, NATO BI Team, based at the NATO Liaison Office, is attending the regular debriefing meetings as an observer.

54.   The NATO BI Peer Review Team noted significant progress in using the Internet in support of the anti-corruption policy and programmes in the following three main directions:

− Internet as a direct communication channel. At the MOD website, the section on anti-corruption is rich in information and guidance and provides 22 hotlines for reporting cases of abusing power as well as for asking direct questions regarding any aspect of the military service. In 2018, a web-portal "Corruption in Army Kills" has been established by the Scientific Centre for Prevention of Corruption in the Security and Defence Sector at the NDU with the support of StratCom Ukraine and used successfully to collect information and applications from citizens about potential corruption offences. MOIA maintains a sub-site "Report corruption" with detailed instructions, reference documents and sheets or reporting facts on possible or actual corruption.

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[27] This Service is like a Military Police without full authority to investigate and arrest.

– Internet as a training platform. The Online Training Course on Prevention and Counteraction to Corruption in the Ministry of Defense of Ukraine and the Armed Forces of Ukraine has been developed by the Scientific Centre for Prevention of Corruption in the Security and Defence Sector at the NDU and published on the Centre' website. The calendar of training courses is published on the Prevention of Corruption page of the MOD website along with all normative documents and guides that might be useful for the personnel and their families regarding prevention of corruption.

– Internet as a source of feedback on the anti-corruption programme implementation. In the 2018 annual report, the MOD Department for Prevention and Detection of Corruption provided data about the use of social networks and official channels of communication in response to undertaken anti-corruption measures. Between July 5 and December 25 2018, 111 websites have been observed, and 94 messages with a negative or critical tone have been registered. These messages have been subsequently distributed on 1872 sites, where 3557 have got "likes" from 10,103 views. The MOIA maintains a web-based permanent Questionnaire for interviewing citizens who interact (interacted) with the Ministry of the Interior. The first question is, "Have you encountered acts of corruption in the activities of the Ministry of Internal Affairs? If yes, in which areas of activity?" The possible answers reflect the list of functions most prone to corruption.

55.   Since 2015, the ministries regularly provide information about their anti-corruption activities including various statistics, publishing annual reports and information bulletins, practical guides for dealing with the electronic declarations, manual and guide on the implementation of the Code of Conduct, MOD' Handbook "Corruption risks in the system of procurement of the MOD," and others.

56.   In the SSU, the corruption prevention and response are institutionalised through and structural unit and anti-corruption programme. They are based on the results from the standardised risk mapping and assessment procedures in a three years perspective and annual action plans. The work of the Internal Audit Division is organised within the same framework. The annual assessments and auditing results are addressed to the SSU Director, but the Accounting Chamber has also access.

57.   Regarding the monitoring of the implementation of anti-corruption programmes and reporting the outcomes, the NATO BI Peer Review visit identified two different practices based on the interlocutors' explanations. The ministries have established the required commission for monitoring and coordination of the implementation of the anti-corruption programmes, and

they provide feedback information with improving quality and value. However, at the inter-agency level, especially between the ministries, from one side, and NACP, NABU, and SAPO, from the other hand, the information provided is rare, weak in a substance, and presented in very generic terms.

58.   The information, provided by the other SAQ participating security sector organisations – mostly by the NGU, SBGS, and Police, illustrates the effect of applying a common methodological approach that has been established through the *Methodology for Corruption Risk Assessment in the Government Agencies*. The mapping of corruption risks is both standardised and agency-specific, which is the first step of creating relevant and potentially effective action plans. However, according to the answers, the work has been done mostly through a completely internal self-assessment mechanism. Such an approach usually avoids illuminating high-levels corruption risks**.**

59.   Concluding this section, the NATO BI Peer Review Team pointed out that the measures undertaken during the SAQ reporting period by the defence and security agencies and organisations provide a general framework to cope successfully with the corruption risks. The policy of anti-corruption is now possible because the subject has been made openly discussable, the political and professional agents of change are under pressure to apply reforms, and transparency and public awareness are expanding. Policy of anti-corruption (instead of isolated measures) is possible also because the "norms-organisations-processes-standards-skills" nexus is established, at least as general way of thinking. Initial training opportunities for both professional tackling corruption and standards-based behaviour are established. However, achieving sustainable outcomes and irreversible effects on the ethical behaviour across the defence and related security sector requires inspiring leadership, systematic and diligent work and support provided to the staff. The SAQ recognised that *"the leadership of the Ministry of Defence has made a critical assessment of the MOD achievements in implementing the anti-corruption programmes. A sociological survey of the AFU personnel* [28] *indicates that the anti-corruption reforms have not changed the state of counter-corruption work in the military formations, units and defence enterprises."*

Recommendations:

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[28] Regarding the results of the implementation of the Anti-corruption Strategy (2015-2017) at the MOD, the Scientific and Research Center for Humanitarian Problems of the Armed Forces of Ukraine conducted in 2016 an annual sociological study on the topic "State of implementation of the state anti-corruption policy in the Armed Forces of Ukraine and the effectiveness of the work of commanders (heads) on the implementation of anti-corruption legislation". Source http://www.mil.gov.ua/diyalnist/zapobigannya-proyavam-korupczii/zviti/informacziya-pro-stan-vikonannya-v-2015-roczi-v-ministerstvi-oboroni-ukraini-derzhavnoi-programi-shhodo-realizaczii-zasad-derzhavnoi-antikorupczijnoi-politiki-v-ukraini-(antikorupczijnoi-strategii)-na-2015-2017-roki.html

a.   Continue to monitor, analyse, and evaluate the scale and character of corruption problems. Corruption is a social phenomenon that drives the behaviour of people, and a successful anti-corruption policy means a change of the people' attitude. Ukraine society, militaries, and law enforcement professionals are changing very fast recently. The anti-corruption system needs to be provided with information and intellectual support to meet the demands and exclude improvisations and mimicry.

b.   The established "top-down" corruption risk assessment mechanism (through the chain of command) should be balanced by an independent internal audit, able and obliged to report to financial and law enforcement authorities, as well as by opportunities for the civil society and key partners to review the management process. In this regard it is important that corruption risk assessments are used in planning annual internal audit programmes.

c.   Review the effectiveness with which the rules are enforced as they apply to different categories militaries and civilians. In the social domains of defence and law enforcement, nothing is forever. People with a wicked way of thinking are the same way inventive as those that build anti-corruption walls. Norms' effectiveness depends on social dynamics and must be monitored and revisited on time to keep their power strong.

d.   Continue to train and educate specialists on excellence in countering corruption. Effective corruption prevention requires comprehensive knowledge in different fields and the ability to analyse, investigate, formulate claims, and identify lessons. Continue to make full use NATO defence institutions and capacity building programmes likewise the Building Integrity BI, the Defence Education Enhancement Programme (DEEP) as well as the Professional Development Programme (PDP) for experts training and coaching of trainers. Fulfil the requirements of the MOD/MOIA PARP BI Partnership Goal.

e.   Continue to improve the policy, management, command and control processes. Well-established, normatively improved, and strictly implemented processes do not allow corruption and, simultaneously, build integrity. So the opposite – any attempt to manipulate a decision outside the established processes, almost surely signals for corruption.

f.   Improve the quality of the current "whole-of-government" approach to tackling corruption. The ministries and security sector organisations must review the cooperation with NACP, NABU, and SAPO to increase and better reflect the interconnection of the anti-corruption programmes objectives within the three-year national Anti-Corruption Strategy.

g.   Explode further the partnerships' potential. The ministries could intensify their reporting mechanisms with the national and international institutions leading and supporting the fight against corruption, notably in

terms of policies and prevention strategies in place. Inherently and related explicitly to NATO, the MOD could consider to include NATO 2019 BI Peer Review Report's recommendations in its plan and invite NATO BI to review their implementation periodically (every sixth or twelve months) alike other participating ministries of defence in NATO BI. The MOD could also consider publishing this review on its website as, first, a matter of transparency, and, secondly, to foster interagency cooperation and get further inherent support in promoting and handling reforms.

h.   Plan, coordinate, and manage better the partners' contribution to building integrity training. The fight against corruption requires a multidisciplinary approach and international support. The ministries and organisations should establish priorities among various proposals of capacity building activities and public events.

i.   Secure the volunteers' contribution with respect. No other source would provide better information on what the military people demands are and how they react to the high-level defence decisions. Also, the opposite, they are trusted by nature and can better than any PR servant explain why such decisions should be taken and what the consequences could be.

j.   Expand further the use of the Internet and social networks as a source of information and tool for influence widely. Merely turn the connected people into a powerful instrument for keeping the militaries proud and honest. With or without the MD, the network will work with steadily growing intensity and effectiveness. It is better to use it for good.

k.   Ambitiously move from "anti-corruption" towards "integrity building." Such a task is not easy. Its realisation will require a new wave of reforms, starting from the education, redefinition of military professionalism and civilian expertise and going up to the political responsibility. As it will take time to frame the problem and find the right approach, it is better to start earlier.

Personnel – policy, behaviour, training, discipline

60.   The SAQ answers and BI Peer Review discussions boldly underlined the crucial role of personnel integrity. The personnel are seen as both specific objects of the anti-corruption policy and a hub in which all-major risk areas are intersected. The NATO BI Peer Review Team was informed about the advancement of implementation the *Strategy for the Public Administration Reform of Ukraine for 2016-2020*, a component of which is the building integrity of the civil servants and public institutions.

61.   The Peer Review visit interlocutors from the security sector ministries and organisations shared a common concern regarding their efforts to

manage the military, police, and civilian personnel adequately to the actual operational requirements, economic and financial realities, societal demands. They underlined that not only the complexity of the personnel problematic but also the dynamic of the JFO and related counterintelligence, law enforcement, counterpropaganda, and public order problems, as well as the difficult economic situation of the country, affect the systematic personnel reforms.

62.   The SAQ and BI Peer Review Process do not aim to review the overall personnel policy and management practice, but its quality and effectiveness to a large extent determine the building integrity outcomes. From this perspective, a common for all organisation shortcomings was identified – compared to the NATO Best Practice Framework Model for HRM (SAS- 059), the reported approaches meet partially only the 'Administering Personnel' function. This function deals mainly with the routine operational personnel processes like budgeting, assignments, promotions, conflicts resolution, personal files, and others, and cannot be a substitution of policy and strategy.

Ministry of Defence and the Armed Forces of Ukraine (AFU)

63.   During the Peer Review visit, the MOD and AFU leaders framed the personnel problematic in three bounded strategic objectives: to provide well trained and motivated fighting manpower, (for that purpose) to improve the efficiency of the military human resource management including to eradicate corruption in any form, and (for achieving these objectives) to apply NATO standards and best practices.

64.   The leaders argued that the human resources management is operating in a very satisfactory fashion, and the RAND research report Security Sector Reform of Ukraine (2016) was quoted. This statement was supported by the newly in place management of personal careers, the existence of Code of Conduct, the availability of job descriptions, and the new attestation system. According to delivered Information Bulletin #6 (2019) *Report on Anticorruption Activities of MOD in 2018,* the Minister of Defence has approved in 2017 the *Concept Military HRM Policy in AFU until 2020.* However, the Concept was neither reported by the SAQ nor discussed during the Peer review visit. However, the discussions have outlined some areas of real progress, issues in development, and problems have to be met ahead.

65.   The NATO BI Peer Review Team pays particular attention to the personnel policy issue because it connects the armed forces' manpower with national security, politics, economy, demography, and societal demands. A weak and situational policy usually reflects first of all the defence funding and inevitably feeds corruption and corruption related activities. In this perspective, the Team identified that the partners have some difficulties in distinguishing accurately between "personnel policy" as guidelines on rules,

requirements, benefits and opportunities that reflect the basic institutional values including integrity, and "human resource management." For example, the functions of the MOD Personnel Policy Department are more focused on the day-to-day administration of personnel vice focusing on providing modern effective HR policies that reflect a professional qualification model common with Allies. The Main Personnel Department of the GS (J1) functions independently from the MOD personnel policy division to manage personnel in a basic manner towards NATO approaches at the tactical level of command and operational.

66.   The MOD's anti-corruption programme has been specified and extended by more specific, issue-oriented programmes as the Action Plan (roadmap) to reduce the risk of corruption in military personnel management (2017 – 2020). The BI Peer Review Team noted this decision as timely and focused on one of the most sensitive areas of defence policy - the military personnel. The ambition to link the Anti-corruption Programme and military human resource management in a manner to reinforce each other is very encouraging and should be sustained further.

67.   Within the framework of the Programme, intensive work has been done for establishing institutional ethical standards of behaviour. SAQ indicates the *Code of Ethical Conduct and Professional Ethics for Military Officers, Public Officials and Other Persons Authorised to Perform State Functions at the Ministry of Defence of Ukraine and the Armed Forces of Ukraine* (2017) as the primary source of legally binding behavioural standards for both military and civilian servants. (From now on – the Code)

68.   The Code "summarises" various legal sources and sets out the basic principles of ethical conduct as well as some anti-corruption restrictions and prohibitions: priority of service interests; political neutrality; impartiality; competence and efficiency; transparency; confidentiality; abstinence from implementation of illegal orders; institutional loyalty; gifts receiving; three years ban for re-employment in related to the MOD sector of business; conflict of interests; incompatible external interests; nepotism in all forms; unacceptable use of office/position; personal ethical checks; obligation to file assets declaration and cooperate for its validation. With such comprehensive scope, the Code might perform three mutually reinforcing functions: regulatory on what is forbidden to do, why, and what are the consequences that will follow; educational (developing and building the culture of integrity), and communication (providing permanent communication on the implementation of the Code).

69.   The numbers of building integrity, good governance and anti-corruption professional development programmes have considerably increased since 2014.   The BI Training and Education Center (supported by NATO and

bilateral donors), contributes to awareness-rising through intensive training and dissemination of information materials. BITEC includes a scientific/research department, which contributes to the development of own educational programmes and materials, as well as training of trainers. The scientist component stemmed from the National Anti-Corruption Strategy of Ukraine. Nevertheless, the level of corruption and its penetration in the defence and security sector require much more training efforts to mitigate further the risks. Such methodology is conducted in the security sector, notably with the Police, and should be similarly used by the defence sector.

70.   BITEC and NATO BI expanded the educational programmes to the regions with raising awareness training and consequences of corruption in operations. The inclusion of BI Discipline "Building Integrity and fighting corruption in the Defence Sector" was launched at the Lviv Military Academy of the Land Forces in 2015 with the support of NATO BI's sister programme – the Defence Education Enhancement Programme (DEEP). It is now included in the educational process as a separate discipline at all higher military education institutions and subdivisions at the Kharkiv National University of the Air Force named after I. Kozhedub, National University "Odessa Naval Academy" and the Military Academy (Odessa) for the Special Forces of the Armed Forces. Nevertheless, BI-related education and focused training are not yet standardised in all military academies.

71.   Regarding the pre-deployment training, the course provided since 2015 by NATO BI Programme entitled "BI in Peace Support Operations" and conducted with the support of Mobile Training Teams is not still embedded in national curricula nor part of any national pre-deployment training though BITEC provides courses to troops prior to their deployment to international peacekeeping operations and missions (KFOR) and to JFO. Positive developments are also the inclusion of Air Force and Special Operations Forces in the pre-deployment training and the training of completed contingents. However, the raising awareness courses that BITEC has been providing to units deployed in the country's East since 2018 based on NATO BI recommendations are noteworthy. The first assessment of these courses revealed the necessity to change the teaching methodology and move from lecture-type to practical cases studies.

72.   Recently, the training on ethical behaviour is organised as High Academic Advanced Courses (in 2018 – 9 courses), short mobile courses (in 2018 – 15 courses in different garrisons), and one-two days specialised training sessions on particular anti-corruption issues. In 2018, 1157 servants received those kinds of training, 571 of them through specialised courses, 163 in full-time and 327 mobile training, 88 have been trained on ethical behaviour in international peacekeeping operations. Besides, NATO anti-corruption experts have provided seminar-type training to 530 persons.

73.   The effectiveness of the current system of BI training does not meet the acute criteria. The trainers see it as mostly awareness-raising and too general. The recently undertaken measures aimed to improve the evidence bases and to adapt the courses to audiences' specifics. As the BITEC staff is only 17 at all and uses three relatively small classes, the training capacity could be hardly expanded. The Peer Review Team discussed that the initial programme of BI training (completed) must end with an independent programme outcomes assessment and as a ground for more advanced and fruitful approach. Recently, evaluations have been based only on the participants' opinion. The engagement of NATO BI experts is highly recommended.

74.   The Peer Review Team also noted insufficient social studies' background of the BI training programmes. Not knowing, who the recent Ukrainian militaries are would be hard train them to be able to cope with the challenges of corruption and other forms of unethical behaviour. The only unit mandated to perform social studies of the MOD and AFU staff is the Centre for Humanitarian Issues within the MOD Personnel Department.

75.   The MOD also mentioned an initiative to establish a Lessons Learned mechanism for enrichment and actualisation of the education and training curricula on ethical behaviour. NATO comprehensive experience in learning any aspect of the anti-corruption policy and practice might be widely used in support of further Ukrainian efforts.

76.   During the Peer Review visit, the introduction of a pilot HRM system in the Air Force in 2018 was reported (in the Army and Navy). The pilot programme ended in November 2018. The results of this programme remain to be concluded as well as any intention to influence a new military personnel model with this experience. The reform aims to change the current "career administration" with advanced "career management." The new system envisages an independent commission to make the personal performance assessment, based on 20 primary and 16 additional criteria. There will be specific commissions for the Services and branches to be able adequately to estimate the performance results. They will report directly to the Personnel Policy Department without any side interferences. The system will be supported by specific software able to compare the officers' qualities and to propose an individual career development plan. The Peer Review Team appreciates such innovation, especially if it is a part of a structural HRM reform. The given approach to performance evaluation will help to raise the trust towards the process because it looks more collegial and transparent. The critical factors are the quality of evidence-based job analysis and descriptions, selection of assessment criteria, quality of personal data, procedures related to commission composition and final decision-making, as well as the appeal mechanism.

77.	Regarding a critical personnel management element – the periodical performance assessment, the Peer Review Team noted a very loose interpretation of the ethical behaviour role on the overall personal performance. The evaluation methodology provides neither clear criteria nor proper weighting of integrity in the total estimate. The existence of such a gap may devaluate all building-integrity training efforts. NATO expertise on filling this shortcoming could be provided both in formulating an assessment procedure and practical application. It is recommended that the MOD and the AFU personnel departments de-conflict their roles regarding human military resource management.

78.	The rotation of military and civilian personnel from sensitive to corruption positions needs a clear policy developed upon a mapping exercise accompanied by a professional development programme. From one side, the SAQ answers inform about the existence of a Register of Civil Servants and Military Officers Working or Serving in Corruption-prone Areas, as well as Register of individuals holding such positions established according to the *Law on Corruption Prevention*. The role of the registers is to prevent personal conflicts of interests and violation of the specific restrictions, defined by the Law. From the other side, regular personnel rotation from these positions does not occur based on legal requirements. However, the rotation might be used accidentally, and for different reasons, as in an Instruction (#170), the sensitive to corruption posts are registered. The Peer Review Team thinks the rotation of officers, performing quality control functions at defence industrial units, should be frequent (no more than three years) to avoid corruption risks.

79.	The military remuneration and bonus practice is extremely complicated and could not be assessed properly based only on the provided data. The setting up of specific additional payments is a critical corruption risk as in some cases they overcome the regular salary. The SAQ underlines the payments to the participants of ATO/JFO as one of "the biggest risks." Cases of fraud in the remuneration process have been detected since 2014, and there is a good understanding of what went wrong and what the outcomes are. As the payments were increased three times only in 2017, the government and MOD authorities, as well as the other institutions engaged in the JFO, have taken measures to put the problem under control and the discretionary bonus pay has been ceased.

80.	The Peer Review Team was informed about the ambition to introduce a new remunerations system based on the military rank. The Team supposes that the *first immediate step* should be to make everything related to the additional payments transparent to all (as a motivating factor and corruption anti-dot) and limited to the level of 15-20 per cent of the basic remuneration. However, two new laws covering NCO reforms for ranks, pay and career progression where not approved by Parliament, which may further stress

retention and reforms in the AFU structures and add additional corruption risk.

81.   Very encouraging development with a strong impact on integrity is the fact that data about military allowances are available for public and intensively debated. Besides anything else, that may help the authorities to get a better understanding of both social and militaries' reflections and demands concerning salaries and additional payments in the AFU.

82.   The SAQ answers illustrate both advance and weakness of the gender problematic throughout the Ukrainian security and defence sector. Provided numbers witnesses that a problem with equality exists in the civilian sphere of defence, especially but not limited to earning equal income while working in the same organisation. That said, in 2018, the MOD and the MOI and their subordinate institutions developed action plans on WPS. Progress was observed in the areas of gender awareness, education and training. Both ministries are instituting gender component curriculums at entry and advanced-level educational institutions. In 2018, the AFU reported the number of women in the military was above 23,000, which is an increase of over 2,000 since 2015. As of January 2019, approximately 4% of the AFU senior officers (colonel/lieutenant colonel) are women. However, the AFU reports that no female officer holds the rank of a general or flag officer due to the lack of appropriate military-level education and experience at the strategic-operational level. Approximately 8% of military personnel in the JFO are women. More than 65% of the 46,000 civilian positions in the AFU are filled by women.

83.   It is slightly beyond the scope of the SAQ to discuss the allocation of housing, but it would be worth ensuring that the system is fair and transparent. The answers signal about MOD "formal and irresponsible" reaction to the Accounting Chamber's recommendations regarding one of the most urgent social problems – provision of housing for more than 40,000 militaries. The housing system has nevertheless a clear impact on the rotation of staff, which pre-empts from proper turnover, career development, and enhancement of individuals' experiences. In some case, housing also represents an incentive for rotation, which may also create some corruption opportunities.

84.   Concerning prosecuting the cases of corruption and fraud, the system of military courts Ukraine, as part of the judicial system, was closed down in 2010. A position of Chief Military Prosecutor is established within the Prosecutor General's Office. However, the provided numbers of registered and investigated cases of corruption, frauds, and criminal offences in the defence and security sector organisations, as well as in the on-going operations raises a question of re-establishment of military prosecution and courts' system in line with some of the NATO countries practices with similar

to the Ukrainian size of military and militarised manpower.

Recommendations:

a.   Use *NATO' Best Practice Framework Model for HRM* (SAS-059) as a source of reference for structural reform of HRM. Renew whole HRM functionality focusing not only on effectiveness but primary on institutional application of principles of transparency, accountability and integrity. The Framework Model is not a model to be copy-paste. Instead, it defines the critical generic processes that should be considered for a country to have a comprehensive, all encapsulating, efficient, and dynamic HRM system.

b.   A full review of the AFU's current personnel management system may avoid minor adjustments and refinements to a legacy Soviet professional military education (PME) and permit the adoption of a western value-based military career management process. Thus, to effect the reforms needed and reduce corruption risk, a clear MOD and AFU vision is needed to establish a professional officer and non-commissioned personnel corps founded on western principles, values, ethos and PME. A new personnel ranking system could be based not only on higher education, but also be primarily defined by unique military professional education and career progression in a new model. Ideally, the new model should cover all military personnel occupations and be founded on demonstrated profession military competence, leadership and staff experience, military ethos, intellectual ability and agility, and future advancement potential.

c.   Develop a new concept of "military professionalism" and define requirements for a "civilian expert" accurately. Military professionalism does not come together with the service contract. It needs to be correctly defined not only based on the Ukrainian specific military culture and traditions but also as an instrument of shaping the future (demanded) military qualities.

d.   Initiate the transition from "pay by position/function" to "pay by rank" for all military servicemen and decrease significantly any additional payments as for the time being a significant part of the Service remuneration. The emphasis on the recruitment-retention-transition nexus, highlights the quality and effectiveness of the HRM elements, such as functional and job analysis, personnel planning, performance management, professional development, remuneration, career development, and others. The same is valid for the civilians if they have to get equal incomes for the same job as the militaries in the MOD.[29]

e.   Develop further the rotation system as corruption risk reduction

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[29] This recommendation applies to all institutions under the focus of this report to both military and civilian personnel management.

measure. Introduced in 2017 two-way cross-system for rotation of military personnel might be expanded towards the rotation of personnel in sensitive positions (especially procurement and oversight posts) regularly.

f.   Introduce Military Career Transition (MCT) system as a military HRM component. In the current situation, the Service leavers are usually disregarded completely and there is no understanding of the role the MCT plays in the "recruitment – retention – resettlement" nexus of the HRM process. Moreover, the current legislation, regulating social and professional adaptation of militaries entirely excludes military families from governmental support at the point of discharge from Service. The objective necessity to think about the post-retirement life of families while still serving is a risk factor for various forms of unethical behaviour and even illegal actions. The absence of effective MCT system is one of the primary reasons to see the MOD full with retired officers instead of developing a civilian corps of experts. This could be done with the assistance of the BI Programme.

g.   Improve the personnel and unit performance assessment as a ground for merit-based promotions. Such an achievement could be vital for the individual and institutional integrity. Transfer of know-how and initial training is essential, and NATO and the Allied nations can provide it better than anybody else.

h.   Continue providing integrity and anti-corruption guidance for staff. The establishment of permanent communication of dialogue type, hotlines, live discussions, and comprehensive training would be the beginning of building the culture of integrity. The recently achieved is very promising and need an upgrade. An "encyclopaedia" of poor performance and honest practices might serve well.

i.   Expand the inclusion of BI Discipline within other military and specialised academies at all levels. Ukraine security sector academies and training institutions need synchronisation and coordination among stakeholders for turning the current various short courses for BI awareness-raising into consolidated BI discipline. The topical process must validate the requirements and identify training and education solutions under NATO's Education Training and Evaluation and Exercises Policy and Global Programming, which aims to achieve alignment and coordination of efforts in further sustaining and developing the discipline. The current Lviv Military Academy expertise could serve as a role model for other academies, and proper institutional support and resources should be dedicated. Establish a refresher training model of a few hours once a year on BI, and make successful completion of it as one of the perquisite qualifications for advancement.

j.   Create specific BI training to include the military family-members. The family members used to be more social, critical and outspoken on any form of disrespect.

k.   Use intensively the entire NATO BI Education and Training Plan. In connection, the participation of members of defence academies in previous NATO BI Discipline Requirement Workshops should contribute to embedding BI Discipline into existing curricula and the development of professional programmes. Share the information about and use intensively the NATO "Online building integrity awareness course," introduced in 2018.

State Special Transport Service of Ukraine

85.   A special law, last amended in 2017, transferred the special transport function and organisation from the Ministry of Infrastructure establishing the State Special Transport Service of Ukraine (SSTSU) as a MOD structural unit. During the SAQ and Peer Review process, SSTSU was still in a transition period on some aspects of its mission. However, regarding the building integrity problematic, the Service applies the MOD established a set of measures and practices.

86.   It is difficult to say that the Service has its own policy on building integrity. Rather there is a combination of established practices (the leadership discusses issues of ethical behaviour every week, anti-corruption training is provided monthly, the Head of the Service personally participates in key decisions such as promotions of senior servicemen, delivery of newly built houses, and others), and MOD used instruments such as Code of Conduct, Internal Audit, anti-corruption action plan based on the MOD' programme and own risk assessment.

87.   The relatively small number of personnel – reported as 4602 military servicemen and civilian servants, permits a robust centralised control and performance-based decisions, including on corruption sensitive issues. A Committee performs the corruption risk assessment according to the established method and MOD guidance. Between the most sensitive issues are the delivery of additional payments, procurement of goods and services, accommodation of servicemen, and promotions.

88.   A sensitive element is that the Service' enlisted personnel is composed of about 40% of volunteers under service contracts and 60% conscripts. According to the interview, cases of "dedovshchina" are sporadic; the level of criminality between the servicemen is comparatively low – two criminal cases per 1000 servicemen while for the MOD the ratio is 16/1000; there are no reported cases of corruption.

89.   There is a two-level servicemen promotion system based on

commissions in each unit and a central one. The Central Commission decides promotions above the deputy-commander of a battalion position. The list of proposed and approved officers is public. The appeal mechanism includes a duty report through the chain of command and telephone "hotline." However, in both cases, the respondent is the same Commission that had taken the decision.

90. Providing the servicemen and women with housing is a critical issue for the Service (as it is the other military and militarised organisations). As an independent institution, SSTSU has its own housing programme that succeeded to provide 937 (as of the date of the interview) apartments while other 600 servicemen stay in line. The Service has a construction certificate and performs a construction plan in the cities of units' dislocation. All the procedures of housing are made by a Commission: it studies the housing problem in each garrison, negotiate with the self-governing authorities about using local-owned apartments or provision of land for construction, creates awaiting list, and, when apartments are available – deliver them according to the approved list. The Head of the Service approves the waiting list but does not provide apartments by its own decision.

91. The military department at Dnepropetrovsk State University of Railway Transport provides high education of SSTSU officers. The anti-corruption training is included into the judicial component of curricula; this means, the education is focussed on the meaning and interpretation of the existing anti-corruption related legal acts. The in-service training is performed by the Department of Anti-corruption based on an annual plan and in coordination with the MOD anti-corruption body.

Recommendation:

a. Rethink the organisation of ethical education and training. The knowledge of legal acts that frame the anti-corruption policy of Ukraine needs to be well studied but it is not enough to build the cadets (95 cadets currently) culture of integrity. Preparing the servicemen and servants to properly judge what could be unethical behaviour also requires evidence-based training and role games in the concrete SSTSU working environment.

Ministry of Internal Affairs

92. The Ministry of Internal Affairs leadership sees the institution as a "multidisciplinary, service-oriented, civilian agency of the European model, which develops a law-enforcement and security policy." This formulation underlines several major focal points. First of all, service-oriented is the counter-thesis of process-oriented that was the common characteristic of all Soviet-type public institutions. To achieve such change and quality is not an

easy task, but their efforts are worthwhile because it is the essence of the reform of the law enforcement sector. The second focus is on the overall civilian character of the Ministry. Recently, it includes civil components, law enforcement agencies, and structural organisations like the NGU and SBGS that have a military status along with law enforcement functions. To complete the "European model," the civil character of the Ministry and its structural units should be realised. "Civil" means, enforcing the laws, the state administration to serve to the people. Applying this approach used to have a profound impact on law enforcement policy and practice.

93.   During the reported period, the MOIA has reviewed the early-introduced codes of ethical conduct. Some of them like the *Code of Conduct and Professional Ethics of Persons of Regular and Commanding Staff of Law Enforcement Bodies of Ukraine* (2012) and the *Code of Conduct of the Employees of MOIA of Ukraine, Territorial Divisions, Institutions, Organisations and Enterprises, which belong to the MOIA Administration* (2016) have lost their legitimacy. Currently, the *Code of Conduct of the Policemen* is active. However, the present-day practice is to define integrity mostly in a number prohibitions: inadmissibility to use of state property for own benefits; obligation to avoid conflicts of interests; commitment to non-disclosure and non-use of duty information, including after the termination of service; preventing the provision of any benefits and taking commitment to individuals and legal entities, political parties, public and religious organisations. The good practice is the ethical documents to have more obliging character. This means, the law enforcement officers while defending the public interests, should make the common good of citizens priority over personal, private or corporate interests.

94.   Reportedly, the Commissions for Corruption Risks Assessment and Monitoring the Implementation of the Anti-corruption Programme of the Ministry of Internal Affairs (established in 2017) is a permanent consultative and advisory body at the MOIA on integrity issues. The Commission meets at least once a quarter to discuss and evaluate corruption risks in the MOIA, plan measures for elimination of the corruption risks, prepare proposals to the annual anti-corruption programme of MOIA, coordinate and monitor the execution of this programme, provide consultations and suggestions on anti-corruption issues, and consider information about suspects in corruption. The State Secretary of the MOIA heads the Commission that includes 31 specialists, representatives of 18 structural divisions of the Ministry and the Main Service Center (interregional authority). The permanent body for building integrity planning of the ministerial annual *Anti-corruption Programme* and its implementation is the Department for the Prevention of Corruption and the Lustration of the Ministry of Internal Affairs of Ukraine. However, in 2018, 43 notifications of corruption were investigated. Information about the results and

sanctions was not provided. The Review Team noted that according to the *Law of Ukraine On Prevention of Corruption*, MOIA is not an authorised to perform corruption investigations and apply sanctions – MOIA informs the special authorised bodies dealing with counter-action of corruption (Prosecutors' bodies, NPU, NABU, and NAPC) in terms of their competency. A special Disciplinary Commission considers notifications at the level of violation of disciplinary rules.

95.   Anti-corruption training is provided to each MOIA servant ones in three years. Additional qualification might be required depending on the annual performance assessment or in cases of changing positions or functions. The training is provided in the higher education institutions with the specific training conditions, which are preparing the policemen, or in various MOIA academies or through public tenders. Every servant is also obliged to use not less than 30 hours annually for self-education.

Recommendations:

a.   Clarify further the role of MOIA as a supervising and coordinating body of various law enforcement and security organisations. Democratic internal security policy means finding ways to meet the public demands of security with the Services' operational outcomes, reflecting both domestic developments (resource constraints) and international challenges (including direct threats).

b.   Continue to improve the policy-making and performance coordination role of MOIA. Regarding the personnel sector of the internal affairs policy, the Ministry needs to perform a human resource management strategic review across all subordinated organisations. It needs to define a more precise than the current strategic vision (valid until 2020), to specify the manpower structure along the line of "militarised – civilian" and to select ways to use the human resources much more effectively. Use the continuing strategy to visualize the Ministry vision for the future and to develop the necessary operation to achieve that vision.

c.   Advance the organisation, procedures and qualification of HRM personnel. The human resource departments should not only support policy formulation and implementation but most of all, to provide reliable staffing to any field operation of the Services. Strategic and operational HRM, bounded in a loop by educated, motivated, informed, and flexible experts would be a relevant and sustainable solution. MOIA systematically needs to harmonise its military personnel management practices and related reforms with the MOD approaches. This may require a fixed and regulated format of interagency coordination to keep system development tendencies observed and reflected through objective and fact-based institutional decision-making. Adapt the

NATO's Best Practices HRM Model to the MOIA organisations.

d.   Introduce Military Career Transition (MCT) systematic approach. MCT directly stimulates and expands public and private, military and civilian engagement areas, offers proactive access to its transparent and fair practices in HRM.

e.   Improve the civilian-military ratio across the sector. Capable civilians in the security sector are an essential requirement for the quality of consolidated democracy. The civilians provide specific experience and perspectives on security issues that might balance the traditional military way of thinking. To have military people with a particular career path for everything in such an involved agency as the MOIA would be quite expensive for any country.

f.   Continue to pay attention to ethical training of police, military and civilian servants. To build a civil law enforcement services is more an issue of culture than a formal status. Using NATO programmes for improving the quality of training would secure great outcomes at lower cost – MOIA' organisations vitally need *quality* training.

g.   Perform a compensation review across the MOIA organisations. The remuneration system, established by the *Law of Ukraine On State Service* (2015), has a essential role in stimulating professional performance, encouraging the servants to work efficiently, effectively, with integrity and initiative. Accordingly, the total amount of additional remuneration for a year cannot exceed 30 per cent of the annual salary. However, the mechanism of payment and stimulus should contribute to building professional integrity and effectiveness, not to dividing people that serve to different structural organisations of the MOIA. Engage external audit and consultancy to both make a clear picture across the Ministry and find a proper way ahead.

h.   Establish strategic communications. MOIA's internal and external (societal and international partners) stakeholders and need to know MOIA's vision and priorities as well as the strategy for achieving them. Such an approach will help the MOIA and its organisations to get political support for continuing the reforms, vital public support in terms of confidence, and sustainable international partners' contribution.

National Police of Ukraine

96.   The BI Peer Review Team was strongly convinced that the Police reform after 2014 is one of the critical issues for the transformation of the entire security sector of Ukraine. The MOIA and Police leadership emphasised that the public expectations are extensive, and the effects of reforms - successful or not - are felt immediately by society. The time of the

creation of NPS is not enough to achieve and explore the full effect of the reforms, including in the aspect of police integrity. Probably in the security sector, the Police institution is the one in which the symbiosis between professionalism, respect for the rule of law, and ethical behaviour, which constitute the integrity, is most clearly manifested. Therefore, the Peer Review Team focused mostly on structural issues that define the macro-framework of the reform and the character of critical processes.

97. The Police is an independent law enforcement institution. Independence was explained as legal, structural, and operational protection from direct political influence in any form. According to the *Law On National Police* (2015), the Minister of Internal Affairs determines the state policy of public security and order and the provision of police services and oversees its implementation by the Police; manages the legal framework of Police role and activities; approves the strategic programmes and annual plans; regulates the Police inter-agency collaboration; decides on the allocation of budgetary funds; makes proposals to the Cabinet of Ministers for promotion of the Head of Police and approves the deputy-heads; and others. The head of the Police decides about the manpower and headquarters structure after consultations with the Minister and manages the daily police operations. Under these arrangements, the Peer Review Team sees the civilian political control over Police services and operations secured while the professional leadership is provided with relative freedom to decide how to organise the work, manage the resources, and command the operations. From the integrity point of view, such division of roles and responsibilities may work well if the integrity drives the behaviour all political and professional leaders and police officers.

98. Regarding the police personnel, the Peer Review Team noted, first of all, a significant gap in the Police workforce – 22,1 thousand less between the Law-selling and the current number (1 January 2019). The commentaries created the impression that after 2014, the Police (reformed) has been burdened with huge (reasonable) expectations but insufficient resources. The Team underlines that if the functions-resources misbalance continues too long, it may have a significant impact on personal and institutional integrity.

99. The Personnel Department of the NPU headquarters is a unit loaded with a vast large number of responsibilities – 58 functions! However, the establishment of strategic management of the police personnel was not founded between them.

100. The National Police is probably one of the security sector institutions that succeeded timely to expand the initial (until 2020) strategy and plans for reforms. The 2019-2024 Strategy reflects the learned lessons (including from the successful experiments in Lviv district) and envisages further structural reforms with focus on community policing; developing the Police as civil

service able to operate effectively while respecting the human rights and citizen freedoms; strengthening the operational collaboration with the judicial system; improving the transparency and personal accountability; and others.

101. While the reform efforts continue, the Police leadership has the ambition to make corruption in any form "impossible" through systematic measures, immediate reactions, and "zero tolerance" to any violations. The overall approach was summarised as "selection, education, training, working environment, and control."

102. The corruption prevention work starts with seems to be an exact professional psychological recruitment of police candidates, including widely using polygraph tests. The institutional website provides information for positions in any of the Police branches (patrol, economic, cyber, guard, internal security, the special police unit CORD) and regional divisions (26, including Kyiv, provinces, Crimea and Sevastopol). The personnel policy is managed through a collectivised mechanism of decision-making – a personnel policy board, to avoid possible forms of improper and dishonest selection and promotions. This mechanism needs to be validated in terms of procedures and risks related to the criteria and assessment method, as well as final decision-making and appeal.

103. Directorate for Prevention of Corruption and Lustration (a permanent body) and Committee on Corruption Risk Assessment (established by internal order) manage the NPU annual Anti-corruption Programme. The Programme is based on the unified *Methodology for Assessing Corruption Risks in the Public Authorities Activities* and includes evaluation of the likelihood of corruption risks occurrence in the NPU activities, prioritisation of corruption risks, and institutional measure for prevention, detection and response. The Peer Review Team noted that the unified methodology guides the mapping of corruption risks mostly within the institutional structural units, while better results could be achieved following different processes of decision-making and implementation.

104. The anti-corruption problematic is included in the programmes of studies at all levels of education - initial professional training; training in higher education institutions with specific police training conditions; postgraduate education; job training. The MOIA maintains seven institutions at the university-level where education and specific police training are provided. During the first half of 2019, 67 classes, seminars and lectures were performed, focussed on corruption offences, e-declarations and conflict of interests. The NPU experts also provide personal instructions to Police employees on different aspects of the anti-corruption legislation (642 in six months). A free of charge online-training "Conflict of interests: need to know" is provided by the National Agency of Corruption Prevention together with a

civil project for developing open online courses "Prometheus" (the project is supported by the UN Development Programme in Ukraine). About 30 anti-corruption related projects have been performed with partner countries and international institutions. According to the interviews, the effect of the implementation of the anti-corruption strategy is quite positive and is recognised in the society. It was noted that even cases of "petty corruption" (fuel theft and so on) are almost zero. Since February 2019, with the approval of the *Anti-Corruption Programme of the National Police of Ukraine for 2019-21,* the responsibility for implementation of the Anti-Corruption Programme is entrusted to the heads of structural divisions of the central police management body and the territorial bodies (including interregional and regional).

105.   On the NPU website, section "Prevention and detection of corruption," there are 32 publications on various aspects of anti-corruption, as well as videos with illustrations and recommendations on "Finesses of the anti-corruption legislation" and "How the policeman should not become the assaulter of the anti-corruption legislation. Information of the substantial changes in the property possession".

106.   In 2018, 89 signals and information on corruption offences or corruption-related offences had been investigated, other 27 have been found irrelevant, and 126 requests for information regarding possible corruption have been responded. A mobile squad for rapid reaction on corruption signals is operational. The Directorate of Corruption Prevention and Lustration performs three-five investigations monthly, including in the regional and local divisions of the NPU. Particular attention is paid to the validation of information for potential conflicts of interests (21 cases in 2018, 27 in the first half of 2019).

107.   The process of managing the annual presentation of e-declarations is well-illustrated and guided using leaflets, web-based instructions and videos. The number of notifications on non-submissions or delayed submissions of the annual declarations, directed from NPU to the NACP, had declined from 467 in 2018 to 15 in the first half of 2019.

108.   The public attention on Police performance continues to provide valuable feedback on the reform efforts. There is some stability in the citizens' sensitivity as the annual number of calls to the NPU hotlines is about 100 000 (in 2018 and extrapolated from the first half of 2019). Signals are about misfeasance (110 calls in 2018), excess of power or service duties (653), illegitimate benefits (113), illegal enrichment (6), bribery entrapment (41), and others (30).

Recommendations:

a.   Strengthen further the personnel aspect of the Police reform. The current direction is unquestionably right, and the achievements are significant. The problems – also. The challenge is in sustainability and permanent improvement. In the Police, the two sides of integrity – professional performance and ethical behaviour are most visible and have immediate societal and political effects.

b.   Improve further the drivers of integrity: education, training, working environment, and control. Education should help people to understand; training – to be able to do; working environment – to sustain both motivation and the achievements; control – to help people to stay on the right track.

c.   Provide resources relevant to the prescribed powers to the Police. Power itself is a corruption risk factor. More power, as it was provided to the Police after 2014, would be a stronger corruption factor if sufficient resources were not provided.

National Guard of Ukraine

109.   The National Guard of Ukraine is a military formation with law enforcement functions. It is a part of the system of Ministry of Internal Affairs and a component of the defence sector. This way, the NGU falls under the authority of the civilian minister, but the second-level chain of command is completely military. NGU mission is to protect the life, rights, freedoms and legitimate interests of citizens, society and the state from criminal and other wrongful infringements, and also to maintain the public order and security. NGU also contributes, in coordination with law enforcement agencies, to the national security and protection of national borders, anti-terrorism, and fighting the organised crime. According to the mission, the structure includes headquarters, six territorial commands (incl. Crimean), Military educational and training institutions, and various operational, public order protection, convoy, special purpose units, critical infrastructure protection, diplomatic protection, supply, and aviation units.

110.   The service of the enlisted personnel might be either as a regular mandatory military service or under a volunteer contract. The mixed completion used to create a specific environment from integrity point of view. In this aspects measure are taken for precise selection of volunteering candidates including use of polygraphs, checking for a criminal files, and professionally developing of a psychological profile. After signing the first contract (3 – 5 years), team-building and crisis leadership trainings are provided. Psychological support is provided during the service as well as religious practice and capelin support.

111.   The rotation of officers is not a principal requirement, but a commander' decision. There are open competitions for each free position.

NGU provides personnel for the JFO; the rotation terms are: general term – 3 months; for the Administrative Office of the NGU in the JFO – 2 months; for the divisions involved within the AFU – usually 6 months.

112. Attestation is undertaken on annually. All promotions, selection for training courses in the military and civilian institutions and abroad are best on the performance assessments and are decided by commissions to prevent opportunities for corruption, nepotism, and other ethical violations. This mechanism needs validation on the procedural level in terms of checks and balances mentioned in above comments.

113. The Peer Review Team considers *The Code of Ethical Conduct for military officials and other persons authorised to perform state functions in the National Guard of Ukraine* as very valuable document as it not only stipulate principles but also provides short guidance on their implementation, establishes a mechanisms of reviewing the individual integrity and of sanctioning.

114. Commission of 20 representative of key departments and other structural units meets ones in three months and does the anti-corruption work, including corruption risks mapping and assessment (according to the NACP methodology), development and adjustment of the anti-corruption programme, monitoring and control of the ethical performance across the NGU. Eight military servicemen and one employee were brought to criminal liability for criminal corruption offences, and four soldiers to administrative liability for committing administrative offences related to corruption during 2014-2016. The cases and courts' decisions have been published and delivered with comments to all NGU units. Recently, penalties for violation of the Code of ethics have not been applied recently.

115. One of the sensitive to corruption elements always have been the medical commissions that check the health status of all militaries before start working within the MIOA. A ministerial order as of 2017 established new regulations, common for the MOIA and all subordinated organisations. The Military-Medical Commission (MMC) considers appeals, applications and complaints of candidates for police service, police officers, military candidates, servicemen, former police officers, former members of the private and military staff and retired military personnel for medical and military medical examination, analysis and evaluation of their health status. The Central MMC heads a comprehensive system of territorial (garrisons) permanent and interim commissions. The ministerial order regulates any element of the medical examination procedures. However, the order does not establish a mechanism of control despite the high corruptions risk of this procedure is well known. The Central MMC and its territorial divisions must be professionally independent of any external influence, and they seem to be

independent. However, this does not mean to be out of control.

Recommendations:

116.   Discuss and develop further the NGU concept that is in line with the MOIA concept and practises. The current status in terms of role, responsibilities, chain of command, accountability, and especially the "tasking-resourcing" nexus, generates ineffectiveness and high corruption risks. If the situation continues without structural measures, the misbalance between functions and resourcing may turn into a threat to institutional integrity and national security.

117.   Improve further the NGU conceptual, normative, and operational coordination with the other MOIA organisations and the AFU. The results from of the comprehensive review of the defence and security sector (2019) should be used to develop conceptual documents that balance tasks with the required capabilities. The NATO' European countries have various successful, flexible, and adaptable practices that could help Ukraine to finds its right model.

118.   Clean definitely the NGU participation in the JFO from corruption opportunities. The JFO conditions are different (than those envisaged by the laws) and more dynamic than the bureaucratic system may reflect. However, there are enough comprehensive lessons to learn from and improve the integrity preparation, performance, and control.

State Border Guard Service of Ukraine

119.   The State Border Guard Service of Ukraine is the successor of the Border Guard Troops of Ukraine, The transition from military status towards a civil service, undertaken in 2003, reflects the traditional European approach where the borders are controlled and protected by border police type structures. However, according to the law on the State Border Guard Service of Ukraine (2003), the personnel of the SBGS include up to 42 000 militaries and 6000 civilian state employees. Thus, currently, SBGS is a militarised law enforcement organisation, not a civil service. The Peer Review Team does not raise this issue now, considering the armed conflict, but underlines the necessity to introduce more civil practices, especially regarding transparency, accountability and respect to human rights and citizen freedoms.

120.   Recently, SBGS operates 227 checkpoints and control points. 2018 turned out to be the most challenging for the Ukrainian border guards. The granting of a visa-free regime with Europe against the background of exacerbation of tensions on the borders with Russia and the occupied territories has placed an exclusive responsibility on the border guards for the

security of citizens, the suppression of attempts at armed provocations, illegal migration, and smuggling flow.

121.   Border control institutions have several specifics that distinguish them from other law enforcement agencies. Between them, but not limited to, are the institutional power defined by law, the internal structure of the border guard Service, the character of the state border, the size and transportation capacity of border checkpoints, and, not least, the relationships with other agencies with roles on the borders. Each of these characteristics alone and all together might be a factor for spreading of corruption pressure. *The Anti-corruption programme of SBGS* (2019) correctly estimates the critical drivers of corruption, underling that "The analysis of the powers of officials of the State Border Guard Service in the exercise of functions determined by law gives grounds to conclude that these functions are powerful and at the same time discretionary, which creates opportunities for the emergence of corruption risks." The risk assessment is conducted by a commission led by the Head of the SBGS under the unified methodology. The commission also coordinates and evaluates the implementation activities and reports to the Minister of Internal Affairs. *Methodological Guidance of Dealing with Whistleblowers* (an internal SBGS document) is also available among the Service units.

122.   SBGS operates (since 2017) Centre for Corruption Risk Prevention and Integrity. The main tasks of the Centre includes studying the personnel and keeping the records of those who have allowed unethical behaviour; implementing the institutional anti-corruption programme; ensuring the constitutional right to freedom opinion and religion for the personnel. Elements of the Centre's organisation are the Polygraph Researches Department, Group on prevention and detection of corruption; Personnel Inspection Department; and Military Clergy Service Department.

123.   A special investigation is conducted to the candidates to serve in the State Border Guard Service of Ukraine following the procedure established by the *Law of Ukraine On Prevention of Corruption.*

124.   The SBGS's personnel operate under two guides on professional performance and behaviour (2016): *Code of Conduct of employees who perform border management functions* and *Rules of Behaviour of the State Border Guard Service of Ukraine personnel to Prevent Corruption.*

–   The Code of Conduct sets out various standards of professional performance "on the state borders" like serving to the Ukrainian people, patriotism, social justice and priority of the human rights and civil freedoms, respect to the law, effectiveness, transparency and openness, institutional loyalty, neutrality and impartiality, and fairness. The Code explicitly stipulates

requirements to the leadership's behaviour. The Peer Review Team estimates such guidelines as correct as they reflect the proper behaviour of all state servants. However, the document should also reflect the SBGS specifics.

− The Rules of behaviour is a comprehensive and detailed document on all aspects of corruption prevention. It explains in good enough way the forms of corruption and provides clear guidance on individual behaviour. However, the Rules repeat texts regarding the corruption prevention of various laws and normative acts.

125. The Peer Review Team sees some unclear understanding of the value of having a code of conduct and rules of behaviour. According to the established good practices, the code of ethical conduct should help the servants to judge correctly what is "right" and what could be "wrong" in their working environment. The rules of behaviour, in the SBGS case, are professional performance rule, established according to the key management processes, activities, and operations. While the code of (ethical) conduct is used to estimate the morale of the servants, the rules of behaviour informs about their professional qualities and skills.

126. The Service's anti-corruption sub-site provides direct access to related legislation, ethical code and rules of behaviour, the annual Anti-corruption programme, information and performance guidance on e-declarations of assets, signalling for corruption and others, video instruction on individual security while working on the borders, and contact information. The opportunities for direct reporting signals of corruption and other ethical violations are limited to the Authorised officer of the State Border Guard Service of Ukraine on the Prevention and Detection of Corruption and the phone of Service "Trust" ("Довіра").

127. Regarding the basic military and civilian salaries in the SBGS, the SAQ provides information about sources where data are periodically published. However, the value of the SAQ process is not only the access to data but, moreover, the self-assessment of their impact on the individual and institutional integrity. The Peer Review Team was also not able to discuss the specific amount of monthly surcharge payments and premiums that are set individually for the militaries as the chiefs and commanders of units specify them within the cash allowance thresholds approved in the SBGS budget. However, as the practice of various additional payments is legitimised for all state institutions, the repeated opinion is that the SBGS needs to reduce the personnel reliance on the sensitive payments because of the high corruption potential. Incremental pay increases, tied to qualifications and rank, create an equitable system free of direct corruption influence and favouritism.

128. The attestation of personnel is conducted to ensure proper selection,

appointment, trainning and career perspectives and that the professional and moral qualities of every servant are reviewed and weighted through an "objective assessment."

129.   Regular personnel rotation is not envisaged even for the militaries. Some of the published official annual reports signal about the leadership intention to limit the rotation to a minimum. This perspective may increase corruption risks and needs further discussion as it is also related to career opportunities. Advancing in rang is possible if the duration of service on a particular rang downgrades (as it has been done yet for the young officers), but a promotion on a higher position, especially for captains and senior officers, used to require rotation.

130.   The Peer Review visit identified serious advancement on gender policy in terms of recruitment, retention and providing the female militaries in SBGS with equal opportunities for rank and position advancement – probably the most systematic and sustained results among the security sector organisations. The overall Ukraine participation in the UN initiative "Women, Peace and Security" is provided through a National Action Plan until 2020. Furthermore, the NATO BI Programme has been introducing lectures focusing on mainstreaming BI and gender perspectives in 2018 with the assistance of experts from NATO BI and expert from the Ministry of Defence of the Republic of Moldova who have this specific combined expertise.

Recommendations:

a.   Make the SBGS reform a benchmark. SBGS has significant achievements in both reform and performance but also exceptional challenges to cope with in the near future for taking responsibility and control of *all* Ukraine borders.

b.   Use the European Union FRONTEX Agency developed (2007) *Common Core Curriculum for Border Guard Basic Training* (after specific permission) to improve both professional and ethical capacities and performance. The Common Curriculum offers a set of common standards for the national border guard training institutions, instructors, and professionals.

State Emergency Service of Ukraine

131.   The State Emergency Service of Ukraine (SESU) is the central executive body, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs. The Service implements the state policy on civil protection from natural and manmade disasters, undertaking preventive measures, performing emergency response, search and rescue, firefighting, and technogenic safety operations. The CabMin act *On Approval of the Regulations on the State*

Emergency Service of Ukraine (2015) defines the Service mission in 73 functional responsibilities. However, the document regulates neither the manpower of the Service not the status of the personnel (presumably, they are provided by other decisions).

132.   However, as reported, the Service staffs are composed by about 44500 uniformed with military ranks, 15900 civilian servants, and 200 civilian administrative servants. The military personnel are provided with the opportunity to have a full career, which equalised with the military service only on social issues. The BI Peer Review Team noted this as one more case in which the military uniforms are worn mostly for social gains.

133.   The Minister of Internal Affairs proposes the Head of SESU for approval by the CabMin. The Service activities are guided, resourced, and coordinated by the MIOA. Reportedly, the Head of SESU often reports directly to Verkhovna Rada. Such openness contributes to the relatively high public confidence of the Service' performance – an average of 65% approval.

134.   Regarding the factors that shape the environment for better building integrity, there is no completion for free officers positions as they are not published even internally, promotions of officers are decided by the Head of the Service; rotation of officers even on sensitive to corruption position is practised. For the civilians, free positions are published, and competition is possible.

135.   Department of Internal Security and Counteraction to Corruption is the permanent structure for dealing with integrity problems. On annual bases, according to an internal order of the Head of SESU, a Corruption Risk Assessment Commission is established for corruption risks identification and prioritisation, as well as coordination and monitoring the SESU annual Anti-Corruption Programme implementation. Corruption risks are identified in the following areas: administrative work of the SESU apparatus; control measures carried out by SESU for emergency prevention (e.g., fire safety permissions); personnel management; internal audit; logistics; public procurement. The results are presented in the Commission's *Report on Corruption Risk Assessment in the SESU Activities.* Unfortunately, the open access to the risk assessment results stops here. However, the annual anti-corruption programme seems comprehensive (51 measures in 2019), covering regulatory measures, anti-corruption training, instructions on e-declarations, sharing of information on improper behaviour, organisational work, and others.

136.   The attestation procedure is according to the MOIA established rules and practice. Like in the other observed institutions, it is not clear to the Peer Review Team, what is the weight of the ethical behaviour on the individual

performance assessment if the highest estimate sounds the following way: "The task was completed in time (in advance) with high-quality results, achieved with a high degree of autonomy (if necessary, teamwork), initiative, effectiveness, and in accordance with the rules of ethical behaviour. During the assignment, civil servants made proposals for other documents or their improvement."[30]

137. Department of Internal Security and Counteraction to Corruption' experts provide anti-corruption training to the personnel in the regional offices (in 2018: 26 workshops, four of them as teleconferences). The training is focused mostly on explanation and illustration of various legal acts and orders dealing with corruption, bribery, conflict of interests, misfeasance, and others.

138. Reporting on corruption offences and other abuses by SESU officials is organised by post-mail, email, and phone. On the SESU web-portal, in the section "Citizens' Appeal," there is a heading "Internet Reception", through which members or citizens may contact and report on any problems in the Service. Protection of whistleblowers seems to the Peer Review Team insufficiently effective (e.g., leave a phone number to contact you – we guarantee anonymity).

139. SESU has its own Code of Conduct. According to the interview, there is no recorded case of corruption in the Service.

Recommendations:

a. Improve the SESU personnel management developing a unified data base and electronic information system to diminish risks for manipulated decisions and increase transparency of the promotion, housing, additional payments, honouring, and other procedures.

b. Pay special attention to those officers engaged in issuing permissions, approvals and licensing procedures. These processes are prone to corruption by presumption. The qualities of work and servants ethical execution influence the SESU public prestige to a great extent.

Security Service of Ukraine

140. The Security Service of Ukraine has a legally defined manpower between 27 000 and 31 000 in special periods. Such a great number of personnel derives from the comprehensive set of Service' functions. One of

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[30] Source: https://www.dsns.gov.ua/ua/Viznachennya-rezultativ-sluzhbovoyi-diyalnosti-derzhavnih-sluzhbovciv-yaki-zaymayut-posadi-derzhavnoyi-sluzhbi-kategoriy-B-i-V.html

them is the counterintelligence within the Armed Forces of Ukraine. The Service maintains a proportionally high number of military personnel (actual data were not discussed), and there is a plan for gradual reduction through new regulations for the servants' qualifications.

141. As reported, the most severe personnel problems, which undermine the SSU prestige, are the operational performance and the selection and promotions, especially of senior servants and those that transfer from other security sector organisations. Polygraphs are used for establishing individual profiles of the candidates.

142. The President, upon recommendation of the Head of the SSU, promotes directors of key SSU central departments and regional agencies, including the one for the fight against corruption and organised crime. Verkhovna Rada appoints the Head of the Security Service of Ukraine, upon recommendation of the President of Ukraine.

Recommendations:

a. Demilitarise the SBU to a maximum rational extent. There are no reasonable arguments to maintain their current status. Transition the function of military intelligence to the appropriate MOD structure is feasible.

b. Build internal checks and balances. To compensate for the impact of secrecy on the institutional "health," introduce internal decision-making and performance control checks and balances.

c. Build external checks and balances. Introducing a new law on SSU, clarify further the role and mandate of the Service and its operational collaboration with the other law enforcement and defence institutions and the relevant parliamentary committees. Strengthen cooperation with the National Agency for Corruption Prevention (NACP) experts' for better streamlining the corruption prevention efforts inside the SSU.

d. Develop the prevention corruption efforts (scope and scale of the individual capacity building) inside the SSU according to the internal evaluated corruption risk areas (1. Pre-trial, operation, and counterterrorism; 2. Handling of classified information and state secrets; 3. HRM; 4. Finance and logistics; 5. Internal control out of 17 identified corruption risk areas).

Planning and budgeting

143. The SAQ answers and Peer review visit discussions illustrated an improving understanding of the planning, programming and budgeting impacts

on the two essential aspects of integrity: the effective use of dedicated to national defence and security resources and ethical individual and collective performance. The planning and budgeting aspects of the policy are recently seen as the core field of the so-called "grand corruption." The opportunities for channelling public funds into personal or party accounts and the business individuals and organised crime to "capture the state" might happen exclusively at the planning and budgeting level and related legislative work. Rewarding corrupted-thinking affiliates with the highest public positions is usually applied to close the grand corruption chain.

144.   The influence for applying more long- and mid-term oriented planning that might improve the annual budgeting outputs recently come mostly from the Government with the Verkhovna Rada support. The growing number of strategic decisions, documents, and (mostly mid-term) programmes provide the essential policy framework and guidance for an intensive transition towards planning programming and budgeting system. Despite that the existing normative arrangements and practice are not yet in synchrony with NATO standards and allied countries' practices, the achievements are encouraging, especially in the MOD and AFU.

145.   Nevertheless, the SAQ answers signalled a common problem regarding the implementation of plans for the procurement of expensive material items. It is related to the *Law on Public Procurement* that stipulates procurement should be done on an annual base (art. 4, p. 1). The logic of this text is that procurement should be undertaken if money is provided through the concrete annual budget. By the first look, such requirement seems reasonable. However, for procurement of costly items that might be diversified across several budgets more flexible regulations would facilitate the projects management.

146.   Created opportunities for additional, non-budget funding of the security sector organisations is an exceptional area of concern. The Special Fund creates a specific framework for the revenue functions of the security sector organisations. "Making more money" may change seriously the priority of work, especially of Police and SBGS, as well as to violations of the rules if the collection of fines is turned into performance criteria.

147.   The overall system of control, including managerial, auditing (both internal and external), and democratic (parliamentary and through the formalised public councils and project offices) is now empowered by national anti-corruption agencies and special judicial bodies. Despite that the SAQ answers and interviews signalled of some overlapping and not properly established mandates and procedures, the system seems formally completed. It needs time and further attention to mature enough to be able to break effectively and sustainably the dangerous trend of corruption expansion.

Further strengthening of public transparency and effective monitoring would play a reinforcing role. The Peer Review Team recommends an external periodical review of the auditing and anti-corruption law enforcement practices to continue as it was done in 2012 by the Transparency International (UK).

Ministry of Defence and AFU

148. Formally, the *Law On Defence Planning* (in power since 2005) regulates the MOD and AFU planning and budgeting process. The Law aims to put some consistency in the short-, mid-, and long-term defence planning process in two, six and twelve years perspectives. A combination of strategic level documents (*National Security Strategy, National Military Strategy, Military Doctrine, and the Strategic Defence Bulletin*) and the so-called "targeted development programmes (*State Programme for Development of the State Military Organisations* (the Armed Forces); the Armed Forces tasks; the *State Programme for Development of Arms and Military Technical Equipment*; the *State Programme for the Reform and Development of the Industrial Defence Complex*).

149. The new *Law of Ukraine on National Security* defines defence planning as an integral part of the state strategic planning system. It should ensure the building up required defence capability by defining priorities and directions for the development of the armed forces. The defence planning should reflect the AFU needs of combat systems, arms, and other military equipment, infrastructure, training, and maintenance. It also requires the development of relevant concepts and plans and programmes, taking into account the real and potential military threats and financial and economic opportunities of the state.

150. Regarding the strategic-level documents of national defence, the *Law on National Security* modifies to some extent the old system, introducing *National security strategy, Military security strategy, Cyber security strategy, Strategic defence bulletin, Strategy of public security and civil protection*, and *Strategy for development of the defence industrial complex*. The BI Peer Review visit did not include a detailed discussion on these documents, as most of them, if any, are not developed yet.

151. Since 2016, the Ministry of Defence uses a *State Targeted Defence Programme for Development of Armaments and Equipment until 2020* as a mid-term planning document that sets out objectives and activities for realisation through the annual budgets. The arrangements seem to be very similar to the known "Material plan of MOD" – a Warsaw Pact time method of gradual delivery of equipment, often driven by unclear modernisation objectives and much less by real operational needs. NATO approach to defence planning and budgeting is very different in any aspect, but, briefly, it

is about integrated resource management based on required defence capabilities. On the "bottom" of the planning process is not the "equipment" alone but all other armed forces' imperatives – doctrine, people, education, training, equipment, maintenance, infrastructure, organisation, and combat readiness (Joint Military Capabilities Plan).

152. The current planning and budgeting process is driven by the immediate (actually, short-term) procurement for operational needs of the armed forces. It seems to be top-down framed by the political inputs and budget constraints and bottom-up formulated by the GS based on the armed forces' requirements. The Peer Review Team sees this approach as relevant to the ongoing intensive military conflict and the need for high-tempo operational procurement. As it is susceptible to corruption due to secrecy, emergency and lack of any strict checks and balances, some extraordinary ex-ante measures should be undertaken to prevent direct or hidden corruption.

153. However, the establishment of a modern planning and budgeting system is an integral component of the comprehensive defence reform. The Peer Review Team is of the view that the NATO Handbook on Long Term Defence Planning (RTO TR-069 / SAS-025) might be used as a one source of reference for building a compound, effective, sustainable and well protected against corruption planning and budgeting system, but most importantly through supporting activities led by the international Advisory Group guided by the PARP Partnership Goal.

154. The State budget of Ukraine is established along functional lines, and one of them is "Defence." Despite the introduction of "targeted programmes (sub-programmes)," they are not seen among the budget indicators (at least at the Ministry of Finance website). Controlling the budget line "Defence" means discussion on the overall amount of MOD budget, comparison of the figures with the previous year and the percentage of the overall budget. The line-type budget provides neither the Parliament nor the society with enough information to discuss what the outcomes and effects would from spending dedicated to the defence funds.

155. Actors in the budgeting process are the MOD and GS of AFU, the Ministry of Finance (MOF), the Government, the President, Verkhovna Rada' Budget Committee (leading), the Committee on National Security and Defence, the Committee for Social Policies, Employment and Pensions, as well as the National security and Defence Council. All have the power to review and introduce amendments through standardised procedures.

156. The state newspaper "Governmental Courier" publishes the *Draft Law on State Budget of Ukraine* not later than seven days after its submission to the Verkhovna Rada. The budget key indicators are published on the MOF

website. The final budget bill is submitted to Rada together with the implementation report of the previous year.

157. The MOD is the institution that more than the other security sector organisations benefits form the Special Fund. The purpose of the Fund is to obtain additional funding for the armed forces (as well as the other security sector organisations) to maintain their combat and mobilisation readiness. The Fund is credited from regulated by law economic activities of the Armed Forces (own revenues), proceeds from the sales of surplus weapons, military and special equipment, the immovable military property of the AFU, and alienation of land where the immovable military property is located. The SAQ answers inform successful implementation of the Fund's targets for the previous years but do not provide comments on how effective is the use of extra-funding by units, or the use of those funds, and how the overall mechanism of "economic activities of the Armed Forces" is protected from corruption and other improper usages.

158. The NATO BI Peer Review Team noted that the establishment of such a mechanism might be driven by the AFU's immediate combat readiness and operational needs. The SAQ answers do not provide information and comments on its efficiency (the ability to provide the best possible defence for the invested money) probably because of the current focus on military effectiveness (ability to achieve strategic military objectives). However, from a longer perspective, the planning and budgeting system of the Ministry of Defence needs a comprehensive modernisation.

159. Ukraine has a three-level auditing system to control the executive power expenditures: the Accounting Chamber on behalf of the Parliament, the State Audit Service do within-the Government-audit and ministerial-level internal auditing units. As reported, the number and scope of audits cover almost all activities of the MOD and AFU. A significant development is that the strategic (multi-year) and operational (annual) plans of audits are based on risk assessment (including corruption) of the particular units, functions, operations, or activities. Summarised results of the internal audit are published every six month and annually on the MOD website and in the "White book". Nevertheless, the Peer Review Team underlines again that the well-established and intensively working system of audits (both internal and external) reports only hierarchically.

This way, the response to violations of rules might depend on those engaged

in or benefiting from them.[31]

160.   Regarding the military property alienation, the Government and MOD have assumed the control and monitoring functions, relieving the AFU commanders from direct responsibilities and corruption challenges. The Government should approve the alienation of movable and immovable surplus. The process of realisation on the free market or utilisation of the equipment is carried out by enterprises authorised by the Cabinet of Ministers through open auctions and tenders. As it was mentioned earlier, 50 % of the income is provided to the MOD Special Fund and used for the building of houses for the militaries. However, dealing with discharged military materials, land, and real estate is still seen between the serious corruption risk factors.

Recommendations:

a.   Undertake extraordinary measure to compensate for the current urgency in defence planning, budgeting, and procurement. The intensive engagement of the Internal Control and Risks Management Service, Military Law Enforcement Service, and other newly established control bodies might provide more confidence in the emergency decisions and their implementation.

b.   Prepare to introduce the full system for capability-based planning (CBP). The *Law on National Security* sets out 2020 for start using CBP.

c.   Prepare to introduce Planning, Programming, Budgeting, Execution, and Estimation System and a programme-type budget used widely by the allied nations as guided by the 2018 PARP Partnership Goal on Defence Planning and Budgeting. This step is necessary for various reasons: the envisioned defence reform could not be effective in delivering defence and military capabilities using irrelevant planning and budgeting methods; the programme managers will have much more flexibility to select the ways to achieve declared objectives; the democratic control would be much more effective if oversights objectives-driven programmes; defence planning

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[31] Auditor reporting helps make public sector organisations accountable to government, taxpayers and the public at large; it may also provide accountability for funds provided by domestic and foreign donors and institutions. From this perspective, various good practices might be considered for further development of the auditing function, e.g., where crime data are available, the auditing body sends the audit report and materials thereto to the prosecutor's office; disclosure of audit reports of high public interest, which do not include classified information; the auditing body announces through its website the non-fulfilment of the obligations of the audited authorities, the failure to comply with the recommendations given, the refusal of dismissal of servants with managerial responsibilities in result of which acts or omissions violations of the law have been committed; audit reports of funds provided by national and international donors should be made public; and others. Understandably, the introduction of such practices requires appropriate legal arrangements.

interoperability with NATO would be accomplished; such innovation would provide opportunities for comprehensive use of information technologies.

d.   However, preparation of such change will need serious time (according to the East European NATO members' experience, 3-4 years would be necessary for preparation, introduction and full operational*isation*) and a good number of educated people. Development of knowledgeable people must start now. Transfer of NATO-based know-how would be vital.

State Special Transport Service of Ukraine

161.   The SSTSU suffers the same planning and budgeting deficits as the MOD, MOIA and the other security sector organisations. In the SSTSU case, the impact of short-horizon planning and chronic under budgeting of core functions is obvious because of the relatively small number of personnel and lack of budget buffers. The current year budget gap is 41%, including 20% insufficient funding for salaries and social payments. Since the subordination of the Service to Ministry of Transportation and later to the Ministry of Infrastructure, budget for capital investments and maintenance of critical equipment have not been provided (most of the modern equipment has been donated by partner nations). Even the daily life of the servicemen is underfunded for electricity, heating, food and others.

162.   Reportedly, the Service leadership and commanders use all opened by laws opportunities to compensate the resource gaps, including a special fund for private, local, and state institutions donations. Including also the Service own very ambitious (but not funded) housing programme, it seems that many efforts and attention were spent away from standards of military organisations performance. Each of these "sidebar" activities may turn into corruption, bribery, conflict of interests and nepotism factors. The leadership believes they have control over the behaviour of the people and that the transfer to MOD system will add about 40% to servicemen incomes will strengthen their ethos. However, the SAQ aims to help to build a sustainable system that would work properly in any case.

Recommendation:

a.   Use the MOD strategic review process to better situate the SSTSU functions and resource needs within the general defence framework. During the last 30 years, the current Service inherited functions from various fields as building, maintenance, and protection of railroad infrastructure, other typical military engineering works as fortifications building and demining, as well as contribution to civil defence and protection of the population in cases of natural disasters and industrial catastrophes, and others. The Service needs a clearer model (for example "The US Army Corps of Engineers") as a source of defining capabilities requirements and, respectively, proper funding.

Ministry of Internal Affairs

163.   The MOIA did not answer the Planning and Budgeting chapter of SAQ. However, during the interviews, the budget planning and implementation were identified as a low-intensity risk area. The unreasonable modifications of the MOIA budget parameters were presented as a possible source of corruption and improper management such as diversion of funds from essential functions and tasks towards non-priority activities, inefficient procurement and other expenditures, manipulation of projects estimates, on which basis the budgets are formed were listed between the issues of special attention and control. However, the crucial issues are rational minimization the number of requests for changes, and most importantly, the established legal procedures for amendments. The Peer Review Team shared the opinion that in cases of comprehensive structural reforms and complicated security situation, amendments of the budget are almost unavoidable. Moreover, as the MOIA has a planning and budgeting Partnership Goal the same as the MOD, both processes need to be aligned.

Recommendations:

a.   Introduce an integrated inter-agency planning and budgeting system. The CabMin decree *On Approval of the Regulation on the Ministry of Internal Affairs of Ukraine*, 2015, art. 11, p. 25, stipulates a very imprecise function to the Minister to "decide on the distribution of budget funds, the main administrator of which is the Ministry of Internal Affairs." The new role of MOIA, as policy guiding and coordination body of various national agencies, requires a new type of ministerial planning and budgeting cycle. The coordination of bottom-up proposals may lead only to a very modest improvement and slow development of the sector.

b.   Establish cooperation among the MOIA agencies on shared tasks through joint committees and boards. Horizontal cooperation between different type agencies that have shared functions is crucial for their operational effectiveness. The measure should be discussed further but undertaken as soon as possible to avoid forming an institutional interests-based restrictive mind-set, characterised by limited collaboration, duplication, and low efficiency.

c.   The MOIA leadership may consider the following, but not only, elements of the planning cycle:

– Goals setting through stakeholders' engagement and coordination;

– Integrated analyses to understand rational synergies and trade-offs across the subordinated agencies and assessment of different policy options;

– Policy design and formulation in terms of objectives, priorities, tools, and approaches;

 – Integrated resource planning (human, material, financial, infrastructure, as well as utilization of discharged assets and real estate, and others);

 – Coordinated implementation (including financing); and

 – Monitoring, evaluation, and adjustment of strategy, plans and programmes.

National Police of Ukraine

164.   The National Police of Ukraine did not answer the Planning and Budgeting chapter of SAQ except little information about some legal regulations. However, during the interviews, it was reported that NPU budget is provided through the MOIA with a delegation of spending authority including on procurement. NPU is defined as the responsible executor of the budget programmes and during their implementation ensures the targeted and effective use of funds. The budget is delivered mostly between remuneration (73 %) and operations.

165.   Despite that the head of NPU submits to the MOIA proposals regarding the state policy of public security and order, crime prevention, and provision of police services, regarding the budget, the Minister may take only a decision for its distribution. The Peer Review Team does not see a well-established connection between policy proposals and funding that may hurt Police capabilities in future.

166.   Moreover, the *Law of Ukraine On National Police*, 2015 stipulates that the Minister of Internal Affairs, regarding the Police, "…approves strategic programmes of activity and defines priority directions of work of the Police, ways of carrying out tasks assigned to it, approves plans of its work" (art. 16, p. 3). The focus is explicitly on the Police operations and no requirements of systematic longer-than-a year planning. The Peer Review Team finds this situation in dissonance with the overall efforts for reforming the sector. Furthermore, the urgent needs of development that inevitably would come soon are usually prone to high corruption risks.

167.   Cases of fraud in the remuneration process have not been detected as an automated system of payments control has been established.

168.   Delivering additional payments is a primary method of motivating the police personnel. The provided illustration that the Economic Police saves money to the people and should be stimulated with special payments sounds very irrelevant. Nevertheless, the leaders shared a good understanding of what might go wrong. The Peer Review Team believes that defending the

widespread additional payments with groundless arguments is one of the weakest elements of the security sector reform, including its planning and budgeting aspect.

Recommendations:

a.   Introduce strategic management of NPU. The MOIA and NPU leaders may leave aside the thinking that the Police budget is mostly static, particularly in the current fiscal constraints in Ukraine. The strategic management approach may help overcome this problem, focusing more on the systematic development based on gradual balancing between the objectives and tools, efficiency and effectiveness, police programmes and strategies.

b.   Publish budget execution documents quarterly on the NPU website (additionally to the unified governmental portal Єdata [32]). More resource transparency with illustrations of operations will help to strengthen public confidence and gain higher political attention.

National Guard of Ukraine

169.   The NGU performs three primary missions – to contribute to national defence, to protect critical facilities, and to contribute to the public order maintenance. According to the interview, from a total of 24 functions, seven have military defence character, ten are related to various forms of law enforcement, and seven are about the security of critical infrastructure and other installations. The Peer Review Team sees that within the system "roles-organisation-manning-operations-resources," the balances are compromised yet. It is not surprising that NGU receives less than 30 per cent budgeting of what the leaders believe should be provided. The situation signals severe structural problems that may turn into risks to some aspects of the national security of Ukraine.

170.   In the NGU, the planning seems to be only on annual bases and all purchases are made in accordance with the approved by the MOIA annual procurement plan. It is a bottom up planning mechanism, based on units' requests of equipment, materials, and services. The plan provides either modernisation of obsolete military hardware and re-filling of operational expenditures (weapons, fuel, and others) or equipment, infrastructure, and services for newly established military units. The plan may be amended during the year through the same procedure as it is created. However, such

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[32] Єдиний веб-портал використання публічних коштів (The single web portal for use of public money) - https://edata.gov.ua/

mechanism could not be called "management." As a relatively newly established institution, the NGU vitally needs a long-term vision and development programme. The currently active *Concept of the NGU development for the period till 2020* needs a consecutive document with programme character to reflect the accumulated own lessons learned, the requirements and "spirit" of the *Law on National Security* and the growing international experience.

171.   The system of auditing is established at four levels: the Accounting Chamber audits the MOIA budget performance, including those of the subordinated agencies and reports to the Rada; the State Audit Service reports to CabMin; the MOIA Internal Audit controls the NGU central administration and some of the units; the NGU Internal Audit Department performs audits of compliance, financial performance, and effectiveness. The audit department is well aware of the importance of their role in detecting and preventing corruption and is very knowledgeable on auditing. The audit reports are delivered to the chief of NGU and, monthly, to the Internal Audit Department of MOIA (separate reports might be provided on particular cases). The discussants highlighted the insufficient regulation on feedback information and following measures according to the audit recommendations.

172.   The commercial activities of the military units are estimated as sources of high-level corruption risks. However, strong arguments for the outcomes of these activities were not provided.

Recommendations:

a.   Take measures to balance the NGU roles and functions with the available resources. The NATO BI Peer Review Team sees the current situation very close to the red line beyond which the NGU may lose its substantial role for the national defence and security sector, and turns into a dysfunctional anachronism.

b.   Establish control and transparency over commercial relationships. A military organisation should not be burdened or self-burdened with business relationships as there would be no more productive incubator of corruption and bribery.

c.   Establish direct collaboration between the NGU and MOD internal audit departments. The MOD system and the Internal Audit Department leadership are more advanced than any others, and the NGU could only benefit from a close methodological collaboration.

State Border Guard Service of Ukraine

173.   Like in the other agencies, subordinated to the MOIA, the planning process in SBGS is developed annually based mostly on the units' proposals made according to an Action plan, approved by the Minister of Internal Affairs. It is difficult to identify is there any political input in the process and to what extent the planning cycle will lead to institutional development and better performance. The role of the Minister of Internal Affairs is hidden and the role of the head of SBGS seems formal. From the BI perspective, the principal question is about the accountability for the taken and not taken decisions on planning and budgeting.

174.   Regarding the SBGS operations in the JFO' zone, a mechanism of delivering guidance, coordination, or approval was not identified below the level of CabMin and the National Security and Defence Council (NSDC).

175.   The SBGS is a subject of the presidential decree as of 2016 *On Donor Assistance to the Military Units of the AFU, NGU and the SBGS.* Information on the value of the donorship was provided. Another source of income to the Special Fund are sales of metal scrap.

176.   The head of the Service has established permanent Public Council more as an instrument of public relations than democratic control, as the policy owner is the Minister of Internal Affairs.

Recommendation:

a.   Develop a new SBGS development strategy and capability programme. The framework, provided by the MOIA Strategy 2020 is relevant, but SBGS needs its strategy for institutional and capability development based on its own experience and European know-how. If such is established, the European Union' support could be better directed and effectively used. In a long-term perspective, SBGS will have ever-growing importance from both domestic and European context, and this challenge should be copied with systematic development and priority budgeting.

State Emergency Service of Ukraine

177.   As in the other MOIA structural units, the SESU planning horizon is almost overlapping with the annual budget. However, reportedly, along with the several "lines" in the MOIA budget proposal, the Service also manages numerous development "projects" – a good sign for expanding the planning perspective.

178.   The budget is delivered between remuneration (80-85%) and operations and maintenance (10-15%). Resources for capital investments are provided through a central mechanism and the delivery of resources, obviously, depends on the state budget overall performance.

179. Of the most resource-consuming aspects of the state emergency management is the amassing of various state disaster relief reserves. State emergency reserve is an extremely prone to corruption issue in three directions: aggregation of reserves, refreshment, and use in emergency situations in terms of accidents and introduction of emergency legislation. Reportedly, responsible for the state reserves are Ministry of Economy and Ministry of Finance. However, the SESU will use materials from both its own operational reserve of various types materials and the state reserves, and this must be seen as a sensitive to corruption issue.

180. There are several state-owned enterprises in the Service' portfolio, which are in the process of liquidation. The question was not discussed further during the interview.

181. Salaries are regularly paid, and the procedure is not seen as prone to corruption. Regarding the system of additional payments, the Peer Review Team noted the significant disproportion again between the possible amounts to military servicemen (not limited) and civilian servants (limited to 20% of the regular salary) and an unequal payment when the military and civilian persons perform one and the same job. It is difficult to find a higher corruption risk factor than this one. It was reported that there are often objections to the way personal benefits are set out. This is inevitable, especially in the absence of legally established performance and results-based management. As this report noted earlier, those issues must be decided between the CabMin and Verkhovna Rada as a part of the ongoing comprehensive administrative reform.

182. Voluntary donations (including from abroad) are a substantial income in the Service budget. Along with the attestations, permissions, and sertifications the Service is authorised to provide to physical and legal entities, they comprise a sensitive to corruption segment of the SESU management.

183. It is hard to say that the Service has its own housing policy as in 2019 have been provided only six apartments. However, a special Commission and procedures are established to preserve the process from possible corruption.

Recommendations:

a. Perform a strategic review of the state emergency management system to strengthen the "preparedness-response-recovery-resilience" capabilities of SESU. The disaster management challenges are growing all around the world, and the sector undertakes adaptive efforts.[33] However, a

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[33] For examples visit the EU' Disaster Risk Management Knowledge Centre at https://drmkc.jrc.ec.europa.eu/overview/News#news/432/details/14157/driver-trial-1-uncovers-new-solutions-for-a-more-integrated-crisis-management-at-eu-level and Euro-

few countries have a painful Ukrainian experience and a mountain of lessons to be learned. Functional, operational, and material improvement of the Service will make it more attractive for high-quality people that will take integrity problematic as a cultural challenge.

b.   Undertake reforms to reflect the real budget climate of SESU. Systematic underfunding is a structural corruption risk factor. To cope with challenges of the aging of the country's infrastructure like bridges, railroads, highways, dams, nuclear power plants, the electrical grid, and others, policy as well as the SESU planning and budgeting have to giving preference to vulnerability instead of hazards.

Security Service of Ukraine

184.   The SSU's overall material and financial maintenance planning cycle is organised according to the general procedures. The budgeting practice reflects most of all particular operational needs, not a long-term development plan. The corruption risk element in such practice is that any material item is managed not by its life cycle but according to the available budget; tender procedures can go through the mechanism different to those applied during public procurement.

185.   Regarding the planning priorities, the primary budgeting criteria and procurement priorities for SSU are the operational requirements, especially those concerned with the participation in ATO/JFO. Coincidentally, the SSU leadership determined the some aspects of the servants' performance during operations among the immoral actions that most seriously undermine the prestige of the Service.

186.   Neither the legal arrangements nor the practice envisages any form of public (including open to the public in Rada) hearings on the SBU budget.

187.   The line-type budget does not require a detailed explanation of the budget items (according to the Budget Code of Ukraine), and it is not necessary to keep the budget confidential – general budget information could be obtained from the SSU official website and the Ukrainian official newspaper *Holos Ukrayiny* (*Voice of Ukraine*)

188.   The SSU's internal audit planning is based on the annual risk assessment and is formulated through strategic (three-year) and operational (one-year) plans. Audit Results - disclosures, evaluations and recommendations as required by national internal audit standards are addressed only to the SSU Chairman. However, it was reported that all state

bodies of Ukraine following the procedure established by the current legislation (including the Accounting Chamber, the Ministry of Finance, law enforcement) also have access to audit reports. The Peer Review Team emphasised, as regarding similar cases in other institutions, that such regulation of the internal audit has limited value and almost null in case of senior-level engagement in corruption relations and other ethical violations.

Recommendations:

a.　　Introduce strategy-based development of the SSU. The aim of the BI Peer Review Process is not to substitute the reform process. Instead, it attracts the attention to issues that should be improved in any case. The systematic (at least) mid-term planning as an annual budgeting framework seems essential for SSU effectiveness. A strategic vision could be discussed publicly and with foreign partners, while the draft laws are confusing to improve if the platform is constructed poorly.

b.　　Initiate a discussion on the SSU functions-manpower-retention balance. From the BI point of view, having so many staff, burdened with various functions of highest priority and underpaid may create a very confusing and even dangerous institutional environment.

c.　　Include the relevant Parliamentary committee's access to the internal audit reports. Expanding the external checks and balances could be a good antidote for the SSU institutional health.

Operations

189.　Operations of security and defence forces are one of the most sensitive aspects of their integrity environment. One of the typical common shortfalls is the absence of anti-corruption problematic in the operational doctrines, and, consecutively, in the training and operational planning guides. NATO' lessons from the operations in Kosovo and Afghanistan, as well as other national experiences, illuminate the importance of having unique texts and practice to secure integrity in both operational training and operations planning, command and control.

190.　All SAQ participating institutions recognised operations (dominantly ATO and JFO, but not limited to them) as a specific environment in which corruption and other forms of non-ethical behaviour may occur and lead to substantial consequences. The lost of operational effectiveness, and public prestige due to improper performance on the field was officially recognised as a structural problem only after 2015-16. The anti-corruption problematic did not exist either in the doctrines and field manuals or in training programmes. The "normal" practices of control were not applied to the deployed units.

191.   However, the current documents, policy, plans, and programmes treat the integrity problematic in peacetime, in peacekeeping operations, and combat (anti-terrorist) operations. They regulate various preventive, investigative, and reporting mechanisms and frame the reactions and sanctions if violations of rules identified. Since 2016, the anti-corruption problematic has been intensively introduced in the academic and training centres courses. The role of NATO BI and the member countries contribution to this process was widely appreciated during the interviews.

Ministry of Defence and AFU

192.   As reported by the SAQ, the current approach to secure integrity during operations reflects the understanding that the legislation, policy, and practice based on integrity are "for peacetime and military conflict periods." However, no one of the quoted documents stipulates special pre-deployment training and preventive anti-corruption measures. The focus is rather on what should be done "in the field of operations." The established Joint Monitoring Group controls the ATO/JFO staff' behaviour for violations of laws and corruption, but the people, especially those mobilised, rare have an idea about the laws, rules, codes, and various forms of corruption and crime. One of the SAQ comments says "combat manuals and other governing documents that establish the foundations of combat deployment do not yet cover organisation of anti-corruption work by commanding officers." The Peer Review noted this as parallelism of the anti-corruption measures. Prevention of corruption and other forms of poor behaviour is regulated and performed in parallel to the core military process, not as essential element of the planning, deployment, and command and control in missions (combat operations). Such an approach might deteriorate the effectiveness of any undertaken measure, limiting its application to particular circumstances and a period. NATO has provided opportunities not only to train people but also to get access to evidence-based methodology on building integrity in operations from the Peace Support Operations Training Centre in Sarajevo (Bosnia and Herzegovina). The BI in Peace Support Operations annual course focuses on understanding corruption, the rule of law, local contracting, UN and NATO anti-corruption procedures in operations. The BI for Senior NCOs Course (NATO BI certified) addressees the BI principles, concept, and impacts of corruption in peace support operations and missions.

193.   Since 2017, specialised corruption prevention and response planning is functioning in the operationally deployed military units. Probably based on previous experience, the focus is on logistic support units, the control of charitable material and financial resources, reward and other special individual payments provided to those that participate directly in combat operations. There is no information about how effective is this practice.

194.   The answers argue that the senior MOD officials and commanders are well aware of the corruption problematic at different levels of command and sectors and have been adequately trained to identify risks and take the legally prescribed measures.

195.   Urgent operational requirements have a special regulation within the security sector organisations. The Peer Review Team understood that the rules, applied to military and anti-terrorist operations and in cases of emergencies, provide ample opportunities for using negotiated procurement at relatively low levels of values - about $7,300 for goods and $55,300 for construction works. This amount is relatively small, and the procurement procedures are performed in the units' permanent locations (not in the JFO area). All purchases without exception are subject to prior study by financial and legal representatives and subject to internal audit by the MOD' Internal Audit Department. The Monitoring Group (consisting of representatives of the Department of Finance and the Department of Internal Audit of the Ministry of Defence, sent to the JFO area on a rotational basis) examines and carries out audit of all risky transactions (not only financial). The results are reported quarterly on the MOD website and annually in the White Book.

Recommendations:

a.   Protect the JFO from corruption, nepotism, conflict of interests, and other forms of unethical behaviour. Recently, JFO is the most important and complicated field of building integrity. The operation is not only vital for national security but also is symbolic for the new Ukrainian military and their political leaders. It should be kept clean from any confusing practices, especially the supply of logistics services and materials and delivery of volunteers' donations. It would be very painful the fighters to understand that while they have been fighting someone have stolen from them. The operation in Donbas is dynamic, so unusual are the circumstances in which various forms of corruption may have a place. Take into account also the risk assessment conducted by the Department of Internal Audit. Continue to improve the specific, time- and case-sensitive guidance and training to civilian and militaries before deployment to the Joint Force Operation and other missions.

b.   Introduce integrity into the military doctrine, field manuals, and operational planning procedures to secure gradual building the culture of integrity. Further, continue expanding the anti-corruption education and training towards more effective, role-focused forms.

c.   Use the NATO BI policy to secure sustainable support and quality work. NATO BI policy is a standard-setter based on pieces of evidence and lessons learned from operations in Kosovo, Iraq, Afghanistan and others. The

policy can help ensure that corruption is taken into consideration in the Ukraine MOD and AFU doctrinal training, and operational planning documents (for JFO as well as in other missions).

State Special Transport Service of Ukraine

196. SSTSU has been yet engaged in ATO/JFO performing several of its core missions: the creation of pontoon bridge, rapid reconstruction of a bridge, demining, and others. Building fortifications for the combat forces have been ordered due to the inability of other troops to perform the task. The Chief of the GS of AFU has provided the mission tasking to the SSTSU contingents.

197. Generally, half the Service staffs have yet experience in the zone of operations (in total 2788). According to the interview, the units' commanders provide pre-deployment instructions to the contingents on various issues, including prevention of corruption and criminal relationships. Specific training provided by experts is not envisaged.

Recommendation:

a. Establish BI training as a component of any contingent' pre-deployment preparation. Building integrity will start making effects on servicemen behaviour only if it is applied systematically. The commanders' instructions rarely provide arguments and illustrations; the experts focus on the mission' specific environment and help the servant to get better understanding and motivation.

Ministry of Internal Affairs

198. The current MOIA corruption risk assessment does not include operations as a sensitive domain because the ministerial functions include budget and financial management, healthcare services, academic education, licensing and permissions, and public administrative services. Operations are the responsibilities of the MOIA executive agencies. For that reason, the Ministry did not answer questions regarding operations.

199. The NATO BI Peer Review Team noted that the ATO/JFO as well as most of the security operations are inter-agency operations or at least require close cooperation between different actors. From this perspective, the MIOA may have responsibilities to secure the operational and technical interoperability not only between the subordinated organisations but also with the AFU and the judicial system. The anti-corruption problematic is one of the elements of joint pre-deployment training, operational planning, and command and control that could be adequately provided only by the MOIA.

Recommendation:

a.   Develop doctrinal and operational interoperability across the subordinated agencies. The MOIA faces three threats simultaneously: at home, on the borders, and in the cyber. The be able to come with these challenges and their future mutation, MOIA needs to build an operational environment in which the subordinated agencies would be able to work more closely intertwined and co-located and exploit their different cultures, expertise and capabilities to bear against the huge problems Ukraine faces recently.

National Police of Ukraine

200.   The on-going police reform has many aspects and centres of gravity and one of them is the operational effectiveness. The measures, currently undertaken to improve the police situational awareness (established situational awareness centres), rapid reaction, and collaboration with local communities have recognised outcomes. However, the interlocutors shared information about the still insufficient professionalism of the newly appointed staff during operations and police investigations. Corrupted way of thinking and practices used to be between most significant factors for erosion of the police effectiveness.

201.   In preparation of the consecutive anti-corruption strategy (2019-21), the NPU Commission for Assessing Corruption Risks and Implementation Monitoring undertook in late 2018 a survey on the possible corruption risks in the normative base or activities of the National Police. The mapping of corruption   risks   was   organise   in   the   following   areas: NPU organisational structure; internal control system; HRM; procurement procedures; provision of administrative services; implementation of control and supervision functions; compliance with the requirements, restrictions, and prohibitions established by the *Law of Ukraine On Prevention of Corruption*; other issues arising from the NPU activities. Police operations are not explicitly listed, but being the essence of Police mission they need to be precisely protected against corruption and other forms of non-ethical behaviour regarding the citizens.

202.   The Peer Review Team underlines that police misconduct and police corruption are two negative sides of the police integrity and determine its ability to perform the job effectively and ethically. Neither highly skilful but corrupted nor ethical but unprofessional police officers can meet the people demands for better public order. However, while the police officers are in operations (including as a Police component of the JFO), dynamics used to be very high and only well-trained professionals might keep the effectiveness and moral stocked. Based on the NATO approach, the Team recommends MOIA and NPU to focus on police capacity building rather than training (without underestimating its importance). The Police mission is more complex

than the mission of any other law enforcement service, and the servant should get relevant development.

Recommendations:

a.   Include police operations in the mapping of corruption risks. As it is about operation analysis, adequate expertise should be engaged. Cooperation with relevant NATO experts would preferable and productive.

b.   Handle all complaints against police performance in operations. It is essential that the NPU allocate significant attention and resource (high-quality personnel) to investigate appropriately any complaints against police officers performance. No a signal or report should be left without investigation and public accountability. It might be organised on two-three levels depending on the seriousness of the cases.

c.   Introduce the system of after operation debriefings. Debriefings might provide information for evidence-based correction decisions at individual, tactical, organisational, and legal levels.

National Guard of Ukraine

203.   The NGU performs full spectrum operations: from public order and anti-terrorism to peacekeeping and military defence. Recently, the attention is focused mostly on the NGU staff performance in JFO where the conditions are different and extreme as well as very dynamic. The interlocutors underlined the negative impact on staff behaviour of insufficient coordination among different participating organisations. The spread of corruption across the zone of operations has been estimated as a high threat, and special military prosecutor office for the JFO has been established in the city of Kramatorsk (Northern Donetsk Oblast).[34]

204.   Reportedly, the NGU units' commanders of all levels receive general guidelines on combating corruption during preparation and operational deployment as well as orientation on possible sources of corruption and other ethical challenges. However, the ethical problematic is not included yet in the field manuals and other combat deployment documents.

205.   Corrupted dealing with various types military equipment in the zone of operations is seen as the priority risk: false accounting of military property, false discharging of military equipment as "lost," corruption risks related to the misuse of received charitable aid, and others.

206.   SAQ informs about some experience in introducing anti-corruption measures in the *Moral and Psychological Support* Section of the *Mobilisation*

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[34] The JFO Headquarter is located in the city of Kramatorsk.

and Combat Readiness Plan for the NGU Military Units. This Plan reflects the *Law of Ukraine On Mobilisation Training and Mobilisation* (1993!), and is the basic guiding document regarding deployment planning. Despite that the Peer Review Team was not able to discuss the Plan, such a step is seen as very positive. It demonstrates the maturity of understanding the possible impacts of corruption on operational effectiveness and willingness to start systematic preventive work.

207.   The Peer Review Team was not able to clarify what exactly the way is if NGU would like to propose changes of rules of engagement, tactics, standard operations procedures, and others – through MIOA or MOD or the field commanding officer.

208.   NGU reports about enhanced system of training, including on anti-corruption, applied to various categories militaries. Notably, pre-training (at places of recruitment, before the deployment) of officials who will perform duties for military equipment and property management, accounting, and discharging. Special inspections are carried out on proper documentation of everything related to changing the status of military equipment, materials, and property, as well as control for the accurate registration and proper use of donations in any form.

Recommendations:

a.   Continue to improve the anti-corruption planning, mission-specific training, and operational control as components of any military deployment. Pay attention to those military positions that have been identified as risky for corruption and criminality. Use evidence-based training and role games.

b.   Introduce guidelines on ethical behaviour during deployment. Such a document might be generic with opportunity for specification for any particular mission and operational environment.

c.   Strengthen the collaboration with MOD's bodies for ethical control of operations. Each institution might only benefit from mutual reinforcement of prevention and control capabilities. By the end of 2019, introduce guidelines on ethical behaviour for all stages of deployment in collaboration with the AFU.

State Border Guard Service of Ukraine

209.   The interviewed argued that the scale of public interest in the work of the SBGS and the intensity of media and Rada scrutiny are significant. There are high demands to improve customer service (especially from business travellers and tourists) while applying complex regulatory measures. Over the reported period, the reform of the SBGS mobile units "Dozor" was finalised and they were fully operational.

210.   The SBGS operations are unique, and it is challenging to transfer know-how and lessons from the other law enforcement services and AFU. The growing intensity of operations on the borders and border areas represent a substantial burden not only to the professional skills of the staff but also to their ethical power. The Service leaders recognised that in such a complex and dynamic situation, as it is recently on the borders (including after the visa-free regime with the EU), there is insufficient regulation of the anticorruption element of the border control procedures.

211.   From an anti-corruption point of view, a close cooperation between SBGS and the Custom Service of Ukraine could be very productive in terms joint operations, coordinated training, sharing of information and dealing with whistleblowers. During the interviews such opportunity was discussed on the examples of European countries.

212.   The Service has trained professional military auditors, who can monitor the risk of corruption in the field. Their work is included in the operational plans. The Peer Review Team sees the "auditors in uniform" not as the best possible and cheapest solution. Using valuable and expensive officers for a work that could be done by civilians might be only a transitional solution.

Recommendation:

a.   Improve the operational training further to combine professionalism and teamwork. Develop professionalism on the bases of highest standards of integrity, objectivity and sense of patriotism; master skills and expertise; ability to use effectively modern equipment and to manage information; commitment to the rule of law, ethical conduct, accountability and compliance with the SBGS own procedures. Strengthen the team culture through focusing on the Service' singular mission and bringing the staff together in common purpose, mutual support and close partnership.

State Emergency Service of Ukraine

213.   The SESU operations include but not limited to fire fighting, search and rescue, assistance in recovery from accidents, catastrophes, natural disasters and other kinds of disaster events that endanger the life or health of people or cause material damage. The operations emergency character does not provide an opportunity for the traditional type of BI pre-deployment training.

214.   Reportedly, SESU servants have been engaged in the ATO.

215.   The Peer Review Team couldn't get a detailed picture of the particular operations, but noted from the interview that their complexity is expanding with approaching "the temporarily occupied territories of Donetsk and Luhansk

regions." [35] Complexity, dynamism, and ambiguity must be considered appropriately also from anti-corruption and unethical behaviour point of view.

216. In most of the cases, the SASU operations include delivery of immediate personal aid, recovery materials to the local authorities, deployment of interim shelters, and others. From a BI point of view, the establishment of electronic operational control of the delivery of materials is seen as convincing corruption prevention factor

Recommendations:

a. Improve BI pre-deployment training based on up-to-date scenarios. The complex character of the hybrid threats to Ukrainian people and infrastructure likely will require a more sophisticated response and recovery operations, inter-agency coordination, and mutual reinforcement. NATO and EU experience in coordinating such operations might be used widely for bettering the training scenarios, including in anti-corruption aspect.

b. Establish an automated electronic system to control the existence, transportation and delivery of recovery materials. The system will improve both the management of emergency resources and their proper usage in support of the people in need.

Security Service of Ukraine

217. The Commission for the Evaluation of Corruption Risks in the activities of the SSU has investigated the organisational structure, system of internal control, personnel management, procurement procedures, provision of administrative services, control and oversight functions, as well as compliance with requirements, restrictions, prohibitions defined by a law, as well as other issues that arise during the activity of the SSU. The risk assessment identified the field operations as the sphere where cases of corruption and other violations of the ethical behaviour have caused severe damage to the Service reputation. However, the SSU did not answer the SAQ chapter on operations and more information was not provided during the interview.

218. The use of the secret and special operations and equipment is essential to the detection, prevention, and prosecution of public sector corruption, as well as terrorism and organised crime. However, these operations may provide opportunities to servants with low personal integrity, way of thinking, motivation, and conduct are open to question, and so should be carefully considered and monitored.

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[35] Official definition from the Law On Peculiarities of The State Policy to Ensure Ukraine's State Sovereignty in the Temporarily Occupied Territories of Donetsk and Luhansk Regions," passed by Verkhovna Rada in January 2018.

219. The *Law on SSU* (1992) regarding the operations stipulates, "In operational activities, the Security Service of Ukraine combines the principles of undivided authority and collective approach, publicity and conspiracy" (Art 3, p. 2). Such definition provides too much freedom for improvisations that may lead to inter-agency tensions and public criticism.

220. During the interview, amendments of the current legislation were presented and argued as a bottom-up proposal for further reforms of the SSU. However, some questions regarding the functions and operations of the Service remain open.

221. The internal auditing system is established according to the legal requirements. Based on an annual risk assessment strategic (three-year) and operational (one-year) plans are developed. The tools of audit investigations are prescribed by the operational plan, which is compiled annually. All auditing materials are reported only to the head of SSU. According to the interview, the Accounting Chamber has access to audit materials.

Recommendation:

a.   Provide SSU with legal guidance on conducting secret and special operations to detect, prevent and prosecute public sector corruption, as well as terrorism and organised crime. The guidance should address critical issues such as authorisation of operations, monitoring and control, and accountability mechanism..

Procurement

222. According to the discussions, the procurement of specific security and defence items has to cope with a triple challenge. From one side, the MOD and MOIA and subordinated organisations must procure items of emergency needs because of the extraordinary security situation. The "comfortable" gradual procurement of capabilities is almost not applicable. The security sector organisations have only orientation three-year plans, but their realisation is on an annual basis. From the other side, most of the providers of sector-specific items are state-owned enterprises, which in almost all cases have monopoly positions on the national market, they are not transparent and accountable, and are managed by compromised practices. As the primary customer for weapons and military equipment, the MOD, AFU, NGU and SBGS have principle responsibility to fill the production capacity of these enterprises. From the third side, the non-classified items should be provided through the newly established public procurement system.

223. The inherited practice of the *State Defence Procurement Order* was not openly criticised, as alternatives have not been developed yet. However, the

disputants understand how prone to corruption is this system.

224. The interlocutors witnessed that the situation with defence and security procurement is very complicated, the burden on the people is hefty, and corruption risks are high. However, as the comprehensive control system is almost completed, there are high expectations it would be successful in preventing and fighting corruption.

225. The following laws establish the overall legal framework for public procurement of the defence and security organisations:

a. Laws on procurement:

– The *Law on Public Procurement* (2015) defines the general public procurement rules; and *determines* that the legislation should not be applied to those national defence and security organisations that have "specialised procurement organisations" as these organisations shall have their own procurement rules and procedures;

– The *Law on State Defence Procurement Order,* which derives from the *Law On State Secret,* regulates the procurement of classified military items, services and works;

– The *Law on Peculiarities of Procurement of Goods, Works and Services to Satisfy the Defence Needs* determines the procurement rules for operational (military, anti-terrorist, and emergency operations) needs of all defence and security sector organisations "during a special period."

b. Auxiliary laws, related to procurement:

– *On Electronic Documents and Electronic Document Circulation;*

– *About the Electronic Digital Signature;*

– *On Access to Public Information;*

– *On Antimonopoly Committee of Ukraine;*

– *On Prevention of Corruption.*

c. Non-regulatory act:

– Order of the State Enterprise "Zovnishtorhvydav of Ukraine"[36] (2016) on *Approval of the Procedure for the Implementation of pre-threshold*

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[36] Currently, State Enterprise "ProZorro."

procurement.

d. Orders of the Ministry of Economic Development and Trade regarding the procurement (all issued in 2016):

– On *Approval of the Procedure for Posting Information on Public*

Procurement;

– On *Determination of the web portal of the Authorised Procurement Body in the electronic procurement system and ensuring its functioning*;

– On *Approval of Sample Tender Documentation*;

– "On *Approval of the Sample Agreement on the Grant of Access to the e-auction Module and the Database.*

226. There is a "national" system for below-the-threshold procurements (for items and services worth less than UAH 200,000 and works worth up to UAH 1,5 billion) that ensures compliance with the key principles specified by the *Law on Public Procurement* (Art. 3). In such cases, the procurement authority shall publish a report on the awarded contracts within the e-procurement system.

227. The quality of products purchased under public procurement contracts shall be controlled by the commissions composed of a representative of the contracting authority and a commission of the recipient. Representative offices of the contracting authorities shall be located at the production facilities, institutions and organisations to control the quality of items and services procured under the government contracts. The Peer Review Team supposes that this (inherited) system is not relevant to the contemporary management practices and international quality standards.

228. The *Law on Public Procurement* also regulates the procedures for appealing the decisions of the contracting authority.

229. Some of the respondents shared that a large number of normative regulations for public procurement and their continuous changes create many discrepancies and lead to not malicious violations.

230. During the conduct of the NATO BI Peer Review visit, 170 criminal proceedings were addressed and that the abuse of procurement (weaponry, low quality, and others) is the most important case. It was also mentioned that a typical case of fraud is fuelled by the expectation to benefit from disabled packages. The Verkhovna Rada Committee on Corruption Prevention and Counteraction is entitled to conduct investigations over those cases and is also entitled to remove the order for new procurement.

Ministry of Defence and AFU

231.   The SAQ informs precisely about many MOD's internal orders and instructions that determine responsibilities for identification of procurement needs; formulation of public contracts requirements, indicators and costing; budget proposals (according to the targeted programmes and sub-programmes); and contract management. The heart of the procurement process seems to be the MOD Department of Military Technical Policy, Armaments Development and Military Technique of Ministry of Defence of Ukraine and Department of State Procurement and Supply of Material Resources. The role of the unit, authorised to develop defence contracts at the Ministry of Defence, is to summarise proposals for the primary indicators of the contract and to prepare a resolution of the Cabinet of Ministers of Ukraine for approval. Defence procurement decisions might be public and classified. The former is realised according to the *Law On Public Procurement.* The SAQ does not provide information on the classified procedures. The budget payments are centralised.

232.   The procurement at the MOD is organised as centralised and de-centralised, depending on the stock list, specifics, quantity, volumes, and other criteria. For the "targeted programmes" (and sub-programmes) as procurement managers are authorised: heads of eight MOD departments, ten General Staff units, and the Command of the Armed Forces, Joint Operational Headquarters, Logistics Command, Rear Services of the Armed Forces, Armaments and Military Equipment Department of AFU, and the Main Department for Operational Support of the Armed Forces – all together 23 procurement authorities. Only one of them – the Department for State Procurement and Material Resources provision for the MOD seems to be professional in all elements of the procurement process.

233.   Tender committees support both the centralised and de-centralised procurement. In the MOD, the Tender Committee is independent body in which various ministries and MOD departments are represented. The General Staff of AFU, as the general customer and main source of technical requirements, is not embodied. The members have different profiles and expertise, as well as special training and certificate on procurement (however, participation in the Committee is not the experts' primary job). The Committee meets *ad hoc* 4-5 times a week. Currently, there are twelve members of the Committee, three of them female. The Committee takes decisions with 2/3 majorities. Their responsibilities include overall planning, organisation, management and documentation of tenders. The SAQ does not inform about any specific requirement to the members regarding education and experience. It is mentioned that, after their promotion, the members "… may undergo training in organising and running procurement procedures

234.　The lower-level budget holders (commanders of branches, types of troops (forces), heads of other bodies of military control, commanders of military units, heads of institutions and organisations) are authorised for decentralised procurement. Tender committees are established in support of each budget holder.

235.　The introduction of e-procurement system ProZorro is widely recognised as a great success. "ProZorro is a state-owned online public procurement platform and a collaboration environment that ensures open access to public procurement (tenders) in Ukraine. Fully implemented in 2016 as a hybrid system (both centralised public and decentralised private marketplaces) it is recognised as one of the most innovative public procurement systems delivering services in a stakeholder-focused, transparent, effective, fair and low-cost way. It was reported that the Ministry of Economic Development and Trade, in conjunction with the State Treasury Service, continue to improve the platform to be able to display the payments on procurement contracts. However, e-procurement only permits contract evaluation and tender on consumable items. Thus procurement of any item listed on the State Secrets equipment list (the majority of military type equipment) is not conducted with e-procurement. In fact, the law of procurement permits sole source contracting for items listed on the State Secrets list, which is a significant corruption risk and not subject to extensive review by cabinet or the public for public funds expenditure.

236.　At least seven general and specific laws and 15 executive resolutions and orders regulate the disposal of the military assets. The process of determining, listing, and monitoring the disposal of military assets and property is under the exclusive control of the MOD. There is an annual list of property disposals published by the MOD, and these are posted on the MOD website. The valuation of movable and immovable property items is carried out by independent commercial entities selected on a competitive basis, and the competition information is published in the media and on the MOD website. The Cabinet of Ministers takes the final decision on the alienation of military assets that are still operational but not used anymore by the troops, surplus assets, as well as complex facilities, including military camps and other immovable property. Institutions and companies, authorised by the Cabinet of Ministers, carry out the realisation of military assets disposal. They are obliged to offer competitive, open and transparent tenders. The MOD receives 50% of the revenue from military assets disposal through the Special Fund. According to the Art. 13 of the *Code of Budget*, the revenue of the Special Fund entirely belongs to the MOD overall budget. It falls under the Parliament's decision-making procedure. Half of it covers medicines, healthcare, and educational costs.

237.　Special procedures are established for the destruction and utilisation of

discharged and not suitable for further storage ammunitions with Cabinet of Ministers' final decision. Private and public companies may apply to tenders for utilisation, as well as for sale of ammunition.

238. The explained law-based procurement procedures are improved compared to the previous SAQ in some legal and procedural aspects. However, the Peer Review Team noted the following two critical issues regarding the rate of competitive versus single-source and open versus classified procurement:

- First, as already underlined in the previous two SAQ, the Ukrainian defence industrial complex receives the major part from the purchase of arms and military equipment. A significant proportion of the contracts are signed on the basis of the governmental defence purchasing system under the *Law On State Defence Procurement Order.* Doing business by the state administration with state-owned UkrOboronProm and other industries needs special attention. The fundamental problem is that, if the supplier is subordinated to the customer then either the supplier should risk its profit and efficiency, or the customer should receive inferior quality products, or the cost of the product will grow to meet the requirements of both, but the taxpayers will pay the marge. A more reliable regulative mechanism should be established to secure both effectiveness and efficiency and to strengthen transparency and accountability.

- Second, the following SAQ comment needs particular attention, discussion, and reflections: "As procurement of items, works and services for defence needs are *mostly classified,* and *there is no competition* in the national market of armaments and military equipment, competitive procedures shall not apply to the selection of contractors. This means that there is a risk of excessive pricing by monopolist companies." On the other side, the SAQ informs, "In 2016, *up to 10%* of defence procurement procedures were conducted *via the e-procurement system* and were based on open tenders and below-the-threshold procedures[37]."

Recommendations:

a. Continue reforming the defence procurement system. Establish a system of periodical evaluation, assessment, and adjustment based on the regular collection of data. Reduce the level of secrecy and closed procurement procedures for the sake of increased transparency, accountability and market-oriented results.

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[37] Italic added.

b.   Start hiring procurement professionals. Professional militaries transferred into businessmen are not relevant perspective. Procurement should be an utterly civilian profession for people with appropriate education and expertise selected on competitive principle. Increase the level of individual BI-specialised training of the staff in the finance department of MOD and the economic directorate of the General Staff.

c.   Replace the current system of military representatives to the production enterprises with relevant International Standards for quality, integrity, and others.

d.   Continue to move from tender committees to the system of authorised persons with scorecards to increase the accountability and individual responsibility for the selection decision. Concentrate on life cycle management approach when defining the procurements' requirements of armament and military technics.

e.   Introduce as a priority a lifecycle-based costing and supply of military systems. Use NATO' *Generic Cost Breakdown Structure* [38] and request transfer of experienced know-how.

f.   Start working on the development of a modern *acquisition* system. Ukraine capital investments in defence equipment are sharply growing, and the national defence industry should be able to cope with the development and production challenges. The new system should move the focus from procurement towards modern defence acquisition that includes concepts and technology development, experimentation and testing, defence systems procurement, sustainment, and lifecycle management.

g.   The new acquisition system should be established as a component of long-term defence planning and projects management. Long-term planning, as it is practised in NATO, is vitally needed for the AFU. As its introduction requires specific training of various specialists as well as preparation of comprehensive documentation, database and specialised software, the preparation must start as soon as possible. Transfer of NATO know-how is highly recommended.

h.   Intensify the inter-ministerial cooperation of the internal audit department of MOD with other defence and security State organs as a vanguard for increased professionalism and individual capacity building of audit experts – especially the respective internal audit division of the SSU in the field of transfer of expertise, knowledge and experiences.

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[38] See Cost Structure and Life Cycle Costs for Military Systems (RTO TR-058 / SAS-028), available at https://apps.dtic.mil/dtic/tr/fulltext/u2/a418708.pdf

State Special Transport Service of Ukraine

239. The SSTSU' corruption risk assessment Commission estimated the public procurement as the second in importance factor. Despite the relatively small cost of the tenders (for example, for military uniforms) and the use only of ProZorro platform a corruption problems exist or are potential.

240. The Peer Review Team sees also a challenge in the fact that the Service maintains its own logistics capacity for medical health care, housing construction and exploitation management, catering and others – no outsourcing in any form. A solution like this fits to well-funded organisations, which the Service is not.

241. Eventual provision of resources for capital investments will make the SSTSU a beneficent of the State Defence Order. Such decision would require a procurement capacity that the Service currently does not have.

Recommendation:

a. Establish a flexible procurement system. As a member of the MOD system, the Service could save the well-established public procedures and ProZorro opportunist for procurement of goods and services for daily operations needs and start using the MOD bigger capacity for state-level supplies and especially, when the purchase should be made abroad.

Ministry of Internal Affairs

242. The MOIA performs procurement for the central administration and territorial units. Public procurement is conducted through ProZorro e-procurement system except the items particularly listed by the *Law on Public Procurement.* However, there is not a specific department on procurement, which means that the responsibility for the organisation of public tenders lays entirely on the Procurement Committee and provision of materials and services is through the State Order mechanism.

243. The Ministry should support its policy implementation through quality and timely procurement of capabilities. However, the Peer Review Team noted that, in the current situation, it is not very clear who should be accountable to whom for the procurement of capabilities. The Tender Committee is a collectivised body that supports cost-effectiveness decision-making, but the responsibility for institutional functionality is political. Moreover, the coordinating role of MOIA also presupposes the coordination of the procurement plans and budgets of subordinated organisations.

244. The currently valid corruption risk assessment does not include procurement between the sensitive processes. Nevertheless, the annual

(2019) Anti-corruption programme envisages the implementation of measures to comply with the requirements of the financial control, prevention and settlement of conflicts of interest; prevention of corruption in the field of public procurement; strengthening of the efficiency of financial resources management; development and support of the internal audit system.

Recommendations:

a.   Establish a procurement policy. The procurement policy should set out principles of suppliers' selection, contracts management, securing equal opportunities for small and medium-sized local businesses, ensure proper projects governance, monitoring of suppliers to avoid critical risks, and others.

b.   Create a single, integrated (ministerial) procurement system to issue tenders and manage contracts. Create an organisation for defining and planning capability requirements and introduce lifecycle-based costing for a smart procurement. Continue to move from tender committees to the system of authorised persons with scorecards to increase the accountability and individual responsibility for the selection decision.

c.   Increase competition between the suppliers eliminating most of the recently classified orders of subordinated organisations.

d.   Make the procurement management professional. At the Ministry-level, any function, notably procurement, should be performed professionally as a singular job. Tender Committee might be helpful to some extent only – it can't be a policy making and advising body.

e.   Set up independent equipment testing and quality assurance process. The MOIA should develop interoperability between the subordinated institutions, including in a technical aspect.

National Police of Ukraine

245.   A Tender Committee, which members are "unbiased," performs the procurement function. However, the NPU corruption risk assessment evaluates the possible discrediting of police officers that are members of tender committees as with "medium" intensity, and the existence of a hidden conflict of interests as "low" intensity risk.

246.   Majority of the tenders (95%) are public and performed through ProZorro. The current tenders are published on the NPU website – most of them are for provision of living facilities for the Police staff. Performed tenders are also publicly reported.

247.   NPU maintains a list of providers that have failed to supply their obligations ("blacklist") for different reasons; currently, one company was

listed in 2017.

Recommendation:

a.   a consolidated Police procurement system. A Police Service of 140 000 people, deployed to any town across a vast territory, needs of the adequate mechanism of capabilities procurement. The NPU leaders should review and map out the current governance structure for all police expenditure, including procurement, and design, in collaboration with territorial bodies of NPU and other stakeholders, continue to improve a unified system to secure value for money procurement and systematic advancement of the Police capabilities.

National Guard of Ukraine

248.   The NGU performed tenders for about 100 million EUR saving more than 2.5 million EUR using ProZorro. However, the prevention of corruption in public procurement is one of the anti-corruption programme' priorities for ensuring effective management of financial resources. As NGU suffers from a severe budget deficit, the control of expenditures is seen as a critical tool not only from the integrity point of view but also for maintaining the operational effectiveness.

249.   NGU, as military formation, also uses the State Defence Order mechanism for procurement of items provided by the state-owned enterprises. For that reason, addressing the NGU' needs of materials and services depends more on the Government policy than on own budget. It was reported that NGU local units receive good sponsorship from authorities and private sources. Therefore, it is difficult to estimate the value provided for the procurement money.

250.   A Department for public procurement is the executive body of the Tender Committee. The internal audit is very well established in both central administration and territorial units and is used widely for compliance and effectiveness assessments.

Recommendation:

a.   Improve procurement effectiveness. As a military-type organisation, NGU should also apply the capability-based planning and this way, to establish a doctrinal approach to the procurement of items and services. In this aspect, procurement should also be coordinated with developments in the AFU as well as with the ongoing foreign assistance. NATO support for the introduction of capability-based planning might be requested simultaneously with the MOD.

State Border Guard Service

251.	Regarding the procurement procedures, Department of Resource Supply provides methodological guidance and monitoring of compliance with the requirements of the legislation.

252.	Online information is provided for annual procurement plans, open tendering procedures, closed tenders and taken decisions, and decisions to dismiss participants in public tenders for violations of rules.

253.	The SBGS has performed 514 procurement procedures in 2019, all public. However, the SBGS website does not provide information regarding open and completed procurement procedures as it is the general practice.[39]

Recommendation:

a.	Develop procurement information page on the website. Information provided through the website on planned, open, and concluded procedures has essential anti-corruption value, especially for the media and specialised civil organisations. It also gives orientation to the national and international business that will have an impact on competitiveness and better costing.

State Emergency Service of Ukraine

254.	Public procurement in SESU is organised according to the legal requirements and established by MOIA procedures. A Tendering Committee is managing the process and is responsible for providing the Service with high values for the money dedicated to emergency management. The tendering procedures are in a small number and are preformed through ProZorro platform - there were 12 pre-threshold purchases in 2019,

255.	The BI training of the Tendering Committee members is conducted as explanatory of the anti-corruption and public procurement legislation and is focused on the sanctions they imply. However, further improvement of the training based on their own lessons as well as information for unethical behaviour for the other security organisations is highly recommended.

256.	Insignificant numbers of supplies are performed through "simplified procedures" of direct negotiations. A critical aspect of this process would be not-authorised contacts between negotiators and suppliers.

257.	The practice of inter-agency procurement of commonly used items (administrative cars, computers, office equipment, and others) in MOIA format does not exist.

Recommendation:

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[39] For example, visit the website of the Polish Border Guard regarding the procurement at https://portal.smartpzp.pl/kgsg

a.   Expand further the share of purchases made through ProZorro platform. Despite the deliberate planning, the SESU could not be completely prepared in terms of materials and services for all emergency situations. However, the number of procurements through direct negotiations should be kept at the minimum, and special anti-corruption measures should be undertaken in any case, including by the Internal Audit.

Security Service of Ukraine

258.   The SSU corruption risk assessment identified possible ineffective use of budgetary funds allocated for centralised provision of the SBU structures with computer equipment, general-purpose software and consumables as medium intensity risk.

259.   Annual plans for public procurement are developed separately for tender committees of public funds managers. Plans could be amended at any time to meet operational needs.

260.   Tender Committee provides public procurement of non-classified items and services through the ProZorro platform. Information on the proportion of classified procurement was not provided.

Recommendations:

a.   Provide transparency on public procurement. The effectiveness of democratic control and anti-corruption measures, as well as the SSU public image, can only benefit from similar to the other security sector organisations transparency of public procurement. Published online annual plans are for 2015 and 2016 and are not accessible.

b.   Endure with the endeavour to be in 100% compliance with the *International Standards for the Professional Practice of Internal Auditing (Standards).*[40]

Engaging with defence companies and other suppliers

261.   The previous SAQ emphasised that "the mechanisms of oversight and the practical relationships between the employees of the defence industrial complex and civilian and military personnel of the Ministry of Defence and armed forces are critical areas, which need serious attention." Recently provided information argue an improvement, achieved through procurement related normative acts and regulations – the laws *On State Defence Order,*

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[40] *International Standards for the Professional Practice of Internal Auditing (Standards)* are available in Ukrainian language at https://na.theiia.org/standards-guidance/mandatory-guidance/Pages/Standards.aspx

On Public Procurement, and On Organisation of Defence Planning, as well as the Cabinet of Ministers' *Regulations On State Defence Order and On Development of Manufacturer Register*, and others. However, those normative acts do not define anything about the personal relationships during various stages of the procurement process. The *Law On Prevention of Corruption* sets out some general to all public servants rules. They reflect the defence and security sector procurement to some extent but not completely.

262.   Despite repeated by the answers, the guidance on non-use of agents or liaisons between the customers (procurement authorities) and suppliers of *State Defence Procurement Order* is not altogether clear. Dualism is a fact due to, from one side, legal prohibition of using intermediaries, and, from the other side, the inherited and widely used system of military representatives to defence items production units.[41] There is an obvious conflict of interest in this case that is different from the existing in the public service and needs specific analysis and regulation. If the military representative' integrity was compromised by a conflict of interests neither the quality of production nor reasonable prices would be secured.

263.   The absence of regular rotation of the military representatives is also a corruption risk factor.

264.   For the ordinary public tenders, the e-platform ProZorro limits the necessity to engage officers and civil servants in direct relationships with state, private, and foreign suppliers at some stages of the procurement process; puts all bidders at equal bases; neutralises opportunities of correcting the requirements according to someone's preferences; makes the tendering process transparent and controllable by the media and public. But, it is limited to non-classified consumable like procurements.

265.   The Ministry of Finance makes control and prevention of improper payments in cases of violation of legal requirements, cancellation of the tender procedure, and entry into force of a court's decisions that invalidates the procurement procedure.

266.   From the information gathered during the interviews with the MOD a function is missing to address the equipment offer and demand on the supplies market. Such gap may create opportunities for purchasing equipment, which is not required or does not match the assessed needs. A case of pressure was reported to the NATO BI Team where the media, aware of the situation managed to counterbalance the pressure exercised by a defence company and the purchase of some not required equipment. The introduction and implementation of a capability based planning mechanism is

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[41] In Russian "военная приемка." Used in all former Warsaw Pact countries.

acknowledged as being an added value pre-empting from such risks and contributing to reduce the risk of purchasing not required equipment.

Recommendations:

a.   Introduce a "Defence procurement integrity pact" as an agreement between the defence and security sector organisations and all real and potential providers of materials, works, and services to setting out "…that neither side will pay, offer, demand or accept bribes; nor will bidders collude with competitors to obtain the contract, or bribe representatives of the authority while carrying it out."[42].

b.   Introduce "Common Industry Standards" at least for the state, private, and foreign companies, agents and other intermediaries, consultants, representatives, distributors, contractors and suppliers, consortia, and joint-venture partners working in the Ukraine defence economic sector.[43]

c.   Develop systematic education and training programmes on procurement and other business relationships. International experience sharing could complement curricula/professional development programmes on issues like lifecycle costing, business negotiations, contracting and contract management, public-private partnerships and outsourcing, and others.

CONCLUSIONS

267.   The comprehensive, open, and detailed reply to the Self-Assessment Questionnaire demonstrates leadership commitment, experts' dedication, and admirable citizen position regarding the importance of building integrity in the defence and security sector organisations. The open acknowledgement of corruption risks is a key precondition for moving forward.

268.   The answers illustrate concrete achievements beyond the new laws and programmes in almost all areas prone to corruption but it also highlighted within many new laws, potential areas which open Ukraine up to the risk of corruption. Most effective between them are those that change the environment and provide ground for sustainable improvement like the e-declarations for preventing conflicts of interests, e-procurement platform, serious improvement of the usability of the MD' website, the hotlines for

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[42] The Integrity Pact is a tool developed by Transparency International to help governments, businesses and civil society fight corruption in public contracting. Source: https://www.transparency.org/whatwedo/publication/integrity_pacts_in_public_procurement_a n_implementation_guide

[43] For example, see "European Common Industry Standards for the prevention of corruption in the Aerospace and Defence sector" at https://www.mbda-systems.com/wp-content/uploads/2015/04/ASD_Common_Industry_Standards.pdf

reporting and measures to stimulate and protect corruption whistleblowers, publication of annual reports and White Books, and many others.

269. Simultaneously, several critical areas are continuously seen as highly risky. Personnel policy, procurement of capabilities and relationships with commercial entities, military economic activities and state owned defence enterprises, integrity in the Joint Force Operation are between those where comprehensive reforms are expected.

270. The Peer Review Team noted that current focus is placed mostly on the anti-corruption problematic. The overall integrity building requires also development of new personnel policy and management, a definition of the contemporary military professionalism, improvement of the working environment, and effective leadership. The current achievements are promising, but the way ahead requires coordinated shifting from specific measures towards a comprehensive and sustainable policy on integrity.

271. The Self-Assessment Questionnaire/Peer Review Process is one of the tools that connect NATO and the Allied nations with Ukraine' comprehensive defence and security sector reform. This instrument is capable to provide further support for transfer of advanced know-how, advice, training and material support on both structural and immediate operational issues. The introduction of proven democratic practices and standards will turn the structural reforms into societal effects – security, stability, and prosperity.

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