

**Government of Ukraine Report on Diagnostic Study  
of Governance Issues Pertaining to Corruption,  
the Business Climate and the Effectiveness of the Judiciary**

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**Prepared with the Assistance of the Legal Department of the International  
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## I. BACKGROUND

1. **Under Ukraine’s Stand-By Arrangement (SBA) with the International Monetary Fund (IMF), improving governance and transparency is one of the key objectives of the program along with restoring macroeconomic stability and laying the foundation for robust and balanced growth.** (See Ukraine’s Letter of Intent (LOI) addressed to the Managing Director of the IMF, dated April 22, 2014, at paragraph 2). Under Ukraine’s Memorandum of Economic and Financial Policies (MEFP) that is attached to the LOI, Ukraine committed to a comprehensive diagnostic study on certain governance issues to be completed in close consultation with IMF staff by July 15, 2014 (see paragraphs 24-25). The completion of the diagnostic study by the government of Ukraine is a structural benchmark under the program, whose implementation will be discussed by the IMF Executive Board as part of the First Review of the SBA. The government committed to following up on recommendations of the study. IMF staff assisting with the study visited Kiev from May 28 to June 11 and from June 24 to July 4.<sup>1</sup>

2. **Consistent with the objectives of the SBA for Ukraine, the diagnostic study focused on three key governance areas:**

- Corruption, especially high-level corruption—including corruption associated with public procurement, tax evasion and money laundering—that can have a significant negative macroeconomic impact;
- Assessing the impact on the business climate arising from the general design and implementation of the legislative and regulatory regime governing economic activity in Ukraine; and
- The effectiveness of the judiciary, in particular with respect to resolving commercial disputes. The concern is that if commercial disputes are not resolved in a consistent, timely, and transparent manner, this can result in a serious drag on economic activity and innovation.

3. **In order to assess the pertinent areas of focus, the study encompassed discussions with a wide variety of stakeholders.** Meetings were held with government ministers and agencies, the National Bank of Ukraine, judges and court administrators, a selection of parliamentary deputies, and representatives of civil society and the business sector. The study was coordinated by the Ministry of Finance and the National Bank of

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<sup>1</sup> The Legal Department of the IMF was responsible for providing the assistance. IMF staff assisting in the study included Ceda Ogada, Kyung Kwak, Emmanuel Mathias, Sebastiaan Pompe, Natalia Stetsenko and Jonathan Pampolina, all of the IMF Legal Department. Jerome Vacher, the IMF Resident Representative in Ukraine, and his office also provided valuable assistance.

Ukraine. Other key agencies participating in the study were the Ministry of Justice, the Fiscal Revenue Administration, the Financial Intelligence Unit, the Anti-Corruption Commissioner, and the working group on corruption of the Presidential administration (corruption issues); the Ministry of Economy (business climate issues); and the Supreme Court, the High Council of Justice, the State Judicial Administration and the State Enforcement Service (judiciary issues). The Ministry of the Cabinet of Ministers also participated. Discussions were also held to hear the views of international organizations and bilateral agencies involved in providing assistance to Ukraine in the areas of focus. (See Annex A) This report sets forth the study's main findings and conclusions.

### A. General Observations

4. **Throughout the study, it became clear that there is widespread agreement in Ukraine that corruption is pervasive and oppressive, that the business climate is severely hampered by an over-bearing and opaque regulatory framework, and that the judiciary is ineffective in resolving commercial disputes in a consistent, timely and transparent manner.** Several over-arching causes for this state of affairs were advanced by stakeholders. With respect to the executive branch of government, the following were highlighted as problematic:

- A bloated, inefficient and politically-controlled public service sector, characterized by lack of transparency in its processes and decisions, low pay, an insufficient skills base and duplication of responsibilities among agencies;
- The lack of a proper general administrative procedure to guide the relationship between citizens and the state with regard to public rights and benefits; and
- Over-regulation of business activities.

With regard to the legislative branch, stakeholders stated that some members of Parliament also contributed in a major way to the governance issues under study because:

- The financing of political parties and the nominations of candidates to Parliament by the various parties are fraught with corruption;
- Laws are passed that are narrowly tailored to advance specific personal or business agendas rather than the public good. In so doing, laws are also repeatedly amended—even after just having been passed—thus contributing to lack of legal certainty;
- Parliamentarians interfere in the appointments of judges in ways that undermine judicial independence;

- The problems stemming from Parliament are driven in part by the immunity of parliamentarians from criminal investigations; and
- Some interlocutors summarized Parliament's role as engaging in "legalizing corruption".

With regard to the judiciary, the key problems causing its ineffectiveness were noted as lack of judicial independence, pervasive corruption, and a complex and unwieldy judicial structure and court process. While the problems affect the judiciary in all domains, commercial disputes are said to be particularly affected.

5. **A recurring phrase used to summarize the overall situation was "state capture" by blocks of powerful political and economic elites that are pyramidal in structure and entrenched throughout public institutions and the economy.** These pyramids have typically taken the form of powerful well-known elites at the top, heads of agencies in the middle and agency staff at the base. They are perceived to control appointments in the public sector, to ensure the application of regulations in a manner that entrenches their oligopolistic control of the economy and keeps a tight lid on public access to information. These elite power structures are viewed as predatory, with an overarching objective of self-enrichment, and purposely pervert the constitution and the legislative and regulatory framework as well as institutions to that end. The pervasive mid- and low-level institutional corruption is viewed as a product of that predatory structure, and many observers believe that it cannot be tackled without first addressing the predatory structures. The tax administration, the police, the Prosecutor General's Office, the State Enforcement Service, and the judiciary were noted as having traditionally been viewed as among the most corrupt public institutions. Officials in these powerful agencies are believed to have formed corrupt networks that abuse their formidable powers over investigation, prosecution and conviction to intimidate, obtain bribes, raid and harass corporate and business interests for the benefit of the powerful political and economic blocks referred to above.

6. **At the same time, there is a keen appetite and energy for reform in Ukraine to address the issues of corruption, the unfavorable business climate, and an ineffective judiciary.** In this regard, the study found a strong belief that there is a real window of opportunity for change in Ukraine following the recent political developments. Stakeholders in the civil and business community recognized that, under the new government, some reforms have begun to take place and others are in various stages of consideration and planning. It is also apparent that there is close scrutiny of public officials from the public at large, civil society and the business sector, who believe this is the time for sustained pressure for reform. Furthermore, there is increased demand for public consultation in the legislative and regulatory process. Other international organizations and bilateral partners of Ukraine are also increasing their engagement in the country, emphasizing that they want to take advantage of the window for reform. Nonetheless, it is acknowledged that the necessary reforms have just started and very much more remains to be done. Some of the suggestions for reform are very far-reaching. For example, many interlocutors called for a comprehensive restructuring

of the public sector to re-distribute in a more efficient and effective manner the competencies of government among the three branches of government. Others called for a massive retrenching of the public sector followed by substantial salary increases, benefits and training for the remaining complement. Many called for reform of political party financing, the nominations and distribution process for parliamentary seats, and an overhaul of procedure for initiating and adopting legislation. Others favored dismissal of all judges and recruiting an entirely new set through an elective process.

7. **The challenges to the current momentum for reform are sobering and well recognized.** They include a public impatient for reform; an uncertain political environment in which the make-up of parliament and perhaps of the government may change following possible early parliamentary elections; conflicting views on the way forward within the civil society reform movement on some issues; obstructionism from powerful vested interests; need for more structure within the government to drive and coordinate the reform effort; and the pressure caused by events in eastern Ukraine. In particular, it was constantly emphasized in discussions that, without sustained political will at the highest levels of government and politics, progress will be very difficult. Civil society and business sector representatives also stressed the importance of adequate coordination among international organizations and Ukraine's bilateral partners if the reform program is not to be over-burdened by being pulled into several directions. In this regard, some interlocutors stressed that assistance from international organizations and bilateral partners had sometimes been perceived as simply engaged in "ticking the boxes" as opposed to facilitating deep, well-thought out, systematic and ultimately sustainable and effective reforms.

8. **For each of the three areas of the study's focus, the main findings and conclusions are set forth in the subsequent sections.** As already mentioned above, the causes of the governance challenges are viewed as wide-ranging. As such, tackling the identified issues will require a similarly broad range of strategies. While the government is keen on using Ukraine's IMF-supported program as a vehicle for addressing many of these issues, it also recognizes that some of the proposed solutions heard during the study cannot be addressed under an IMF-supported program. For example, the IMF, as a specialized technical agency dealing with economic matters has no mandate to engage in political matters such as the proper relationship between citizens and the state, the appropriate distribution of competencies among the branches of government, political party reform or the apportionment of seats in parliament. It must thus be emphasized that the potential areas that may be discussed by the government and the IMF staff for possible inclusion under Ukraine's IMF-supported program are focused on measures that are judged to have a direct economic impact.

## II. CORRUPTION

### A. Overview of Existing Literature

9. **As part of the diagnostic study, a wide range of already existing reports on corruption in Ukraine prepared by the business community, civil society groups,**

**international organizations and bilateral partners of Ukraine was reviewed.** The literature points to a general consensus that corruption is pervasive and entrenched in Ukraine. In particular, Ukraine is perceived as one of the most corrupt countries, ranking 144 out of 177 countries in the Transparency International index in 2013.<sup>2</sup> Collusive ties between political and economic elites are seen as contributing to and facilitating corruption in all spheres of public life—from huge procurement contracts, to tax collection, to licenses and permits for small and medium-sized enterprises (SME). The political elites are said to have rapaciously used the state to enhance their wealth, especially during the period of mass privatization of state-owned enterprises, while the economic elites are seen as having used their wealth to enhance their political power.<sup>3</sup> In this regard, the merger of political and business interests has led to the emergence of major financial and industrial structures in which political and economic elites apparently used their wealth and their influence over the government to fortify their control in pyramid-like structures throughout the public service and the economy.<sup>4</sup> Under this widespread view, personal material interests of these political and economic elites have become a major determinant of public policies (amounting to “state capture”).<sup>5</sup> This economic situation hinders fair competition, encourages under-the-table deals, and promotes corruption.<sup>6</sup> There is little public confidence in either current preventive or enforcement measures regarding corruption. On the occasions where enforcement takes place, such enforcement is viewed as aimed at lower-level state employees or used for retribution in political vendettas.<sup>7</sup> Proceeds of corruption are not properly detected, investigated, prosecuted or recovered.

## **B. Reform Proposals in the Literature**

10. **The literature recognizes that a number of anti-corruption initiatives have been developed, including over the recent months, by the authorities and civil society.** The government announced a new general anti-corruption strategy which had been called for by the civil society and in particular non-governmental organizations (NGO), experts and journalists that developed the “reanimation package of reforms”.<sup>8</sup>

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<sup>2</sup> Transparency International, *Corruption Perceptions Index: Ukraine*, 2013.

<sup>3</sup> See generally TORO Creative Union - Transparency International National Contact in Ukraine, *National Integrity System Assessment: Ukraine*, 2011.

<sup>4</sup> See generally World Bank, *Ukraine - Building Foundations for Sustainable Growth: A Country Economic Memorandum*, 2004.

<sup>5</sup> See generally USAID, *Anti-Corruption Assessment Handbook: Final Report*, February 28, 2009.

<sup>6</sup> See generally World Bank, *Ukraine—Building Foundations for Sustainable Growth*.

<sup>7</sup> US Department of State, *Investment Climate Statement*, February 2013.

<sup>8</sup> Reanimation Package of Reforms, Newsletter No. 1, May 2014.

This group proposed a set of measures to fight against corruption along five priorities: (i) strengthening the integrity and accountability of the public sector; (ii) ensuring transparency of political party finances; (iii) guaranteeing access to publicly-important information; (iv) reducing corruption risks in the public procurement process; and (v) increasing capacity for detection and criminal prosecution of acts of corruption. NGOs involved in anti-corruption efforts, including in relation to the reanimation package of reforms include Transparency International Ukraine, the Anti-Corruption Action Center, the Center for Political and Legal Reforms, and the Association of Ukrainian Monitors on Law Enforcement.

11. **Several international organizations and bilateral agencies have long been involved in institutional reforms to reduce corruption in Ukraine.** Institutional reforms and reduction of endemic corruption are one of the key priorities of the European Bank for Reconstruction and Development (EBRD) in Ukraine, covering the strengthening of non-state institutions and advocacy for fair treatment of businesses, including through the establishment of an independent Business Ombudsperson.<sup>9</sup> The European Commission has been recommending further improvements to Ukraine's anti-corruption legislation, including the strengthening of mechanisms for independent oversight on asset disclosure and the reform of rules on the immunity of members of parliament from criminal proceedings.<sup>10</sup> The Organization for Economic Cooperation and Development (OECD) is mostly involved through the Istanbul action plan. While this action plan is a voluntary process and reports are only published with the authorities' consent, it offers a comprehensive source of information on progress made. Progress is being encouraged particularly with regard to anti-corruption bodies, political party finances, procurement and the judiciary.<sup>11</sup> The Council of Europe Anti-Corruption Group (GRECO) recommended further developments to the composition of Ukraine's National Anti-Corruption Committee created in 2010 to analyze the corruption situation in Ukraine, to develop strategies against this phenomenon and to monitor their implementation. It underscored the importance of its independence, which should be broad-based and representative of society.<sup>12</sup> The Council of Europe Anti-Money

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<sup>9</sup> EBRD, *Transition Report: Stuck In Transition – Ukraine Country Assessment*, 2013.

<sup>10</sup> European Commission, *Implementation of the European Neighbourhood Policy in Ukraine, Progress in 2013 and Recommendations for Action*, March 27, 2014, p. 8.

<sup>11</sup> OECD, *Istanbul Anti-Corruption Action Plan for Ukraine: Second Monitoring Round (Progress Update)*, April 2014.

<sup>12</sup> GRECO, *Joint First and Second Evaluation Round: Compliance Report on Ukraine (4<sup>th</sup> Addendum)*, March 28, 2014, pp. 3-4. It should be noted that the National Anti-corruption Committee only met once during the last three years.



Laundering Group (MONEYVAL) has also recommended various improvements in the AML/CFT regime.<sup>13</sup>

12. **As a part of the anti-corruption efforts, the World Bank has included conditionality on assets disclosure in the context of its development policy loans (DPL).**<sup>14</sup> While assets disclosure has been required since 1993, enforcement and verification have not been taking place, and the World Bank's recent DPL1 included a prior action for the submission to Parliament of "legislation to establish centralized external verification of financial disclosures by elected and senior public officials and disciplinary and administrative accountability for those who fail to comply with financial disclosure requirements or misrepresent financial information". The authorities went further and Parliament has already enacted amendments to the anti-corruption law delegating the verification to the tax authority and including administrative sanctions for failure to properly comply with disclosure requirements. As a trigger for DPL2, the authorities are required to "enact legislation to establish centralized external verification of financial disclosures by elected and senior public officials and disciplinary and administrative accountability for those who fail to comply with financial disclosure requirements or misrepresent financial information and establish an independent anti-corruption preventive agency responsible for the verification of asset declarations". The World Bank contemplates that 100 percent of the financial disclosures for elected and senior public officials would be subject to external verification by 2015.

13. **A wide range of anti-corruption conditionality has also been included in recent EU initiatives.** The EU State Building Contract (SBC) financing conditions require that by the second quarter of 2015, there will be: (i) a fully operational law enforcement anti-corruption agency targeted at high level officials; (ii) alignment of the criminal code with GRECO and OECD standards; (iii) alignment of the criminalization of illicit enrichment with UNCAC; (iv) entry into force of a law on reform of the Prosecutor's General's Office; (v) entry into force of constitutional amendments on the independence of judges; (vi) entry into force of a reform of the High Council of Justice, the justice system and the status of judges; (vii) implementation of an effective system for verification of declarations of assets, income and expenses of public officials; (viii) reformed system of prevention and resolution of conflict of interests of civil servants; (ix) implementation of an access to public information law; (x) civil service and administrative procedure reforms; and (xi) access to public registers, including beneficial owners of companies and immovable properties.<sup>15</sup> The EU-Ukraine Visa

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<sup>13</sup> MONEYVAL, *Mutual Evaluation Report: Ukraine*, March 19, 2009; *First Progress Report*, September 27, 2010; and *Second Progress Report*, December 6, 2012.

<sup>14</sup> World Bank, *First Development Policy Loan: Program Document*, May 9, 2014.

<sup>15</sup> See Ukraine, Ministry of Economy, *Information on the State Building Contract between Ukraine and the European Commission*.

Liberalization Action Plan also includes measures aiming at improving the fight against organized crime, terrorism and corruption.<sup>16</sup>

### C. Discussions During the Diagnostic Study

#### General Observations

14. **Discussions during the diagnostic study confirmed the widespread view in the literature that corruption in Ukraine is pervasive and entrenched.** While recent positive developments are broadly recognized, it was stressed by the full range of stakeholders that much more needs to be done and that strong vested interests continue to resist change.

#### Issues Raised

15. **Interlocutors acknowledged that there have been some positive changes since the current government came into office.** A number of laws have been enacted, in particular regarding the anti-corruption framework, procurement, access to public information, and the reduction of the number of permits and licenses. (See Section III of this report.) Civil society input is being included in the preparation and review of draft laws prepared by the government, including through the creation of the “Reforms Support Center” operating directly under the Cabinet of Ministers. Civil society input is also being sought by some parliamentarians. There is also a perception of a decrease in corrupt behaviors. However, meetings with the private sector and NGOs mentioned cases of strong resistance to change, particularly within the Parliament, including under pressure of some powerful oligarchs. In addition, there is broad agreement that the reform process requires a more centrally-coordinated process. Some stakeholders consider that the political momentum should enable international organizations to develop more robust conditionality, noting that past conditionality on anti-corruption has often been weak on substance.

16. **While views on the adequacy of the current anti-corruption legal framework vary, there is a general agreement that the key issue relates to implementation of the framework.** Some stakeholders consider that the criminalization of corruption, asset disclosure mechanisms and the anti-money laundering (AML) regime are broadly aligned with international standards, while others consider that key changes to the framework are necessary. However, there was clear convergence that effective implementation—which requires top-level political will—is the key issue and should be done by independent institutions. It is broadly recognized that the civil society has been

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<sup>16</sup> See EU-Ukraine, *Visa Dialogue— Action Plan on Visa Liberalization*, December 14, 2013.

instrumental in recent progress, and that it should play a proactive role going forward in order to ensure effective implementation of the anti-corruption framework.

17. **With regard to the structure of corruption, there is a strong view that corrupt public officials often work in concert across public agencies to intimidate, harass to conduct corporate raiding and to extract bribes.** Among the agencies perceived as the most corrupt are the tax administration, the police, the Prosecutor General's Office, the State Enforcement Service and the judiciary. Within the courts, commercial courts were mentioned as the most corrupt. (See Section IV of this report.) A number of stakeholders indicated that appointments to public positions are not transparent and are often subject to payment that can range from a few thousand dollars for teachers, to hundreds of thousands of dollars for judges, and millions of dollars for nomination for a parliamentary seat. The purchase of public positions is seen as an investment that needs to be recouped and explains a pyramidal organization of the bribery with the lower levels feeding the upper levels.

18. **Stakeholders stated that the corrupt practices of public officials are often facilitated by intermediaries.** In particular, some lawyers, notaries, tax advisors, and consulting firms are apparently known to be embedded in corrupt schemes. Their intermediation gives an appearance of legality to the process. Proceeds are allegedly often placed in the domestic financial sector and laundered using opaque legal entities and foreign financial centers. In addition, some meetings indicated the involvement of some members of the medias and NGOs in corrupt schemes.

19. **The AML regime is generally judged to have failed to prevent the laundering of massive proceeds of corruption due to ineffective implementation.** It is well-known that leaders under the previous government transferred large amounts of funds abroad, including through commercial banks they controlled. Some stakeholders noted as a problem the lack of independent AML institutions, pointing out that the Financial Intelligence Unit, for example, is not in their view sufficiently independent. Other problems mentioned include the difficulty of accessing information on the beneficial ownership of property and companies, often hidden through offshore corporate vehicles, the low level of sanctions for non-compliance with AML requirements, the fact that tax evasion is not a predicate offence to money laundering, and the poor drafting and implementation of double taxation agreements with offshore financial centers, facilitating justification of illegitimate capital outflows.

### **Proposals for Reform**

20. **During the study, differing views were expressed between those who feel that corruption issues could only be addressed by the far-reaching measures mentioned in paragraph 6 above and those who believe that significant progress could be achieved short of such far-reaching measures by focusing on identified**

**specific measures.** For those who believed in a more fundamental re-organization of government, key issues include a reform involving a re-thinking of the distribution of responsibilities among the executive, legislative and judicial powers.

- In particular, a number of stakeholders consider that government responsibilities should be rationalized and ministries should have more well defined responsibilities and that, government services should generally be decentralized. At the same time, it was emphasized that the number of public officials should be drastically reduced, their pay substantially increased and their skills upgraded. In addition, appointment to positions should be transparent and done on a competitive basis. Several NGOs emphasized that a proper general administrative procedure needs to be established to regulate the interactions between citizens and the state concerning public rights and benefits.
- With regard to Parliament, some stakeholders felt that the right of individual members to initiate legislation should be substantially curbed since this right is viewed as having been abused to advance narrow personal and business interests. They further consider that the immunity of parliamentarians from criminal investigations should be reviewed and that Parliament should not be directly involved in the nominations, dismissal and investigations of judges. (See Section IV of this report.) Further, it was felt that public financing of political parties could also reduce incentives for corruption.
- Many called for reform of political party financing, the nominations and distribution process for parliamentary seats, and an overhaul of procedures for initiating and adopting legislation.
- On the judiciary, some made calls for dismissing all judges and recruiting a new set, possibly through election, that could include vetting of existing judges. (See Section IV of this report.)

In contrast to those calling for an immediate radically fundamental restructuring of government, others were of the view that such restructuring would necessarily take time and that there are more specific measures that can be taken more quickly that would have a positive impact against corruption. These specific proposals are discussed in the ensuing paragraphs.

**21. Of the more specific proposals, a number aim at improving the criminal law framework for anti-corruption, including in line with international standards.**

Further improvements of compliance with international standards relevant for corruption (Council of Europe, UN, OECD, FATF) are currently being discussed at ministerial level with input from civil society. Measures considered include the criminalization of illicit enrichment, the definition of conflict of interest, the definition of undue

advantages and gifts, sanctions for public officials who fail to provide income and asset disclosures, the inclusion of tax crimes as a predicate offense to money laundering, a transparent framework for the funding of political parties and candidatures for elected public offices, and increased transparency on the beneficial owners of legal persons and arrangements. Limiting the general powers of the Prosecutor General's Office, judicial reforms, review of the anti-monopoly regime and simplifying the framework for business licenses and permits were also viewed as avenues for limiting corruption. (See also Sections III and IV of this report.)

22. **There is broad support for the creation of an independent anti-corruption agency with investigative powers.** However, there are diverging views on the specific structure it should take and the functions it should exercise. At least two main draft laws are being discussed within government and in the legislature. The following key elements are among issues currently being considered: the independence of the agency's director and who would be responsible for his nomination and appointment; the officials subject to its investigations (e.g., all or only top-level public officials); and the type of offenses to be investigated (e.g., from corruption acts to a broader approach of financial crimes and abuse of powers). In addition, some stakeholders are of the view that the proposed agency should be limited to investigative functions, while others think that it should be also in charge of the verification of income and assets disclosure, and preventive measures for combating corruption. Others believe prevention aspects should be handled separately.

23. **Given widespread concerns about corruption in the Prosecutor General's Office and in the courts, views are mixed among stakeholders regarding how cases investigated by the independent investigative agency should be prosecuted and whether a specialized anti-corruption court should handle such cases.** One proposal is that such prosecution should be assigned to special prosecutors with requisite experience and appropriate screening, who would report directly to the Prosecutor General. Another view is that some kind of independent prosecution service should be established outside the Prosecutor General's Office to deal with such cases. However, there was a concern that this option might be difficult as it may require a constitutional amendment. Regarding court jurisdiction for such cases, some interlocutors called for a separate and independent anti-corruption court, which might also be difficult as it would probably also require a constitutional amendment. Others favored specialized judges and chambers within the existing court system.

24. **The establishment of a second independent anti-corruption agency dedicated to prevention activities is also being discussed.** While there is concern that this could be costly and might lead to lack of coordination or unhealthy competition between the two proposed agencies, the proponents of such an option emphasize that preventive functions are critical and could be sidelined by the more high-profile work of investigations if both functions are placed in one agency. Views on the competencies of

such preventive agency vary, but include functions such as publication of assets reports, verification of assets disclosures, background check on applicants to public positions, prevention of conflict of interests, issuance of codes of conducts, analysis of new legislation and regulations from an anti-corruption perspective, design of anti-corruption strategies and programs, coordination with the civil society, and general public education.

**25. Calls for strengthening and verifying the income and asset disclosure requirements for public officials are widespread but vary regarding scope and substance.** On scope, while some favor disclosure and verification requirements that apply to all public officials, others prefer a focus on those officials at higher risk of grand corruption. Others still suggest a broad disclosure requirement but a targeted verification mechanism. On substance, the issue is whether disclosure should be limited to income and assets going forward, or also encompass expenses.<sup>17</sup> There is general agreement that one independent agency should be in charge of collecting, verifying and publishing disclosures. However, different views were expressed on the specifics of whether such a function should be vested in an anti-corruption preventive body, in an agency that is also in charge of anti-corruption investigations, or within the tax administration.

**26. A number of reform suggestions aim at improving the AML framework and the ability to recover the proceeds of corruption.** They include the revision of the AML law to ensure enhanced due diligence requirements for domestic politically-exposed persons, the inclusion of tax crimes as a predicate offence to money laundering, the strengthening of risk-based supervision and the strengthening of administrative and criminal sanctions. Other concerns encompass the improvement of fit and proper requirements for banks, the strengthening of the independence of the financial intelligence unit (FIU), and the requirement of the inclusion of information on beneficial owners in public registries of companies and immovable property. Another issue relates to the mandatory reporting of information to the FIU. While supported by the FIU, it is seen as costly and ineffective by some reporting entities, which recommend focusing instead on the reporting of suspicious transactions, in line with international standards. Other matters under discussion involve reversing the burden of proof in money-laundering investigations, the introduction of non-conviction based asset forfeiture and the lowering of the maximum amount for transactions allowed in cash (currently

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<sup>17</sup> Since 2011, there is a mandatory disclosure of expenses of all officials subject to disclosure requirements, with a threshold currently of UAH 80,000. Some NGOs call for a lower threshold, for example, one month's salary of the official.

UAH 150,000) so as to reduce cash transactions—which are more vulnerable to laundering.<sup>18</sup>

27. **Tax evasion and public financial management more generally are also areas in which some reforms are being discussed.** Issues include the reduction of the number of taxes and fees, the automatization and simplification of tax and customs processes (including for VAT refund), better rules for transfer pricing, and the analysis of double taxation agreements with offshore financial centers. With regard to revenue administration, the measures considered include further strengthening of internal investigations, streamlining the number of staff and of tax offices while increasing salaries, improving access to information covered by secrecy rules (e.g., banking secrecy) and improving cooperation with foreign jurisdictions with regard to valuation. With regard to public financial management, independent oversight was cited as an important element to curb corruption. The Accounting Chamber of Ukraine, a governmental body responsible for conducting control over the use of the state budget and state special purpose funds, has stated that its functions and mandates are quite limited and should be expanded. The Accounting Chamber noted that, in line with relevant international standards, it should be guaranteed full independence so as to remain protected against external influences and its control functions should be further expanded.<sup>19</sup>

#### D. Conclusions on Corruption

28. **There is no question that society at large—the public, civil society, the business sector and public officials—believe that corruption is pervasive, oppressive and harmful to the economy of Ukraine in macro-economic terms.** Many Ukrainians rank corruption as the biggest current problem in Ukraine. Considering the widespread nature of corruption and its deleterious effect at the macro-economic level, the government is committed to addressing the problem, particularly high-level corruption. Due to the pyramidal organization of corruption, anti-corruption measures should be concentrated at the top levels of public institutions. It is important to emphasize that the design of this effort will take time and its effective implementation even more so.

29. **While recognizing the long-term nature of efforts to tackle corruption, the pervasiveness of corruption does call for strong immediate specific measures,**

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<sup>18</sup> A draft resolution of the Board of the National Bank of Ukraine providing for a reduction in the amount of cash settlements by individuals to UAH 100,000, was posted on the official Internet page of the National Bank of Ukraine for submission of comments by July 1, 2014.

<sup>19</sup> In particular, the Accounting Chamber noted that its mandates should be expanded to cover inspections over both revenues and expenditures of (i) funds from the state budget, (ii) funds from local budgets, and (iii) funds from state owned enterprises and their subsidiaries.

**which will produce measurable results.** Such specific measures are needed in particular to bolster the reform initiatives of the current government and support economic recovery and growth. While a number of reform suggestions such as constitutional reforms related to the structure of government, the distribution of powers within it, and the funding of political parties are beyond the scope of an IMF-supported program, there are specific measures that can and should be supported under Ukraine's SBA. Due to the pyramidal organization of corruption, these measures could be concentrated at the top levels of public institutions.

30. **In addition to adequately investigating and punishing acts of corruption, building robust preventive measures is also key.** Such an effort should include the streamlining of anti-corruption preventive efforts at the governmental level; an effective income and asset declaration framework and the risk-based implementation of AML preventive measures with a focus on the proceeds of corruption and tax evasion.

31. **The anti-corruption preventive and investigative efforts should be supported by initiatives to improve the business climate and credible judicial and post-court enforcement systems.** (See Sections III and IV of this report.)

#### **Potential Areas for IMF Program Discussions**

32. **Preventive Measures: Key anti-corruption preventive measures are largely absent and, where they do exist, should be streamlined and consolidated.** There is a clear need to establish an effective and robust basis for preventive anti-corruption measures at the executive level. These initiatives should include (i) developing a national anti-corruption strategy and following-up on its implementation (the elaboration of which the government has just announced on July 2, 2014); (ii) reviewing draft laws from an anti-corruption perspective before their enactment; (iii) advising agencies on corruption prevention (including through assessments of corruption risks and integrity plans); (iv) establishing and promoting codes of conducts; (v) conducting background checks of applicants to positions in the civil service with sufficient powers, resources and ability to veto applications, including in case of conflicts of interests; (vi) educating the public (about ways to prevent and expose corruption and how to obtain redress); (vii) reporting annually on anti-corruption efforts; and (viii) representing Ukraine in international cooperation efforts at policy level. The existing Government Commissioner for anti-corruption policy and the civil service agency already perform some of these functions, but a more robust system is called for, taking into account GRECO recommendations regarding preventive anti-corruption functions. It is proposed that further discussion on these issues be discussed with IMF staff following the First Review of the SBA.

33. **Enforcement Measures: A credible framework to investigate corruption should be developed. An independent anti-corruption agency with broad**



**investigative powers should be established to ensure credibility in the enforcement of the legal framework.** The agency would be in charge of investigation of acts of corruption and of laundering the proceeds of corruption related to high-level officials, including those reflecting allegations received through a public hotline and relevant reports received from the FIU. The agency would prepare semi-annual public reports of its activities, including summary and anonymous data on its investigations and their outcomes. It would also have powers of asset recovery (freezing, seizing and executing confiscation orders of assets related to its own investigations). The agency should be (i) operationally independent from executive, legislative or other external influence; (ii) accountable and transparent; (iii) adequately resourced in terms of budget, staffing and expertise; and (iv) able to obtain all relevant information domestically and to engage in international cooperation with regard to its area of competency. Operational independence will be realized, in particular, through appropriate procedures for appointment, term limits and dismissal of the head of the agency; the power to recruit and dismiss its own staff; special procedures for budgetary allocations; competitive remuneration for the head and staff of the agency, and an annual external review.<sup>20</sup> Cases investigated by this agency would be prosecuted by prosecutors nominated through careful screening by, and reporting directly to, the Prosecutor General. Some stakeholders are of the view that the establishment of an independent anti-corruption court and an independent prosecutorial function for corruption cases should be considered. In summary, while there are competing views as to how exactly to do so, there is strong support among stakeholders for establishing an independent anti-corruption investigative agency. It is therefore possible that First Review discussions could lead to conditionality on enabling legislation for establishing such an agency by the time of the Second Review. Subsequent discussions could then take place regarding the actual effective operation of the agency.

**34. Income and Asset Declarations: An effective income and assets declaration mechanism should be put in place.** It would particularly aim at preventing illicit enrichment and would include adequate verification powers and sanctions for non-compliance and fraudulent information. In order to be effective, the disclosure framework should focus on persons who are high-level public officials as well as those most at risk of high-level corruption. The FATF definition of domestic politically exposed persons (PEPs) is relevant in this respect.<sup>21</sup> The declaration form should clearly

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<sup>20</sup> This could be performed by internationally recognized anti-corruption experts that would be granted access to relevant information to assess the effectiveness of the agency and would publicly report key findings.

<sup>21</sup> Pursuant to the FATF Recommendations' glossary, "domestic PEPs are individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials". In the context of Ukraine it would be important to make sure that the following persons are specifically included: members of parliament; ministers and deputy ministers; directors and deputy directors of departments, agencies and state-owned enterprises; directors and deputy directors of law enforcement agencies; all judges; advisers

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capture all relevant information, including information on beneficial ownership and control of assets, and information from family members and close associates. These PEPs should submit their disclosures before taking office, and annually until the third year after the end of their public functions.<sup>22</sup> Disclosures should be filed electronically and available to the public on a single website shortly after the deadline for submission and stay accessible during the period of disclosure requirement. Verification should be an independent process, and rely on sufficient powers to obtain, without court order or prosecutor's approval, any relevant public or private information related to persons subject to declaration, their family members and close associates and to consider information received from the public.<sup>23</sup> If declarations are inconsistent, false or missing, relevant information should be communicated to anti-corruption investigative officers. Proportionate, enforceable and transparent sanctions should be introduced, including dismissal from office and criminal sanctions for fraudulent disclosure or failure or delay in submitting declarations.<sup>24</sup> The World Bank and the EU have general conditionality requiring an effective system for verification of declaration of assets. The EU requires that such a system be in place by the second quarter of 2015,<sup>25</sup> which gives a reference period within which Fund staff can work with the authorities to develop specific measures (which are not outlined in the EU conditionality).

**35. AML Framework: The AML framework should support anti-corruption efforts.** The AML law and other relevant laws should be amended to include key elements of the FATF standard and best practices. The authorities have already committed to ensure that, by end-September 2014, banks are required to conduct enhanced due diligence on business relationships with domestic PEPs; and the laundering of the proceeds of tax crimes is criminalized and made a predicate offence to money laundering.<sup>26</sup> Additional legal amendments should ensure that: (i) illicit

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to the President, Prime Minister and ministers; regional governors, mayors of major cities, and certain functions most exposed to corruption risks such in the prosecution service, the tax agency, customs, police and other law enforcement.

<sup>22</sup> Extending the disclosure requirements for a reasonable period after leaving office would contribute to prevent abusive revolving doors situations, and ex-post income related to decisions taken while in office.

<sup>23</sup> Sufficient safeguards should be in place to prevent abuse of powers by verification officers (e.g., traceability of information requests, administrative and criminal sanctions for improper use of information).

<sup>24</sup> Asset disclosures from the authority in charge of verifying asset disclosures would be accessible by the Financial Intelligence Unit (FIU) to allow for cross-checking of information.

<sup>25</sup> See above, paragraph 13.

<sup>26</sup> Pursuant to Article 209 criminal code, predicate crimes to money laundering are all crimes (except tax crimes as of now) punished by the criminal code by "imprisonment or a fine of more than three thousand income tax exemption". In order to ensure effective use of the AML framework to address tax evasion and corruption, it would not only be necessary to modify Article 209 criminal code (to delete the exemption of tax crimes from the scope of the ML offence) but also Articles 212 and 212-1 to ensure that the type of tax crimes that are considered predicate offenses to money laundering is broad enough.

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enrichment is criminalized in line with the UNCAC and made a predicate offense to money laundering; (ii) financial institutions are allowed to end a business relationship with a customer when unable to perform customer due diligence requirements; and (iii) pecuniary administrative sanctions for non-compliance with AML requirements are effective, proportionate and dissuasive. In addition, mechanisms should be implemented to ensure that (i) information on the beneficial owners of financial institutions, domestic companies and immovable property is accurate, up-to-date, and available to relevant authorities and reporting entities in a timely manner; (ii) financial institutions' AML/CFT reporting requirements are focused on suspicions rather than on mandatory criteria; (iii) the FIU, AML supervisors, law enforcement and prosecutorial authorities involved in AML issues are adequately resourced, skilled and operationally independent; and (iv) risk-based AML/CFT supervision of financial institutions and other relevant business and professions is developed, with a focus on the risks of laundering of the proceeds of corruption and tax evasion. As a first step, some of the revisions to the legal framework mentioned above can be discussed with IMF staff during the First Review discussions, and included as structural benchmarks for the Second Review. Additional discussions could then be held to address other elements of the AML/CFT framework, in light of the implementation in the domestic framework of the 2012 FATF standards.

36. **Asset Recovery: Adequate mechanisms should be developed to recover proceeds of corruption.** In this respect, and in line with international standards and best practices, legislative reforms should be introduced to allow for substitute or equivalent value restraint and confiscation of legitimate assets of the same value as the stolen assets; provide a sound legal basis for a wide range of types of international mutual legal assistance; and allow for the rapid tracing, temporary freezing or seizing of assets.<sup>27</sup> In addition, provided sufficient safeguards are in place, the burden of proof for confiscation should be shifted to the alleged offender and relatives to show that the assets stem from a legitimate source, when the prosecution has provided credible evidence that assets cannot stem from a legitimate source. Detailed recommendations could be prepared at a later time, taking into account the action plan on asset recovery prepared by the authorities with the support of the World Bank/UNODC's StAR initiative. (See paragraph 26(c) of the MEFP.)

### III. BUSINESS CLIMATE

#### A. Overview of Existing Literature

##### General Observations

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<sup>27</sup> See also paragraph 33 and recommendations on asset recovery powers of the anti-corruption agency.

37. **The diagnostic study encompassed a review of already existing reports on Ukraine’s business climate prepared by the business community, civil society groups and multilateral and bilateral partners of Ukraine.** The literature reveals a general consensus that the business climate in Ukraine is adversely impacted by two main problems—the complexity of the design of the legal framework regulating business activity and the attendant negative incentives that are manifested in the implementation of such a complex framework. Much of this work has been done by the International Finance Corporation, the World Bank, the OECD and U.S. government agencies and some of that work is referenced in this study.<sup>28</sup>

38. **There is a sense that the general design of the legal framework regulating business activity in Ukraine is unnecessarily complex.**<sup>29</sup> First, there are too many laws and regulations addressing the same matters and too many agencies with overlapping jurisdiction. Second, the provisions of these various laws and regulations are often drafted ambiguously and in some cases even in a contradictory manner. Third, these laws and regulations are subject to frequent and unnecessary changes.

39. **The complexity of the legal framework has led to serious shortcomings in its implementation ranging from lack of accountability (because so many laws, regulations and agencies are involved in regulating the same issues), to lack of legal certainty (arising from ambiguous and contradictory provisions), to opportunities for abuse, harassment and extortion of bribes.** The net effect is the significant imposition of costs and burdens on businesses. The lack of legal certainty hampers business and investment planning activities. Businesses are also less able to innovate or sustain growth because they have to spend considerable time, energy and financial resources dealing with bureaucracy, excessive paperwork and rent-seeking behavior.<sup>30</sup> Two problem areas that have been much highlighted are business licenses and permits, and inspections and audits of businesses.

- Business permits are certificates authorizing business entities to establish businesses. The amount of time and the costs incurred to apply for them,

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<sup>28</sup> See in general World Bank- IFC, *Ukraine—Opportunities and Challenges for Private Sector Development*, 2014; German Advisory Group, Institute for Economic Research and Policy Consulting, *Economic Reform Agenda for Ukraine*, March 2014; Baker & McKenzie, *Conducting Business in Ukraine*, 2014; World Bank, *Doing Business 2014 – Ukraine*, 2013; PricewaterhouseCoopers, *Doing Business and Investing in Ukraine*, 2013; Chadbourne and Parke, *General Legal Considerations for Doing Business in Ukraine*, May 2013; US Department of State, *Investment Climate Statement*, February 2013; KPMG, *Your Business in Ukraine*, 2012; OECD, *Attracting Investment in Renewable Energy in Ukraine*, November 2012; and World Bank-IFC, *Investment Climate in Ukraine as Seen by Private Business*, 2011.

<sup>29</sup> See generally World Bank-IFC, *Ukraine—Opportunities and Challenges*, US Department of State, *Investment Climate Statement*, and World Bank-IFC, *Investment Climate in Ukraine*.

<sup>30</sup> World Bank-IFC, *Investment Climate in Ukraine*.

including the preparation of supporting documentation are considered to be burdensome.<sup>31</sup> Business licensing, which is required for certain business activities under Ukrainian law, is also considered to be burdensome.<sup>32</sup>

- Intrusive regulatory inspections and audits are reported to have forced businesses in Ukraine to spend a substantial amount of time in dealing with non-productive activities and in some cases to have to close down. The current regime is criticized for not discriminating on a risk-based approach between large and small firms and among risks posed by various types of business. As such, the inspection regime is viewed as placing a disproportionate burden on small and medium sized firms. Large firms tend to benefit from economies of scale in dealing with the bureaucratic red tape, while smaller firms do not have such means and often end up having to resort to bribing public officials.<sup>33</sup>

40. **The complexity of the legal framework is also reported to have contributed to the low level of competition in Ukraine’s domestic market.** Certain groups and individuals manipulate the legal framework to create unfair barriers to market entry, which entrenches oligopolistic market structures and anticompetitive behavior. Low levels of competition are further perceived to be driven, *inter alia*, by weaknesses in the national competition policy framework and the often ineffective application of competition policies.<sup>34</sup>

41. **A further aspect of complexity has been the apparent harassment of businesses by the Prosecutor General’s Office, which has prosecutorial powers that go well beyond the criminal justice system.** The Prosecutor General’s Office can exercise “general supervisory authority” over many regulatory issues, and may intervene in pending court cases to assert a state interest which judges seldom contradict. The apparent abuse of prosecutorial power has traditionally manifested itself in, for instance, corporate raiding. Corporate raiding is generally described as an attempt to illegally take valuable business assets from their legitimate owner, typically involving some improper coercive role of state authorities. It has been reported that the Prosecutor General’s Office together with the judiciary have played a significant role in facilitating corporate raiding.<sup>35</sup>

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<sup>31</sup> OECD, *Attracting Investment*.

<sup>32</sup> US Department of State, *Investment Climate Statement*.

<sup>33</sup> World Bank-IFC, *Ukraine—Opportunities and Challenges*.

<sup>34</sup> World Bank-IFC, *Ukraine—Opportunities and Challenges*.

<sup>35</sup> M. Rojansky, *Corporate Raiding in Ukraine*, International Research & Exchanges Board, Scholar Research Brief, July 2013.

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## B. Reform Proposals in the Literature

42. **Many recommendations have been made in existing reports to improve and streamline the legal framework and to reduce the scope for uncertainty or exercise of discretionary power by regulatory bodies.** These recommendations generally cover the harmonization of the legal framework with existing international standards such as those prevailing in the EU, the streamlining of the existing framework to remove overlaps amongst various primary and secondary legal instruments, the development of clear implementing regulations and interpretative norms, and the improvement of transparency in the legislative process.

43. **One of the possible reforms suggested as a way to mitigate the complexity of the legal framework is the regulatory guillotine.** The regulatory guillotine is a process of evaluating the entire stock of regulations that leads to an automatic repeal by a set deadline of all regulations, which do not continue to provide social value. The regulatory guillotine has been considered by some organizations as the best solution for rapid review of a large number of procedures or regulations, eliminating those that are no longer needed without lengthy and costly legal action on each regulation.<sup>36 37</sup>

44. **Self-certification mechanisms and transparency in the legislative process have also been advocated as important elements to improve the legal framework.** In business permits, the “silent consent” principle or “self-certification” principle was promoted as a way to improve the ease of starting up businesses. This principle allows permit applicants to start business operations without an official response from permit agencies after the expiry of the legally stipulated permit issue turn-around time.<sup>38</sup> It has also been recommended that the legislative process should be fully transparent for all new laws and regulations, thus expanding the involvement of the business sector, trade unions, nongovernmental organizations and society in the legislative process and strengthening the value and credibility of regulatory impact assessments.<sup>39</sup>

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<sup>36</sup> World Bank-IFC, *Ukraine—Opportunities and Challenges*.

<sup>37</sup> In practice, however, reform efforts through accelerated reviews of regulations (i.e., regulatory guillotine) have had limited impact on the economic situation in Ukraine primarily because such reviews are non-legislative in nature and are limited to assessing the conformity of regulations to requirements under current legislative acts. In order for the regulatory guillotine to bear concrete results, a review needs to be done with respect to the entirety of the regulatory framework established at the legislative level, and a new economic model needs to be created for Ukraine so that the non-legislative regulatory framework is brought into conformity with the newly created economic model.

<sup>38</sup> World Bank-IFC, *Investment Climate*.

<sup>39</sup> World Bank-IFC, *Ukraine—Opportunities and Challenges*.

45. **Reform measures to reduce the complexity in the legal framework have also featured as part of conditionality in development projects for Ukraine.** The World Bank's DPL approved in May 2014 includes measures to ease regulatory requirements on business operations.<sup>40</sup> Specifically, the DPL included a prior action on enactment of a package of regulatory reforms to ease business and property registration, and to reduce the number of permits. Ukraine met this prior action through the adoption of laws to reduce the number of permit documents<sup>41</sup> and to simplify the procedure of setting up business. (See paragraph 55 for Ukraine's recent legislative efforts on business regulations.)<sup>42</sup> The DPL also called for, *inter alia*, enactment of legislation to continue to overhaul selected priority area regulations, establish regulatory impact assessments, rationalize construction permits, and ease licensing requirements (Trigger 6).

46. **Finally, the relationship between improving the business climate and addressing public corruption and the effectiveness of the judiciary is well-recognized in Ukraine.** In particular, recommendations have been made to set up frameworks to both prevent and combat corruption in the public sector and reforms to the prosecutorial, judicial and post-enforcement systems have been widely discussed as a way to prevent predatory behaviors against businesses.<sup>43</sup> (See Sections II and IV of this report.)

### C. Discussions During the Diagnostic Study

#### General Observations

47. **There is widespread agreement that the business climate in Ukraine is very negatively impacted by an overbearing legal framework.** Many of the issues discussed in the existing literature outlined above were confirmed in the discussions during the diagnostic study.

#### Issues Raised

48. **With regard to the complexity and design of the legal framework, stakeholders' perceptions are that there is over-regulation of economic activity.** This is perceived to take the form of too many laws and regulations. Over-duplication

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<sup>40</sup> World Bank, *First Development Policy Loan*.

<sup>41</sup> Law of April 9, 2014, No. 1193, *on amendments to several legislative acts of Ukraine on reducing the number of permit documents*.

<sup>42</sup> Law of April 15, 2014, No. 1206, *on amendments to several legislative acts of Ukraine on simplifying the procedure of setting up business*.

<sup>43</sup> See, for example, Rojansky, *Corporate Raiding in Ukraine*.

was identified in that different pieces of legislation and regulation often address the same matter and several different agencies may have overlapping jurisdiction, leading to a lack of clear accountability for any one agency. Several underlying reasons are suggested for this over-regulation. Too many legislative bills are submitted by both government agencies and members of the parliament at the same time, and there is no central mechanism to monitor and coordinate such legislative developments. While the State Service of Ukraine for Regulatory Policy and Entrepreneurship Development (now renamed the State Regulatory Service) reviews draft legislation prepared by government agencies, this governmental body has no powers to enforce coordination and streamlining within the government of legislative bills and regulations at the development stage, although it devotes special attention to expert evaluations of legislative bills since such bills have a decisive regulatory effect on the development of economic processes in Ukraine.<sup>44</sup>

**49. Frustration was expressed by interlocutors regarding laws and regulations that are apparently deliberately drafted in an ambiguous and contradictory manner, so as to leave room for various interpretations that would then give rise to regulatory uncertainties to be exploited for illegitimate gain.** Stakeholders generally confirmed that there is large scope for improvement in streamlining legal instruments to remove ambiguities and contradictions. In particular, it was felt by some that, while as a matter of principle, legal instruments should be interpreted to resolve any ambiguities in favor of business entities, the general perception is that enforcement authorities tend to

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<sup>44</sup> Pursuant to the Law of Ukraine “On the Principles of State Regulatory Policy in the Area of Economic Activity”, the State Service of Ukraine for Regulatory Policy and Entrepreneurship Development evaluates draft regulations specifically for their consistency with the principles of state regulatory policy defined in that Law. The fact that the Rules of Procedure of the Parliament of Ukraine fail to make allowance for the Law of Ukraine “On the Principles of State Regulatory Policy in the Area of Economic Activity” opens the doors to the adoption of legislative acts of a regulatory nature that are not based on weighted predictive results of an analysis of their regulatory impact, which in turn makes it impossible in future to trace the effectiveness of acts adopted by the state’s principal regulatory body. Pursuant to the Law of Ukraine “On the Principles of State Regulatory Policy in the Area of Economic Activity”, the Parliament of Ukraine is a regulatory body. Under Article 15 of that Law, procedures for the Parliament’s implementation of state regulatory policy must be defined in the Law on the Rules of Procedure of the Parliament of Ukraine, with allowance for requirements established in that Law. At the same time, no such amendments have been introduced, either in the Parliament’s previous Rules or in its current Rules.

The inconsistency of the Rules of Procedure of the Parliament of Ukraine with the requirements of the above Law opens the doors to legislative acts that regulate economic and administrative relationships in the area of economic activity without allowance for legislation on state regulatory policy – in particular, without performing an analysis of the regulatory impact of adopted regulations and without tracking the effectiveness of their actions. This is particularly critical with bills submitted by Parliamentarians, since nearly one half of all regulatory bills are submitted as legislative initiatives by members of the Ukrainian Parliament and, accordingly, remain outside the realm of mandatory regulatory procedures. At the same time, implementation of regulatory policy relative only to non-legislative regulation makes it impossible to achieve an objectively possible positive stimulating effect on economic activity in the country, since the real economic model of a society is based on laws themselves, while non-legislative acts merely reproduce legislatively defined mechanisms.



interpret such ambiguities in favor of governmental entities. Matters are further compounded by what many regard as unjustifiably frequent amendments to laws and regulations, often seen as engineered to advance narrow commercial interests of particular parties instead of the public good.

50. **Unduly burdensome and unnecessary licensing and permits requirements were particularly highlighted as a problematic area for both domestic and foreign businesses.** It was noted that, while the “silent consent” principle may be used, for instance, in permits (see paragraph 44 above), it is often not easy for business entities to rely on this principle because the application of the principle in practice still leads to a judgment rendered ex post facto by regulating entities, thus creating the very uncertainty that the principle was designed to remove.

51. **With regard to implementation of the legal framework, interlocutors of the study were clear that the complexity in the design of the framework allows in practice for the regulatory system in Ukraine to be used in an abusive manner, producing negative economic effects on the business climate in Ukraine in general.** The lack of transparency and excessive exercise of discretion in the implementation of the legal framework is cited as one of the primary concerns, reflected in discretionary application of laws and regulations. The business community in particular complained about excessive and unjustified regulatory inspections and audits. Several agencies routinely inspect and audit businesses at will without any clear justifications and each of these agencies may have the independent authority to shut down a particular type of business. Business owners are never sure of when any one of these agencies may appear for an audit or inspection and threaten closure. Misuse of such perceived broad powers continually force businesses in Ukraine to spend substantial amounts of time dealing with audits and inspections and to pay bribes to avoid closure or some other threatened sanction, or to opt to escape the regulatory burdens and corrupt behavior by operating in the shadow economy.

52. **Powerful business and political cartels which are perceived effectively to control public institutions are said to engage in abuse by manipulating the complexity of the regulatory system to advance private interests in the name of public policy and to defeat fair competition by erecting barriers to market entry (as part of “state capture”).** Stakeholders stated that, while the underlying legal framework governing market competition is generally sound, its implementation has been challenging marred with inconsistencies and the lack of transparency. Many expressed concerns about the lack of a level playing field and barriers to market entry for small and medium-sized enterprises, which are often driven by abuse of dominant positions and collusion or anticompetitive cooperation by a small number of large-sized firms. It was also emphasized that state-owned enterprises are often misused as vehicles to promote interests of certain groups, thus further contributing to the monopolistic and anticompetitive market structure in key industries.

53. **A particular complaint repeated in many of the meetings was the view that the Prosecutor General's Office is endowed with over-arching power, which go well beyond prosecutorial powers in the criminal justice system.** The powers of this office concerning oversight of civil and regulatory matters in the “public interest” were assessed by many stakeholders as so broad that they could be used to justify intervention by that office in the review of large areas of economic activity. This was explained as a legacy of the old procuracy system under the Soviet regime. These powers are viewed as having been often misused to advance corruption and state capture. (See Sections II and IV of this report.)

### **Proposals for Reform**

54. **The general consensus among stakeholders is that the legal framework should be simplified and streamlined and that more discipline should be introduced into the process of preparing draft laws and regulations within the government.** Following recent political developments, it is recognized that some reforms have already begun to take place and others are well under way in various stages of consideration and development. These efforts include: (i) streamlining various laws and regulations on economic activities to limit the possibility of legal uncertainties and discretionary regulatory power, and aligning them with internationally accepted standards, EU standards in particular; and (ii) introducing greater coherence and discipline in the processes within the government that leads to the making of laws and regulations governing economic activity.

55. **Efforts are ongoing to streamline legislative and regulatory instruments governing economic activities and to clarify overlapping jurisdictions in regulatory agencies.**

- *Reform Measures Already Taken:* Laws have recently been adopted or are in the process of being developed to facilitate the conduct of businesses. Amendments to several laws have been adopted with the aim of simplifying permit procedures and procedures of setting up businesses and protecting investors' rights.<sup>45</sup> Amendments to laws to simplify the termination of businesses and to improve licensing procedures have been already signed by the President, and are ready to be adopted.<sup>46</sup>

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<sup>45</sup> See (i) Law of April 9, 2014, No. 1193; (ii) Law of April 15, 2014, No. 1206; and (iii) Law of May 13, 2014, No. 1255, *on amendments to several legislative acts of Ukraine on protection of investors' rights*.

<sup>46</sup> See (i) Law of May 13, 2014, No. 1252, *on amendments to the Law of Ukraine “On licensing system in the sphere of economic activity” on improvement of procedure of issuing licensing documents executed by the central executive authorities*; and (ii) Law of May 13, 2014, No. 1258, *on amendments to several legislative acts of Ukraine on simplifying the procedure of state registration of termination of entrepreneurial activity of individual entrepreneurs according to declarative principle*.

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- *Reform Measures Being Considered:* There are also a number of draft laws at various stages of development, including: (i) standardization (which envisages the creation of a single national standardization agency, and the compliance of the national standards with the relevant EU standards); (ii) joint-stock companies (which envisages enhancement of activity of joint-stock companies and to increase of shareholders' protection); (iii) amendments to the Tax Code of Ukraine to simplify the state registration of termination of private individuals' business activities; (iv) licensing of certain types of economic activity (the list of administrative services and related fees); and (v) technical regulations and conformity assessment. On taxation, a concept paper to reform the current tax regime is being developed under the auspices of the Ministry of Finance, which seeks to further improve the tax system by reducing types of taxes and tax benefits for certain privileged sectors. The Fiscal Revenue Service also referred to their ongoing work to improve the system of tax audits and collections. (See Section II of this report.)
- A draft law is being developed under the initiative of the State Service of Ukraine for Regulatory Policy and Entrepreneurship Development, which proposes to, *inter alia*, establish a central regulatory mechanism for inspections and audits. Business inspection has traditionally been vulnerable to regulatory abuses in particular due to overlaps in jurisdictions of inspection authorities. The draft law would provide for uniform procedures applicable to all inspecting agencies, and define specific responsibilities for such agencies. The draft law also proposes the prohibition of inspections and audits initiated by law enforcement agencies such as the Prosecutor General's Office that are perceived to have traditionally abused the inspection regime.

56. **Notwithstanding recent reform efforts, representatives of the business community and the civil society were vocal in their support for sustained and accelerated deregulation efforts in business regulations.** Some members of the business community referred to the "2013 National Action Plan" as a possible platform to further advance reforms; while this Action Plan was developed under the previous regime, it was based on the consensus of the business community and could provide useful guidance in providing a more systematic approach to streamlining relevant rules and procedures affecting business operations such as permits and licensing. The 2013 National Action Plan provided for various measures aimed at improving the business climate, which included measures targeted at deregulating and reforming administrative services, such as simplification of the procedures for starting business, improvement of permit procedures and simplification of customs documents.

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**57. With regard to greater discipline and coherence of the rule-making processes within the government, there was a strong view that there is a need for both internal controls (through quality controls over and coordination of draft legislative and regulatory instruments) and external monitoring (though open and transparent public consultations).**

- *Internal Controls:* Stakeholders emphasized that a central coordination mechanism should be established to provide oversight and coordination functions over the rule-making process within government.<sup>47</sup> There are also calls for incorporating and implementing regulatory impact assessments.
- *External Monitoring:* It was acknowledged by stakeholders that the level of public participation in the legislative process has increased in recent months. The establishment of the Reforms Support Center housed in the Ministry for the Cabinet of Ministers is one such example; the center has been set up as a liaison between the civil society and the government to provide feedback to legislative proposals and decisions adopted by the government. Representatives of the civil society and the business community, however, called for further progress in public engagement in the legislative process through open and timely access to information, which will afford opportunities for interested members of the public to provide timely and informed feedback on the ongoing legislative and regulatory developments.

**58. Recommendations to improve the implementation of the legal framework included the establishment of a new Business Ombudsman and the strengthening of public financial administration.**

- Many stakeholders expressed support for the establishment of an independent body to combat the abuse of regulatory power. The recently-established Business Ombudsman initiative was suggested as a useful initiative to address systemic issues faced by the business community, in particular corruption and unfair business practices aided by public officials. This initiative which has principally been supported by the European Bank for Reconstruction and Development brings together representatives of the Ukrainian government, business associations and international financial institutions. The Business Ombudsman Institution, once fully established, will: (i) receive, examine, and facilitate the resolution of complaints by business of unfair treatment including corruption; and (ii) ascertain the systemic cause of the unfair treatment of business and

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<sup>47</sup> While, currently, there are internal control mechanisms provided by the State Service of Ukraine for Regulatory Policy and Entrepreneurship Development, which has mandates to review draft legislative and regulatory instruments for the presence of any “corruption risks” resulting from ambiguities in such instruments, such functions appear to be limited in scope.

corruption and share its findings with the public and the appropriate public authorities.

- Independent oversight functions over public financial management were also cited as an important element to curb the abuse of regulatory power. The Accounting Chamber of Ukraine, a governmental body responsible for conducting control over the use of the state budget and state special purpose funds, has stated that its functions and mandates are quite limited and should be expanded. (See Section II of this report.)

59. **Recommendations to improve the competition regulatory framework to encourage market entry and to protect small and medium-size firms against monopolistic behaviors of large firms were also made.** Some reform efforts are already under way. The Anti-Monopoly Committee (AMC) is working on the full harmonization of Ukrainian competition legislation with EU standards as well as the planning of the National Competition Program 2014-2024 in order, *inter alia*, to enhance the competitive business environment and to boost the AMC's investigative power. The AMC emphasizes that enhanced competition would require judges with adequate qualifications and training to adjudicate competition cases, transparency in the provision of state aid, and the AMC's independence in its investigative functions.

60. **More generally, broader reform of the public administration system was also suggested as a solution to improve the accountability of the public administration system.** Given the widespread perception that the public service is bloated and inefficient, the reduction of redundant government services and government employees was mentioned as an urgent priority. In this regard, many stakeholders also mentioned that the decentralization of the public administration system is important for introducing efficiency into the system. At the same time, efforts to improve the quality of public services should include the introduction of rigorous professional standards, the enhancement of training and the increase in salaries of public officials. Improvements in salaries and professional standards of conduct in the public sector are expected to make the public service more attractive as an employer and reduce rent-seeking activities. It was also noted that the current hiring system should be reformed to separate nominating functions from appointment functions. (See Sections I, II and IV of this report.)

61. **Finally, anti-corruption and judicial reforms have been generally suggested as ways to also improve the general business climate.** (See Section II and IV of this report.)

#### **D. Conclusions on Business Climate**

62. **In light of the foregoing, it is clear that stakeholders perceive the legislative and regulatory framework pertaining to economic activity as overbearing and that**

**it impacts negatively on the business climate in Ukraine.** The study revealed that stakeholders do acknowledge that the current government, in consultation with stakeholders, has already started to pursue several reform initiatives. However, there remains substantial scope for further efforts to eliminate, streamline, simplify and clarify the legal framework. In particular, the mission heard that a key priority for many stakeholders is to ensure that reform efforts are driven from an authoritative central point so as to ensure adequate coordination (both within the government and among the government, civil society and business community) and so as also to ensure effective monitoring and reporting of reform progress. The government is committed to addressing the pertinent issues, including in the context of Ukraine's IMF-supported program.

### **Potential Areas for IMF Program Discussions**

63. **Reform Coordination Mechanism.** A central coordinating mechanism should be established with authority to ensure adequate high-level coordination (both within the government and among the government, civil society and business) and so as also to ensure high-level effective monitoring and reporting of progress. One possibility for such a mechanism is that it be placed at the level of the Office of the Prime Minister to ensure that all ministries and agencies are bound to the coordination, monitoring and reporting process established under the mechanism. Another possibility could be for the Prime Minister to empower an inter-ministerial team headed by a relevant minister to perform the government-wide coordination function. A formal decision by the Cabinet of Ministers to establish such a mechanism should be done relatively quickly, perhaps in the context of discussions with IMF staff under the First Review of the SBA.

64. **Reform Action Plan.** The coordinating mechanism discussed in the above bullet point should establish an action plan to eliminate, streamline, simplify and clarify the legislative and regulatory framework affecting economic activity in Ukraine. Individual ministries and agencies would be required to provide their input to the action plan based on their areas of competency. A public consultative process involving the business community and civil society should also be provided for in the coordinating mechanism. Key elements of this action plan would include a census of existing legislative and regulatory requirements detailing those that are to be eliminated, streamlined, simplified or clarified, with appropriate prioritization in terms of substantive impact and timelines. The development of the action plan should be carried out in consultation with IMF staff and those of other relevant international organizations. In preparing the action plan, the following questions should provide guidance:

- In terms of the legislative and regulatory process:
  - How can transparency and public involvement be increased in the design of the legislative and regulatory framework in order to prevent its capture by special interests?
  - Is there a need to streamline the legislative and regulatory process to ensure effective coordination on legislative bills and regulations amongst authoring agencies/ministries and parliamentarians so as to reduce the potential for problematic conflicts/overlaps in the adopted laws and regulations?
  - Is there a need to incorporate and implement regulatory impact assessments in the legislative and regulatory process?
- In sectoral areas:
  - Is there need to simplify and reduce licensing and permits – what is the right balance?
  - Is there also a case for limiting the frequency of inspections and audits by various control agencies?
  - Is there a case for decentralizing regulatory services to local levels so as to enhance efficiency?

This measure could be a structural benchmark (proposed timeline of end-October 2014) to be discussed at time of the First Review discussions.

65. **Monitoring and Reporting on Action Plan.** The coordinating mechanism should continuously monitor progress made by ministries and agencies on the action plan and publish quarterly reports on such progress. This measure could be further discussed at subsequent reviews possibly to be implemented on an ongoing quarterly basis following the adoption of the action plan discussed above and lasting for the duration of the SBA.

66. **Limiting Powers of the Prosecutor General's Office to Interfere with Business in Non-Criminal Contexts.** There could be a possible measure to limit the power of the Prosecutor General's Office regarding the office's broad powers of supervision over civil and regulatory measures that go well beyond criminal matters. This is an issue also of concern to the Council of Europe, which promotes the prompt reform of the legal framework on the Prosecutor General's Office with a view to transforming this institution into a body compliant with European standards. This matter could be taken up for discussion at subsequent reviews.

## IV. EFFECTIVENESS OF THE JUDICIARY

### A. Overview of Existing Literature

67. **The diagnostic study engaged in a review of already existing reports on the judiciary and the post-court enforcement framework in Ukraine.** The literature uniformly shows that there are very major challenges in the enforcement of civil and commercial claims through the courts and post-court enforcement service in Ukraine. The existing body of reports and literature, both from within Ukraine<sup>48</sup> and beyond,<sup>49</sup> is rich and reaches back many years. These reports also document detailed tracking and in-depth commentary by international agencies, including notably the Council of Europe (CoE) through its Venice Commission and the Commissioner of Human Rights. Also among these agencies are the European Union (EU) and the European Bank for Reconstruction and Development (EBRD).<sup>50</sup> What stands out in these numerous sources, despite their varied origins and nature, is the consensus on the challenges for the legal enforcement regime of civil and commercial claims in Ukraine.

68. **The existing literature covers the full range of issues confronting the judicial and post-court enforcement systems, including the following key issues:**

- ***State capture and external influencing of the judiciary***, particularly through the judicial appointments process, which has been criticized as a vehicle for corrupt

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<sup>48</sup> See, *inter alia*, M. Mylnek, *Keeping the judicial system as it is now is beneficial to the government* (Razumkov Centre), November 1, 2013; Centre for Judicial Studies, *Monitoring of Judicial Independence 2011 Report and 2012 Report*; I. Koliushko and R. Kuybida, *Constitutional Amendments: How to Avert the Threat to Judicial Independence* (Centre for Political and Legal Reforms), September 17, 2013; Radio Svoboda, *Judicial Reform by Most Other Names* (Kharkiv Human Rights Protection Group), August 22, 2013; See also, *inter alia*, O. Hrubá, *Judicial Independence in Ukraine, Poland and Romania – Compliance with Copenhagen Criteria* (Central European University), March 29, 2013, and M. Popova, *Politicized Justice in Emerging Democracies: A Study of Courts in Russia and Ukraine* (New York: Cambridge University Press), 2012.

<sup>49</sup> See, e.g., M. Natorski, “Reforms in the judiciary of Ukraine: domestic practices and the EU’s policy instruments,” *East European Politics*, Vol. 29, Issue 3, May 13, 2013, and W. Tiede and O. Rennals, “Recent Developments in the Ukrainian Judicial System and the Impact of International and European Law,” *Eastern European Politics and Societies*, Vol. 26, Issue 1, February 2012.

<sup>50</sup> See Opinions of the European Commission for Democracy through Law (Venice Commission), 2011 – 2013. Also Reports of the Commissioner for Human Rights of the CoE on Ukraine visits (November 2011 and December 2006). Special reports of the CoE on Ukraine, including *Comments on the “Consolidated draft law” on the restoration of trust in the Judiciary of Ukraine*, March 31, 2014, and *Non-enforcement of domestic judicial decisions in Ukraine: general measures to comply with the European Court’s judgments*, June 13, 2007. See also EBRD, *Commercial Laws of Ukraine: An assessment by the EBRD*, 2011; Z. Mylovanova, F. Rackwitz, and O. Volynets, “Debt Enforcement and Insolvency in Ukraine,” *EBRD Law in transition: Debt enforcement in times of uncertainty*, 2010; EBRD, *Insolvency Law Assessment Report (2009 & 2002)*; and F. Dahan, E. Kutenicova, J. Simpson, “Enforcing secured transactions in central and eastern Europe: An Empirical Study,” *EBRD Law in Transition*. See also V. Simonenko, *Judicial ethics and problems of its implementation in Ukraine* (UNODC-OECD), 2012. See also several justice sector technical assistance reports by the EU, USAID and other agencies.



and inappropriate political influence.<sup>51</sup> Reports have also criticized the disciplinary oversight and the initial five-year appointment period of judges (described as ‘probationary’ in the international reports) as tools for external influence.<sup>52</sup>

- ***Weak judicial organization*** as manifested in a proliferation of court levels that lead to serious problems concerning both over-lapping jurisdiction and lack of clarity on which court has jurisdiction on certain issues. The four-tier court system, with multiple courts of cassation and a weak Supreme Court, has been heavily criticized in the literature, both domestically and internationally.<sup>53</sup> The Venice Commission has questioned the motivation for the multiple levels, referring to it as going “far beyond the desire to create a more efficient judicial system”.<sup>54</sup>
- ***Procedural shortcomings*** that are subject to abuse by litigants and that lead to case overloads and backlogs.
- ***Weak post-court enforcement*** of civil and commercial claims. The general view is that the key challenges do not lie primarily in the statutory framework, but in the lack of its effective implementation by the relevant agencies, including the State Enforcement Service (SES).<sup>55</sup>

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<sup>51</sup> See Plenary Assembly of the Supreme Court of Ukraine, Resolution No. 1, April 11, 2014; Venice Commission, Opinion No. 722/2013, June 15, 2013 (CDL-AD(2013)014), paras. 28 and 29; and Venice Commission, Opinion No. 403/2006, June 22, 2007 (CDL-AD (2007)028).

<sup>52</sup> See, for example, Consultative Council of European Judges, Opinion No. 1, *on the standards concerning the independence of the judiciary and irremovability of judges*, 2001 (para 48) requires that Ukraine abolishes the five-year probation for judges. This view is forcefully affirmed by the Plenary Assembly of the Supreme Court in its Resolution No. 1, April 11, 2014. On the abuse of disciplinary oversight, see decision of the European Court of Human Rights in *Oleksandr Volkov v. Ukraine*, 27 May 2013. (Application No. 21722/11).

<sup>53</sup> See Plenary Assembly of the Supreme Court, Resolution No. 1, April 11, 2014, Venice Commission, Opinion No. 722/2013, and Venice Commission, Opinion No. 588/2010, October 18, 2010 (CDL-AD (2010)029).

<sup>54</sup> Venice Commission Opinion 588/2010, p. 9. Also, Venice Commission, Opinion No. 722/2013, paras. 45 and 63. The quote on the collision of jurisdictions originates from the Directorate General of Human Rights and Legal Affairs of the Council of Europe (Venice Commission, Opinion No. 588/2010). There are reports that the setting up of a distinct Supreme Court for Civil and Criminal Cases was purposely introduced to side step the then-Supreme Court (chaired by a Chief Justice opposed to then President Yanukovitch) to ensure that politically sensitive appeal cases were handled by loyalists parachuted in. See Popova, *Politicized Justice* (2012:12).

<sup>55</sup> Carsten Mahnke and Jos Uitdehaag, *Enforcement Matters: Enforcement in the Ukraine*, (European Union and WYG International led Consortium); EBRD, *Law in Transition: Debt Enforcement in Times of Uncertainty*, 2010; EBRD, *Law in Transition: Towards Better Courts*, 2010; Leigh Turner (former British Ambassador to Ukraine), “Why Ukraine needs judicial reform”, *Kyiv Post*, June 23, 2010. See also CoE, *Non-enforcement of Domestic Judicial Decisions in Ukraine* (on non-compliance by state agencies regarding post-court enforcement).

- *Weak professional standards and integrity* as manifested in the recruitment and disciplinary processes and in institutionalized corruption.

## B. Discussions During the Diagnostic Study

### General Observations

69. **The challenges in the enforcement of civil and commercial claims in Ukraine that were recognized in the existing literature were confirmed in the discussions during the diagnostic study.** There is a clear view that the courts and the post-court enforcement regime are largely ineffective and are marked by an almost universal perception of pervasive corruption. These institutions enjoy little public or market trust as being independent, consistent, timely or transparent in the resolution and enforcement of disputes, in particular civil and commercial disputes. Interlocutors repeatedly mentioned established routines of inappropriate influencing of the courts and of the SES by outside parties, operating through public officials in the government and in parliament. Such influencing is understood to be directed at gaining unfair market advantages for powerful networks of political and economic elites. Important political and market players have made the court and enforcement agencies instruments to manipulate the market, by squeezing out competitors, building monopolies, legitimizing fraudulent and unlawful expropriations or facilitating extortionist transactions. Use of the courts to legitimize corporate raiding is a frequent occurrence. Underlying the extent of external influencing, there are persistent and authoritative reports that to become a judge or prosecutor requires payment to key political agents. In addition to corruption challenges and the lack of independence, the complex structure of the judiciary, inefficient court procedures and a dysfunctional post-court enforcement system were emphasized by stakeholders as serious challenges in the enforcement of civil and commercial claims.

70. **It is apparent that the challenges faced in the resolution and enforcement of civil and commercial cases have an adverse impact on economic activity.** For example, one meeting flagged the constriction of the rental market in the face of the impossibility to evict non-paying tenants. Another meeting pointed at the prevalent system of pre-payments of services to minimize defaults, resulting in increased transaction costs and restricted market development. Banks pointed at the depleted mortgage market, with some prominent banks having moved out of the mortgage market, in part because of their inability to enforce security. The SME sector in Ukraine is recognized as strikingly weak, which has been linked in part to the inability of small business to enforce claims.

71. **Overall, in discussing the challenges identified, the following five categories can be distinguished:** (i) State capture and external influencing; (ii) judicial

organization; (iii) court procedure; (iv) post-court enforcement; and (v) professional integrity.

## Issues Raised

### *State Capture and External Influencing*

72. **Stakeholders emphasized that the major factor fuelling the ineffectiveness of the judiciary is lack of independence.** While the independence of the courts in Ukraine is enshrined in the Constitution, authoritative international agencies and national observers question whether it is adequately secured in statutory law and in practice. They argue that the Constitution itself is applied in a way that violates its own wording and intent.<sup>56</sup> Various statutory provisions on the judiciary are regarded as violating constitutional provisions. They are also seen as violating Ukraine's treaty obligations, notably the European Convention of Human Rights (ECHR).<sup>57</sup> The EU-Ukraine Association Agreement signed on June 27, 2014, also has relevant provisions.<sup>58</sup>

73. **The appointment of judges is viewed as a key instrument that is used to undermine independence.** This control originates initially from the membership of the central management body of the judiciary, the High Council of Justice, most of whose members are appointed by non-judicial agencies. The High Council is an important agency in charge of, among other things, the appointment and discipline of judges.<sup>59</sup> The control is further exercised through the reported upfront payments required to be made to parliamentarians and others in order to secure a judicial appointment, thus creating a situation where judges are compromised from the point of recruitment. Judges recruited in this manner are said to be in a difficult position to address corruption issues or, more generally, to maintain an independent mind on issues that come before them or the

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<sup>56</sup> The appointment of judges by Parliament and the 5-year probationary period (Article 128, Constitution of Ukraine) and the method of composition of the High Council of Justice (the management body of the judiciary – Article 131) are viewed as being in disaccord with Article 126. Article 126 provides: The independence and immunity of judges are guaranteed. External influencing of judges is prohibited.

<sup>57</sup> Article 6 of the European Convention on Human Rights upholds the right of citizens to be tried before an 'independent and impartial' court.

<sup>58</sup> In the EU-Ukraine Association Agreement, whose political provisions were signed on March 21, 2014, Article 14 provides "...Parties shall attach particular importance to the consolidation of the rule of law and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular. Cooperation will, in particular, aim at strengthening the judiciary, improving its efficiency, safeguarding its independence and impartiality, and combating corruption. Respect for human rights and fundamental freedoms will guide all cooperation on justice, freedom and security."

<sup>59</sup> The High Council forwards submissions to the President and Parliament (for the probationary period or permanent appointment respectively) for the appointment and dismissal of judges, and hence is the critical sieve in that process. (Article 131, Constitution of Ukraine).

challenges that the judiciary faces. An additional tool to muzzle independence is that the Constitution and the Law on the Judiciary and the Status of Judges establish that the initial term of appointment of judges is for a probationary period of five years. After that period, a definitive appointment may be made by the Parliament. There is a widespread perception that this is a discretionary authority, which has been used to ensure the loyalty and compliance of judges.

### ***Judicial Organization***

74. **Discussions during the study identified that another major source of the judiciary's ineffectiveness is its unnecessarily complex and unwieldy structure.** More specifically, the statute on the organization of the judiciary introduced by the previous government (President and Parliament) in 2010 is perceived as having been purposely designed to permit and facilitate state capture and external influence. The statute created an additional superior court, serving as a court of cassation, on top of the civil and criminal courts (next to the superior courts for the administrative and commercial courts, which already existed). At the top of this very large number of superior cassation courts sits the Supreme Court, whose actual authority is correspondingly restricted.

75. **The complex structure of the judiciary creates problems of prolonged case duration, jurisdictional conflicts, legal uncertainty, litigious behavior and budgetary escalation.** In most countries, the judicial system consists of three tiers. A fourth tier necessarily invites longer case process. Additionally, in an environment where one case can be filed in more than one court at the same time, this over-lapping jurisdiction creates internal institutional conflict. Further, since which court has jurisdiction is not always clear, cases have sometimes been filed in one court, only for the litigant to find in the final instance that it should have been filed in another court and must start the case anew in that other court. This contributes to legal uncertainty. Legal uncertainty is further promoted by situations in which no court is willing to accept jurisdiction of particular cases arguing that jurisdiction properly lies in another court. Moreover, the jurisdictional problems apparently allow litigants to file objections in one court against a case filed in another court. This encourages litigious behavior that further clogs the courts. Finally, since each court stream has its own infrastructure and support systems, the cost for the judicial system as a whole in public expenditure and efficiency are said to be high.

76. **Interlocutors pointed out that the complexity of the judiciary extends beyond the four-tier system and is also manifested in the overall management of the system.** In this regard, at the highest levels, the judiciary is managed by a number of councils and the role of the Chief Justice and the Supreme Court is diluted. Two key agencies are the High Council of Justice and the High Qualification Commission. Their

powers are to initiate the selection and recruitment of judges, their promotion, disciplinary proceedings and dismissal. With the exception of promotion (which is the exclusive jurisdiction of the High Qualification Commission of Judges of Ukraine) there is significant overlap of the powers of these agencies. In this regard, the Council of Europe has noted that the distinct roles of each cannot be identified.<sup>60</sup> Also, the High Council is constituted by non-judicial agencies, which has raised fundamental questions on its independence and impartiality. This is flagged as a problem by the Supreme Court and the European Court for Human Rights has found it to be in violation of Ukraine's treaty obligations.<sup>61</sup> Finally, the Chief Justice stated that his office does not have a formal position of authority or effective influence in the management of the courts.

### *Case Procedure*

77. **The study found that weaknesses in procedural rules create incentives that discourage contract compliance—including the payment of debts—and are instrumental to the weak payment culture in Ukraine.** Debtors are aware that legal shortcomings, either in the design of the legal framework or in its implementation, make enforcement difficult principally because:

- No summary enforcement procedure exists. Any state agency—or private party with an enforceable title, such as a mortgage or pledge—must first secure a court order to proceed with enforcement. This includes even the post-court enforcement service, the SES. It also includes the Tax Administration with regard to enforcing unpaid tax claims. The tax authorities cannot seize a bank account, but must first secure a court order. Non-payment of a claim, even when uncontested, requires state and private creditors to refer a case to court always. This encourages debtors to contest payment of claims, even when they did not originally contest these, with the sole purpose of delaying payment.
- Interim measures are rarely applied. Ukrainian law has a system of interim measures (seizures, attachments, garnishments, etc.). However, interlocutors complained that even while creditors routinely apply for such interim measures, courts are reluctant to impose them. This means that debtors continue to enjoy the use of their assets pending the outcome of a court case, which impacts on

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<sup>60</sup> Venice Commission, Opinion No. 588/2010, para. 50. Also, Venice Commission, Opinion No. 401/2006, *on the Draft Law on the Judiciary and the Draft Law on the Status of Judges of Ukraine*, March 20, 2007 (CDLAD(2007)003), para 22 ff.

<sup>61</sup> ECHR, *Case of Oleksandr Volkov v. Ukraine*. In this case the court found that the High Council of Justice did not meet the test of Article 6 of the European Convention of Human Rights, notably in regard to independence and impartiality. The court also found that this applied equally to the situation existing prior to 2010, in which the majority of High Council members consisted of non-judges, as it did after 2010 in which the majority of High Council members were judges, on grounds that the agencies appointing these members were non-judicial bodies.

debtor compliance incentives and significantly increases the risk of asset dissipation.

- No regime or tradition of imposing punitive damages or loss of profits exists. Interlocutors further complained that Ukrainian courts have a restrictive tradition of applying damages for breach of contract, whether punitive damages or damages for loss of profits.
- The debtor evidentiary burden is light. In tax cases, for example, it suffices for the debtor to state his disagreement with the claim, which then shifts the burden to the tax authorities to justify it.<sup>62</sup>

**78. Debtors take advantage of the procedural rules to prolong cases and thus delay enforcement of contracts because:**

- No effective appeal barriers exist. There is little to stop cases from going to appeal. This clogs up the appeal and superior courts and causes significant delays, which for tax cases in the Supreme Administrative Court can go up to 3 years. These delays favor non-compliant debtors.
- Litigation is cheap and often free. Despite the elaborate system of court fees on paper, civil and tax litigation continue to be largely subsidized by the taxpayer.<sup>63</sup> Extensive exemptions apply. There are 24 exempt groups, including a large number of state agencies. Also, a regime of reimbursement of court fees (such as for cases dismissed only on procedural grounds) exists for certain procedures. Also, court fees are applied uniformly: thus in tax cases litigants have to pay the same fee regardless of the size of the claim or assessment, and regardless of whether the claimant is a private individual or a company. Moreover, court fees decrease for appeals, with the fees of the appeal courts being half those of the district courts. This invites extended litigation through use of appeals.

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<sup>62</sup> The law allows for taxpayers to file an objection to a tax assessment or the attendant penalty in case of late payment. This objection does not need to be motivated. It is then incumbent on the tax authorities to advance the arguments on which basis the assessment, or the attendant penalty, can be justified. Judges identified this regime as problematic: The absence of the need to substantiate objections has the dual effect of (i) boosting objections from taxpayers (at least some of which may be spurious), and (ii) imposing the need of a broad-based and scattershot defense by the tax authorities. As the tax authorities must cover all possible eventualities, it is very burdensome for them and for the courts.

<sup>63</sup> The share of court fees in contributing to court revenues in Ukraine is the second lowest among 47 countries reviewed. The smaller the share of court fees, the higher the share for the taxpayer, who effectively subsidizes litigation. With a share of 3.5%, Ukraine is an outlier even within countries in the region. (Cf., e.g., Bulgaria 52% and Serbia 76.7%). See CEPEJ, *European judicial systems. Efficiency and quality of Justice*, 2012 Edition, Chapter 3.5, The revenues of the judicial system, pp. 76-81.

- There is no statutory interest. Given high inflation, prolonging litigation is profitable since the absence of statutory interest reduces the real value of debt.

**79. While the procedural weaknesses discussed above contribute to court congestion, there are no effective out-of-court alternatives.**

- There are no effective alternative dispute resolution (ADR) systems. Mediation is nearly unknown, even though permitted under Ukrainian law. There is an arbitration practice, but it is modest and has no real market impact.<sup>64</sup> This condition is the natural consequence of the incentives outlined above: there is no real financial or procedural incentive for debtors to seek out ADR.
- There is no distinct regime for standard and small claims, which is burdensome both to the market and the enforcement agencies. Ukrainian law does allow for the summary enforcement if the debt is notarized, but this is little used.

**80. Contract compliance and payment of debts is further obstructed by instruments available to debtors, which effectively block the legal process.**

- A much-used instrument is fraudulent insolvency. This serves as a subterfuge to escape debt payments since the application for insolvency creates a moratorium, even if insolvency itself is not declared. Debtors apparently engineer applications for insolvency and then have these lifted when convenient.
- Civil claims cannot be enforced against state agencies or state-owned enterprises. Ukrainian law provides for an effective moratorium on the enforcement of civil claims against such agencies or such enterprises in which the state holds more than a 25 percent stake.<sup>65</sup>

**81. Finally, Ukraine lacks a register for bad debtors.** Consequently, it is hard for companies to determine the credit history of new customers. This invites opportunistic debtor behavior, as some debtors move from one company to the next in a constant string of defaults.

### ***Post-Court Enforcement***

**82. There is broad agreement that civil and commercial claims are not systematically enforced following court decisions.** Stakeholders consider that the post-

<sup>64</sup> The State Service of Ukraine for Regulatory Policy and Entrepreneurship Development has a mediation function for conflicts between businesses and public authority. However, its jurisdiction is limited to disputes with regard to the issuance of licenses. It stated that it handles roughly 400 cases on an annual basis and that about 60% of the decisions are made in favor of businesses as opposed to the state.

<sup>65</sup> Law of November 29, 2001, No. 2864, *on the Introduction of Moratorium on Coercive Sale of Property*.

court enforcement service, the SES, has failed in applying all of the enforcement measures available to it. There are complaints that, even when these measures are applied, they are typically applied on a selective basis and usually in violation of the clear statutory deadlines. External interference, institutional corruption and complex legal process were identified as among the key factors contributing to the ineffectiveness of the SES.

- **External Interference.** Interlocutors stated that there is interference by outside agencies in the work of the SES, notably by the Prosecutor General's Office using its broad powers of oversight that go well beyond the criminal justice system. Interference is also manifested in what is viewed as a culture of deliberate non-compliance by state agencies to court decisions.
- **Complex Legal Process.** Under Ukrainian law, a court decision does not constitute enforcement title in its own right. The SES must secure an additional document to proceed towards enforcement. This requirement is viewed as unnecessarily complicating the enforcement process.

83. **Other issues pertain to the challenges faced by litigants in terms of cost and of holding the SES accountable for its performance.**

- **Cost.** The cost structure for post-court enforcement may sometimes dissuade litigants from going through with the process. This is because the cost consists of both a statutory fee (determined in terms of a fixed percentage of the value of the claim) and coverage of enforcement costs (without a cap). Consequently, while enforcement costs can be small for small claims, for large claims, the enforcement costs can be quite large.
- **Accountability.** Litigants have little recourse against an under-performing SES agent. Although there are rules which allow litigants to apply for the replacement of an agent, senior lawyers stated that in practice the SES routinely denies such applications regardless of how deserving they may be.

84. **A final set of challenges are more internal to the SES.**

- **Workload, Incentives and Budgetary Aspects.** The SES recognizes many of the challenges discussed above, but points out that they are due in part to a number of significant operational challenges it faces. The first is a heavy workload. The SES had 8 million cases in 2013, which translates into 2000-3000 enforcement cases per annum per enforcement agent. The second is a very poor salary structure, including the lack of any incentive pay. Enforcement agents are paid the same no matter how effective they are in recovery. Third, the SES lacks an adequate operational budget for its needs, including for tracking down assets.

***Professional Integrity***



85. **There is a widespread perception in Ukrainian society and in the market that the courts and the SES are characterized by pervasive corruption.** As discussed above, the buying of judicial positions by applicants compromises the integrity of judges from the outset. It is said that these advance payments need to be recouped and so often lock judges into the status quo of corruption. There are reports that payments are required not only at the time of recruitment, but also on an ongoing basis.<sup>66</sup> Another manifestation of weak professional integrity concerns case assignment. A system of random computerized case assignment was introduced in recent years. The objective of the system is to reduce the possibility of outside parties influencing the outcome of court decisions by directing cases to certain judges. However, discussions revealed a concern by several interlocutors that the computerized system is subject to manipulation and that external influencing of case assignment continues. As regards the SES, stakeholders identified institutional corruption as a major problem. Payments are made to SES officials either to speed up or delay enforcement or to influence certain steps in the enforcement process such as the appraisal of assets. There are also said to be schemes within the SES that lead to the fraudulent capture of private or corporate assets by state agents. Other more general matters concerning corruption are discussed in Section II of this report.

### **Proposals for Reform**

86. **In addition to calls from civil society, business and Ukraine's international partners, the need for serious reform in the judiciary and in the post-court enforcement process is openly acknowledged by the new government and the judiciary.** There is already an active reform agenda in place but it is still far from being realized in practice. A cornerstone of the reform agenda is the government's engagement with civil society through, in particular, the Reform Support Center, a joint government/civil society working group. The Center has 17 Task Forces, each of which is assigned specific areas. These areas include judicial reform and post-court enforcement for which the reform agenda can be said to have four broad objectives as further discussed below.

87. **The first objective is to address state capture and external influencing.** As discussed above, the new government has inherited a regime in which the political branches of government effectively exert direct control over the judiciary. In this regard, the reform agenda seeks to enhance constitutional provisions guaranteeing independence, ensure statutory conformity with the Constitution and meet a number of

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<sup>66</sup> Article (in Ukrainian) posted on Pravda website last November 30, 2011. Available via the Internet: <http://www.pravda.com.ua/news/2011/11/30/6800310>

treaty obligations. One specific goal is to reform the appointments process to ensure that it is driven by the judiciary itself. Another key proposal is to abolish the probationary period for newly-appointed judges. To this end, the government tabled a Constitutional Amendment Bill in April 2014. In the run-up to the presidential elections in May 2014, this Amendment Bill was withdrawn. Following the elections (June-July 2014), the government tabled a new Constitutional Amendment. This new Amendment Bill does not, however, include the judicial reform component. Many interlocutors stated that they regret this development and will seek to have it corrected.

88. **A second objective is to effect the necessary changes in the organization and procedure of the courts to strengthen the efficient, consistent, timely and effective enforcement of disputes.** A key area of contemplation is a return to the three-tier court structure that existed prior to 2010. Also under contemplation is the establishment of out-of-court or expedited resolution of disputes.

89. **The third objective is to strengthen the post-court enforcement stage of claims.** The enforcement framework is being reviewed by the Reforms Support Center, the joint government/civil society task force established by the government. The SES supports an abolition of the civil oversight role of the Prosecutor General's Office in line with international recommendations and Ukrainian draft legislation currently in Parliament.<sup>67</sup> One of the outputs of the joint task force is a draft bill on the partial privatization of the enforcement service. This draft bill is in line with prior recommendations in this domain.<sup>68</sup> In addition, the government has developed an e-auction system, on which a pilot project is being progressively rolled out.<sup>69</sup> This project has been welcomed by stakeholders. The aim of the project is to maximize recovery by reducing the potential for fraud at the point of asset liquidation.

90. **A fourth objective is to strengthen the anti-corruption framework to enhance professional integrity in the courts and the SES.** In particular, the government enacted a Law to Restore the Trust in the Judiciary, which suspended and dismissed the judicial management board (the High Council of Justice), all presidents

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<sup>67</sup> A Bill on the Prosecutor General's Office passed the second reading in Parliament on June 4, 2014 by the relevant Parliamentary Committee and was sent for consideration in the second reading. Its adoption in the second reading by the Parliament is pending. The Bill takes out the civil oversight role, but includes a number of other clauses that are seen by some observers as unsatisfactory.

<sup>68</sup> See, e.g., Mahnke & Uitdehaag, *Enforcement Matters*.

<sup>69</sup> As a result of Directive of the Cabinet of Ministers of Ukraine No. 332-4 (April 1, 2014) a new system of e-auctions became operative in Kiev and the Vinnytsia, Dnipropetrovsk, and Lviv oblasts. By Directive of the Cabinet of Ministers of Ukraine No. 575-r (June 11, 2014), this system was also introduced in the Zaporizhia, Ivano-Frankiv, Odesa, Kharkiv, and Chernihiv oblasts. The SES reports that 1506 movable and immovable seized assets have logged into the database at a consolidated assessed value of UAH 346.3 million, of which assets at a value of over UAH 9 million have been auctioned.

and vice-presidents of the district courts and other senior officials.<sup>70</sup> The Law also envisages a special committee to verify the integrity of sitting judges. The study found that various steps have been undertaken in recent years to strengthen professional integrity of the judiciary. These steps merit further support and strengthening. They include greater professionalization of the recruitment system with the introduction of objective standards and anonymous testing procedures, a Code of Ethics adopted by the judiciary in 2012, and the Judicial Misconduct Complaints Form and process introduced by the Ministry of Justice in 2008.<sup>71</sup> With regard to the SES, as noted above, the joint government/civil society is working on a broad review of the post-court enforcement regime. (See also, more generally, Section II of this report.)

### C. Conclusions on the Judiciary and Post-Court Enforcement

91. **On the basis of the conditions described above, the diagnostic study concludes that substantial reform of the judiciary and the post-court enforcement regime is required to ensure the effective, consistent, timely and transparent resolution of disputes.** In this regard, the government and the judiciary are committed to ensuring the necessary reforms, including in the context of Ukraine's IMF-supported program.

#### Potential Areas for Program Discussions

92. **State Capture and External Influencing.** To address the problem of state capture and external influencing, the following should be considered for review and discussion:

- The role of external factors, including of Parliament in the recruitment and dismissal of judges.
- The five-year initial period of judicial appointments ('probationary' period).
- The composition of the central management agencies of the judiciary involved in the appointment and dismissal process.

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<sup>70</sup> The law provides that the members of the High Council of Justice (other than the *ex officio* members) and the High Qualifications Commission of Judges of Ukraine are suspended, while the presidents and vice presidents of higher specialized courts, appeals courts, and local courts, as well as the clerks of the higher specialized courts and their deputies and the clerks of appeals court divisions are dismissed from their administrative function.

<sup>71</sup> Council of Judges of Ukraine and State Judicial Administration of Ukraine, *Strategic Plan for the Ukrainian Judiciary for 2013-2015* (FAIR-USAID), December 2012. The Code of Ethics was adopted by the XI Conference of Judges of Ukraine on February 22, 2013. The oversight over the judiciary no longer resides with the Ministry of Justice.

- The role of the Prosecutor General's Office beyond the criminal domain, notably its supervisory role over the courts and SES.

Work is already underway in these areas and other international organizations such as the European Commission and Council of Europe, which have a broader mandate than the IMF on these issues, are actively following the reform discussion. In this regard, the government understands that whether and how external influencing into the judiciary should be included as part of the IMF-supported program requires further consultation and consideration within the IMF.

93. **Judicial Organization.** To address the challenges raised by judicial organization, the following should be considered for review and discussion:

- In close consultation with the Supreme Court, the High Council of Justice, further agencies as necessary (such as, possibly, the Supreme Administrative Court) and civil society, develop an action plan, including draft legislation, on the following topics:
  - A return to a three-tier court structure and a simplification of the jurisdictions, with the overall objective to ensure an efficient, consistent, timely and effective court process.
  - Consolidation of the number of management agencies, notably the High Council of Justice and the High Qualification Commission and review of their composition, with the overall objective of simplifying and professionalizing judicial management, with clear accountability structures.
  - To assist in accountability, the publication of regular reports with core performance data of the judiciary, including inflow and outflow of cases, clearance rate and disposition time, and the number of pending cases, should be discussed.

94. Some of these measures for consideration may be closely linked to the issues raised in paragraph 92 above. Accordingly, the government understands that whether and how such measures should be included as part of the IMF-supported program requires further consultation and consideration within the IMF.

95. **Court Procedures.** The following measures should be considered for review and discussion:

- **Case Backlogs.** A comprehensive review of the procedure before the civil, commercial and administrative courts, touching on strengthening of out-of-court disputes settlement; the enforcement regime for uncontested claims to ensure compliance with the European Payment Order; the procedure for small and

standard claims; interim measures (such as seizures, garnishments and other conservatory measures); executory deeds with the objective to broaden the number of deeds permitting prompt enforcement and by-passing the courts; appeal procedures, particularly by introducing effective appeal barriers; the application of statutory interest; provisions on damages for contractual default; provisions on mortgage enforcement. As regards cases pending in the superior courts, the following measures should be considered, develop targeted measures to reduce the large number of pending cases in the superior courts; strengthen filters to pre-select cases coming to the superior courts.

- **Tax cases.** In addition to the above measures concerning case backlog, consideration should be given to imposing the obligation on taxpayers who object to their assessment or to penalties attached to the assessment to give the grounds for their objection; the mandatory court referral for tax enforcement cases should be reviewed.
- **Court Fees.** The court fee system for civil, commercial and tax cases with an aim of transferring costs to litigants, distinguishing between private and corporate entities and between case types. Any reform must uphold the principle of access to justice.
- **Bad Debtors.** Develop a bad debtor register.
- **Expenditure Review.** Consider a public expenditure review for the judiciary, which examines the system as a whole, including the personnel allocations, the wage structure, and the efficiency of the work process, the organizational fragmentation and the court fees/revenues. The expenditure review could include targeted recommendations for (i) a more realistic and equitable salary structure for both judges and court staff; (ii) an efficient judicial organization allowing for economies of scale; (iii) increased efficiency in work processes; (iv) efficiency gains in personnel allocations; and (v) court fee adjustments. These recommendations should be in line with international standards, best practices and recent developments throughout Europe.

96. **Post-Court Enforcement.** The following should be considered for review and discussion:

- **Enforcement Procedures.** A review should be effected which critically assesses the current enforcement regime, including the following issues: ending the oversight role of the Prosecutor General's Office; abolishing the interim enforcement title required for enforcement by the SES (see above); establishing liability of civil servants, bankruptcy and liquidation administrators and trustees for failure to comply with court decisions; allowing for enforcement of civil claims against the state, state agencies and state-owned enterprises, and forced

sale of assets; providing for effective compensation for delays; imposing statutory interest for defaults; and giving due consideration to requests that an enforcement agent be replaced.

- **Improving Efficiency.** Actively pursue e-auction by (i) proceeding with a nation-wide roll-out of e-auctions; (ii) ensuring all assets are logged onto the e-auction system; (iii) giving e-auctions a more solid statutory basis. Consider a system of private enforcement agents for certain categories of claims based on comparative models.
- **Performance Accountability.** Publication of regular reports with core performance data of the SES, including inflow and outflow of cases, clearance rates and disposition times, and the number of pending cases; regular publication of the number of complaints filed against enforcement agents and the sanctions applied.
- **Budgetary Aspects.** An independent external review, with civil society participation, of the budgetary constraints and performance incentives for enforcement. The results would be published.

97. **Professional Integrity.** To begin tackling the problem of professional integrity in the judiciary and in the SES, the measures set forth below should be considered for review and discussion. (See also Section II of this report.)

- Entrenching professionalism of recruitment by forcefully and consistently implementing the Code of Ethics and following-up on cases received under the judicial complaints process.
- Regular publication of the number of complaints filed against judges and the sanctions applied.
- An independent audit of the automatized case assignment system could be conducted with civil society participation. The audit would identify problems and make concrete recommendations on improvement. The audit report would be published.
- Analysis, perhaps by civil society, of asset declarations and performance of the courts and of the SES.

## V. OVERALL CONCLUSION

98. **This diagnostic study, which was called for by the government, represents an important and useful tool for assessing a number of inter-related issues that have an impact on improving governance and transparency of public sector processes and decision-making in Ukraine.** The government recognizes the

importance of following-up on the issues raised and recommendations suggested in this report and commits to doing so, including in the context of meeting the objectives of Ukraine's IMF-supported program. The government appreciates the assistance of the Legal Department and other staff of the International Monetary Fund in the conduct of the study as well as all of the various stakeholders and interlocutors who provided their valuable time and frank views.

**ANNEXES****A. List of Government Agencies Participating in the Diagnostic Study and Other Entities Consulted*****Ministries and Agencies***

The Minister, Cabinet of Ministers  
The Minister, Ministry of Finance  
The Minister, Ministry of Economic Development and Trade  
The Governor, National Bank of Ukraine  
The Deputy Minister, Ministry of Justice  
State Investment Agency  
State Enforcement Service  
Accounting Chamber  
Antimonopoly Committee  
State Service of Ukraine for Regulatory Policy and Entrepreneurship Development (now renamed the State Regulatory Service)  
State Committee on Entrepreneurship  
Fiscal Revenue Administration  
National Agency for Civil Service  
Government Anticorruption Commissioner  
Organized Crime and Anti-corruption Service, Ministry of Interior  
Financial Intelligence Unit  
Reforms Support Center  
Working Group on Corruption – Administration of the President of Ukraine  
Prosecutor General's Office

***Parliament***

Viktor CHUMAK, *Member of Parliament & Chairman of the Committee on Fighting Organized Crime and Corruption*  
Viktor PYNZENIK, *Member of Parliament & Former Minister of Finance*

***Judiciary***

Supreme Court  
Supreme Administrative Court  
High Council of Justice  
State Judicial Administration



***International Organizations***

European Union Delegation  
 Council of Europe  
 European Bank for Reconstruction and Development

***Foreign Governments***

Embassy of USA (USAID, US Department of Justice and US Embassy Moscow)  
 Embassy of France  
 Embassy of Canada  
 Embassy of UK  
 Embassy of Germany

***Nongovernmental Organizations***

American Chamber of Commerce  
 Center for Political and Legal Reform  
 Center of Judicial Studies  
 Anti-Corruption Action Center  
 Transparency International  
 Commercial Law Center  
 Notary Chamber of Ukraine and licensed private notaries  
 Ukrainian League of Industrialists and Entrepreneurs  
 European Business Association  
 Anti Lustration Committee  
 Ukrainian Bar Association  
 Reanimation Group  
 Ukrainian Legal Foundation

***Business Sector***

Ukrsibbank  
 Raiffaizen bank  
 Gide  
 Kyiv Star  
 Dragon Capital  
 Baker & McKenzie

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