United Nations
Office on Drugs and Crime

UKRAINE:

LEGISLATIVE GAP ANALYSIS ON PREVENTING CORRUPTION IN THE PRIVATE SECTOR

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ACRONYMS AND ABBREVIATIONS

CC	Criminal Code of Ukraine
CAPU	Code on Administrative Procedure of Ukraine
CIPE	Center for International Private Enterprise
Commissioner, anti-corruption commissioner	a person responsible for the implementation of an anti-corruption programme
Company	legal entity that is not a state authority or local government body
CoE	Council of Europe
CPC	Criminal Procedure Code of Ukraine
CUAO	Code of Ukraine on Administrative Offences
EU	European Union
FATF	Financial Action Task Force
ISO	International Organization for Standardization
Istanbul Plan	Istanbul Action Plan to Combat Corruption
NABU	National Anti-Corruption Bureau of Ukraine
NACP	National Agency on Corruption Prevention
OECD	Organisation for Economic Co-operation and Development
SAP	State Anti-Corruption Programme for 2023-2025, approved by the Resolution of the Cabinet of Ministers of Ukraine dated 4 March 2023, No. 220
SBI	State Bureau of Investigation
Standard Anti-Corruption Programme	Standard Anti-Corruption Programme of a Legal Entity, approved by Order of the National Agency on Corruption Prevention dated 10 December 2021 No. 794/21
Standard Regulation on the Authorized Unit	Standard Regulation on the Authorized Unit (Authorized Person) for the Prevention and Detection of Corruption, approved by Order of the National Agency on Corruption Prevention dated 27 May 2021 No. 277/21
State-owned companies	state-owned enterprises, business associations (in which the state share exceeds 50 per cent), state organizations (institutions)
the Law	Law of Ukraine “On Corruption Prevention”
UNCAC	United Nations Convention against Corruption
UN	United Nations
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime

INTRODUCTION

As a result of full-scale invasion of Ukraine by the Russian Federation on 24 February 2022[1], Ukrainian companies suffered from rising raw material costs, unsafe working conditions and shortages of personnel. Despite being under martial law, leading Ukrainian business associations continued to try and reduce corruption risks and make the business environment more conducive to ethical and fair business operations. There is a growing expectation from society that businesses will maintain integrity during the recovery, apply corporate integrity and advocacy skills, monitor competitors and, if necessary, act as whistle-blowers to bring corruption to light[2].

As per the assessment of the fourth Rapid Damage and Needs Assessment[3] of the impact of the invasion during almost three years since February 2022, the total direct damage across sectors reached almost US$176 billion[4] (as of 31 December, 2024). Housing (about US$57 billion, or 33 per cent of total damage) and energy and extractives including damage to the district heating sector (US$20.51 billion, or 12 percent) have been among the most affected sectors[5]. In terms of recovery and reconstruction needs, including building back better (BBB) principle, the total estimated recovery and reconstruction needs across the public and private sector amount to about US$524 billion[6]. These costs – estimated for a period of 10 years – consider BBB principles, including a shift toward lower energy intensity and adoption of modern standards (including for climate resilience and inclusive design), as well as inflation, market conditions, surge pricing in construction commonly seen in areas of major construction, and higher insurance premiums[7]. The highest estimated needs are in housing (almost US$84 billion, or 16 per cent of the total), followed by transport (almost US$78 billion, or 15 per cent), energy and extractives (almost US$68 billion, or 13 per cent), commerce and industry (over US$64 billion, or 12 per cent), agriculture (over US$55 billion, or 11 per cent), social protection and livelihoods (US$39 billion, or 7 per cent), and explosive hazards management (almost US$30 billion, or 6 per cent)[8]. From an investment perspective, the role of private sector in meeting needs and reducing the burden on the public authorities is considered critical, while an accelerated agenda of pro-competition reforms and deeper integration with the EU and international markets could significantly increase the private sector's role in reconstruction, especially in infrastructure sectors[9]. The estimated private sector investments needed amount to at least US$41 billion that is the largest share of investments (in renewable energy generation, flexible capacity, and cogeneration) which the private sector is expected to undertake[10].

Corruption in the private sector has become one of the biggest challenges Ukraine faces, especially as it seeks closer integration with international markets and international partnerships. A number of Ukrainian companies have faced sanctions and some have also faced large-scale anti-corruption investigations under extraterritorial anti-corruption laws (such as the U.S. Foreign Corrupt Practices Act (FCPA). These events have increased public awareness of the need to strengthen adherence to integrity frameworks not only for its own sake, but also to bolster Ukraine's global image.

For a long time, the image of Ukrainian business was marred by corruption scandals that accompanied the large-scale wave of privatization between 1995-2005. These scandals fed a stereotype about the private sector as an environment where corruption was not only widespread, but often part of the business culture[11].

1 Resolution ES 11/7, UN General Assembly, adopted 24 February 2025, available at: https://docs.un.org/en/A/RES/ES-11/7.

2 https://www.cipe.org/wp-content/uploads/2023/11/CIPE_Ukraine_Rebuild-with-Trust_2023_UKR.pdf.

3 The fourth Rapid Damage and Needs Assessment (RDNA4) (2025). URL: https://ukraine.un.org/en/download/178969/290001. Date of access: 24 October 2025.

4 Idem. Page 10.

5 Idem. Page 36.

6 Idem. Page 10.

7 Idem. Page 41.

8 Idem. Page 143.

9 Idem. Page 42.

10 Idem. Page 144.

11 https://www.cipe.org/wp-content/uploads/2023/11/CIPE_Ukraine_Rebuild-with-Trust_2023_UKR.pdf, p. 5.

Ukraine's ratification of the Council of Europe (CoE) Criminal Convention on Combating Corruption (2009) and the United Nations Convention against Corruption (2009) was the first step towards the implementation of international standards of corruption prevention. However, over the next decade, anti-corruption efforts were mainly directed at the public sector, leaving the private sector outside the ambit of systemic reforms.

A new stage of anti-corruption reform began in 2014 with the adoption of the Anti-Corruption Strategy for 2014-2017 including the Law of Ukraine "On Corruption Prevention". These regulatory acts became the basis for the gradual introduction of anti-corruption compliance measures in the private sector. The strategy outlined the main causes of corruption in the private sector including the deep interlinkages between business and politics, imperfect regulation of business activities, as well as corruption within regulatory bodies and the judicial system[12].

In order to strengthen corruption prevention in the private sector, the Anti-Corruption Strategy for 2014-2017 provided for a number of measures that were partially implemented in that period[13]. For instance:

- The Business Ombudsman Council was established. This body is empowered to receive and consider complaints from representatives of the private sector, as well as to provide recommendations to government bodies and local governments;
- Legal entities whose officials have been held accountable for corruption or corruption-related offences were restricted from participation in public procurement;
- A model anti-corruption programme for legal business entities was developed based upon consultations with a wide range of stakeholders including representatives of business associations.

However, a strategy for implementing anti-corruption standards in the private sector was not developed and information about the legal obligations of enterprises as per the legislation as well as other corruption prevention issues was not disseminated optimally.

According to the results of a study conducted by the All-Ukrainian Network for Integrity and Compliance (UNIC) in 2018, a majority of representatives of businesses (about 80 per cent) are more or less familiar with anti-corruption legislation. However, 75 per cent of respondents, who considered themselves familiar with the anti-corruption legislation, cited media materials as their main source of information. Only every fourth respondent was familiar with the content of the laws[14].

The next Anti-Corruption Strategy for 2021-2025 was adopted by the Verkhovna Rada (the unicameral parliament and sole legislative body) of Ukraine on 20 June 2022 after a delay of four-and-a-half years[15].

However, despite some positive developments, corruption remains a significant concern. According to the results of a sociological study[16] conducted by the InfoSapiens agency on behalf of the National Agency on Corruption Prevention (NACP), corruption emerged as the most important area of concern (excluding the invasion). Corruption was considered to be a very serious concern by 76 per cent of survey respondents from the private sector, as compared to 73.0 per cent in 2023. This marks a return to Pre-2021 levels.

While 21.3 per cent of survey respondents said that they would be willing to report corruption, only 17.2 per cent reported actually having done so. Although this figure is low, it reflects an upward trend[17].

12 https://zakon.rada.gov.ua/laws/show/1699-18#Text.

13 https://zakon.rada.gov.ua/laws/show/en/1699-18?lang=en#Text.

14 Survey conducted on "Corruption Risks in the Activities of Government Bodies: A Business Perspective".

15 https://nazk.gov.ua/wp-content/uploads/2022/08/Antykoruptsijna-strategiya-na-2021-2025-rr.pdf.

16 Corruption in Ukraine 2024: Understanding, Perception, Prevalence", https://www.sapiens.com.ua/publications/socpol-research/333/NACP_presentation_report_2024_ENG.pdf.

17 https://nazk.gov.ua/pdfjs/?file=/wp-content/uploads/Pages/07/17/0717bf197d9dbfd35baa6d2e939ca43a2e47460785552328ee7bd5e2fdebb05e11548549.pdf&fbclid=IwY2xjawIYDotleHRuA2FlbQIxMAABHS_baCPkBAcsRCeMFrftI-w77mmcV-Fbs32clfaELUKu5DuiU-2aktzz5w_aem_nTexjMGzJFr14Q6qty4xHg.

According to a sample survey of the general populace conducted by the UNIC in November 2018, there was a widespread appreciation of businesses that declared themselves as having a high level of integrity. Two out of three survey respondents completely agreed and more than 80 per cent somewhat agreed with the following statements: "It is important for me to buy products and services from a manufacturer that declares a high level of integrity" and, "The reputation and integrity of a company are as important to me as price and quality."[18]

Over the past decade, this trend seems to have gathered momentum in line with greater public awareness about the role of business in creating a transparent business environment. Increasingly, private sector enterprises in Ukraine are perceived not only as economic actors but also as potential allies in the fight against corruption, that are capable of influencing the establishment of transparent business practices.

The shift in attitudes toward the private sector is occurring alongside a growing recognition of its vital role in fostering a sustainable and responsible business environment—an essential component of anti-corruption reforms.

Over the past decade, Ukraine has implemented a broad range of anti-corruption measures, bringing its national legislation significantly closer to international and European Union (EU) standards. However, an analysis of the current legal framework highlights the need for further progress. Advancing reforms in this area is crucial not only for Ukraine's integration with Europe and successful EU accession negotiations but also for building trust and enhancing cooperation with foreign partners.

The UNODC Programme Office in Ukraine conducted a study on the compliance of Ukrainian legislation with international and European standards on corruption prevention in the private sector and also developed recommendations to help businesses build integrity and anti-corruption compliance.

This report contains the key results of the study, as well as recommendations for decision-makers in the private and public sectors on the formation of appropriate anti-corruption policies and measures for their implementation.

18 https://www.dropbox.com/scl/fi/lx2ak1dq7yqwmsp5w4uqp/UNIC_Report_General_Population_UKR.pdf?rlkey=9h3l25fwgyw2x9oflpnr3hnpz&e=1&dl=0.

RESEARCH METHODOLOGY

An analysis of the regulatory framework (international treaties, EU acts, etc.) was carried out during the preparation of the study this report is based on, considering the inclusion of so-called soft law, i.e. those regulatory acts that are only of a recommendatory nature for Ukraine. This study itself is based on publicly available materials, inquiries to the bodies that formulate or implement anti-corruption policy regarding certain issues or statistical data, interviews with individual NACP employees as well as field research conducted by NACP and other governmental and non-governmental organizations (NGOs)[19]. It does not predict or preempt in any way the results of the review of implementation of the United Nations Convention against Corruption (UNCAC). In June 2024, Ukraine's UNCAC second cycle review process, suspended in 2022 due to the invasion resumed with the aim of supporting Ukraine in implementing the Convention, which was ongoing at the time of drafting this report.

The methods used for this analytical research of legislation on the prevention of corruption in the private sector for compliance with international standards were:

1. **Legal and doctrinal analysis** — Examining laws, regulations, and policies of Ukraine to identify their key provisions and principles related to anti-corruption measures.
2. **Comparative legal analysis** — Comparing national legislation with international standards and good practices, such as those set by the OECD, FATF, UNODC or UN conventions, to identify gaps and areas of alignment.
3. **Content analysis** — Systematically analysing the content of legal texts, guidelines, and regulatory frameworks to assess the scope, coverage, and effectiveness of anti-corruption measures.
4. **Expert interviews and surveys** — Consulting legal experts and compliance officers, to gather insights on implementation, effectiveness, and areas needing improvement.
5. **Document and policy review** — Reviewing corporate policies, internal controls, risk management strategies, and audit reports to assess compliance levels with prescribed standards.
6. **Monitoring and benchmarking** — Tracking compliance status over time and benchmarking national legislation against international standards to measure progress and identify good practices.

Purpose and approach: To analyse the compliance of Ukrainian legislation with international and European standards in the field of corruption prevention in the private sector in Ukraine. This was done via an examination of international and national legislation in the field of corruption prevention in the private sector. This includes EU directives and other instruments such as from the Organisation for Economic Co-operation and Development (OECD) which are currently not binding on Ukraine as it is not part of the EU. However, these and other instruments have been included in anticipation of Ukraine seeking a full EU membership in the future. An exhaustive list follows.

19 Rebuilding with Trust: How Ukraine's Private Sector Can Strengthen Integrity in Recovery and Combat Corruption. URL: https://www.cipe.org/resources/rebuild-with-trust-how-ukraines-private-sector-can-strengthen-the-integrity-of-reconstruction-and-combat-corruption/.

A Resource Guide on State Measures for Strengthening Business Integrity. UNODC, 2024. URL: https://businessintegrity.unodc.org/bip/en/new-publication_-a-resource-guide-on-state-measures-for-strengthening-business-integrity.html.

Recommendation of the Council for OECD Further Combating Bribery of Foreign Public Officials in International Business Transactions (2021 Anti-Bribery Recommendation). URL: https://baselgovernance.org/sites/default/files/2021-11/Recommendation%20of%20the%20Council%20for%20OECD%20Further%20Combating%20Bribery%20of%20Foreign%20Public%20Officials%20in%20International%20Business%20Transactions.pdf.

OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. URL: https://www.oecd-ilibrary.org/finance-and-investment/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_81f92357-en.

International legal framework:

(i) Signed and ratified by Ukraine:

- Council of Europe Criminal Law Convention on Corruption (ETS 173) of 27 January 1999, ratified by Ukraine on 18 October 2010;
- Council of Europe Civil Law Convention on Corruption of 4 November 1999, ratified by Ukraine on 16 March 2005;
- United Nations Convention against Transnational Organized Crime of 15 November 2000, ratified by Ukraine on 21 May 2004;
- United Nations Convention against Corruption of 31 October 2003, ratified by Ukraine on 2 December 2009.

(ii) Not binding on Ukraine:

- Convention adopted in accordance with article K.3 of the Treaty establishing the European Union, on the protection of the European Communities' financial interests of 26 July 1996;
- Convention adopted on the basis of article K.3 (2) (c) of the Treaty establishing the European Union on the fight against corruption involving officials of the European Community or officials of Member States of the European Union of 26 May 1997;
- Council Decision 2008/568/JHA on the establishment of a network of anti-corruption contact points of 24 October 2008;
- Council Framework Decision 2003/568/JHA on combating corruption in the private sector of 22 July 2003;
- Directive 2017/1371 of the European Parliament and Council of 5 July 2017 on the fight against fraud to the Union's financial interests by criminal law;
- Draft Directive on combating corruption of 3 May 2023;
- EU Directive 2019/1937 on the protection of persons reporting breaches of EU law of 23 October 2019;
- OECD Convention on combating bribery of foreign public officials in international business transactions of 17 December 1997.

(iii) OECD recommendations and guidelines:

- OECD Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions of 26 November 2009 as amended on 26 November 2021;
- OECD Recommendation on Tax Restrictions to Combat Bribery of Foreign Public Officials in International Business Transactions of 25 May 2009;
- OECD Recommendation on Bribery and Official Export Promotion of 13 March 2019;
- OECD Recommendation on the Development of Cooperation Bodies to Overcome Corruption Risks of 16 November 2016.

(iv) Recommendations of relevant international organizations:

- International Standard ISO 37001:2016 Anti-corruption Management Systems;
- International Standard ISO 37002:2021 Whistleblowing Management Systems.

National legal framework:

- Law of Ukraine "On Corruption Prevention";
- Law of Ukraine "On the Principles of State Anti-Corruption Policy for 2021-2025";
- Code of Ukraine on Administrative Offences;
- Criminal Code of Ukraine;
- Criminal Procedure Code of Ukraine;
- Civil Code of Ukraine;
- Civil Procedure Code of Ukraine;
- Resolution of the Cabinet of Ministers of Ukraine on "Approval of the State Anti-Corruption Programme for 2023-2025";
- Standard Anti-Corruption Programme of a Legal Entity, approved by NACP;
- Ukrainian Case Law and European Court on Human Rights Decisions.

Applicability of national legislation to the private sector:

Current legislation in Ukraine does not contain a definition of "private sector". A report— "Rebuilding with Trust: How the Private Sector in Ukraine Can Strengthen Integrity during Recovery and Overcome Corruption" — was prepared in 2023 by the Center for International Private Enterprise (CIPE). Within the ambit of the term "private sector", the authors included a wide range of business structures, organizations and enterprises — from micro, small and medium-sized enterprises (MSMEs) to large monopolistic firms and State-owned enterprises[20], various membership organizations and organizations engaged in business support[21].

However, with regard to public law, a distinct law to determine the legal status of entities under public law is yet to be adopted (although the Civil Code clearly establishes that the procedure for the formation and legal status of legal entities under public law are established by the Constitution of Ukraine and the law)[22]. As of August 2025, the legislature relies on the classification of entities in the Civil Code, which is made on the basis of the manner of their creation and how they became legal entities. There are no other clear formal criteria.

The Commercial Code of Ukraine was repealed as of 28 August, 2025. Its provisions regulating economic activity have been transferred to the Civil Code and other special laws. In its stead, the Law of Ukraine «On the Peculiarities of Regulation of the Activities of Legal Entities of Certain Organizational and Legal Forms in the Transitional Period and Associations of Legal Entities» has been put into effect. Certain issues related to economic activities are regulated by special laws, in particular, the Law of Ukraine «On Limited and Additional Liability Companies» and the Law of Ukraine «On Joint-Stock Companies». State and municipal enterprises will gradually be transformed into business companies (LLCs or joint-stock companies). Ukrainian national legislation recognizes legal persons under private law and legal persons under public law, a division which is based on who creates or who is the owner (shareholder) of such a legal entity. This is different to more widely applied concepts such as "private or public sector enterprise/entity".

As per the provisions of the Civil Code, a legal entity under private law is created on the basis of constituent documents in accordance with article 87. A legal entity under public law can be created by an administrative

20 In some economies, state-owned enterprises (SOEs) operate in the same markets as private companies and may even look like private businesses (selling goods, competing for customers, etc.). Some governments give SOEs a lot of autonomy, so they resemble private firms in their structure or decision-making. International organizations (like the International Monetary Fund or World Bank) sometimes classify state-owned commercial enterprises separately from core government services.

21 https://www.cipe.org/wp-content/uploads/2023/11/CIPE_Ukraine_Rebuild-with-Trust_2023_UKR.pdf.

22 Yurkevych Y. On the Differentiation of the Status of Legal Entities (Their Associations) of Public and Private Law. URL: http://pgp-journal.kiev.ua/archive/2016/01/8.pdf.

act of the President of Ukraine, a State authority, an authority of the Autonomous Republic of Crimea or a local self-government body.

According to article 167 of the Civil Code, the State may create both legal entities under public law (State enterprises, educational institutions, etc.) and legal entities under private law (business partnerships, etc.), and participate in their activities on general grounds, unless otherwise established by law.

Article 61 of the Law of Ukraine "On Corruption Prevention" obliges legal entities to develop and implement measures that are necessary and reasonable to prevent and combat corruption in their activities. Managers and founders (participants) of a legal entity are obliged to ensure regular assessment of corruption risks and to take appropriate anti-corruption measures.

Further, article 61 of the Law also obliges officials of legal entities and other persons employed and performing functions in legal entities to:

- not commit or participate in corruption offences related to the legal entity;
- refrain from behaviour that may be regarded as a willingness to commit a corruption offence related to the legal entity;
- immediately inform the official responsible for prevention of corruption, the head or founders (participants) of a legal entity when there are attempts at inducing corruption;
- immediately inform the official responsible for prevention of corruption, the head or the founders (participants) of the legal entity when corruption or corruption-related offences are committed by other employees of the legal entity and/ or other persons; and,
- immediately inform the official responsible for preventing corruption, the head or the founders (participants) of the legal entity when they perceive a real or potential conflict of interest.

Although article 61 does not specify which legal entities are covered by it, an analysis of the other provisions of the Law shows that its provisions are binding only on legal entities under public law and legal entities defined in part 2 of article 62 of the Law, which are:

- State-owned, municipal enterprises, business entities (in which the State or municipal share exceeds 50 per cent), where the average number of employees for the reporting (financial) year exceeds 50 people, and the amount of gross income from the sale of products (works, services) for this period exceeds UAH 70 million (approximately US$1,671,315);
- legal entities that are participants of the procurement procedure in accordance with the Law of Ukraine "On Public Procurement", if the cost of procurement of goods, service(s), works is equal to or exceeds UAH 20 million (approximately US$4,80,770).

For all other legal entities under private law that do not meet these criteria, the provisions of the Law "On Corruption Prevention" are mostly advisory in nature. The exception is the prohibition on the abuse of official powers or position, as set out in article 22 of the Law, which will result in criminal liability if not observed. It applies inter alia, to persons who permanently or temporarily hold positions that have organizational, administrative or economic duties, or those who are specially authorized to perform such duties in legal entities under private law, regardless of their legal composition. It also applies to persons who are not officials of the entity but undertake work for or provide services under an agreement with the entity.

Clause 5-2 of part 1 of article 12 of the Law authorizes NACP to inspect the anti-corruption efforts of State bodies, the authorities of the Autonomous Republic of Crimea[23], local self-government bodies, legal entities under public law, and those private legal entities specified in part 2 of article 62. These inspections may cover areas such as the development and implementation of anti-corruption programmes, the operation of internal and regular reporting channels for suspected corruption or related offences, other violations of the Law, and protections for whistle-blowers.

23 Ukranian legislation foresees the power of NACP to inspect bodies in this region.

Pursuant to clauses 5-4 of article 12 of the Law, NACP has the right to receive, in particular, written explanations from business entities, regardless of their form of ownership, on the circumstances that may indicate a violation of the rules of ethical behaviour, prevention and settlement of conflicts of interest, and other requirements and restrictions provided for by the Law.

It is therefore clear that legal entities under private law that do not meet the criteria outlined in part 2 of article 62 of the Law are not legally required to implement anti-corruption measures, and their failure to do so carries no legal consequences. This is confirmed by the powers granted to NACP under article 12 of the Law.

Thus the State, as represented by NACP, only has a recommendatory role when it comes to countering corruption in the private sector. Within this legal framework, government agencies are limited to providing recommendations, investigating corruption and other economic crimes committed by officials of private legal entities. State bodies, primarily NACP, without having any real influence on private law entities, influence the development of the compliance system in such legal entities in various ways, including through public appeals and measures of zero tolerance for corruption in the private sector.

Challenges posed by application of the Law of Ukraine "On Corruption Prevention":

The lack of clear criteria for dividing legal entities into public and private has led to a situation where a number of legal entities with 100 per cent State ownership, in particular joint-stock companies (Ukrposhta, Ukrzaliznytsia, Energoatom, etc.), are recognized in their statutes as legal entities under private law, and therefore do not fall within the ambit of the law. Officials of such joint-stock companies do not submit electronic declarations, and are neither subject to restrictions on receiving gifts nor to the requirements for preventing conflicts of interest. All these issues are regulated at the level of internal policies, the violation of which is only subject to disciplinary liability at most and may not invite any legal consequences. Likewise, the absence of relevant internal documents also does not have any legal consequences for the entity.

In its "Clarifications on Financial Integrity: Application of Certain Provisions of the Law of Ukraine "On Corruption Prevention» Regarding Financial Control Measures" dated 13 November 2023, No. 4 (as amended), NACP recommended that the entire body of regulatory legal acts and legal documents defining that entity's legal status be analysed to determine whether it qualifies as a legal entity under public law.

In practice, this legislative uncertainty in the statute on who is a shareholder (or owner) of a joint-stock company or not, can lead to discretion in determining whether representatives of such a company can be held liable for a number of corrupt acts.

Based on the practice of the European Court on Human Rights, NACP has outlined a number of criteria for classifying legal entities under public law. These are:

1. The nature of activities: In particular, this refers to the type of activity and the sphere/industry in which such activities are carried out. A legal entity under public law is active in spheres/industries that are a legitimate subject of public interest namely, the interest of the State, society, territorial community, as well as interests and needs that are important for a large number of people. This includes but is not limited to mining, energy and transport sectors, as well as the provision of housing and communal services.
2. The context of activities: A legal entity that operates as a monopoly in a certain sphere or in a sphere that is fully or largely regulated by the State/territorial community is characterized as a legal entity under public law.
3. Institutional dependence of the legal entity on the State/territorial community: This occurs in cases where the share of State or municipal ownership in the authorized capital of a legal entity exceeds 50 per cent, or that gives the relevant bodies of State administration or local self-government decisive influence on the economic activities of these entities allowing them to single-handedly shape the will of the legal entity. It also occurs when the State/territorial community is an active participant, influences the affairs of the legal entity and participates in operational management etc. Institutional dependence on the State is also seen in those legal entities (regardless of their

organizational and legal form) that are institutionally dependent on the State indirectly (through other legal entities under public law).

4. Functional dependence of the legal entity on the State/territorial community: such dependence may occur when the State/territorial community has a high degree of supervision and control over the most important aspects of the activities of a legal entity. For example, if the State/territorial community, through the State bodies or local self-government bodies:
    - appoints the management of such a legal entity;
    - provides instructions that are mandatory for the legal entity to fulfill;
    - exercises control over the assets of the legal entity;
    - may use the assets of the legal entity at its own discretion;
    - may entrust the legal entity with the performance of its tasks, functions;
    - reviews and approves legal agreements, etc[24].

However, despite the fact that NACP notes that a legal entity under public law does not necessarily have to possess all of the above characteristics, a number of joint-stock companies[25], which meet the criteria, are classified as legal entities under private law, in accordance with their statutes which have been approved by the government or the relevant ministry. Therefore, they and their officials are not subject to the vast majority of the requirements of the Law.

This legal uncertainty should be eliminated by adopting a legislative act that would clearly distinguish between legal entities under private and public law.

When conducting this research, the author took into account that corruption in the private sector is primarily bribery in the commercial interests of officials and employees of private sector business entities, as well as bribery of civil servants or persons providing public services, or abuse of authority by officials of a legal entity under private law and persons providing public services in order to obtain undue benefit for themselves or third parties[26].

In this report, the author identified the following as typical features of a legal entity under private law:

- The commercial content and orientation of the legal entity's activities aims to obtain profit on a systematic basis, at the entity's own commercial risk, based on the principles of free competition.
- The entity has private ownership of the means of production and the products of labour, a market-based mechanism for regulating business activities, and limited government investment and subsidies.
- These business entities are legal entities under private law and their associations, which are created at the initiative of the founders (participants) voluntarily, on the basis of constituent documents.
- The property used by business entities—individually or jointly—for entrepreneurial activities is owned by them under the right of private ownership or other legal property rights.
- The management of business activities, including disposal of property and use of profit from entrepreneurial activity is carried out by the owner/co-owner of property personally or through bodies authorized by them. The management of business activities of associations of legal entities under private law — through higher management bodies — is thus carried out with the participation of owners of corporate rights.

24 https://wiki.nazk.gov.ua/pdfjs/?file=/wp-content/uploads/Categories/94/eb/94eb4d1e2ad4cac55bc28c399c1a322043e796ecd6663ec7a71d74c746fcf459998422727.pdf.

25 For example, Ukrzaliznytsia, Ukrposhta, Energoatom. See: https://zakon.rada.gov.ua/laws/show/735-2015-%D0%BF#Text, https://www.ukrposhta.ua/doc/statutory-documents/Statut_at_ukrposhta_21082023.pdf, https://zakon.rada.gov.ua/laws/show/1420-2023-%D0%BF#Text.

26 Holovkin B.M. On the corruption in private sector. URL: https://chasprava.com.ua/index.php/journal/article/view/591/563/.

- These business entities are independently liable for their obligations, with all property belonging to them, while the State is not responsible for the consequences of entrepreneurial activity of private business[27].

Therefore, for the purposes of this report, the private sector is understood as business entities, including legal entities under private law, regardless of their organizational and legal form, except for those established and owned by the State.

For reference, as per the latest figures at time of publication: organizational and legal classifications under which the largest number of legal entities are registered in Ukraine (as of 1 April 2024):

- Limited liability company — 792,200 legal entities or 52.7 per cent of the total number of legal entities;
- Private enterprise — 199,844 legal entities or 13.3 per cent of the total number of legal entities[28].

27 Holovkin B.M. On the corruption in private sector. URL: https://chasprava.com.ua/index.php/journal/article/view/591/563/.

28 https://skilky-skilky.info/wp-content/uploads/2024/04/Kilkist-zareiestrovanykh-iurydychnykh-osib-za-orhanizatsiyno-pravovymy-formamy-hospodariuvannia-na-1-kvitnia-2024-r.pdf.

MEASURES TO PREVENT CORRUPTION: INTERNATIONAL AND NATIONAL LEGAL FRAMEWORKS

International requirements:

The **United Nations Convention against Corruption** (UNCAC) is the only legally binding universal anti-corruption instrument. It was adopted by the United Nations General Assembly on 31 October 2003. Ukraine signed the Convention on 11 December 2003 and ratified it on 2 December 2009. Today, this landmark anti-corruption instrument enjoys near universal adherence with 191 parties and provides the pre-eminent global platform for international cooperation on countering corruption.

A notable feature of UNCAC is the peer reviews of the implementation of the Convention that are carried out as part of the Implementation Review Mechanism. Ukraine's second review cycle, focusing on the implementation of chapters II (Preventive measures) and V (Asset recovery) was ongoing at the time of drafting this report (in 2025). While it includes some analysis of the existing legislation, this report does not preempt or prefigure in any way the findings of this aforementioned review, which is intended to serve as a building block for future anti-corruption reforms in Ukraine.

As mentioned earlier, Ukraine is implementing its treaty obligations by inter alia, implementing the Anti-Corruption Strategy for 2014-2017 and the ongoing Strategy for 2021-2025.

Article 12 of UNCAC provides that each State Party shall take measures, in accordance with the fundamental principles of its domestic law, aimed at preventing corruption in the private sector, strengthening accounting and auditing standards in the private sector and, where appropriate, establishing effective, appropriate and dissuasive civil, administrative or criminal sanctions to comply with such measures[29].

The initial norms on business integrity in Ukraine were the result of Ukraine's obligations under international agreements and conventions adopted by Ukraine after the 2014 Maidan Revolution. These include the obligations related to the 2014 EU-Ukraine Association Agreement, the 2017 Memorandum of Understanding between the Government of Ukraine and the OECD on Deepening Cooperation, Visa Liberalization with the EU, and the conditions imposed by the EU's macro-financial assistance programmes for Ukraine (2014-2017) and the World Bank (2014)[30].

In 2017, Ukraine joined the OECD Declaration on International Investment and Multinational Enterprises, an integral part of which are the OECD Guidelines for Responsible Business Conduct[31]. The 2023 version of the

29 Article 12 of the UN Convention Against Corruption:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

30 https://www.cipe.org/wp-content/uploads/2023/11/CIPE_Ukraine_Rebuild-with-Trust_2023_UKR.pdf.

31 https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0144#adherents.

Guidelines contains updated recommendations on responsible business conduct, in particular in the area of business integrity. Section VII is devoted to combating bribery and other forms of corruption.

Salient features of the Guidelines for private sector representatives[32]:

1. Not engage in any act of corruption, including the offering, promising or giving of any undue pecuniary or other advantage to public officials or employees of persons or entities with which an enterprise has a business relationship or to their relatives or associates. Likewise, enterprises should not request, agree to or accept any undue pecuniary or other advantage from public officials or the employees of persons or entities with which an enterprise has a business relationship. Enterprises should not use third parties or other intermediaries, including, inter alia, agents, consultants, representatives, distributors, consortia, contractors and suppliers and joint venture partners for channelling undue pecuniary or other advantages to public officials, or to employees of persons or entities with which an enterprise has a business relationship or to their relatives or associates.
2. Develop and adopt adequate internal controls, ethics and compliance programmes or measures for adequately preventing, detecting and addressing bribery and other forms of corruption, developed on the basis of a risk-based assessment, taking in to account the individual circumstances of an enterprise, in particular the enterprise risk factors related to bribery and other forms of corruption (including, inter alia, its geographical and industrial sector of operation, other responsible business conduct issues, the regulatory environment, the type of business relationships, transactions with foreign governments, and use of third parties). These internal controls, ethics and compliance programmes or measures should include a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, conflict of interest registers, records, and accounts, to ensure that they cannot be used for the purpose of engaging in or hiding bribery or other acts of corruption. Such individual circumstances and risks should be regularly monitored and re-assessed as necessary to determine the allocation of compliance resources and to ensure the enterprise's internal controls, ethics and compliance programme or measures are adapted and continue to be effective, and to mitigate the risk of enterprises becoming involved in bribery or other forms of corruption. These internal controls, ethics and compliance programmes or measures for preventing and detecting all forms of corruption should also include carrying out risk-based due diligence.
3. Prohibit or discourage, in internal company controls, ethics and compliance programmes or measures, the use of small facilitation payments, which are generally illegal in the countries where they are made, and, when such payments are made, accurately record these in books and financial records.
4. Ensure, taking into account the particular risks related to bribery and other forms of corruption, properly documented due diligence pertaining to the hiring, as well as the appropriate and regular oversight of agents, and that remuneration of agents is appropriate and for legitimate services only. Where relevant, an updated list of agents engaged in connection with transactions with public bodies and State-owned enterprises should be kept and made available to competent authorities, in accordance with applicable public disclosure requirements. Enterprises should take steps to ensure that their agents avoid exercising illicit influence and comply with professional standards in their relations with public officials.
5. Enhance the transparency of their activities in the fight against bribery and other forms of corruption and foster a culture of integrity. Measures could include i) strong, explicit and visible support and commitment from the board of directors or equivalent governing body and senior management to the enterprise's internal controls, ethics and compliance programmes; ii) a clearly articulated and visible corporate policy prohibiting bribery and other forms of corruption, easily accessible to all employees and relevant third parties, including, inter alia, foreign subsidiaries, agents, and other intermediaries; and iii) disclosing the management systems and the internal controls, ethics and compliance

32 OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. 2023. URL: https://www.oecd-ilibrary.org/docserver/81f92357-en.pdf?expires=1728376469&id=id&accname=guest&checksum=F14D85F3676ED3662D02FDAE24C0C535.

programmes or measures adopted by enterprises in order to honour these commitments. Enterprises should also foster openness and dialogue with the public so as to promote its awareness of and co-operation in the fight against bribery and other forms of corruption. Enterprises are encouraged to disclose, without prejudice to national laws and requirements, any misconduct related to bribery and other forms of corruption, as well as the measures adopted to address cases of suspected bribery and other forms of corruption. These measures may include, but are not limited to, processes for identifying, investigating, and reporting the misconduct and genuinely and proactively engaging with law enforcement authorities.

6. Promote awareness of and compliance with enterprise policies and internal controls, ethics and compliance programmes or measures against bribery and other forms of corruption, among employees and persons or entities linked by a business relationship, through appropriate dissemination of such policies, programmes or measures and through training programmes and disciplinary procedures that take into account applicable language, cultural and technological barriers.
7. Not make illegal contributions to candidates for public office or to political parties or to other organizations linked to political parties or political candidates. Political contributions should fully comply with national laws including public disclosure requirements and should require senior management approval. This includes not obliging workers to support a political candidate or a political organization.

Among the documents containing recommendations derived from these normative instruments are:

- "Good Practice Guidance on Internal Controls, Ethics and Compliance" (OECD)[33]
- "Integrity Compliance Guidelines" (World Bank)[34]
- "Global Principles for Countering Bribery (World Economic Forum Partnership Against Corruption Initiative)"[35]
- "Rules on Combating Corruption (International Chamber of Commerce)"[36]
- "An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide" (UNODC)"[37]

An analysis of the above documents is combined in the "Anti-Corruption, Ethics and Compliance Handbook for Business", developed by the OECD, UNODC and World Bank[38]. This handbook lists 12 key elements of anti-corruption efforts that are common to all the above-mentioned documents. These are:

- support and commitment of senior management to preventing corruption;
- development of an anti-corruption programme;
- oversight of the implementation of the anti-corruption programme;
- a clear, visible and accessible policy prohibiting corruption;
- detailed policies for specific risk areas;
- application of the anti-corruption programme to business partners;
- internal controls and record-keeping;
- communication and training;

33 https://www.oecd.org/en/topics/anti-corruption-and-integrity.html.

34 https://thedocs.worldbank.org/en/doc/06476894a15cd4d6115605e0a8903f4c-0090012011/original/Summary-of-WBG-Integrity-Compliance-Guidelines.pdf.

35 https://www3.weforum.org/docs/WEF_PACI_Global_Principles_for_Countering_Corruption.pdf.

36 https://iccwbo.org/wp-content/uploads/sites/3/2023/12/2023-ICC-Rules-on-Combating-Corruption-1.pdf.

37 https://businessintegrity.unodc.org/bip/uploads/documents/resources/An_Anti-Corruption_Ethics_and_Compliance_Programme_for_Business-_A_Practical_Guide.pdf.

38 https://www.unodc.org/documents/corruption/Publications/2013/Anti-CorruptionEthicsComplianceHandbook.pdf.

- promotion and encouragement of ethics and compliance;
- detection and reporting of violations;
- remediation of violations; and,
- periodic reviews and assessments of the anti-corruption programme.

National legislation:

In 2009 and then in 2011, the Laws of Ukraine «On the Principles of Preventing and Counteracting Corruption» (now invalid) were adopted, which did not contain any provisions relating to the prevention of corruption in legal entities under private law.

Procedures for preventing corruption in the private sector were first introduced in Ukraine with the adoption of the Law of Ukraine "On Corruption Prevention" in 2014, which, based on international standards, defined the basic concepts and principles of preventing corruption in the private sector. The main components of the system for preventing corruption in accordance with the Law include:

- ensuring that a legal entity develops and implements anti-corruption measures;
- ensuring that an official or founder of a legal entity regularly assesses corruption risks and implements anti-corruption measures;
- compliance with established standards of integrity and anti-corruption restrictions by employees and contractors of a legal entity where an anti-corruption programme has been adopted.

However, the Law obliges only certain categories of companies to develop an anti-corruption infrastructure, as mentioned in the previous chapter.

WHAT IS COMPLIANCE? NATIONAL PERSPECTIVE AND INTERNATIONAL GUIDELINES

The implementation of a compliance system is considered to be an important part of countering corruption in the private sector[39]. However, the concept of compliance is treated differently in different parts of the Ukrainian legislative framework. In order to be clear what this means in the context of anti-corruption, this present report defines it as a system of measures applied in an organization to prevent its employees from committing corruption and corruption-related offences. The terms 'compliance' and 'anti-corruption compliance' are used interchangeably without prejudice to the differencing notions of compliance inherent in different parts of Ukraine's legal and legislative system[40].

There are several reasons why anti-corruption compliance is important in the private sector. (1) It ensures full and substantial implementation of existing international and national normative frameworks. (2) It ensures effective compliance, which enhances the company's reputation as it is recognized as being stable, transparent, honest and trustworthy, thus encouraging customer loyalty. (3) It helps prevent additional costs such as fines and penalties that may be imposed if the company is in breach of its obligations (4) Effective compliance can also enhance access to markets, and capital. Therefore, business owners should understand what the company loses by resorting to corrupt acts[41].

Employees must understand that they are essential stakeholders in the development of an anti-corruption programme. Once approved, implementation of the programme should be rigorous, and enforced through inclusion in relevant documents such as employment contracts, internal regulations, and in contracts concluded by a legal entity.

An anti-corruption compliance system in the private sector:

As per an analysis of international and national documents discussed in the sections above, an anti-corruption compliance system in a private enterprise should comprise the following elements.

- **Having an integrity/anti-corruption policy** that: (encourages employees to report corruption; has an inbuilt whistle-blower reporting and protection system; and, has protocols for internal (managerial) action when corruption and related violations are reported.

39 One of the tools for preventing and detecting corruption is the OECD "Guidelines for Multinational Enterprises on Responsible Business Conduct" 2023, which recommend the implementation of a compliance system by enterprises. URL: https://www.oecd-ilibrary.org/docserver/81f92357-en.pdf?expires=1728376469&id=id&accname=guest&checksum=F14D85F3676ED3662D02FDAE24C0C535.

40 See Clause 24, Part 1, article 2 of the Law of Ukraine "On Capital Markets and Organized Commodity Markets" dated 23 February 2006;

Clause 22, Part 1, article 1 of the Law of Ukraine "On Financial Services and Financial Companies" dated 14 December 2021;

Regulations on licensing the Export Credit Agency (ECA) and the conditions for its activities in insurance, reinsurance and guarantee provisions, approved by the resolution of the Board of the National Bank of Ukraine dated 6 January 2023;

Methodological recommendations on the organization of corporate governance in banks of Ukraine, approved by the resolution of the Board of the NBU dated 3 December 2018;

Regulations on the organization of the risk management system in Ukrainian banks and banking groups, approved by the resolution of the Board of the National Bank of Ukraine dated 11 June 2018;

Licensing conditions for conducting economic activities in the transportation of natural gas, approved by the resolution of the National Commission for State Regulation in the Energy and Utilities Sectors, dated 16 February 2017;

Regulations on the authorization of persons intending to conduct activities in the provision of information services on the stock market and the conditions for conducting such activities, approved by the resolution of the National Commission for Securities and Stock Market dated 27 September 2018;

Requirements (rules) for the implementation of securities trading activities: brokerage activities, dealer activities, underwriting, securities management, approved by the decision of the National Securities and Stock Market Commission dated 3 November 2020.

41 Anti-Corruption Compliance: A Guide for a Training Program for Persons Responsible for Implementing an Anti-Corruption Program. – K., 2023.

- **An empowered person responsible for implementation.** The head of the legal entity must appoint an authorized person for corruption prevention (anti-corruption commissioner), who will be responsible for implementing the provisions of the anti-corruption programme.
- **A comprehensive assessment of corruption risks** must be undertaken; thereafter, a periodic assessment of corruption risks in the activities of a legal entity, must continue.
- **Anti-corruption measures,** standards, policies and procedures and the manner of their implementation must be clearly laid out.
- **The scope and range** of persons to whom its provisions are binding, must be clearly stated.
- **Rules of interaction and cooperation** with law enforcement agencies investigating corruption and related violations, must also be spelt out.
- **The rights and obligations of the following must be mentioned clearly:** the founders of the legal private entity, the person chosen as the Commissioner responsible for corruption prevention; the other officials working in the company; and the employees.
- **The norms of professional ethics** must be laid down clearly for the following: the founders of the legal private entity, the person chosen as the Commissioner responsible for corruption prevention; the other officials working in the company; and the employees.
- **Protocols to identify, declare and manage conflicts of interest.** Measures to prevent violations by third parties acting in the interests or on behalf of the enterprise.
- **Procedures for the following must be laid down clearly:**
    - regular reporting by the Commissioner to the founders (participants) of the legal private entity;
    - proper supervision, control and monitoring of compliance;
    - assessment of results of implementation;
    - employees seeking to report a corruption offence;
    - protection of employees who have reported corruption;
    - protocol for informing the Commissioner about the occurrence of real or potential conflicts of interest;
    - protocols to identify, declare and manage/resolve conflicts of interest;
    - Commissioner's individual consultation with employees on the application of anti-corruption standards and procedures;
    - regular and advanced training of employees in the field of preventing and combating corruption.
    - application of disciplinary measures to those who violate the provisions of the anti-corruption programme/ integrity policy;
    - response measures regarding identified facts of corruption or corruption-related offences, in particular, informing authorized State bodies, and conducting internal investigations;
    - rules of interaction and cooperation with law enforcement agencies investigating corruption and related violations;
    - measures to prevent violations by third parties acting in the interests or on behalf of the enterprise;
    - procedure for making amendments as and when required to the integrity policy/ anti-corruption programme;

Based on a comprehensive analysis of legislation conducted by NACP, compliance can be described as business processes adjusting to certain norms, regulations, rules.

The basis of compliance is[42]:

- legislation (national, foreign, international);
- internal rules of conduct (policies, codes of ethics and conduct, standards, regulations, etc.);
- individual transactions (contracts, agreements with counterparties, clients, etc.);
- case law and the practice of other competent State bodies;
- business ethics and business practices.

Ukraine has yet to develop sustainable anti-corruption compliance practices. However, Ukrainian businesses can support the implementation of the State Anti-Corruption Programme (SAP) for 2023-2025 (approved by the Resolution of the Cabinet of Ministers of Ukraine dates 4 March 2023, No. 220 SAP). The private sector businesses can support SAP by strengthening their own standards of business integrity and adhering to international good practices. This will give them better access to loans, win them public tenders or help them to start a business partnership with a reputable foreign company[43].

Role of International standard ISO 37001:2016 Anti-bribery management systems:

In order to gain the trust of international partners, Ukrainian business must, first of all, confirm its reputation as an honest organization with zero-tolerance of corruption. A tool to help achieve this goal is the implementation and support of an anti-corruption management system in accordance with the international standard ISO 37001:2016 "Anti-bribery management systems — Requirements with guidance for use". This ISO guidance is widely used in Ukraine. Though a new ISO 37001:2025 has been officially published and adopted on 28 February 2025, it has yet to be put to nation-wide use.

Both ISO standards provide a framework for organizations to establish, implement, maintain, and improve an anti-bribery management system (ABMS). They aim to help organizations prevent, detect, and respond to bribery, and to comply with anti-bribery laws and commitments.

Many aspects are addressed by the ISO 37001:2016 such as:

- **Scope:**
  The standard is applicable to all types of organizations, regardless of their size, sector, or location. It focuses specifically on bribery, including both direct and indirect bribery, and can be extended to cover other related issues like fraud or money laundering.

- **Requirements:**
  The standard outlines specific requirements for implementing an ABMS, such as establishing an anti-bribery policy, requiring top management leadership appointing a compliance officer, conducting risk assessments, and implementing financial and commercial controls.

- **Guidance:**
  ISO 37001 provides guidance on how to meet the standard's requirements, including practical steps for implementing the ABMS, addressing bribery risks, and fostering a culture of integrity and transparency.

42 https://wiki.nazk.gov.ua/archive/print/page/6102/29.11.2023/.

43 https://www.cipe.org/wp-content/uploads/2023/11/CIPE_Ukraine_Rebuild-with-Trust_2023_UKR.pdf.

- **Benefits:**
  By implementing an ABMS that meets the requirements of ISO 37001, organizations can enhance their reputation, reduce legal and financial risks associated with bribery, and demonstrate their commitment to the internationally recognized standards.

However, there are several challenges that need to be resolved. These are:

The lack of qualified specialists: To build an effective anti-corruption system, expertise in the normative instruments at the national and international levels is needed, in addition to having a good understanding of business processes. Needless to say, such expertise also comes at a cost and is not always affordable for medium-sized businesses.

Getting international certification: To confirm compliance with the requirements of the standard, it is necessary to undergo certification by an accredited certification body, usually one that is internationally recognized. This too has cost implications.

A senior management buy-in: The implementation of any standards for counter corruption requires a senior management buy-in They must know and appreciate the benefits of creating an effective anti-corruption system.

To this extent, and in order to help entrepreneurs gain basic knowledge and develop practical skills, the All-Ukrainian Network of Integrity and Compliance (UNIC), together with the Office for the Development of Entrepreneurship and Exports, the national project "Action.Business", with the support of UNDP in Ukraine and funding from the Governments of Japan and Germany, has developed an online educational course titled "Strengthening Integrity: Minimizing Risks and Building Compliance by Business during Reconstruction[44]. Available free of cost to registered companies, the course is adapted for medium and small businesses and is based on international standards in the field of business integrity. Such activities are carried out mostly by NGOs with the support of international partners, and they rely on the support of State bodies that formulate anti-corruption policy, who could partner and promote with such initiatives.

The State Anti-Corruption Programme (SAP) for 2023-2025 provides for the development of tools aimed at building integrity in the private sector, including:

- methodological documents building organizational integrity, identifying and eliminating corruption risks in the activities of the enterprise;
- anti-corruption standards for the private sector;
- methodological documents on the practice of applying integrity standards (anti-corruption standards).

In order to foster implementation of integrity standards, NACP has developed tailored tools such as:

- a Model Code of Integrity[45];
- a Handbook 2.0 on Building Organizational Integrity;
- a Guide for Managers.

Use of these documents is not mandatory for business, but they do provide detailed recommendations based on the international norms and standards including ISO 37001:2016.

In order to increase uptake, NACP should conduct well-targeted outreach campaigns in and around Kiev and also in the provinces. Thus, the priority tasks in the field of building anti-corruption compliance capacity in the private sector can be defined as:

44 https://business.diia.gov.ua/education/zmitsniuiuchy_dobrochesnist_minimizatsiia_ryzykiv_ta_rozbudova_komplaiensu_biznesom_pid_chas_vidbudovy.

45 https://wiki.nazk.gov.ua/wp-content/uploads/2025/Model-Code-Ukraine_eng.pdf.

- developing an internally coherent and consistent legal framework of compliance;
- conducting educational and outreach campaigns to promote the introduction of compliance practices, which will have positive reputational advantages in addition to making businesses more effective;
- encouraging businesses to implement international UNODC standards on ethics and anti-corruption;
- developing accessible training programmes for specialists on effective implementation and compliance with these standards.

As per the standards and other norms, among the most important components are an anti-corruption programme and creating internal structures and processes that support a reporting system and protects whistle-blowers. The following sections examines this in greater detail.

The head of a legal entity must appoint an authorized person for corruption prevention (anti-corruption commissioner), who will be responsible for implementing the provisions of the anti-corruption programme.

NACP Order No. 794/21 of 10 December 2021 No. 794/21 approved the Model Anti-Corruption Programme of a Legal Entity. Its implementation will allow improving the compliance policy of legal entities aimed at preventing and deterring employees from committing corruption or corruption-related offences, and will ensure that the activities of a legal entity comply with the requirements of anti-corruption legislation.

Causes behind lack of implementation:

It has been observed that while comprehensive standards and practices have been developed, they have remained largely unimplemented. This is because the legal entities under private law that were surveyed lack the mechanism provided for the anti-corruption programme to verify the implementation of the anti-corruption measures. This is especially true for legal entities participating in public procurement if the cost of the procurement of goods, services or works is equal to or exceeds UAH 20 million (approximately US$480,770). While the Law of Ukraine “On Public Procurement” obliges the customer to deny participation in procurement if said legal entity does not have an anti-corruption programme or an authorized person for the implementation of the same, this often remains a mere formality.

Though the regulatory body, i.e. NACP is authorized to conduct inspections as specified in part 2 of article 62 of the Law, in practice, there is no mechanism for NACP to either track enterprises participating in public procurements worth UAH 20 million (approximately US$480,770) or more, or even verify the status of the actual implementation of their anti-corruption programmes.

Reporting channels and working with whistle-blowers:

Over the years, and with the adoption of more and more laws and international instruments, the idea of reporting persons has been gradually refined and the notion of whistle-blowers has become predominant internationally. However, the concept is not always understood in the same way by all countries and stakeholders. This can lead to an increase in the risk and vulnerability of persons and make it difficult to distinguish between a whistle-blower and other categories of reporting persons.

The importance of whistle-blower protection cannot be overstated, as reporting has been found to be the most common way to detect fraud, as stated in the 2023 report from the Association of Fraud Examiners (ACFE) which showed that 43 per cent of cases were uncovered through whistle-blower reports[46]. This is three times the percentage of other fraud detection mechanisms. In particular as per the report, more than half of the whistle-blower reports (52 per cent) came from employees within the organization. The rest came from customers, suppliers, shareholders, i.e. people outside the system.

46 https://legacy.acfe.com/report-to-the-nations/2024/.

Creating channels for employees to report violations of the law or other wrongdoing and protecting whistle-blowers are essential for a transparency and accountability mechanism in any organization, whether in a government agency, a private company, or a non-profit organization. Whistle-blowers can report information about fraud, corruption, human rights violations and other illegal activities or abuses in the workplace. Such reports help both to detect and, in some cases, to prevent violations. However, without protection, whistle-blowers risk facing serious consequences and retaliation, such as loss of employment, harassment, discrimination, threats and other forms of negative influence from the employer on their professional or personal life.

An increasing number of UN Member States have adopted or strengthened their whistle-blower protection legal and policy frameworks.

The following section explores the Global, European and Ukrainian response to this issue.

The UN, EU, OECD, ISO standards related to whistle-blower protection:

Having signed and ratified the following international treaties in the field of preventing and combating corruption and protection of reporting persons, Ukraine has a mandatory obligation to implement them.

- United Nations Convention against Corruption (UNCAC) signed on 11 December 2003, ratified on 2 December 2009;
- Council of Europe Civil Law Convention on Corruption signed on 4 November 1999, ratified on 16 March 2005, entered into force on 1 January 2006;
- Council of Europe Criminal Law Convention on Corruption signed on 27 January 1999, ratified on 18 October 2006, entered into force on 1 March 2010.

In addition to the above instruments, there are several others dealing with corruption that haven't been signed and/or ratified by Ukraine. There are also other legal instruments that provide some subsequent guidance regarding protection of reporting persons that can be used to strengthen Ukraine's efforts in this area. These are:

- Parliamentary Assembly of the Council of Europe Resolution 1729 (2010) Protection of whistle-blowers on 29 April 2010[47].
- Recommendation CM/Rec(2014)7 of the Committee of Ministers to member States on the protection of whistle-blowers on 30 April 2014[48].
- Parliamentary Assembly of the Council of Europe Resolution 2300 (2019) Improving the protection of whistle-blowers all over Europe on 1 October 2019[49].
- EU Directive 2019/1937 on the protection of persons reporting on breaches of EU law on 23 October 2019[50].
- G20 High-Level Principles for the Effective Protection of Whistleblowers 2019[51].
- Resolutions and decisions adopted by the Conference of the States Parties to the United Nations Convention against Corruption at its tenth session – Resolution 10\8[52] on 11-15 December 2023.
- ISO 37002: 2021 Whistleblowing management systems — Guidelines[53].

47 https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17851&lang=en.

48 https://rm.coe.int/16807096c7.

49 https://pace.coe.int/en/files/28150/html.

50 https://eur-lex.europa.eu/eli/dir/2019/1937/oj/eng.

51 https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Thematic-Areas/Public-Sector-Integrity-and-Transparency/G20_High-Level_Principles_for_the_Effective_Protection_of_Whistleblowers_2019.pdf.

52 https://www.unodc.org/corruption/en/cosp/conference/session10-resolutions.html#Res.10-8.

53 https://www.iso.org/standard/65035.html.

These, and other modalities, are explored in further detail in the following text.

(i) Provisions of UN Convention Against Corruption (UNCAC):

UNCAC contains general provisions on reporting offences and the protection of persons reporting corruption.

In particular, article 13 of UNCAC states that each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with the Convention[54].

As the custodian of the Convention, UNODC supports States in strengthening their systems and mechanisms to facilitate reports of wrongdoing and to effectively protect whistle-blowers and other categories of reporting persons, including by:

- providing training on and raising awareness of whistle-blower protection and the difference between whistle-blowers and other categories of reporting persons;
- providing training on and raising awareness of the impact of gender in the protection of whistle-blowers and how to make reporting and protective mechanisms more gender-sensitive;
- providing legal advice on and drafting support for the development of legal and policy frameworks;
- developing general and sector-specific knowledge products and tools to guide States on how to develop national frameworks and internal reporting and whistle-blower protection mechanisms; and,
- partnering up with other international organizations and NGOs involved in the protection of whistle-blowers[55].

(ii) UNODC Publications and Guides:

In 2015, UNODC published a "Resource Guide on Good Practices in the Protection of Reporting Persons"[56]. This was followed in 2021 by "Speak Up for Health: Guidelines to Enable Whistle-blower Protection in the Health-Care Sector", and in 2025 by «Protecting Whistle-blowers: Practical toolkit for developing whistle-blower protection frameworks» [57]. These publications include numerous examples from various countries, as well as a table of criteria for evaluating national, institutional, and legal systems in terms of whistle-blower protection as well as the steps to take for their protection and whistle-blowers culture promotion.

(iii) Provisions of Conventions of the Council of Europe (for whistle-blowers):

Civil Law Convention on Corruption: One of the first documents to draw attention to the importance of the role of whistle-blowers in the fight against corruption and to provide protection for persons reporting any wrongdoing was the Council of Europe's Civil Law Convention on Corruption[58]. Article 9 of the Convention states that each Party shall provide in its domestic legislation appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report their suspicion in good faith to responsible persons or competent authorities.

54 https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

55 https://www.unodc.org/corruption/en/learn/thematic-areas/whistle-blower-protection.html,
https://www.unodc.org/documents/corruption/Publications/2021/Speak_up_for_Health_-_Guidelines_to_Enable_Whistle-Blower_Protection_in_the_Health-Care_Sector_EN.pdf.

56 https://track.unodc.org/track/uploads/res/track/resourcehub/resource-guide-on-good-practices-in-the-protection-of-reporting-persons_html/UNODC_2015_Resource_Guide_on_Good_Practices_Protection.pdf.

57 https://www.unodc.org/documents/corruption/Publications/2021/Speak_up_for_Health_-_Guidelines_to_Enable_Whistle-Blower_Protection_in_the_Health-Care_Sector_EN.pdf,
https://track.unodc.org/track/en/track/resourcehub/2025/protecting_whistle-blowers_practical_toolkit_for_developing_whistle-blower_protection_frameworks.html.

58 https://zakon.rada.gov.ua/laws/show/994_102#Text.

However, the document does not elaborate on the concept of "adequate protection" and the issue of implementing such protection in practice remains open.

Article 22 of the Council of Europe's Criminal Law Convention on Corruption states that each Party shall take such measures as may be necessary to provide effective and appropriate protection for those who report the criminal offences established in accordance with articles 2 to 14 (including offering and giving bribes in the private sector), or otherwise cooperate with the investigating and prosecuting authorities, including witnesses who give testimony concerning such offences.

(iv) Provisions of the Parliamentary Assembly of the Council of Europe (Resolution 1729 (2010):

The Parliamentary Assembly of the Council of Europe has played a key role in shaping standards for the protection of whistle-blowers across Europe. The Assembly's Committee on Legal Affairs and Human Rights described whistle-blowers as individuals who take brave, proactive steps to report wrongdoing, rather than remaining silent.

In 2010, it adopted Resolution 1729 (2010), which set out a series of recommendations intended to guide Member States in developing dedicated whistle-blower protection laws[59]. The resolution proposed a comprehensive framework for whistle-blower protection, emphasizing the need to cover a broad range of offences, and to ensure protection across both public and private sectors—including sensitive areas such as the armed forces and intelligence services. Key provisions included measures to safeguard whistle-blowers through proper investigations, confidentiality, protection against retaliation (such as dismissal or discrimination), and legal protections for those who disclose wrongdoing externally, including through the media.

The Assembly also called for broad legal coverage, protecting all employees regardless of sector, and encouraging the reporting of any concerns in good faith related to human rights violations, corruption, and other matters of public interest.

Recommendation CM/Rec (2014): the Committee of Ministers of the Council of Europe adopted Recommendation CM/Rec (2014)7[60], which outlined a shared European approach to whistle-blower protection. It defines a whistle-blower as anyone who discloses information about a threat or harm to the public interest, discovered through their work in either the public or private sector.

The Recommendation encourages States to create legal, institutional, and judicial systems that promote whistle-blowing in the public interest. It emphasizes that laws should protect all workers—paid or unpaid, current, former, or prospective employees, even if they obtained the information during recruitment or other pre-employment processes.

Importantly, it states that employers should not use contractual or legal obligations to silence or punish whistle-blowers. It also establishes a three-tier reporting system:

1. reporting within the organization;
2. reporting to relevant public authorities;
3. public disclosure (e.g., to journalists or elected officials).

The Recommendation allows for flexibility in choosing the most appropriate reporting channel based on individual circumstances and encourages organizations to set up internal reporting mechanisms.

To prevent retaliation, the Recommendation outlines protections for whistle-blowers, including:

- protection from any form of harassment or intimidation;

59 https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17851&lang=en.

60 https://search.coe.int/cm#{%22CoEIdentifier%22:[%2209000016805c5ea5%22],%22sort%22:[%22CoEValidationDate%20Descending%22]}.

- protection even if the report is mistaken, as long as it was made in good faith and based on reasonable belief;
- consideration of public disclosures when internal channels exist, in decisions about protection;
- interim protective measures, especially in cases involving job loss, pending the outcome of legal proceedings.

Overall, these frameworks aim to create a safer environment for reporting wrongdoing and to establish whistle-blowing as a vital tool for transparency, accountability, and the protection of public interest.

In 2019, the Council of Europe continued its efforts to strengthen whistle-blower protection by adopting **Resolution 2300(2019)**[61] and **Recommendation 2162(2019)**[62]**.** These initiatives aimed to improve protection mechanisms across Europe and examined the potential impact of the then-draft EU Directive 2019/1937 on whistle-blower protection. The Parliamentary Assembly encouraged aligning national frameworks with this directive to ensure consistent standards both within the EU and in other Council of Europe Member States.

A key recommendation was the proposal to develop a binding Council of Europe convention on whistle-blower protection. This proposed instrument would build on the EU Directive while incorporating the additional guidance and principles set out in Resolution 2300(2019). The Assembly also supported the creation of independent bodies tasked with protecting whistle-blowers and advocated for a pan-European network to promote best practices and a stronger whistle-blowing culture.

The Parliamentary Assembly emphasized that bridging legal and procedural gaps among European countries would enhance protection for individuals reporting misconduct. This, in turn, would promote a broader culture of transparency and accountability. Greater coherence across national systems would also prevent discrepancies between EU Member States obligated to implement the Directive and non-EU Council of Europe countries.

However, in its 2020 response, the **Committee of Ministers** acknowledged the complexity of creating a binding legal instrument like a convention. It noted the wide variation in how Member States address whistle-blower protection and cautioned that such negotiations could be lengthy and uncertain. For the time being, the Committee emphasized the importance of supporting countries in implementing **existing recommendations,** such as those issued by the Committee of Ministers itself or **GRECO** (the Group of States against Corruption of the Council of Europe).

This approach aligns with broader international principles, including the **G20 High-Level Principles for the Effective Protection of Whistleblowers** and **UN Resolution 10/8,** which call for practical, enforceable protections, a supportive reporting environment, and mechanisms that encourage safe and responsible whistle-blowing across jurisdictions. In December 2023, the Conference of the States Parties to the United Nations Convention against Corruption adopted the first-ever resolution on the protection of reporting persons – resolution 10/8. The resolution highlights the important role that reporting persons play to effectively prevent and combat corruption. It refers to whistle-blowers as a specific category of reporting persons who report corruption in the context of their professional activities or work-related environment[63].

(v) Provisions of EU Directive 2019/1937:

Currently, the discussion continues on the need to create a single European framework document on whistle-blower protection. In particular, the Parliamentary Assembly has previously called on the Committee of Ministers of the Council of Europe to unify approaches and avoid a "legal gap" between EU Member States that have implemented EU Directive 2019/1937 and those that are members of the Council of Europe but are not EU members[64].

61 https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=28096.

62 https://pace.coe.int/en/files/28151.

63 https://www.unodc.org/corruption/en/learn/thematic-areas/whistle-blower-protection.html.

64 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02019L1937-20240709.

EU Directive 2019/1937 on the protection of persons reporting on breaches of EU law clearly establishes that whistle-blower protection is part of the right to freedom of expression and is based on the work of the Council of Europe and the case law of the European Court on Human Rights.

The aim of EU Directive 2019/1937 is to establish common minimum standards that improve the protection of whistle-blowers across the EU, preserve existing protection mechanisms and encourage Member States to take further steps.

Unlike resolutions and recommendations of the Council of Europe, it is legally binding on EU Member States and imposes on them the obligation to implement its provisions as national legislation, which is an important step towards consistency in the legal protection of whistle-blowers in the EU.

It should be noted that Directive EU 2019/1937 covers both the public and private sectors and aims to cover the maximum number of areas that the EU can potentially regulate.

Thus, Directive EU 2019/1937 protects persons who report the following violations of EU law:

1. violations falling within the scope of EU acts in the areas of: public procurement; financial services, products and markets, prevention of money-laundering and terrorism financing; product safety and compliance with standards; transport safety; environmental protection; radiation protection and nuclear safety; food and feed safety, animal health and welfare; public health; consumer protection; protection of privacy and personal data, and security of networks and information systems;
2. breaches affecting the EU's financial interests; and,
3. breaches affecting the internal market (competition, state aid, tax rules, etc.).

The EU does not directly legislate in areas such as education and social protection, which are regulated by national governments. This is because whistle-blowing in these areas primarily concerns breaches of national law, not EU law, and is therefore not directly covered by Directive EU 2019/1937. This is a gap that national governments need to fill in order to ensure that the same rules apply to whistle-blowers in all areas. From a practical point of view, it is not practical to expect a whistle-blower to decide for themselves whether their report concerns a breach of EU law or national law. The idea behind EU Directive 2019/1937 is to extend the protection measures to areas regulated by national and/or regional law.

Therefore, it applies to persons working in the public or private sector who have received information about a breach in connection with an employment relationship, including:

- persons who have the status of employees;
- persons who are self-employed;
- shareholders and persons belonging to the administrative, management or supervisory body, including volunteers, paid or unpaid trainees;
- any persons working under the supervision and direction of contractors, subcontractors and suppliers;
- persons who report or publicly disclose information about a breach received in an employment relationship that was terminated;
- persons who report or publicly disclose information about a breach when the employment relationship has not yet started and the information about a violation was received during the recruitment process or other negotiations before the conclusion of the contract.

The whistle-blower protection measures provided for in Chapter VI of Directive 2019/1937/EU may also apply to:

- intermediaries (facilitators);
- third parties connected to the reporting persons who may suffer work-related retaliation, such as colleagues or relatives of the reporting persons;

- legal entities owned, employed or otherwise connected to the reporting persons in the context of their work.

In Directive 2019/1937/EU "information about breaches" means information, including reasonable suspicions, about actual or potential breaches, which occurred or are very likely to occur in the organization in which the reporting person works or has worked or in another organization with which the reporting person is or was in contact through his or her work, and about attempts to conceal such breaches.

The Directive does not use the term "whistle-blower" but instead uses the phrase "reporting persons".

It protects persons who report violations under the following conditions:

- they had reasonable grounds to believe that the information about the reported violations was true at the time of the report and that such information falls within the scope of EU Directive 2019/1937;
- they made the report through internal or external channels, publicly reported the information about the violation.

As regards anonymous reports, the Directive leaves it to the discretion of the Member States to decide on the acceptance and consideration of anonymous reports by legal entities in the private or public sector, as well as by competent authorities.

However, individuals who anonymously reported or made public information about a violation and were subsequently identified and prosecuted for reporting were entitled to the protection provided for in EU Directive 2019/1937, if they meet the conditions set out above.

It provides for the following channels for reporting breaches, including:

- internal reporting — bringing information about a breach to the attention of the legal entity in the private or public sector, orally or in writing;
- external reporting — bringing information about a breach to the attention of the competent authorities, orally or in writing; and,
- public disclosure — making information about a breach publicly available.

As a general rule, information about a breach can be reported through internal reporting channels. EU Directive 2019/1937 explicitly sets forth that States should encourage reporting through internal channels before reporting through external channels. This is especially true if the breach can be resolved within the organization or the whistle-blower is confident that there is no risk of retaliation.

Whistle-blower confidentiality protection:

An important measure to protect whistle-blowers is the prohibition of the disclosure of information that identifies the whistle-blower without their consent. However, there are certain exceptions to the general obligation to ensure confidentiality—namely: information about the whistle-blower may be disclosed in cases where it is a necessary and proportionate obligation in the framework of investigations by national authorities or judicial proceedings, in particular in order to guarantee the whistle-blower's right to protection. In such cases, whistle-blowers shall be provided with information on the disclosure of their identity, unless this would jeopardize the investigation or judicial proceedings. The individual shall be given written notice stating the reasons for the disclosure.

The rules of EU Directive 2019/1937 on the protection of whistle-blower confidentiality and the exceptions thereto shall be reflected in national legislation.

EU Directive 2019/1937 also requires the establishment of liability for persons who violate the rules on ensuring the confidentiality of whistle-blowers and their reporting. Penalties must be effective and proportionate, but Member States are free to determine the specific list of penalties for such violations.

Regarding the protection of whistle-blowers, in general, EU Directive 2019/1937 prohibits any form of harassment of whistle-blowers, attempts to retaliate against them, and also contains an expanded list of forms of harassment.

EU Directive 2019/1937 defines "harassment" as any direct or indirect act or omission relating to work that causes or is likely to cause harm to the whistle-blower and is a consequence of an internal, external report or public disclosure.

Thus, EU Directive 2019/1937 prohibits the following forms of harassment of whistle-blowers, in particular:

- suspension, reduction, dismissal or equivalent measures;
- demotion or failure to provide a promotion;
- change of authority, place of work, work schedule, reduction of salary;
- prohibition of training;
- negative performance evaluation or recommendation;
- application of administrative measures of influence, such as financial sanctions;
- coercion, intimidation, harassment or ostracism;
- discrimination, disadvantageous or unfair treatment;
- failure to convert a temporary employment contract into an open-ended one if the whistle-blower has legitimate expectations;
- non-renewal or early termination of a temporary employment contract;
- damage, in particular to the person's reputation on social networks, or financial losses, such as loss of business and lost income;
- inclusion in official and unofficial "blacklists", which may subsequently lead to the inability to find work in a certain field or industry;
- early termination of a contract for goods or services;
- cancellation of licence or permit;
- referral to a psychiatrist or medical referral (Article 19).

(vi) Provisions of OECD:

The OECD plays an important role in facilitating countries' review of whistle-blower protection measures and developing policies based on international good practices. In 1998, the OECD introduced the first soft law instrument on whistle-blower protection in the public sector with the Recommendation on Improving Ethical Conduct in Public Service. In 2009, the OECD Council adopted the Recommendation on Further Combating Bribery of Foreign Public Officials in International Business Transactions, which includes provisions on the need to introduce whistle-blower protection measures in the public and private sectors. In 2021, this Recommendation was revised, and its updated version includes provisions on strengthening whistle-blower protection and focuses on deepening international cooperation in this area. The OECD Recommendations list 24 measures that OECD members must ensure for any individual reporting of corruption.

(vii) Provisions of ISO 37002:2021 Standard:

The ISO 37002:2021 standard[65], "Guidelines (standard) on internal mechanisms for protecting individuals who report information about violations," was adopted by the International Organization for Standardization in 2021 after extensive international consultations. The ISO 37002:2021 can be applied by all organizations, regardless of their type, size, and the sphere in which they operate.

65 https://www.iso.org/standard/65035.html.

The 37002:2021 standard provides guidance on the four stages of the reporting process: receiving reports of violations, assessing them, reviewing them, and closing them.

Organizations applying the ISO 37002:2021 standard need to implement measures to establish, implement, maintain, and improve a whistle-blower management system in order to:

- encourage and facilitate the reporting of violations;
- support and protect whistle-blowers and other stakeholders;
- provide for effective means of dealing with reports;
- improve organizational culture and management;
- reduce the risks of illegal actions.

In fact, the ISO 37002:2021 standard complements the provisions of EU Directive 2019/1937 since it stipulates that organizations are obliged to develop internal whistle-blower policies and create channels for protected reporting, and the 37002:2021 standard provides recommendations on how to effectively establish the process of receiving, processing and considering reports of violations.

In connection with the future implementation of EU Directive 2019/1937, and in order to unify the procedures for submitting and considering reports in the public and private sectors, it is therefore necessary to amend the legislation to ensure the protection of whistle-blowers in the private sector.

Ukraine National Legal Framework:

(i) The Role of the Law of Ukraine "On Corruption Prevention":

The aforementioned Law references the recommendations of the EU Directive 2019/1937 extensively in its recommendations with regard to whistle-blower protection. Article 1 of the Law of Ukraine "On Corruption Prevention" provides for the following types of channels for reporting corruption:

- Internal reporting channels — these are protected reporting channels of information by whistle-blowers to the head or authorized unit (person) of the State body, legal entity where whistle-blowers work, are serving or training or perform work, as well as to the authorized person in a higher-level body which monitors compliance with anti-corruption legislation at subordinate enterprises, institutions and organizations;
- External reporting channels (in EU Directive 2019/1937 this is public disclosure) — ways of reporting information by whistle-blowers through individuals or legal entities, in particular through the media, journalists, public associations, trade unions, etc.;
- Regular reporting channels (in EU Directive 2019/1937, this is an external channel) — methods of protected reporting of information by whistle-blowers to the prosecutor's office, the National Police, NABU, SBI, NACP.

According to EU Directive 2019/1937, internal channels and procedures are mandatory for public sector legal entities, as well as private sector legal entities with 50 or more employees. Special rules apply to legal entities under private law with 50 to 249 employees — in particular, they may establish common channels for receiving reports and conducting investigations.

Currently, the Directive allows the legal entity to administer internal channels independently or to outsource them to another legal entity. It requires those outsourcing companies to comply with data protection legislation and whistle-blower confidentiality, as well as persons administering such channels within the organization.

It also requires that internal channels be open beyond the direct employees to a wider audience. Employees of the legal entity's branches, suppliers, interns, volunteers and other individuals should be able to report through an internal channel.

Legal entities are required to ensure:

- the functioning of internal reporting channels that guarantee the confidentiality of the whistle-blower and the person referred to in the report and prevent access of employees who are not authorized to read these reports;
- confirmation of receipt of the report by the whistle-blower within seven days of receipt;
- appointment of an impartial person or unit responsible for receiving reports, maintaining contact with the whistle-blower and requesting additional information from the whistle-blower if necessary;
- good faith response to reports, including anonymous ones, if provided for by national law;
- informing the whistle-blower about the consideration of the report within a reasonable time, not exceeding three months from the confirmation of receipt of the report;
- provision of clear and easily accessible information on the procedures for external reporting to competent authorities or institutions, bodies, offices, EU agencies.

Currently, the Law of Ukraine "On Corruption Prevention" mainly applies to legal relations that arise in the public sector.

However, as already noted in the previous chapters, the Law applies to some legal entities under private law, in particular, those that are participants in the procurement procedure in accordance with the Law of Ukraine "On Public Procurement", if the cost of the procurement of goods, services, works is equal to or exceeds 20 million UAH (approximately US$480,770).

Internal channels for reporting corruption include the Unified Portal for Whistleblower Reports (hereinafter referred to as the Portal) and special telephone lines. Thus, like EU Directive 2019/1937, the Law guarantees whistle-blowers the opportunity to submit reports orally or in writing. Legal entities under private law that fall under part 2 of article 62 of the Law are obliged to ensure the functioning of internal channels — to connect to the Portal and create a special telephone line.

According to the official website of the Portal, 11 organizations are connected to it under the section of "Legal entity under private law". However, a detailed study[66] found that all of them have a State form of ownership.

In addition, in accordance with part 4 of article 53-1 of the Law, legal entities under private law that fall under part 2 of article 62 of the Law are subject to requirements to provide whistle-blowers with conditions for reporting possible facts of corruption or corruption-related offences, other violations of the Law by:

- implementing mechanisms to encourage and form a culture of reporting possible facts of corruption or corruption-related offences, other violations of the Law;
- providing employees and persons who are serving or are being trained there or performing certain work with methodological assistance and consultations on reporting possible facts of corruption or corruption-related offences, other violations of the Law;
- organizing and ensuring the consideration of reports on possible facts of corruption or corruption-related offences, other violations of the Law; and,
- mandatorily ensuring the functioning of internal channels for reporting possible facts of corruption or corruption-related offences, other violations of the Law in cases provided for by the Law.

It should also be noted that the procedure for considering reports, provided for in article 53-2 of the Law, also applies only to those legal entities under private law that fall under part 2 of article 62 of the Law[67].

At the same time, Paragraph 5 of part 3 of article 61 of the Law imposes an obligation on officials and employees of a legal entity to immediately inform the official responsible for preventing corruption, the head

66 https://whistleblowers.nazk.gov.ua/#/organizations.

67 https://zakon.rada.gov.ua/laws/show/1700-18#Text.

or founders (participants) of the legal entity of cases of corruption or corruption-related offences committed by other employees of the legal entity or other persons.

Therefore, legal entities under private law, in particular those that fall under Part 2 of article 62 of the Law, must ensure the functioning of protected internal reporting channels, and their officials and employees are obliged to report corruption or corruption-related offences. This issue requires further regulation.

(ii) The Role of the Law of Ukraine "On Prevention and Counteraction to the Legalization (Laundering) of Proceeds of Crime, Financing of Terrorism and Financing of the Proliferation of Weapons of Mass Destruction":

Provisions relating to reporting violations and protection of reporting persons are also enshrined in other Ukrainian legislation, albeit to a lesser extent.

For example, part 15 of article 18 of the Law of Ukraine "On Prevention and Counteraction to the Legalization (Laundering) of Proceeds of Crime, Financing of Terrorism and Financing of the Proliferation of Weapons of Mass Destruction" provides for reporting information to the head and/or responsible employee of the primary financial monitoring entity or the State financial monitoring entity. The above-mentioned Law states that the procedure for providing such reports, as well as the procedure for their consideration, are determined by the relevant State financial monitoring entity and the Deposit Guarantee Fund of Individuals, respectively.

(iii) The NaUKUMA study on corruption and whistle-blowing:

The Interdisciplinary Scientific and Educational Center for Combating Corruption at the National Academy of Sciences of Ukraine (NaUKUMA) conducted a study[68] on the implementation of systems for reporting violations and working with whistle-blowers, during which 103 representatives of private companies were interviewed.

The study found that 77 per cent of respondents indicated that their organizations had a whistle-blower system in place (there were approved policies, reporting channels, mechanisms for encouragement and protection).

The data obtained indicates that medium and large businesses were more inclined to implement a whistle-blower system. Among the main reasons that prompted the implementation of a whistle-blower system, respondents noted the need to comply with international standards, meeting the requirements of the central office, reputational benefits for the company, an instruction from the supervisory board/management board/compliance service on the need to create such a system.

As for those respondents who answered that their organization did not have a whistle-blower system (23 per cent), the main reasons for non-implementation were: lack of need, small number of employees, lack of grounds to believe that there was violation. Business representatives were not sure that such a tool as a whistle-blower mechanism would benefit the company and therefore were in no hurry to use it.

The study also showed that among the most popular reporting channels implemented in companies were telephone hotlines (36 per cent), email (35 per cent), and online message portal (19 per cent).

The aforementioned NaUKMA study[69] also observed that 77 per cent of respondents were unaware of cases of illegal measures of influence being applied to a whistle-blower by company representatives or third parties; while 18 per cent noted that there were such cases in the company; and 5 per cent noted that at least one of the listed measures of negative influence was applied. Thus, 23 per cent of respondents observed a possible violation of the rights of whistle-blowers in their organizations.

This unfortunate situation indicates that whistle-blowers working in business are almost unprotected and also highlights the need to extend legislation on the protection of whistle-blowers to legal entities under private law.

68 Biletsky A. Business and whistleblowers: a study of the current state of implementation of the reporting system in private companies in Ukraine. K.: ТОВ РЕД ЗЕТ, 2022. – 24 с.

69 Ibid.

(iv) EU Directive 2019/1937 and its relevance:

In addition to prohibiting various forms of whistle-blower harassment, EU Directive 2019/1937 contains other provisions aimed at strengthening the legal protection of whistle-blowers. First, whistle-blowers cannot be held liable for disclosing trade secrets or work-related confidentiality rules when reporting a breach while confidentiality agreements are undoubtedly important tools for creating a safe professional environment.

Secondly, the rights and remedies provided for in EU Directive 2019/1937 cannot be waived by any agreements, in particular settlements and non-disclosure agreements. However, this issue is very important for private sector organizations, as organizations' codes of ethics and confidentiality agreements (non-disclosure agreements) contain prohibitions on disclosure of information and sanctions for such disclosure.

In line with Ukrainian legislation, organizations should pay attention to the following norm, i.e: a whistle-blower cannot be held legally liable for reporting suspected acts of corruption or corruption-related offences, or for disclosing the information contained in such a report—even if doing so may breach official, civil, labour, or other duties or obligations. The act of reporting possible corruption or related violations shall not be considered a breach of confidentiality under any civil, labour, or other contractual agreement; a whistle-blower is exempted from civil liability for property and/or moral damage caused as a result of reporting possible facts of corruption or corruption-related offences, except in the case of a knowingly false report. In case of unintentional reporting by a whistle-blower of inaccurate information, it is subject to refutation in accordance with the procedure established by the Civil Code.

Directive 2019/1937/EU also establishes a reverse burden of proof: harm caused to a whistle-blower is a priori considered to be harassment for reporting. The burden of proving that the adverse measures taken against the whistle-blower were not the result of the reporting by the whistle-blower lies with the employer.

Directive 2019/1937/EU requires countries to provide for effective, proportionate and dissuasive sanctions against natural and legal persons for:

- obstructing or attempting to obstruct the reporting of information about an offence by a whistle-blower;
- prosecuting persons protected by Directive 2019/1937/EU;
- bringing unfair legal proceedings against such persons; and,
- breaching the obligation to keep the identity of persons referred to in Directive 2019/1937/EU.

To meet international standards and effectively protect whistle-blowers, it is recommended that Ukraine adopt standalone legislation that includes the following key components, aligning with instruments like the EU Directive 2019/1937, G20 High-Level Principles, and UN Convention against Corruption (UNCAC) Resolution 10/8:

1. clear and broad definition of whistle-blowers;
2. protected disclosures;
3. protection from retaliation;
4. confidentiality and anonymity;
5. reporting channels;
6. independent oversight body;
7. legal remedies and support;
8. override of confidentiality clauses;
9. public awareness and training; and,
10. alignment with international standards.

It is also suggested to develop standalone legislation to address the issues related to whistle-blower protection.

PRIVATE SECTOR ACCOUNTABILITY FRAMEWORK

The threat of sanctions against persons who have committed corruption related offences is one of the most important methods of preventing corruption. In this regard, it is relevant to know which treaties apply to Ukraine. This chapter examines those provisions that establish the liability of private sector actors committing acts of corruption, in accordance with both binding and non-binding international instruments. It also covers the sanctions imposed for corruption and corruption-related offences, as well as other violations of the Law of Ukraine "On Corruption Prevention".

International instruments:

(i) Mandatory Application:

Having signed and ratified the following international treaties in the field of preventing and combating corruption, Ukraine has an obligation to implement them.

- United Nations Convention against Corruption (UNCAC) signed on 11 December 2003, ratified on 2 December 2009;
- United Nations Convention against Transnational Organized Crime signed on 12 December 2000, ratified on 21 May 2004;
- Council of Europe Civil Law Convention on Corruption signed on 4 November 1999, ratified on 16 March 2005;
- Council of Europe Criminal Law Convention on Corruption signed on 27 January 1999, ratified on 18 October 2006.

The above-mentioned international instruments recognize the transnational aspects of corruption, establish an indicative list of crimes related to corruption, indicate the links between corruption and organized and economic crime, including money-laundering, and propose a set of measures to prevent and combat corruption, promote international cooperation, and identify and recover assets obtained from corruption and other crimes.

The first review cycle in 2010-2015 for Ukraine, included a specific recommendation: "Ensure that the domestic legislation provides for liability of legal persons for offences established in accordance with the UNCAC, in line with article 26 of UNCAC"[70].

(ii) Recommendatory elements of international normative framework:

In addition to the above instruments, there are several others dealing with corruption that haven't been signed and/or ratified by Ukraine. However, they do provide some additional guidance regarding preventing and combatting corruption that can be used to strengthen Ukraine's efforts in this area. Two of these are:

1. Convention drawn up on the basis of Article K.3 of the Treaty on EU on the protection of the European Communities' financial interests of 26 July 1996[71] and Directive 2017/1371 of the European Parliament and of the European Council of 5 July 2017 on the fight against fraud to the Union's financial interests by criminal law[72].

70 https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2013_07_05_Ukraine_Final_Country_Report.pdf.

71 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A41995A1127%2803%29.

72 https://zakon.rada.gov.ua/laws/show/984_008-17#Text OR should we cite the directive in English since that is available here: https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=oj:JOL_2017_198_R_0003.

2. Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union of 26 May 1997[73].

The Convention[74] entered into force on 28 September 2005, and all EU Member States have acceded to it. According to the Convention, each EU country must take necessary measures to criminalize both active and passive corruption by EU officials. The Convention covers both participation in and incitement to any of these forms of corruption. The sanctions must be effective, proportionate and dissuasive. In addition, EU countries must provide in their national legislation for the criminal liability of directors of undertakings or any other person having decision-making powers or exercising control over a business for offering, promising or giving any undue advantage to an EU official.

Article 3 of the Convention stipulates the obligation of States Parties to provide for the following sanctions for corruption:

- in the case of natural persons - imprisonment,
- in the case of legal persons:
  - deprivation of the right to state benefits or assistance;
  - temporary or permanent deprivation of the right to participate in public procurement procedures;
  - temporary or permanent deprivation of the right to conduct commercial activities;
  - establishment of judicial supervision;
  - decision on liquidation;
  - temporary or permanent closure of establishments used to commit a criminal offence.

3. EU Council Framework Decision 2003/568/JHA of 22 July 2003[75] on Combating Corruption in the Private Sector (2003/568/JHA)

This instrument is part of the broader EU legal framework against corruption, but covers different sectors (public vs. private). Article 2 of the Framework Decision provides for the establishment of criminal liability for active and passive bribery committed by a manager or a person working in a legal entity in the private sector. At the same time, the Framework Decision applies to both commercial and non-profit legal entities. For a natural person found guilty of committing such acts, the main penalty is imprisonment for a term of two to three years and an additional penalty which is a ban on holding office or engaging in certain activities. Sanctions against legal entities include:

- deprivation of the right to state benefits or assistance;
- temporary or permanent deprivation of the right to engage in commercial activities;
- judicial supervision of the activities of the legal entity;
- liquidation of the legal entity.

4. Draft Anti-Corruption Directive of 3 May 2023:

In May 2023, the European Commission presented an anti-corruption package, which included a proposal for an Anti-Corruption Directive, following an external evaluation of existing anti-corruption laws and policies in

73 https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A41997A0625%2801%29.

74 The Convention drawn up on the basis of Article K.3(2)(c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union» — commonly referred to as the «Convention against Corruption Involving Officials» or the «1997 EU Anti-Corruption Convention.

75 https://eur-lex.europa.eu/eli/dec_framw/2003/568/oj.

EU countries. Accordingly, in June 2011, to facilitate more serious political commitments from all EU decision-making bodies, the European Commission introduced a mechanism for periodic evaluation of the efforts of EU countries' to fight corruption. This mechanism would also help strengthen anti-corruption measures and deepen mutual trust in the EU.

The EU Anti-Corruption Report published in 2014 showed that the nature and extent of corruption, the effectiveness of anti-corruption policies varied widely across the EU[76], and demonstrated that greater attention was needed to address the issue EU-wide. The EU also conducts reviews of its own anti-corruption machinery and seeks to continuously improve it and plug gaps in implementation. By itself, this is a good practice that could be adopted in Ukraine[77].

Meanwhile, the draft EU Anti-Corruption Directive (if adopted) will replace the Council Framework Decision on combating corruption in the private sector and the Convention on combating corruption involving officials of the European Communities or officials of Member States. It will also amend EU Directive 2017/1371, relating to the fight against fraud affecting the financial interests of the EU through criminal law (so-called PIF Directive).

The draft Directive seeks to modernize the EU's fragmented legislative framework on anti-corruption by integrating binding international standards into EU law. It is intended to address corruption in both the public and private sectors, and its provisions are being reviewed and analysed by key stakeholders, including EU institutions, Member States, and civil society organizations[78].

Based on articles 83 and 82(1)(d) of the Treaty on the Functioning of the EU, it defines criminal offences and sanctions relating to corruption, taking into account its possible cross-border nature, where the Parliament and the Council may establish minimum rules by means of directives. The draft Directive also requires Member States to introduce effective, proportionate and dissuasive criminal penalties for a number of criminal offences, such as bribery (both in the public and private spheres), misappropriation, abuse of influence, abuse of office, obstruction of justice and enrichment through corruption. The maximum penalty for natural persons is proposed at minimum four to six years of imprisonment depending on the type of offence (vs. current one to three years in the current Framework Directive Decision 2003/568/JHA).

Additional measures such as fines, disqualification from holding public office, disqualification from standing in elections, deprivation of access to public funding and other measures are also suggested. In addition, the draft Anti-Corruption Directive requires the mandatory establishment of liability of legal entities for committing corruption offences.

The draft Directive obliges Member States to establish criminal liability for bribery in the private sector (both active and passive) (article 8), misappropriation, embezzlement or appropriation of property committed by an official or other employee of a legal entity in the private sector (article 9), abuse of influence (article 10).

In addition, article 16 of the draft Directive defines the concept of a representative of a legal entity who commits a criminal act for the benefit of or on behalf of such an entity. In sum, this is any natural person who is authorized by the legal entity to act independently or as a representative of the collegial body of the legal entity on the basis of the authority to:

- represent the legal entity:
- make decisions on behalf of the legal entity;
- exercise control over the activities of the legal entity.

76 https://e-learning.iir.edu.ua/pluginfile.php/5070/mod_book/chapter/1120/Sviatun_Corruption.pdf.

77 European Commission, proposal for a directive on combating corruption, COM (2023) 234, p. 2 (explanatory memorandum).

78 https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2024)762406.

Article 17 of the draft Directive defines the types of sanctions that may be applied to legal entities, including private sector legal entities:

- criminal or administrative fines, the maximum limit of which shall be not less than 5 per cent of the total worldwide turnover of the legal entity, including its affiliated organizations during the fiscal year preceding the decision to impose the fine;
- deprivation of the right of that legal entity to public benefits or assistance;
- temporary or permanent exclusion from public procurement procedures;
- temporary or permanent deprivation of the right of that legal entity to carry out commercial activities;
- withdrawal of permits or licences for the activities in the context of which the offence was committed;
- possibility for public authorities to annul or terminate a contract with the legal entity;
- placing such a legal entity under judicial supervision;
- liquidation of that legal entity by judicial procedure;
- temporary or permanent closure of the premises of a legal entity that were used to commit the offence.

Article 21 of the draft Directive establishes the limitation periods for bringing to justice corrupt actors, including for acts committed in the private sphere as a minimum of 8 and maximum of 10 years from the date of the commission of the relevant crime[79].

5. OECD Instruments

The OECD has many relevant instruments relating to corruption. These are:

- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 17 December 1997[80] and a number of OECD Recommendations:
- OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions [OECD/LEGAL/0378] (the Anti-Bribery Recommendation) of 26 November 2009 as amended on 26 November 2021[81];
- Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions [OECD/LEGAL/0371]) of 25 May 2009[82];
- Recommendation on Bribery and Officially Supported Export Credits [OECD/LEGAL/0447]) of 13 March 2019[83];
- Recommendation for Development Co-operation Actors on Managing the Risk of Corruption [OECD/LEGAL/0431]) of 16 November 2016[84].

79 Available from EU Monitor 'legal provisions of COM(2023)234- Combating corruption https://www.eumonitor.eu/9353000/1/j4nvhdfcs8bljza_j9vvik7m1c3gyxp/vm2rt3g0oeym.

80 https://legalinstruments.oecd.org/public/doc/205/205.en.pdf.

81 https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378.

82 https://legalinstruments.oecd.org/public/doc/202/202.en.pdf.

83 https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0447.

84 https://legalinstruments.oecd.org/public/doc/347/347.en.pdf.

Ukraine is not a permanent member of the OECD and has not ratified the 1977 OECD Convention[85], but submitted its application[86] for the same during the International Conference on the Recovery of Ukraine (URC 2022) in Lugano in July 2022.

Participation in the Working Group on Combating Bribery in International Business Transactions, an OECD body, is one of the conditions for the start of accession negotiations. The applicant country must participate in the activities of the Working Group and implement its acts[87].

The implementation of the State Anti-Corruption Programme also aims to assist Ukraine's accession to the OECD. The Convention obliges the Member States to criminalize the bribery of foreign public officials by legal entities or individuals in order to obtain or retain a business advantage, as well as any such efforts to obtain illegal advantages in carrying out international business transactions.

However, criminal liability is established only for a person who provides (offers) an improper benefit and does not apply to foreign officials for demanding or receiving an improper benefit. The term "foreign official" is used in a broad sense and covers any person who is appointed or elected, who holds a position in a legislative, executive or judicial body of a foreign State, performs State functions for a foreign State, including for a State agency or State enterprise, and is also a representative of a State international organization.

To bolster the fight against bribery of foreign officials, the OECD instrument provides for additional measures, including:

- establishing criminal liability for legal entities (article 2);
- criminal liability for legalization of income received in connection with commercial bribery of foreign officials (article 7);
- civil, administrative or criminal liability for violation of accounting and auditing rules (opening hidden accounts, concluding and conducting unrecorded or dubious transactions, recording non-existent expenses, recording liabilities with incorrect identification of their object), as well as for falsification of accounting statements, other accounting documents, accounts and financial reports of companies for the purpose of bribing foreign officials or concealing the fact of such bribery (article 8);
- confiscation of property, money and proceeds from bribing a foreign official (article 3).

Amongst the instruments used by the Working Group are the OECD council Recommendations that alongside monitoring of the effectiveness of the control mechanism, also emphasize the importance of adopting clear legislation that explicitly prohibits deductions from the tax base for bribes to foreign officials in international business transactions,. Additionally, the refusal to deduct bribes from tax does not depend on the opening of an investigation by law enforcement agencies or the initiation of legal proceedings.

Subparagraph 2.4.4.1.9 of Appendix 2 to SAP provides for the development and submission to the Cabinet of Ministers of Ukraine of a draft law amending the legislation to align it to the norms of the OECD Council Recommendations[88].

85 Memorandum of Understanding between the Government of Ukraine and the Organization for Economic Co-operation and Development on Deepening Cooperation dated 7 October 2014. URL: https://zakon.rada.gov.ua/laws/show/966_003#Text.

86 Approval of the draft Agreement (in the form of an exchange of letters) between the Government of Ukraine and the Organization for Economic Co-operation and Development on joining the Working Group on Combating Bribery in International Business Transactions of the Organization: Order of the Cabinet of Ministers of Ukraine dated 10 September 2024. URL: https://zakon.rada.gov.ua/laws/show/867-2024-%D1%80#Text. Per letter No. 4735/0/2-23 from the Government of Ukraine dated 28 February 2023, the OECD was notified of the acceptance of the invitation to become a member of the Working Group, confirming compliance with the conditions set out in the letter of the OECD Secretary-General Matthias Kormann dated 17 February 2023 No. MC/2023.037cb.

87 Working group to develop proposals for Ukraine's participation in the Working Group on Combating Bribery in International Commercial Transactions of the Organization for Economic Co-operation and Development: Decree of the President of Ukraine dated 28 July 2022. URL: https://zakon.rada.gov.ua/laws/show/539/2022#Text.

88 Approval of the State Anti-Corruption Program for 2023-2025: Resolution of the Cabinet of Ministers of Ukraine dated 4 March 2023 No. 220. URL: https://zakon.rada.gov.ua/laws/show/220-2023-%D0%BF#Text.

LIABILITIES ESTABLISHED UNDER NATIONAL LEGAL FRAMEWORK

Liability for corrupt acts in Ukraine may be disciplinary, civil, administrative or criminal. According to article 3 of the Law of Ukraine "On Corruption Prevention" such liability also applies to representatives of the private sector — persons who permanently or temporarily hold positions related to the performance of organizational and managerial or administrative and economic duties, or are specially authorized to perform such duties in legal entities under private law, regardless of their organizational and legal form, as well as other persons who are not officials and who perform work or provide services in accordance with a contract with an enterprise, institution, organization. Contrary to international standards, it does not apply to individual entrepreneurs.

Disciplinary liability:

The application of this type of legal liability, as disciplinary, is provided for both corruption and corruption-related offences. The peculiarity of this type of liability is that the decision on the application of disciplinary sanctions to a person guilty of committing a disciplinary offense is not entrusted to the court (as in other types of legal liability), but to the head of the institution (a person to whom the offender is directly subordinate in service) and this decision on bringing to disciplinary responsibility is formalized by a corresponding order and is a discretionary power of the head of the institution.

Part 2 of. article 65 of the Law of Ukraine «On Corruption Prevention» establishes that a person who has committed a corruption offence or an offence related to corruption, but on whom a court has not imposed a penalty, or on whom a penalty in the form of deprivation of the right to hold certain positions or engage in certain activities related to the performance of State or local self-government functions, or engage in such activities that are equated with these powers — is subject to disciplinary liability in accordance with the procedure established by law.

Civil liability:

The procedure for applying civil liability in general is regulated by the Civil Code and the Code of Civil Procedure of Ukraine for corruption. Civil liability may be imposed only in cases where the offence committed has caused negative consequences in the form of moral or material damage. According to article 1166 of the Civil Code, property damage caused by unlawful decisions, actions or inaction to the personal non-property rights of an individual or legal entity, as well as damage caused to the property of an individual or legal entity shall be compensated in full by the person who caused it. The person who caused the damage shall be exempt from compensation if they prove that the damage was not caused through their fault.

For the application of civil liability, a civil offence must be committed (i.e. unlawful conduct must occur, then the connection between such conduct and the damage caused must be proved to establish the fault of the person who violated their obligations, which caused the damage). With regard to the conditions for the obligation to compensate for damage caused by a corruption offence or corruption-related offence to arise, it is additionally necessary to establish that the subject did cause damage (persons specified in part 1 of article 3 of the Law of Ukraine "On Corruption Prevention", including representatives of legal entities under private law), as well as to establish the violation by this subject of the requirements of anti-corruption legislation, which may result in the occurrence of civil liability.

As defined in articles 66 and 68 of the Law, losses, damage caused to the State, legal entities or individuals as a result of a person committing a corruption or corruption-related offense shall be subject to compensation by the person who committed the relevant offense, in accordance with the procedure established by law. Material and procedural issues regarding such compensation are regulated by the provisions of the civil and civil procedural legislation of Ukraine.

Administrative liability:

Section 13-A of the Code of Administrative Offences provides liability for administrative offences related to corruption. This comes into effect when someone is in:

- violation of restrictions on concurrent employment and combination with other types of activities (article 172-4);
- violation of restrictions established by law on receiving gifts (article 172-5);
- violation of financial control requirements (article 172-6);
- violation of requirements for preventing and resolving conflict of interest (article 172-7);
- illegal use of information that became known to a person in connection with the performance of official or other powers specified by law (article 172-8);
- violation of restrictions established by law after the termination of the powers of a member of the National Commission for State Regulation in the Energy and Utilities Sectors (article 172-8-1);
- failure to take measures to combat corruption (article 172-9);
- violation of the ban on placing sports bets related to the manipulation of official sports competitions (article 172-9-1);
- violation of legislation in the field of environmental impact assessment (article 172-9-2).

Most of the sanctions listed in these articles provide for liability in the form of a fine of 50 to 2,500 tax-free minimum incomes of citizens[89], as well as confiscation of money received illegally as a result of an administrative offence, and/or deprivation of the right to hold certain positions or engage in certain activities for a period of one year. In accordance with article 38 of the Code of Administrative Offences, an administrative penalty for committing an offence related to corruption may be imposed within six months from the date of its detection, but no later than two years from the date of its commission.

The Code defines several types of administrative offences, the subject of which may be a person who permanently or temporarily holds a position related to the performance of organizational, managerial or administrative and economic functions of a legal entity under private law. In particular, part 2 article 172-8 of the Code, which establishes liability for the illegal disclosure or use in another way by a person in their own interests or in the interests of another individual or legal entity, of information about a whistle-blower, their relatives or information that may identify the whistle-blower, their relatives, which became known to them in connection with the performance of official or other powers specified by law[90].

The Code also provides for whistle-blower protections under article 53-5, which prohibits disclosing information about the identity of the whistle-blower, their relatives or other data that may identify the whistle-blower, their relatives, to third parties who are not involved in the consideration, verification and/or investigation of the facts reported by them, as well as to persons whose actions or inaction are related to the facts reported by them, except for cases established by law.

Officials of a legal entity under private law may be liable under article 172-9 of the Code— which establishes liability for failure to take measures provided for by law by an official or official of a State authority, an official of local government, a legal entity, or their structural units—in the event of a corruption offence being detected. The representatives of a legal entity under private law can be held liable under this article only if they participate in procurement procedures in accordance with the Law of Ukraine "On Public Procurement" if the cost of

89 Non-taxable minimum income of citizens or Minimum income of citizens, from which tax is not levied - a monetary amount of 17 hryvnias, established by clause 5 of subsection 1 of section XX of the Tax Code of Ukraine, which is used when referring to the non-taxable minimum income of citizens in other laws.

90 Code on Administrative Offences: Law of Ukraine dated 7 December 1984. URL: https://zakon.rada.gov.ua/laws/show/80731-10#Text.

procurement of goods, services, or works is equal to or exceeds UAH 20 million (approximately US$481,928) (clause 2, part 2, article 62 of the Law)[91].

Those involved in sports competitions may be held responsible for administrative offences under articles 172-9 and 172-9-1 of the Code of Administrative Offences. They are required to perform their duties honestly, prevent misuse of their position, protect confidential sports information unless disclosure is required by law, and avoid unlawful decisions or influences that could affect the course or outcome of competitions. Based on the above, it can be concluded that officials of legal entities under private law may be subjects of administrative offences related to corruption, provided for in part 2 of article 172-8, articles 172-9 and 172-9–1 of the Code of Administrative Offences.

According to the National Police of Ukraine, during 2023/2024, no protocol under these articles was drawn up, where the subject of liability was an official of a legal entity under private law.

Analysing the components of the above-mentioned administrative offences related to corruption, representatives of legal entities under private law cannot be subject to liability. To date, the mechanism of bringing administrative responsibility for offences related to corruption in the private sector has not been applied.

The overwhelming majority of anti-corruption administrative sanctions in Ukraine apply to public officials (e.g., failure to submit declarations, conflict of interest, violation of restrictions on gifts, etc.). For the **private sector,** liability is mostly tied to illegal offers of benefits to public officials, violations of lobbying or financing rules, other narrow cases. And, in practice, no protocols/reports are being drawn up under these "private sector" articles in recent years. This means that the administrative enforcement mechanism is essentially dormant when it comes to business actors.

Criminal liability:

Even before the signing and ratification of the relevant international treaties, Ukraine had already established criminal liability for certain corruption offences in the private sector by general norms that provided for liability for crimes in the sphere of official activity and crimes against property.

In accordance with note 1 to article 364 of the Criminal Code, "officials" were recognized as persons who permanently or temporarily perform the functions of representatives of the authorities, as well as permanently or temporarily hold positions related to the performance of organizational and managerial or administrative and economic duties at enterprises, institutions or organizations regardless of the form of ownership, or perform such duties under special authority.

Articles 364, 365, 368, 369 of the Criminal Code (as amended in 2001), as well as under part 2 of article 191 of the Criminal Code provide for liability for the commission of a corruption offence in the private sector[92].

The Constitutional Court of Ukraine, in its Decision No. 21-рп/2010 dated 6 October 2010, indicated that the term "corruption" means "the use by a person of official powers granted to him and related opportunities in order to obtain an improper benefit or accept a promise/offer of such a benefit for himself or other persons". The Court further explained why an act that does not correspond to the meaning of the term "corruption" cannot be recognized as a corruption offence:

> "In the Civil Convention on Combating Corruption of 1999, the Criminal Convention on Combating Corruption of 1999, and the United Nations Convention against Corruption of 2003 ratified by

91 According to the official exchange rate on the website of the Ministry of Finance of Ukraine as of 20 October 2024. URL: https://minfin.com.ua/ua/currency/2024-10-20/.

92 Preventing corruption in private sector: textbook / [В.С. Батиргареєва, Б.М. Головкін, О.В. Новіков та ін.] ; за заг. ред. Б.М. Головкіна. – Харків : Право, 2020. – 286 с.URL: https://ivpz.kh.ua/wp-content/uploads/2021/09/%D0%BC%D0%BE%D0%BD%D0%BE_%D0%97%D0%B0%D0%BF%D0%BE%D0%B1%D1%96%D0%B3%D0%B0%D0%BD%D0%BD%D1%8F-%D0%BA%D0%BE%D1%80%D1%83%D0%BF%D1%86%D1%96%D1%97-%D0%B2-%D0%BF%D1%80%D0%B8%D0%B2%D0%B0%D1%82%D0%BD%D0%BE%D0%BC%D1%83-%D1%81%D0%B5%D0%BA%D1%82%D0%BE%D1%80%D1%96.pdf.

> Ukraine, corruption activity is directly related to the self-serving actions (inaction) of an official in the performance of his/her official duties. The above may be equated with giving or receiving a bribe, abuse of official position or influence, facilitating the laundering of proceeds from corruption crimes, their concealment, embezzlement or misuse of property, obstruction of justice, as well as illicit enrichment as a significant increase in income that exceeds the legal income of a person and which he or she cannot rationally be justified, etc."[93]

In order to implement the provisions of the Council of Europe Criminal Law Convention on Corruption and UNCAC, the Verkhovna Rada (the unicameral parliament and sole legislative body) of Ukraine adopted the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Liability for Corruption Offences" dated 7 April 2011, amended articles 18 and 364 of the Criminal Code, which define the concept of an official of a foreign State[94]. This law also established liability for corruption crimes in the private sphere[95]. It effectively addressed the observations of the Constitutional Court mentioned above by establishing criminal liability for abuse of authority by an official of a legal entity under private law, regardless of its organizational and legal form (article 364-1 of the Criminal Code); bribery of an official of a legal entity under private law, regardless of its organizational and legal form (article 368-3 of the Criminal Code); and abuse of influence (article 369-2 of the Criminal Code).

Another development regarding criminal liability was when the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine in the Sphere of State Anti-Corruption Policy in Connection with the Implementation of the Action Plan on the Liberalization of the Visa Regime for Ukraine by the European Union" of 13 May 2014[96], amended article 354 of the Criminal Code, criminalized "bribery of an employee of an enterprise, institution or organization" of private law.

The note to article 45 of the Criminal Code stipulates that corruption criminal offences are considered to be criminal offences provided for in articles 191, 262, 308, 312, 313, 320, 357, 410, in case they are committed through abuse of official position, as well as criminal offences provided for in articles 210, 354, 364, 364-1, 365-2, 368-369-2 of the Criminal Code. That is, article 45 of the Criminal Code stipulates that corruption criminal offences include, in addition to absolute corruption offences (articles 210, 354, 364, 364-1, 365-2, 368-369-2 of the Criminal Code), also the so-called "general criminal offences" but committed by an official through abuse of his official position (articles 191, 262, 308, 312, 313, 320, 357, 410 of the Criminal Code)[97].

Article 18 of the Criminal Code states that the concept of an official as a subject of committing a criminal offence includes persons who permanently, temporarily or under special authority perform the functions of representatives of the authorities or local self-government, as well as permanently or temporarily hold positions in State authorities, local self-government bodies, enterprises, institutions or organizations related to the performance of organizational and managerial or administrative and economic functions, or perform such functions under special authority, which the person is granted by an authorized State authority, local self-government body, central State administration body with a special status, an authorized body or an authorized official of an enterprise, institution, organization, court or law[98].

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93 Decision of the Constitutional Court of Ukraine in the case on the constitutional submission of the Supreme Court of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the provisions of the laws of Ukraine on the «Principles of preventing and combating corruption», «Liability of legal entities for committing corruption offences», «Amendments to certain legislative acts of Ukraine on liability for corruption offences» (case on corruption offences and the introduction of anti-corruption laws) dated 6 October 2010. URL: https://zakon.rada.gov.ua/laws/show/v021p710-10#Text.

94 Amendments to article 18 of the Criminal Code of Ukraine, which defines the concept of "official" taking into account the amendments made by the Law of Ukraine "On Amendments to the Criminal Code of Ukraine, the Criminal Procedure Code of Ukraine and other legislative acts of Ukraine on improving the mechanisms for holding legal entities liable for bribery of officials of foreign states" dated 4 December 2024. URL: https://zakon.rada.gov.ua/laws/show/4111-IX#Text.

95 Amendments to Certain Legislative Acts of Ukraine Regarding Liability for Corruption Offences: Law of Ukraine dated 7 April 2011. URL: https://zakon.rada.gov.ua/laws/show/3207-17#Text.

96 Amendments to Certain Legislative Acts of Ukraine in the Sphere of State Anti-Corruption Policy in Connection with the Implementation of the Action Plan on Visa Liberalization for Ukraine by the European Union: Law of Ukraine of 13 May 2014. URL: https://zakon.rada.gov.ua/laws/show/1261-18#n50.

97 https://nazk.gov.ua/pdfjs/?file=/wp-content/uploads/Pages/7c/a1/7ca106e92ba8470241496750ea5ab16a1ebc1957c526e024529deaf8746bc0bc1980965.pdf.

98 Criminal Code of Ukraine: Law dated 13 April 2001. URL: https://zakon.rada.gov.ua/laws/show/2341-14#Text.

It is therefore important to note that officials or other persons of a legal entity under private law may be held liable only for the commission of acts provided for in articles 191, 262, 308, 312, 313, 320, 357 of the Criminal Code and for unconditional corruption offences provided for in articles 210, 354, 364-1, 368-3, 369, 369-2 of the Criminal Code. Any other acts are not criminalized.

Article 45 of the Criminal Code of Ukraine determines what should be considered criminal offences related to corruption, namely criminal offences provided for in articles 366-2 and 366-3 of the Criminal Code. However, the subject of these criminal offences may be exclusively an official of a legal entity under public law.

According to a study conducted by NACP and the NGO "Center for Political and Legal Reforms", the dynamics of some criminal offences (unconditionally corrupt) according to the reporting forms used by the Attorney General's Office, where the subject may be an authorized person of a legal entity under private law, is decreasing and for some stayed at the same level[99].

In particular, under article 364-1 of the Criminal Code, 244 criminal proceedings were registered in 2018, but only 114 in 2022, and 169 in 2023.

Under article 354 of the Criminal Code, during 2018-2022, there were approximately the same number of criminal proceedings annually (34 in 2018, 67 in 2019, about 30 in 2020-2022, and 61 in 2023). Under article 368-3 of the Criminal Code, about 60 proceedings took place during 2018-2022, while 45 were registered in 2023. The dynamics under article 369 of the Criminal Code were progressing: from 785 proceedings in 2018 to 2,223 in 2023. Under article 369-2 of the Criminal Code, there were about 200 in the period 2018-2022 and 481 proceedings in 2023[100].

Despite there being several provisions in the criminal code detailing the types of corporate liability for corruption and related offences, the fact that the scope of applicability is mandatory only for legal entities of private law that are participants in the procurement procedure up to a certain limit means that a lot of officials in the private sector fall outside the scope of the legal framework.

However, the application of criminal legal measures to legal entities is not widespread in practice, and only two relevant decisions could be identified, as per data of the Unified State Register of Court Decisions[101]. As of 30 October 2024, only two decisions could be identified, the operative part of which contains an indication of the application, along with the punishment to a person who was found guilty of committing a corruption crime provided for in Article 369 of the Criminal Code, of such a measure of a criminal legal nature to a legal entity on behalf of and in the interests of which this crime was committed, as a fine, and no convictions, by which such measures of a criminal legal nature, such as liquidation and confiscation of property, would have been applied to a legal entity[102].

In addition, there are no verdicts with the application of such measures for the so-called "corruption crimes" in the private sphere.

Legal basis of forfeiture of property (article 59 of the Criminal Code) is defined as a forceful seizure of all, or a part of, property of a convicted person in favour of the State. In accordance with part 6 of article 41 of the Constitution of Ukraine, forfeiture of property is only permissible as a result of court decisions, to the extent and in the manner established by law. Part 2 of article 59 of the Criminal Code establishes that forfeiture of property is imposed for grave and especially grave mercenary crimes, as well as for crimes against the foundations of national security of Ukraine and public safety, regardless of their severity, and may be imposed only in cases specifically provided for in the special part of the Criminal Code. As for corruption crimes, today, forfeiture of property as a type of punishment is provided for in the sanctions of part 5 of article 191, part 3 of

99 https://nazk.gov.ua/pdfjs/?file=/wp-content/uploads/Pages/7c/a1/7ca106e92ba8470241496750ea5ab16a1ebc1957c526e024529deaf8746bc0bc1980965.pdf.

100 https://dap.nazk.gov.ua/kpi/info/1/.

101 https://reyestr.court.gov.ua/Review/67709206;
https://reyestr.court.gov.ua/Review/117443133.

102 https://reyestr.court.gov.ua/.

article 262, part 2 of article 308, part 3 of article 308, part 3 of article 312, part 3 of article 313, part 3 of article 365-2, part 3 of article 368, part 4 of article 368, part 4 of article 368-3, part 4 of article 368-4, parts 2-4 of article 369, and part 3 of article 369-2 of the Criminal Code. Hence, forfeiture of property as an additional type of punishment is provided for a number of corruption crimes in the private sphere.

Article 45 of the Criminal Code stipulates that corruption criminal offences include, in addition to absolute corruption offences (articles 210, 354, 364, 364-1, 365-2, 368-369-2 of the Criminal Code), also the so-called "general criminal offences" but committed by an official through abuse of his official position (articles 191, 262, 308, 312, 313, 320, 357, 410 of the Criminal Code). In the case of absolute corruption offences, where the subject may be an authorized person of a legal entity under private law and for which forfeiture of property may be applied, then under part 4 of article 368-3, parts 2-4 of article 369, part 3 of article 369-2 of the Criminal Code of Ukraine, there are no convictions for the period from 2020 to October 2024 and forfeiture of property was not applied[103].

Special forfeiture (article 96-1 of the Criminal Code) is another legal instrument that can be used to punish corruption and related offences. In accordance with the SAP, an additional article was introduced into the Criminal Code, to define the concept of and procedure for applying special forfeiture. This is defined as the forced gratuitous seizure by court decision of money, valuables and other property into the ownership of the State in cases specified by the Criminal Code, provided that an intentional criminal offence or a socially dangerous act has been committed. This offence or act should fall under the characteristics of an act provided for by the Special Part of the Criminal Code (article 364-1), for which the main punishment is provided for in the form of imprisonment or a fine of more than 3,000 non-taxable minimum incomes of citizens. It can be applied to officials of a legal entity under private law, regardless of its organizational and legal form, and it was not applied in any of the 20 decisions of criminal liability that were analysed between 2022 – 2024[104]. However, special forfeiture was applied in several decisions for the commission of a crime provided for in part 1 of article 354 of the Criminal Code and part 2 of article 369-2 of the Criminal Code, which contradicts the provisions of article 91-6 of the Criminal Code[105]. Part 1 of article 96-1 of the Criminal Code of Ukraine contains an exhaustive list of crimes for which special forfeiture may be applied. Crimes provided for by articles 354 and 369-2 of the Criminal Code of Ukraine are not included in the list of article 96-1. Therefore, the court does not have the right to apply special forfeiture for those crimes.

According to statistics provided on the NACP website on the results of pre-trial investigations of criminal corruption offences and offences related to corruption in 2023, special forfeiture was not applied as a measure of a criminal law nature, but only as a procedural measure for the commission of crimes provided for in articles

103 https://reyestr.court.gov.ua/.

104 Decision of the Amur-Nyzhnyodniprovskyi District Court of the city of Dnipropetrovsk dated 16 March 2022 in case No. 203/14/22. URL: https://reyestr.court.gov.ua/Review/10367574;

Decision of the Irpin City Court of Kyiv Region dated 24 January 2022 in case No. 367/9360/21. URL: https://reyestr.court.gov.ua/Review/102813044;

Decision of the Zhovtnevy District Court of Dnipropetrovsk dated 19 April 2023 in case No. 201/3984/23. URL: https://reyestr.court.gov.ua/Review/110331780;

Decision of the Rokytniv District Court of Rivne Region dated 28 September 2023 in case No. 571/553/23. URL: https://reyestr.court.gov.ua/Review/113774633;

Decision of the Pechersky District Court of Kyiv dated 15 February 2024 in case No. 757/46169/21-k. URL: https://reyestr.court.gov.ua/Review/117111823;

Decision of the Krynychanskyi District Court of Dnipropetrovsk Region dated 6 November 2024 in case No. 201/5902/22. URL: https://reyestr.court.gov.ua/Review/119641188;

Decision of the Kozelshchyna District Court of Poltava Region dated 24 September 2024 in case No. 533/830/24. URL: https://reyestr.court.gov.ua/Review/121849852.

105 Decision of the Primorsky District Court of Odessa dated 23 April 2024 in case No. 522/5025/24. URL: https://reyestr.court.gov.ua/Review/118637885;

Decision of the Samara District Court of Dnipropetrovsk dated 4 May 2023 in case No. 206/1751/23. URL: https://reyestr.court.gov.ua/Review/110685168.

368-3, 369 and 369-2 of the Criminal Code[106]. Although both measures involve the seizure of property, their legal nature and grounds for application differ significantly.

Special forfeiture can be both a type of punishment and a procedural measure of coercion. The main difference lies in the purpose and grounds for application. The punishment in the form of forfeiture of property is applied to a person who has committed a crime in order to punish him and prevent the commission of new crimes according to the court judgement. Special forfeiture, as a procedural measure, is aimed at seizing property related to a crime, regardless of whether the person from whom the property is seized is a criminal, and is aimed at preventing the further use of this property for criminal purposes

Such simultaneous consolidation of cases of application of special forfeiture in the norms of the Criminal Code and the Code of Criminal Procedure significantly complicates national law enforcement and gives rise to discussions about the problem of uncertainty of both the conceptual apparatus and the place of special forfeiture in the system of legal norms.

There are two different statutes of limitation provided for under the Ukrainian Criminal code: as per parts 1 and 2 of article 368-3 of the Criminal Code– 5 years and article 369 and 369-2 of the Criminal Code – 5 or 10 years depending on the qualification of the committed act (simple corpus delicti of a crime or with aggravating circumstances, as defined (parts 2-4 of Art. 369, part 3 of article 369-2 of the Criminal Code)).

As and when the requirements of EU legislative acts become mandatory for Ukraine, these will need to be revised.

In sum, the gaps identified above lead to law enforcement officers and courts not being able to assertively apply criminal legal measures against legal entities on the part of law enforcement officers and the courts. Instead, their approach is tentative, and even cautious. The shortfalls can be seen in the points summarized below:

Weaknesses in the legislative approach: criminal legal measures against legal entities are a relatively new introduction to current criminal law and mark a departure from existing norms. Traditionally, in the criminal law of Ukraine, only natural persons were recognized as the subject of a crime (and from 1 June 2020, of a criminal offence), and therefore, the entire system of norms and institutions of criminal law was built on the assumption that the commission of a crime/criminal offence results in a forced restriction of the rights and freedoms of the natural person who is found guilty. An example of this weakness is the difference between the proportion of convictions where criminal legal measures are applied to legal entities, including for corruption crimes as compared to those for natural persons.

Limited list of offences classified as criminal: the list of offences, the commission of which by an authorized person is the basis for the application of criminal legal measures to a legal entity, is restricted. An examination of the draft law—that introduced criminal legal measures to the Criminal Code, or the explanatory note to it—describes what criteria were applied to determine the range of those criminal offences for which criminal legal measures can be applied to a legal entity. An exhaustive list is provided for in article 96-3 of the Criminal Code. If those corruption crimes are singled out where the subject is an official or an individual— a representative of a legal entity under private law, which fall under this norm, then these will be only crimes provided for in parts 1 and 2 of article 368-3, article 369, 369-2, 262 of the Criminal Code. However, an analysis of the provisions of article 96-3 of the Criminal Code shows that only the commission of three unconditional corruption crimes[107] from the entire list of corruption crimes can be grounds for applying criminal legal measures to a legal entity of private law.

Outdated criminal code: Another limitation is that acts where liability is clearly established (for example, in parts 1 and 2 of article 354 of the Criminal Code and article 364-1 of the Criminal Code) are not attributed to

106 Decision of the Primorsky District Court of Odessa dated 3 October 2023 in case No. 522/18323/23. URL: https://reyestr.court.gov.ua/Review/113921491;

https://dap.nazk.gov.ua/kpi/info/1/.

107 These are crimes provided for in parts 1 and 2 of article 368-3, article 369 and 369-2 of the Criminal Code.

such crimes. The articles clearly provide that an authorized person of a legal entity may receive an unlawful benefit for committing such crimes or create conditions for receiving such a benefit or, evade responsibility for such actions. The list of crimes specified in article 93-6 of the Criminal Code, for which criminal legal measures can be applied, should ideally be supplemented to legal entities under private law.

Definition of authorized person of a legal entity: The legislature's definition of an authorized person of a legal entity is unclear. Notes 1 and 2 to article 96-3 of the Criminal Code say that an official of a legal entity is recognized as such, as well as another person who, in accordance with the law, the constituent documents of a legal entity or an agreement, has the right to act on behalf of the legal entity, as well as in the interests of legal person. In accordance with the international legal obligations of Ukraine and the adopted regulatory laws, it is advisable to supplement the list of legal grounds for recognizing a person as an authorized person of a legal entity, such as special authority and a court decision, and also to include those who exercise control within the legal entity or are its beneficiaries.

Unclear practical application of norms: The norm "committing criminal offences in the interests of a legal entity ..., if they led to its (i.e. the legal entity itself) obtaining an unlawful benefit or created conditions for obtaining such a benefit ..." also causes misunderstanding in practice, primarily due to how the concept of "unlawful benefit" is defined in the Criminal Code. This is further compounded by the fact that to apply criminal legal measures to a legal entity, the criteria are the commission on behalf of and in the interests of a legal entity, of such corruption crimes that consist in bribing an official of a legal entity under public law or a person providing public services. In sum, these weaknesses lead to law enforcement officers and courts not being able to effectively apply criminal legal measures against legal entities on the part of law enforcement officers and the courts. Instead, their approach is tentative, and even cautious, even for corruption crimes committed in the interests of legal entities under private law.

Weak sanctions structure: the legislative provisions on the application of a fine as a measure of a criminal legal nature to a legal entity, i.e. article 96-7 of the Criminal Code defines a fine as a monetary amount paid by a legal entity on the basis of a court decision. It differs from a fine as a type of punishment, as the basis for applying a fine and other measures of a criminal legal nature to legal entities is not the corpus delicti of the crime, but the fact of involvement in it.

As a general rule, a fine is imposed based on twice the amount of illegally obtained unlawful benefits. The Council of Europe's Criminal Law Convention on Corruption stipulates that adequate measures should be applied to legal entities, and notes that sanctions should be moderate. Thus, it can be assumed that it is unlikely that the amounts of fines exceeding the annual income of a particular legal entity will be considered adequate or moderate, hence the need to consider the annual income when applying this measure of a criminal legal nature. Therefore, while fines are an important modality in penalizing legal entities, national legislation is somewhat underdeveloped in this regard.

Seizure and forfeiture of property: In accordance with the Action Plan on Visa Liberalization between Ukraine and the EU[108], and the need to bring the current legislation into line with the provisions of the Action Plan, national legislation on confiscation of property obtained by crimes committed has been noted as an area of improvement. The recommendations of the Council of Europe Group of States against Corruption (GRECO) following the results of the joint first and second evaluation rounds (Strasbourg, 23 March 2012) inter alia, recommends the adoption of new rules for the seizure and forfeiture of proceeds of crime. This will make it possible to apply these measures not only to direct but also to indirect (converted) income and to carry out equivalent forfeiture and forfeiture of third-party income[109].

National criminal legislation provides for the application of both forfeiture and special forfeiture for corruption acts, including those committed on behalf of a legal entity under private law.

108 https://zakon.rada.gov.ua/laws/show/984_001#n2.

109 https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ca329.

Way forward:

To pave the way for Ukraine's accession to the OECD and ratification of its Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and its Recommendations, a number of measures have been taken which are discussed in detail below. These are:

(i) The draft Law on Amendments to the Criminal Code, the Code of Criminal Procedure and Other Legislative Acts of Ukraine on Improving the Mechanisms for Holding Legal Entities Responsible for Bribery of Foreign Officials No. 11443 (adopted by the Verkhovna Rada on 4 December 2024, entered into force on 26 December 2024)[110].

(ii) The Law on Amendments to the Tax Code of Ukraine taking into account the Provisions of the Recommendations of the Council of the OECD Regarding Tax Measures to Further Combat Bribery of Foreign Officials in International Business Transactions of 16 December 2023[111], which was adopted by the Verkhovna Rada on 4 December 2024, entered into force on 25 March 2025[112], and,

(iii) The draft Law on Amendments to Certain Legislative Acts of Ukraine on Improving Mechanisms for Preventing Corruption, in Particular in the Private Sector of 17 July 2023[113] (it was withdrawn from the agenda of the Verkhovna Rada on 6 February 2024).

These are discussed in detail below:

(i) The Law on Amendments to the Criminal Code, the Code of Criminal Procedure and Other Legislative Acts of Ukraine on Improving the Mechanisms for Holding Legal Entities Responsible for Bribery of Foreign Officials No. 11443:

This Law implements paragraphs 39, 69 of the Action Plan for the Implementation of the OECD Programme for Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine dated 3 November 2023 No. 1165. It entered into force on 26 December 2024.

The main requirement of the OECD Convention is to establish autonomous legal liability of legal entities for bribery of foreign public officials in international business transactions. In their letter to Ukraine, the Chair of the Working Group, called on the countries to adopt the criminal liability model to implement the Convention[114]. The same approach is used in article 16 of the draft Directive of the European Parliament and of the Council on combating corruption, the adoption of which was expected in January 2025 (still not adopted), after which it should have become an element of the EU acquis[115], to which Ukrainian legislation will need to be adapted.

To achieve this goal and ensure the implementation of the OECD Convention, the Law makes the following amendments to the Criminal Code of Ukraine, in particular:

- the grounds for applying criminal legal measures to a legal entity regardless of the prosecution of an individual;
- an expanded list of criminal legal measures and an increase in the amount of the fine that can be applied to a legal entity; and,
- the possibility of applying special forfeiture based on a court decision.

110 https://itd.rada.gov.ua/billinfo/Bills/Card/45114.

111 https://itd.rada.gov.ua/billInfo/Bills/Card/43345.

112 https://zakon.rada.gov.ua/laws/show/4112-IX#Text.

113 https://itd.rada.gov.ua/billInfo/Bills/Card/42327.

114 https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/fighting-foreign-bribery/The%20OECD%20Working%20Group%20on%20Bribery%202023-2024%20Activity%20Report.pdf.

115 Ukraine *has* to comply with the EU acquis communautaire (the body of common EU rights and obligations) because this is a mandatory condition for EU membership.

This Law also amends the Criminal Procedure Code to apply criminal legal measures to legal entities in a separate manner, i.e. differently from criminal prosecution of individuals. This mechanism is provided only for criminal offences defined in articles 209, 369, 369-2 of the Criminal Code, committed against officials, listed in part 4 of article 18, which will help to verify its effectiveness in practice in relation to this specific category of crimes.

Going forward, its ambit will be extended to other categories of criminal offences, based on lessons learned and experiences gained.

The Law has made amendments to the Criminal Code, which defines:

- grounds for applying criminal legal measures to a legal entity regardless of the criminal liability of an individual;
- grounds for exempting a legal entity from applying criminal legal measures;
- increasing the amount of fines applied to legal entities as the main criminal legal measure and the possibility of applying additional (non-financial) criminal legal measures;
- rules for applying criminal legal measures and restrictions on the liquidation of legal entities under a special procedure;
- the possibility of applying special forfeiture on the basis of a resolution on the application of criminal legal measures to a legal entity and cases of applying special forfeiture on such grounds.

It also provides that the following additional (non-financial) measures may also be applied to a legal entity:

- temporary restrictions on the activities of a legal entity. A temporary restriction on the activities of a legal entity is a ban on a legal entity to carry out a certain type and/or types of activity for a period of time determined by a court decision. In particular:
    - participate in public and defence procurement;
    - use a licence (suspend the licence);
    - participate in the privatization of State and municipal property;
    - participate in the lease of State and municipal property (including the extension of the lease agreement);
    - receive, extend the term of a special permit for the use of subsoil (including suspension of the special permit for the use of subsoil);
    - participate in bodies of social tripartite dialogue;
    - purchase bonds of domestic State loans of Ukraine;
    - create and participate in the work of self-regulatory organizations;
    - provide and receive advertising;
    - carry out sponsorship;
    - participate in public-private partnerships; and,
    - participate in joint ventures.
- temporary restriction on obtaining rights and benefits is a ban on a legal entity from receiving rights and/or benefits specified by the legislation of Ukraine within the period specified by a court decision. In particular:
    - receive any benefits and assets from the State and the community;
    - attract, use, and utilize funds from international technical projects and international financial transactions;
    - receive State aid by business entities (be a recipient of State aid);

- acquire the status of a resident of Diia City[116];
- receive state and other financial support for export activities.

According to the new law, Chapter 37-1 was introduced to the Criminal Procedure Code of Ukraine which:

- regulates criminal proceedings regarding the application of criminal legal measures to legal entities in a special procedure in Section VI "Special Procedures of Criminal Proceedings";
- determines a special procedure for autonomous criminal proceedings against a legal entity both at the stage of pre-trial investigation and trial;
- provides for the peculiarities of the participation of a representative, a defence counselor of a legal entity, which provide for an expanded scope of rights and procedural opportunities for the defence party;
- determines an additional measure to secure criminal proceedings in the form of restrictions on the activities of a legal entity, which is associated with making changes to the constituent documents regarding the founders (participants) of the legal entity, the size and composition of the authorized capital, the name of the legal entity, concluding a transaction, the subject of which is the participant's share in the authorized capital of the legal entity, committing significant economic obligations (significant transactions), disposing of the assets of the legal entity and its termination;
- provides for the possibility of canceling restrictions on the legal entity;
- provides for the termination of the pre-trial investigation by either closing the criminal proceedings or applying to the court with an act on the application of criminal legal measures to the legal entity;
- provides for the possibility of concluding an agreement in criminal proceedings regarding the application of criminal legal measures to legal entities in a special procedure and the peculiarities of judicial proceedings regarding the conclusion of agreements;
- provides for the appeal of court decisions regarding the conclusion of an agreement;
- determines the specifics of the execution of the decision on the application of measures of a criminal legal nature.

The duration of application of additional (non-financial) measures of a criminal legal nature will be determined by the court and may range from six months to three years.

The amendments to the Criminal Code and the Code of Criminal Procedure that are instituted by the new Law require the introduction of corresponding amendments to a number of other legislative acts to provide for the application of the specified temporary restrictions[117].

(ii) The draft Law on Amendments to the Tax Code of Ukraine taking into account the Provisions of the Recommendations of the Council of the OECD Regarding Tax Measures to Further Combat Bribery of Foreign Officials in International Business Transactions of 16 December 2023[118]:

This Law, which was adopted by the Verkhovna Rada on 4 December 2024 and entered into force on 25 March 2025[119], proposed to take into account the recommendations of the OECD Council by making amendments to Sections I "General Provisions", II "Administration of Taxes, Duties, Payments", III "Enterprise Profit Tax" and IV "Personal Income Tax" of the Code.

116 A resident of Diia City is a term used for Ukrainian company that has obtained special legal status through a registration process on the Diia portal to benefit from a special tax regime and other advantages for operating in the digital economy. This status provides tax benefits such as a 9 per cent Exit Capital Tax (ECT) for companies and lower income and social contributions for gig specialists. To qualify, a company must be a Ukrainian legal entity focused on IT or innovation, meet revenue and minimum salary requirements, and follow a specific application procedure.

117 https://zakon.rada.gov.ua/laws/show/4111-IX#Text.

118 https://itd.rada.gov.ua/billInfo/Bills/Card/43345.

119 https://zakon.rada.gov.ua/laws/show/4112-IX#Text.

The proposed changes include the following key provisions:

- Expanding the definitions in the Code to include circumstances that may suggest a taxpayer has provided an illegal benefit to a foreign official, with supervisory authorities guided by a list published by the National Anti-Corruption Bureau of Ukraine (NABU).
- Requiring supervisory authorities to notify NABU of any findings during taxpayer inspections that may indicate illegal benefits, and informing the taxpayer accordingly.
- Extending the document retention period for taxpayers when they receive information suggesting possible illegal benefits.
- Imposing a fine equal to 7.5 per cent of the identified difference if a taxpayer declares this difference in their corporate income tax return based on inspection results indicating possible illegal benefits.
- Allowing unscheduled documentary inspections of taxpayers against whom a court has ruled on offering, promising, or providing illegal benefits that could affect deductible expenses.
- Permitting the accrual of monetary obligations beyond the statute of limitations if there is a court decision related to illegal benefits affecting taxable expenses.
- Clarifying that suspicion reports regarding illegal benefits cannot be based solely on differences declared by taxpayers in their tax returns following inspections.
- Imposing a fine of 50 per cent of the tax liability if a taxpayer commits actions that lead to tax obligations based on a court decision related to illegal benefits.
- Increasing the taxpayer's financial result by the amount of expenses suspected to be connected to illegal benefits.
- Increasing the financial result by expenses identified by supervisory authorities during inspections as possibly linked to illegal benefits.
- Increasing the financial result by expenses found by courts to have been incurred for the purpose of providing illegal benefits.
- Excluding from deductible expenses any costs by individual entrepreneurs or professionals that are suspected of being linked to illegal benefits.

(iii) The draft Law on Amendments to Certain Legislative Acts of Ukraine on Improving Mechanisms for Preventing Corruption, in Particular in the Private Sector of 17 July 2023[120]:

The purpose of adopting the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Improving Mechanisms for Preventing Corruption, in Particular in the Private Sector" was to unify the terminology used in the Law of Ukraine "On Corruption Prevention". It also sought to establish the obligation to report to a specially authorized entity in the field of combating corruption information. The entity could be an employee who conducted the internal audits. This employee, as the specially authorized entity, could indicate cases of corruption or corruption-related offenses by employees of a legal entity or by other persons and/or incitement to commit a corruption offence related to the activities of a legal entity.

The lack of a clearly formulated obligation for the internal auditor of a legal entity to report information that may indicate corruption to a specially authorized entity in the field of combating corruption is a problem that needs to be resolved.

In accordance with subparagraph «f» of paragraph 2 of article 12 of UNCAC, each State Party shall take measures to ensure that private legal entities, taking into account their structure and size, have sufficient internal audit control mechanisms to assist in the prevention and detection of corrupt acts and that the accounts and necessary financial information of such private legal entities undergo the necessary audit and certification procedures.

120 https://itd.rada.gov.ua/billInfo/Bills/Card/42327.

This would provide for addressing the problem of the high level of tolerance of corruption in the private sector, in particular by establishing at the legislative level the obligation of internal auditors to report on corruption and corruption-related offenses they have discovered.

Currently, paragraphs 3, 4 of part 3 of article 61 of the Law "On Corruption Prevention" provide for general requirements for employees of a legal entity, including private enterprises, to immediately inform the official responsible for preventing corruption in the activities of the legal entity, the head of the legal entity or the founders (participants) of the legal entity about cases of incitement to commit a corruption offense related to the activities of the legal entity, and the commission of corruption or corruption-related offenses by other employees of the legal entity or other persons. In addition, such a duty is clearly imposed on employees of internal audit units in executive bodies in accordance with clause 3, clause 13 of the Procedure for conducting internal audit and establishing internal audit units, approved by the Resolution of the Cabinet of Ministers of Ukraine dated 28 September 2011 No. 1001.

However, the absence of a legislative provision that would clearly define the obligation of internal auditors of a private legal entity to report on the facts they have discovered of incitement to commit a corruption offense related to the activities of a legal entity, and the commission of corruption offenses or offenses related to corruption, leads to the ineffective fulfillment of such an obligation.

This law was withdrawn from the agenda of the Verkhovna Rada on 6 February 2024.

Justifying the introduction of such changes, the explanatory note to the draft law stated that internal audit is a process carried out by the internal audit unit or internal auditor to verify the effectiveness of the activities of a legal entity, compliance with the requirements of current legislation, reliability and accuracy of financial reporting and preservation of assets. That is, the main purpose of the activities of the internal audit unit or internal auditor was to protect the business and the owner's capital by reducing (preventing) risks. Thus, special professional diligence must be applied by the internal audit unit or internal auditor when performing complex audit tasks, in particular in terms of assessing the risks caused by possible facts of financial violations, fraud and corruption.

The Anti-Corruption Strategy for 2021-2025 adopted by the Law dated 20 March 2022 provides for addressing the problem of the high level of tolerance of corruption in the private sector of the economy. The strategy does so, in particular by establishing at the legislative level the obligation of internal auditors to report facts of corruption and corruption-related offences they have discovered.

In addition, such a duty is clearly imposed on employees of internal audit units in executive bodies in accordance with clause 3 of clause 13 of the Procedure for conducting internal audit and establishing internal audit units, approved by the resolution of the Cabinet of Ministers of Ukraine dated 28 September 2011 No. 1001[121].

However, the absence of a legislative provision that would clearly define the obligation of internal auditors of a private legal entity to report facts of incitement to commit a corruption offence related to the activities of the legal entity and the commission of corruption offences or offences related to corruption that they have discovered, renders this obligation ineffective. Yet, the obligation is listed in the subjects as per the provisions of paragraphs 3, 4 of part 3 of article 61 of the law.

Given the high level of latency of corruption and corruption-related offences, it is necessary to expand the list of subjects by defining the obligation of employees conducting internal audits to immediately inform a specially authorized subject in the field of combating corruption, i.e., according to paragraph 14 of part 1 of article 1 of the Law, the prosecutor's office, the National Police, NABU or NACP[122].

121 https://zakon.rada.gov.ua/laws/show/1001-2011-%D0%BF#Text.

122 It should be noted that the above amendments to the legislation of Ukraine were developed in close cooperation with the OECD. Thus, in order to develop and agree on them, four online meetings were held between August and September 2023 among the representatives of the Ministry of Finance of Ukraine, the State Tax Service, the Reform Office under the Ministry of Finance, individual anti-corruption bodies and other stakeholders with OECD tax experts, including representatives of the Peer Learning Programme, established by the OECD Working Group.

CONCLUSIONS AND RECOMMENDATIONS

Corruption in the private sector of Ukraine remains a significant problem that affects both the business environment and the international image of the country. Despite the gradual implementation of anti-corruption mechanisms, the majority of private companies have not put in place systemic measures to prevent corruption. The main challenges in this process are the insufficient level of awareness of the benefits of anti-corruption compliance, low staff training and shortcomings in the legal regulation of this issue.

Based on the research conducted for this report, the following conclusions were drawn, and recommendations were developed.

Conclusions:

Corruption in the private sector is understood as the provision of undue benefits or advantages to officials and employees of private sector business entities, as well as the provision of undue benefits to civil servants or abuse of authority by officials of a private law legal entity in order to obtain undue benefits for themselves or third parties.

Corruption in the private sector occurs when people authorized to work for private law legal entities abuse their authority and fail to discharge their duties to the said entity. This is usually motivated by the desire for personal gain or to secure economic benefits and competitive advantages for the firm in question. In some cases this may take the form of trying to influence the economic policy of the state and the business environment.

This is done by bribing key staff in competing firms, business partners and civil servants.

For administrative liability for offences related to corruption, officials of legal entities under private law may be subjects of administrative offences related to corruption, provided for in articles 172-8, 172-9, and 172-9–1 of the Code of Administrative Offences.

The features of disciplinary liability of officials of legal entities under private law are:

1) this is the employer's right which he/she can use, may refer the case to the labour collective for consideration, or may refuse to hold the violator accountable at all;
2) a limited number of types of penalties;
3) the general procedure, conditions, terms and other issues of holding officials of legal entities under private law to disciplinary liability are regulated by articles 147–152 of the Labor Code of Ukraine.

According to criminal statistics[123], a moderate level of corruption crimes are recorded in the private sector. On average, about 700 crimes are recorded per year, which is approximately 10 per cent of the total number of registered corruption crimes. In recent years (2020–2024), about 400 people have been convicted in Ukraine for committing corruption crimes in the private sector. As of 2024, the largest number of recorded corruption crimes in the private sector (29 per cent) were related to abuse of authority by an official of a legal entity under private law, regardless of its organizational and legal form (article 364-1 of the Criminal Code of Ukraine). The second place (7 per cent) is occupied by two types of crimes— bribery of an official of a legal entity under private law, regardless of its organizational and legal form (article 368-3 of the Criminal Code of Ukraine) and bribery of an employee of an enterprise, institution, organization at 5 per cent (article 354 of the Criminal Code of Ukraine).

The Criminal Code provides for liability for almost all crimes provided for in the conventions that are mandatory for Ukraine.

123 https://nazk.gov.ua/pdfjs/?file=/wp-content/uploads/Pages/7c/a1/7ca106e92ba8470241496750ea5ab16a1ebc1957c526e024529deaf8746bc0bc1980965.pdf.

Article 14 of the Council of Europe Criminal Law Convention on Corruption and article 12 of UNCAC provide for the need to establish liability for acts regulating accounting, financial reporting, as well as accounting and auditing standards, if such acts are committed with the aim of committing any of the corruption crimes (for example, issuing or using an invoice or any other accounting document or record containing inaccurate or incomplete information; unlawful failure to record a payment, forgery of documents, etc.). It should be noted that for the commission of such acts, which are specified in the articles of these conventions, liability is provided for both criminal (articles 205-1, 220-1, 220-2, 222, 223-1, 358, 384, 388 of the Criminal Code) and administrative offences (articles 164-2, 165-5, 166-6 of the Code of Administrative Offences).

The Ukrainian legislature has defined a list of corruption offences in the note to article 45 of the Criminal Code. As rightly noted by national experts[124], the list of offences that are classified as corruption contradicts the concepts of corruption in general and corruption offence as defined in the Law of Ukraine "On Corruption Prevention".

The subjects of committing criminal offences, liability for which is provided for in articles 354, 368-3 of the Criminal Code, are an employee of an enterprise, institution or organization who is not an official, or a person who works for the benefit of an enterprise, institution or organization (article 354 of the Criminal Code), an official of a legal entity under private law, regardless of its organizational and legal form (article 368-3 of the Criminal Code).

Yet, an individual entrepreneur cannot be a subject of the specified crimes, which does not meet international standards. In addition, in almost all international instruments, the concept of a person acting on behalf of or in favour of a legal entity is not limited to an official (who, in accordance with national legislation, must be vested with administrative, economic or organizational and managerial functions), but includes authorized persons of a legal entity who should be understood as officials of the legal entity, as well as other persons who have the legal right to act on behalf of the legal entity (for example, ultimate beneficiary).

There is also a position among analysts[125] that articles 364-1 and 368-3 of the Criminal Code should be excluded, since violations of the interests of a legal entity under private law as a result of abuse of authority by its official in the absence of signs of another criminal offence should result in administrative or civil liability, not criminal liability. In addition, when a person offers or promises an official of a legal entity under private law, regardless of its organizational and legal form, to provide the official or a third party with an improper benefit and such official accepts it, liability may also arise under the general rules on giving and receiving improper benefit.

The author's analysis of the current situation and results of anti-corruption investigations in the private sector highlights the following trends:

1) a steady trend towards an increase in the amount of fines for legal entities when closing proceedings on a corruption offence committed by their officials;
2) increase in active international cooperation during anti-corruption investigations;
3) criminal prosecution of officials for corrupt acts, including past ones:
4) the presence of an effective anti-corruption programme which excludes (mitigates) liability for legal entities under private law;
5) increased cooperation with pre-trial investigation bodies and the presence of a compliance system in the company as arguments for a significant reduction in the amount of fines.

124 Корупційні схеми: їх кримінально-правова кваліфікація і досудове розслідування / За ред. М.І. Хавронюка.– К. : Москаленко О. М., 2019. – 464 с. https://newcriminalcode.org.ua/upload/media/2020/07/22/koruptsiy-ni-shemy-i-h-kryminalno-pravova-kvalifikatsiya-i-dosudove-rozsliduvannya.pdf.

125 Корупційні схеми: їх кримінально-правова кваліфікація і досудове розслідування / За ред. М.І. Хавронюка.– К. : Москаленко О. М., 2019. – 464 с.

Андрушко П. П. Щодо відповідальності юридичних осіб за корупційні правопорушення у вигляді застосування до них заходів кримінальноправового характеру.Бюлетень Міністерства юстиції України.2012. – № 3. С. 104–115.

It has been demonstrated that the provisions of the Criminal Code are unclear and not applied in practice, and that the list of sanctions needs expansion in a manner that is proportional, commensurate with the gravity of the offence committed and at the same time effective and deterrent (as indicated in UNCAC and the CoE Criminal Law Convention on Corruption).

The calculation of the amount of the fine as a measure of a criminal legal nature that can be applied to legal entities in the private sector, which is capped at about approximately US$44,000— a relatively small sum for large corporations— needs to be reexamined and revised to be an effective deterrent.

The possibility of applying special forfeiture for committing an act in favour of a legal entity under private law needs to be strengthened as currently, it is provided only for crime foreseen in article 364-1 of the Criminal Code. Forfeiture as a type of punishment is applied when committing crimes provided for in part 4 of article 368-3, parts 2-4 of article 369, part 3 of article 369-2 of the Criminal Code.

Another gap that needs to be addressed is the lack of statistical data or information on bringing legal entities to justice for corruption.

Corporate ethics and business integrity are a powerful means of strengthening the fight against corruption in the private sector. International experience in combating corruption in the private sector indicates the need to use non-legal corporate instruments (codes of ethics and conduct, rules of ethical and business conduct, anti-corruption ethics and compliance programmes with an analysis of real and potential corruption risks in the activities of a legal entity under private law, the availability of policies and mechanisms for reporting corrupt acts, personnel training, etc.), which are able to form an appropriate level of legal awareness in the business environment, which is the main condition for prevention of corruption in the private sector.

The anti-corruption compliance system in Ukraine has certain features and includes both mandatory and additional elements. The mandatory elements include the presence of an anti-corruption programme of a legal entity, a person responsible for its implementation (the Commissioner), a corruption risk assessment system, as well as a set of anti-corruption policies, standards and procedures. Additional elements and forms of their implementation depend on the company's field of activity and the level of corruption risks in the environment (corruption rating, country, region, industry).

A study[126] of the experience of approving and implementing anti-corruption programmes among domestic legal entities showed that these companies either did not create an anti-corruption compliance programme at all or used a formal approach to its development, supposedly fully complying with the requirements of the law, but not implementing real prevention of corruption risks. Such anti-corruption programmes are completely non-functional, quite often copied from the websites of other organizations or simply duplicate the provisions of the Standard Anti-Corruption Programme of a Legal Entity[127].

Regarding the functioning of channels for submitting and considering reports on wrongdoing, in particular corruption, it should be noted that Ukrainian legislation regulates this issue in relation to legal entities of public law and partially legal entities of private law, which fall under part 2 of article 62 of the Law of Ukraine "On Corruption Prevention". Paragraph 5 of part 3 of article 61 of the Law imposes an obligation on officials and employees of a legal entity to immediately inform the official responsible for preventing corruption, the head or founders (participants) of the legal entity about cases of corruption or corruption-related offences committed by other employees of the legal entity or other persons.

Thus, legal entities of private law that do not fall under part 2 of article 62 of the Law must ensure the functioning of protected internal reporting channels and their officials and employees are obliged to report corruption or corruption-related offences. However, Ukrainian legislation does not have any requirements for such channels nor a procedure for considering reports received through those channels. Therefore, there is a risk of violation of the rights of whistle-blowers, including disclosure of the reported information and the identity of the whistle-blower, improper consideration of reports and prosecution of the whistle-blower.

126 https://pravo.org.ua/wp-content/uploads/2020/10/1553535186shadow-report-on-evaluating-the-effectiveness-of-state-anticorruption-policy-implementation_short-3.pdf.

127 https://zakon.rada.gov.ua/laws/show/z1702-21#Text.

Main recommendations:

Legislative concerns:

1. Reform of anti-corruption legislation and laws: establish clear criteria for dividing legal entities into legal entities of public law and legal entities of private law. For the purposes of anti-corruption legislation, it is advisable to move away from the use of the concepts of "legal entity of public law" and "legal entity of private law" and instead introduce defining parameters that allow unambiguously establishing whether Law of Ukraine "On Corruption Prevention" applies to a specific legal entity and its officials.
   Ensure the development of national recommendations for the implementation of an anti-corruption management system for the private sector, taking into account the specifics of SMSEs. The recommendations should provide simple and practical tools adapted to the legal form, resources and typical risks of such enterprises.
2. Develop standalone legislation on whistle-blower protection. Also:
   - Provide for a legislative obligation for legal entities of private law that are not covered by Part 2 of article 62 of the Law of Ukraine "On Corruption Prevention" to introduce protected internal channels for reporting wrongdoing.
   - Expand the functionality of the Unified Whistle-blower Portal by extending its scope to legal entities of private law outside the scope of Part 2 of article 62 of the Law of Ukraine "On Corruption Prevention", as well as conduct a broad information campaign to raise business awareness of the capabilities of this tool.
3. Strengthen and expand scope of criminal liability: consider the possibility of including individual entrepreneurs in the list of subjects of corruption crimes (articles 354 and 368-3 of the Criminal Code of Ukraine) and to establish an obligation to implement anti-corruption compliance for companies whose officials or employees have committed a corruption crime, as well as creating a mechanism for monitoring the implementation of this obligation.

Training and advocacy:

1. Conduct an advocacy and information campaigns to implement anti-corruption compliance in the business environment. This can include development and implementation of:
   - information campaigns on the importance and benefits of anti-corruption compliance for business.
   - training programmes for managers, compliance officers and employees of private sector enterprises.
   - Regular trainings on identifying and minimizing corruption risks in business practice.
2. Promote the international standard ISO 37001:2025, in particular through partial grant funding for certification for small and medium-sized enterprises.
3. Financial incentives: Introduce grant programmes for small and medium-sized businesses for the successful implementation of anti-corruption compliance.
4. Increase access to resources: Create open online resources with practical cases, tools and recommendations for implementing anti-corruption measures.
5. Government incentives: governments can implement incentives to promote the development and integration of anti-corruption programmes from companies for different areas such as public procurement etc. International resources and tools such as the UNODC tool «A Resource Guide on State Measures for Strengthening Business Integrity»[128], are valuable resources for the same.

The implementation of the recommendations outlined will increase the effectiveness of anti-corruption measures in the private sector of Ukraine and bring them closer to international standards, strengthen trust in Ukrainian business in the international arena, and create a favourable environment for fair competition and ethical business.

128 https://businessintegrity.unodc.org/bip/en/new-publication_-a-resource-guide-on-state-measures-for-strengthening-business-integrity.html.