



THE FINDINGS OF CIVIC MONITORING

NATO-UKRAINE COOPERATION

ANNUAL NATIONAL PROGRAMME 2016

Institute for Euro-Atlantic Cooperation
KYIV - 2017

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Institute for Euro-Atlantic Cooperation
and Consortium of Independent Experts

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This publication by the Institute for Euro-Atlantic Cooperation is a continuation of public oversight activities over the implementation of the Annual National Programmes (ANPs) – the documents regulating the process of approximating Ukraine to meet the North Atlantic Alliance membership criteria since 2009. The subject matter of the present analysis is the implementation of the ANP 2016.

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INTRODUCTION

This study is a result of collaboration of independent experts who in the fall of 2016, set up a consortium for civic monitoring of the NATO – Ukraine Cooperation Annual National Programme 2016 (hereinafter – ANP 2016) under the auspices of the Institute for Euro-Atlantic Cooperation.

The expert group included former Foreign Minister of Ukraine – *Volodymyr Ohryzko*; former Deputy Defense Minister of Ukraine – *Leonid Polyakov*, in the past known through his work as the Military Programs Director at *Razumkov Center*, a renowned international law expert and a longtime IEAC partner – *Robert Khorolsky*, a young independent expert – *Anna Kovalenko* and IEAC experts: *Ihor Koziy*, *Volodymyr Horbach* and *Oleksandr Sushko*.

The methodology of the project was prepared on the basis of the previous cycles of ANP monitoring carried out by the Institute in 2009–2011 and the recommendations designed by IEAC experts for the development and implementation of the annual national programs (these studies are available on the IEAC website)¹.

Access to relevant information was crucial for both substantial success of the project and generally to maintain confidential cooperation between the government and civil society organizations with the purpose of the Euro-Atlantic integration of Ukraine. In the course of the research, IEAC submitted more than 130 requests to the authorities in Kyiv and the regions that are responsible for or involved in the

implementation of measures envisaged in the ANP-2016. Not all of the recipients of the requests responded and not all of the responses were substantially equivalent.

The most valuable information for this project was provided in the responses to the requests received from the Ministry of Defense of Ukraine, the National Security and Defense of Council of Ukraine, the Ministry of Internal Affairs of Ukraine and the State Emergency Service of Ukraine. A lot of significant information was also provided by the National Guard of Ukraine, the General Staff of the Armed Forces of Ukraine, the Ministry of Foreign Affairs of Ukraine, the National Civil Service Agency, the Ministry of Social Policy of Ukraine and the Ministry of Information Policy.

IEAC welcomes the growing interest of the executive branch towards the participation of civil society in the drafting, implementation and monitoring of the ANP, which was noted during 2016, including on behalf of the office of the Vice Prime Minister for the European and Euro-Atlantic Integration – Ms *Ivanna Klympush-Tsyntsadze* and looks forward to the further development of public policy-making culture in the political and security sectors and in general in the context of bringing Ukraine closer to the NATO standards.

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IEAC

¹ Guidelines for the development and implementation of the Annual National Programs (based on the experience of ANPs 2009 and 2010). – Institute for Euro-Atlantic Cooperation, 2011, <http://ieac.org.ua/public/item/4->

[rekomentatsii-shchodo-rozrobky-ta-realizatsii-richnykh-natsionalnykh-prohram-na-osnovi-dosvidu-rnp2009-ta-2010](http://ieac.org.ua/public/item/4-rekomendatsii-shchodo-rozrobky-ta-realizatsii-richnykh-natsionalnykh-prohram-na-osnovi-dosvidu-rnp2009-ta-2010)

EXECUTIVE SUMMARY

The process of preparation and implementation of the Annual National Programme of NATO-Ukraine cooperation 2016 (hereinafter – ANP 2016) reflects the transitional nature of the whole NATO-related policy of Ukraine that includes both repeatedly declared desire to become a member of NATO (in 2010 and after 2014) and a legacy from the times of *Yanukovich's* presidency when the policy of membership in the Alliance was replaced by the policy of military non-alignment and "cooperation with NATO." The term "cooperation with NATO", introduced in ANP 2010 is also mentioned in the title of ANP 2016, despite the official rejection of the policy of "non-alignment."

There is no legal certainty yet as to the final goal of Ukraine's cooperation or integration with NATO. According to the current Law of Ukraine On Principles of Domestic and Foreign Policies the goal is "to enhance cooperation with the North Atlantic Treaty Organization to reach the criteria required for membership in the organization". There are still different interpretations of whether this wording renders a clear intention to become an Alliance member.

Due to such uncertainty, the independent experts in Ukraine are debating whether to further develop the ANP as the algorithm of Ukraine's preparation for NATO membership with the respective obligations of Ukraine on the basis of political, economic, security, military and legal membership criteria; or as a plan of bilateral cooperation between Ukraine and NATO, where the focus is on the joint activities of the two parties (such as exercises, personnel training, equipment supply, etc.).

The parties (Ukraine and NATO) should be clear about the strategic goal of cooperation and about the purpose (and content) of the ANP in a changing environment, while providing for the appropriate level of public communications.

The process of developing the ANP 2017, which continued in parallel with the preparation of this study showed government's consideration of the proposals previously voiced by the civil society organizations. The process of drafting a new document has been more inclusive and involved NGOs and independent experts. ANP 2017 was approved by the Cabinet of Ministers of Ukraine on February 2, 2017 and submitted to the President together with the relevant draft decree. The document was titled "The Annual National Programme 2017 under the auspices of NATO-Ukraine Commission". This wording corresponds to the Declaration to Complement the Charter on a Distinctive Partnership between the North Atlantic Treaty Organization and Ukraine concluded in 2008. It specifies that "Ukraine will develop the Annual National Programmes with the purpose of promoting Ukraine's reforms and consistent with all the elements of the decisions taken at the NATO Foreign Ministers meeting under the auspices of the NATO-Ukraine Commission on December, 2008."

Appointment of Ms. *Ivanna Klymush Tsintsadze* as Vice Prime Minister for European and Euro-Atlantic integration in April 2016 has become an important step forward in ensuring coordination of the work, including planning and implementation of the ANP. The establishment of the Commission for Coordination of Euro-Atlantic integration of Ukraine under the auspices of the responsible VPM in July 2016 has also become a logical step forward. However further steps are necessary for the implementation of the single mechanism guiding and ensuring effective planning and implementation of reforms in the sphere of national security and defense.

The consortium experts agree that for greater practical value of the ANP in the future it should become:

- a joint NATO–Ukraine intellectual product;
- have clear objectives and implementation deadlines, information about actors, appropriate resource support and clear performance indicators;
- answer the question of how the ANP will help Ukraine get closer to NATO membership criteria.

The ANP planning process using ANP 2016 as an example shows that there are gaps that are common to all sections of the ANP. The number of medium-term goals is often greater than the number of priorities which is unjustified. Medium-term goals often look artificially created for the ANP and do not correspond to the wording contained in the main medium-term planning documents (programs) of the state and the government. It is necessary to provide for a meaningful regular link between the ANP and other official planning documents.

For example, in the defense sector at this stage medium-term goals should be based on the language contained in Annex 1 of the Strategic Defense Bulletin. Later, after the entry into force of the Armed Forces Reform Program 2017–2020, which is expected in 2017, the relevant targets can be adjusted.

The priorities for the year are a logical continuation of the ANP-defined objectives; their implementation depends on the state budget and is consistent with it. The priorities are defined by the appropriate government agency that receives the budget to support them. The key measures are based on appropriate budget planning and should be aimed at implementing priorities.

The experience of implementing ANP 2016 confirms the presence of the following needs:

- Plan the ANP from the largest to the smallest, moving from short-term to long-term plans. It is necessary to distinguish between the tasks based on the level of importance.
- Improve communication with the staff involved in the planning and implementation

of the ANP in various government agencies; establish regular capacity development courses, trainings and coordination and methodology meetings with the participation of professionals who are directly involved in drafting and implementation of the programme, assisted by the relevant joint NATO–Ukraine programs and individual NATO members. In particular, it is necessary to ensure professional development training of specialists in setting medium-term goals, objectives and actions with regard to departmental resource capabilities, as well as the mechanisms for monitoring and evaluation of medium-term goals, objectives and activities.

- Ensure high quality coordination of the ANP planning process and planning for appropriate advisory and technical assistance.
- Ensure harmonization of the ANP content and relevant government and departmental programs that integrate the work on the ANPs in the relevant work on the annual plans of ministries and departments.
- Use the ANP as a tool for inter-agency coordination between security, defense and law and order authorities.

ANP should be part of the public communication process. Implementation of the ANP and introduction of the State Programme of Public Information on Euro-Atlantic integration of Ukraine 2017-2020, approved by the Cabinet of Ministers in December 2016 should be coordinated from a single focal point and organizationally and substantially interconnected.

Given the significant public importance of the ANP, which directly affects the rights and obligations of citizens, it is important to carry out mandatory public discussion of its content at the stage when amendments and additions are still possible.

THE CONTENT AND THE FORMAT OF ANP 2016

The ANP is the official policy-planning document of Ukraine focusing on achieving the Euro-Atlantic democratic governance standards, rule of law, comprehensive reforms of the defense and security sector in line with the NATO standards. The ANP is developed by the executive authorities in close cooperation with the Alliance and the implementation is the responsibility of the Cabinet of Ministers and the executive agencies and, in some cases, in cooperation with civil society organizations.

The action plans were developed and approved for each ANP.

The content and the format of the ANP-2016 have a unique "hybrid" nature. On the one hand, the format was inherited from the original ANP 2009 version, granted to Ukraine following the results of the NATO Bucharest Summit (2008), virtually as a substitute for the NATO Membership Plan (MAP) aiming to meet the membership criteria. On the other hand, the ANP format kept some of the previous content also in 2016 as the legacy from the times of *Yanukovich's* presidency when the policy of membership in the Alliance was replaced by the policy of military non-alignment and "cooperation with NATO."

The annual national programs have been an integral part of all MAPs, which were offered to the NATO candidate countries. Therefore, offering MAP-free ANP in 2009 was seen as a form of temporary compromise pending the time when the NATO member states would reach consensus on the future membership of Ukraine and Ukraine itself would overcome its own indecision. Thus the ANP had the same meaning as the ANPs for the candidate countries, but without a formal MAP "wrapping". An essential condition for using this format was the officially declared and enforceable aspirations of the country's membership in the Alliance.

The situation changed in 2010 after President *Yanukovich* took office, when Ukraine gave up the NATO membership course and declared the policy of military "non-alignment", which was later formalized in the legislation of Ukraine. Then, refusing to give up the format completely – the Ukrainian side adjusted the ANP format by diluting the goal-setting instrument, rather than focus on achieving the membership criteria, the ANP became the "NATO–Ukraine cooperation" document without the definition of the end goal. Accordingly, they adjusted the content of the document by removing the provisions that were interpreted as a direct aim at gaining membership thus rendering them meaningless under the conditions of "non-alignment".

This situation lasted until 2014, when the change in the policy occurred as a result of the success of the Revolution of Dignity and the beginning of the Russian aggression involving the annexation of Crimea and Donbas hybrid warfare. This was when Ukraine restored some elements of the NATO membership course. However, the changes that were made to the Ukrainian legislation in 2014 left some room for uncertainty.

According to the current (2014) Law of Ukraine On Principles of Domestic and Foreign Policies, Article 11, Ukraine's objective is "to enhance cooperation with the North Atlantic Treaty Organization to reach the criteria required for membership in the organization". The current National Security Strategy of Ukraine, Article 4.7, defines the objective as "joining the European security system, the basis of which is NATO". Although any reference to the non-block approach has been removed from Ukrainian laws, the allied partners of Ukraine do not consider this wording to clearly mean a formal membership ambition. As a result, in its documents related to Ukraine, such as the 2016

Warsaw Summit Declaration, NATO avoids a direct reference to Ukraine's membership, unlike Georgia that unambiguously keeps insisting upon its membership prospects. Hence, there is no clarity about the ANP's final purpose either.

As of 2016, this uncertainty was also reflected in the title of the document. While according to the Presidential Decree, the first ANP 2009 was titled – "The Annual National Programme 2009 of preparing Ukraine for NATO membership", the ANP 2016, falling under our scrutiny as a part of this analysis, was titled "The Annual National Program of NATO–Ukraine Cooperation 2016".

It was only during the preparation of the ANP

2017, which draft was approved by the Cabinet of Ministers of Ukraine on February 2, 2017, when the methodological approaches were changed to some extent and a new document received the title "The Annual National Programme under the auspices of NATO–Ukraine Commission 2017" (the analysis of this document is not the purpose of this study. As of the date of release for our publication, the ANP 2017 has not yet entered into force).

Parties (Ukraine and NATO) should be clear about the strategic goal of cooperation and about the purpose (and content) of the ANP in a changing environment, while providing for the appropriate level of public communications.

POLITICAL AND ECONOMIC ISSUES

1.1. DOMESTIC POLICY

1.1.1. Democratic Reforms

1.1.1.1. Constitutional Reform

This reform is rightly defined as critical for implementing all the other reforms. While the main objective of the constitutional reform proper is "to prevent the usurpation of power by any high-ranking public official" on the one hand and "ensure the unity of the government policy" on the other.

In fact, these are the two main challenges that Ukraine faced during the Revolution of 2013–2014 (first) and in the post-revolutionary period (second challenge).

Essentially, Ukraine embarked on alternate and incremental changes in the individual chapters of the Constitution dealing with decentralization and judicial reform, as well as practical alignment of the organization of the prosecutorial authorities in conformity with the European standards.

The decentralization reform was developed and voted during the first hearing already in 2015. In January and February, 2016 it was planned for final approval. However, unfortunately, this reform has become hostage to the negotiations with Russia to resolve the conflict in Donetsk and Luhansk regions. Partly this was due to merging the amendments to the Constitution regarding general decentralization of governance with the transitional arrangements dealing with the specifics of local government in the temporarily occupied territories of Donbas in one single text. Had we had 2 separate draft amendments, the first part would definitely have been voted and enforced.

The political establishment of Ukraine insists that security is a definitive priority in the implementation of the "Minsk agreements", so changes to the Constitution in terms of decentralization can take place only after the withdrawal of the Russian troops. On March 15, 2016 the Constitutional Court issued a judgment No. 1-rp/2016, which allows the Parliament to decide during which session to finally adopt the law amending the Constitution. However, Article 155 of the Constitution of Ukraine clearly establishes the timeline for amending the Constitution as two consecutive sessions of the Parliament.

Thus, the reform of the Constitution in terms of decentralization has been suspended, but not deadlocked. The decentralization reform is successful where it does not require amending the Constitution i.e. fiscal and financial decentralization implemented by the government, establishment of new territorial communities and other.

The judicial reform is the main and successful change of the Constitution in 2016.

The Law "On Amendments to the Constitution of Ukraine" was voted by the *Verkhovna Rada* on June 2 and on June 24 it was signed by the President. At the same time, on June 2 the Parliament passed the implementation law – a new version of the Law of Ukraine "On the Judicial System and the Status of Judges", although in violation of the Parliamentary Rules of Procedure for which it was criticized, however the law was still enacted.

These constitutional amendments contain many positive changes, including the establishment and liquidation of courts by the law; career development and dismissal of judges by the High Council of Justice, which by more than a half will consist of judges elected by judges; introduction of lifetime appointment of judges; introduction of performance evaluation for each judge in terms of competence, integrity, ethical behavior and the mechanism of judge's participation in the competitive selection or dismissal/transfer in the event of liquidation or reorganization of the court employing the judge.

However, the implementation of the justice reforms will continue in the next year and it requires implementation of the Law "On the High Council of Justice" passed on December 21 and a new version of the law "On the Constitutional Court of Ukraine" (see the corresponding chapter on judicial reform further on).

The reform of the prosecutorial authorities has been going on for years. The office of the prosecutor already lost its general supervision powers over the last year as a result of aligning its powers closer to the European standards and it is

planned to also withdraw the investigation function after 2016.

In addition to the changes described in the ANP, the Draft Law "On Amendments to the Constitution of Ukraine concerning inviolability of MPs and judges" No. 1776 is formally pending in the Parliament. However, the issue of judicial immunity has been regulated in the constitutional changes on June 2, so it has lost relevance in this sense. At the same time, parliamentary immunity requires diminishing instead of elimination, since it is an integral sign of parliamentarism, as provided by this bill. So the likelihood of its approval in the existing wording is minimal.

It's important to remember that the Constitutional Commission established by the Presidential Decree on March 3, 2015 did not meet in 2016. It was only the Council for Judicial Reform that met more or less regularly. This is a different advisory body coordinated by *Oleksiy Filatov* – Deputy (Chief of Staff) Head of the Presidential Administration of Ukraine. This means that the emergence of new amendments to the Constitution of Ukraine is not yet planned for.

1.1.1.2. Electoral Legislation Reform

The main areas of this reform are the realization of the integral right of citizens to freely elect government authorities and the duty of the state to provide this opportunity to the citizens.

Medium-term goals:

- Accountability and effectiveness of the Parliament, the stability of the party-based system, rotation of political elites within the coalition of parliamentary factions called "The European Ukraine";

- Ensuring the inevitability of prosecution for crimes and administrative offenses against citizens' electoral rights.

In 2016, parliamentary by-elections were held only in some single mandate constituencies and

the election of mayors in newly established local communities is to be held on December 18. The government provided the citizens with the constitutional right to elect and to be elected.

In the annual address to the Parliament, Ukraine's President mentioned the need to adopt a law on elections held on a proportional basis using open regional lists of parties. However, this issue stands still in the Parliament, partly for the reasons of political situation and partly, because of a lack of proper public pressure regarding this matter. It seems that to speed up this process constructively it would be appropriate to first let the Supreme Council adopt the electoral legislation development concept.

Conversely, this year some progress was registered in establishing the mechanism of transparency of party finances. The law on public financing of political parties took effect and it provides for reporting by the parties on their income and expenses, as well as government funding for parties.

The main objectives of the Law are:

- Reducing dependence of political parties on funding by private donors (the oligarchs, industrial and financial groups and so on);
- Creating conditions for free and fair inter-party competition and development of new parties by introducing public financing of political parties;
- Increasing transparency of financing of political parties and their local organizations and enhancing transparency of campaign financing;
- Establishment of real, proportionate and effective sanctions for violations of party financing and campaigning.

The eligibility for government funding will extend to the parties that will win at least 2% of

votes at the next regular or extraordinary elections. And in 2016, the parties that passed the 5% threshold during the parliamentary elections in 2014 began receiving government funding quarterly.

The amount allocated from the national budget for party financing will be determined by the following formula: 2% of the minimum wage multiplied by the number of voters who participated in the last parliamentary elections. Most of the funds will be divided proportionally between the parties: more votes - more money. The additional 10% will become a kind of "gender bonus": the funds will be distributed evenly between the parties, where there is at least one woman for every three members in the electoral lists.

The decision to grant public financing to a party is adopted by the National Agency for the Prevention of Corruption. For this purpose, political parties need to submit a financial report using a new form set out in the law and pass an audit.

1.1.2. Human Rights

It is noteworthy that the text of the ANP 2016 openly states that Ukraine takes measures derogating from some of its international obligations in respect of human rights. However, it is done temporarily and unwillingly because of continuing Russian military aggression and increased "terrorist activity" in Donetsk and Luhansk regions, endangering the public and threatening the lives of citizens.

The right to derogate from some commitments defined in the International Covenant on Civil and Political Rights and the European Convention on Human Rights will apply before complete cessation of armed aggression, restoration of the constitutional and public order in the occupied territories.

Apart from the main areas and medium-term objectives, this chapter also contains priorities for the current year, as well as a list of major activities.

The main priority is the implementation of the National Human Rights Strategy 2020.

On February 24, 2016 the Cabinet of Ministers approved the National Action Plan 2020 to implement the UN Security Council Resolution 1325 "Women, Peace and Security", mentioned in the text of the ANP 2016 as the main activity in the human rights chapter.

Another main activity – the development of the National Plan to implement Resolution 1612 (2005) "Children in Armed Conflict" was recognized impractical because on January 26,

2016 a number of significant changes to the matter in question were made in the Law of Ukraine "On Protection of Childhood", which took into account the requirements of the Resolution.

On October 21, 2016, the Expert Council of the Parliamentary Committee on Human Rights considered the issue of misusing the Action Plan to implement the National Human Rights Strategy, delayed implementation for most of the Action Plan items, low level of activity and interaction with civil society organizations by the executive agencies. The UHHRU proposals on the need to strengthen parliamentary control over the implementation of the legislative part of the Action Plan received support.

On November 11, the Ministry of Justice published a report on the implementation of the Action Plan as a part of the National Human Rights Strategy in the third quarter of 2016, which recorded substantial progress.

On November 12, the President of Ukraine submitted the draft Law "On Ratification of the CoE Convention on the prevention of violence against women and domestic violence and combating these phenomena" (Istanbul

Convention) to the *Verkhovna Rada* of Ukraine.

However, the Constitutional Commission has not yet prepared the final version of the constitutional amendments regarding the rights and freedoms of man and citizen. The public discussion of the draft Law of Ukraine "On Amendments to the Constitution of Ukraine (in relation to Human Rights)" still continues. The bill was prepared by the Working Group of the Constitutional Commission for the rights, freedoms and duties of man and citizen. Regional outreach meetings took place throughout the year to discuss the proposed changes. Later, it is planned to send the bill fully examined by the Constitutional Commission to the Venice Commission and hold an information campaign in case of receiving a positive opinion. The final step in the work of the Commission should be the submission of the bill to the President of Ukraine and later to the Parliament.

There is an outstanding problem of human rights violations in the Crimea annexed by Russia, but the solution rather lies in the international law than in the ANP.

1.1.3. Freedom of Expression and Information Policy

The following general information policy priorities have been identified: openness of the authorities in terms of information, preventing censorship and interference in journalists' activities. But under the conditions of an actual war this is justly falling under certain restrictions, which however do not apply to the general situation with observance of the freedom of speech principle in Ukraine.

There is also one significant aspect of the government information policy associated with the ban on broadcasting Russian TV channels via cable networks and Russian films as well as television series glorifying the law enforcement agencies of Russia. Some Russian media

personnel are banned from entering Ukraine. In Ukraine, it is not seen as an issue of the freedom of expression and information, but as legitimate opposition to propaganda projected by the hostile power that is forced and temporary.

Relatively high number of attacks on journalists remains a serious problem in Ukraine, which has increased from the beginning of the armed conflict in Donbas. A blatant murder of *Pavlo Sheremet*, a prominent journalist that happened in Kyiv on July 20 caused a big shockwave while the perpetrators and customers of this murder remain unidentified.

The practical priorities for the current year are the launch of the national public broadcasting

company and the start of reforming the state-owned and municipal media.

During 2016, the government funded the work and the process of converting the National Public TV and Radio Broadcasting Company into JSC The National Public Broadcasting Company. The independent supervisory board has been meeting to elect the NPBC leadership in the first half of 2017. However, there is a problem with funding. It was proposed to use most of the NPBS funding from the State Budget 2017 for the preparation and holding of the Eurovision song contest in Ukraine, which resulted in demarche and resignation of *Zurab Alasania* – the Head of NPBS.

The CMU unlocked the possibility for *Ukrtelecom* film studio to join the future public television company, where the former management regularly resisted the idea.

On January 1, the Law "On the Reform of government-owned and municipal print media" was enacted. Following the Procedure for developing the list of print media and editorial offices subject to (voluntary) reform during the

first phase of the reform, on July 1, 2016, this list included 206 editorial offices of government-owned and municipal media. The Resolution of the Cabinet of Ministers approving the Procedure is still pending, but it is to be issued by the end of the year.

The ANP 2016 did not provide for direct cooperation in the field of information policy with NATO. However, the implementation of the Partnership's Roadmap for Strategic Communications between NSDC and NATO International Staff started this year. Creating a system of crisis communications has been postponed completely until Q4. Creating a Situation Centre of the Information Ministry is also still in the plans. The project of creating a unified training center for strategic communications has been developed. The first trainers were trained and certified and a number of training courses were developed. Although, concrete practical work and, most importantly, receiving feedback will become possible only thereafter.

1.2. THE RULE OF LAW

1.2.1. Reform of the judiciary, administration of justice and related legal institutions

Justice system remains one of the most compromised components of public administration in Ukraine. According to the poll conducted by the *Razumkov* Center in October 2016, almost 80% of Ukrainians do not trust the courts, 10.5 % trust the court system², and corruption in the courts is one of the key factors of the negative business climate in Ukraine.

Reforming the judiciary is a part of the numerous international commitments of Ukraine

(before the IMF, EU, etc.). It is also mentioned in various government planning documents. So, the commitments contained in ANP 2016 are not unique. Instead, they are essentially an abbreviated version listing only the general areas, avoiding specific purposes and failing to provide for any specific measures.

The following areas were mentioned:

- ensuring independence, impartiality and fairness of judges;

² Almost 80% of Ukrainians do not trust the courts. *Ukrinform*, 22.11.2016. <https://www.ukrinform.ua/rubric->

[politycs/2125611-sudam-ne-doviraut-majze-80-ukrainciv.html](https://www.ukrinform.ua/rubric-politycs/2125611-sudam-ne-doviraut-majze-80-ukrainciv.html)

- preventing and combating corruption in the system of justice in Ukraine;
- increase performance transparency of judges and their level of responsibility;
- raising the level of training and qualification of judges;
- raising the level of efficiency of justice and streamlining the powers of the courts of various jurisdictions;
- strengthening the guarantees for the lawyers in terms of practicing law and ensuring access to free legal aid;
- improve the system of enforcement of judgments and improve the efficiency of enforcement proceedings;
- aligning the powers and performance of prosecutorial authorities to the European standards.

The ANP does not provide for the actors responsible for implementing objectives mentioned in this subsection, as well as indicators allowing to assess the quality of implementation.

However, 2016 was marked by some concrete steps towards the justice reform. As mentioned above, the Constitutional amendments adopted on June 2, 2016 envisage the following:

- establishment and liquidation of courts exclusively by law;
- establishment of the High Council of Justice - a body appointing and dismissing judges (instead of the President and the Parliament) which by more than a half will consist of judges elected by their peers at the congress of judges;
- introduction of lifetime appointment of judges;
- introduction of performance evaluation for each judge in terms of competence, integrity, ethical behavior and the mechanism of judge's

participation in the competitive selection or dismissal/transfer in the event of liquidation or reorganization of the court employing the judge.

The implementation of the judicial reform adopted in June started in November, 2016. During the first stage the reform requires a reset of the highest judicial authority - the Supreme Court of Ukraine. In November, potential candidates began filing the application papers to fill the positions of judges of the new Supreme Court.

The implementation of the approved justice reform will continue in 2017. This requires implementing the Law "On the High Council of Justice" approved on December 21 and adopting a new Law "On the Constitutional Court of Ukraine."

At the beginning of March 2017, the aforementioned new agency – the Supreme Council of Justice was in the final stage of establishment.

Another element of judicial reform is the creation of special anti-corruption courts, which requires adoption of a separate law.

The reform of the prosecutorial authorities has been going on for years. The office of the prosecutor already lost its general supervision powers over the last year as a result of aligning its powers closer to the European standards and it is planned to also withdraw the investigation function after 2016. However, the stages of the reform implemented during 2015-2016 have not reached decisive results, because personnel re-certification, which took place during 2015-2016 resulted in the vast majority of "old guard" prosecutors staying in office.

1.2.2. Preventing and Combating Corruption

Preventing and combating corruption is among one of the most serious challenges that Ukraine faces. According to the experts, Ukraine

remains among the most corrupt countries in Europe. In particular, according to the Corruption Perceptions Index promulgated by Transparency

International in January 2017, Ukraine moved up in the ranking only by two positions compared to the previous year after receiving 29 points and taking the 131st place out of 176 countries.

In this section, the ANP mirrors the same obligations that were a part of the IMF Memorandum, as well as the Action Plan on visa liberalization with the European Union:

- functioning of the National Agency for Prevention of Corruption as a preventive authority and the National Anti-Corruption Bureau of Ukraine as a law enforcement agency;
- monitoring lifestyle of civil servants;
- establishment of a Unified State Register of tax declarations of persons authorized to perform central or local government functions;
- ensure integrity and accountability in the public sector;
- ensure financing transparency of political parties and political activities and limiting the exposure of policies to private capital.

Obviously, the implementation of these policy priorities requires coordinated work of a large number of government agencies, including the newly created anti-corruption institutions.

However, when planning major activities under this section of the ANP, the Ministry of Defense was defined as the main actor (six out of eight activities) which is not proportional to the content of the declared development areas and objectives.

However, in general, Ukraine has made some progress in the anti-corruption policy in 2016.

First of all it includes the actual launch of three new anti-corruption agencies: the National Anti-Corruption Bureau (NABU), Special Anti-corruption Office of the Prosecutor (SAP) and the National Agency for the Prevention of Corruption (NAPC). In particular, in November 2016, 200 NABU detectives were investigating more than

215 criminal proceedings, while 36 cases were pending trial. In March 2017, the joint efforts of NABU and SAP resulted in the arrest of *Roman Nasirov* – Head of the State Fiscal Service of Ukraine – the highest level public official ever arrested in the independent Ukraine on corruption charges while in office. However, only court decisions will determine the extent of effectiveness of these efforts.

Significant progress has been achieved in ensuring transparency of public procurement, which for years has been a source of large scale corruption. Since August 1, 2016 all public procurement in Ukraine (with some special exceptions) is made through the PROZORRO online system, which was recognized as the world's best public procurement startup, receiving the World Procurement Award in May 2016.

In October, the first stage of using tax e-declaration system was completed. More than 100 000 officials submitted their declarations electronically and now for the first time they became available for unlimited online viewing. The circle of relatives and related persons of public officials, subject to mandatory asset declaration has expanded significantly. For the first time, movable property, luxury items, excessive spending and cash became a subject of the tax declarations.

Besides, new legislation has been introduced to monitor the finances of political parties and their financing from the state budget. For the first time, the political parties published reports on their financial income and expenses. Although, according to many experts much of the party financing is still in the shade, as evidenced by some indicators in the reports published by the parties³.

Nevertheless, the announced changes were not enough for a decisive breakthrough of Ukraine in this area, so the key efforts still lie ahead.

³ What is not reported in the political party reports 2016? *Ukrinform*, 20.12.2016. <https://www.ukrinform.ua/rubric->

presshall/2140937-pro-so-govorot-zviti-politichnih-partij-za-2016-rik.html

With regard to the security sector, the emergency situation related to the conflict with Russia used to justify heightened secrecy of the security and defense agencies against the new anti-corruption policy instruments. In particular, much of the defense and security procurement is not reflected in the PROZORRO system (as state secret). Electronic declarations of SSU officers and

officers from other security agencies also were not published.

While these and other restrictions may be partially justified, they still create an atmosphere of distrust and fuel suspicions that the volume of corruption and abuse in the defense and security sector has not decreased but rather increased, resulting in a substantial growth in government spending in this sector.

1.3. Economic Issues

According to the ANP 2016, the main elements of the economic policy of Ukraine in the near future include the establishment of a deep and comprehensive free trade zone with the European Union, as provided for by the Association Agreement between Ukraine on one hand, and the European Union, the European Atomic Energy Community and their member states on the other, ratified by the Law of Ukraine No. 1678-VII issued on September 16, 2014 (hereinafter - the Association agreement). Equally important is to restore full functioning of Ukraine's economy, which suffered significant damage as a result of corruption by the previous government and aggressive policy of the Russian Federation. The main priorities of economic development of Ukraine in 2016 is the creation of basic prerequisites of economic growth by achieving low inflation, stabilization of public finances and ensuring stability of the financial system.

There are no specific requirements and actions that could make the ANP stand out from among other government planning documents in terms of economic issues.

Thus, ANP performance evaluation in this respect lies in the area of overall assessment of the economy, macroeconomic indicators, implementation of the EU Association Agreement and a number of measures to deregulate the economy, protect economic competition, simplification and

optimization of taxation and building a favorable business climate.

Ukraine emerged from the period of rapid economic decline and resumed moderate growth: according to official government data presented by the Prime Minister *Hroisman* in February 2017, GDP growth in 2016 was 2.2 % (which was higher than all the forecasts, which expected economic growth at the level of no more than 1.5 % – 1.8 %). The growth in Q4 reached 4.7 % compared to Q4 2015.

Annual inflation decreased significantly down to 12.4 % (compared to 43.3 % in 2015).

Production in key areas ceased to slump and started to recover, primarily due to the growth in industry, agriculture and production of steel. According to the statistical data, during 10 months in 2016 the economy of Ukraine received USD 3.1 billion FDI where USD 2.2 billion was injected as a result of additional bank capitalization by the shareholders. This is 41% more than in 2015.

In 2016, the National Bank continued to actively curtail FX restrictions introduced in 2014 and ease the monetary policy. These steps became possible due to the stabilization of *hryvnia* exchange rate. Over one year, the national currency fell from UAH 23.4/USD 1 to UAH 26.3/USD 1.

Ukraine has reached modest improvement of its results in the World Bank Doing Business – rising to the 80th position in the 2017 ranking from

last year's 83rd. This result demonstrates inefficiency of the efforts to reform the economy,

implement deregulation and improve the investment climate.

1.3.1. Energy Security

The Energy Security section of the ANP contains a more detailed list of policy priorities than the overall economic chapter and the most important ones are the following:

Energy markets reform, ensuring transparency of business activities, competition in these markets and their de-monopolization, the integration of Ukraine's energy sector into the energy markets of the EU member states and the European energy security system; improving energy efficiency and ensuring energy conservation, particularly in the Armed Forces of Ukraine;

Diversification of sources and routes of energy supply, overcoming dependence on Russia in supplying energy and technology, development of renewable and nuclear energy considering priority aspects of environmental, nuclear and radiation safety;

Create conditions for a reliable energy supply and energy transit through Ukraine.

In 2016, Ukraine actually completed the development of the reform policy regarding energy tariffs. Direct subsidies of utility costs were eliminated and the energy tariffs were raised to meet the market level and targeted subsidies were introduced.

There has been launched an ambitious corporate governance reform of the largest government-owned energy company – *Naftogaz* of Ukraine and an independent Supervisory Board was formed, where most of the members are foreign experts equidistant from the Ukrainian government and business interests. In 2016, *Naftogaz* of Ukraine announced the receipt of some net profit for the first time in its history, while during the previous years the company registered massive losses set off by the state budget.

For the first time in the history of Ukraine the government did not purchase natural gas from Russia in 2016, which has become a significant step towards energy independence.

At the same time, Ukraine still attempts to achieve independence in terms of supplies of Russian fuel for the nuclear power plants and anthracite coal from the occupied territories of Donbas. The latter has become a particularly sensitive issue during the winter season 2016–2017.

Ukraine has gained slight progress in reforming the natural gas and electricity markets, where monopolies continue to dominate. Implementation of the progressive legislation adopted in 2015 in line with the relevant European standards concerning the natural gas market is slow. The reform-oriented bill on electricity market was not approved as of late 2016.

Some measures are implemented at the level of CEB aiming at some aspects of energy security policy, energy conservation and energy efficiency.

In particular, according to the Ministry of Defense, the representatives of the Armed Forces of Ukraine took part in the training titled "Energy Security in Operational Planning" (June 14–17, 2016, in Nemenchine, Lithuania).

In addition, the MoD has developed a List of energy saving measures in the 17 most energy-intensive garrisons that have priority in the daily MoD operations for possible inclusion in the joint NATO projects to improve energy efficiency. In 2016, the heating supply systems in three garrisons have been converted to use alternative energy sources (No. 1 in Kolomyia, Ivano-Frankivsk oblast, No. 12 in Mukachevo, Transcarpathian oblast and No. 62 in Mykolayiv).

1.4. FOREIGN POLICY

This chapter of the ANP talks about the threats that emerged before Ukraine as a result of the Russian aggression and, in this context, about the need to strengthen the special partnership between

Ukraine and NATO on the basis of decisions taken at the meeting of the NATO-Ukraine Commission at the level of the Heads of State and Government in Newport on September 4, 2014.

1.4.1. Integration into the European Union

EU integration is a process running in parallel to NATO integration; however some significant components of both processes overlap, particularly in terms of building democratic institutions, the rule of law and other political and economic components.

Since January 1, 2016, Ukraine started the implementation of its commitments within the EU Association Agreement signed in 2014.

The analysis of the first implementation steps of this agreement is the subject of a separate study by IEAC, which can be found on the IEAC website⁴.

1.4.2. Cooperation with NATO in maintaining security of the Euro-Atlantic space. Participation in the international peacekeeping operations under the UN auspices

This section is relevant, detailed and structured and can be useful, in case of proper performance of the mentioned above tasks, in terms of receiving the experience of practical cooperation with NATO military contingents by the Armed Forces of Ukraine.

However, both priorities for 2016 and the main activities are described in a too general manner, and in such a way that makes it harder to monitor the performance of the planned activities.

From the available information it can be concluded that the NATO-Ukraine Commission had a series of meetings (March, April, May, June, July and September). They took place at both the highest political and operational (working) levels.

In particular, the Ukrainian contingent takes part in the NATO multinational force in Kosovo (KFOR) and in the national staff of the NATO mission "Resolute Support" in Afghanistan. There have been held several meetings of the NATO-Ukraine joint working group on military reforms in March, May, June, July and September 2016. On two occasions, the representatives of the State Aviation Service took part in the meetings of the Working group on communications, navigation and air space surveillance of NATO Aviation Committee. A meeting with the Turkish military took place with facilitation of Vinnytsia Oblast State Administration where they discussed NATO Air Situation Data Exchange Programme. The British and Ukrainian military personnel took

⁴ Implementing the Ukraine-EU Association Agreement: initial lessons learned, consequences, implementation practices. Conrad Adenauer Foundation, the Institute of Euro-Atlantic Cooperation, 2016,

<http://www.ieac.org.ua/public/item/21-vprovadzhuichy-uhodu-pro-asotsiatsiiu-ukrainayes-pershi-uroky-naslidky-praktyky-vykorystannia>

part in the training on tactical casualty care, EOD and more. Following the results of the Joint Working Group on Defense and Technical Cooperation the government looked into the question of holding the Day of Ukrainian Industry at the NATO HQ.

For instance, the representatives of the State Emergency Service have participated in the conferences regarding the international NATO exercise CRNA GORA focusing on response to civil emergencies in March and June, 2016. They also took part in the NATO-led trainings for the national instructors providing training in CBRN response (April and June, 2016), in on-line

exercises and NATO's seminar in Civil-Military Cooperation during Crisis Response (July, 2016) and NATO's pilot Risk and Disaster Management Course (September, 2016).

In the context of Ukraine's participation in the activities of NATO Partnership Cooperation Menu 2016, the representatives of the Ministry of Foreign Affairs of Ukraine took part in the public relations training (March, 2016), NATO week in Kyiv (April, 2016) and NATO Public Diplomacy Course (June, 2016). 158 representatives from the Ministry of Defense of Ukraine took part in 116 activities of NATO Partnership Cooperation Menu 2016.

1.4.3. Arms control, non-proliferation of weapons of mass destruction. State export control

This section describes the obligations of Ukraine to implement the provisions of several international treaties, to which Ukraine is a party.

The implementation of this item during 2016 included the participation of Ukraine's representatives in the number of international organizations and their agencies (mainly OSCE), to which Ukraine is a party. It has been indicated that 10 inspections and 5 observation flights took place in the territory of Ukraine and the representatives of Ukraine took part in 15 inspections and 5 observation flights. In addition, the Ministry of Defense of Ukraine participated in the workshops held by the NATO Verification Coordinating Committee to verify and refine the data from the annual exchange of information under the Treaty on Conventional Armed Forces in Europe and data entry into the NATO electronic database "Verity" (January, September 2016) and

in bilateral working meetings on the abovementioned topic with the representatives of Hungary (February, 2016) and Germany (April, 2016).

The State Border Guard Service, for instance, conducted trainings on maintenance of radiation monitoring systems and a professional development course on maintenance and repairs of the systems for monitoring movement of nuclear materials.

NATO Trust Fund sponsored disposal of radioactive waste from the former Soviet military sites and began the disposal of the radioactive waste buried at the *Vakulenchuk* dump site.

Overall, based on the available information it is difficult to draw conclusions about the quality of implementation and relevance of the activities to the main purpose of the reform - bringing Ukraine closer to the NATO standards.

1.4.4. Fighting Terrorism

This item is spelled out in more detail. There also have been determined important areas of improving the work of the law enforcement agencies of Ukraine in this important sector and the areas of practical cooperation with the Alliance.

However, one of the main co-implementers – the Security Service of Ukraine failed to provide any specific information on the measures undertaken under the Programme, except for the fact of denying entry to Ukraine for 230 foreigners with ties to terrorist organizations, such as "The Islamic State". Generally, it was stated that the representatives of the Security Service took part in a series of trainings in anti-terrorism and held "regular meetings with the representatives of foreign law enforcement agencies and special services."

The representatives of the Ministry of Defense of Ukraine took part in a number of trainings in tactical planning, the fight against suicide terrorists, force protection, intelligence operations during asymmetric combat, crisis management operations, etc., taking place in January, February, May and September 2016 in several NATO member states and the partner countries.

272 officers of the Armed Forces of Ukraine were trained in cooperation with the Canadian military police. Six other officers were trained at three rebel counteraction courses and military police officer training course (April, May, August, September and November 2016).

There has been held a meeting of the working group of the NATO Center of Excellence and the EOD Department of the National Police of Ukraine to identify relevant threats in Ukraine and organize interagency cooperation. A representative of the abovementioned unit took part in the international conference "Security Forum 2016" (June, 2016). 34 NPU specialists have been trained at the interagency cooperation courses in counter-IED operations and vehicle bombing scene inspection with participation of the experts from Spain and the USA (February, March 2016).

A meeting between the State Border Guard Service and the representatives of the US Border Patrol was held to exchange experiences.

However, this section is full of general information in the same way as the previous sections and contains almost no concrete measures and deadlines for their implementation.

1.5. Public information about Ukraine's cooperation with NATO

The section establishes the basic areas of work aiming at properly informing the public about the importance of enhanced cooperation between Ukraine and NATO. In this regard, the information covers several important tasks, including the launch of the Ukraine - NATO web page, holding NATO International Week in Ukraine and the need to develop a strategic communications model in Ukraine with the participation of NATO experts, etc.

The approval of the Communications Strategy for the MoD and the Armed Forces of Ukraine by the Minister of Defense of Ukraine (July 2016) has become an important step forward.

The representatives of the Ministry of Defense of Ukraine were also trained in conducting psychological operations during peacekeeping and security operations (February – March 2016), information operations (February - March 2016), planning of psychological operations (March

2016) and strategic communications (May 2016).

There are more than 140 reports and press releases about cooperation with NATO on the MoD website. There have been also produced 26 TV programs and 55 videos on the said topic. Three press tours were held for the media representatives during Ukraine's hosting US-Ukrainian command post exercise "Rapid Trident 2016" and "Sea Breeze 2016" and the multinational command post exercise "Maple Arch 2016" with involvement of the troops. The International NATO Week titled "Adaptation of NATO to contemporary and future security challenges" was held in Ukraine (April 2016) in cooperation with the NATO Information and Documentation Center in Ukraine and the Embassy of Lithuania - NATO Contact Point Embassy in Ukraine. Deputy Defense Minister took part in the seminar on the future of Euro-Atlantic integration of Ukraine organized by J. Marshall Foundation and NATO Information and Documentation Center in Ukraine (April 2016).

Over 1 200 journalist requests were processed in Ukraine's MoD. Over 900 stories have been published about the Armed Forces of Ukraine as a result of this work, including on cooperation with NATO. More than 40 foreign journalists were assisted in their work in the ATO and filmed 19 videos, produced 1 film and wrote 54 articles.

The website of the Interior Ministry of Ukraine contains more than 20 stories on cooperation with NATO.

The SSU has drafted and published over 250 materials on combating terrorism and on cooperation with NATO. Also, there was held the 8th international conference on "Protection of democratic values and human rights in the activities of secret services" (May 2016).

The MFA of Ukraine provided the content for the "Ukraine-NATO" website. The information included 85 news items, 12 publications on cooperation with NATO and 6 sets of pictures in the picture gallery.

Deputy Secretary of Ukraine's NSDC took part in a number of conferences and seminars on issues dealing with international security and cooperation with NATO, organized with the assistance of the NATO Information and Documentation Centre of in Ukraine (March, April and May 2016).

The Ministry of Information Policy of Ukraine in cooperation with the NATO Information and Documentation Center in Ukraine and the NATO Liaison Office in Ukraine provided significant methodological and practical assistance to Ukraine's MoD in holding informational events dedicated to NATO-Ukraine cooperation. In particular, NIDC contributed to broadcasting NATO TV content on Ukrainian television and radio channels. The Ukrainian UATV channel specializing in foreign language broadcasting showed a series of information and analytical programs called "Security Factor".

A number of interviews and conferences that allowed reaching out to 100 000 people were organized with the help of the Ministry of Information Policy. A series of info-graphic materials have been prepared for the media that explain the contents of key strategic documents of NATO-Ukraine partnership, etc.

The Ministry of Health of Ukraine held a series of information events (exhibitions, thematic discussions and informational reviews) dedicated to the partnership between Ukraine and NATO, using to this end the European and Euro-Atlantic Information Center of Kharkiv National Medical University.

It should be noted that the vast majority of oblast state administrations, with the exception of Vinnytsia and Chernivtsi, did not provide specific information on measures relating to practical cooperation with NATO.

Same as the preceding paragraphs, paragraph 1.5 does not contain any specific dates of implementation of certain provisions while the reporting information is of a general nature, which makes it impossible to conduct a qualitative analysis of their performance.

1.6. Training of Experts in NATO-Ukraine Cooperation

The section contains references to the need to implement the NATO-Ukraine Professional Development Program for civilian personnel working in Ukraine's security and defense sector.

According to the National Civil Service Agency, over 20 communication activities for the representatives of government defense and security sector were conducted in the framework of the said Program, reaching out to more than 1 000 people. Particularly, we can note the trainings

conducted at the Professional Development Institute for public servants of categories 1 to 4 and local government officials (February – March 2016), the International interdepartmental seminar on the NATO language testing standards (April 2016) and training in Applied IT Security (August 2016) and others.

Measures were taken to improve the work of the coordinating body responsible for implementing the said Program.

1.7. Safeguarding National Representation in NATO Agencies

During 2016, Ukraine did not complete the procedure for the appointment of the Ambassador of Ukraine to NATO. Acting

Ambassador has been running the mission since the recall of Ambassador *Igor Dolgov* in 2014.

CHAPTER II. DEFENSE AND MILITARY ISSUES

2.1. THE NATIONAL SECURITY POLICY

2.1.1. The National Security Strategy of Ukraine

The National Security Strategy of Ukraine was approved by the President of Ukraine in 2015. Overall it is a balanced document presenting Ukraine's strategic course to join NATO and, in particular, to achieve NATO standards and interoperability of the Armed Forces of Ukraine with the armed forces of NATO member states, and so on.

The following has been done to implement the Strategy in 2016:

- A number of sectoral conceptual documents have been adopted, such as Ukraine's Security and Defense Concept, the Strategic Defense Bulletin

(SDB), Ukraine's Strategy of Cyber Security, the Information Security Doctrine and the concept of the State Target Program of reforming and developing the defense industry 2020;

- Efforts have been constantly spent to accelerate the development and procurement of new domestic military equipment and weapons. To this end, in May 2016 the Cabinet of Ministers of Ukraine approved the State Target Program for the development of armament and military equipment 2020. However, the government orders to develop the State Target Program of reform and development of defense industry 2020

have not been implemented (only the Concept of the said State Program was approved in January 2016). Timely implementation of the armament development program without a defense industry development program is unlikely.

- Some progress has been made in the law enforcement reform - the structure of investigation agencies is changing (the State Bureau of Investigation has been created) and the efforts to strengthen the anti-corruption system were intensified (the National Anti-Corruption Bureau of Ukraine has become operational);

- Some progress has been made in the development (restoration) of a sustainable system

of military justice. The approaches to reforming the military prosecutor's office are being developed and there is a discussion about the restoration of the system of military courts, establishment of military Bar and reorganization of the Military Law Enforcement Service of the Armed Forces of Ukraine into the military police with more powers.

- Despite the significant work undertaken in the elaboration and approval of a number of conceptual and legal documents in the national security sector, the low level of funding does not yet allow to hope for any drastic changes and complete attainment of the Strategy objectives.

2.1.2. Managing the National Security and Defense of Ukraine. Responding to crisis situations

Positive developments in this regard include the level of attention that has been paid to the creation and harmonizing the system of regulatory framework for coordinated crisis response. In particular, this includes the approval of the corresponding matrix titled "Sharing responsibilities between Ukraine's security and defense components in the organization of planning and crisis response" in the Security and Defense Development Concept. In addition, the Concept and Ukraine's Cyber-security Strategy, as well as the National Security Strategy approved in 2015 have accentuated the importance of protecting critical infrastructure that is extremely relevant in the context of crisis response.

In addition, on December 29, 2016, NSDC issued the decision requesting the Cabinet of Ministers to develop and approve the Concept of a state system for protection of critical infrastructure and the action plan for its implementation in 2 months period.

In 2015, NSDC created a War Cabinet and approved the relevant by-laws. However, nothing is known about its work. There is no clear

understanding of the place of the War Cabinet (established by the Presidential Decree) in the system of national security and defense of Ukraine and the Supreme High Command General HQ prescribed in the applicable law. Nothing has been mentioned in the ANP about these pressing issues of national security and defense.

Also the Main Situation Center of Ukraine was created back in 2015, which was still not operating as a full-fledged crisis response center in 2016, although NATO officials allegedly noted the some progress also reported by the NSDC. Similarly, they report on numerous meetings, consultations and exchange of experience regarding the work of the Situation Center.

Although, ANP 2016 does mention the Main Situation Center, however, it talks only about extending partner consultations and receiving advice without aiming at achieving particular results. At the same time, Ukraine's Security and Defense Concept adopted in 2016 provides for creating an entire "network of situation centers for the security and defense sector as the technical basis for crisis response."

Unfortunately, in the context of managing national security and defense of Ukraine and crisis response, the problem inherited from the "disadvantaged 1990s" still persists. It's the lack of

funding for the intelligence agencies, which certainly has a negative effect on their ability to detect signs of threats, foresee the crisis and quickly respond to crisis situations.

2.1.3. Security and Defense Sector Reform

In 2016, the President approved Ukraine's Security and Defense Development Concept aiming for a clear and regular departmental guidance regarding key areas of reform and development of the security and defense agencies. In general, this document provides for the necessary comprehensive vision of the main stages of development of security services and defense and the content of these stages. However, traditionally domestic concept papers and this document in particular are somewhat overloaded with fine details and general terms. This paper could be significantly shortened allowing using it more efficiently and monitor its implementation.

In this sub-paragraph, in the context of reporting on the ANP implementation, the departments mainly report on completing the most typical items from the concepts and programs - they report to have held numerous meetings, negotiations, conferences and meetings, but provide very little information on the practical and visible results of the reform.

Among the practical measures of security and defense sector reform, this paragraph in the ANP only mentioned "creating proper conditions for effective cooperation of central executive authorities of Ukraine with the advisers from NATO member states assigned to the NATO Liaison Office in Ukraine to provide advisory assistance to Ukraine in the reform of the national defense and security sector, including granting

them access to the offices and official information;"

It's important to note that this problem could not be solved for 20 years, since none of the heads of the SBU and the MoD was ready to take the responsibility for raising the level of openness of the MoD and the Armed Forces before NATO advisers.

In 2016, certain steps were finally taken, although these steps were not drastic. At least the NSDC established an interdepartmental working group to develop concept papers regarding national security and defense, which includes international advisors from NATO countries. The procedures of access to classified information for NATO representatives are still worked on. At least in the MOU some progress is already observed in this regard.

There should be noted yet another potentially important role that the adoption of Ukraine's Security and Defense Concept has. It can allow for coordination of a number of policy documents that are being drafted or already developed and approved by the Cabinet of Ministers and the President of Ukraine, strategies and concepts of individual components of security and defense sector departments including such "civilian" agencies as the Ministry of Foreign Affairs. There are now more than a dozen of such documents and their coordination and harmonization is critical.

2.1.4. Implementation of democratic civilian oversight over the Security and Defense Sector of Ukraine

Unfortunately, this important sub-section of the ANP was not properly filled with content and the objectives defined therein are insignificant.

There is one relatively positive development in this area – greater involvement of volunteers, increased attention to the defense issues and control exercised by the media and the public. These attempts were made before and also during 2016, when yet another set of declarations on the need to strengthen the role of community councils in the security departments was proclaimed. The Ministry of Defense continues to issue the White Paper on major national defense policy issues. The webpages of departmental websites are updated. Throughout the year, the *Verkhovna Rada* of Ukraine and the MoD implemented a project aiming at development of the Concept of Democratic Oversight over the Armed Forces of Ukraine (as of late 2016, the draft Concept was still in the works) with the assistance of the OSCE Office in Ukraine.

In general, democratic oversight in Ukraine is still understood in terms of civilian control/audit over the military and increase in transparency of the defense sector. At the same time, during the current year almost nothing has changed with regard to another main feature of democratic control – ensuring proper accountability for exercising the defense function by the democratically elected civilian government.

Parliamentary oversight remains weak and ineffective. The Parliament can only influence the

appointment of the Minister of Defense, the Minister of Interior and the SBU Chairman, although there is no regular oversight in place after appointment. Moreover, the Ukrainian Parliament has no influence at all on the appointment of their deputies and heads of services and other military organizations.

At the end of 2016, the Defense Minister and three deputy ministers (including the Secretary of State) were military, 1st Deputy Minister is a recently retired Colonel General. In 2016, only one deputy defense minister was a civilian and an ex diplomat (he was released in early 2017 due to resuming of his diplomatic service). Thus, solving the urgent issue of appointment civilian leadership to the Defense Ministry has yet again been postponed for the future. The Strategic Defense Bulletin states that: "In agreement with the Euro-Atlantic rules and standards Ukraine will strengthen civilian oversight over the Armed Forces by the end of 2018 through the Minister of Defense of Ukraine and the Ministry of Defense of Ukraine, also by appointing a civilian Minister of Defense of Ukraine, his deputies and the State Secretary of the MOD."

Thus, this tendency still remains when democratically elected civilian politicians demonstrate lack of preparedness to assume direct responsibility for leading the country's defense sector as it is customary in the NATO countries.

2.1.5. The Reform of the defense forces and other components of Ukraine's security and defense sector

2.1.5.1. The Reform of the Security Service of Ukraine

The present day SBU Reform Concept (2008) is considered outdated, but it is still in force.

However, this year during a high-level meeting of the NATO-Ukraine JWG in Brussels, a representative of the SBU has reported on the progress in development of the new SBU Reform Concept. However, at the end of 2016 nothing new was approved in this regard.

Basic approaches to reforming the SBU are recorded in key strategic national security documents - "The National Security Strategy of Ukraine", "Sustainable Development Strategy 2020", "The Concept of development of Ukraine's security and defense sector" (the document was approved after signing the ANP) and others.

Traditionally, in reforming the security services, the advisers from NATO and the EU are guided by the PACE Resolution 1402/1999 on the control of internal security services, which suggests the following areas of security services reform:

1. De-militarization (relieving personnel of military status);
2. Decommissioning of organized crime units;
3. Decommissioning of economic security units;
4. Revoking pretrial investigation functions.

It should be noted that the current concept of the SBU reform envisaged these reforms, but instead of pursuing implementation, based on the available information they are now preparing a new (another?) reform concept.

ANP's overall approach to the security reform assumes that the reformed object changes comprehensively while radical changes are introduced in its functional mechanisms. However, due to a lack of a modern framework document is currently not known what the SSU

will turn into as a result of the reform and how it will interact with other law enforcement agencies (at least at the level of a document open to the experts and the public).

As a result, the ANP text about the reform was changed to partial modernization, description of day-to-day business and studying of foreign experience, while by-passing the strict criteria that could be used to measure the achievement the ANP objectives.

The ANP was supposed to be a document which prescribed clear sequence of actions and relevant criteria. In practice, since the ANP is coordinated by the Cabinet of Ministers of Ukraine, the document mainly serves as a bureaucratic communication tool between the SSU and CMU.

At the same time, it is not the CMU but the President of Ukraine who sets the organizational structure of the SSU, approves the SSU Board by-laws, independently (based on the proposal of the SSU Chairman) appoints all key managers (deputies, heads of the HQ departments and regional branches). Besides, the President of Ukraine oversees the work of the SBU, both personally and through authorized bodies. Annually, SBU Chairman submits a written report about the work of the SBU to the President.

The above information demonstrates that SSU belongs to the Presidential branch of government. Therefore, it is the President who bears responsibility for all the processes happening in the SBU, including the pace and quality of reforms.

Setting the goals in the text of the ANP could involve setting specific, measurable, achievable, realistic and time-oriented goals. Instead, as

shows the analysis of Paragraph 2.1.5.1. "the main objective", "medium-term objectives", "priorities for the current year" and "SSU major reform measures" are generally formal and declarative. After all, each subheading of this kind does not translate into specific quantitative and qualitative indicators, which can be used to evaluate the results of such reform.

"Medium-term objectives" subheading translates into a statement of a number of long processes of studying foreign experience or improving materiel and logistics. This allows evading attainment of concrete results and vaguely responding to public requests about specific work done (according to the information received from SSU):

- the partners only share their experiences in the organization of information and analytical support to law enforcement activities of special services in NATO countries;
- SSU adopted only one partnership objective in the framework of the NATO Planning and Review Process/PfP, relating to development of the national cyber defense system which is now under construction;
- learning about the work of NATO and EU members' intelligence services is done using open sources of information and in the course of bilateral consultations with the representatives of partner security services in the framework of bilateral cooperation;
- SSU receives advisory support from NATO experts on logistics and other consultancy support on the basis of bilateral cooperation.

A separate item of the ANP is the interaction with NATO advisers. Formally, this interaction is present, but the result of this interaction is difficult to establish. EU and NATO advisers together with the SSU staff actually developed a draft SSU Reform Concept but it neither approved nor yet in force.

The advisory mission of the European Union (EUAM) was sent to Ukraine back in 2014. This

body was specially established upon Ukraine's request to help with civil security sector reform.

In late 2015, SSU established a Center for facilitating the reform of the agency. In January 2016, the International Advisory Group on the Security Service Reform was created. It involved international experts and advisers. According to the information provided by the SBU the participants are: the EU Advisory Mission on Ukraine's civil security sector reform, NATO Liaison Office in Ukraine, NATO Information and Documentation Centre, the official representatives of partner special services of foreign countries (Poland, Romania, Lithuania, Sweden and others), NSDC experts and the Commissioner of the President of Ukraine overseeing the activities of the SSU. The team also involved the representatives of the *Verkhovna Rada* of Ukraine dealing with the national security issues, civil society representatives and leading national experts. SSU did not provide any information about the names of the experts working in the SSU Reform Center. So, it is unknown which MPs, experts and civic activists take part and what activities were carried out during 2016.

Among other things, the International Advisory Group worked on the basic provisions of the draft SSU Reform Concept and a package of proposals on the gradual reform of the Security Service.

On June 10, 2016 the SSU Reform Concept was submitted to the National Security and Defense Council of Ukraine for approval. In August 2016, a working version of this concept was submitted for consideration and approval. Today, the document is pending approval. In parallel, work is ongoing on the implementation of the SSU reform implementation plan. The plan also has not been signed yet. The previous version of the plan provided for a two-phased implementation process:

- 1) Phase 1 – 2016–2017;
- 2) Phase 2 – 2018–2020.

Now the time frame will probably change.

B The program and the planning documents dealing with SSU reform and development should take into account the requirements vested in the SSU by Ukraine's Security and Defense Development Concept (enacted by the Presidential Decree on 14.03.2016 No. 92) and the Strategic Defense Bulletin of Ukraine (enacted by Presidential Decree on 06.06.2016 No. 240).

Creating conditions for rapid horizontal cooperation with other government agencies is also an important task for the SSU.

The ANP states that the SSU is responsible for reforming itself. However, self-reform is an illusion. Designing the reform and monitoring its implementation has to involve a group of experts, independent from the SSU management. The President himself must be the bearer of the political will to reform the Security Service, while retaining the respective roles of the Parliament, CMU, National Security Council and the public.

The reform of the system should take place openly and transparently with informing the public about major activities in accordance with approved policy documents.

Only then, implement the following:

- approve the SSU Reform Concept and reform roadmap with clear mechanisms for implementation;
- establish a cross-functional interaction between the authorities in the context of reforming the Security Service;
- establish a cross-functional interaction between the Security Service and other law enforcement agencies (clear and phased plan for transferring the functions to avoid duplication);
- establish effective democratic control over security agencies;
- define clear objectives with specific actors and timing of the implementation process;
- establish effective performance evaluation process.

The lack of a comprehensive approach to the reform of the Security Service at the end of 2016 makes the conduct of real transformation in accordance with the public interest and international standards dubious.

2.1.5.2. Development of the State Border Guard Service of Ukraine (hereinafter – SBGS) and the reconstruction of the state border infrastructure

Implementation of the ANP in this area of government work was focusing on two key approaches:

- Further development of the state border infrastructure according to the European criteria and the National Security Strategy of Ukraine;
- Development of SBGS in terms of defense and protection of the state border of Ukraine and protection of the sovereign rights of Ukraine in its exclusive (maritime) economic zone.

To this end, in 2016, the Action plan for the implementation of the Integrated Border Management Concept No. 626-r was developed

and adopted by the Cabinet of Ministers of Ukraine on 31.08.2016 pursuant to implementation of the next new edition of the Integrated Border Management Concept 2015.

It should be noted that the SBGS activities were also additionally regulated by Ukraine's Security and Defense Development Concept, which was enacted by the NSDC decision on 03.04.2016 and approved by Decree of the President on 14.03.2016 No. 92/2016 and the Strategic Defense Bulletin, adopted by the NSDC decision on 20.05.2016 and approved by the President of Ukraine on 06.06.2016, No. 240/2016.

To ensure implementation of these documents, the SBGS Administration drafted and started implementing the following:

- SBGS Action Plan to implement the Security and Defense Development Concept of Ukraine (approved by the SBGS Administration on May 10, 2016, No. 62);

- Developed draft Action Plan to implement the SBGS Matrix achieving strategic goals and major objectives of defense reform in line with the Strategic Defense Bulletin of Ukraine.

To implement the above approaches in the ANP, SBGS outlined five medium-term objectives (implementation deadline – 3–6 years), which covered only four priority objectives for the current year. Implementation of the priority objectives was supposed to be supported with ten major activities during 2016, of which six were fully implemented.

SBGS employed its capabilities during participation in the international exercises "Sea Breeze 2016", conducted with the participation of troops from the NATO countries.

A representative of SBGS participated in the training course in protection of exclusive (maritime) economic zones to familiarize himself with the British approach to effective management of the processes and operations while performing service in the exclusive economic zone.

In addition, SBGS organized and took part in 2 consultations, 2 visits, 2 meetings, 1 briefing and 1 workshop.

Weak correlation between the mid-term goals, annual priority objectives and main activities shows that ANP-related planning and coordination in the SBGS and other agencies (Presidential Administration, NSDC, CMU and MFA) needs improvement and above all professional training of the staff responsible for developing and approval of the ANP.

For example, it is difficult to explain the link between the annual priority objective "to begin the formation of new rapid response units in the SBGS and equip them with modern types of armaments, combat and other military equipment" and the main activity – "discuss with NATO and the member states the issue of receiving support for the formation of new rapid response units in the SBGS, training and equipping it with special equipment". The implementation of this annual priority objective is considered fulfilled by SBGS because "during thematic consultations with NATO, in August 2016 SBGS agreed to receive NATO STANAG standards dealing with the functioning of the rapid response units."

There are activities which by their content do not belong to any priority objective for the year, or their relation to the latter is very questionable.

The annual priority objective "to ensure the development of modern logistics in SBGS in accordance with the NATO standards" must be at least mid-term in terms of timing and supported by the relevant main measures.

Only two activities that can be considered as the main activities of the ANP were envisaged to implement the Action Plan of organizing the joint operational border protection function with the EU members - Poland, the Slovak Republic, Romania and Hungary and the Republic of Moldova in 2016, namely:

"Ensuring signing of the protocol between the border protection and customs authorities of the Republic of Moldova and Ukraine on the establishment and operation of contact (consulting) points on the state border between Ukraine and Moldova;

and equipping the contact (consulting) points operating at the state border at the cost of projects and programs of technical assistance under the EU Eastern Partnership Program and cross-border cooperation programs."

2.1.5.3. Unified System of Civil Defense

The State Emergency Service of Ukraine (hereinafter – SES) is working to implement government's civil defense policy. Planning and implementation of medium-term goals and priority objectives for the current year was made through the implementation of the main activities carried out in 2016 in the following areas:

- prevention of emergency situations and ensuring the elimination of their consequences;

- assessment of the risks of emergency situations;

- learning foreign languages;

- Ukraine's international cooperation in prevention of emergency situations and ensuring the elimination of their consequences.

To implement the ANP, SES outlined nine medium-term goals, which were supported by nine priority objectives and eleven main activities.

All activities were implemented during 2016, including:

- completed the practical phase of the NATO Project "Support to Humanitarian EOD in Ukraine", with the total cost of about EUR 1 million, within the framework of NATO Science for Peace and Security Program;

- The project envisaged equipping SES explosives units in Donetsk and Luhansk oblasts, which were looted by the pro-Russian terrorist groups, with advanced equipment to perform humanitarian EOD.

- SES received bomb suits MED ENG EOD-9, metal detectors Vallon VMH 3 CS, the scope for increasing the depth of the search, the scope to search hard-to-reach areas, tactical goggles, life support equipment for field work, personal body armor, modern metal detectors to search for explosive devices, kits for marking hazardous areas, team and individual kits for 20 explosives experts to perform humanitarian EOD and 4 FORD RANGER vehicles. In October 2016, humanitarian EOD training courses were

conducted in the SES Training Center for 22 explosives experts from SES units in Donetsk and Luhansk oblasts using techniques and equipment received from NATO in the framework of the project.

In 2016 (December) the explosives units of SES Ukraine responded to more than 9 500 calls, detected, extracted and destroyed more than 73 800 explosive devices and inspected and cleared the total area of more than 7 600 hectares;

SES approved staff structure of the regional humanitarian EOD units (centers), estimated and determined the needs in special equipment and facilities. Work has begun to repair premises to house personnel, machinery and equipment;

153 people (including 26 children) were killed and 1 667 people injured (including 761 children) as a result of officially registered incidents in Ukraine.

Compared to the same period in 2015, the total number of emergencies in 2016 decreased by nearly 3%. Since the beginning of 2016, there has been a decrease in the number of deaths (over 30%), but the number of victims increased (by 76% compared to the same period last year) due to the growth in the number of medical and biological incidents;

- 218 SES representatives received English language training (NATO American Language Course "STANAG-6001" and "ELT");

- SES unit participated in NATO-led international exercises practicing response to civil emergencies "CRNA GORA- 2016", held in Podgorica (Montenegro) organized by the Euro-Atlantic Disaster Response Coordination Center.

However, the process of identifying and planning activities to implement priority objectives needs to be improved same as the process of determining the medium-term objectives that should be a part of SES regulations.

2.1.5.4. Establishment, formation and development of the National Guard of Ukraine (hereinafter – NGU)

The main purpose of NGU as a military organization with law enforcement functions is a mobile, self-sufficient force with optimal strength and a high level of interoperability with similar forces of NATO and the EU. It also has the capacity for cooperation with the Armed Forces of Ukraine in fighting armed aggression against Ukraine and elimination of armed conflicts.

Establishment, formation and development of NGU took place during the participation of its divisions, units and formations in the military conflict with Russia.

To implement the ANP, NGU outlined six medium-term goals, which were supported by nine priority objectives for the current year, which implementation was supported by thirteen major activities during 2016. All main activities were completed.

In particular:

NGU sent 12 representatives to the Republic of Lithuania, Georgia, the Federal Republic of Germany and the Republic of Poland to receive treatment and rehabilitation;

NATO Support and Procurement Agency (NSPA) provided medical rehabilitation equipment to IRC "*Novi Sanzhary*";

"Internship in mountain and ski operations (summer event)" was held at the Romanian Gendarmerie Mountain Training Center (Sinaia, Romania) under a joint project between NGU and the Romanian Gendarmerie titled "Support to the Development of the National Guard of Ukraine";

NGU representatives participated in the meeting of the Executive Committee of Multinational Joint Coordination Committee on

military cooperation and defense reform for four times;

NGU troops took part in the international military exercises "Sea Breeze" and "Rapid Trident 2016" in Ukraine;

NGU representative took part in the seminar for senior leadership on "Defense and Security Reform: Challenges and Opportunities";

more than 80 officers have graduated or enrolled in different language training courses;

participated in a working meeting with the representatives of the US DoD Threat Reduction Agency to discuss and address a number of specific organizational and financial issues to prepare for the NGU exercises in safety of nuclear facilities and materials;

worked on clarifying the goals, content, timing and objectives of implementing activities in the framework of PARP. The structural units responsible for achieving specific PGs were identified;

published "The White Book of the National Guard of Ukraine";

ensured participation of staff in more than 60 different consultations, visits, meetings, seminars, courses, etc.

The positive change here is the prevailing desire of the military and civilian personnel to learn foreign languages and participate in the tactical level activities.

However, the growth in the number of international exchanges runs the risk of transforming into chaotic "military and educational tourism" without proper planning, verification of the quality and preparation of relevant training programs.

2.2. DEFENSE FORCES REFORM

2.2.1. The National Defense Planning System

The President vetoed amendments to the Law of Ukraine "On Defense Planning" in 2015 and the Parliament did not revisit this issue during 2016, although the SDB approved by the President of Ukraine mentioned "imperfect defense planning procedures, their lack of consistency with the budgeting process and inadequate mechanisms of program-based defense management".

The main reasons are:

- lack of a clear defense planning algorithm in the current regulatory framework and lack of specific responsibility of the officials for untimely development of defense planning documents and poor quality;;

- existence of wide-ranging deficiencies in the existing procedures for adoption/approval of government development programs for the Armed Forces and government programs for development of weapons or defense industry. The programs are developed by the government, approved by the President and the funding is in the hands of the Parliament (*Verkhovna Rada*), where the MPs pursue different priorities and lack personal responsibility for the inadequate

provision of resources to defense, security and intelligence organizations...;

- allocation procedures of already approved budget for defense and security needs are flawed and overly bureaucratic. The funding is usually late and incomplete. There is a harmful trend that continues from the previous years regarding the delay in the use of a significant part of the allocated budget at the end of the year. It's always entailed a large volume of receivables in the Ministry of Defense. Unfortunately, this negative phenomenon still remained in 2016.

The government defense procurement programs (GDPP) for the production of military equipment and weapons are approved late, after the beginning of the current year. They are constantly reviewed and are not funded on time. In particular, in 2016 only 59% of GDPP were financed, where 58% of funding fully came from the state budget and only 1% came from the special fund.

Excessively classified status of GDPP does not allow establishing effective oversight over its implementation; conversely, this creates conditions for voluntarism and abuse.

2.2.2. Government, Parliament, Media and Community Relations

Positive changes: redesigned MoD website and regular updates to its English language version. MoD also holds regular meetings and briefings.

However, overall effectiveness of interaction between the military, the government, the

parliament and the media is low (compared to the experience of developed democracies), since this is usually done in-house by the officers who have neither proper experience nor established relationships.

2.2.3. Plans for the Reform and Development of the Armed Forces of Ukraine

The Strategic Defense Bulletin defines only general reform objectives. However, the State Program of Armed Forces Reform and Development was approved in late 2016 (December 29), already after the adoption of the State Budget 2017. The program is traditionally "top secret", hence its specific content is unknown.

So, again there is no clear link between SDB-defined general development priorities of the Armed Forces (since by the time of adoption of the budget they had not been elaborated and approved in the Armed Forces Reform and Development Program) and the sources of priority funding. Due to the delay in the adoption of the Program yet again there will be no possibilities to allocate funds that are necessary for the reform and development of the Armed Forces in 2017. Accordingly, the budget spending efficiency and quality control over expenditures is expected to be low. Among other things, this is also a factor that contributes to corruption in the defense sector.

This issue has repeatedly drawn attention not only from the independent experts but also the leadership of the Military Prosecutor's Office of Ukraine. In particular, shortly before the end of 2016, Chief Military Prosecutor said that: "As of

19.12.2016, the Ministry of Defense of Ukraine used about UAH 4 billion from the annual financial resource of UAH 21.5 billion allocated from the general fund for logistics and materiel, amounting to about 18.5%. Moreover, the relevant departments of the MoD also failed to commit to spend nearly UAH 1.4 billion (where UAH 300 mil. should be spent on the purchase and construction of housing for the military – which is as much as 300 apartments). Similarly, no funds were used from UAH 200 mil. to repair military facilities, procure food and clothing – UAH 200 mil., purchase and development of weapons and equipment – UAH 200 mil. and communications – 100 mil., etc.

Despite the fact that in the last days of 2016 MoD made efforts to reduce the said delay, however, it failed to fully spend the budget and "putting out fires" clearly once again led to an increase in MoD receivables.

In addition, there was still a lot of abuse in the production and repair of weapons for the Armed Forces in 2016, despite the existing plans, concepts and strategies. The Military Prosecutor's Office, the MoD and SBU Military Counterintelligence are yet unable to overcome abuse in the production and procurement of arms.

2.2.4. The Armed Forces of Ukraine (UAF) reform plans in 2016

The main efforts were directed at the development of Special Operations forces, Joint Operations Staff and building-up combat capacity of the Armed Forces of Ukraine through the creation of additional military units.

Eleven priorities were outlined for the current year to implement the ANP in this area. Their implementation was supported by eleven major activities during 2016. All major activities have

been held. Medium-term goals have not been provided under this section.

The process of reforming UAF in 2016 had an unscheduled nature due to the fact that the 2016 Plan was not approved and the introduction of the new Plan covering the period till 2020 is expected in 2017.

UAF reform in 2016 took place under the Appendix to the Strategic Defense Bulletin of

Ukraine, enacted by the Presidential Decree on June 6, 2016 No.240:

- the following has been revised: functions, responsibilities and authorities for solving issues of command and control of the defense forces and support to the development of command and control system and coordination of the actions between the Ministry of Defense of Ukraine and the General Staff of the Armed Forces of Ukraine;

- completed the formation of a Joint Operations HQ and other C2 authorities of the UAF;

- GS undergoes gradual transition to the "J" structure. The GS UAF Personnel Department was reorganized by merging it with the Mobilization Directorate of the Main Defense and Mobilization Planning Directorate, GS UAF;

- the Main Defense and Mobilization Planning Directorate transferred the Mobilization Directorate to the GS UAF Main Personnel Directorate ;

- the Central Directorate for training and daily activities of troops (forces) of the Armed Forces of Ukraine was reorganized into the Main Training Directorate UAF (J7) by improving the structure and absorbing the Operational Training Directorate of the Main Operations Directorate, GS UAF;

- the UAF Public Affairs Directorate was formed on the basis of the General Staff Press Service;

- the structure of the Main Operations Directorate (J3) was improved by incorporating the Directions Management and handing over operational training control to the General Directorate of Training of the Armed Forces of Ukraine;

- introduced amendments to the Laws of Ukraine regarding deployment and functioning of the Special Operations Forces of Ukraine;

- identified the composition of capabilities reporting to the UAF Special Operations Forces Command;

- established a training center of the Special Operations Forces of Ukraine;

- established Military Clinical Medical Center of occupational pathology of the Armed Forces of Ukraine (physiotherapy, occupational diseases, mental health and nursing patronage) in the town of Irpin as the main military rehabilitation center offering positions for specialists from other health centers, identified other rehabilitation institutions as components of a single system and so on.

In addition, according to the state defense procurement program, 3 007 new, refurbished and modernized major types of munitions and military equipment were purchased and delivered to the Armed Forces.

The received technical assistance included weapons, military equipment and materiel totaling in USD 84 882 824, including: UAVs – 24, counter-fire radars – 14 sets, communication devices – 766, NVGs – 2 250, medical evacuation vehicles – 5, medical equipment – 17, medical supplies – 23 684, equipment for the Special Operations Forces – 201, other combined military equipment – 5 690.

The following units were prepared according to NATO standards: 3 Army mechanized battalions, 2 battalions of highly mobile airborne troops (Paratroopers and Airborne) and 12 Special Operations companies.

The Implementation Program of the NATO–Ukraine Military Committee's Work Plan provides for 342 activities and 277 have been implemented (81%).

With the purpose of building-up vessel capacity for the Ukrainian Navy, there have been built three small armored artillery boats and three more are in production. The MoD has signed the government contract with JSC "*Leninska Kuznia*" to build two amphibious boats.

On 02.12.2016, the MoD published Order No.655 "On Approval of standardization by-laws in the Ministry of Defense of Ukraine and the Armed Forces of Ukraine."

2.2.5. Improvement of C2 and communications

UAF C2 improvement is made through:

- The introduction of best practices in the field of automation of management, administrative procedures and command and control;
- Upgrading communication systems, telecommunications protection, intelligence, electronic warfare according to the NATO standards;
- Receiving fast access to the aerospace surveillance data;
- Capacity building in the area of cyber security.

To implement the ANP in this performance area, the UAF outlined twelve medium-term goals, which were supported by four priority objectives for the current year and ten key activities for 2016. All main activities have been implemented.

UAF completed digital linking of the information and telecommunication nodes for three combined firing ranges and the HQ of the Air Command "East".

UAF constructed radio relay digital communication lines in the area of the antiterrorist operation in Donetsk, Luhansk and Dnipropetrovsk oblasts.

23 secure connection stations were deployed and commissioned in the UAF information and telecommunication systems.

UAF field (mobile) communications component was mostly equipped with both domestic and foreign digital communications equipment.

UAF is ensuring ongoing upgrades of stock analog communication facilities (units) with dual-use digital telecommunication equipment to secure interoperability between the components of fixed and mobile communication system using special purpose telecommunications network or public telecommunications network.

UAF established a system of satellite communications using both fixed and mobile stations.

Within the framework of the NATO Trust Fund helping modernize C2 and communications, UAF started implementing two priority projects for supplying the forces with tactical satellite communication. This includes implementation of the pilot project under the Regional Airspace Security Program (RASP).

2.2.6. Enhancing Combat Readiness of the Armed Forces of Ukraine

Despite the fact that primary consideration was given to maintaining an adequate level of combat readiness of the future UAF, the relevant activities in 2016 were postponed due to the absence of the program document that defines the outline of the future structure. Its adoption is planned for 2017.

To implement the ANP in this area, the UAF outlined four medium-term goals, which were supported by two priority objectives for the

current year and four main activities during 2016. All main activities have been implemented.

Ukraine declared one Air Force transport aircraft Il-76MD and *Hetman Sahaidachny* frigate carrying Ka-27 helicopter of Ukrainian Navy for the next NATO RF rotation in 2016.

The representatives of the Armed Forces of Ukraine took part in the planning conference under the NATO Operational Capabilities Concept.

2.2.7. Improving logistical and medical support of the Armed Forces of Ukraine

It is planned to deliver logistical support for the troops (forces) from the joint logistics centers used as multifunctional facilities providing the troops (forces) with logistics and materiel on the territorial basis, regardless of their reporting structure, as well as from arsenals, supply centers and bases.

To implement the ANP and in this area, the UAF outlined eight medium-term goals supported by seven priorities for the current year and 16 main activities during 2016. All main activities have been implemented.

The UAF worked on the medical support regulations for the Defense Forces in line with the NATO standards.

The UAF established and approved a future medical support system for the Defense Forces based on the national standards, taking into account NATO standards, integrated with the civilian health system.

The UAF has planned the organizational and staff structure of Defense Forces' medical services.

The representatives of the UAF Logistics took part in the Brigade-level command-post exercises NATO - GEO EX 2016.

On 09.09.2016, the Minister of Defense of Ukraine approved the "Temporary Guidance on organization of introduction of NATO standards in the Ministry of Defense and the Armed Forces of Ukraine."

The UAF improved training programs for medical personnel considering the features of medical support during the anti-terrorist operation.

The Military Medical Center of the western region opened and commissioned an ergotherapy room and a wheelchair repair shop as a part of the NATO Trust Fund project in physical rehabilitation and prosthetics for the servicemen who were injured during the antiterrorist operation in Donetsk and Luhansk oblasts.

The Rehabilitation Department for the patients with amputated limbs opened in the UAF Military Medical Clinical Centre of occupational pathology.

279 UAF service personnel was sent abroad for treatment in the framework of the NATO Trust Fund project in physical rehabilitation and prosthetics for the servicemen who were injured during the antiterrorist operation in Donetsk and Luhansk oblasts.

8 sets of modern medical equipment and devices (computer tomography equipment – Optima CT 520 – 2, Fibergastrosopes GIF-E3 – 4, ultrasound diagnostic scanner – SonoAce R7 – 1 and Fiberbronchoscope BF-TE2 – 1) were purchased to equip the military medical clinic centers totaling in over UAH 28.2 million.

2.2.8. Maintaining combat readiness, modernization and upgrades of weapons and military equipment

Limited capacity of domestic enterprises to meet the needs of the UAF in modern weaponry

remains the main problem of equipping the UAF with armaments and military equipment.

To implement the ANP in this area, the UAF outlined seven medium-term goals supported by three priority objectives for the current year and eleven main activities during 2016. All main activities have been implemented.

The Ministry of Defense of Ukraine concluded the Agreement with the Ministry of Defense of the Republic of Bulgaria to receive the rights to use

the software of the Bulgarian national codification tool "BULCOD" free of charge.

NATO Support and Procurement Agency (NSPA) signed a contract with the Ukrainian company to supply hardware and software for the automated information system of codification and creation of a comprehensive information security system (CISS). The contract has been implemented.

2.2.9. Improving personnel management effectiveness and continuing professionalization in the Armed Forces of Ukraine

The MOU regularly works on the elaboration and revision of the regulatory framework in the field of personnel management. The Ministry of Defense received substantial assistance from the Government of Norway and other countries.

In particular, in 2016 the MoD website still demonstrated obsolete personnel policy concept dating back to 2013, which was based on "reduction of the overall strength of the Armed Forces to the necessary minimum (considering potential threats); manning the Armed Forces exclusively with professional military personnel;" ... and other similar "rarities".

At the same time, during the reporting period 2016, they continued to develop a new personnel management strategy, but nothing is known about its approval.

Despite the constant updating of concept papers, the fundamental personnel management issues remain, which indicates the immutability of old post-Soviet approaches.

Firstly, the role of high level commanders/chiefs is overly redundant in matters of appointment of officers, while the role of HR is only subsidiary that does not meet the modern practices of NATO members.

Secondly, the remuneration level for soldiers and NCOs is still low, which does not allow bringing in professionals with necessary quantity and quality, conduct the necessary personnel rotation and properly motivate personnel for achievements and successes.

2.2.10. Improving the system of military education and skills training

Foreign partners of Ukraine (both NATO members and partners) provide substantial assistance. With this assistance, Ukraine improves the curricula and implements best practices. Ukraine holds training courses to study the principles, procedures and standards of

NATO. The representatives of Ukraine study in foreign schools. That is, the quantitative aspect of the issue looks good in general.

However, the issue of quality of education remains unknown, especially among the representatives of Ukraine who studied abroad.

Nothing is known about the qualitative analysis of how overseas military education is used in Ukraine. Same goes about the general statistics – how many people were trained since Ukraine's independence, where they were trained and in what subject and how much of them still serve?

Is there a well-established selection procedure for training and appointment to the relevant positions after studying in foreign universities? What is the level of corruption in the system of military education today? Since, in previous years the effectiveness of these procedures was low and corruption was high.

2.2.11. Improving the training of troops and ensuring their interoperability

In 2016, the Ministry of Defense approved the list of Partnership objectives 2020. It also approved the composition of capabilities that need to achieve the proper level of interoperability (although, to join NATO the goal of achieving interoperability should be set for all the Armed Forces). NATO countries provide substantial assistance to Ukraine in improving training of troops and providing for their interoperability.

In particular, according to the Minister of Defense: "5 Armed Forces battalions were trained to meet NATO standards in 2016." The training was delivered by the instructors from

the United States, Canada, Great Britain, Lithuania and other partner countries. The training covered 15 Army brigades, 210 Air Force crews, 3 Navy groups, 28 warships and naval support vessels, 4 brigades of mobile airborne troops and 13 special operations units. The training also covered 100 000 personnel of the Armed Forces reserve."

Overall, trainings, visits, consulting and training in standards were held regularly in 2016. Significant assistance was provided by numerous NATO countries, including the US, Canada, UK, Poland, Lithuania and other.

2.2.12. Ensuring social protection of servicemen and their families

Certain changes are observed in medical and rehabilitation support and insurance pay-outs. NATO member states and partners provide significant assistance in rehabilitation.

On the other hand, significant problems with housing still remain and they persistently are not addressed, although the Strategic Defense Bulletin approved in the 2016 provided for "the introduction of an effective mechanism to provide housing for the servicemen of the Armed Forces of Ukraine."

In fact, the laws and regulations already provide enough tools for addressing the housing issue, but these tools are not utilized by the Ministry of Defense and the funds are not spent

efficiently, while the state's leadership does not pay any attention to this problem. At the same time the service housing queue in the MoD has exceeded 40 000 people.

The area of acquisition and allocation of housing, compensation for housing is completely clandestine, opaque and apparently corrupt. The Housing Issues webpage on the website of the Ministry of Defense has not been working for the third year already. In other words, the requirements of Ukraine's Security and Defense Concept requesting "quarterly updates of relevant information on the official websites of public authorities" are ignored;

The level of salaries, benefits and compensation is generally insufficient for effective motivation of the officers and citizens of Ukraine

to sign long-term contracts as required, thus making the Armed Forces a really professional organization, as required by the guidelines.

2.2.13. Protecting the Environment in the Defense Sector

Contamination remediation is conducted regularly, especially regarding the combat vehicles motor pool.

Joint projects with Denmark and Sweden have been already initiated and cooperation with Lithuania is actively developing.

2.2.14. Disposal of Obsolete and Unusable Ammunition

According to the NSDC, the Ministry of Defense and the National Space Agency, implementation of the NATO Trust Fund activities dealing with destruction of surplus and unusable ammunition in

2016 slowed down since the priority was given to the implementation of the 5 NATO Trust Funds launched in December 2014 due to the aggression of Russia against Ukraine.

CHAPTER III. RESOURCES

Section 3 of the ANP 2016 consists of only one unit 3.1 "Fiscal policy and budgetary resource for the security and defense sector."

The Decree of the President of Ukraine outlined that the security and defense expenditures of the State Budget of Ukraine in 2016 shall be carried out according to legally defined priorities of development and reform of the Armed Forces, other military organizations and law enforcement agencies considering the changing military and political situation and the financial capacity of the state.

As noted above (see previous section) UAF lacked proper planning document in 2016. The main document, which to a certain extent provided consistency and sustainability of the reform, was Annex 1 to the Strategic Defense Bulletin of Ukraine approved by the Decree of the President of Ukraine No.240 on 06.06.2016.

In pursuance of this section, there were identified two medium-term goals and only one priority objective for the year, supported by one main activity – "priority-based spending of the State Budget of Ukraine earmarked for the defense and national security needs, procurement of materiel and technical equipment for troops, development of weapons and military equipment."

The annual list of appropriations in 2016 offered UAH 55,698.2 million to cover the needs of the Defense Ministry of Ukraine: materiel and technical equipment of troops – UAH 14,134.4 mil. (general fund – UAH 13,607.6 mil., special fund – UAH 526.8 mil.), development of arms and military equipment – UAH 8,118.0 mil., (general fund – UAH 7,858.1 mil., special fund – 259.9 mil.), social payments – UAH 33,445.8 mil., which is 60% of total appropriations.

The amended Law of Ukraine "On the State Budget of Ukraine 2016" provided for the following general fund expenditures for the Ministry of Interior: UAH 40,194.9, including for MoI HQ – 3,938.4 mil., the National Police – 15,668.8 mil., the National Guard – 8,621.9 mil., SBGS - 6,249.8 mil., SES - 4,914.6 mil. and the State migration service – 801.4 mil..

In addition, the State Budget 2016 approved the expenditure from the special fund for the Interior Ministry amounting to UAH 1.400,0 mil. to implement measures to improve national defense capabilities, the National Police – UAH 1,000.0 mil., the National Guard – UAH 200.0 mil., SBGS Administration – 100.0 mil. and SES – UAH 100.0 mil.

The resolutions of the Cabinet of Ministers of Ukraine No. 391, dated 24.06.2016, No. 721, dated 19.10.2016, No. 764 dated 26.10.2016 and No. 907 dated 07.12.2016 approved the procedure for the use of funds provided by the State Budget for the

implementation of measures to improve the national defense capabilities for the National Guard, SBGS Administration, SES and NPU, respectively.

The CMU Resolution No. 64-1 issued on 08.02.2016 "On the Government Defense Procurement Program 2016" approved the government defense procurement program indicators for SBGS and NGU.

In 2016, SBGS and NGU were financed in full in accordance with the approved general fund allocations in 2016.

The State Budget of Ukraine 2016 provided UAH 1,734.0 mil. (20.1% of the State Budget expenditures under the general fund) to the National Guard of Ukraine for the purchase of arms, ammunition, military equipment and vehicles, communications, etc., to include upgrades and repairs.

22.6% of total expenditures were provided for the SBGS logistics. The program has been fully funded.

CHAPTER IV. SECURITY ISSUES

Section IV "Security Issues" talks about information security, particularly the legislation dealing with the protection of classified information, records management (organization of document processing), security clearance and access to classified information (personnel security), ensuring secrecy (physical security), authorization system for the state secret related activities, business entities (industrial safety) and cyber security. Ukraine has identified these items as most important in the context of cooperation with NATO.

The concept of "information security" in the ANP is presented in a rather narrow sense and does not include a number of components that are vital in terms of the information warfare. In particular, the ANPs have ignored intelligence activities to identify threats in the information

sphere, counterintelligence activities to counteract the efforts of the enemy and ensuring information security, protection of the population from the negative information and psychological influence of the enemy, own actions of pro-active information influence on the population and enemy forces, pro-active actions in cyberspace (also in the social media) and other.

The aims and objectives proposed in the ANP are mostly abstract and the planned approach basically involves continuation (implementation, ensuring, conducting) of activities (monitoring, inspections, work, functioning) in accordance with the applicable law and the standards of NATO member states and contains no specific indicators, according to which one could assess the progress in accomplishing the objectives.

The document describes the process of organizing the preservation of classified information to NATO or NATO member states.

Administrative arrangements for the protection of classified information between Ukraine and NATO were signed on September 28, 2016 in Kyiv by the Chairman of the Security Service and the Director of NATO Office of Security. They provide the details of the procedures for mutual protection of classified information provided for in the 1995 Security Agreement between Ukraine and NATO and promote the approximation of the national procedures to the NATO standards. Also, the Agreement regulates access and security clearance to classified information for the international advisers.

The SSU developed "The Rules of handling and protecting NATO classified information in Ukraine" (for official use only) to set the order of proceedings performed by Ukraine's entities involved in cooperation with the Alliance, the activities related to NATO classified information, implementation of monitoring and special regime of such activities. "The Rules of handling and protecting NATO classified information in Ukraine" were developed under the Security Agreement between Ukraine and NATO signed on 13.03.95. They introduced a mechanism for exchange of classified information between the NATO institutions and Ukraine.

According to the NATO experts, the established system of protection of classified information handed over by NATO to Ukraine meets the standards of NATO security policy.

This section of the ANP also considers the issues of cyber security. This is logical, because now the NATO policy views actions in the cyberspace as part of the Alliance's collective defense. In the ANP, Ukraine should have focused not only on creating small departmental units and asking to equip them accordingly, but on creating comprehensive national capacities that are integrated and coordinated from a single focal

point, development of capabilities implementing consolidated government policy on this issue to counter cyber threats.

In this regard it is critical to take into account the principles of the relevant NATO policy, adopt corresponding national policies, and in turn, make suggestions based on the experience in combating cyber attacks in Ukraine as an active partner.

All this requires a cross-functional interaction of all state bodies responsible for cyber security: the Ministry of Defense, the State Service for Communications and Information Protection (SSCIP), the Security Service, the National Police, the National Bank and the intelligence agencies.

The Decree of the President of Ukraine No.96 issued on March 15, 2016 enacted the decision of the NSDC "On the Cyber Security Strategy of Ukraine" issued on 27.01.2016. The cyber defense working group, which includes the representatives of the above organizations, operates under the NATO-Ukraine high level Joint Working Group on defense reform.

Additional proposals for joint projects with the NATO Science Committee working under NATO "Science for Peace and Security Program" were prepared and handed over to NATO as part of the development of national cyber protection system and researching the modern hybrid warfare in the SSU. The decision to launch such projects can be taken only by the Alliance using the internal procedures of the NATO International Staff.

At the end of 2016, implementation of the first phase of the NATO-Ukraine Trust Fund on cyber security is pending the tendering procedures by the Romanian partners in accordance with the project design and tender documents that were processed and finally agreed with the Ukrainian side during April-May, 2016.

The Coordination Council for implementation of the NATO-Ukraine Trust Fund on cyber security was established according to the SSU order. The members of the Council include the representatives of the NSDC, Foreign Ministry and security structures.

Despite the presence of important ongoing projects, the relevant section of the ANP mainly included only general measures: improving the regulatory framework, consultation, continuing negotiations with NATO in the form of NATO-Ukraine cyber security expert meetings.

Thus the SSCIP actually withdrew from implementing measures in the field of cyber security, although in fact it is an important component of cyber defense. The ANP enumerates only existing powers of the Service and a mention of cooperation with NATO. In fact, the work of the SSCIP requires deep analysis and appropriate changes. In 2016, there have been identified functional deficiencies in SSCIP activities, particularly when working on the launch of the system of electronic tax declarations.

In general, the experience of implementing ANP 2016 in the field of information security leads to:

- creation of a national information security system, including the national system of risk management for the information security in accordance with the recommendations of NATO, EU, ITU and ISO;
- changes in the regulatory framework to clearly outline data protection responsibilities of public authorities;
- implementation of the regulation requirements in the field of technical information security, cryptography and cyber security (cyber security incident response teams, special government communications, etc.);
- effective use of public resources for information security and protecting critical infrastructure, including monitoring spending of public funds allocated for information security measures.

CHAPTER V. LEGAL ISSUES

This chapter is the last and the smallest in the ANP. It consists of only one section 5.1, dedicated to "implementation of existing and preparation of new international treaties between Ukraine and NATO in the areas of mutual interest."

The structure of the section consists of four elements:

- introductory paragraph of a declarative nature;
- three medium-term goals;
- two priority objectives for the current year;
- (only) two main activities.

Since 2009, the section dealing with implementation and conclusion of NATO-Ukraine international treaties in all previous ANPs began with the statement, similar to that contained in the ANP 2009: "Ukraine shall provide for consistent and full implementation of agreements concluded with the North Atlantic Treaty Organization and yet will continue to work on the

creation of appropriate legal mechanisms of cooperation with NATO." ANP 2016 does not have a similar provision for the first time.

Instead, for the first time the ANP 2016 incorporated an introductory paragraph stating that "work will be activated to harmonize the legislation of Ukraine with the legislation of NATO members in the relevant areas in 2016" in the framework of the measures to reform the security and defense sector of Ukraine in accordance with the NATO standards mentioned in the National Security Strategy of Ukraine 2015.

The need and the purpose of inclusion of such paragraph in the section are not clear.

The content of the introductory paragraph is not associated with the subheading, since the declared aim of harmonizing Ukraine's legislation with the legislation of NATO members differs significantly from the conclusion and

implementation of international treaties with the Alliance, to which the remaining paragraphs of the subsection are dedicated. This paragraph is also isolated from other elements of the subsection, because neither medium-term goals nor priority objectives or key activities are related to the issue of harmonization of Ukraine's legislation with that of NATO.

Moreover, it is important to note that the National Security Strategy of Ukraine (which the paragraph has a reference to) does not set the goal of harmonization of Ukrainian legislation with that of the individual members of NATO and the current legislation of Ukraine does not contain the concept of harmonization of Ukrainian legislation with the legislation of a foreign state.

The medium-term goals were copied verbatim from the ANP 2015, where they first appeared. The wording of the goals lacks specifics, they are mostly common in nature and do not refer to specific treaties or legal issues. Moreover, it is difficult to call them goals, as actually they point to the process, "continued implementation of international agreements ...", "drafting new international agreements ...", "... continued dialogue on legal issues."

The first goal does not have standards-related content as "continued implementation of international agreements of Ukraine concluded with NATO" is required by the current legislation of Ukraine, namely Art. 9 and 18 of the Constitution of Ukraine and the Law of Ukraine "*On the International Treaties of Ukraine*", which is a sufficient legal basis establishing the duty of government authorities to implement concluded international agreements, including with NATO. In this context it should also be noted that the current Law "*On the International Treaties of Ukraine*" uses the term "execution" rather than "implementation" of the international treaty.

It's noteworthy, that the measures mentioned in Section V apply only to the first goal. Thus,

according to the ANP, the second and the third goals were not saturated with specifics.

Two priority objectives in 2016 have the same features as the wording of the goals: universality and abstractness. The first objective is a novelty: "continue to improve the legal base of cooperation between Ukraine and NATO in the framework of the dialogue... on legal issues..."; whereas the second: "conduct joint activities (consultations, workshops, study visits etc.) relates to the legal aspects of cooperation between Ukraine and NATO" and has always been present in all the previous annual national programs.

In our opinion, this "stretched" wording of the goals and objectives, as well as illogical introductory paragraph do not allow understanding what are the priorities of NATO-Ukraine cooperation in the legal sphere in 2016 and give the actors the maximum possible discretion regarding the implementation criteria.

The measures provided for in Section V cover only the second priority, while the first objective was not filled with specifics.

The ANP provides for only two main activities:

- ensure the implementation of these three international agreements that have been concluded between Ukraine and NATO during 2015-2016;

- ensure implementation of activities to raise the awareness of staff working in the legal departments of the relevant central executive bodies and other government authorities of Ukraine dealing with the provisions of the legal framework of cooperation between Ukraine and NATO, including bilateral agreements between Ukraine and the Alliance.

Regarding implementation of the first activity, the Ministry of Defense provided very limited information: the government approved an implementation agreement with NATO to fulfill one international agreement, which was

concluded in 2015⁵, and the Ministry of Defense signed an agreement with the relevant NATO agency. The general conclusion on the current status of the activity: "implementation in progress."

Regarding the implementation of the second activity, the Defense Ministry has indicated only that a representative of the Armed Forces of Ukraine passed the NATO training course in "Law of Armed Conflict" in one of the NATO countries. The general conclusion on the current status of the activity: "implementation in progress."

No information has been received from other government agencies that are listed as implementers of these measures: the Ministry of Justice, Ministry of Foreign Affairs, Ministry of Finance and the National Bank. The information from the Ministry of Justice is especially lacking, which representative in the Commission for Coordination of Euro-Atlantic integration of Ukraine has the status of the National Coordinator for NATO-Ukraine cooperation in the field of law and the Ministry of Foreign Affairs represented by the National Coordinator for NATO-Ukraine cooperation in foreign policy.

Based on the information of the State Fiscal Service of Ukraine (listed among the actors of the main first activity), it appears that the Fiscal Service did not participate in the activities to implement the Programme because it was not defined as the main actor in any of the activities and has not been involved by other government agencies to implement the Programme.

In this context it should be noted that among the three key ministries responsible for the objectives of Section V (the Ministry of Justice, Ministry of Foreign Affairs and Ministry of Defense) only the Ministry of Foreign Affairs was directly empowered with the Euro-Atlantic Cooperation functions⁶. Instead, the information of the Ministry of Justice and Ministry of Defense did not contain any references to their participation in ensuring cooperation with NATO or Euro-Atlantic Cooperation.

The analysis of the provisions of Chapter V of the ANP 2016 and its implementation progress allows drawing a number of conclusions and recommendations.

Is there a need in having the Legal Issues Section?

The above leads to consider a rather obvious question: does the ANP require a separate chapter on legal issues? The analysis showed that some of the provisions of this chapter could be eliminated without much harm, and the rest moved to other sections of the Programme also without prejudice⁷. It appears to only improve the quality of the document.

But the answer is not so obvious because there are two serious counterarguments against this decision. The first points to the bureaucratic tradition: a separate section on legal issues appeared in the NATO-Ukraine MAP 2002 and was present in the following NATO-Ukraine annual target plans adopted by Ukraine with the purpose of its implementation. Then this section

⁵ At the same time, the Ministry did not mention the government resolution, which in 2016 approved the use of NATO funds received for the realization of the abovementioned Implementation Agreement.

⁶ See The Ministry of Foreign Affairs of Ukraine Regulations approved by the Cabinet of Ministers of Ukraine issued on March 30, 2016, No. 281.

⁷ The issue of conclusion and implementation of specific international treaties relates to the sections dealing with regulation of a relevant treaty and the issue of increasing awareness of legal staff relates to subsection 1.7 "Training of experts in NATO-Ukraine cooperation."

was moved to the annual national programs. Changing the well-established bureaucratic tradition is always a challenge for inter-agency cooperation and therefore its removal requires a really good reason. The second counterargument means that the structure of the Annual National Programme obviously reflects the structure of the NATO Membership Action Plan (MAP)⁸, and is therefore a politically sensitive issue.

Therefore, the decision of the President of Ukraine requiring the Annual National Programme to contain the Legal Issues Chapter deserves support⁹.

What should be the purpose of the Legal Issues Chapter?

The above analysis results in the first recommendation: early in the chapter one should articulate the functionality of this chapter. This is crucial, as it will make the chapter important and self-sufficient and¹⁰ help ensure internal consistency and integrity of the chapter and facilitate its implementation by public authorities including monitoring over efficient and effective implementation.

This particular wording used for such purpose and its implementation in specific provisions of the chapter, to some extent will serve as a political marker and a message about Ukraine's intent regarding joining NATO.

To meet this rather difficult task, we recommend noting that in accordance with the requirements of the President of Ukraine, starting 2017, the ANPs should be adopted "under the auspices of the NATO-Ukraine Commission." This means, among other things that the content of the chapter and the whole document should be

determined also by the status of the NATO-Ukraine Commission as defined by the parties.

In this regard it is worth noting that the NATO-Ukraine Commission was established pursuant to paragraph 12 of the Charter on a Distinctive Partnership signed between NATO and Ukraine on July 9, 1997 – "12. NATO and Ukraine consider their relationship as an evolving, dynamic process. To ensure that they are developing their relationship and implementing the provisions of this Charter to the fullest extent possible, the North Atlantic Council will periodically meet with Ukraine as the NATO-Ukraine Commission, as a rule not less than twice a year. The NATO-Ukraine Commission will not duplicate the functions of other mechanisms described in this Charter, but instead would meet to assess broadly the implementation of the relationship, survey planning for the future, and suggest ways to improve or further develop cooperation between NATO and Ukraine."

In August 2009, the scope of the Commission competences was expanded by the Declaration to Complement the Charter on a Distinctive Partnership between NATO and Ukraine, which established that: "Ukraine shall develop the Annual National Programmes to promote Ukraine's reforms and consistent with all the elements of the decisions taken at the NATO Foreign Ministers meeting in December 2008 under the auspices of the NATO-Ukraine Commission."

In this connection the requirement of the President of Ukraine that each section of the Annual National Program should start with the definition of "major reform objectives under the defined areas

⁸ Adopted at the meeting of the heads of states - members of the North Atlantic Council in Washington on April 24, 1999.

⁹ Paragraph 2 of the Regulations on the development of the annual national programs under the auspices of NATO-Ukraine Commission and assessment of the results of their

implementation, approved by the Decree of the President of Ukraine No. 547/2016 issued on December 7, 2016.

¹⁰ Currently, as noted above, the section lacking such provision should be "reorganized" by moving its substantive provisions to other sections dealing with regulation of the relevant international agreements.

and expected changes in the policy of the state and the life of the society" seems logical¹¹.

On the other hand, it will be extremely difficult to define the range of "major reform objectives" and "anticipated changes" as a part of this chapter. To solve this problem, we recommend paying attention to the role of this chapter for the MAP. Comparison of the text in the MAP chapter on legal issues and the content in the similar chapters of Ukrainian annual programs indicates their essential differences.

According to the MAP, the purpose of the chapter is to ensure that the NATO candidate countries could identify and remove all of their domestic legal and institutional barriers that might prevent them from becoming a member of this international organization or properly fulfill the membership obligations¹². Hence the emphasis on the importance of "thorough analysis" by the candidate country of its domestic laws for compatibility with NATO regulations and this country's awareness of the formal legal process leading to membership¹³.

Instead, this logic has been significantly degraded in the Ukrainian annual target plans and national programs from the beginning¹⁴, since the emphasis was on the technical issues of implementation of international agreements with NATO and the creation of appropriate legal mechanisms of cooperation with NATO. Although the text also traditionally included section "5.2 The analysis of conformity of the national legislation to the basic treaties of NATO", but it had a rather limited meaning¹⁵ and obviously received low level of significance. Moreover, this section was missing both from the ANP 2015 and ANP 2016.

Thus, the main purpose of the section may lie in the fact that the Ukrainian state should: (a) promptly identify all of its domestic legal and institutional barriers that might prevent it from reaching the defined end goals of cooperation with NATO, and (b) eliminate these barriers and properly execute all liabilities arising from defined ultimate goals of cooperation with NATO.

¹¹ Paragraph 3 of the Regulations on the development of the annual national programs under the auspices of NATO-Ukraine Commission and assessment of the results of their implementation, approved by the Decree of the President of Ukraine No. 547/2016 issued on December 7, 2016.

¹² We are talking about two types of legal obstacles: (a) the level of constitutional law – whether it allows the state to become a NATO member; (b) in the case of country's accession to all the treaties of NATO, whether it will be able to actually execute them: including whether all the obstacles in its national legislation that could prevent the

practical implementation of the obligations arising from membership are removed.

¹³ See paragraph 1 Chapter V of the NATO Membership Action Plan (MAP).

¹⁴ Only NATO-Ukraine MAP 2002 made a clear emphasis that "Ukraine remains committed to reviewing existing legislation to determine compliance with the regulations and standards of NATO".

¹⁵ It always was limited to two items: conducting conformity analysis between the legislation of Ukraine and the basic treaties of NATO and translation of basic NATO treaties.

