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**Promotion and protection of all human rights, civil,
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including the right to development**

Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights on his mission to Ukraine

Comments by the State*

* The present document is being issued without formal editing.

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Comments by the Government of Ukraine to the report of the Independent Expert J.P.Bohoslavsky's Report on his mission to Ukraine (May 14-23, 2018)

Comment of the Ministry of Finance of Ukraine to the section C. Litigious/odious debt

In the section C title and in the paragraph 42 the wordings *the concept of «odious debts»* is used. Please note that Ukraine's defence in case of this debt is not based on the concept of 'odious debt' as such. That is a concept / legal theory of international law according to which, in summary, it is said that a country should not be encumbered with the debt incurred by a prior corrupt regime. In this case, Ukraine does not advance any defences based upon such a legal theory. Perhaps words "*for the concept of «odious debts»*" should be replaced with "*...a claim by one sovereign state against another based on private law rights (certainly in the context of capital markets securities)...*".

For the same reason we suggest that the mention of "odious debt" in the section title be deleted, for consistency.

In paragraph 43, we would suggest the Independent Expert consider making reference to one further aspect of the UN Basic Principles of Sovereign Debt Restructuring Processes - namely principle 1, which provides as follows: "A Sovereign State has the right, in the exercise of its discretion, to design its macroeconomic policy, including restructuring its sovereign debt, which should not be frustrated or impeded by any abusive measures." To this end, we would suggest the last sentence of paragraph 43 be revised to read as follow (proposed new language is underlined): "*Amongst these principles, there are three that are in particular relevant for this case: good faith by both the sovereign debtor and all its creditors, the right of the sovereign debtor to restructure its debt without frustration or impediment by any abusive measures and debt sustainability as a goal of any debt workout mechanism.*"

Taking into account the abovementioned, as well as some other inexactnesses, the Ministry of Finance of Ukraine offers the following wording of the Section C (new language is underlined and italicised).

"C. Litigious debt

40. In 2013, a few months before the Maidan events took place, the Government of the former President Viktor Yanukovich, sold USD 3 billion of two-year debt. The Russian Federation bought the bond. While it was in practice a bilateral loan to Ukraine, it was structured like a conventional Eurobond, and issued under *the laws of England & Wales*. After the Maidan events ousted the Yanukovich government, Ukraine was said by Russia to have defaulted on the bond in late 2015 (*although Ukraine challenges the validity of the alleged debt*).

41. *As the Russian Federation did not accept to participate in the 2015 debt restructuring, and instead brought a claim (through the bond trustee) against Ukraine before the English Courts, in which the Russian Federation is claiming a full repayment of this alleged debt. Ukraine argues that non-payment is justified because (amongst other reasons) the Russian Federation had unlawfully pressured it into accepting the financial support and had illegally invaded and purportedly annexed sovereign Ukrainian territory in Crimea, as well as interfering militarily in the east of Ukraine. These acts by Russia caused very substantial economic damage to Ukraine and necessitated its US\$ 17.5 billion Extended Fund Facility with the IMF, as one of the conditions of which Ukraine had to implement the 2015 debt restructuring.*

42. In September, 2018, the English Court of Appeals ruled that the dispute over the non-payment of the bonds should go to full trial. *This decision is currently challenged in the United Kingdom Supreme Court which can be expected to hear the appeal during 2019 or 2020. Few, if any, cases in the past, have offered the opportunity for a claim by one sovereign state against another based on private law rights (certainly in the context of capital markets securities) to be adjudicated before a domestic court. This case could have implications not*

only for Ukraine and the Russian Federation, but for a wider spectrum of sovereign bond issuers.

43. *Whilst recognising Ukraine's lawful right to defend itself from Russia's claim, and to challenge the validity and enforceability of this alleged debt through the English Courts, the Independent Expert would like to call the attention of all parties involved to the "Basic Principles on Sovereign Debt Restructuring Processes" adopted by the UN General Assembly in 2015 with votes by both States. Amongst these principles, there are three that are in particular relevant for this case: good faith by both the sovereign debtor and all its creditors, the right of the sovereign debtor to restructure its debt without frustration or impediment by any abusive measures and debt sustainability as a goal of any debt workout mechanism."*

Comment by the Secretariat of the Ukrainian Parliament Commissioner for human rights

State's readiness for looking for long-term solutions by adopting Action plan on realization of the Strategy of integration of internally displaced persons and implementation of long-term decisions concerning internal movement should become a significant step toward social adaptation and reintegration of internally displaced persons. Action plan is under consideration of the Cabinet of Ministers of Ukraine now.

Comment by the Ministry of Foreign Affairs of Ukraine

The military invasion by the Armed Forces of the Russian Federation in Crimea began on 20 February 2014 by blocking and seizing Ukrainian civil and military facilities, administrative buildings and infrastructure, as well as illegitimately imposing the pro-Russian Crimean authorities.

Russia also made further attempts to retrospectively legitimize its presence by holding the so-called referendum of 16 March 2014 and signing the so-called treaty on Crimea's admission to the Russian Federation on 18 March 2014.

The aggression continued in the east of Ukraine, where Russia intervened with thousands of troops and heavy weaponry. At the same time, the Russian Federation became a sponsor of terrorism by providing financial, material, military and technical support to the illegal armed groups of so-called "LNR" and "DNR", active in respective region and which are also organized, controlled and funded by the Russian Federation.

Due to the temporary occupation by the Russian Federation of the integral part of Ukraine – the Autonomous Republic of Crimea and the city of Sevastopol, as well as of certain parts of Donetsk and Luhansk regions – Russia is fully responsible for respect for and protection of human rights in these territories under international humanitarian law and international human rights law.

Given the fact that the report deals with Ukraine it must take into consideration the provisions of the Ukrainian legislation. The Law of Ukraine "On Peculiarities of the State Policy on Ensuring the State Sovereignty of Ukraine in the Temporarily Occupied Territories in Donetsk and Luhansk Regions" defines the legal status of the temporarily occupied territories and we insist that the respective wording was used in the report. The respective verbal note was sent to all the diplomatic missions in Kyiv in April. We really hope that the respective corrections regarding the wording will be made in the final report.

«Temporarily occupied territory of Ukraine» refers to the territory of the Autonomous Republic of Crimea, the city of Sevastopol and some parts of Donetsk and Luhansk regions.

"Attempted annexation of Crimea" or "occupation and attempted annexation of Crimea" can be used to emphasize the gravity of the internationally wrongful act committed by the Russian Federation and the consequences of the Russian aggression against Ukraine.

For the geographical indication of the Ukrainian territories (informally – the occupied Crimea, the occupied Crimean peninsula), "certain districts of Donetsk and Luhansk regions"

wording "temporarily occupied territories of certain districts of Donetsk and/or Luhansk regions" should be used instead of "ORDLO" abbreviation.

«OARF» should stand for the "occupation administration of the Russian Federation" consisting of the state bodies and structures, operationally responsible for the administration of the temporarily occupied territories of Ukraine.

"DNR" and "LNR" (Donetsk and Luhansk People's Republics) should be used solely for the indication of terrorist organizations, including "DNR terrorist organization" and "LNR terrorist organization".

Armed aggression by Russia in Donbas, international armed conflict, Russian war against Ukraine, Russian-Ukrainian conflict.

Russia's act of aggression in breach of international law and the United Nations Charter.

Russian regular armed forces and units subordinated to the Defense Ministry of the Russian Federation, units and special units subordinated to other law enforcement agencies of the Russian Federation, their advisers, instructors and illegal armed groups, armed gangs and groups of mercenaries, created, commanded/controlled and funded by the Russian Federation.

Russian-terrorist forces/troops, terrorists, Russian mercenaries, Russia-backed illegal armed gangs/militants.

"IAGs" should stand for "illegal armed groups".

Russia is a party to the international armed conflict against Ukraine, which began on 20 February 2014 with illegal occupation of Crimea. This conflict is still ongoing in Donbas.

Comment by the State Property Fund of Ukraine to the part G. State owned enterprises and privatizations

According to the Law of Ukraine "On Privatization of State and Communal Property", which entered into force on March 07, 2018, privatization objects are divided into large and small objects.

Preparations for privatization and sale of large privatization objects are carried out with the involvement of advisers on a competitive basis, and the sale of small privatization objects is carried out exclusively on electronic auctions through the e-commerce system ProZorro.Sales.

The List of large privatization objects of state property approved by the Resolution of the Cabinet of Ministers of Ukraine dated May 10, 2018 No. 358-p. includes 23 enterprises to privatize in 2018.

The Lists of small privatizations object to privatize in 2018 approved by the order of the State Property Fund of Ukraine dated March 27, 2018, No. 477 includes 818 objects.

According to the operational data as of 22.11.2018, through the electronic trading system, 377 small privatization objects were put up for the sale.

If the procedure for preparation for sale of privatization objects included in the list for 2018 will not be completed by the end of the current year, such facilities will be included in the list for 2019.

In accordance with the legislation of Ukraine, the State Property Fund of Ukraine creates and maintains the Unified Register of State-Owned Objects in conformity with the information provided by the bodies of management of information on state-owned objects.

Authorized bodies of management of state-owned objects in compliance with the assigned tasks keep records of state-owned objects under their control, control the effective use and preservation of such objects, and make decisions on the conditions of their state ownership, their further use and provide the administrator of the Register with information about the objects of state property for formation and maintenance of the specified Register.

As of October 1, 2018, the Unified Register of State-Owned Objects contains:

- almost 3.3 thousand business entities (state enterprises, their associations, subsidiaries), which belong to the sphere of relevant entities management;
- 477 economic organizations with corporate rights of the state, including 257, in the authorized capital of which more than 50% belongs to the state.

Comment by the National Agency on Corruption Prevention

Paragraph 72

In the mentioned paragraph of the draft report is indicated that there is a need to improve the institutional design and administrative practice of the National Agency on Corruption Prevention (NACP) to ensure the independence from political interference.

Thus, Mr. Bohoslavsky claims that the NACP is in some way dependent on political interference while executing its legal authority. It may imply a selective approach of the NACP to the subjects of the assessment on the existence of a conflict of interest. However, such an evaluation provided without reference to any legal facts or cases in which the NACP has been politically biased.

In addition, taking into account the particularities the NACP functions, (namely the fact that among various functions it also carries out the monitoring and control of legislation on the prevention and settlement of conflict of interest over a wide range of top public officials), there will always be individuals or entities dissatisfied with the work of the NACP, hence, blaming the NACP for bias and allowing political interference.

However, the absence of adequate analysis of the nature of complaints by such individuals, in specific cases, without a clear definition of deficiencies in the NACP functions, makes the relevant statements unfounded.

Paragraph 74

The NACP neither has no bias regarding cooperation with the National Anti-Corruption Bureau of Ukraine (NABU). For example, on the results of the complete assessment of declarations, substantiated conclusions approved in relation to identified signs of corruption components in 65 declarations, 82 confirmed findings on the facts of non-submission of statements – The NACP corresponding decisions were sent to authorized subjects in the field of combating corruption, namely: NABU, National Police, Prosecutor's Office. At the same time, not all of the substantiated conclusions of the NACP had a reciprocal reaction from the NABU.

The NACP adopted 481 decisions on the results of the complete declaration assessments, with 143 in 2017, and 338 in 2018. A total of 250 administrative protocols were drawn up and sent to the court for violating declaration requirements (such as: late submission without a valid reason; failure to notify or late notice on the opening of currency account in a foreign banking entity, as well as significant changes in the state of property; declaring of knowingly false information).

According to the Laws of Ukraine "On the National Anti-Corruption Bureau of Ukraine" and "On Corruption prevention", NABU and NACP signed a Memorandum of Cooperation and Information Exchange (signed on 13.01.2017), under which both Parties expressed and legally established intentions, particularly, regarding the development of cooperation in the field of prevention and combating corruption, taking into account the given executive authority.

In pursuance of the commitments under the Memorandum mentioned above, the NACP is ready to cooperate in the identified areas, including permission of access of the NABU representatives to electronic information and reference systems, registries and data banks in operation of the NACP as well as access to the ITS Register at the premises of the NACP.

To ensure the principles of openness and transparency, in tight cooperation with international partners and experts, the NACP developed and approved the NACP Communication Strategy

for 2018-2020 (decision no. 811 from 27.04.2018). Its implementation aimed at increasing the level of citizens trust in the NACP (since there is a distinct lack of full understanding of the NACP goals, essence of its work and its preventive role); establishing a concrete dialogue with the society; formation of citizens' awareness on responsibility for committing corruption or related offenses; formulation of an anti-corruption civic consciousness and therefore intolerance to corruption as such.

In fulfilling provisions of this Communication Strategy, cooperating with the United Nations Development Program in Ukraine, The NACP held a series of training entitled "Conflict of Interest: Must Know!". These training covered 12,000 persons in 2017 and more than 40,000 persons in 2018.

Paragraph 73

NACP operates and hosts the Information Telecommunication System for Logic and Arithmetic Assessment of Declarations (ITS LAAD), official website and other information systems and resources using own server hardware equipment, which is necessary for the performance of the law-defined duties. To enhance the functioning of the systems mentioned above, NACP is currently constructing an Institutional Data Processing Center (IDPC) and is due to be completed in December 2018.

After the construction completion, the NACP will be capable of hosting the Information Telecommunication System of the Unified State Register of Declarations of persons authorized to perform functions of the state or local government (ITS Register) using own server hardware of the IDPC. Currently, the ITS Register is hosted externally by State Enterprise «Ukrainian Special Systems - SE USS.».

According to article 10 of the corresponding Action Plan, an inter-agency workgroup, with the State Service for Special Communications and Information Protection (SSSCIP) Head in charge, conducted a technical audit to obtain the real-time information on current functioning of the ITS register. Such inspection consisted of detecting the ITS Register': vulnerabilities of architectural and system components, capability to interact with other ITS, compliance of software with functional requirements in accord with the Ukrainian legal framework, technical requirements in relation to reliability and safeguards of uninterrupted system operation, operation requirements during peak load, formulation of conclusions and recommendations for system optimization, improvement and upgrade of the ITS Register.

The inter-agency workgroup was comprised of representatives from: SSSCIP, NACP, State Enterprise «Ukrainian Special Systems», State Enterprise «State Centre for Information Security», State Enterprise «National Information Systems», State Enterprise on Electronic Governance, Ministry of Justice of Ukraine, Ministry of Interior of Ukraine, State Border Service, Pension fund of Ukraine, State Service on Geodesy, Cartography and Cadaster, Institute on Telecommunication and Global Information Space of the National Academy of Sciences of Ukraine and others. As the result of the assessed technological audit, the workgroup gathered a report which currently used in the on-going operationalization of the ITS LAAD and further technological enhancement of the ITS Register.

To provide for due and effective operation of the ITS LAAD, in the past several months the NACP has succeeded in: developing specifications and system requirements for necessary software engineering required for the ITS LAAD operation (under agreement with the SSSCIP); developing technical documentation for description of JSON schema in accord with the standard (<http://json-schema.org>) and parameters for preservation of declarations' data in the JSON format; augmenting server hardware capacity for due functioning of the ITS LAAD; approving the corresponding computer orders and protocols for automated information exchange.

Paragraph 75

The NACP has completed all the necessary steps for the ITS LAAD launch before the due date of the 25th September 2018.

As of 27th November 2018 the following was carried out by the NACP: the ITS LAAD software modified; trial operation completed; Complex Information Protection System

(CIPS) for the ITS LAAD constructed; state experts appraised the CIPS and conformity certificates received; rules for the logic and arithmetic declarations' assessment finalized and adopted, as well as regulations for automated verification and methodology for the examination of such rules.

As the result of the ITS LAAD obtainment, the NACP received a powerful tool for conducting logic and arithmetic assessment of declarations, as well as their verification - automated information exchange with state registers and information databases.

Expected that ITS LAAD operation will significantly increase the quantity and quality of the full declarations assessments, primarily due to process automation and high-speed information collection and subsequent processing.

Paragraph 76

The ITS LAAD has a built CIPS and operates in a safe network. NACP has obtained the conformity certificate (reg. no.17528 from 21.09.2018) for the CIPS of the ITS LAAD under the normative framework for special data protection from the State Service for Special Communications and Information Protection of Ukraine.

According to the NACP decision (reg. no. 2342 from 19.10.2018), the declarations loaded from the ITS Register to the ITS LAAD via secure communication lines. Moreover, a workgroup was assembled to study and test the technical capability of the rules for logic and arithmetic assessment of declarations, automatic verification, and its subsequent examination factors.

The logic and arithmetic assessment of declarations system (LAAD) will operate according to the NACP-approved rules of such evaluations and examination factors. It implies the following operational algorithm.

1. The LAAD system is applied to declarations in the ITS Register and has two major operational components.

1) Conformity of declaration contents (Component-1) - comparison of declaration contents to contents of previously submitted declarations by the same declarant, to determine inconsistencies (carried out after declaration submission).

2) Conformity of declaration contents to contents of state registers and data banks (similar databanks) of public institutions (Component-2), which may contain information on objects stated in a declaration. Therefore, to define the extent of information conformity to the contents of corresponding data banks. (Occurs after submission).

After application of "Component-1" the ITS LAAD proceeds to rating declarations according to the value of inconsistency degree, from high to low.

"Component-2" is applied by the ITS LAAD to declarations in which the inconsistency rating is equal or higher than 2000 points and to statements which undergo the full assessment process.

Such a system allows to define the rate degree of inconsistency of each declaration and distributes them in conformity with the counted points. Points calculated according to the LAAD rules. "Component-1" consists of 103 rules. These rules evaluate by content and detect the amount of property and income that is reflected in each declaration, detect extent of possible inconsistency as the result of valuation (for example, in the subjects' declaration indicated overall property value of 10 million), comparing such indicators with previous declarations and evaluate the difference between income, assets and liabilities of a given declarant.

Declarations which rated above 2000 points become subjects to the complete declaration assessment process. Decisions on commencing the assessment process after completion of the "Component-1" made during the NACP Chair meeting. Such Chair meeting may be called concerning rated points of inconsistency, as well as to persons noted in the commentary to Article 50 of the Law of Ukraine "On Corruption Prevention," general inconsistency rating of declarations and others.

2. “Component-2” of the ITS LAAD is applied to declarations with inconsistency rating above 2000. “Component-2” currently has two rules, which imply a comparison of declaration content with corresponding databases specifically about a declarants' family members (their property, assets, and liabilities)

Moreover, “Component-2” would allow receiving information automatically from state registers and databases concerning real estate and other property of a declarant, which in turn will sufficiently increase the speed and effectiveness of full declaration assessments.

3. ITS LAAD does not detect whether the content of declarations is true or false; however, it indicates individuals responsible for full declaration assessments concerning specific declaration sections which shall be carefully assessed. The ITS LAAD will also show the rate of inconsistency in each declaration and subsequently extent of possible risks, depending on which the ITS LAAD will report on viability and justification of the full declaration assessment process.

Full-scale operation of the ITS LAAD implies automatic information exchange with 16 state registers and databases operated by various state bodies. The NACP already succeeded in such engagement with 13 out of 16 registers.

The NACP is currently working on establishing automatic protocol exchange with three state registers, which are operated by the Ministry of Justice of Ukraine (Real estate rights State register; Unified state register of legal entities, sole proprietors and civic associations; State register of movables encumbrance).

Appropriate and objective operation of the ITS LAAD is impossible without direct access to required state registers and databases. The absence of such access disables the NACP from due full declaration assessments, detection of possible corruption-related administrative or criminal infringements (when false information is declared); detecting signs of illicit enrichment.

Automated information exchange with 3 outstanding key registers in operation of Ministry of Justice of Ukraine (State register of civic status of citizens; Unified register of attorney warrants; Inheritance register) will become available following the adoption of the corresponding Act by the Parliament of Ukraine (reg. no. 7276 from 10.11.2017), however it is yet to be adopted. The Act mentioned above would also legally safeguard obtainment of necessary information classified as attorney secrecy (information on inheritance, detection of undeclared businesses or real estate in declarants' possession or control of his family members)

Paragraph 96

(a) The NACP continues to gain experience in the practical application of the mechanism for monitoring the implementation of legislation on ethical conduct, preventing and resolving conflicts of interest and compliance with restrictions on the prevention of corruption.

According to the facts of violating the requirements of the Law on Prevention and Conflict of Interest and related restrictions, the NACP prepared and sent to the court 432 administrative offenses reports (almost 3 times more than in 2017), the vast majority of which were drawn up for violation requirements for the prevention and settlement of conflicts of interest (405 protocols), violation of restrictions on the combination and combination with other activities - 6 protocols, for violation of the legal limits on the receipt of gifts – 2 protocols for not fulfilling legal requirements (regulations) NACP - 19 protocols.

The heads of state bodies and enterprises issued 77 regulations on violation of the requirements of the legislation on the prevention and settlement of conflicts of interest (in particular, in connection with the establishment of non-compliance with the provisions of the Law on the transfer of management to another person of enterprises and corporate rights) (which is 3 times more compared with 2017), of which 39 are fulfilled, and 38 are in execution.

The NACP establishes facts of violations of the mentioned Law based on information received from the media and other open sources, as well as from individuals and legal entities.

Only in 2018, 940 notifications were received by the NACP on the prevention and settlement of conflicts of interest and related restrictions, the results of which were reviewed by 299 monitoring and control measures on the implementation of legislation on ethical conduct, prevention, and settlement of conflicts of interest (inspections observance of the requirements of the bill). There is a reason to assume that the activity and involvement of the public in the detection and intolerance of such manifestations of corruption is the result of the endless informational and educational activities of the NACP.

However, we note that the results of the practice of the Law of Ukraine "On prevention of corruption", including the prevention and settlement of conflict of interest, NACP developed a draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on corruption prevention", which among other things provides a number of changes, including provisions on the prevention and settlement of conflicts of interest, in order to improve the legal agreement of relevant issues.

Also, the draft report states that there is an urgent need for an adequate settlement, in particular, for conflict of interests, in connection with which it is proposed to introduce rigorous norms in this area. The draft report lacks specific information that would allow the Independent Expert to identify the issue of conflicts of interest and it is unclear what deficiencies are implicated, so providing relevant comments is not seen as possible.

(c) The Law of Ukraine on "Prevention of Corruption" has set a cornerstone for the creation of the whistleblower legal framework in Ukraine. Throughout the past several years the NACP has been responsible for its implementation. Processing of the whistleblower reports is methodically and operationally organized. Such statements are processed according to the procedure developed by the NACP and international experts (NACP decision from 27.10.2018, Ministry of Justice of Ukraine reg. from 15.01.2018).

The Whistleblower protection guarantees in Ukraine are as following: ability to report of corruption-related cases anonymously; information in regards to the identity of a whistleblower may be disclosed only upon his approval, except for cases stated in the Law; ones' labour rights protection (cannot be dismissed, disciplinary punished, pressured), in case of restoration on a job position, whistleblower is paid a reparation bonus; protection in court proceedings (NACP representatives may be attracted to the party of the claimant whistleblower during administrative and civic court proceedings); if a whistleblower or his close persons are threatened, law enforcement institutions are obliged to protect them in various ways.

Safe and accessible reporting channels are established for whistleblower reports collection. From January to October 2018, the NACP registered 1202 whistleblower reports (approximately 700 received via safe email box and 500 through the NACP official website).

In implementing the recommendations of the EU and the OECD ACN (within the 4th round of monitoring of Ukraine), a draft Law of Ukraine "On whistleblower protection" was developed by the NACP (decision no. 2285 from 12.10.2018) and is currently under legal review by other state bodies involved. The above-mentioned draft includes provisions on specifying and defining meaning of the term "whistleblower"; information on whistleblowers identity is set to be confidential, specifying legal particularities under which the identification is disclosed; range of persons which reported on widened; free of charge legal advice is safeguarded; implementation of administrative and criminal responsibility for infringement of whistleblower rights; objective information on protection of whistleblowers must be included into the annual National report on implementation of anticorruption policy.