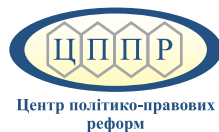


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# HOW TO CARRY OUT CIVIC ANTICORRUPTION EXPERT ASSESSMENT? Recommendations



## How to Carry out Civic Anticorruption Expert Assessment? Recommendations

Editor - Oleksii Khmara.

The material has been developed by a team of think-tank and civic experts and is designed for civil society institutions and community activists who have previous experience in conducting civic monitoring and civic expert assessment.

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# **HOW TO CARRY OUT CIVIC ANTICORRUPTION EXPERT ASSESSMENT?**

Recommendations

## TABLE OF CONTENTS

<b>1. WHAT IS CIVIC ANTICORRUPTION EXPERT ASSESSMENT?</b>	<b>5</b>
<b>2. WHAT SHOULD ONE KNOW BEFORE THE START?</b>	<b>7</b>
<b>3. WHO CAN CARRY OUT CIVIC ANTICORRUPTION EXPERT ASSESSMENT AND HOW IS IT DONE?</b>	<b>10</b>
<b>4. SHOULD ALL DOCUMENTS ISSUED BY GOVERNMENT BODIES BE REGARDED AS REGULATORY ACTS?</b>	<b>13</b>
<b>5. HOW CAN CORRUPTOGENIC FACTORS BE DETECTED?</b>	<b>14</b>
CORRUPTOGENIC FACTOR 1: SCOPE OF ADMINISTRATIVE DISCRETION AND DISCRETIONARY POWERS	14
CORRUPTOGENIC FACTOR 2: LEGAL REGULATION GAPS	15
CORRUPTOGENIC FACTOR 3: CONFLICTS OF LAWS	17
CORRUPTOGENIC FACTOR 4: IMBALANCE OF INTERESTS AND UNDUE BURDEN FOR RECIPIENTS OF PUBLIC SERVICES	18
<b>6. HOW TO PREPARE A CONCLUSION UPON THE RESULTS OF CIVIC ANTICORRUPTION EXPERT ASSESSMENT?</b>	<b>19</b>
STEP I. FORMAL ANALYSIS OF A DRAFT RA	21
STEP II. ANALYSIS OF THE CONTENTS OF DRAFT RA	22
STEP III. GENERATING CONCLUSIONS OF EXPERT ASSESSMENT ON AVAILABILITY AND IMPLICATIONS OF CORRUPTOGENIC FACTORS	22
STEP IV. DEVELOPING RECOMMENDATIONS ON ELIMINATION OF CORRUPTOGENIC FACTORS	22
<b>7. HOW TO REPORT EXPERT ASSESSMENT FINDINGS TO GOVERNMENT BODIES?</b>	<b>24</b>
7.1. SENDING THE CONCLUSION OF CIVIC ANTICORRUPTION EXPERT ASSESSMENT IN ACCORDANCE WITH PROCEDURE OF THE LAW OF UKRAINE ON CITIZEN APPEALS	24
7.2. CONDUCTING CIVIC ANTICORRUPTION EXPERT ASSESSMENT IN ACCORDANCE WITH PROCEDURE OF RESOLUTION #976 OF THE CABINET OF MINISTERS OF UKRAINE ON APPROVAL OF PROCEDURE FOR PROMOTING CIVIC EXPERT ASSESSMENT OF EXECUTIVE BODIES ACTIVITIES AS OF 5 NOVEMBER 2008	26
7.3. FILING THE CONCLUSION OF CIVIC ANTICORRUPTION EXPERT ASSESSMENT IN ACCORDANCE WITH PROCEDURES OF RESOLUTION #996 OF THE CABINET OF MINISTERS OF UKRAINE ON ENSURING PUBLIC PARTICIPATION IN THE STATE POLICY DEVELOPMENT AND IMPLEMENTATION AS OF 3 NOVEMBER 2010	29
<b>8. IF YOU FALL ON DEAF EARS, WHAT NEXT?</b>	<b>33</b>
8.1. APPEALING TO THE HIGHER EXECUTIVE BODY	33
8.2. APPEALING TO THE PROSECUTOR'S OFFICE	34
8.3. APPEALING TO ADMINISTRATIVE COURT	34

## 1. WHAT IS CIVIC ANTICORRUPTION EXPERT ASSESSMENT?

Conducting an anticorruption expert assessment means scrutinizing draft regulatory acts (RAs) for possible provisions that may promote or facilitate corruption offences. Anticorruption expert assessment is carried out to prevent corruption risks and develop recommendations on eliminating them.

Why is anticorruption expert assessment necessary? Development of RAs and legal regulation of social relations in Ukraine is somewhat chaotic and haphazard. This creates conditions for officials to “model” powers that are favourable for them or create opportunities for acting at their own discretion. This also enables officials to abuse incomplete and ambiguous definitions which delimit their powers and to engage in corrupt behaviours.

Article 15 of the Law on Preventing and Countering Corruption expressly granted a right to citizens and their associations to carry out civic anticorruption expert assessment. This right had been earlier conferred upon civic councils by Resolution #996 of the Cabinet of Ministers of Ukraine as of 3 November 2010. Importantly, resulting council proposals are obligatory for consideration by government authorities that are linked to those respective councils.

How is civic anticorruption expert assessment carried out? All activities of civic experts in relation to anticorruption expert assessment consist of three steps.

Firstly:

- make sure that the draft RA falls within the category of RAs with a high degree of corruption risks;
- ascertain the purpose of RA development and assess the level of feasibility of draft adoption;
- check whether the draft RA is compliant with the Law of Ukraine on Preventing and Countering Corruption.

Secondly, analyze:

- whether the draft RA completely regulates social relations under its auspices;
- whether the draft RA provisions are easily comprehensible;
- projections of possible RA application and feasibility of its practical application.

Thirdly:

- develop recommendations on elimination of corruptogenic factors;
- submit the results of expert assessment and proposals to the government body that developed the respective RA. These results and proposals should be taken into account by this government body prior to final adoption of the RA.

Why this publication? Despite the relative simplicity of tasks of a civic expert in the context of RA analysis, it should be recognized that civic anticorruption expert assessments are still conducted sporadically. This stems both from the lack of professional civic experts and from cumbersome application of the methodology proposed by the Ministry of Justice of Ukraine.

Consequently, Transparency International Ukraine in partnership with the Institute of Applied Humanitarian Research, Centre for Political and Legal Reforms, Centre of Civic Advocacy and with the support of UNDP Ukraine developed these Recommendations for carrying out civic anticorruption expert assessment. The Recommendations are designed to help individuals who have minimum experience in conducting civic monitoring or civic expert assessments to master the process of efficiently planning and conducting their own expert assessments of RA drafts.

Has everything been taken into account? In developing the Recommendations, compilers took into account the best national experience in the area of corruptogenic factor analysis, including government-authored approaches.

The team did not aspire to draw an exhaustive list of corruptogenic risks or describe all possible ways to avoid them. The goal of the publication is, rather, to guide civic experts on the path of developing high-quality expert conclusions based on the findings of anticorruption expert assessments. The aforesaid expert conclusions are expected to assist government bodies in development of adequate national policies and fullest possible consideration of the public opinion.



## 1. WHAT IS CIVIC ANTICORRUPTION EXPERT ASSESSMENT?

We sincerely hope that recommendations presented in this publication will become a source of reference for civic experts interested in preventing corruptogenic provisions in draft RAs of different levels. Your comments and suggestions regarding this publication are always welcome at the email address of Transparency International Ukraine: [info@ti-ukraine.org](mailto:info@ti-ukraine.org).

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## 2. WHAT SHOULD ONE KNOW BEFORE THE START?

<b>ANTICORRUPTION CIVIC EXPERT ASSESSMENT OF DRAFT REGULATORY ACTS</b>	Reviewing draft regulatory acts to seek out provisions that may promote or facilitate corruption offences (corruptogenic factors) in order to prevent creation of a corruption-friendly environment, and to develop recommendations for elimination of such provisions.
<b>ADMINISTRATIVE PROCEDURE</b>	The established operations procedure of an administrative body (government body or body of local self-government) for considering individual cases, decision-making and providing administrative services.
<b>ADMINISTRATIVE SERVICE</b>	The outcome of exercising powers of authority by an administrative service provider as requested by an individual or legal entity aimed at the acquisition, modification or termination of rights and/or obligations of such individual/legal entity according to applicable laws.
<b>REFERENCE (BLANKET RULE)</b>	A rule that sets a general framework for rules of conduct to be followed, while specifics of those rules are defined in other regulations.
<b>CIVIC ANTICORRUPTION EXPERT ASSESSMENT</b>	Anticorruption expert assessment of regulatory acts and draft regulatory acts as carried out by civil society institutions and civic councils on their own and at their initiative; funded either through internal resources or other non-government channels.
<b>CIVIC COUNCIL</b>	A permanent collective elected advisory and consultative body established to ensure the participation of citizens in policy-making and implementation, exercising civic control over the activities of executive bodies, establishing effective cooperation of these bodies with the public, taking into account public opinion in development and implementation of the national policies.
<b>CIVIL SERVANT</b>	A citizen of Ukraine, who is in public and legal relations with the state, holds an office in a government body and exercises authority arising from such office in order to ensure the execution of functions of this government body. This category also includes officers and officials of local self-government bodies.
<b>DISCRETIONARY POWERS</b>	<p>A variety of rights and obligations of government bodies and bodies of local self-government and individuals authorized to perform the functions of state or local self-government, enabling to determine discretionarily, wholly or in part, the type and content of a management decision made or choose discretionarily one of several options of management decisions as provided for by a draft regulatory act or current regulatory act.</p> <p>Discretionary powers permit:</p> <ul style="list-style-type: none"> <li>• a government body (or a person authorized to exercise the functions of state or local self-government) at its own discretion to evaluate a legal fact, which in its turn may modify or terminate legal relations;</li> <li>• an authority to choose at own discretion one form of response to a given legal fact from several options proposed in the draft regulatory act (or current regulatory act);</li> <li>• a government body (or a person authorized to exercise the functions of state or local self-government) at its own discretion to choose an instrument of public-law impact on individuals and legal entities, type, size and method of implementation thereof;</li> <li>• a body (or a person authorized to exercise the functions of state or local self-government) to choose the form of exercising its powers – issuing a regulatory or individual legal act, taking (or refraining from) administrative action;</li> </ul>

## 2. WHAT SHOULD ONE KNOW BEFORE THE START?

	<ul style="list-style-type: none"> <li>• a body (or a person authorized to exercise the functions of state or local self-government) to determine, wholly or in part, the procedure for taking legally significant actions, including their term and sequence;</li> <li>• a body (or a person authorized to exercise the functions of state or local self-government) at its own discretion to determine the procedure of implementation of management decision, including delegating the implementation of adopted decision to subordinates, other bodies of state power and local self-government, set the term and the procedure of implementation.</li> </ul>
<b>LICENSING AND PERMIT ISSUANCE POWERS</b>	Powers of issuing documents evidencing special rights to engage in certain activities (certificates, licenses, letters of accreditation, attestations, etc.) or to use certain items (such as weapons). This category can also roughly include powers associated with the lease of government property, privatization of the state property, and allocation of budget funds (state procurement, etc.).
<b>LAWS</b>	Regulatory acts issued by the legislator (in our country - the Verkhovna Rada of Ukraine), having supreme legal force and regulating the most important social relations. Laws are generally divided into constitutional and common laws. All laws have supreme legal force meaning that: <ul style="list-style-type: none"> <li>• nobody but bodies of legislative power are authorized to adopt, amend or abrogate laws;</li> <li>• only the Constitutional Court of Ukraine shall have the right to hold a law of Ukraine or any individual provision thereof to be unconstitutional;</li> <li>• all other regulatory acts shall be issued in compliance with the laws;</li> <li>• in case of conflict between a law and a regulatory act the law shall prevail.</li> </ul>
<b>CIVIL SOCIETY INSTITUTION</b>	Civic, religious and/or charitable organizations, trade unions and their associations, creative unions, associations, employers' associations, non-governmental mass media and other non-profit companies and institutions legalized under the law of Ukraine.
<b>SUPERVISORY POWERS</b>	Powers exercised to check the legitimacy of activities (particularly, operating procedures) of legal entities (inspection, audit, control, supervision).
<b>CORRUPTION</b>	Abuse of powers and opportunities pertaining thereto in order to gain undue personal benefit or accept a promise/offer of such benefit for him/herself or others, or, accordingly, promising/ offering or giving undue benefit to such person or at his/her request to other individuals or legal entities to induce that person to abuse of his/her office powers and associated opportunities.
<b>CORRUPTION OFFENCE</b>	A wilful act bearing the marks of corruption committed by a person referred to in part one of Article 4 of the Law of Ukraine on Preventing and Countering Corruption in Ukraine, entailing criminal, administrative, civil and disciplinary liability according to the law.
<b>CORRUPTOGENIC FACTOR</b>	An individual provision or several provisions of a regulatory act, which, when implemented, will or may give rise to corruption.
<b>UNDUE ADVANTAGE</b>	Money or other property, advantages, privileges, services, intangibles that are unreasonably promised, offered, given or received for free or at a price lower than the minimum market price.



## 2. WHAT SHOULD ONE KNOW BEFORE THE START?

<b>REGULATORY ACT</b>	<p>(hereinafter referred to as the “RA”) – a written document containing legal norms.</p> <p>Regulatory act possesses a number of features; as a rule it:</p> <ul style="list-style-type: none"> <li>• exists as a written document;</li> <li>• has obligatory attributes spelled out in legislation (title, adoption date, signature etc.);</li> <li>• is adopted (generally) by a relevant government body (bodies);</li> <li>• is disseminated in official printed publications;</li> <li>• official text shall be a publication thereof in the national language;</li> <li>• contains legal norms;</li> <li>• has legal effect;</li> <li>• takes legal effect in accordance with the procedure prescribed by legislation;</li> <li>• applies across time, space and to a given set of persons;</li> <li>• registered (if foreseen by the law) within the State Roster of Regulatory Acts.</li> </ul> <p>Regulatory acts are divided into laws and subsidiary regulations.</p>
<b>RULE-MAKING POWERS</b>	Powers to adopt subsidiary regulations that set rules of conduct binding for an unlimited scope of persons.
<b>GOVERNMENT BODIES</b>	Executive bodies and other bodies of state power, government bodies of the Autonomous Republic of Crimea, their executive offices and territorial units (departments, etc.).
<b>SUBSIDIARY REGULATIONS</b>	<p>Regulatory acts adopted/approved by relevant bodies, officials or officers of executive bodies or bodies of local self-government or judicial bodies other than laws and aimed at enforcement of the laws of Ukraine in whole or individual provisions thereof.</p> <p>Types of subsidiary regulations (depending on their issuing bodies):</p> <ul style="list-style-type: none"> <li>• Regulatory acts issued by the President of Ukraine;</li> <li>• Regulatory acts issued by the Cabinet of Ministers of Ukraine;</li> <li>• Regulatory acts of the Verkhovna Rada and the Council of Ministers of the Autonomous Republic of Crimea;</li> <li>• Regulatory acts of Ministries, state committees, or other central bodies of executive power of special status;</li> <li>• Regulatory acts issued by local state administrations;</li> <li>• Regulatory acts issued by bodies of local self-government;</li> <li>• Regulatory acts issued by divisions and departments of their respective central bodies at the local level;</li> <li>• Regulatory acts issued by heads of state-owned companies, institutions and organizations at the local level;</li> <li>• Other subsidiary regulations.</li> </ul>
<b>OFFICIAL DUTIES</b>	The list of functions and responsibilities stipulated by law for a relevant public office to be fulfilled by a civil servant holding such office and set out in his/her job description.
<b>REGISTRATION POWERS</b>	Powers exercised to certify the establishment, modification or termination of legal status of entities or individuals (taxpayers, licensees), civil deeds and legal objects (real estate, motor vehicles, etc.).
<b>JURISDICTIONAL POWERS</b>	A specific and exhaustive scope of powers of a given government body or body of local self-government and relevant officer/official as provided for in the Constitution, laws or subsidiary regulations of Ukraine.
<b>ACQUIS COMMUNAUTAIRE</b>	The legal system of the EU, which includes (but is not limited to) legislative acts of the European Union adopted within the framework of the European Community, common foreign and security policy and cooperation in the area of justice and home affairs.

### 3. WHO CAN CARRY OUT CIVIC ANTICORRUPTION EXPERT ASSESSMENT AND HOW IS IT DONE?

Section 3, Article 15 of the Law of Ukraine on Preventing and Countering Corruption gives individuals, associations of citizens and legal entities a right to initiate and conduct civic anticorruption expert assessment of draft RAs.

Civic councils at executive bodies are also authorized to conduct civic anticorruption expert assessment of draft RAs. This is provided for by Model Regulation on the civic council at a Ministry, other central body of executive power, the Council of Ministers of the Autonomous Republic of Crimea, oblast, Kyiv and Sevastopol municipal, district and district state administrations in Kyiv and Sevastopol, approved by Resolution #996 of the Cabinet of Ministers of Ukraine as of 3 November 2010.

#### Civic anticorruption expert assessment

reviewing draft regulatory acts and current regulatory acts that are being or have been adopted by government bodies or bodies of local self-government for possible corruptogenic factors.

This analysis is carried out by civil society institutions or at their request with subsequent notification of the authoring body of the discovered corruptogenic factors and provision of recommendations as to addressing them.

#### The expert assessment subjects are:

social relations under regulation of draft RAs and effective RAs adopted by central bodies and local self-government (hereinafter referred to as the "government bodies") that have a potentially high level of corruptogenic factors or are directly related to community interests, rights and freedoms of individual citizens.

#### The expert assessment objects are:

draft RAs developed by government bodies that are subject to expert assessment as stipulated by the Law of Ukraine on Preventing and Countering Corruption, Resolution #966 of the Cabinet of Ministers of Ukraine on Ensuring Public Participation in the State Policy Development and Implementation as of 3 November 2010 and Resolution #976 of the Cabinet of Ministers of Ukraine on Approval of the Procedure for Promoting Civic Expert Assessment of Executive Bodies Activities as of 5 November 2008

current RAs adopted by government bodies that may be subject to expert assessment according to the Law of Ukraine on Citizen Appeals and Resolution #976 of the Cabinet of Ministers of Ukraine on Approval of the Procedure for Promoting Civic Expert Assessment of Executive Bodies Activities as of 5 November 2008.



### 3. WHO CAN CARRY OUT CIVIC ANTICORRUPTION EXPERT ASSESSMENT AND HOW IS IT DONE?

The law does not establish special requirements organizations and individuals authorized to engage in civic anticorruption expert assessment. It is important to make sure that civil society institutions are ready to produce a reasoned opinion on the existence of corruptogenic factors and their impact on social relations governed by a given regulatory act and submit action-oriented recommendations on elimination of such corruptogenic factors.

It should be noted that civil society institutions and civic councils shall carry out civic anticorruption expert assessment of regulatory acts and draft regulatory acts on their own and at their initiative. Assessment can be funded either from internal resources or from external non-government funds.

Civic experts usually conduct anticorruption expert assessment in a few simple steps. They are:

#### STEP I. REVIEWING A DRAFT REGULATORY ACT FOR COMPLIANCE WITH FORMAL ATTRIBUTES

Formal attributes of RAs are:

- reference details of the RA undergoing civic anticorruption expert assessment (in case of anticorruption expert assessment of an amended regulatory act, it is necessary to indicate the details of all regulatory acts introducing amendments thereto and which have undergone anticorruption expert assessment);
- author of the RA (government body/body of local self-government);
- grounds for RA expert assessment;
- scope of the RA under assessment;
- evaluation of jurisdiction of the authoring government body (body of local self-government);
- compliance of the RA contents with Constitution and laws of Ukraine.

#### STEP II. ANALYZING THE RA DEVELOPMENT PROCEDURE, PARTICULARLY, IN TERMS OF COOPERATION WITH THE CIVIL SOCIETY

The expert conclusion shall specify whether public consultations have been conducted during development of the RA. Such consultations are provided for in the Procedure for Conducting Public Consultations on the Issues of State Policy Development and Implementation (as approved by the Cabinet of Ministers Resolution #996 as of 3 November 2010), and government bodies authoring the RA have to arrange and hold public consultations. The latter are mandatory in such cases:

- draft RAs have major social importance and concern constitutional rights and freedoms, interests and responsibilities of citizens;
- RAs introduce benefits to, or impose restrictions on, business entities and civil society institutions, or exercising powers of local self-government delegated to executive bodies by relevant councils.

#### STEP III. CONSULTING SECTORAL EXPERTS IN THE AREA REGULATED BY THE ACT

Why should one consult industry experts? Because they can point out potential corruption risks of RA application that do not arise directly from its content, but can result from distortion of relations in the area regulated by the act. The outcome of consultations with industry experts shall be reflected in expert conclusions. In particular, specific examples showcasing corrupt practices of application of effective RAs shall be provided.

### 3. WHO CAN CARRY OUT CIVIC ANTICORRUPTION EXPERT ASSESSMENT AND HOW IS IT DONE?

#### STEP IV. REVIEWING THE RA FOR CORRUPTOGENIC FACTORS

Analysis of corruptogenic factors, namely:

- list of provisions where corruptogenic factors have been identified;
- description of corruptogenic factors discovered in the provisions;
- description of possible effects that corruptogenic factors may provoke during application of a specific provision;
- specification of positions of officials who can use corruptogenic factors to engage in corrupt practices;
- recommendations on elimination of corruptogenic factors and removal (adjustment) of corruptogenic provisions;
- availability of preventive (precautionary) safeguards in the RA concerned and recommendations on their incorporation thereto.

Findings of civic anticorruption expert assessment shall be presented as expert conclusions.

Experts shall submit their conclusions upon the findings of civic anticorruption expert assessment to the department of a government body (or body of local self-government), which developed the draft RA or carried out its legal expert assessment.

A soft copy of expert conclusion may be forwarded to this government body electronically.

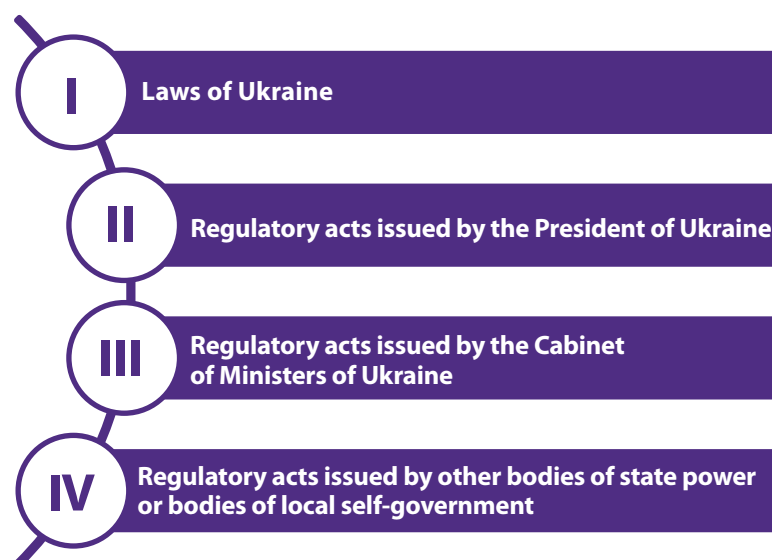
The expert conclusion with findings of civic anticorruption expert assessment produced by civic council shall be posted on official website of the body, at which such council has been established (in thematic section "Civic council").

#### 4. SHOULD ALL DOCUMENTS ISSUED BY GOVERNMENT BODIES BE REGARDED AS REGULATORY ACTS?

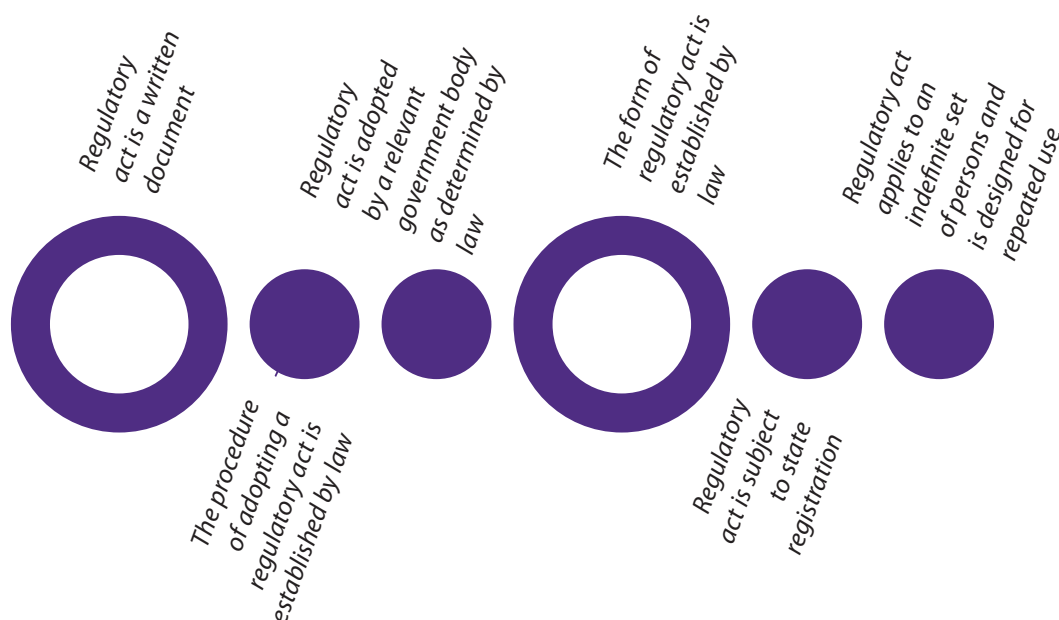
Currently, the legislation of Ukraine does not clearly specify what acts shall be classified as such (respective list of RAs is not available), but there is a number of signs that can help to identify whether a respective document is a RA.

**Regulatory acts** are official documents adopted (issued) by a relevant entity in accordance with legal requirements to the form and procedure, providing for the legal norms applicable to an indefinite set of persons, and designed for repeated use.

*Regulatory acts are divided into four groups (the same approach is proposed by Order #1380/5 of the Ministry of Justice of Ukraine on Approval of Guidelines for Expert Assessment of Draft Regulatory Acts for Possible Corruptogenic Provisions as of 23 June 2010):*



#### Attributes of regulatory act:



Draft RAs, which could potentially contain corruptogenic factors, usually govern the enforcement and protection of rights and freedoms of person and citizen and other private law entities (civic associations, legal entities). They can also pertain to the so-called “public laws” (administrative, customs, financial, etc.), regulate the relationships between government bodies and private law entities, or regulate the relations between representatives of government bodies and internal procedures, which may not relate to relationship with the entities of private law, but still affect the enforcement and protection of their rights.

## 5. HOW CAN CORRUPTOGENIC FACTORS BE DETECTED?

Once a civic expert is convinced that a document he/she reviews is a draft RA, he/she shall take further actions to review this RA for possible corruptogenic factors and produce recommendations on elimination of them.

A corruptogenic factor is an individual provision or several provisions of RA which will or may give rise to corruption.

The most probable corruptogenic factors of draft regulatory acts can be divided into the following categories:

- scope of administrative discretion and discretionary powers
- legal regulation gaps
- conflicts of laws
- imbalance of interests and undue burden on recipients of public services.

The above list is not exhaustive. There are different classifications of corruptogenic factors. Thus, in carrying out anticorruption expert assessment, government bodies need to follow Order #1380/5 of the Ministry of Justice of Ukraine on Approval of Guidelines for Expert Assessment of Draft Regulatory Acts as of 23 June 2010. This methodology also outlines four factors. However, their classification is somewhat different. The Methodology provides for the definition of each of these factors, criteria and methods of their assessment and possible means of elimination.

There are other classifications, typologies and groups of corruptogenic factors. To make the work of civic experts easier, a group of experts developed a civic anticorruption expert assessment methodology. Its classification and description of corruptogenic factors is the most convenient for civic anticorruption expert assessments.

Below you will find an example of analysis of an RA draft and the elicited corruptogenic factors.

The Draft Resolution of the Cabinet of Ministers of Ukraine on the Approval of the Procedure of Bidding for the Qualification of Programmes, Projects (Events) Developed by Civil Society Organizations and Implemented with the Government Financial Support was developed by the Ministry of Economy of Ukraine to ensure that government effectively and transparently supports civil society organizations.

In the course of September 2010 - October 2011, representatives of CSOs were actively advocating their proposals to this regulatory act. Currently these issues are addressed by Resolution #1049 of the Cabinet of Ministers of Ukraine on the Approval of the Procedure of Bidding for the Qualification of Programmes (Projects, Events) Developed by Civil Society Organizations and Creative Unions and Executed (Implemented) with the Government Financial Support as of 12 October 2011. Most of the civil society proposals have been taken into account, in particular, a number of corruptogenic factors discovered in the draft RA have been eliminated.

### **CORRUPTOGENIC FACTOR 1: SCOPE OF ADMINISTRATIVE DISCRETION AND DISCRETIONARY POWERS**

Mentioning administrative discretion and discretionary powers as such does not mean that a draft RA contains corruptogenic norms (for example, such discretionary powers are justified in internal organization of a government body). Corruptogenity, on the other hand, may arise in relations between a government body and individuals and legal entities.

For example, in draft Resolution of the Cabinet of Ministers of Ukraine on the Approval of the Procedure of Bidding for the Qualification of Programmes, Projects (Events) Developed by Civil Society Organizations and Implemented with the Government Financial Support (hereinafter referred to as the "Draft Procedure"), one instance of this corruptogenic factor was detected. More specifically, paragraph 2 of item 4 of the draft Resolution contained the following provision:

*"4. Bidding documents shall specify:*

- objectives and priorities, particularly those envisaged by national and regional programmes, which should be the goals of programmes, projects (measures) of CSOs to be supported by the bidding organizer."*



## 5. HOW CAN CORRUPTOGENIC FACTORS BE DETECTED?

Thus, the bidding organizer (government body) was vested with the right to pick those goals and priorities, for which the projects (events) of CSOs would be funded. Moreover, it was stipulated that the goals and priorities could partially meet those set by national and/or regional programmes. What happened in reality was government bodies (heads of the respective organizational department which organized the bidding) establishing – at their own discretion – the goals and priorities for funding for each year, which oftentimes were not aligned to longer-term national and/or regional programmes.

How was it connected with corrupt actions in enforcement of the RA provision and how it went before the Resolution was adopted? Each head of department that organized a bidding was “focused on” CSOs with which a long-term co-operation was established, including organizations established by this official or his/her proxies. Other adopted long-term development programmes were not implemented.

At the same time, these were these national programmes that formed the basis for financing of some other areas and sectors.

Civic experts proposed to limit the discretionary powers of bidding organizers on setting the goals and objectives, and checking whether such goals and objectives comply with national and/or regional programmes.

The proposal was accepted.

According to current Procedure of Bidding for the Qualification of Programmes (Projects, Events) Developed by Civil Society Organizations and Creative Unions and Executed (Implemented) with the Government Financial Support (as approved by Resolution #1049 of the Cabinet of Ministers of Ukraine as of 12 October 2011):

«4. Tender documents shall specify:

- objectives and priorities of national and/or regional programmes, which shall be achieved through implementation of programmes (projects, activities) of CSOs submitted for bidding».

### CORRUPTOGENIC FACTOR 2: LEGAL REGULATION GAPS

This factor allows a decision-maker who enforces the provisions of RA to interpret it as desired and choose behaviours that are “beneficial” for him/herself. Such gaps may include references to other laws or legislative acts that do not exist, have not been enacted, have been invalidated, when no relevant procedures are established, etc.

In most cases, this corruptogenic factor is detected in final and transitional provisions of a regulatory act and in first provisions of draft RA of ministries and other central executive bodies (e.g., Government resolutions). The text of a regulatory act can also contain references to other laws and subsidiary regulations or request other bodies to approve the forms, procedures, etc.

In such a case, a civic expert shall first check the availability (absence, status) of relevant laws and other RAs, which are referred to by the provisions of draft RA under scrutiny.

This corruptogenic factor often does not “manifest” itself immediately. This is exemplified by a situation when deadlines of developing and submitting the amendments to other laws changed by the draft RA to Verkhovna Rada of Ukraine are unspecified in the Final Provisions section of the draft RA.

Corruptogenic factors can also manifest themselves if an RA authoring body appoints itself as an entity that will comply with the regulations of RA. For example, similar provisions were discovered in the draft resolution of the Cabinet of Ministers of Ukraine in question and, furthermore, they still exist in the adopted resolution.

According to part 2 of Resolution of the Cabinet of Ministers of Ukraine #1049:

«2. Ministries, other central and local executive bodies: within a two-month period submit proposals on bringing regulations of the Cabinet of Ministers of Ukraine in compliance with the Procedure; bring its own regulations in compliance with the Procedure».

## 5. HOW CAN CORRUPTOGENIC FACTORS BE DETECTED?

Thus, the deadline is specified for fulfilment of the obligation of Ministries or other central and local executive bodies to submit proposals on bringing regulations of the Cabinet of Ministers of Ukraine in compliance with the Procedure, while the deadline for bringing the Cabinet of Ministers own regulations in compliance with the Procedure is not.

Another manifestation of this corruptogenic factor in the draft Procedure was the fact that the bidding organizer at its own discretion approved a number of bidding forms to be submitted by CSOs:

- Application for participation in the bidding;
- Description and estimate of costs necessary to implement a programme (project, event);
- Final report upon fulfilment of funding agreement.

Civic experts proposed to mitigate this deficiency to the maximum extent possible by developing and incorporating the above-mentioned document templates as annexes to the Resolution of Cabinet of Ministers of Ukraine that has approved the Procedure.

Before adoption of the Procedure, there were cases when bidding organizers discretionarily established these forms, which were not approved by relevant government body (even by an order of the head of department of a relevant government body). Forms of documents were recurrently changed by adding new items that were useless but put additional burden on bidders. The forms were not published. Different approaches were used at the regional level.

This corruptogenic factor was mitigated in the following manner:

- The templates of documents necessary for bidding have been recognized to constitute an integral part of bidding announcement.

*According to item 4 of Resolution #1049 of the Cabinet of Ministers of Ukraine:*

*«Bidding announcement shall also contain forms of the documents approved by the bidding organizer»*

- The bidding organizer shall post bidding documents on its official website and, in case when financing is provided from state budget, submit this information to the Secretariat of the Cabinet of Ministers of Ukraine for posting on a specialized website.

*According to Item 3 of Resolution #1049 of the Cabinet of Ministers of Ukraine:*

*«3. Announcement of bidding for identification of programmes (projects, events) developed by civil society organizations and creative unions and executed (implemented) with government financial support (hereinafter referred to as the "tender") and the requirements to bids shall be made public by the tender organizer 30 days before the deadline for submitting on its official website and in any other appropriate form. If the financial support of programmes (projects, events) is provided by state budget, the tender organizer shall submit this information to the Secretariat of the Cabinet of Ministers of Ukraine for posting on the government website "Civic Society and Government».*

- Reference details (list of information) to be specified in the forms were defined.

*For example, according to Item 7 of Resolution #1049 of the Cabinet of Ministers of Ukraine, the bid, form of which is approved by the bidding organizer, shall specify: the name of a civil society organization or creative union and the name of a programme (project, event) signed by the director or an authorized representative of the CSO or creative union, sealed with a stamp (if available). While the programme (project, event) description should include goals and objectives, implementation plan specifying the terms and responsible persons for each stage of implementation, expected results and specific performance indicators, information about the target group, other CSOs or creative unions involved in programme (project, event) implementation, methods of informing public about the progress achieved, detailed estimates of the costs and funding sources.*

## 5. HOW CAN CORRUPTOGENIC FACTORS BE DETECTED?

### CORRUPTOGENIC FACTOR 3: CONFLICTS OF LAWS

Possible manifestations of conflicts of laws as a corruptogenic factor are:

- conflicts in different legislative acts (conflicts between the provisions of the Constitution and laws; provisions of international and national laws; provisions of laws and subsidiary regulations; subsidiary regulations of different levels);
- conflicts between different provisions within one RA.

Identifying conflicts of second type is easier for an expert, because in such case he/she works with the text of a single draft regulatory act. In order to detect conflicts of the first type, study of other legislative acts and possible enforcement, publications and case law, consultations with relevant experts, etc. are necessary.

However, identifying conflicts of the second type is of utmost importance, because methods used to address the conflicts of the first type can be applied even if a relevant regulatory act is adopted. For example, in case of conflict between provisions of law and subsidiary regulation, the law prevails. In case of conflict between the provisions of RAs of equal legal force, the provisions of most recently adopted RA prevails.

In case of conflict between the provisions within one RA, a government body or its official have no clear rule to follow, which may result in behaviour that is beneficial for him/herself or violate or restrict the rights of individuals and legal entities.

For example, item 7 of the draft Procedure under review stipulates that:

«7. The bid should contain:

- application for participation in the bidding in a form established by bidding organizer;
- a copy of state registration certificate, charter (internal regulations) of a CSO (filed along with relevant original documents);
- a copy of decision of State Tax Administration on including a civil society organization into the Roster of Non-Profit Organizations and Institutions;
- a copy of financial statement for previous year, if a CSO was registered more than one year before the announcement of bidding;
- description of programme, project (event) and cost estimate for its implementation using in forms approved by bidding organizer;
- endorsement letters from other civil society organizations confirming their participation in bidding in capacity of co-implementers;
- information about CSO activities, including previous experience in implementing similar programmes and projects (events)”.

The list of documents to be submitted by a CSO included such document as “a copy of financial statement for the previous year”. At the same time, other legislative acts in the field of taxation and accounting neither provide any form for reporting nor oblige CSOs to submit such a report to any government bodies. According to the Tax Code and Order #56 of the State Tax Administration of Ukraine On Approval of Form and Procedure of Preparing Tax Statement on the Use of Funds of Non-Profit Institutions and Organizations as of 31 January 2011, CSOs that are included in the Roster of Non-Profit Institutions and Organizations shall file a tax statement on the use of funds of non-profit institutions and organizations.

Pursuant to civic proposals, amendments have been introduced: namely, the name of document to be submitted under Item 7 of Resolution #1049 of the Cabinet of Ministers of Ukraine was changed to “a copy of tax report of a civil society institution for past 2 years”.

## 5. HOW CAN CORRUPTOGENIC FACTORS BE DETECTED?

### CORRUPTOGENIC FACTOR 4: IMBALANCE OF INTERESTS AND UNDUE BURDEN FOR RECIPIENTS OF PUBLIC SERVICES

This factor becomes evident when the same-group regulatory requirements for individuals and legal entities may establish different rights, impose additional restrictions, and exclude them from the scope of an RA.

This corruptogenic factor also relates to establishing large lists of documents, duplication of information in different documents, establishing excessive requirements for information, application forms, etc., which an individual or legal entity has to submit, introducing requirements to submitting information that government body can receive on its own, imposing a large number of restrictions, prohibitions and requirements to obtain permits (licences, approvals) to engage in certain activities, which are unreasonable for a given area and activities. For instance, item 1 of the Draft Procedure of Bidding for the Qualification of Programmes, Projects (Events) Developed by Civil Society Organizations and Implemented with the Government Financial Support, which underwent public consultations, stipulated that:

*«This Procedure shall not apply to financial support provided from budgetary funds to All-Ukrainian organizations of disabled people and war and labour veterans».*

Thus, for unknown reasons All-Ukrainian organizations of disabled people and veterans of war and labour were excluded from the scope of Procedure, which regulated allocation of governmental financial support on a competitive basis. Instead, for example, all other civil society organizations, including those with All-Ukrainian status, were requested to participate in biddings. The procedure also aimed at establishing transparent mechanisms for government financing. Exclusion of certain organizations or biddings from the scope of this regulatory act was evidence of an imbalance of interests.

During public consultations this imbalance was the most evident. On one hand, while most CSOs were opposing this imbalance, the version without this provision provoked fierce debates on the side of All-Ukrainian organizations of disabled people and veterans of war and labour. In any case, open biddings, transparent mechanisms for decision-making and access to information facilitate elimination of potential environment for corruption offence.

In the current version of Resolution #1049 of the Cabinet of Ministers of Ukraine On the Approval of the Procedure of Bidding for the Qualification of Programmes (Projects, Events) Developed by Civil Society Organizations and Creative Unions and Executed (Implemented) with the Government Financial Support as of 12 October 2011, the list of biddings excluded from the scope of the Procedure got even larger. This is due to pressure of CSOs concerned.

*According to the second paragraph of item 1 of Resolution #1049 of the Cabinet of Ministers of Ukraine:*

*«This Procedure shall not apply to budgetary support provided under the laws of Ukraine to All-Ukrainian fitness and sports associations and fitness and sports NGOs to implement the programmes and aerospace events among children and youth; All-Ukrainian CSOs of disabled people and veterans and their associations, support of non-production enterprises and organizations of All-Ukrainian Association of the Blind and All-Ukrainian Association of the Deaf, and enterprises and associations of the aforesaid organizations that allocate budgetary funds to maintain their social and cultural departments, national creative unions and their regional branches».*

In addition, Resolution #1049 of the Cabinet of Ministers of Ukraine envisaged the exclusion from the bidding procedure the provision of the government support to CSOs “for conducting by their governing bodies events set forth in their statutory documents (assemblies, forums, plenary sessions, meetings of the council, board, conferences and general meetings)”.

According to Resolution #1373 of the Cabinet of Ministers of Ukraine as of 5 December 2011 on Amending Item 1 of the Procedure of Bidding for the Qualification of Programmes (Projects, Events) Developed by Civil Society Organizations and Creative Unions and Executed (Implemented) with the Government Financial Support as of 12 October 2011, the words “for conducting by their governing bodies events set forth in the statutory documents (assemblies, forums, plenary sessions, meetings of the council, board, conferences and general meetings)” were removed from the text of Procedure. Competition of “interests” of different social groups, groups of individuals or legal entities happens in all countries. Benefits or balance are legitimized through decisions, including the adoption of acts of government bodies. Obviously, it is impossible to come to a decision that would fully satisfy all stakeholders of the process. To justify the methods of addressing these conflicts, it is necessary to study the interests of various stakeholders, to hold public consultations and to explore international standards and experience and other sources.

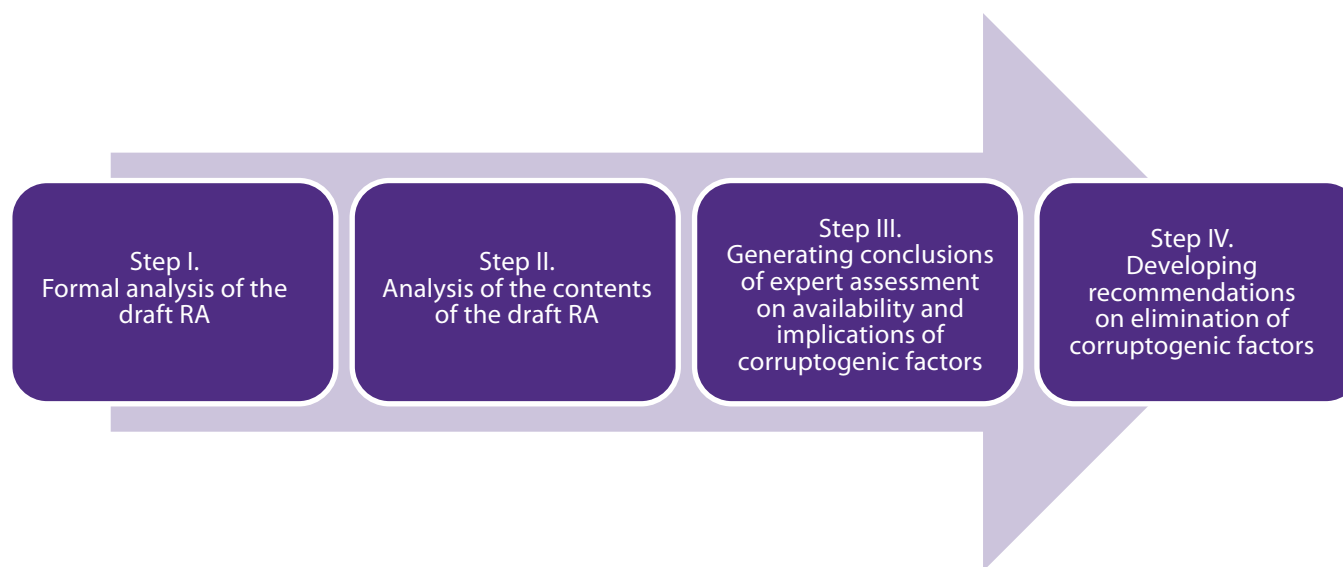
Please, refer to Civic Anticorruption Expert Assessment Methodology: Short Guide for detailed explanation of components of above-mentioned corruptogenic factors and methods used to address them.

## 6. HOW TO PREPARE A CONCLUSION UPON THE RESULTS OF CIVIC ANTICORRUPTION EXPERT ASSESSMENT?

The results of civic anticorruption expert assessment are issued in form of expert conclusion. This conclusion is a type of analytical document and reflects essential steps of expert assessment. Therefore, the conclusion shall meet general requirements to contents of similar documents: concerted positions and consistency of information presented, accuracy and precise use of terminology, etc. While preparing an expert conclusion, it is advisable to use common vocabulary, avoid technical terminology and phrases, except for those provided for in regulatory acts and intrinsic to a subject of the civic anticorruption expert assessment.

An expert conclusion should not exceed six-ten A4 pages (excluding annexes). The title page should include the name of initiator (initiators) of civic anticorruption expert assessment, his/her contact details, information about the regulatory act, the timeframe of civic expert assessment, etc.

The recommendations on how to prepare the conclusion upon the results of civic anticorruption expert assessment are provided below. The entire process can be divided into four logical steps.



### STEP I. FORMAL ANALYSIS OF THE DRAFT RA

The following information is ascertained based on the findings of the analysis of a draft RA or applicable RA and reflected in the expert opinion:

- reference details of the regulatory act undergoing civic anticorruption expert assessment (in case of anticorruption expert assessment of an amended RA, it is necessary to indicate the reference details of all regulatory acts that introduce amendments thereto and that have been subject to anticorruption expert assessment);
- author of the regulatory act (government body/body of local self-government);
- grounds for regulatory act assessment;
- scope of regulatory act under review;
- evaluation of competences of government authority (body of local self-government) that has adopted the regulatory act.

## 6. HOW TO PREPARE A CONCLUSION UPON THE RESULTS OF CIVIC ANTICORRUPTION EXPERT ASSESSMENT?

### STEP II. ANALYSIS OF THE CONTENTS OF THE DRAFT RA

At this stage, the expert shall review the contents of RA for potential corruptogenic provisions – making assumptions as to presence of corruptogenic factors, generating conclusions – forecasting specifics of enforcement of provisions that could foster corruption. While analyzing the contents, there is a need to consult experts in the area of RA regulation who can provide a professional assessment of corruptogenic factors that might arise as a result of enforcement of certain provisions of the RA. These potential corruption risks pertaining enforcement of RA do not arise directly from its contents, but can result from distortion of relations in the area of regulation. The outcome of consultations with industry experts shall be set forth in the expert conclusion, in particular, indicating information about specific examples of the corrupt practices of enforcement of current regulatory acts.

The analysis of contents also includes evaluation of the RA provisions comparing them to the provisions of other RAs in a given area to identify any conflicts, overlapping areas and other corruptogenic factors. Such analysis can be also based on the study of case law, expert surveys in the area and analysis of social and legal studies in the area.

The expert conclusion includes:

- The list of provisions of the draft RA that have been analyzed;
- The list of provisions of other RAs governing the respective area of social relations;
- Analysis of court decisions, social and/or legal studies;
- Methods used for analysis (comparisons, forecasting);
- Consistency of the analysis and practical applications of analysis methods.

### STEP III. GENERATING CONCLUSIONS OF EXPERT ASSESSMENT ON AVAILABILITY AND IMPLICATIONS OF CORRUPTOGENIC FACTORS

The next step is to produce conclusions of analysis that shall be properly substantiated with references to the provisions of other RAs, existing practice of relevant bodies, judicial bodies, findings of studies, etc. and relate to the availability of corruptogenic factors and probability of corruption if such corruptogenic factors are incorporated in the activities of certain bodies or officials.

The expert conclusion shall contain findings of the corruptogenic factor analysis, more specifically:

- list of provisions, in which corruptogenic factors have been identified;
- description of corruptogenic factors discovered in provisions of the RA;
- description of possible effects of corruptogenic factors in terms of enforcement of a specific provision;
- specification of positions held by officials who can abuse the aforesaid corruptogenic factors to engage in corrupt practice.

### STEP IV. DEVELOPING RECOMMENDATIONS ON ELIMINATION OF CORRUPTOGENIC FACTORS

This stage is of utmost importance, since it represents the ultimate goal of civic anticorruption expert assessment – prevent corruption through addressing corruptogenic factors in draft regulatory acts. In this regard, it is crucial to generate informed, well-considered, realistic and reasonable recommendations compliant with the applicable laws on elimination of such factors or mitigation of potential corruption impact.



## 6. HOW TO PREPARE A CONCLUSION UPON THE RESULTS OF CIVIC ANTICORRUPTION EXPERT ASSESSMENT?

The expert assessment conclusion shall contain:

- recommendations on elimination of corruptogenic factors and removal (adjustment) of corruptogenic provisions;
- recommendations on incorporating preventive (precautionary) anticorruption provisions.

For ease of use, the findings and conclusions of expert assessment shall be presented in form of a table as presented below.

No	RA Article (part, item, paragraph) and their contents	Detected corruptogenic factors	Warnings generated by the expert  (regarding the effect of availability of corruptogenic provision in the RA)	Recommendations on possible methods of removal of corruptogenic factor

The expert conclusion should consist of three essential components:

<b>I. Introduction</b>	Contains the results of Steps 1 and 2, i.e. indicates the subject of expert assessment, date of expert conclusion, the subject and object of the expert assessment and information about the compiler, as well as compliance with the procedure of development and approval of the relevant RA. In addition, this component specifies the RA which serves as legal ground for conducting civic anticorruption expert assessment.
<b>II. Rationale</b>	Contains information obtained as a result of Steps 3 and 4. This component describes the process and findings of analysis, particularly: a provision of RA which is corruptogenic and reasons for such judgment; possible corruption effect that can arise from enforcement of the relevant provision of RA; officials (officers) who can abuse these corruptogenic provisions of RA to engage in corruption. The above tale would be the most appropriate form of the rationale. Such analysis can be based on familiarization with provisions of the laws of Ukraine, case law, expert surveys in the area and analysis of social and legal studies in this area.
<b>III. Concluding part</b>	Contains the conclusion of civic anticorruption expert assessment or the findings of analysis. Thus, the concluding part contains, first, a brief conclusion as to what provision of RA contains corruptogenic factors and what are these factors, and, second, recommendations on possible methods of eliminating these corruptogenic factors subject to relevant substantiation and referencing to the applicable laws. Also, the concluding part should specify the regulatory act, on the basis of which this conclusion is submitted for consideration to a government body/body of local self-government (Laws of Ukraine on Citizen Appeals, on Preventing and Countering Corruption, Resolution of the Cabinet of Ministers of Ukraine on Ensuring Public Participation in the State Policy Development and Implementation and/or Resolution #976 of the Cabinet of Ministers of Ukraine on Approval of the Procedure for Promoting Civic Expert Assessment of Executive Bodies Activities as of 5 November 2008).

The expert conclusion shall be signed by a person who conducted expert assessment and filed to the RA-authoring government body or a government body that conducted legal expert assessment of the regulatory act for its consideration.

## 7. HOW TO REPORT EXPERT ASSESSMENT FINDINGS TO GOVERNMENT BODIES?

The Law of Ukraine on Preventing and Countering Corruption provides for the right of the public to request and/or carry out civic anticorruption expert assessment of regulatory acts. However, this law does not envisage the procedure for reporting of findings of such expert assessment to the relevant government bodies and bodies of local self-government for use in their work, in particular, in order to eliminate corruptogenic factors that have been identified in the draft regulatory act.

Meanwhile, the procedure of reporting findings of civic anticorruption expert assessment to relevant bodies is an important element of cooperation between public and government bodies in terms of preventing and countering corruption. Response of relevant government bodies to the findings of this expert assessment is important as well.

In this regard, members of public should know the effective procedures of appealing to government bodies and local governments and the procedure of their response to such appeals, as provided for in this law. Currently, findings of civic anticorruption expert assessment can be reported to government bodies and bodies of local self-government in three ways:

- in accordance with the procedure set forth in the Law of Ukraine on Citizen Appeals;
- in accordance with the procedure set forth in Resolution #976 of the Cabinet of Ministers of Ukraine on Approval of the Procedure for Promoting Civic Expert Assessment of Executive Bodies Activities as of 5 November 2008;
- in accordance with the procedure set forth in Resolution #996 of the Cabinet of Ministers of Ukraine on Ensuring Public Participation in the State Policy Development and Implementation as of 3 November 2010.

### 7.1. SENDING THE CONCLUSION OF CIVIC ANTICORRUPTION EXPERT ASSESSMENT IN ACCORDANCE WITH PROCEDURE OF THE LAW OF UKRAINE ON CITIZEN APPEALS

The Law of Ukraine on Citizen Appeals #393/96-VR as of 2 October 1996 defines how Ukrainian citizens can exercise their constitutional right to submit to government bodies, public associations according to their charters proposals for improving their activities, point out deficiencies in their performance, appeal to actions of officials, government and public bodies. According to Section 2, Article 3 of the Law, a proposal (comment) is a citizen appeal, which expresses advice or recommendation regarding the activities of government bodies and bodies of local self-government, citizen representatives (council members) of all levels, officials, and opinions on regulation of social relations and living conditions of citizens, improving the legal framework for government and public life, socio-cultural and other areas of government and public activities. In fact, civic anticorruption expert assessment of draft RAs and effective RAs that have been developed and adopted by the relevant government bodies and bodies of local self-government, is the activity aimed at identification of shortcomings in the operation of these bodies. Therefore, a conclusion of civic anticorruption expert assessment should include proposals on possible improvement of their activities.

#### ***Requirements to the appeal and procedure of its submission***

The Law provides for the following requirements to citizen appeals (proposals or comments):

- appeals should be addressed to the appropriate government body, local self-government or officials authorized to address the problems raised in citizen appeals (in this case, an author of regulatory act);
- an appeal should contain full name, place of residence and the substance of the issue raised / observation / proposal. The appeal may be filed by an individual (individual appeal) or a group of persons (collective appeal). In case of collective appeal, each person should specify relevant data.

It should be noted that the Law on Citizen Appeals does not expressly provide for the submission of proposals on behalf of CSOs. Therefore, proposals regarding possible improvement of draft regulatory acts and current regulatory acts due to the presence of corruptogenic factors should be submitted by or on behalf of the CSO head or members as a collective appeal.

## 7. HOW TO REPORT EXPERT ASSESSMENT FINDINGS TO GOVERNMENT BODIES?

- Appeals on the results of civic anticorruption expert assessment shall be put in writing and mailed or transferred to the appropriate body, institution or official personally or through its/his/her authorized representative, if such authority is executed in accordance with the applicable law.

The most reliable method is to send the appeal by registered mail or courier service with delivery confirmation.

- A written appeal shall be signed by the applicant(s) and dated.

The form of appeal regarding the proposals made in the conclusion of civic anticorruption expert assessment can be of two types:

- an appeal in form compliant with the Law and specifying all the circumstances of civic anticorruption expert assessment, substantiation of the presence of corruptogenic factors and proposals on possible methods to improve the RA or its draft;
- an appeal in form compliant with the Law and containing a proposal to consider the conclusion of civic anticorruption expert assessment, which has been prepared in accordance with recommendations above and designed as an annex to that appeal.

Selection of an appeal form will depend on the volume of conclusion of civic anticorruption expert assessment.

If the volume is not extensive, such conclusion can be designed as a single appeal.

Should the volume be extensive, it is advisable to prepare an appeal as two separate documents: an appeal to the government body or body of local self-government with a proposal to consider the conclusion of civic anticorruption expert assessment and conclusion of civic anticorruption expert assessment as an annex thereto.

### ***Obligation of government body or body of local self-government to accept and review an appeal.***

Government bodies and bodies of local self-government and officials shall consider proposals (comments) and notify applicants of consideration results. That is, as a general rule, appeals that are properly executed and filed in the prescribed manner shall be accepted and reviewed.

However, there are exceptions to this rule.

A written appeal which lacks indication of a place of residence, not signed by the applicant (applicants), or appeal that is authored by an unidentifiable source (whereby it is deemed anonymous) cannot be accepted for consideration and processing.

The Law also provides for the grounds for returning the appeal to applicant with appropriate explanations:

- an appeal is incompliant with the above-mentioned requirements set by the Law. In this case, the appeal shall be returned within ten days of its receipt;
- an appeal is missing data necessary for taking an informed decision of government body or official. In this case, the appeal shall be returned within five days.

## 7. HOW TO REPORT EXPERT ASSESSMENT FINDINGS TO GOVERNMENT BODIES?

According to Article 20 of the Law, appeals shall be reviewed and the respective decision shall be taken within one month from the date of their receipt, and those appeals that do not require additional examination shall be decided immediately, but not later than within fifteen days from the date of their receipt. If the issues raised in appeal cannot be resolved within one month, the head of a relevant body or his/her deputy shall establish the deadline for consideration of the appeal and notify the applicant thereof.

The total period of resolving issues raised in an appeal may not exceed 45 days. This period may be reduced upon reasonable written claim of the applicant.

Taking into account the specifics of appeals-proposals relating to results of civic anticorruption expert assessment, a reasonable period for reviewing such appeals may vary from one month to 45 days since the conclusions of civic anticorruption expert assessment undoubtedly require further examination by authorized officials of a government body or body of local self-government. However, if the period of consideration exceeds one month, such period shall be established by the head or deputy head of a relevant body and the applicant shall be notified thereof.

### **7.2. CONDUCTING CIVIC ANTICORRUPTION EXPERT ASSESSMENT IN ACCORDANCE WITH PROCEDURE OF RESOLUTION #976 OF THE CABINET OF MINISTERS OF UKRAINE ON APPROVAL OF PROCEDURE FOR PROMOTING CIVIC EXPERT ASSESSMENT OF EXECUTIVE BODIES ACTIVITIES AS OF 5 NOVEMBER 2008**

In this case, the procedure for reporting the results of civic anticorruption expert assessment to government bodies is an integral part of the established procedure for carrying out civic expert assessment of activities of executive bodies.

The Procedure for Promoting Civic Expert Assessment of Executive Bodies Activities is approved by Resolution #976 of the Cabinet of Ministers of Ukraine as of 5 November 2008. This Procedure determines the process of promoting civic expert assessment of executive bodies' activities carried out by civil society organizations. Civic expert assessment of executive bodies' activities provides for civil society organizations to: (a) evaluate executive bodies' activities; (b) evaluate the effectiveness of decisions making and implementation by those bodies; (c) prepare proposals for solving important social problems to be taken into account by executive bodies in their work.

Therefore, civic expert assessment of executive bodies' activities may evaluate activities of executive bodies on development of regulations and/or making decisions aimed at detecting corruptogenic factors subject to subsequent development of proposals as to their elimination, i.e., solving the important social problem of corruption.

As opposed to the Law of Ukraine on Citizen Appeals, which applies to citizens or bodies (groups) of citizens, this Procedure applies only to institutions (civil society organizations) - CSOs, professional and creative unions, associations of employers, charitable and religious organizations, public self-organization bodies, non-government media and other non-commercial institutions and organizations legalized in accordance with the law.

Notwithstanding its title, this Regulation applies not only to government bodies, particularly executive ones, but also to bodies of local self-government. For the latter, nevertheless, it acts as a recommendation.

It does not apply to legislative bodies (the Verkhovna Rada) and judicial bodies (the State Justice Administration, courts of all levels and jurisdictions, bodies of justice self-government).

Unlike other methods of carrying out civic anticorruption expert assessment, this procedure provides for filing a request for conducting an expert assessment to a relevant government body before the expert assessment starts.

#### **Requirements for a request**

To carry out civic expert assessment, a CSO shall file a request to the relevant government body. Prior to preparing such request, one needs to determine activities that will be subject to expert assessment. In this case, it is necessary to determine a decision or regulatory act, the adoption of which will be subject to civic anticorruption expert assessment.

## 7. HOW TO REPORT EXPERT ASSESSMENT FINDINGS TO GOVERNMENT BODIES?

A request for carrying out a civic expert assessment of activities of an executive body or body of local self-government filed to the relevant executive body or body of local-self government shall contain:

- Name of the organization (CSO);
- Information about the legalization of the organization, i.e. registration with the Ministry of Justice;
- Location, i.e., legal address and actual location, should they differ;
- e-mail address;
- Subject and goal of the civic expert assessments, such as evaluating a draft regulatory act or adoption of a decision for possible corruptogenic factors;
- List of documents and other materials necessary for civic expert assessment compliant with the subject and goal of the civic expert assessment. It is advisable to specify the type, name, details or content of necessary documents, if available;
- Address, at which the answer to the request should be sent or full name of the person authorized to receive such answer and his/her contact telephone number and email address;
- Signature and date.

The procedure for filing a request to a government body for carrying out civic anticorruption expert assessment is the same as described above - by registered mail, mail or courier service with receipt confirmation. In the case of hand delivery of request to the government body office, it is necessary to prepare two copies of the request – the first one should be left at the office of the government body and the second should bear the mark of the government body office confirming the registration of the request. Confirmation should include at least the date of registration, registration number and the name of the person who performed the registration.

### **Obligation of government body or body of local self-government to accept and review a request**

After receiving a written request in accordance with aforementioned requirements from an organization (civil society institution), the executive body shall facilitate civic expert assessment. To do this, after receipt of the written request for civic anticorruption expert assessment from a civil society institution, an executive body shall:

- within one week after the receipt date, issue an order (instruction) on facilitation of expert assessment and measures on producing materials, including the full name and title of a person (persons) responsible for ensuring interaction with civil society institution. This order (instruction) shall be made available to the civil society institution initiating the civic expert assessment within three days after its issuance;
- establish, where appropriate, a working group for preparation of materials involving representatives of civil society institution that initiated civic expert assessment;
- within one week after the receipt date, post information regarding plans the civic expert assessment and measures taken by the government body to facilitate it on its website;
- provide the civil society institution with the materials or duly certified copies of them with due regard to the requirements and deadlines established by the Law of Ukraine on Access to Public Information: a total 5 business day period which can be extended up to 20 business days in case of large volume of materials or a need to search information in large data arrays. This information shall be made available gratis. If the information request involves making copies of more than 10 pages, the applicant shall reimburse the actual cost of copying and printing.

This procedure is most conducive for conducting civic anticorruption expert assessments, as it involves cooperation between civil society institutions and representatives of a government body, enables civic experts to obtain necessary documents and materials effortlessly. Officials of executive bodies are prohibited from obstructing civic expert assessments and interfering with relevant activities of civil society institutions.

## 7. HOW TO REPORT EXPERT ASSESSMENT FINDINGS TO GOVERNMENT BODIES?

After necessary materials are obtained, civic anticorruption expert assessment shall be carried out with subsequent preparation of the conclusion based on the proposals on addressing corruptogenic factors in RAs, draft RAs or certain activities of government bodies such as making certain decisions.

After civic anticorruption expert assessment is completed, conclusions shall be sent to the relevant government body in the same manner as the request for the expert assessment. Taking into account the procedure of the civic expert assessment of executive bodies' activities and specifics of anticorruption expert assessment, the expert conclusion should be sent with a cover letter. The letter should briefly describe the history of the issue, including who, when and to which body has filed the request for the civic expert assessment; the goal and subject of the expert assessment; which actions were taken by the government body (issuing an order specifying input data and responsible persons, creation of a working group, etc.); period of the expert assessment and names of experts and summary of expert assessment results and proposals. The conclusion of civic anticorruption expert assessment in form of detailed description of the analysis performed, including the methods used, arguments, etc., shall be attached to that letter.

Proposals developed by civil society institutions upon the findings of the civic expert assessment shall be taken into account by the executive body when developing social and economic development programmes, state targeted and regional programmes, budgets at various levels, addressing current issues and concerns.

### **Actions of an executive body upon receipt of expert proposals**

Having received expert proposals from civil society institution, an executive body shall:

- within one week post them on its website;
- consider them at the earliest meeting of the panel with the participation of representatives of the civil society institutions that carried out civic expert assessment;

If no panel had been established, the expert proposals shall be considered by the head of the executive body within two weeks with the participation of representatives of civil society institutions that carried out civic expert assessment

- develop and approve actions to address the resulting findings of expert assessment;
- within ten days, provide civil society institution that carried out the civic expert assessment with a written response setting out the results of expert proposal consideration, as well as actions aimed at their implementation. This information shall also be made public at the website;
- file civic expert proposals in hardcopy and electronic form to the Secretariat of Cabinet of Ministers of Ukraine for uploading to the government website "Civil Society and the Government";
- publish i) full name of manager, mail address, contact information of the civil society institution that conducted the civic expert assessment, the subject and timing of expert assessment; II) the date of commencement of the civic expert assessment (day of receipt of the request); III) expert proposals submitted by civil society institution upon the results of civic expert assessment; IV) measures approved by executive body aimed at implementation of the expert proposals; V) response of executive body to civil society institution on the results of consideration of expert proposals and relevant action taken to implement them.

For more information about civic expert assessment of executive bodies' activities, please refer to: M. Latsyba, Civic Expert Assessment of Executive Bodies' Activities: Step by Step / M.Latsyba, O.Khmara, O.Orlovskiy; Ukrainian Independent Centre for Political Research - K.:Agency "Ukraine", 2010. - 96 p. Electronic version of the publication is available at <http://www.ucipr.kiev.ua>.



## 7. HOW TO REPORT EXPERT ASSESSMENT FINDINGS TO GOVERNMENT BODIES?

### 7.3. FILING THE CONCLUSION OF CIVIC ANTICORRUPTION EXPERT ASSESSMENT IN ACCORDANCE WITH PROCEDURES OF RESOLUTION #996 OF THE CABINET OF MINISTERS OF UKRAINE ON ENSURING PUBLIC PARTICIPATION IN THE STATE POLICY DEVELOPMENT AND IMPLEMENTATION AS OF 3 NOVEMBER 2010

Resolution #996 of the Cabinet of Ministers of Ukraine as of 3 November 2010 on Ensuring Public Participation in the State Policy Development and Implementation approved the Procedure of Public Consultations Regarding the Issues of the State Policy Development and Implementation and Standard Regulation on the Civic Council at a Ministry, other Central Executive Body, the Council of Ministers of the Autonomous Republic of Crimea, oblast, Kyiv and Sevastopol municipal, district and district state administrations in the Cities of Kyiv and Sevastopol.

The findings of civic anticorruption expert assessment may be filed according to this Resolution in two ways:

- through public consultation;
- through civic council activities.

#### 7.3.1. Filing conclusions of civic anticorruption expert assessment through public consultation

The procedure of conducting public consultations sets out essential requirements for organizing and conducting public consultations by executive bodies on the issues of development and implementation of state policy, in particular national anticorruption policy. Results of public consultation shall be taken into account by the executive authority when taking final decision or in further work. Public consultations shall be organized and conducted by the draft RA initiator or a body that prepares proposals for implementation of national policy in the relevant area of governance or public life. Public consultations are held in form of public debate (direct form) and public opinion research (indirect form).

Public consultations in form of public debate are compulsory for:

- draft RAs that are of major social importance and concern the constitutional rights, freedoms, interests and obligations of citizens as well as regulatory acts providing for benefits to, or imposing restrictions on business entities and civil society institutions, exercising powers of local self-government delegated to executive bodies by relevant councils.
- draft RAs;
- draft national and regional economic, social and cultural development programmes and decisions regarding the progress achieved in their implementation;
- annual reports of administrators of budget funds.

Therefore, the majority, if not all draft RAs and current RAs, which require civic anticorruption expert assessment, shall be subject to mandatory public consultations.

Public consultations can take form of: conferences, forums, public hearings, roundtables, sessions, public meetings, television and radio debates, web-conferences, and e-consultations.

Nowadays, the most popular and common form of public consultation among government bodies is holding e-consultations on the Government website "Civic Society and the Government" and official websites of executive bodies.

Within the framework of public debate, proposals and comments are submitted in oral and written form or sent by email to responsible person of executive body and to the Government website "Civic Society and the Government" and the official websites of executive bodies.

Proposals and comments received at the Government website "Civic Society and the Government" and official websites of executive bodies shall be posted on these websites within five business days after their receipt.

Civil society organizations, research and expert organizations and other legal entities submit their proposals and comments in writing, specifying their names and locations. Anonymous proposals are not registered and are disregarded.

## 7. HOW TO REPORT EXPERT ASSESSMENT FINDINGS TO GOVERNMENT BODIES?

It is recommended to file proposals and comments with the enclosed results of civic anticorruption expert assessment both in writing and electronic form.

### **Obligations of government bodies to take into account the results of public consultation**

Proposals and comments submitted during a public consultation shall be considered and analyzed with the participation of relevant experts where applicable.

Upon the results of a public consultation, executive bodies shall prepare a report specifying:

- the name of executive body which carried out public consultation;
- essence of the issue or name of the draft RA submitted for discussion;
- data of individuals who took part in the public consultation;
- information on proposals received by the executive bodies as a result of public consultation;
- information regarding proposals and comments of the public subject to compulsory justification of the decision made and the reasons for ignoring proposals and comments;
- information of the decisions made as a result of the public consultation.

The executive body shall make the results of the public consultation available for general public through posting them on its website or in any other appropriate manner no later than within two weeks after its completion.

### **7.3.2. Filing conclusions of civic anticorruption expert assessment through civic council activities**

A civic council at a Ministry, other central executive body, the Council of Ministers of the Autonomous Republic of Crimea, oblast, Kyiv and Sevastopol municipal, district and district state administrations in the Cities of Kyiv and Sevastopol (the "civic council") is a permanent collective elected advisory and consultative body established to ensure the participation of citizens in policy-making and implementation, state affairs management, exercising civic control over the activities of executive bodies, establishing effective cooperation of these bodies with the public, taking into account public opinion in the development and implementation of the state policy.

The main tasks of a civic council include exercising public control over the activities of executive bodies and promoting their consideration of public opinions in development and implementation of national policies, which is generally a task of civic anticorruption expert assessment.

Functions of a civic council include holding civic expert assessments in general and civic anticorruption expert assessments of draft regulatory acts in particular, as well as exercising public control over taking into account by a government body of proposals and comments of the public, compliance by the government body with regulatory acts aimed at preventing and countering corruption.

Accordingly, civic anticorruption expert assessment of a relevant body can be carried out by a civic council independently or through involving representatives of national and international experts and scientific organizations, enterprises, institutions and organizations (upon consent of their heads), and individual experts. The necessity for civic anticorruption expert assessment and involvement of external experts shall be considered at a meeting of the civic council subject to the adoption of the relevant decision.

In this case, the conclusion of civic anticorruption expert assessment shall be considered at a meeting of the civic council which decides on its approval and submission to the relevant body for consideration. The conclusion of the expert assessment may be executed as an annex to the decision of a civic council. Decisions of civic council bear advisory character and are not compulsory for consideration by the respective body.

## 7. HOW TO REPORT EXPERT ASSESSMENT FINDINGS TO GOVERNMENT BODIES?

The civic council shall inform its government counterpart and the public about its work through posting on a special section “Civic Council” of the official website of the body. It can also inform about its work by publicizing materials on the decisions made, minutes of meetings and other documents. These can include decisions on conducting civic anticorruption expert assessments and expert assessment conclusions, which were considered at the civic council meeting and submitted to the relevant government body for consideration.

A decision made by the body upon the results of consideration of civic council proposals shall be made available for the members of the civic council and general public within ten days after its adoption through posting it on the official website of the body or in any other appropriate manner. Information regarding the adopted decision shall contain information about the civic council proposals taken into account or a grounded refusal to accept them.

Therefore, current legislation of Ukraine provides for at least four ways (procedures) to report the results of civic anticorruption assessment to a government body. Selection of a certain procedure depends primarily on the mechanism utilized for civic anticorruption expert assessment per se (civic expert assessment, civic council, public debate or independent civic anticorruption expert assessment). The object and subject of civic anticorruption expert assessment, experience of cooperation or communication with the government body, as well as other circumstances may also influence the ultimate choice.

## 8. IF YOU FALL ON DEAF EARS, WHAT NEXT?

Cooperation between civil society institutions and government bodies has proven that the latter do not always comply with the relevant RAs that govern relations with the public in general and specifically in terms of taking into account the results of civic expert assessments. This is especially true for local government bodies.

For such cases, legislation provides procedures to appeal action and inaction of government bodies that violate requirements of the relevant RAs in terms of responding to appeals and proposals of civil society institutions and individual citizens.

Common violations by government bodies may include:

- failure to provide an individual with response in relation to the results of consideration of his/her appeal;
- violation of the term of response or procedure of extending of the time for consideration of relevant appeal or request;
- ignoring a request for civic expert assessment of activities of executive body, i.e., failure to take appropriate action set forth in the Procedure for Promoting Civic Expert Assessment of Executive Bodies' Activities;
- failure to publish expert proposals submitted upon results of civic expert assessment, generalized proposals received within the framework of open public debates, and publish the results of consideration of the conclusion of civic expert assessment;
- failure to take into account expert proposals provided by civil society organizations;
- failure to provide a reasoned refusal to use the conclusions of civic anticorruption expert assessment;
- other violations of RA requirements, under which civic anticorruption expert assessment has been held and conclusions of which were filed to a government body.

Please, note that the government body shall treat the conclusions of civic anticorruption expert assessment as non-mandatory (advisory).

The government body shall carefully consider the conclusions of such assessment, assess them or take into account or provide a reasoned answer as to ignoring such conclusion. In other words, the government body is not obliged to take into account all the findings and recommendations contained in the conclusions of civic anticorruption expert assessment.

Only action or inaction that violates requirements of the relevant regulatory acts may be appealed.

In case of disagreement with the decision of government body to ignore certain proposals or recommendations, or with reasons for refusal to take certain proposals or recommendations into account, it is advisable to bring the issue into public discourse – to the media, scientific professional publications, advocacy campaigns, etc.

Action or inaction of the government body or its official may be appealed to three institutions:

- the higher executive body in accordance with the procedure set forth in the Law of Ukraine on Citizen Appeals;
- the prosecutor's office as prescribed by the Law of Ukraine on the Prosecutor's Office and the Law of Ukraine on Citizen Appeals;
- an administrative court in accordance with the procedure established by the Code on Administrative Procedure of Ukraine.

## 8. IF YOU FALL ON DEAF EARS, WHAT NEXT?

### 8.1. APPEALING TO THE HIGHER EXECUTIVE BODY

Action or inaction of an executive body or its official may be appealed to the highest executive body.

Such appeals shall be filed to the Head of higher executive body in accordance with the procedure set forth in the Law of Ukraine on Citizen Appeals and take the form of complaint. Complaints to the action or decision of a government body, body of local self-government or official shall be filed in the order of subordination to the higher body or official. It does not deprive a citizen of the right to appeal to court in accordance with the current law. If such body is not available or if the citizen is unsatisfied with the decision taken in relation to his/her complaint – he/she may appeal directly to court. A citizen may file a complaint personally or through his/her authorized representative.

Together with complaint, a citizen shall submit decisions or copies of decisions that were earlier made in relations to his/her complaint, as well as other documents necessary for consideration of the complaint. They shall be returned to the citizen after consideration of complaint.

Complaint regarding the previously appealed decision may be filed to higher-level body or its official within one year after the decision was made, but no later than one month after the date when a citizen was able to study a decision. Complaints filed in violation of the aforesaid deadline will be disregarded. In case of a default to the above term for a valid reason, the body or official considering the appeal may extend this deadline.

If a citizen disagrees with a decision of the higher government body that considered the complaint, the decision may be appealed to court within the time stipulated by the law of Ukraine.

A citizen who has filed an appeal or complaint to government bodies, bodies of local self-government or individual officials has the right to:

- provide arguments to the reviewing officer and participate in the review of appeal or complaint;
- study the review materials;
- file additional materials or ask the body, which considers the appeal or complaint, to request such materials;
- be present during consideration of appeal or complaint;
- resort to legal counsel or representative of staff or individuals/institutions that provide legal aid, and formalize this authorization in accordance with the law;
- receive a written response regarding the results of consideration of appeal or complaint;
- issue a request (orally or in writing) regarding the confidentiality of consideration of appeal or complaint
- claim for damages caused by violation of the statutory procedure for consideration of appeals.

Government authorities, bodies of local self-government, their heads and other officials within their competence shall:

- review appeals or complaints impartially, comprehensively and promptly;
- issue a reasoned resolution if a decision is made to limit a citizen's access to relevant information during the consideration of appeal or complaint;
- at the citizen's request, invite him/her to take part in the meeting of relevant body that will consider his/her appeal or complaint;
- cancel or modify the appealed decisions in cases provided for in the laws of Ukraine; if they do not comply with the law or other regulations, immediately take action to terminate illegal actions, identify and eliminate the causes and conditions that provoked the violation;
- ensure recovery of violated rights and real implementation of the decisions made with regard to appeal or complaint;

## 8. IF YOU FALL ON DEAF EARS, WHAT NEXT?

- notify the citizen in writing of the results of consideration of the appeal or complaint and the decision made;
- if the appeal or complaint has been deemed unreasonable, to explain the procedure for appealing the decision made upon it;
- prevent undue transfer of consideration of appeal or complaint to other bodies;
- personally organize and check the status of consideration of citizen's appeals and complaints, take action to eliminate the causes that provoke them, systematically analyze and inform the public about the progress of this work.

### 8.2. APPEALING TO THE PROSECUTOR'S OFFICE

A prosecutor exercises control over the compliance with legal requirements applicable to the procedure for consideration of complaints by all bodies, enterprises, institutions, organizations, and officials. In particular, control over compliance with the law on citizen appeals is exercised by the Prosecutor General of Ukraine and subordinate prosecutors. Within the powers conferred upon them and pursuant to the effective law, they take action to recover the violated rights, protect legitimate interests of citizens and bringing offenders to justice.

Complaints shall be filed in accordance with procedure set forth in the Law of Ukraine on Citizen Appeals.

The prosecuting agencies shall exercise control only over the compliance with, and enforcement of laws (including laws on personal security, socio-economic, political and personal rights and freedoms of citizens, protection of their honour and dignity), unless the relevant law provides for a different procedure for protecting these rights.

It is advisable to appeal to prosecuting agencies if a government body or its official violates the Law of Ukraine on Citizen Appeals both in case of direct appeal and if the higher executive body ignores a submitted complaint.

### 8.3. APPEALING TO ADMINISTRATIVE COURT

Any decisions, action or inaction of government entities may be brought before administrative courts unless such decisions, action or inaction are subject to a different procedure of court proceeding as established by the Constitution or laws of Ukraine. The jurisdiction of administrative courts applies to public law disputes, including disputes between individuals and legal persons and a government entity regarding the appeal of its decisions (RAs or legal acts of individual effect), action or inaction.

Decisions, action or inaction of government bodies or bodies of local self-government shall be appealed in accordance with the Code on Administrative Procedure of Ukraine. To appeal actions of district and regional administrations, it is necessary to apply to district administrative court. Actions of central executive bodies shall be appealed to the Kyiv District Court of Appeal.

It is advisable to apply to an administrative court in cases when an appeal to higher executive body or a prosecutor's office has failed. At the same time, citizens are also eligible to appeal directly to administrative court. On the other hand, such appeal may be less effective.

Appeal to an administrative court aimed at protection of the rights, freedoms and interests in public relations is called an "administrative claim".

An administrative claim is filed personally by a claimant or his/her representative through submitting a statement of claim to the court of first instance in form of written statement of claim. The statement of claim can be sent to the administrative court by post.

The written statement of claim can be executed through filling in the statement of claim form as provided by the court. At the claimant's request, an officer of the administrative court secretariat may assist in preparing the statement of claim. In addition, everyone shall have the right to legal aid in considering cases in administrative courts, including free legal aid provided on the grounds and in the manner prescribed by Law on Legal Aid #3460-1 as of 2 June 2011.



## 8. IF YOU FALL ON DEAF EARS, WHAT NEXT?

In this case, the administrative claim may include requirements for cancellation or invalidation of decision of defendant (a government body) wholly or in part, or obliging the defendant to make a decision or certain action.

A statement of claim shall specify:

- the name of the administrative court, to which the statement of claim is filed;
- name of the claimant, postal address, contact phone number, e-mail address, if any;
- name of the defendant, position and place of employment of the official or officer, postal address, contact phone number, e-mail address, if any;
- content of claims and description of circumstances used by the claimant to prove his/her claims, and in case if the claim is filed against multiple defendants – the content of claims in respect to each of the defendants;
- if necessary – a request for exemption from payment of court fees and from payment for legal aid and the provision of legal aid, where a relevant body refused the provision of legal aid to person; request on disclosure of evidence; summoning witnesses, etc.;
- the list of attached documents and other materials.

In support of circumstances that prove the claim, the claimant shall provide evidence and in case of a failure shall specify evidence he/she cannot provide by him/herself and the reasons why he/she cannot submit such evidence. Copies of the statement of claim and copies of all relevant documents shall be attached thereto with due regard of the number of defendants and third parties, unless an administrative claim is filed by a government entity.

The statement of claim shall be signed by the claimant or his/her representative specifying the signing date.

If the statement of claim is filed by attorney, it shall specify the name of attorney, his/her postal address, contact phone number, and e-mail address, if any. A power of attorney or other document confirming the attorney's authorities shall be attached to the statement of claim.

Decisions, action or inaction of government bodies or bodies of local self-government can be appealed within one year. The statutes of limitation of actions starts on the day when the person discovered or was able to discover the violation of his/her right or identified or was able to identify the person who violated it.

If applying to a court, it is strongly recommended to engage a legal counsel or other legal professional. Note that all governments have a lawyer or even legal departments or divisions in their structure. To make these appealing methods more effective it is generally recommended that they are accompanied with advocacy campaigns, engaging the public and media, drawing attention to the issue through participating in conferences, seminars, round tables and other events. For more information about appealing government actions, please see Section 4 of "Civic Expert Assessment of Executive Bodies' Activities: Step by Step"<sup>1</sup>.

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<sup>1</sup> M.Latsyba , Civic Expert Assessment of Executive Bodies Activities: Step by Step / M.Lastyba, O.Khmara, O.Orlovskiy; Ukrainian Independent Centre for Political Research - K.: Agency "Ukraine", 2010. - 96 p. Electronic version of the publication is available at <http://www.ucipr.kiev.ua>







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