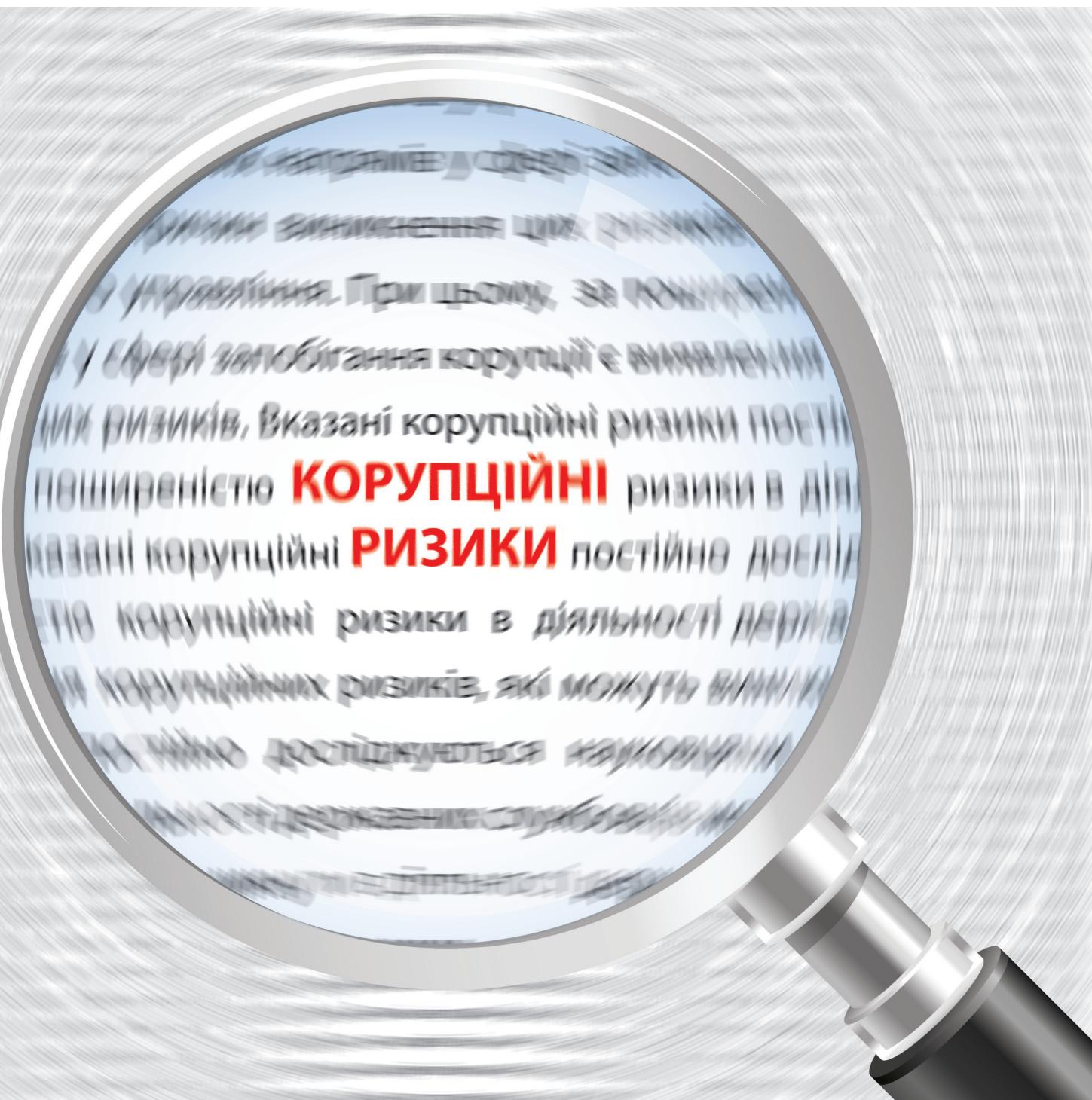


# CIVIC ANTICORRUPTION EXPERT ASSESSMENT METHODOLOGY: SHORT GUIDE



## **Civic Anticorruption Expert Assessment Methodology: Short Guide**

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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 assessments.

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# **CIVIC ANTICORRUPTION EXPERT ASSESSMENT METHODOLOGY: SHORT GUIDE**

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## FOREWORD

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. Even if legal regulation seems proper at first sight, it often contains significant gaps allowing certain officials to abuse incomplete and ambiguous boundaries of their powers. Although the mechanism of anticorruption expert assessment of draft regulatory acts has been known in Ukraine for over 7 years, the government started taking real measures for its implementation just recently. In 2010, the Ministry of Justice of Ukraine developed an anticorruption expert assessment methodology and endorsed it within a relevant decree.

According to it, all draft regulatory acts tabled before the Ministry of Justice and its territorial bodies shall undergo anti-corruption expert assessment as a part of legal expert assessment.

The public has also joined the process of such corruption risk assessment. The respective possibility is provided for in the relevant anticorruption Law ("On Principles of Preventing and Countering Corruption"). Its Article 15 directly envisages the right of citizens and their associations to carry out civic anticorruption expert assessments. In addition, the Cabinet of Ministers of Ukraine adopted Resolution #966 on Ensuring Public Participation in the State Policy Development and Implementation as of 3 November 2010. In accordance with it, civic councils were empowered to conduct civic expert assessments, *inter alia* themed on anticorruption. Importantly, resulting council proposals have to necessarily be considered by government authorities that are linked to those respective councils.

In general, several simple steps comprise civic anticorruption expert assessment. These include:

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

- 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**

This step refers to analysis of the consultative process between the government body and public on the draft regulatory act. 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). Public consultations 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.

### 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 abuse 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.

Although it is quite easy for civic experts to analyze the RAs, it should be noted that CSOs conduct civic anticorruption expert assessment only sporadically. This is due both to the lack of professional civic experts and the complexity of the use of methodology proposed by the Ministry of Justice of Ukraine.

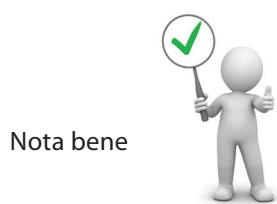
Therefore, a group of Ukrainian non-governmental organizations spearheaded by Transparency International Ukraine with the support of the United Nations Development Programme in Ukraine have developed these Guidelines on conducting civic anticorruption expert assessments. The Guidelines are designed to 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 draft regulatory acts.

In developing the Guidelines, the compilers took into account the best national experience in the area of corruptogenic factor analysis, including government-authored approaches. The team did not aspire either to prepare an exhaustive list of corruptogenic risks or describe all possible ways to avoid them. They were committed to help civic experts to develop expert conclusions upon the findings of anticorruption expert assessment that would user expectations from the government to the fullest degree. The proposed list of corruptogenic criteria is not exhaustive and situations under consideration are generic. In carrying out their own anticorruption expert assessments, activists may identify and deal with other corruptogenic factors.

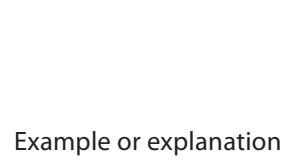
Transparency International Ukraine expresses sincere gratitude to experts who have made a significant contribution to the development of these Guidelines, especially Ihor Osyka (Institute of Applied Humanitarian Research) Mykola Khavroniuk (Centre for Political and Legal Reforms), Tetiana Yatskiv (Centre of Civic Advocacy) and Oleksii Khmara (Transparency International Ukraine). Our special gratitude goes to Yulia Shcherbinina and Maksym Klyuchar (United Nations Development Programme in Ukraine) for their energy and support that continuously inspired the authors to achieve common goals.



**Legend:**



Nota bene



Example or explanation



Question to the expert



## GLOSSARY

<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>	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.
<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>

## GLOSSARY

<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.
<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.

## GLOSSARY

<b>INDICATORS OF DISCRETIONARY POWERS</b>	<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> <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>GOVERNMENT BODIES</b>	Executive bodies and other bodies of state power, government bodies of the Autonomous Republic of Crimea, their executive offices and territorial bodies (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.

## 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.

Thus, according to Section 3, Article 18 of the Law of Ukraine on Preventing and Countering Corruption, draft laws and other draft RAs that stipulate benefits and privileges to certain business entities and delegation of authorities of government bodies, shall be posted for public scrutiny on the official websites of government bodies at the earliest possible convenience, but not later than next day after they are filed to the relevant government body by appropriate entity. Such draft RAs may be subject to civic anticorruption expert assessment as an expression of professional and reasoned public opinion on existence of possible corruptogenic factors in their provisions.

According to paragraph 4 of item 4 of Model Regulation on 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 councils have the authority to conduct civic anticorruption expert assessments of draft regulatory acts.

## 1. CONCEPT, SUBJECT, OBJECT, AGENTS AND GROUNDS FOR CONDUCTING CIVIC ANTICORRUPTION EXPERT ASSESSMENT



The law does not establish special requirements for 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.

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").



Please, refer to Section 4 of these Guidelines for more information on how to develop an expert conclusion upon findings of civic anticorruption expert assessment.

## 2. CONCEPT AND FEATURES OF A REGULATORY ACT

According to Section 3, Article 15 of the Law of Ukraine on Preventing and Countering Corruption, individuals, civic associations and legal entities may conduct civic anticorruption expert assessment of draft RAs at their own initiative.

### Most commonly corruptogenic factors are discovered in draft regulatory acts that deal with:

- Human and civil rights and freedoms, rights and freedoms of entities governed by private law
- Powers of government bodies and bodies of local-self government and individuals authorized to exercise the functions of the state or local self-government
- Provision of administrative services
- Allocation and expenditure of funds of State budget and local budgets
- Bidding (tender) procedures
- Other issues that can result in improper receipt of benefits, services, privileges or other tangible and/or intangible advantages



Thus, a civic expert should determine whether a relevant act (decision or another document) is an appropriate draft regulatory act.

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 identify whether a respective document is an RA.

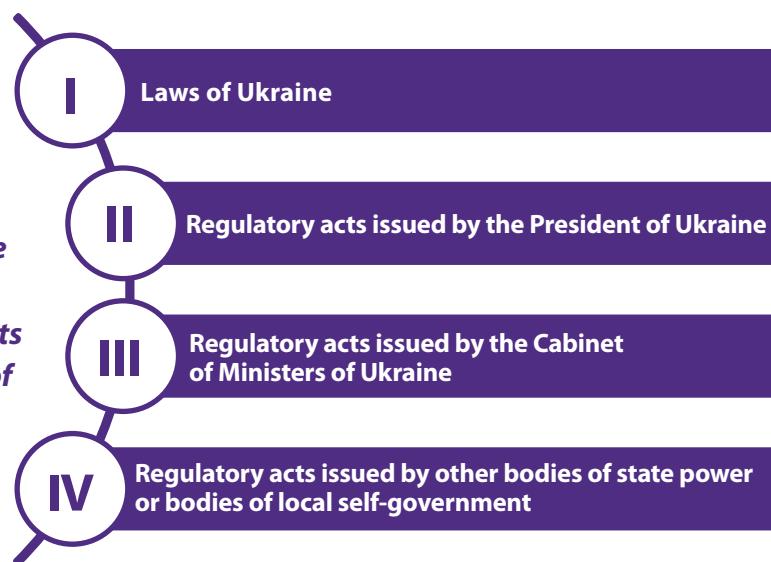
For the time being the acting laws of Ukraine do not clearly specify what acts shall be classified as such (no regulatory acts list is available), but there is a number of signs indicating that a respective document is an RA



**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.

## 2. CONCEPT AND FEATURES OF A REGULATORY ACT

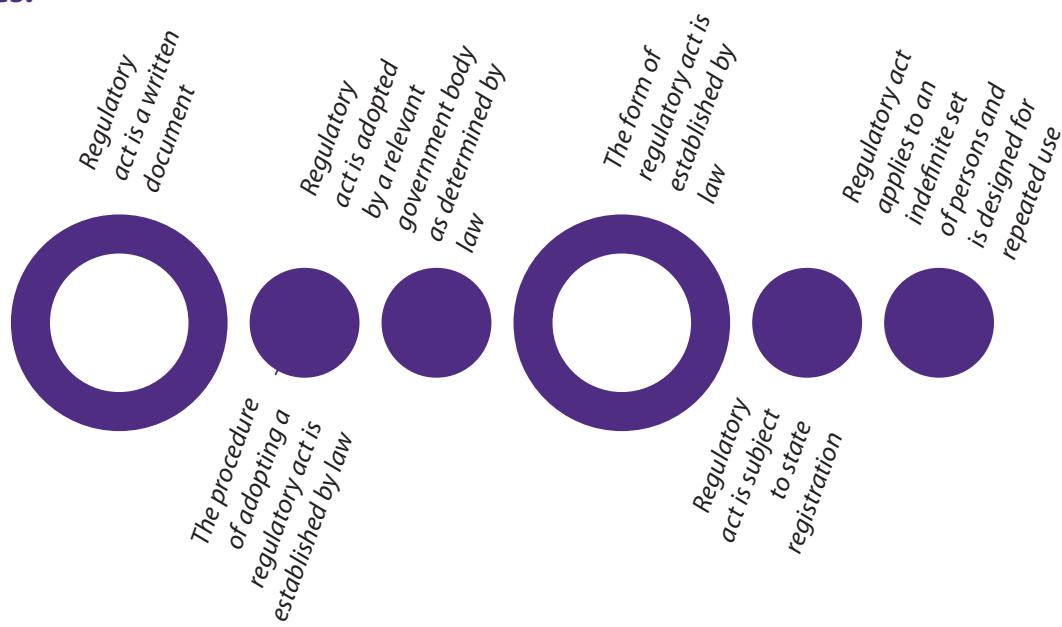
**Regulatory acts are divided into four groups (the same approach is proposed by Order #1380/5 of the Ministry of Justice of Ukraine on Approval of Guidelines for Expert Assessment of Draft Regulatory Acts for Possible Corruptogenic Provisions as of 23 June 2010):**



However, there is another (simpler) classification, which divides regulatory acts into two groups:

- I. Laws of Ukraine;
- II. Subsidiary regulations.

### RA attributes:



## 2. ATTRIBUTES OF A REGULATORY ACT

**Table 1: Attributes of a regulatory act**

<b>REGULATORY ACTS ARE WRITTEN DOCUMENTS</b>	Ukraine has inherited Romano-Germanic (or Continental European) legal system, in which regulatory acts prevail over other sources of objective law. Orders, instructions, customs, precedents, etc. are not regulatory acts.
<b>REGULATORY ACTS ARE ADOPTED BY A RELEVANT GOVERNMENT BODY AS DETERMINED BY LAW</b>	For example, entities authorized to adopt relevant RAs may include the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, Ministries and other central executive bodies, their territorial bodies, other government bodies, which possess rule-making powers according to law, the Verkhovna Rada of Autonomous Republic of Crimea, the Council of Ministers of Autonomous Republic of Crimea, Heads of local state administrations, local communities, bodies of local self-government, etc.
<b>THE FORM OF REGULATORY ACT IS ESTABLISHED BY LAW</b>	<p>The form, in which a regulatory act is adopted, shall be prescribed by a law containing relevant instructions. For example, in accordance with Article 117 of the Constitution of Ukraine, the Cabinet of Ministers of Ukraine shall within its jurisdiction issue resolutions and orders that are compulsory to implement.</p> <p>According to part one of Article 41 of the Law of Ukraine on Local State Administrations, Heads of local state administrations are authorized to issue orders.</p>
<b>THE PROCEDURE OF ADOPTING A REGULATORY ACT IS ESTABLISHED BY LAW</b>	<p>Each RA shall be developed and adopted according to relevant procedure.</p> <p>Procedures of development and adoption shall be established by relevant legislative acts. For example, the procedure of adopting orders by Heads of local state administrations is described in Article 41 of the Law of Ukraine on Local State Administrations and by procedural rules of local state administrations adopted on the basis of Resolution #2263 of the Cabinet of Ministers of Ukraine on Approval of Model Procedural Rules of Local State Administration as of 11 December 1999.</p>
<b>REGULATORY ACTS APPLY TO AN INDEFINITE SET OF PERSONS AND ARE INTENDED FOR REPEATED USE</b>	<p>Analysis of this attribute is the most common expert task, whereas it is necessary to perform correct distinction even if an RA under review has other respective attributes. A guiding suggestion on the regulatory nature of a document can appear in a law providing for the definition of a given form of the act. For example, as indicated above, in accordance with Article 117 of the Constitution of Ukraine, the Cabinet of Ministers of Ukraine shall issue acts in forms of resolutions and orders. However, part 2 of Article 50 of the Law of Ukraine on the Cabinet of Ministers of Ukraine stipulates that RAs of the Cabinet of Ministers of Ukraine shall be issued in form of resolutions only. On the other hand, acts that govern organizational, administrative and other matters shall be issued in form of orders.</p> <p>The expert's task is ever more difficult when a law does not provide such guiding suggestions. For example, according to Article 41 of the Law of Ukraine on Local State Administrations, Heads of local state administrations are authorized to issue orders that can be both of regulatory nature or govern other matters.</p> <p>For example, Order #138 of the Head of Ivano-Frankivsk Oblast State Administration on the Prohibition of "Jeeping" and Use of other Vehicles in the Conservation Area of Ivano-Frankivsk Oblast as of 18 March 2010 applies to an indefinite set of persons, and is intended for repeated use. Therefore, it is the regulatory act. On the other hand, for example, Order of the Head of Sumy Oblast State Administration on Appointing M.V. Sukholytko as Acting Head of the Agricultural Development Department of the State Oblast Administration as of 20 February 2008 is not a regulatory act, since it applies to a specific individual and is designed for a single use. Similarly, it must be borne in mind that despite a strong public interest in the issues of land, the acts on land use cannot be classified as regulatory acts (e.g., Order #363 of the Head of Poltava Oblast State Administration on Issuing Permit to Develop Land Management Projects regarding Land Plots Allotting as of 17 September 2009).</p>

## 2. ATTRIBUTES OF A REGULATORY ACT

### REGULATORY ACTS ARE SUBJECT TO STATE REGISTRATION

According to Decree #493/92 of the President of Ukraine on the State Registration of Regulatory Acts of Ministries and Other Executive bodies as of 3 October 1992, the following acts shall be subject to the state registration:

- RAs of Ministries and other central executive bodies, bodies of commercial management and control shall be registered by the Ministry of Justice of Ukraine;
- RAs of Ministries and Republican Committees of the Autonomous Republic of Crimea - by the Main Department of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea;
- RAs of oblast, Kyiv and Sevastopol city state administrations, their departments, divisions and other units, as well as local bodies of commercial management and control – by the respective oblast, Kyiv and Sevastopol city departments of Justice;
- RAs of district and district in Kyiv and Sevastopol state administrations and their departments, divisions and other units – by district, and district in Kyiv and Sevastopol departments of justice.



The procedure of state registration of RAs is established by Resolution #731 of the Cabinet of Ministers of Ukraine as of 28 December 1992. According to the procedure, any RAs (resolutions, orders, instructions, etc.) shall be subject to state registration, if they contain one or more provisions that:

- a) affect socio-economic, political, personal and other rights, freedoms and legitimate interests of citizens as declared and guaranteed by the Constitution and laws of Ukraine, the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and Protocols thereto, international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine and *acquis communautaire* with due regard to the case law of European Court of Human Rights or establish new or modify, supplement or invalidate the organizational and legal mechanism of their implementation;
- b) have interdepartmental nature, i.e., are binding upon other Ministries, executive bodies and bodies of local self-government, enterprises, institutions and organizations that are beyond the control of body that issued the RA.



State registration shall not apply to RAs that are:

- a) of individual-related nature (dealing with membership on commissions, the appointment and dismissal of their members, incentives for employees etc.);
- b) are designed for a single application, except for acts approving the provisions, instructions and other documents containing legal norms;
- c) of operational and administrative nature (one-off orders);
- d) designed to notify enterprises, institutions and organizations of decisions made by higher bodies;
- e) designed to arrange the implementation of decisions of higher bodies and own decisions of Ministries and other executive bodies that do not contain new legal norms;
- f) advisory, explanatory and informative (guidelines, explanations, including taxation-related, etc.);
- g) technical standard documents (national and regional standards, specifications, construction norms and rules, wage rate reference books, codes of practice, reporting forms, including the state statistical surveys, administrative data etc.).

Thus, 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.

### 3. MAJOR CORRUPTOGENIC FACTORS INCIDENTAL TO REGULATORY ACTS

#### 3.1. Scope of Administrative Discretion and Discretionary Powers

##### 3.1.1. Concept of Administrative Discretion and Discretionary Powers

Scope of administrative discretion and discretionary powers is one of the most common corruptogenic factors.



Wide administrative discretion and existence of discretionary powers as such do not mean that RA draft bears marks of corruptogenicity. Therefore, RA that foresees wide administrative discretion requires further analysis. The wide scope of administrative discretion and discretionary powers provide a government entity with a significantly higher opportunity to influence a decision to be taken.

**Administrative discretion** means activities of a government body related to selection of type of behaviour as envisaged by laws at its own discretion when making decisions and performing other governmental actions. It should be borne in mind that making such decision, taking other actions, or refraining from action is not illegal. The law provides a government body or a person appointed by it with an opportunity to act so.



In simple words, administrative discretion means powers conferred upon a government body or its officials to choose between two or more alternatives.

**Discretionary powers** comprise a variety of rights and obligations of government bodies, persons authorized to perform the functions of the state or local self-government, enabling to determine discretionarily, wholly or in part, the type and contents of a management decision taken or opt for one of several options of management decisions as foreseen by a draft regulatory act. As indicated above, administrative discretion and discretionary powers alone will not generate corruptogenicity of a regulatory act. Therefore, assessment of potential presence of corruptogenic factors shall take into account the scope of legal regulation and specifics of their operation.



For example, administrative discretion may be applied rather to internal organisational relations inside a government body or body of local self-government as well as between them, which do not affect legal status of individuals or legal entities. Thus, for instance, it is impossible to have a detailed regulation of relations between the Head of a government body or body of local self-government and a person authorized to exercise the functions of the state or local self-government, or between a government body and its subordinate state-owned enterprises and government agencies.

At the same time, a breadth of administrative discretion and discretionary powers that pertain to relationships between a government body on the one side and individuals and legal entities on the other side shall be subject to thorough analysis and review. In this area, the use of discretionary powers may give rise to a more corruption-enabling environment.



For example, this includes relations between government bodies and private individuals and legal entities in the area of regulatory activities, providing administrative services, issuance of administrative permits, licenses, certification, accreditation, state registration, social benefits and other government guarantees, conducting biddings (tenders), purchase of property, use of the state and municipal property, imposing public law sanctions, detection and prevention of offences.

##### 3.1.2. Detection Methods

To detect possible corruptogenic factors under the conditions of wide administrative discretion and discretionary powers, a civic expert should analyse provisions that have elements of discretionary powers. The next analytical step envisages checking the availability of corruptogenic factors in enforcement of certain legal norm. Noted below are "flags" signalling wide administrative discretion and discretionary powers and examples of presence of such indicators in RAs.

### 3. MAJOR CORRUPTOGENIC FACTORS INCIDENTAL TO REGULATORY ACTS

**Discretionary powers enable a body (government body, body of local self-government or authorized person of a government body) to assess legal facts, circumstances and grounds that may cause, modify or terminate relationships, enforcement or protection of the rights and freedoms of a person.**



According to paragraph 2, Article 157.12 of the Tax Code of Ukraine, a non-profit organization has the right to exemption from income tax, which arises after it is entered into the Roster of Non-profit Organizations and Institutions by relevant body of the state tax service in the manner prescribed by law.

Therefore, a non-profit organization will be entitled to exemption from income tax only after a relevant government body decides to enter it in the Roster of Non-profit Organizations and Institutions.

**Discretionary powers enable a government body to opt for one of several forms of response to a given legal fact as proposed in the RA.**



For example, according to part 4 of the Regulation on the Roster of Non-profit Organizations and Institutions approved by Order #37 of the State Tax Administration of Ukraine as of 24 January 2011, with due regard to the results of consideration of the application and constituent documents, a territorial body of state tax service shall decide on: entry or re-entry of non-profit institution or organization in the Roster; refusal of entry in the Roster or assign the non-profit institution or organization another non-profitability code.

Accordingly, the legislative act enables the body to decide on entry of non-profit organization to the Roster or refuse the enter it upon the results of consideration of documents submitted by non-profit organization.

**Discretionary powers enable a body and person authorized to exercise the functions of the state or local self-government at its own discretion to choose an instrument of public-law impact on individuals and legal entities, form, type, size and method of implementation thereof.**



According to Article 28 of the Law of Ukraine on Public Associations (effective until 1 January 2013,) violations of legislation on public association may entail the following penalties: warning, temporary ban (suspension) of certain activities; temporary ban (suspension) of all activities or forced dissolution (liquidation). Therefore, a government body is vested with discretionary powers in terms of choosing public law measures.

**Discretionary powers enable government bodies and persons authorized to exercise the functions of the state or local self-government, to establish wholly or in part the mechanism of regulatory actions, their sequence and timing.**



Part 4 of Article 26 of the Law of Ukraine on the State Market Supervision and Control of Non-Food Products stipulates that if the requirement referred to in part 3 of this Article is not met by a business entity within a time specified by relevant market surveillance body, the market surveillance body shall decide to suspend immediately the presentation of such products at respective trade fair, exhibition, demonstration or display of products in any form whatsoever.

Thus, when issuing its order, the market surveillance body shall determine the timeframe for, and the procedure of, its implementation.

**Discretionary powers enable a body (or a person authorized to exercise the functions of the state or local self-government) at its own discretion to determine the procedure of implementation of management decision, including delegating the implementation of an adopted decision to subordinates or other government bodies and set the term and procedure of implementation.**

### 3. MAJOR CORRUPTOGENIC FACTORS INCIDENTAL TO REGULATORY ACTS



According to the Law of Ukraine on Public Associations (effective until 1 January 2013), public associations are legalized (registered) by executive committees of local councils and local departments of the Ministry of Justice. The Law of Ukraine on the State Registration of Legal Entities and Private Individuals Engaged in Entrepreneurial Activities provides that these are state registrars only who shall provide state registration of all legal entities and enrol them into the Unified State Roster of Legal Entities and Private Individuals Engaged in Entrepreneurial Activities.

According to part 1.5. of Joint Order #23/74/5 of the State Committee for Regulatory Policy and Entrepreneurship and the Ministry of Justice of Ukraine on Approval of the Rules of Procedure of Transferring Data of Legal Entities to the State Registrars from the Ministry of Justice and its Territorial Bodies as of 27 February 2007, data shall be transferred to state registrar to make relevant records in the Unified State Roster, and produce a certificate of state registration of a legal entity and transfer it to Ministry of Justice (or a territorial body thereof) that shall issue it to the legal entity (or its authorized representative).

Thus, local departments of the Ministry of Justice and its central body receive documents from NGOs, including registration cards to take registration actions on legal entities and transfer data to state registrars, who proceed with entering data in the Unified State Roster of Legal Entities and Private Individuals Engaged in Entrepreneurial Activities.

Having discovered the presence of wide administrative discretion and discretionary powers, the expert should further check the provisions of draft regulatory act for possible corruptogenic factors. It is usually recommended that this task is performed through forecasting of methods and ways of enforcement of relevant provisions of the regulatory act in terms of whether it creates opportunity for an authorized official (officer) to use its/his/her of powers and possibilities deriving from these powers in order to obtain undue advantages (or promise or offer of undue advantages) for himself/herself or others.



Corruptogenic factors related to wide administrative discretion and discretionary powers may be reflected in draft RAs as follows.

#### **Whether the draft RA provide a government body or a person appointed by it with opportunities to take decision upon its/his/her discretion of value judgments.**



For example, these value judgments may concern such statements as "if no grounds are available, the authorized person may...," "if it does not contradict to public interest...," "should the government body deem it legitimate..." etc. According to part 5 of Article 33 of the Law of Ukraine Law of Ukraine on State Market Supervision and Control of Non-Food Products, any action restricting or prohibiting the placement of products in the market, withdrawal of products from circulation or their revocation, taken in accordance with this Law or the Law of Ukraine on the General Safety of Non-Food Products, shall be proportionate to the extent to which the relevant product may harm the public interest. The decision on imposing restrictions on or prohibiting the placement of products in the market, withdrawing products from circulation or revoking them shall specify the reasons for its application. Thus, the Law vests market surveillance and control bodies with powers to take actions envisaged by the law taking into account the extent to which the relevant product prejudices the public interests.

#### **Whether the draft RA specifies the types of decisions that may be taken by a government body or a person appointed by it without indicating the reasons for those decisions or making the list of reasons non-exhaustive.**

For example, according to item 5 of section I of the Regulation on Roster of Non-Profit Institutions and Organizations approved by Order #37 of the State Tax Administration of Ukraine as of 24 January 2011, entry of non-profit institution or organization to the Roster is performed by the territorial

### 3. MAJOR CORRUPTOGENIC FACTORS INCIDENTAL TO REGULATORY ACTS



body of the state tax service (located on the same territory with a relevant non-profit organization or institution). To be entered in the Roster, a non-profit institution or organization shall submit to the relevant body of state tax service an application for registration in form set forth in Annex 1 to this Regulation, as well as the copies of its constituent documents. Upon consideration of the application and constituent documents, the body of state tax service decides on: entry, re-entry of the non-profit institution or organization in the Roster; refusal of entry to the Roster and assign the non-profit institution or organization another non-profitability code.

Thus, the Regulation does not specify possible grounds for refusal of entry of non-profit organization or institution into the Roster of Non-Profit Institutions and Organizations.

#### **Vesting a government body or a person appointed by it with a right to follow their own choice regarding taking/restraining from a decision/action when determining certain circumstances.**



For example, according to Article 16 of the Law of Ukraine on Public Associations, registration of public association may be refused if its name, constituent or other document submitted for registration is in conflict with effective laws of Ukraine.

Therefore, a government body in charge of registration of public associations has the opportunity to refuse their registration. This factor most commonly occurs when the verb "may" is used.

#### **Lack of unambiguous reference to a government entity (government body or a person appointed by it), which takes the decision or takes actions in a particular case.**



For example, according to section 2 of Article 12 of the Law of Ukraine on Public Associations (effective since 1 January 2013) "...the registration of a public association is performed gratis by executive bodies that are vested with authority to perform registration of public associations according to the law (hereinafter referred to as the "authorized registration body").

Thus, the Law, like other legislative acts, does not provide a clear answer as to what specific body should carry out the registration of a public association. It is obvious that the regulatory act does not contain unambiguous reference to a government entity in charge of registration of public associations.

#### **The RA does not provide for procedural form for decision making.**



For example, according to the Law of Ukraine on Public Associations (effective until 1 January 2013,) civic organizations and their associations were able to obtain legal status in two ways – through the registration or giving a notice of foundation. Article 16 of the Law stipulated that the refusal of registration had to be given in form of decision containing the reasons for refusal. Part 3 of Article 16 of the Law provided that the registration body shall notify a public association of the refusal of its registration in media. However, in relation to the second way of legalization, Article 17 of the Law stipulated that civic organizations and their associations could obtain legal status through giving a written notice to the Ministry of Justice of Ukraine, local executive bodies or executive committees of village, town and city councils. However, the Law did not determine the "response" of the government body to this notice, even the procedure for their acceptance or informing applicants by sending a letter.

That uncertainty might foster the conditions for corruption abuse by relevant officials. There were no formally established deadlines for taking decisions and/or actions.

### 3. MAJOR CORRUPTOGENIC FACTORS INCIDENTAL TO REGULATORY ACTS

#### **Formal time-frames for decision-making or performing certain actions are absent.**



For example, according to part 2 of the Regulation on Roster of Non-Profit Institutions and Organizations approved by Order #37 of State Tax Administration of Ukraine as of 24 January 2011, organizations shall file to a territorial body of state tax service necessary documents (application for registration and constituent documents). Territorial body of state tax service shall consider them and take one of decisions set forth in part 4 of this Regulation. However, the Regulation does not specify the deadline for taking such decision.

Thus, absence of formally specified deadline for decision making may foster conditions for corrupt practice.

#### **Vesting a government body or an authorized person of the government body with a right to request additional documents, data and information from individuals and legal entities as grounds for making decisions and taking action.**



For example, Article 25 of the Law of Ukraine on Public Associations (effective until 1 January 2013) stipulated that bodies responsible for registration of public associations were in charge of control over how they comply with their charters. Representatives of these bodies had the right to attend events held by public associations and request necessary documents and receive explanations.

Therefore, there were no grounds to initiate such actions of government bodies; the right to request documents and receive explanations was not restricted by grounds, terms or conditions.

#### **A government body or a person appointed by it is not obliged to motivate the decision.**



For example, according to part 7 of the Regulation on the Procedure of Registration of Symbols and Insignia of Public Associations, approved by Resolution #144 of the Cabinet of Ministers of Ukraine as of 26 February 1993, a decision on registration or refusal of registration of symbols and insignia is taken on upon consideration of application. According to part 11 of the Regulation, the decision on registration of public association symbols or insignia shall be sent to the applicant within 10 days.

Accordingly, the regulatory act does not oblige a government body to motivate its decision to refuse registration of insignia.

#### **A regulatory act does not specify or under-specifies the reasons for making decisions and/or taking action by a government body or a person designated by it.**



For example, according to part 10 of the Regulation on the Procedure of Registration of Symbols and Insignia of Public Associations, approved by Resolution #144 of the Cabinet of Ministers of Ukraine as of 26 February 1993, a decision on refusal of registration of a public association's symbols or insignia may, among other grounds, be taken on the assumption that these are identical or similar to the symbols or insignia of another association.

However, the regulatory act remains silent about what does identity or similarity of insignia mean. A government body is, thus, vested with a right to evaluate independently and at its own discretion the identity and similarity of symbols and insignia.

#### **A government body has an opportunity to extend or cut the established deadlines without formally determined grounds or acting at its own discretion.**

### 3. MAJOR CORRUPTOGENIC FACTORS INCIDENTAL TO REGULATORY ACTS



For example, part 13 of the Procedure of Tendering for the Qualification of Programmes (Projects, Events) Developed by Civil Society Organizations and Creative Unions and Executed (Implemented) with Financial Support, approved by Resolution #1049 of the Cabinet of Ministers of Ukraine as of 12 October 2011 stipulates that "if only one bid is qualified for the tendering process or none of the bids qualify, a tender committee may decide to extend the deadline for submission of bids. Such extended deadline shall not extend 30 calendar days after the day of such decision".

Accordingly, the Procedure envisages the right to decide on the extension of the deadline for submission of bids. Therefore, such extension is not the obligation but an opportunity of the tender committee, which it may use or not.

**Other provisions enabling a government body or an authorized person by it to make decisions and take action at own discretion.**



For example, it concerns the right of a government body or authorized person of the public authorities to extend a deadline missed by an individual or a legal entity at own discretion, the possibility to take several types of decisions when the legislation provides procedure and grounds for taking of only one decisions, or other provisions that vest the government body or the person authorized by it with a right to take decisions and actions at own discretion.

#### **3.1.3. Methods used to eliminate corruptogenic factors**

**Table 2: Methods used to eliminate corruptogenic factors**

<b>METHODS USED TO ELIMINATE CORRUPTOGENIC FACTORS AFTER THEY ARE DETECTED IN THE ANTICIPATED SCOPE OF ADMINISTRATIVE DISCRETION AND DISCRETIONARY POWERS</b>	Imposing restrictions on the use of discretionary powers in all procedures where their use is not necessary. For example, it can concern not the internal organisational relations of a government body but rather to relations between the government body and individuals or legal entities which can and shall be regulated in order to prevent the conditions for corrupt practice;
	Unambiguous regulation of administrative procedures, determining the powers of a government body and the procedure for exercising them;
	Eliminating legal and technical errors, establishing the deadlines for making decisions and/or taking other actions by a government body at each level of relations with private law entities;
	Providing for an exhaustive list of decisions, acts and actions taken during exercising powers of a government body or a person authorized by it. Specifying their forms and reference details;
	Providing for an obligation of a government body to motivate its decision in case of refusal to take certain actions in relations with individuals and legal entities;
	Providing for an obligation of a government body to make decisions and results of exercise of powers available to the applicants;
	Introducing additional prohibitions or approvals by a body (person) of a higher managerial level in relation to the so-called "unfavourable" decisions and actions;
	Providing for keeping records of decisions of government bodies, obligations to publish them, creating conditions to enable civic control over the use of discretionary powers;
	Providing legal mechanisms and additional procedural guarantees to individuals and legal entities to appeal against decisions, actions and omissions of a government entity in the use of discretionary powers.

Other methods can be also used to eliminate such corruptogenic factors according to the areas of legal regulation and public proposals.

### 3. MAJOR CORRUPTOGENIC FACTORS INCIDENTAL TO REGULATORY ACTS

#### 3.2. Legal Regulation Gaps

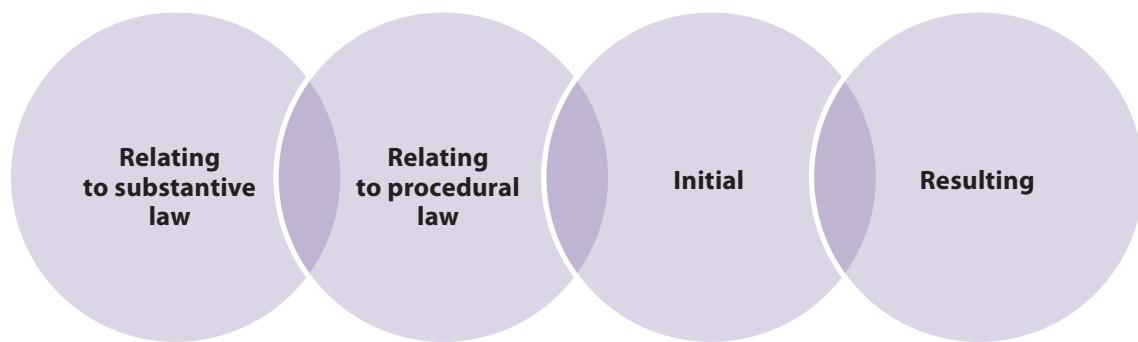
##### 3.2.1. Definition and Types of Legal Regulation Gaps

**Legislation gap** means a gap in the regulation of certain relationships. It is dangerous in terms of creating conditions that may foster corruption, because a gap seems to nudge persons authorized to exercise the functions of state or local self-government and similar entities (hereinafter referred to as the "authorized persons") to a "spontaneous" lawmaking. Instead of taking enforcement (law enforcement) or interpretation (law interpretation) actions, an authorized person on his/her behalf may start filling legislation gap as he/she deems favourable for him or her for the time being.



##### Examples of Legislation Gaps:

- a provision of law refers to provisions of other laws or other regulations, but these other laws or regulations have not yet taken effect or have not been adopted;
- a provision of law refers to provisions of other laws or other regulations, but these other laws or regulations have been invalidated;
- a provision of law refers to subsidiary regulations, but according to the Constitution of Ukraine (Article 92 and others), relevant government bodies are not authorized to regulate such social relations by their acts;
- a provision of law or legal principle relating to substantive law cannot be implemented since it lacks appropriate procedures for this purpose (procedural rules, tendering procedures, etc.).



**Initial** gaps arise from the fact that a lawmaker at the very outset has failed to take into account the variety of life situations that require legal regulation, and has neglected to regulate a particular area of public relations in whole or in part. This can be driven by mistakes made in the use of legal production techniques during drafting or adoption of a law (for example, when the Parliament adopts a particular amendment without having time to read into it, but rather from hearing it at the session).



For example, the forthcoming new Housing Code of Ukraine should govern the following actions: obligations arising from the construction of housing, grounds for registering residential apartments as non-residential properties, legal status of housing cooperatives and associations of co-owners of multi-apartment buildings, particularities of arising of rights of ownership to housing; particularities of the liability of owners and users of apartments (houses), housing stock management, legal status of social housing stock, etc. Nowadays the new Housing Code of Ukraine is lacking, so the relations in the area of housing are regulated by civil law, social security law, administrative law, and from time to time no legal norms are applied to regulate some of them.

Emergence of such gaps may provoke negative consequences, when an authorized person is free to choose a course of action beneficial for him/her (for example, he/she may refer to the lack of legislation and "force up the price" and require a large bribe for acting in the interests of the briber "at his/her own risk").

### 3. MAJOR CORRUPTOGENIC FACTORS INCIDENTAL TO REGULATORY ACTS

**Resulting** gaps arise objectively as a result of continuous development of social relations and emergence of new real-life situations that a lawmaker could not foresee in advance.



For example, the Law of Ukraine on the Prohibition of Reproductive Cloning of Human Beings adopted in 2004 imposed prohibition on cloning of human beings and cloned human embryos, importing them onto, and exporting from, the territory of Ukraine. However, the regulation gap is that these prohibitions are declarative since no legal liability is provided for such actions so far.

Thus, it may result in the use of illegal analogy by authorized persons, particularly, abuse of provisions of the Code on Administrative Offences of Ukraine and Customs Code of Ukraine to extort a bribe or commit other corruption offences.

#### 3.2.2. *Detection Methods*

To detect legislation gaps an expert should:

- be familiar with the law and be able to use databases;
- have analytical and linguistic skills.

If the first requirement is not met, he/she can indicate that certain relations are not covered in the legislation (although they can be governed by other legislative acts that the expert did not take into account). When working with databases, the expert should eliminate all possible legal regulation gaps using the key words set in different cases and the necessary legal synonyms. Furthermore, the expert may identify legislation gaps by examination of relevant scientific literature on the matters governed by the respective branch of law. Learning the particularities of enforcement of law, including case law and statements of citizens (in the media, Internet, etc.) on the difficulties in implementing some of their rights may also help to identify the legislation gaps.

Gaps can be also identified *inter alia* through expert of other interviews, questionnaire survey, etc..

#### 3.2.3. *Elimination Methods*

Gaps can be eliminated only through legislative activities of the Parliament and other government bodies. However, since this process is usually long-lasting, the anticorruption expert assessment shall:

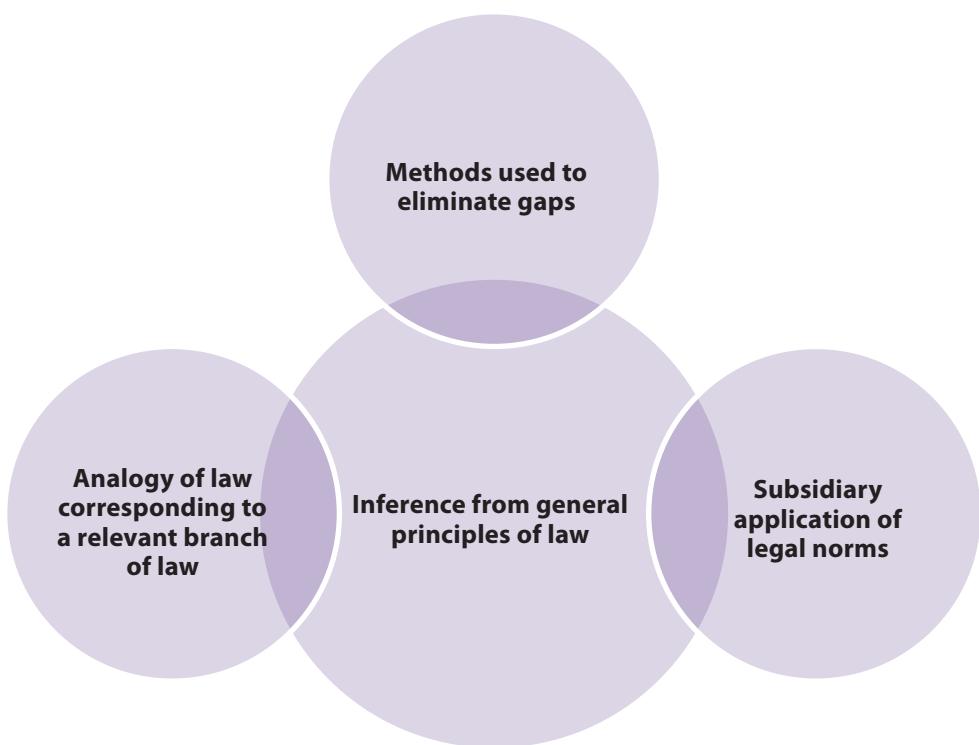
- a) not only sensitize a lawmaker to address gaps through amending legislation, but also
- 6) recommend relevant authorized persons within to use legitimate operational tools to avoid and overcome gaps when addressing a specific legal matter.

**Analogy of general legal principles (analogy of legislation)** means the application of common rules and principles of law to specific relations in case if there are no rules to govern these particular relations. In other words, a judge or a prosecutor, or an official of licensing or permit issuing and registration body shall, if the law does not explicitly provide otherwise and without prejudice to the rights, freedoms and legitimate interests of individuals and legal entities, address the case in accordance with the principles of the rule of law, legitimacy and justice, legal equality, humanism, personal and fault-based responsibility and other principles set forth in relevant articles of the Constitution of Ukraine, international treaties ratified by the Verkhovna Rada of Ukraine of Ukraine, decisions of the European Court of Human Rights and the conclusions of the Supreme Court of Ukraine, which by law are binding upon all parties to relevant social relations. If the analogy of law was applied to a particular case, it does not binding authority to apply it again when solving other similar case.



For example, if during an auction one (any of) procedural issue is not governed by the law, it must be resolved so that the principle of equality of rights of all bidders is not violated.

### 3. MAJOR CORRUPTOGENIC FACTORS INCIDENTAL TO REGULATORY ACTS



**Analogy between laws (analogy of law)** means application of legal norms governing similar relations to real-life situation that are not governed by any law. Such application is possible within relevant branch of law in terms of the most essential attributes. The “similarity” of relations means uniformity of legal regime used for their regulation. Since the existence of gaps may be regarded as a ground for refusing to solve a case, a law enforcement entity should find legal norms governing such “similar” analogous relations and apply them to the specific case.



Thus, civil law contains provisions that govern the procedure for damages caused to a person as a result of property salvage operations. However, it does not provide for legal norms that would define the order for recovering damages arising from the salvage of life. Taking into account a significant similarity between the aforesaid relations, the rules for recovery of damages arising from the salvage of property were used in case law as a legal basis for making a judgment on recovery of damages that arose from salvage of life. The necessity for applying the analogy of law is expressly referred to in some provisions of the legal norm – in particular, Article 242 of the Civil Code of Ukraine stipulates that rules applicable to purchase and sale agreements shall apply to exchange agreements.

**Subsidiary application (inter-sectoral analogy)** may be applied to specific relations of a regulatory order that govern similar relations in neighbour fields in terms of essential attributes. In fact, it is a sort of analogy of law. However, the assimilation is permitted only in those areas that are similar in terms of legal regulation - for example, application of timing requirements in the civil law for the purpose of regulation of labour relations. Possibility to use legal norms by analogy is expressly provided for in specific legislative acts.



For example, part 8 of Article 8 of the Code on Civil Procedure of Ukraine envisages that if disputable relations are not regulated by laws, the court shall apply the law that governs relations that are essentially similar to such disputable relations (the analogy of law), and, if no such law is available, a court should act on the basis of general principles of law (analogy of legislation).

The same situation pertains to the Administrative Code of Ukraine (part 7 of Article 9), which stipulates that if no law is available to govern relevant legal situations, the court shall apply law which regulates analogous cases (analogy of law), and should that law be absent as well, constitutional principles and general legal principles shall apply (analogy of legislation).

### 3. MAJOR CORRUPTOGENIC FACTORS INCIDENTAL TO REGULATORY ACTS

According to Article 8 of the Civil Code of Ukraine, if civil relations are not regulated by this Code, other acts of civil law or a treaty, they are regulated by typical norms of this Code and/or other acts of civil law that regulate cognate relations (analogy of law). Should such analogy fail to satisfy regulation of such civil relations, they shall be regulated by general principles of civil law (analogy of legislation).

Hence, in this case, the court is left with nothing more than analogy of law and analogy of legislation, since in accordance with part 9 of Article 8 of the Civil Code of Ukraine, a case cannot be denied consideration motivated by the fact that laws regulating the issue under review are absent, incomplete, ambiguous or have conflicting provisions.

Analogy of law is totally justifiable in civil, labour, administrative, criminal-procedural and other branches of law. At the same time, it is strictly forbidden in criminal law and is not allowed for in laws on administrative offences due to the principles of legitimacy and legal clarity.

#### 3.3. Conflicts of Laws

##### 3.3.1. Concept of the Conflict of Laws

Unlike legislation gaps, the conflict of laws is "excessive" legal regulation that creates a conflict (difference) between the provisions of two legislative acts governing the same relationship that can lead to a collision (Latin *collisio* - collision) of two interests.

Conflicts of laws should be distinguished from competition of legal norms, when two, three or more legal norms govern the same range of kindred public relations and do not contradict each other, and have different degree of substantiation, specification, scope and so on. The rules on addressing the competition of legal norms are developed in the relevant branches of law and are not complicated.



For example, in case of competition of common and special legal norms, the special legal norm shall prevail (the legal norm governing murders with excess of the limits of self-defence, not the legal norm governing wilful murders in general). In case of competition of special legal norms with qualifying signs, a legal norm providing for a stricter penalty shall prevail (the legal norm governing gross tax evasion, not the legal norm relating to the same act on a large scale).

In such cases, legal norms really seem to compete with each other. Generally, it's normal. A conflict, on the other hand, is a negative and undesirable event, because it involves inconsistent and often mutually exclusive legal norms. Conflicts of laws arise most commonly due to the low level of professional culture of lawyers involved in the legislative process, their mistakes, especially violations of logical, linguistic and other rules of legislative techniques and lack of regularity and consistency of legislation, which entails, in particular, the inability to know and find all necessary legal norms when creating new similar norms. Poor definition of powers of relevant government entities and exceeding authorities conferred upon them by the Constitution and laws of Ukraine fosters conflicts of laws, leading to violations of the principle of distribution of power and intervention interference with law-making activities of other government bodies.

It is apparent that an authorized person prone to corruption offences will attempt to take advantage of this situation and apply exactly those legal provisions which are the most beneficial to him/her in specific situation. The Law of Ukraine on Regulatory Acts that would establish the rules of overcoming conflicts of has not been adopted yet, and it sharpens this problem.

### 3. MAJOR CORRUPTOGENIC FACTORS INCIDENTAL TO REGULATORY ACTS

#### 3.3.2. *Detection Methods*

Methods used for detecting conflicts of laws are similar to those used for detecting legislation gaps. An expert should be familiar with the laws, able to use databases and have analytical and linguistic skills. Thorough familiarity with the laws will help him/her to identify legal relations that are contradictorily addressed in different legislative acts or within one single act. When working with databases, the expert should eliminate all possible legal regulation gaps using the key words set in different cases and the necessary legal synonyms.

To identify contradictions between various provisions within one regulatory act, the expert should carefully read it from cover to cover keeping in mind the text he/she already read. Human memory will give a signal if one of positions is contrary to the other that he/she read and memorized. In a similar way we can detect conflicts between two different RAs, if their volume is not too large and can be kept "fresh" in the expert's memory or if he/she keeps in memory the content of other legislative acts during a long period.

Conflicts of laws can be identified easier if an expert is familiar with relevant scientific literature and the practice of enforcement of relevant legislation, including case law, including case law and statements of citizens (in the media, Internet, etc.) on the difficulties in implementing some of their rights.

Gaps can be also identified *inter alia* through expert of other interviews, questionnaire survey, etc.

#### 3.3.3. *Types of Conflicts of Laws and Methods Used to Eliminate Them*

**Table 3. Types of Conflicts of Laws**

<b>IN TERMS OF LEGAL EFFECT OF RAS CONTAINING CONFLICTING PROVISIONS (VERTICAL, HIERARCHICAL, SUBORDINATION CONFLICTS)</b>	<ul style="list-style-type: none"><li>• between provisions of the Constitution and national laws;</li><li>• between provisions of international (supranational) and national laws;</li><li>• between provisions of laws and subsidiary regulations;</li><li>• between provisions of subsidiary regulations of different levels.</li></ul>
<b>IN TERMS OF TIME OF A PROVISION DEVELOPMENT/ADOPTION (TEMPORAL CONFLICT)</b>	<ul style="list-style-type: none"><li>• a conflict arising from the publication of at least two legal norms governing the same issue in different time.</li></ul>
<b>IN TERMS OF CONTENTS – BETWEEN THE PROVISIONS OF REGULATORY ACTS HAVING EQUAL LEGAL FORCE (HORIZONTAL CONFLICTS)</b>	<p>These provisions can be found in:</p> <ul style="list-style-type: none"><li>• one article of a regulatory act;</li><li>• different articles of a regulatory act;</li><li>• different regulatory acts;</li><li>• different structural elements of one provision – in hypothesis, disposition and sanction.</li></ul>

Generally, the following principle of conflicts of laws shall be used to address hierarchical conflicts: in case of a conflict, a provision having a higher legal force shall prevail. This method of addressing conflicts is actually used at practical level and helps to solve any conflicts with except for particularly complicated cases.

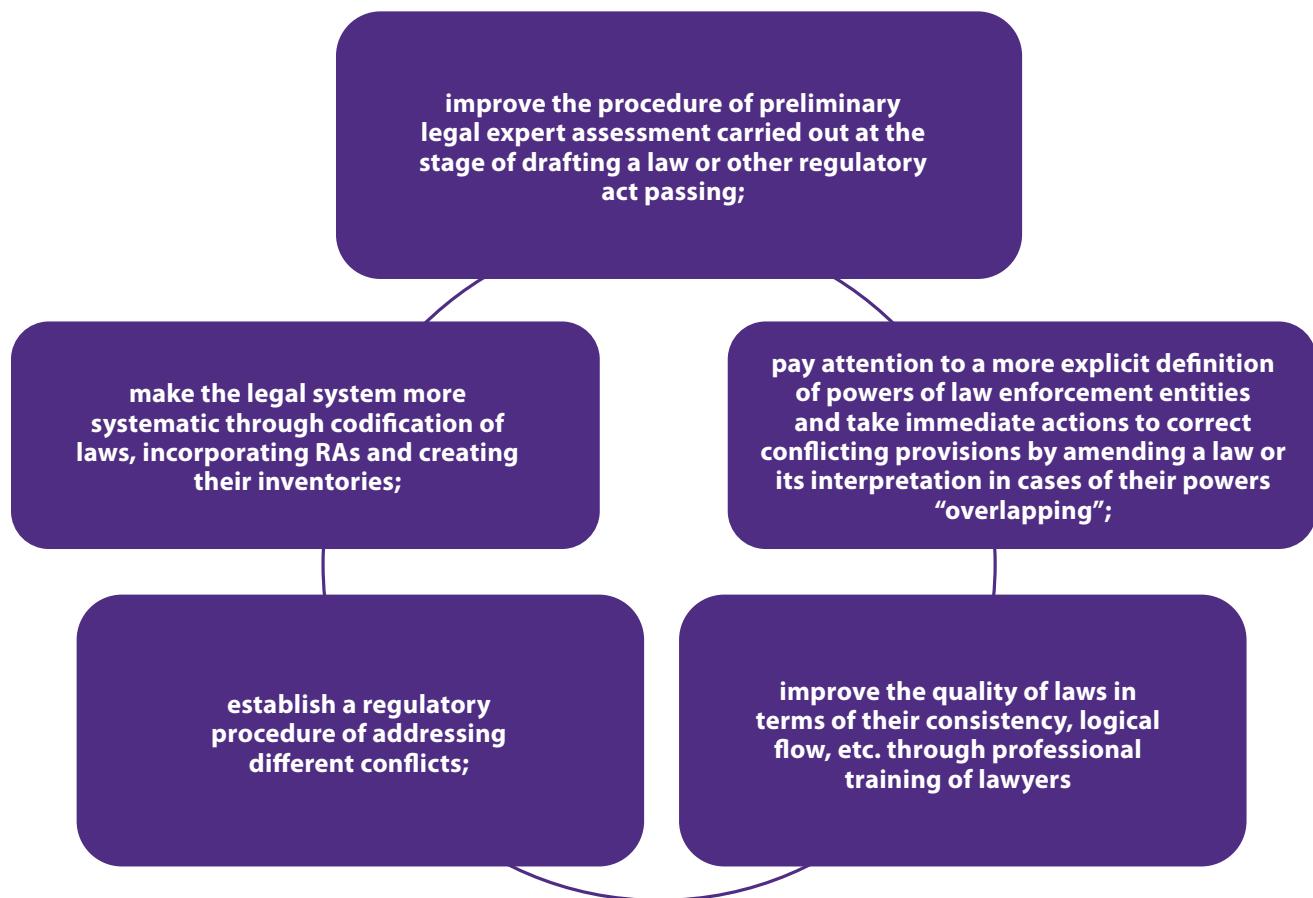
Overall, the following principle of conflicts of laws shall be used to address conflicts: a newly issued regulatory act governing the same issue shall supersede already existing regulatory acts. This method of addressing conflicts is known to lawyers, but in practice is actually applied only in cases where transitional and final provisions of a law or other regulatory acts expressly provide for laws (other regulatory acts) to be superseded by the law (regulatory act) in question.



Conflicts in terms of content are contradictions that can be hardly addressed in a way other than abrogating obsolete laws, making other changes to legislation or official interpretation thereof. Only in exceptional cases transitional and final provisions of a law or other regulatory act expressly provide that the application of all other laws (RAs) shall be suspended until relevant changes are made to them in order to prevent their application in a manner contrary to this law (RA).

### 3. MAJOR CORRUPTOGENIC FACTORS INCIDENTAL TO REGULATORY ACTS

In order to address all of the aforesaid types of conflicts for preventing of corruption, the expert may recommend law-makers and other relevant government bodies to:



### 3.4. Imbalance of Interests and Undue Burden for Recipients of Public Services

#### 3.4.1. Concept of the Imbalance of Interests and Undue Burden for Recipients of Public Services

**Imbalance of interest** may relate both to a draft regulatory act taken as whole and individual provisions of the draft regulatory act.

In the rulemaking practice of any state there are draft legal acts aimed at lobbying interests of a particular social group, a group of individuals or legal entities. This does not mean that the balance of interests can be ideal. There are categories that require more protection station behalf of the state in form of adopting legislative acts. This gives rise to the “competition” of interests.



For example, when adopting RAs aimed at protection of individuals making housing construction investments, the state is faced with the position of developers who have a different interest. Adoption of an RA that prohibits “Jeeping” in forest areas brings up the questions that pertain to interests of persons engaged in this activity. The best option for expert is to carry out an additional analysis of information and previous studies and hold consultations with target groups, which interests are affected by the draft regulatory act. It can also help to collect the respective arguments.

Undue burdens for recipients of public services are another evidence of an imbalance of interests.

### 3. MAJOR CORRUPTOGENIC FACTORS INCIDENTAL TO REGULATORY ACTS



Usually the most “vulnerable” to the manifestation of these factors are those RAs that govern registration, licensing, information and legal procedures of fulfilment of human rights and obligations of private law entities (individuals and legal entities), tendering issues, imposing public law sanctions and prohibitions, restrictions, actions related to the restriction or suspension of subjective rights, obtaining a certain legal status enabling an individual or legal entity to acquire certain rights in the socio-economic or finance area, certain benefits, advantages, etc.

Therefore, undue burdens for recipients of public services should be understood as existence in draft regulatory acts of provisions that lead to onerous conditions, multiple approvals, requirements to provide needless information and/or documents for exercising an individual's rights, establishing of overstated requirements for an individual intending to exercise his/her subjective rights or obtain a respective legal status, etc.

#### 3.4.2. *Detection Methods*

Should imbalance of interests and undue burdens for recipients of public services be detected, the expert needs to analyze the signs of possible corruptogenic factors that may be as follows:

**Individuals and legal entities are charged with obligations to the extent exceeding the level required for exercising subjective rights and freedoms or control of them.**



For example, according to Article 5 of the Law of Ukraine on Volunteering Activities, legal entities engaged in non-profit activities may obtain a status of a volunteering organization. According to part 4, Article 5 of this Law, such organization is vested with a number of rights, including the right to engage in volunteering and other non-profit activities, involve volunteers in volunteering activities, receive funds and other property for volunteering activities, use in its name and volunteer activities the words “volunteering organization”, determine on its own the areas of its volunteering activities, acquire other rights as provided by law.

However, according to part 4, Article 5 of this Law, a volunteering organization shall: provide volunteers with safe and appropriate for their life and health conditions of providing volunteer assistance; conduct training of volunteers (if necessary); compensate for direct damages caused by the volunteering organization as a result of unilateral termination by the organization of the agreement on the provision of volunteer assistance, unless the agreement provides otherwise; compensate for moral and property damage that is caused by volunteering activities; compensate volunteers for costs incurred in connection with providing volunteer assistance as set forth in Article 11 of the Law; insure volunteers according to the Law of Ukraine on Insurance; comply with the legal regime of restricted information; ensure free access to information concerning its volunteering activities.

Thus, the list of obligations incidental to the legal status of a volunteering organizations is more burdensome than acquired rights. Similar rights may be conferred upon other entities, such as civil society organizations, charitable organizations without having to be registered as a volunteering organization.

**A large number of approvals and permits that are necessary for exercising rights, but which are disproportionate to the benefits that an individual or legal entity may obtain as a result.**



For example, this corruptogenic factor is very common for relations on land issues, construction, registration of residential premises as non-residential ones, etc. In some cases, obtaining such an approval may be reasonable (e.g., in the interests of safety of life and health, compliance with legal requirements for design works, etc.), but administrative procedures should be standardized and as far as possible be all-in-package under the “one-stop-shop” principle providing that approval and transfer of documents is performed “inside” a government body and the applicant obtains the result “at the output”.

### 3. MAJOR CORRUPTOGENIC FACTORS INCIDENTAL TO REGULATORY ACTS

**Large lists of documents, duplication of information in different documents, high requirements to information, application forms, and other paperwork that an individual or legal entity has to file. Introducing requirements to submitting information that a government body can receive on its own.**



For example, according to the Law of Ukraine on Public Associations (effective as of 1 January 2013), to have a public association registered, a director or persons authorized to represent him/her for registration purposes shall within 60 days after the public association has been established submit (send by mail) to the relevant territorial registration authority an application for registration as approved by the Ministry of Justice of Ukraine. It shall be accompanied with 1) a copy of the minutes of the constituent meeting compiled according to requirements set forth in part two, five, and seven of Article 9 of the Law; 2) charter (two copies); 3) information on the governing bodies of the public association specifying the full name (if any), date of birth of the director, members of other governing bodies, positions in the governing bodies, telephone number and other means of communication, as well as information about the persons entitled to represent the public association for registration purposes together with a written consent of that person according to part six of Article 9 of this Law, if such person was not present at the constituent meeting; and 4) a completed registration form for state registration of legal entity. The application and documents referred to in items 3 and 4 of part three of this Article shall be signed by the director or a person(s) authorized to represent the public association for registration purposes. The authenticity of signature of this person shall be certified by a notary. The documents shall be subject to a legal expert assessment to check their compliance with the Law on Public Associations.

Thus, to produce correctly all documents and take into account all the requirements, the founders will require professional legal aid. The registration may be refused due to the registration authority considers that one or several provisions are inconsistent with the law.

**Large number of restrictions, prohibitions, requirements for obtaining permits (licenses, approvals) to engage in certain activities that are unreasonable taking into account the relevant area and activities.**



For example, the Law of Ukraine on Licensing Certain Types of Commercial Activities provided for the requirement for social services operators to obtain licenses for such activities. Article 9 of this Law stated that professional activity in the area of providing social services was subject to licensing. The Law of Ukraine on Amending Certain Laws of Ukraine on Simplification of Business as of 15 December 2009 amended Article 9 of the Law of Ukraine on Licensing Certain Types of Commercial Activities and removed social services from the list of activities being subject to licensing.

Therefore, it has been acknowledged that there was no need and it was unreasonable to require social services to undergo licensing, whereas it created undue burdens for providers of social services that the public and the government are interested in. The government is interested in promoting rather than restricting such activity.

**Other undue burdens for recipients of administrative services and regulations that cause imbalance of interests.**

The above list and examples are not exhaustive, which means that experts may identify other factors associated with undue burdens for recipients of administrative services and imbalance of interests.

*Examples are providing in a draft regulatory act for a broad and cumbersome list of particularities, professional, logistical, and social requirements, etc. to individuals and legal entities who apply for obtaining a legal status or a right to receive certain benefits that will require significant resources, including time; establishing undue penalties, government control, reports incidental to this legal status that are disproportionate to the rights acquired, etc.*

It should be noted that signs of undue burdens and imbalance of interest may vary depending on specific groups of recipients of the same public services.

### 3. MAJOR CORRUPTOGENIC FACTORS INCIDENTAL TO REGULATORY ACTS



For example, the Law of Ukraine on the State Registration of Legal Entities and Private Individuals Engaged in Entrepreneurial Activities provides that in order to obtain a legal entity status all legal entities shall be entered in the Unified State Roster of Legal Entities and Private Individuals Engaged in Entrepreneurial Activities by the state registrars.

Therefore, all legal entities regardless of the legal organizational form (private enterprises, entrepreneurial companies, religious organizations, CSOs, charitable organizations, etc.) are interested in the final results – entry in the register and receiving documents certifying their status.

According to Article 24 of the Law of Ukraine on the State Registration of Legal Entities and Individuals Engaged in Entrepreneurs Activities, in order to be registered legal entities shall submit the following documents:

- a completed registration form for state registration of a legal entity;
- an copy of original (photocopy, certified copy) of the decision of founders or a body designated by them about establishment of a legal body;
- two copies of constituent documents (in case of submitting electronic documents – one copy);
- a document evidencing the payment of registration fee;
- information and documents bearing evidence of the ownership structure of founders – legal entities, which allow to identify individuals holding significant participatory interests in those legal entities.

According to the Law, the registration shall be completed within three business days.

However, for example, charitable organizations are currently registered as legal entities through two stages - first they file documents to a local department of the Ministry of Justice, which then transfers a registration form to the state registrar, who gives the documents back to that local department. The first stage for a charitable organization lasts for two months.

The documents to be filed (according to Resolution #382 of the Cabinet of Ministers of Ukraine on Approval of the Procedure for the State Registration of Charitable Organizations as of 30 March 1998) are:

- 1) Application of the founders or their authorized representatives (whose signatures are certified by a notary) (Appendix 1) within one month after the constituent meeting's decision to establish a charitable organization (congress, conference);**
- 2) Minutes of the constituent meeting (congress, conference) specifying the decision to establish a charitable organization and approval of the charter (regulation), decision on election of executive, administrative and supervisory bodies;**
- 3) Charter (regulation) of a charitable organization in two copies;**
- 4) Information of the founders (founder) of a charitable organization: for individuals - full name, date of birth, place of residence and place of employment, position; for legal entities - name, address, a copy of the charter (regulation) and copy of the registration document as certified in accordance with procedure stipulated by law, the decision of the governing body or the minutes of general meeting supporting the consent to establish a charitable organization. A foreign legal entity shall submit a document evidencing its registration in the host country. This document should be certified in accordance with the law of the issuing country and translated into Ukrainian and legalized in accordance with the procedure established by the law of Ukraine;**
- 5) Information about the governing bodies of charitable organization and members of the executive body (full name, date of birth, place of residence and place of employment, position), and confirmation of the registered office address (a warranty letter from the owner of the premises, lease agreement, etc.). If the legal address is located in an occupied apartment, it is necessary to submit a certificate providing information regarding the persons living there and consent statements of adult family members;**

### 3. MAJOR CORRUPTOGENIC FACTORS INCIDENTAL TO REGULATORY ACTS

6) Information of the branches, departments, representative offices (if any) of a charitable organization (Appendix 2) supported by the minutes of general meeting of its branches (departments) or their representatives, powers of attorney and other documents;

7) Document evidencing the payment of the registration fee.

Thus, the procedure itself and the list of documents to be submitted by legal entities engaged in entrepreneurial activities and legal entities established as charitable organizations are cumbersome.



Therefore, when analyzing the presence of a corruptogenic factor consisting in undue burdens for recipients of public services, it is necessary not only to analyze a draft regulatory act reviewed by the expert, but also other legislative acts.

Undue burdens for recipients of public services and imbalance of interests may occur not only within a given group but also in relation to other similar private law entities. It concerns the examples of comparing private enterprises vs. legal entities and state-owned companies, legal entities vs. business entities and private individuals engaged in entrepreneurial activities, legal entities vs. non-profit business entities and legal entities. In such cases one should proceed from the goal of adopting an act and needs to limit such participation of private law entities in certain relations (for example, when only NGOs having All-Ukrainian status are qualified for the tender for implementing national programmes funded from the State Budget).

In carrying out anticorruption expert assessment, it is necessary to remember that an imbalance of interest and undue burden for recipients of public services should be qualified as corruptogenic factor only in cases where the enforcement of relevant legal norms will result or can probably lead to corruption within the meaning of the Law of Ukraine on Preventing and Countering Corruption.

#### 3.4.3. *Methods Used to Eliminate Corruptogenic Factors*

##### **To eliminate a corruptogenic factor, a civic expert may develop the following proposals**

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If a draft regulatory act indicates apparent lobbying interests of certain private law entities (individuals, legal entities), an acceptable option would be to reject that regulatory act altogether and hold public consultations and public campaigns aimed at informing the public and media of the draft regulatory act and corruptogenic factors discovered in it.

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If the draft regulatory act provides for the protection of interests of certain private law entities, whose legitimate rights and legitimate interests require protection on behalf of the state, it is necessary to consider whether the balance of interests of other entities is retained. For example, gratis state registration of public associations, which are non-profit companies does not represent an imbalance of interests in terms that legal entities engaged in entrepreneurial activities that shall pay such fee.

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Submission of proposals as to the approximation and harmonization procedures applying to the same private law entities in other legislative acts.

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Reduction of the number of documents and requirements for submission of information, which is duplicated in documents to be submitted by a private law entity to obtain legal status or ability to exercise subjective rights.

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Revision and reduction of the number of requirements (social, material, technical, etc.) applicable in a given area to a private law entity to obtain a legal status or acquire rights.

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Revision of approvals and permits that are necessary to acquire certain status or approve it and considering the possibility apply the principle of a "one-stop-shop" that will enable a private law entity not be constantly involved.

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Abrogation of approvals, permits, certifications required to engage in certain activities if they are unreasonable with regard to a given area of activity.

The expert may develop other methods to eliminate corruptogenic factors described in this section.

## 4. PREPARATION OF EXPERT CONCLUSIONS UPON FINDINGS 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.

General approach to preparation of an expert conclusion upon the results of civic anticorruption expert assessment



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

Expert conclusion shall reflect the following information:

- 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;
- compliance of contents of regulatory act with Constitution and laws of Ukraine.

## 4. PREPARATION OF EXPERT CONCLUSIONS UPON FINDINGS OF CIVIC ANTICORRUPTION EXPERT ASSESSMENT

### STEP II. ANALYSIS OF DEVELOPMENT PROCEDURE OF DRAFT RA, PARTICULARLY, IN TERMS OF COOPERATING 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 WHO WORK ON ISSUES TO BE 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.

### STEP IV. REVIEWING THE REGULATORY ACT 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.



When drafting the conclusion, it is recommended to be as specific as possible in description of the specific provisions of the act that are contrary to the Constitution and/or laws and other legislative acts adopted by government bodies. Please note that copying (reproducing) the provisions of the act can sometimes be unreasonable. It would be sufficient, in that case, to cite a contradictory provision of the regulatory act specifying the affected provision of the Constitution and/or other regulatory act contrary and substantiate it.

## 4. PREPARATION OF EXPERT CONCLUSIONS UPON FINDINGS OF CIVIC ANTICORRUPTION EXPERT ASSESSMENT

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.



It should be noted that expert conclusions prepared by a civic council shall be additionally posted in thematic section "Civic Council" of the official website of the body, at which such civic council has been established.

### Annex 1

#### **Information on the tender for piloting the civic anticorruption expert assessment of draft regulatory acts**

##### **General Information**

The Law of Ukraine on Preventing and Countering Corruption enabled civic organisations, charitable foundations, public self-organisation bodies and other non-entrepreneurial organisations to carry out civic anticorruption expert assessment of draft regulatory acts. Anticorruption assessment is a comprehensive assessment of draft regulatory acts for their corruptogenicity. Government bodies are mandated to examine and take due account in their operations of an opinion issued based on results of such expert assessment.

The coalition of non-governmental organisations comprising Transparency International Ukraine, Centre of Civic Advocacy, Centre for Political and Legal Reforms and Institute of Applied Humanitarian Research with the support of United Nations Development Programme in Ukraine have announced a small grant competition among non-governmental organizations on carrying out pilot anticorruption expert assessment of draft regulatory acts.

The purpose of the competition was to support the monitoring of civic initiatives aimed at seeking out corruptogenic factors in draft regulatory acts at various levels. Winners of competition have carried out their own expert assessment by using the pilot methodology and described their experience of using this methodology to assess draft regulatory acts. It will help to subsequently adapt this methodology to meet needs of national, regional and local partners.

Thematic priorities of the competition included, but were not limited to:

- Engaging in small business and entrepreneurship;
- Agrarian policy and land relations;
- Ecology and natural resources;
- Housing and municipal economy;
- Education and healthcare;
- Due process of law and law enforcement;
- Transport and communication, industrial policy.

##### **The winners of the tender were:**

1. "Antycorupsia" Union for Safe Management (Drohobych) - Civic anticorruption expert assessment as opportunity of public to influence the rule-making practice.
2. Institute for Analysis of the State and Regional Policy (Lutsk) - Civic anticorruption expert assessment of the procedure for allocating taxi parking lots in Lutsk.
3. Bureau for Economic and Social Studies (Poltava) – Civic anticorruption expert assessment of a draft regulatory act of the Kremenchuk city council.
4. PRAVO Civic Organisation (Khmilnyk) – Civic anticorruption expert assessment: first steps in small communities.

### Annex 2

#### **Sample of expert conclusion upon results of civic anticorruption expert assessment of draft regulatory act**

##### **Expert proposals upon results of anticorruption expert assessment of draft Regulation on the Procedure for Installing Temporary Prefabricated Garages in the city of Khmilnyk**

**The initiator of anticorruption expert assessment of the draft regulatory act is:**

PRAVO Khmilnyk District Civic Organisation, mailing address: 9 Pershoho Travnia Street, Khmilnyk, Vinnytsia oblast, actual address: 12 Lenina Street, Khmilnyk, Vinnytsia oblast. Web-site: [www.pravo-hm.org.ua](http://www.pravo-hm.org.ua), [www.doroh-hm.yandex.ru](http://www.doroh-hm.yandex.ru).

**The period of anticorruption expert assessment of the draft regulatory act:** October-November 2012.

**Anticorruption assessment of draft regulatory act was carried out in accordance with:**

- Constitution of Ukraine #254k/96-VR as of 28 June 1996;
- Law of Ukraine on Access to Public Information #2939-VI as of 13 January 2011;
- Law of Ukraine on Preventing and Countering Corruption in Ukraine #3206 VI as of 7 April 2011;
- Law of Ukraine on the Principles of State Regulatory Policy in Business Activities #1160-IV as of 11 September 2003.

**The purpose of anticorruption expert assessment of the draft regulatory act is:**

Identifying in draft Regulation on the Procedure for Installing Temporary Prefabricated Garages in the city of Khmilnyk legal norms which may contribute to corruption offences and drafting recommendations to remedy such offences.

#### ***Conclusions and proposals***

##### **Conclusions**

Upon carrying out civic anticorruption expert assessment of the draft Regulation on the Procedure for Installing Temporary Prefabricated Garages in Khmilnyk (the «Regulation»), the following legal norms, which may contribute to corruption offences, have been identified:

1. Item 1.3 states that a title document that sets forth the operation period of the temporary building is «the land plot lease agreement or fixed-term land easement agreement». Such statement is contrary to section 4 of the Analysis of Regulatory Impact of the Draft Decision of Khmilnyk City Council «On Approval of the Regulation on the Procedure for Installing Temporary Prefabricated Garages in the city of Khmilnyk» stating that «... temporary prefabricated garages may be placed after the land plot documents were completed according to the established procedure of their installation and after the land plot lease agreement was entered into force».
2. Item 1.3 defines the notion of «unauthorized installed garage». At the same time, it defines that «...a building shall be deemed to be an unauthorized one if such building was installed (built or is under construction) ... in violation of the construction rules and regulations. Considering that the Regulation governs the installation of prefabricated garages, the wording related to the construction is not appropriate.
3. Item 1.4 refers to «Construction of detached one-story (two-storied) fixed garages...» Considering that the Regulation governs the installation of prefabricated garages, the wording that relates to the construction of permanent buildings is not appropriate.
4. Item 2.1 does not expressly indicate which territories within the city may be used to install prefabricated buildings. Likewise, it does not mention the requirements of the General Layout Plan of the city of Khmilnyk that are referred to in item 1.1 of the draft Regulation.
5. Item 2.1 does not contain rules regarding the compliance with the State Construction Rules of Ukraine «Urban Planning, Designing and Building-Up of Urban and Rural Settlements DBN 360-92\*\*», which item 7.44 states, inter alia, that «garages and parking lots for individual vehicles shall be mostly located on the outskirts of residential areas and in or within areas between the main utility lines on land plots which are far away from places designated for children games and public recreation».
6. Item 2.1 does not mention the requirements of Article 30 of the Law of Ukraine on the Principles of Social Protection of Security of Disabled Persons in Ukraine, which article states that «...local councils shall ensure that land plots are allocated to disabled persons suffering from musculoskeletal system diseases to construct garages for manually operated vehicles close to their places of residence».
7. Item 2.1.2 does not expressly list the benefits (namely, it does not contain any explicitly defined benefit) that «disabled

## ANNEXES

persons of group I suffering from general diseases and disabled persons of the Great Patriotic War of all groups (other disabled persons)» may enjoy upon installing temporary prefabricated metal garages.

8. Item 2.1.3 refers to the installation of a garage without express indication that it refers in particular to the location of a temporary prefabricated garage.

9. Item 2.1.3 sets out a requirement to attach to the application «a document or certificate issued by VOOBTI Municipal Company regarding the ownership right to the apartment». Considering that a temporary prefabricated garage may not be installed otherwise than within the area close to residential houses, such a requirement is not reasonable.

10. Item 2.1.3 sets out a requirement to attach to the application «a document or certificate issued by VOOBTI Municipal Company regarding the ownership right to the apartment». Considering that an applicant who intends to obtain a permit to install a temporary prefabricated garage may not be the owner of the apartment, in which he or she lives, such wording is neither reasonable nor appropriate.

11. Item 2.1.3 requires an applicant who intends to obtain a permit to install a temporary prefabricated garage to provide copies of the following documents:

- certificate issued by the office of State Committee for Land Resources stating that there is no land plot used to maintain the garage;
- certificate issued by the Mechanization and Motorsports Department stating that the garage may be installed.

The Regulation, however, does not contain any procedure to obtain these certificates and time limits in which government bodies shall issue them.

Given that the Analysis of Regulatory Impact of the Draft Decision of Khmilnyk City Council «On Approval of the Regulation on the Procedure for Installing Temporary Prefabricated Garages in the city of Khmilnyk» expressly states that «the aim of the draft regulatory act is to establish a transparent, explicitly regulated and uniform procedure for issuing permits to individuals and legal entities to produce land surveying technical documentation to formalise to the right to use the land plot to install temporary prefabricated garages», absence of procedure for obtaining the aforementioned certificates significantly impedes the establishment of «a clear and transparent procedure»;

12. Item 2.1.3 contains a list of documents that are required to be submitted for the attention of city Mayor in order to obtain a permit to produce the land surveying documentation for the land plot to install a temporary prefabricated garage. This list contains documents which only an individual (natural person) may hold (such as driver's license, identification document (passport), certificate of the identification code assigned to a citizen of Ukraine, etc.). Considering that the purposes of draft regulatory act are to establish a transparent, explicitly regulated and uniform procedure for issuing permits to individuals and legal entities, such list of documents is not appropriate.

13. It is not clear in item 2.1.4 what the term «...formalisation of installed (existing) prefabricated garages» means.

14. Item 2.1.4 lists documents that are necessary for «formalisation» of installed (existing) prefabricated garages.

The list sets out a requirement to provide «a sketch plan of the garage location or the document evidencing the right to permit the installation of the garage». If item 2.1.4 is referring to legalisation of unauthorized installed garages, such wording is not appropriate. The same concerns the requirement to provide:

- receipt evidencing payment of the rent for using the land plot to maintain the existing garage for last two years;
- certificate issued by the Mechanization and Motorsports Department stating that the garage is recorded in the Temporary Garage Register.

15. Item 2.1.4 states that individuals and legal entities are entitled to «formalise» prefabricated garages. This list contains documents which only an individual may hold (such as identification document (passport), certificate of the identification code assigned to a citizen of Ukraine, etc.). Such wording is not appropriate.

16. Section 3 states that «land plots for maintaining temporary prefabricated metal garages shall be made available on lease or land easement terms and conditions» (item 3.2 and item 3.3). Such statement is contrary to section 4 of the Analysis of Regulatory Impact of the Draft Decision of Khmilnyk City Council «On Approval of the Regulation on the Procedure for Installing Temporary Prefabricated Garages in the city of Khmilnyk», which states that «... temporary prefabricated garages may be placed after the land plot documents were completed according to the established procedure of their installation and after the land plot lease agreement was entered into force».

17. Item 4.2 contains a rule stating that «the urban planning and architecture department shall prepare a position regarding potential location of a temporary garage on the land plot and its use on lease or land easement terms and conditions». This is contrary to the Analysis of Regulatory Impact of the Regulatory Acts as was referred to in the previous item. Moreover, it is not clear for what (and by whom) a licensed designer is involved in the process of preparing the opinion, if the architecture and urban planning department is already involved, as well as «the relevant land surveying service».

18. Item 4.3 does not set forth a period, within which the land relation regulation sector of the City Council shall prepare the relevant draft of decisions to be considered at a session of the City Council.

19. The draft Regulation in no way refers to the reasons, for which an application on obtaining a permit to install temporary prefabricated garages may be rejected and reasons for refusal from having a land plot made available for use on lease terms and conditions or legalisation of the prefabricated garage that is already installed.

## ANNEXES

20. Item 4.5 does not expressly list «interested parties» who shall approve the land surveying technical documentation before such documentation is submitted to the permitting centre of the City Council for its approval at a City Council's session. Furthermore, no timing is provided for handling an application.
21. Item 4.6 does not set forth a period within which «the land relation regulation sector of the City Council shall prepare the relevant agreements in three copies».
22. Item 4.6 contains no procedure for registration of the agreements.
23. Section 5 contains no clear and transparent procedure for dismantling and carrying over unauthorized installed garages.
24. Annex 1 to the Regulation (Template Application) seems to be inappropriate for application to legal entities.
25. There is no template application which is required to be submitted for the attention of the city Mayor for approval at a City Council session of the documentation to install a temporary prefabricated garage.

### Proposals

1. To restate item 1.3. of the Regulation as follows:
  - temporary garage means a temporary building made of light metal elements without a basement for storage of a vehicle and having an operation period set forth in the land plot lease agreement».
  - apartment house building estate means an apartment house land plot designated in the residential estate (microdistrict) area allocation project under the building up project as needed for allocating and maintaining a residential house (houses) and ancillary and technical buildings related to them. The surrounding area shall be determined for a house (houses) in general and may be allocated for a part of the house (block, floor, apartment section, etc.).
  - unauthorized installation of a temporary prefabricated garage means a building deemed to be an unauthorized one if it was installed on a land plot which was not allotted for this purpose, without proper permit or in significant violation of the construction rules and regulations.
2. We propose to delete item 1.4 from the draft Regulation.
3. We propose to restate item 4.1 as follows: «Individuals and legal entities may install temporary prefabricated garages on the defined territories taking into account requirements of the General Layout Plan of the city of Khmilnyk within apartment house building estates under approved plans for their allocation and in compliance with item 7.44 of the State Construction Rules of Ukraine «Urban Planning, Designing and Building-Up of Urban and Rural Settlements DBN 360-92\*\*» and taking into account the requirements set forth in Article 30 of the Law of Ukraine on the Principles of Social Protection of Security of Disabled Persons in Ukraine.
4. Item 2.1.2 should expressly define which particular benefits will disabled persons of group I suffering from general diseases and disabled persons of the Great Patriotic War of all groups (other disabled persons) enjoy with regard to installation of temporary prefabricated metal garages.
5. In item 2.1.3, the word «garage» after the words «for installation» shall be replaced by the word combination «temporary prefabricated garage».
6. We propose to restate the list of documents that shall be attached to an application (item 2.1.3) as follows:
  - copy of the passport;
  - document evidencing the eligibility to benefits (for persons failing into the benefit categories set forth in item 2.1.2);
  - driver's license;
  - document proving the ownership right or the right to use the technical device;
  - certificate of the identification code assigned to a citizen of Ukraine;
  - certificate issued by the office of the State Committee for Land Resources confirming that there is no land plot used to maintain the garage;
  - certificate issued by the urban planning and architecture department confirming that the garage may be located.
7. To supplement item 2.1.3 with a well-defined and clear procedure setting forth how to obtain a certificate from the office of State Department for Land Resource and the Architecture and Urban Planning Department, with the indication of exact timing during which such certificates shall be issued.
8. To supplement Section 2 with item 2.1.4 of the following wording: «A permit to allot land plots to garage cooperatives to install prefabricated metal garages shall be issued to legal entities registered in the city of Khmilnyk. «Legal entities (garage cooperatives) that are interested in allotment of a land plot to install a prefabricated metal garage shall file a written application for the attention of the city Mayor. An application shall be accompanied with the applicant's state registration certificate, garage cooperative's charter and a list of members of cooperative. Land plots shall be allotted to legal entities to install prefabricated metal garages on lease terms and conditions subject to the General Layout Plan of the city of Khmilnyk for 5 years, with the right to extend the effective period of the lease agreement».
9. Item 2.1.4 shall be re-numbered as item 2.1.5.
10. In item 2.1.5, the word «formalisation» after the words «for installation» shall be replaced by the word combination «legalisation of unauthorized».
11. We propose to restate the list of documents that shall be attached to an application (item 2.1.4) as follows:

## ANNEXES

- copy of the passport;
- document evidencing the eligibility to benefits (for persons failing into the benefit categories set forth in item 2.1.2);
- driver's license;
- document proving the ownership right or the right to use the technical device;
- certificate of the identification code assigned to a citizen of Ukraine;
- certificate issued by the office of the State Committee for Land Resources confirming that there is no land plot used to maintain the garage;
- certificate issued by the urban planning and architecture department confirming that the garage may be located.

12. Item 3.2 shall be restated as follows: «Land plots for maintaining temporary prefabricated metal garages shall be made available for temporary use on lease terms and conditions».

13. Item 3.3 shall be restated as follows: «Land plots shall be let on lease to citizens, whose garages have been already installed, for 5 years with right to extend the effective period of the lease agreement».

14. Section 3 shall be supplemented with item 3.4 as follows: «If an association of co-owners of multi-apartment house (AMCH) is established and possession of the land plot was delivered to it or the land plot is made available to be used by such AMCH, the co-owners shall define a procedure for using the land plot underlying the apartment house and the buildings and surrounding areas. The AMCH members or management shall consider and approve an issue relating to the establishment of a prefabricated garage within the surrounding area of AMCH in accordance with the approved regulation».

15. We propose to restated item 4.2 as follows: «The urban planning and architecture department shall prepare an opinion regarding potential location of a temporary garage on the land plot and its use on lease terms and conditions to install and maintain a temporary prefabricated garage. Such an opinion shall be prepared within 10 days after the application was filed by the interested party with involvement of the land regulation department of the City Council and delivered to this department.

16. We propose to restate item 4.3 as follows: «The land regulation department of the City Council shall prepare the relevant draft decisions to be considered at a session of the City Council in compliance with the Law of Ukraine on Access to Public Information.

17. We propose that item 4.5 shall expressly define all interested parties who may agree upon the land surveying technical document or to delete such a requirement at all. We also propose to expressly indicate time limits within which an application shall be handled.

18. We propose that item 4.6 shall expressly indicate the period within which «the land regulation department of the City Council shall prepare the relevant agreements in three copies indicating the procedure of their registration».

19. Section 5 shall be supplemented with a clear procedure for dismantling and carrying over prefabricated garages with obligatory indication of reasons for such dismantling and carrying over.

20. To expressly define the reasons, for which an application on obtaining a permit to install temporary prefabricated garages may be rejected and reasons for refusal from having a land plot made available for use on lease terms and conditions or legalisation of the prefabricated garage that is already installed.

21. To develop a template application which is required to be submitted for the attention of the city Mayor for approval at a City Council session of the documentation to install a temporary prefabricated garage and template applications that shall be filed on behalf of a legal entity.

Faithfully yours,  
Vitalii Dorokh, Chairman of the Organisation's Board

## ANNEXES

DRAFT

Ukraine  
KHMILNYK CITY COUNCIL  
VINNYTSIA REGION  
DECISION №\_\_\_\_\_

As of « \_\_\_\_ » 2012, made at the City Council session of the 6th convocation

### **On Approval of the Regulation on the Procedure for Installing Temporary Prefabricated Garages in the city of Khmilnyk**

In order to ensure that the requirements related to lawful use by legal entities and individuals of land plots to install and maintain temporary prefabricated garages comply with provisions of Khmilnyk City Land Improvement Rules, approved at the 45th session of the City Council of the 5th convocation under #491 on 26 February 2009, DBN-360 92\*\* Urban Planning, Designing and Building-Up of Urban and Rural Settlements, the Land Code of Ukraine, Article 24 of the Law of Ukraine on Regulation of Urban Planning Activities and being guided by Article 26 of the Law of Ukraine on Local Self-Governance in Ukraine, the City Council has DECIDED:

1. To approve the Regulation on the Procedure for Installing Temporary Prefabricated Garages in the city of Khmilnyk attached hereto.
2. Control over the compliance with this decision shall be conferred upon the City Council's standing commission for urban development, regulation of municipal property and land relations (L.I. Podolskyi).

V.P. Hrushko, City Mayor  
P.P. Drezhenkov  
A.P. Baraban  
L.I. Podolskyi  
O.V. Tenderys  
M.M. Zahnyboroda  
B.Y. Torokhtii

ANNEX

to Decision #\_\_\_\_ made at Khmilnyk City Council's session  
of the 6th convocation as of \_\_\_\_\_ 2012

### **REGULATION**

#### **on the Procedure for Installing Temporary Prefabricated Garages in the city of Khmilnyk**

##### **1. GENERAL PROVISIONS**

1.1. The Regulation on the Procedure for Installing Temporary Prefabricated Garages in the city of Khmilnyk (the «Regulation») is developed pursuant to the Land Code of Ukraine, Laws of Ukraine on Regulation of Urban Planning Activities and on Local Self-Governance in Ukraine, DBN-360 92\*\* "Urban Planning, Designing and Building-Up of Urban and Rural Settlements" and subject to requirements of the General Layout Plan of the city of Khmilnyk, and other legislative and regulatory documents.

1.2. This Regulation shall set forth a procedure for issuing permits to individuals and legal entities to produce the land surveying technical documentation for formalising the right to use the land plot to install temporary prefabricated garages.

1.3. The following terms used in this Regulation shall have the following meanings:

- temporary garage means a temporary building made of light metal elements without a basement for storage of a vehicle and having an operation period set forth in the land plot lease agreement (land plot lease agreement or fixed-term land easement agreement).
- apartment house building estate means a apartment house land plot designated in the residential estate (microdistrict) area allocation project under the building-up project s needed for allocating and maintaining a residential house (houses) and ancillary and technical buildings related to them. The surrounding area shall be determined for a house (houses) in general and may be allocated for a part of the house (block, floor, apartment section, etc).
- unauthorized installation of a temporary prefabricated garage means a structure deemed to be unauthorized one if it was installed (built or is under construction) on a land plot which was not allotted for this purpose, without proper permit or properly approved project, or in significant violation of the construction rules and regulations.

1.4. Detached one-story (two-storied) fixed garages shall be constructed on lands of existing garage cooperatives, within the area of individual private households and apartment house building estates in accordance with the design documentation developed and approved under the established procedure.

### **2. ISSUING A PERMIT TO PRODUCE THE LAND SURVEY TECHNICAL DOCUMENTATION FOR THE LAND PLOT TO INSTALL GARAGES**

2.1. Individuals and legal entities may install temporary prefabricated garages within the defined area or areas of apartment house building estates in accordance with approved plans for their allocation and in compliance with this Regulation.

2.1.1. Such temporary prefabricated garages may be located after the land plot documents for their installation and maintenance were made and a land plot lease agreement was entered into force under the established procedure.

2.1.2. Permits to produce the land surveying technical documentation to install temporary garages within the defined area and areas of apartment house building estates shall be issued to citizens of Ukraine.

2.1.3. Disabled persons of group I suffering from general diseases and disabled persons of the Great Patriotic War of all groups (other disabled persons) shall enjoy benefits with regard to installation of temporary prefabricated metal garages.

2.1.4. Persons interested in obtaining a permit to produce the land surveying technical documentation for the land plot to install a garage shall file to the registration and permitting centre of the City Council a written application for the attention of the city Mayor (annex 1 to this Regulation). The following documents shall be attached to the application:

- identification document (passport);
- document evidencing the eligibility to benefits;
- driver's license;
- document proving the ownership right or the right to use the technical device;
- certificate of the identification code assigned to a citizen of Ukraine;
- document or certificate issued by VOOBTI Municipal Company regarding the ownership right to the apartment;
- certificate issued by the office of the State Committee for Land Resources confirming that there is no land plot used to maintain the garage;
- certificate issued by the Mechanization and Motorsports Department and confirming that the garage may be located.

2.1.5. Legal entities or individuals (citizens) intending to formalise the installed (existing) prefabricated metal garages on the defined sites allocated for placing temporary garages or within the surrounding areas of multi-apartment residential houses shall file to the registration and permitting centre of the City Council a written application for the attention of the city Mayor (annex 1 to this Regulation). The following documents shall be attached to the application:

- identification document (passport);
- certificate of the identification code assigned to a citizen of Ukraine;
- document proving the ownership right or the right to use the vehicle;
- sketch plan of the garage location or the document evidencing the right to permit the installation of the garage (if any);
- receipt evidencing payment of the rent for using the land plot to maintain existing garage for last two years;
- certificate issued by the office of State Committee for Land Resources confirming that there is no (any) land plot used to maintain the garage or the land plot lease agreement (if any);
- certificate issued by the Mechanization and Motorsports Department confirming that the garage is recorded in the Temporary Garage Register;
- certificate issued by the Mechanization and Motorsports Department confirming that the garage may be located.

2.2. Prefabricated metal garages shall not be commissioned and no ownership rights thereto shall be formalised.

2.3. If a citizen, to whom the permit for temporary installation of a prefabricated metal garage, changes his or her place of residence or dies, its owner or heir shall be entitled to re-register or carry over such garage under the established procedure.

### **3. MAKING LAND PLOTS AVAILABLE FOR INSTALLING AND MAINTAINING GARAGES**

3.1. Land plots shall be made available to install and maintain garages under the established procedure.

3.2. Land plots for maintaining temporary prefabricated metal garages shall be made available for temporary use on lease or land easement terms and conditions.

3.3. Land plots shall be let on lease to citizens, whose garages have been already installed, for 5 years with right to extend the effective period of the lease or land easement agreement.

### **4. PROCEDURE FOR PRODUCING THE LAND SURVEY TECHNICAL DOCUMENTATION FOR THE LAND PLOT TO INSTALL AND MAINTAIN TEMPORARY GARAGES**

4.1 This Regulation shall set forth a procedure under which individuals and legal entities shall obtain permits to produce the land surveying technical documentation for the land plot to install temporary prefabricated garages.

4.2. The urban planning and architecture department shall prepare a position regarding potential location of a temporary garage on the land plot and its use on lease or land easement terms and conditions to install and maintain a temporary prefabricated garage.

No proposal may be made for issuing a permit to produce the land surveying technical documentation for land plots to install a temporary prefabricated garage within a historical area. The opinion shall be prepared within 10 days after application was filed by the interested party with involvement of the relevant land surveying service and licensed designer.

4.3. The land regulation department of the City Council shall under the established procedure prepare the relevant drafts of decisions to be considered at a session of the City Council.

## ANNEXES

4.4. An excerpt from the City Council's decision shall be basis to order the technical documentation for the land plot. The customer shall, on a contractual basis, order the technical documentation from a licensed designer.

4.5. After the land surveying technical documentation was produced and agreed upon with the interested parties, the customer shall file to the permitting centre of the City Council a written application for attention of the city Mayor in order to have such documentation approved at a City Council's session and the land plot made available for use on lease terms and conditions.

4.6. If the relevant decision was made, the land relation regulation sector of the City Council shall prepare the relevant agreements in three copies.

4.7. The agreements entered into force shall be registered under the established procedure.

### 5. STATUS OF AN UNAUTHORIZED INSTALLED GARAGE

5.1. Garages that are unauthorized installed and do not meet the requirement of DBN-360-92\*\* and other regulatory requirements shall be demolished under the established procedure.

5.2. Prefabricated garages unauthorized installed in apartment house building estates and located on existing utility networks shall be dismantled and carried over under the procedure as provided by laws.

City Council Secretary

First Deputy City Mayor

P.P. Drezhenkov

### ANNEX 1 TO THE REGULATION

Attention of the City Mayor

/surname, given name, patronymic/

/residential address/

Phone/

### APPLICATION

I hereby kindly request you to issue a permit to produce the land surveying technical documentation for the land plot which area is \_\_\_\_\_ and which is located at \_\_\_\_\_

/address of the land plot location/

to install, maintain\* / underline as appropriate/ a temporary prefabricated garage.

as of \_\_\_\_\_ 20 \_\_\_\_.

/Application date/

/Signature/

The following documents are attached to the application:

- identification document copy (passport);
- document evidencing the eligibility to benefits;
- driver's license;
- document proving the ownership right or the right to use the technical device;
- certificate of the identification code assigned to a citizen of Ukraine;
- document or certificate issued by VOOBTI Municipal Company regarding the ownership right to the apartment;
- certificate issued by the office of the State Committee for Land Resources confirming that there is no land plot used to maintain the garage;
- certificate issued by the Mechanization and Motorsports Department conforming that the garage may be located.

\* 1/sketch plan of the garage location or the document evidencing the right to permit the installation of the garage (if any); 2/ receipt evidencing payment of the rent for using the land plot to service existing garage for last two years; 3/ certificate issued by the Mechanization and Motorsports Department confirming that the garage is recorded in the Temporary Garage Register; 4/ certificate issued by the office of the State Committee for Land Resources confirming that there is no (any) land plot used to maintain the garage or the land plot lease agreement (if any).

FOR NOTES

FOR NOTES

FOR NOTES

FOR NOTES





*Empowered lives.  
Resilient nations.*

**UNDP in Ukraine**

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