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STATE ANTICORRUPTION PROGRAM for 2023-2025

Program development grounds and principles

This Program has been developed by the National Agency on Corruption Prevention (hereinafter referred to as the "National Agency") in accordance with part five of Article 18 of the Law of Ukraine *On Prevention of Corruption*, taking into account the following principles:

optimization of the functions of state and local self-government, which primarily involves the elimination of overlapping powers of different agencies and cases of the exercise of powers by one and the same agency where this combination creates additional corruption risks;

digital transformation of the exercise of powers by government agencies and local self-government bodies, transparency of activities and data disclosure as a basis for minimizing corruption risks in their activities;

creation of more convenient and legal ways to meet the needs of individuals and legal entities as opposed to existing corrupt practices;

ensuring the inevitability of legal liability for corruption and corruption-related offenses, which creates an additional deterrent effect for all parties to legal relationships;

instilling intolerance of corruption in society, promoting a culture of integrity and respect for the rule of law.

Program goal

The goal of the Program is to achieve significant progress in preventing and combating corruption, ensuring coherence and systemic anticorruption efforts of all government agencies and local self-government bodies, and a proper post-war recovery process in Ukraine.

The implementation of the Program will contribute to Ukraine's progress towards membership in the EU, the North Atlantic Treaty Organization (NATO), and the Organization for Economic Cooperation and Development (OECD).

Problems addressed by the Program

The Program is aimed at solving the problems identified in the 2021-2025 Anticorruption Strategy (hereinafter referred to as the "Anticorruption Strategy"), approved by the Law of Ukraine dated June 20, 2022 No. 2322-IX, *On the Fundamentals of the 2021-2025 State Anticorruption Policy*.

1. INCREASING THE EFFECTIVENESS OF THE ANTICORRUPTION SYSTEM

1.1. Shaping and implementing the state anticorruption policy

Problem 1.1.1. The state anticorruption policy is not always based on complete, objective, and reliable data; The efforts of different government agencies, local self-government bodies, and the public are not sufficiently coordinated.

The anticorruption policy in Ukraine is not always based on complete, objective, and reliable data. The lack of comprehensive sociological studies of corruption in Ukraine, which are the main source of information on the real-life corruption experience of the population and businesses, as well as on the most widespread corrupt practices in various sectors, makes it impossible to formulate an effective state anticorruption policy. Another reason why the anticorruption policy in Ukraine is not

always based on complete, objective, and reliable data is the lack of unification of national statistical information, which is not always relevant and correct.

The absence of a single unified system for collecting, consolidating, and visualizing statistical data supplied by specially authorized anticorruption entities and other government agencies makes it difficult to access key information on the performance of these entities.

Sufficient funding and other essential resources are not allocated for the development and implementation of the anticorruption policy, which significantly limits the state's capabilities in terms of both anticorruption policy development and implementation. The lack of effective tools at the disposal of the National Agency for coordinating the anticorruption policy and conducting continuous monitoring adversely affects the effectiveness of the anticorruption policy and the quality of implementation of strategic anticorruption documents.

The potential of anticorruption programs of public institutions in the respective sectors is not fully utilized due to the flaws in the regulatory framework, perception of anticorruption programs mainly as a formal requirement of the law, inadequate assessment of corruption risks (in particular, failure to take into account sectoral specifics that determine the nature of the government agency's activities, which results in incomplete assessment of corruption risks and failure of measures towards their elimination and mitigation to achieve the planned result), the lack of proper tools for monitoring the implementation of anticorruption programs, failure to take into account typical corruption risks identified by the National Agency, and improper implementation of approved anticorruption programs.

Problem 1.1.2. Unsystematic amendments to anticorruption legislation adversely impact the effectiveness of enforcement of the law.

One of the most pressing problems in the legal system of Ukraine is the frequency of legislative amendments, particularly in matters of preventing and combating corruption, their unsystematic nature and inadequate quality. For example, since the beginning of 2019, 34 laws amending the Law of Ukraine *On Prevention of Corruption* have come into force, which hinders the development of a stable and predictable court practice involving the application of the provisions of this Law.

The reasons for the problem include inadequate planning of lawmaking efforts in matters of preventing and combating corruption; the lack of consistency in the study by lawmakers of the general situation in the relevant area of public life, the lack of practical research of the opinions of key stakeholders during the preparation and consideration of legislative proposals.

Problem 1.1.3. Provisions of normative legal acts and their drafts need to be further improved in order to eliminate potential factors that foster corruption.

The main reason for the existence of the vast majority of corrupt practices that cause the greatest economic, organizational, and other harm to the state and society is the generally poor quality of normative legal acts regulating the relevant aspect of public life, as well as the fact that they contain a number of provisions (factors fostering corruption) that, individually or in combination with other provisions, can contribute to the commission of corruption or corruption-related offenses.

The generally low quality of normative legal acts in Ukraine is primarily due to the lack of legislative prescription of the general principles and procedure for lawmaking in Ukraine, as well as the absence of legislatively defined rules for overcoming various types of conflicts and complex forms of competition between legal norms. To a large extent, this situation is due to the fact that lawmakers do not apply in practice the approaches developed in the world's leading democracies to the cycle of formulation, coordination, monitoring, and evaluation of public policy, do not sufficiently study the general situation in the relevant area, do not properly analyze problems in each area, do not use legal forecasting tools, and neglect the elaboration of scientifically sound concepts of legislative development. One of the main reasons for the poor quality of draft laws is the total overload of the Parliament of Ukraine and its staff, due to the need for constant support, substantive processing and consideration of several thousand draft laws, a significant number of which require a more detailed study of the overall situation in the relevant area or a thorough analysis of the problems.

The primary factors that significantly limit the effectiveness of anticorruption expert examination include the objective challenges faced by the Ministry of Justice in ensuring systematic

anticorruption expert examination of draft laws and existing laws, the need to update the procedure and methodology for conducting anticorruption expert examinations by the National Agency, and inadequate consideration of the results of anticorruption expert examination (particularly the public one).

Given the lack of proper legal regulation of lawmaking in Ukraine, as well as the failure to apply the principles and approaches to the public policymaking cycle, legislation is characterized by a large number of factors fostering corruption that have translated into sustainable corrupt practices.

Problem 1.1.4. The institution of authorized anticorruption units (officers) does not fully realize its potential due to insufficient guarantees of autonomy.

The main reasons that prevent authorized anticorruption units (officers) (hereinafter referred to as "anticorruption officers") from unlocking their full potential are the lack of the manager's leadership in establishing anticorruption standards in the operations of the institution, the lack of understanding and rejection by the manager of the benefits of the efforts of the anticorruption officer as an independent professional who ensures the implementation of anticorruption policy at the institution; some degree of legal uncertainty surrounding the establishment of the anticorruption unit (appointment / designation of the anticorruption officer) tasked with prevention and detection of corruption at specific government agencies, business entities in the public sector of the economy, as well as the legal status of such units (officers); the lack of a system of professional development of anticorruption officers and their underdeveloped professional network; the lack of clear priorities in the activities of anticorruption officers; the lack of clear guarantees of autonomy.

The lack of a manager's leadership in establishing anticorruption standards in the operations of the institution is primarily due to the insufficient understanding by the manager of the institution of the requirements of anticorruption legislation regarding the manager's leadership mission, the obligation to integrate a system of corruption prevention into the institution's activities, the scope and lines of corruption prevention efforts, liability for failure to comply with the requirements of the legislation governing its proper organization and the benefits of its effectiveness, as well as inconsistency of the legislation governing the matters of subordination, accountability, and control over anticorruption officers at all levels of public governance.

The legal uncertainty surrounding the establishment of the anticorruption unit (appointment / designation of the anticorruption officer) at some government agencies and public sector business entities is due to insufficient regulation of the matter regarding the possibility of appointment of anticorruption officers at general courts and business entities.

The fact that two different types of anticorruption officers (anticorruption officers at public institutions, whose legal status is defined by Article 13^1 of the Law of Ukraine *On Prevention of Corruption*, and anticorruption officers tasked with the implementation of anticorruption programs of legal entities, whose legal status is defined by Articles 62 and 64 of this Law) exist within the legal landscape leads to excessively complicated legal regulation and errors in the application of laws.

Due to the lack of a system of professional development of anticorruption officers as professionals who ensure the implementation of anticorruption policy in the activities of institutions and the fledgling professional network of anticorruption officers, there is a need to create a management model for organizing training that will ensure the training of a pool of human resources for the positions of anticorruption officers as well as specialized training of incumbent anticorruption officers. As a separate element of the system, the occupation of the anticorruption officer needs to be popularized and the value of anticorruption work needs to be increased in the eyes of managers of public and private sector institutions.

The lack of clearly defined priorities in the work of the anticorruption officers is one of the reasons for the widespread practice of improper organization and planning of anticorruption workflows at the institution, the fact that the functional duties of the anticorruption officer are primarily associated with the organization of the declaration campaign, and perception of such areas of work as corruption risk management, review of draft acts for factors fostering corruption, and so forth as being of secondary importance.

The insufficient level of autonomy of the anticorruption officer is primarily due to vague legislative guarantees of their independence, virtually unlimited discretion of the manager of the institution in the matters of changing its structure or staff list, which leads to the transfer or dismissal of employees of the anticorruption unit, non-compliance by managers with the mandatory requirements for the minimum staff headcount of the anticorruption unit, limited guarantees against unlawful dismissal at the initiative of the manager, and the dependence of the paycheck of employees of the anticorruption unit on discretionary decisions of the manager of the institution.

These factors hinder the formation of balanced systems for preventing corruption at government agencies, local self-government bodies, and business entities, and also impair the effectiveness of anticorruption compliance in each of the areas of public policy implementation at the national, regional, and local levels.

Problem 1.1.5. In many areas of social life, resorting to corrupt practices is a more convenient, efficient, effective, and sometimes only way to satisfy the needs of individuals or legal entities compared to satisfying such needs in the legitimate way.

Recent sociological studies on public attitudes towards corruption in Ukraine show that there is a peculiar social and psychological phenomenon in Ukrainian society, where on the one hand the vast majority of Ukrainian citizens consider corruption to be an unacceptable phenomenon, they understand that corruption leads to a number of negative consequences (in particular, it hinders the economic and socio-political development of Ukraine), and they condemn people who resort to corruption; on the other hand, when it comes not to a general description of corruption or corruption of others (especially politicians, officials, judges, law enforcement officers, and so forth), but to personal problems of a citizen, the need to satisfy certain personal needs (or the needs of their relatives), the same citizens are convinced that there is nothing wrong with solving these problems through corruption.

At the same time, these studies show that if a person knows for sure that they will achieve the desired outcome quickly, comfortably and legally, they will never resort to corruption. Today, the state does not offer a sufficient number of mechanisms for interaction with the state, which would be convenient for individuals and legal entities (as an alternative to the already established corrupt practices), and the public is not always properly informed about the newly created legal, convenient, and effective mechanisms for satisfying such needs.

There is often a perception among government officials that the main purpose of communication in the anticorruption domain is moralizing. Meanwhile, communication campaigns should not be the main factor in changing people's behavior, but rather an auxiliary tool for promoting the alternatives created. For the same purpose, the state should establish a dialog with businesses, encouraging them to also look for legal alternative ways (as opposed to existing informal practices) to solve complex issues in cooperation with the public sector.

A separate aspect of the problem is the inaccessibility of such alternatives due to flaws in the system of government agencies and local self-government bodies. In 2020, Ukraine's administrative and territorial structure changed, with more than 11,000 village, town, and city councils replaced by 1,470 capable territorial communities at the basic level, while 490 districts were optimized and 136 districts were formed at the subregional level. At the same time, the full-scale armed aggression against Ukraine has significantly exacerbated the problems that have existed in local self-government for years and highlighted the shortcomings that persisted in 2020. Therefore, the reorganization of the system of government agencies and local self-government bodies depends on the legislative definition of the basic principles of the administrative and territorial structure of Ukraine, the procedure for the formation, liquidation, establishment, and modification of the boundaries of administrative and territorial units and the resolution of other issues pertaining to the administrative and territorial structure.

1.2. Instilling a negative attitude towards corruption

Problem 1.2.1. Everyday corrupt practices are an established norm of conduct and are not perceived as violations of moral or legal norms. There is no consistent demand from the population for public officials to uphold the prescribed rules of ethical conduct and integrity.

Citizens in Ukraine lack full trust in the state and its key institutions. According to sociological research, this negative circumstance leads to a number of other problems that largely prevent Ukraine from making significant progress towards shaping a negative public attitude towards corruption.

First, there is a perception among the population that there have been no improvements when it comes to preventing and combating corruption, despite moderate albeit steady progress in reality. As a result, people lose hope for a better life, and distrust of the anticorruption reform and the government's intentions to fight corruption is growing.

Second, everyday corruption in Ukraine is perceived as the best and sometimes only way to solve one's own problems or meet one's immediate needs. And even when the state or local governments offer an equally convenient, but completely legal alternative to established corrupt practices, the people do not always use it.

Third, there is a strong demand for justice among the population, transformed (hypertrophied) in Ukraine into a demand for massive criminal prosecution and punishment of high-ranking officials. The absence of a significant number of convictions involving imprisonment (or their insufficient publicity) creates the impression among citizens that the anticorruption reform is not achieving its goals.

Fourth, Ukraine has not developed a culture of proper openness and transparency of public institutions, constructive and mutually beneficial cooperation between the authorities and stakeholders (primarily the public), and a final understanding of the role of an official – to serve the Ukrainian people. Public servants often perceive the issue of interaction with the public as burdensome, and therefore carry out the relevant activities (public discussions, public consultations, and so forth) rather formally.

Problem 1.2.2. The lack of objective coverage of the situation with preventing and combating corruption in Ukraine leads to a distorted public perception of the causes of corruption, its level, and the effectiveness of anticorruption institutions.

One of the main reasons for biased coverage of the situation with the prevention and combating of corruption in Ukraine is the lack of a coordinated unified information policy of the state in matters of anticorruption efforts. Since 2020, Ukraine effectively has no anticorruption communications strategy. Meanwhile, given that the 2017-2020 Anticorruption Communications Strategy was developed in the last year of the 2014-2017 Anticorruption Strategy, it actually existed without the foundation that was supposed to be provided by the Anticorruption Strategy for the relevant period, and therefore it was impossible to effectively address the issue of biased coverage of the situation by implementing this strategic document.

The results of the analysis of media coverage of corruption show that there is little information about public policy on preventing and combating corruption, as well as its implementation.

At the same time, the distorted perception of the situation with preventing and combating corruption in Ukraine is also caused by disinformation narratives promoted by the Russian Federation in Ukraine and abroad to discredit the country. There is no proper response to such disinformation in Ukraine and abroad.

The lack of a proper information landscape in Ukraine for covering the implementation of the state's anticorruption policy, which is a consequence of improper coordination of state communications in the field of anticorruption efforts, in practice causes a distorted perception of the level of corruption by citizens.

1.3. Resolution of the conflicts of interest, observance of general restrictions and bans, rules of ethical conduct

Problem 1.3.1. Flaws of legislation and the lack of effective risk-based mechanisms for detecting conflicts of interest limit the ability to minimize corruption by preventing and resolving conflicts of interest.

Existing definitions such terms as "potential conflict of interest", "real conflict of interest", and "private interest" lack sufficient clarity and unambiguity.

The definitions of the terms "potential conflict of interest" and "real conflict of interest" include such elements as "private interest" and "official / representative powers". Moreover, in order to

establish a real conflict of interest, it is necessary to establish a contradiction between the private interest and the official / representative powers.

The use of the term "contradiction" in the definition of the real conflict of interest does not contribute to clarity, suggesting that not any private interest can affect the objectivity of the exercise of powers, but only the one that "contradicts" the powers. In reality, the main danger of conflicts of interest as a social and legal phenomenon is the fact that a private interest interferes with the impartial exercise of powers, and not the fact that there can be private interests that contradict official powers.

Specifically the failure to prove the existence of a contradiction between a private interest and official powers plays a decisive in courts when it comes to deciding whether the requirements of the Law of Ukraine *On Prevention of Corruption* dealing with the prevention and resolution of conflicts of interest have been violated, and therefore creates additional obstacles to bringing individuals to administrative liability and enforcing the principle of inevitability of liability for corruption-related offenses.

The definition of "private interest" also requires some clarification, as the definition provided in the Law of Ukraine *On Prevention of Corruption* does not provide a clear understanding of what it may consist of. This leads to situations where everyone has to rely solely on their subjective perception of private interest in deciding whether or not a private interest exists, which is the main reason for misunderstanding the nature of the conflict of interest, leading to offenses or complicating the work of public servants who see a conflict of interest in situations where it is actually absent, or vice versa.

The rules for resolving conflicts of interest set out in Section V of the Law of Ukraine *On Prevention of Corruption* are insufficient to ensure the resolution of conflicts of interest: there is no algorithm of actions for the direct superior in cases when they lack the authority to apply a particular method of external resolution of a subordinate's conflict of interest (e.g., transfer or dismissal); there is an inconsistency in the provisions of the Law of Ukraine *On Prevention of Corruption* regarding the time frame for reporting a conflict of interest and the time frame for its independent resolution; there is no administrative liability of managers for failure to act on resolving conflicts of interest of subordinates; there are no requirements for the form and procedure for filing a report on a conflict of interest, which leads to alternative (ambiguous) actions of a person upon discovery of a conflict of interest, which may cause this person to face liability.

Despite the changes to the rules for transferring enterprises and corporate rights to third parties for management, certain flaws still remain, namely: the absence of an obligation to transfer enterprises and corporate rights acquired after appointment (election) to a position to third parties for management; the possibility of officials handing over their businesses or corporate rights for management to their next of kin; disciplinary liability for violation of the obligation to transfer enterprises and corporate rights for management is ineffective (it cannot be applied to some entities, such as Ukrainian Parliament members); it is not prohibited to make decisions or taking actions with respect to legal entities belonging to the official or in which this official owns corporate rights.

While acknowledging the increased effectiveness of the National Agency's monitoring and control over the implementation of legislative acts on ethical conduct, prevention and resolution of conflicts of interest in the activities of public servants, which until 2020 had been carried out by the National Agency with limited tools and mainly on the basis of reports on corruption and corruption-related offenses, it is worth highlighting certain organizational and regulatory problems that still persist and hinder the effectiveness of its activities (inaccurate and or incorrect wording of the respective powers and rights of the National Agency (simultaneous use of the words "monitoring" and "control" in the definitions of powers, which are different in terms of their substance), discrepancies between the provisions of the Law of Ukraine *On Prevention of Corruption* and provisions of other laws, which makes it impossible to obtain certain types of classified information, the lack of a system for ranking and analyzing information contained in the Unified State Register of Declarations of Officials Authorized to Carry out Functions of State or Local Self-Government, which would make it possible to identify risks of violation of legislative requirements pertaining to prevention and resolution of conflicts of interest by the declarants.

Problem 1.3.2. Legal regulation of prohibitions and restrictions on receiving gifts and being a party to certain legal relationships is flawed, and not all prohibitions are enforced by legal liability measures.

To date, the legal provisions defining anticorruption prohibitions and restrictions have been sufficiently tested, and the outcomes of these tests indicate their insufficient effectiveness, which is partly due to the lack of practical experience in designing the relevant restrictions in Ukraine, as well as to disparate amendments made to the rules governing such anticorruption restrictions after the entry into force of the Law of Ukraine *On Prevention of Corruption*.

For example, the prohibition of concurrent employment (of the conduct of specific activities), the wording of which is unclear and can be interpreted in different ways, leads to discretion and, accordingly, corruption risks when making decisions on whether a particular activity is prohibited or permitted by specially authorized anticorruption entities, courts and/or misconceptions of the entities covered by the Law of Ukraine *On Prevention of Corruption* that there are no violations of anticorruption restrictions when signs of violations are present, which causes them to be held liable.

The existing wording of the restriction on receiving gifts makes it possible to argue that gifts exceeding the maximum permitted value (one-time or in total) are automatically prohibited, even if received as gifts within the framework of personal (friendly) relations during certain holidays (events) and not motivated by the person's position or as diplomatic gifts.

Since the relevant restriction should primarily make it impossible to influence the objectivity and impartiality of the official in the performance of their official duties, the wording of the existing restrictions on receiving gifts appears excessive and does not ensure a fair balance between the private and public interests of the person.

In addition, the Law of Ukraine *On Prevention of Corruption* presumes that a decision made by an official in favor of a person from whom they or their next of kin received a gift is considered to be have been made in the conditions of a conflict of interest, regardless of how much time elapsed since the gift was received.

The wording of the relevant provision leads to situations where, even many years after receiving a gift, a decision made in the course of exercising their powers may lead to formal sanctions due to a conflict of interest, although the relationship between the gift giver and the recipient, on account of the amount of time that has elapsed, no longer implies the existence of a private interest as a mandatory component of a conflict of interest.

Enforcement problems are also linked to the flaws of the Law of Ukraine *On Prevention of Corruption*, which defines the rules for handling gifts or unjust enrichment, which are not sufficiently consistent and all-encompassing, and sometimes do not exist at all, for example, when it comes to gifts received in intangible form (money transfer to a bank account).

It is also worth noting that not all anticorruption restrictions are accompanied by the relevant type of liability. For example, a violation of a restriction committed after discontinuation of performance of the functions of state or local self-government has no negative legal implications for the violator, and therefore contributes to the commission of new violations of such restrictions.

This happens because it is impossible to impose a disciplinary sanction due to the specifics of the restriction, which begins to apply after the person has already stopped performing the functions of state or local self-government, as well as the absence of administrative liability for violations of said restriction.

Restrictions applicable after discontinuation of activities involving performance of the functions of state or local self-government, which are not supported by liability stipulations, renders the state unable to influence compliance with this restriction and, therefore, its effectiveness.

Moreover, chaotic amendments to the Law of Ukraine *On Prevention of Corruption* have led to a situation where some persons holding patronage positions (e.g., assistants and advisers to the President of Ukraine), due to their official functions and a sufficiently high level of corruption risks, are subject to anticorruption restrictions, while persons with similar functions and risks (e.g., assistants to Parliament members) are not.

These problems with normative regulation of mechanisms for preventing corruption lead to a decrease in the efficiency and effectiveness of such mechanisms and do not help curb corruption.

Problem 1.3.3. The activities of entities that influence (lobby) the parliamentary decision-making process are non-transparent and non-public.

The scope of public life sectors, which according to Article 92 of the Constitution of Ukraine is determined exclusively by the laws of Ukraine, is all-encompassing, which is why ensuring transparency of the Parliament's lawmaking efforts is of utmost importance. There is currently no legislative regulation of lobbying activities that, which could prevent the spread of corrupt practices in the process of interaction between representatives of various interest groups and government officials, and ensure publicity and openness of government decision-making.

Problem 1.3.4. There are no legislative standards for ethical conduct of MPs, members of local councils, and elected local self-government officials. The existing rules of ethical conduct are not properly implemented due to the failure of managers to exercise their powers to hold violators of such rules liable.

Compliance with ethical rules of conduct by members of the Parliament of Ukraine, members of local councils, and elected officials of local self-government during the term of their representative powers is important for building trust in such individuals and support of their constituents, and ensures the establishment of feedback between society and its elected representatives.

Moreover, the requirements of international acts, recommendations of the Group of States against Corruption (GRECO) as part of the fourth round of evaluation "Prevention of Corruption among Members of Parliament, Judges and Prosecutors", recommendations based on the findings of the European Parliament's special mission in 2015-2016 necessitate adopting codified acts regulating the rules of ethical conduct.

Currently, the rules governing ethical conduct of Ukrainian Parliament members, local councilor members, and elected local self-government officials, including the obligations to observe the relevant rules, are contained in various laws whose provisions have flaws, including the declarative nature of certain rules, the lack of rules that mandate ethical conduct at committee meetings, official events, and during contacts with the press, the lack of sufficient effective mechanisms of legal influence on Ukrainian Parliament members, local council members, and elected local self-government officials for breach of codes of professional ethics.

Also, there is currently no effective mechanism for monitoring and enforcement of the relevant rules of ethical conduct, including filing and review of complaints, the procedure for imposing sanctions for violation of the rules of ethical conduct, which is an important guarantee of public trust in elected officials.

The obligation to comply with the rules of ethical conduct is imposed on both elected officials and public officials, the majority of whom are civil servants.

Practical experience shows that in many cases when it comes to the need for agency control over compliance by a civil servant with the rules of ethical conduct, the manager of the civil service sends the information that needs to be verified to the National Agency, even though the instruments for initiating an investigation into possible violations of the rules of ethical conduct by civil servants and the possibility of holding a civil servant liable fall within the scope of authority of the manager of the civil service.

Failure of the respective managers to take measures to bring their subordinates to disciplinary liability for violations of the rules of ethical conduct should result in actual negative consequences for such managers.

1.4. Implementation of financial control measures

Problem 1.4.1. Legislative regulation that categorizes specific individuals as declarants is flawed, which limits the potential of financial control instruments.

The Law of Ukraine *On Prevention of Corruption* contains a list of categories of positions and specific characteristics that determine the range of declarants. This is a fairly broad range of persons who must submit a declaration of a person authorized to carry out the functions of state or local self-government.

The results of analysis of the changes made to the list of declarants show that they were only partly caused by legislative amendments, creation or liquidation of government agencies, or other objective reasons. However, a significant portion of them resulted from a poorly justified decision of the legislator about a significant level of corruption risks inherent in a particular position or function.

Numerous appeals to the National Agency in which applicants ask for clarification on whether they have status as declarants also speak to the ambiguity of the state policy in this field as well as the vagueness of regulatory wording.

The main reason for this situation is that the legislator did not study the substance of the relevant legal relations in depth and did not evaluate them for corruption risks. As a result, the legislator not only uses ambiguous wording when determining the list of declarants, which leads to legal uncertainty and contradictory court practice, but also includes in the list of declarants those whose official duties almost completely rule out any corruption risks.

At the same time, there are several obvious and acute problems that need to be addressed immediately. In particular, given the decentralization reform and the resulting significant increase in the budgets of municipal enterprises, the corruption appeal of positions at private law legal entities in which a municipal shareholding exceeds 50 percent has increased significantly. This necessitates the extension of financial control measures to such entities.

Another widely recognized problem is the artificial division by the legislator of categories that are in fact substantially identical: "positions with a high level of corruption risks" and "position with an elevated level of corruption risks", as well as "persons occupying a position of authority" and "persons occupying a position of particularly high authority". The principle of legal certainty and lawmaking techniques clearly require that these categories be combined.

Problem 1.4.2. The process of submitting information to the Unified State Register of Declarations of Officials Authorized to Carry out Functions of State or Local Self-Government is cumbersome due to insufficient awareness of declarants about the requirements on how to fill out the declarations; Recurrent problems in the operation of this Register, flawed legislation

The process of submitting information to the Unified State Register of Declarations of Officials Authorized to Carry out Functions of State or Local Self-Government has been cumbersome for a long time due to a number of reasons. The main ones were: technical problems that disrupted the stable operation of the Register; the lack of awareness of declarants of the legal requirements and the procedure for filling out declarations; the need for declarants to collect a large amount of data; insufficient quality and stability of legislation.

This problem leads to a large number of mistakes in filling out declarations by declarants, widespread cases of missed deadlines for submission of declarations, and a lack of understanding by declarants of the essence of legislative provisions and the procedure for their implementation.

It should be noted that this problem has been partly resolved. In particular, the Unified State Register of Declarations of Officials Authorized to Carry out Functions of State or Local Self-Government as a software and hardware complex has been modernized and moved to the premises of the National Agency. Significant steps have also been taken to facilitate and simplify the procedure for filling out the declaration, in particular by introducing the following innovations: the possibility to change the type of declaration without submitting a new declaration; the ability to use an integrated directory with new names of population centers, territorial communities, and districts; automatic filling of fields with the name of legal entities based on their code in the Unified State Register of Legal Entities and Organizations of Ukraine; a directory of vehicle makes and models has been integrated; a drop-down list of the most common objects of declaration has been introduced, which was formed based on the results of the analysis of declarations for previous periods; the possibility to specify a non-existent cryptocurrency has been eliminated; the input of bank account details has been simplified; it is now possible to review the data contained in other registers using the “Data for Declaration” function.

Another relevant reason for the problem is the changeability and unpredictability of legislation pertaining to declarations. In particular, during the existence of e-declaration functionality, the legislator has repeatedly changed the list of declarants and the information to be included in the

declaration. Such changes were mostly made without a prior broad discussion and did not provide for sufficient transition periods for adaptation. This resulted in numerous mistakes made by declarants when filling out declarations, failure to submit or late submission of declarations, and so forth.

Problem 1.4.3. Previous efforts involving oversight and verification of declaration as well as monitoring of the lifestyle were not sufficiently effective.

The problem of insufficient effectiveness of financial control measures consists of the following main elements: a relatively small number of full audits conducted, low effectiveness of measures to prevent late submission or failure to submit declarations by declarants, insufficient effectiveness of lifestyle monitoring, low number of processed declarations submitted by persons defined in Article 52^1 of the Law of Ukraine *On Prevention of Corruption*.

This problem is primarily due to the following reasons:

insufficient level of automation of control measures;

the need to improve the system of prioritization of resource allocation;

the lack of a data warehouse (DWH) system;

limited opportunities access to information in foreign registers and databases.

As a result of the lack of resources to cover a much larger number of declarations with financial control measures, the efforts to verify them are not all-encompassing. This helps to avoid liability for violations of anticorruption legislation. Instead, improvements to the system will make it possible to both respond promptly to violations of anticorruption legislation and prevent them.

1.5. Ensuring the integrity of political parties and election campaigns

Problem 1.5.1. The cumbersome and nontransparent mechanism by which parties are formed, operated, and terminated

The main factor behind the existence of the vast majority of real and potential corrupt practices when it comes to ensuring the integrity of political parties and election campaigns is the non-transparent mechanism of formation, legalization, operation, and liquidation of political parties due to:

unfavorable conditions at the legislative level for the creation of political parties, in particular, the complex procedure for the establishment and state registration of political parties;

a political system that includes political parties that have not participated in the election process for a long time;

failure to align the charters of political parties with the requirements of the legislation, taking into account the fact that registration of such constitutional documents and amendments to them show signs of a formal approach;

a burdensome and complicated mechanism of voluntary liquidation of a political party and its organizational units;

no restrictions on the right to participate in elections for a political party that systematically violates its obligation to report to the National Agency.

The problem is further complicated by the restrictive measures imposed by the Cabinet of Ministers of Ukraine to prevent the spread of COVID-19 in Ukraine and the temporary occupation of part of Ukraine as a result of the armed aggression of the Russian Federation.

At the same time, the National Agency is involved in addressing this issue at the legislative level.

Pursuant to a decision of the Parliamentary Committee on Digital Transformation, a working group has been formed to prepare a draft law on political parties, which includes a representative of the National Agency. The provisions of the draft law are aimed at solving problems related to simplifying the procedure for establishing political parties; purging the political system of parties that have not participated in elections for a long time; aligning the charters of political parties with the requirements of the law and banning political parties that commit systematic violations of the law from participating in elections.

The existing procedure of voluntary liquidation of a political party and its organizational units is burdensome and complicated for leaders and members of a political party due to the large number of organizational units, which makes the ineligible for the simplified liquidation procedure.

Problem 1.5.2. Excessive influence on political parties and election campaigns by specific individuals and legal entities leads to the prevalence of private interests over public ones in representative bodies.

The main reasons for the problem of excessive influence on political parties and election campaigns by specific individuals and legal entities, which leads to the prevalence of private interests over public ones in representative bodies, are:

the possibility of contributions to political parties by individuals who do not have a sufficient legitimate income to afford such contributions are possible due to gaps in legislation, namely:

- the lack of legislative prescription of the correlation between the amount of contributions made by individuals to political parties and their income that can be officially proven;

- no legal prohibition of contributions by individuals acting on behalf of third parties, in particular representatives of financial and industrial groups, oligarchs;

failure to extend the mechanism of allocation of state funding for statutory activities of political parties to political parties that have not cleared the statutory threshold in the election of Parliament members but have received significant support from voters. Such parties become an attractive target for "investments" by certain individuals, which leads to their financial dependence on such individuals and/or legal entities, and thus creates preconditions causing such parties to defend the private interests of their sponsors rather than the public interest of voters;

the absence of a list of prohibitions on the use of state funding by political parties and legislatively defined priority areas for the spending of these funds, as a result of which all expenses incurred by political parties can be attributed to the costs of “statutory activities”. Given the fact that the term “statutory activities” is not defined in the legislation and no priority areas for the spending of state funding are established, this gap in the legislation may lead to the channeling of these funds for other purposes, including in the interests of third parties;

the lack of a procedure for the use of electronic media, outdoor advertising, social media and other online platforms for election campaigning, which gives rise to "hidden advertising" disguised as regular news and publications, which misleads voters and violates the principle of free and equal elections.

Problem 1.5.3. The system for monitoring the funding of activities of political parties and the funding of their participation in elections needs improving.

The main reasons for the problem of a flawed system of control over the financing of political parties and their participation in elections are:

the inability to submit financial statements on the receipt and spending of election and referendum funds through the electronic reporting system.

Financial statements on the receipt and spending of election funds by political parties, their local organizations, candidates in national and local elections (hereinafter referred to as “financial statements of election process participants legally obligated to file reports”) are published by the National Agency in the public section of the electronic system of the Unified State Register of Reports of Political Parties on Assets, Income, Expenditures, and Financial Liabilities. At the same time, submission of financial statements on the receipt and spending of funds of referendums (nationwide or local), the initiative groups and campaigning for the initiative to hold them by political parties, public organizations registered as supporters or opponents of the referendum issue is mandated in hardcopy form and in electronic form simultaneously to two government agencies (the Central Electoral Commission and the National Agency). In this regard, the system of control over the financing of political parties and their participation in elections needs to be improved by enhancing the electronic system of the Unified State Register of Reports of Political Parties on Assets, Income, Expenditures, and Financial Liabilities. This will create an opportunity for political parties, their local organizations, candidates in national and local elections, as well as political parties and public organizations registered as supporters or opponents of a referendum (national or local) to submit and publish financial statements online on a single electronic platform;

the absence of automatic mode of auditing the financial statements of election process participants legally obligated to file reports.

The National Agency has begun implementing automatic verification of reports of political parties through integration with other information, telecommunication and reference systems, registers, and databases. However, the final adjustment is possible on condition that reporting gets reinstated and the automated system gets integrated with other databases.

The introduction of a mechanism for submitting financial statements of election process participants legally obligated to file reports through the electronic services of the National Agency is mandated by the relevant resolution of the Central Electoral Commission, which will enable automatic verification of compliance with the requirements of the law by these participants;

failure to apply a risk-based approach to controlling the activities of political parties, their local organizations, and candidates in national and local elections.

The National Agency applies a risk-based approach to controlling the activities of political parties by monitoring risks in their activities in accordance with approved internal methodological recommendations. At the same time, there is a need for a legislative definition of the powers of monitoring as continuous tracking of financial, economic, and other activities of political parties with the objective of identifying risks.

The Central Electoral Commission and the National Agency are responsible for monitoring the activities of election process participants. However, both institutions lack the essential resources and tools to effectively analyze candidates' campaign expenditures or detect violations of the financing rules due to the large number of reports. The problem of limited resources in controlling the political financing and election campaigning can be solved by introducing selective control, taking into account the risks inherent financial, economic, and other activities of political parties, their local organizations, and candidates running in national and local elections;

ineffective division of powers between the Central Electoral Commission and the National Agency involving control over political financing and election campaigning. This is due to the absence of a legally defined single state body responsible for controlling (analyzing) financial statements on the receipt and spending of election funds of political parties, their local organizations, and candidates running in national and local elections. Thus, the analysis of financial statements on the receipt and spending of election funds is carried out by the Central Electoral Commission together with the National Agency, which leads to overlapping powers and, as a result, inefficient usage of resources.

1.6. Protection of corruption whistleblowers

Problem 1.6.1. Lack of respect for corruption whistleblowers in society, as well as lack of knowledge of legal guarantees for protection of their violated rights among persons who want to report corruption

The institution of whistleblowers is an important preventive measure against the emergence and spread of corruption in society. Often, only whistleblowers have access to information about corruption, which they can detect and report because they are inside the organization.

Presently, the willingness to report possible corruption or corruption-related offenses and other violations of the Law of Ukraine *On Prevention of Corruption* is quite low in Ukraine. The main reasons for a person's reluctance to report corruption is the fear of being condemned by their environment (colleagues, friends, acquaintances) and suffering consequences in the form of penalties imposed by the management.

When citizens make a decision to report corruption, a key consideration is the level of awareness of legal protection of their rights as whistleblowers.

The condemnation by others of corruption whistleblowing and the lack of respect for whistleblowers are caused by a number of factors, the main ones being:

tolerance of corruption, which affects the effectiveness of the whistleblower institution and is a deterrent to its development;

the lack of a mature culture of corruption whistleblowing in society.

At the same time, a potential whistleblower's fear of being subjected to sanctions because of their corruption report is caused by the following factors:

lack of awareness or insufficient awareness of the legal guarantees of whistleblower protection and the mechanism for implementing such protection;

lack of practice of holding managers (employers) liable for violations of whistleblower rights as a preventive measure against harassment and discrimination against whistleblowers.

Problem 1.6.2. Lack of essential knowledge to properly report cases of corruption, the entities authorized to review them, as well as a mechanism for effective review of such reports

As a result of improvements to the legislation on the protection of corruption whistleblowers in October 2019 and June 2021, the guarantees for the protection of corruption whistleblowers were strengthened, mechanisms for the implementation of the relevant guarantees were defined, and financial incentives were introduced for citizens to encourage them to report corruption. However, so far the positive effect of the regulatory consolidation of these guarantees is insignificant, due to the low level of public awareness of possible ways to report corruption and the procedures for reviewing such reports, distrust in the quality of the review process and lack of confidence in the timeliness and proportionality of the response to such reports, and the lack of a single channel for reporting corruption.

Most government agencies have not established all the legislatively prescribed reporting channels, have not segregated internal channels and regular reporting channels, have not developed procedures for receiving and reviewing corruption reports, and provide little guidance to potential whistleblowers. At the same time, the quality of reports is low, as they often lack specific factual data.

The Law of Ukraine On Amendments to the Law of Ukraine *On Prevention of Corruption Pertaining to the Regulation of Certain Issues of Whistleblower Protection* dated June 1, 2021, No. 1502-IX, provides for the functioning of the Unified Whistleblower Reporting Portal, which should make the process of reporting corruption simple and convenient, and ensure the confidentiality and anonymity of whistleblowers. This Law unifies the procedure for reviewing corruption reports.

At the same time, the Unified Whistleblower Reporting Portal has not yet been put into permanent (commercial) operation, which should be preceded by a communications campaign and a number of awareness-raising activities that will raise public awareness of the ways to report corruption and the mechanisms for their consideration.

The Law of Ukraine *On Prevention of Corruption* mentions the cases when whistleblowers can report classified information through external reporting channels. However, this does not apply to information containing secrets of state, and the Law states that the procedure for reporting such information is prescribed by legislation. Meanwhile, there is still no procedure and channels for reporting such information, which means that a whistleblower who works, for example, at the Ministry of Defense, the General Staff of the Armed Forces or the Security Service of Ukraine, can be held liable for disclosing secrets of state, and an investigator of a pretrial investigation authority can be held liable for disclosing secrets of an investigation.

Problem 1.6.3. Whistleblower protection is not properly implemented due to insufficient institutional capacity of the authorized bodies and shortcomings in legislative regulation.

The National Agency, the National Anticorruption Bureau, the National Police, prosecutorial authorities, free legal aid providers, state authorities, authorities of the Autonomous Republic of Crimea, local self-government bodies, legal entities under public law and anticorruption units (anticorruption officers) of the above-mentioned agencies are empowered to cooperate with whistleblowers and take measures to protect them.

The lack of established interaction and coordination between the bodies authorized to provide whistleblower protection does not make it possible to swiftly respond to cases of violation of whistleblower rights and guarantees and provide proper protection.

The anticorruption units (anticorruption officers) do not always take effective measures to prevent violations of whistleblowers' labor rights and provide appropriate remedies in case of violations.

In addition, there are cases when a whistleblower needs psychological assistance after reporting corruption, as it is stressful to report corruption, interact with law enforcement agencies, and suffer harassment in the workplace.

The challenges of wartime also necessitate regulating the issue of obtaining whistleblower status by military personnel, providing proper reporting channels and ensuring legal protection and other kinds of protection for such whistleblowers both during martial law and after its termination or abolishment.

2. PREVENTION OF CORRUPTION IN PRIORITY SECTORS

2.1. Fair courts, prosecutorial and law enforcement authorities

Problem 2.1.1. There is a social trend towards a declining level of trust in the justice system. The law does not define integrity as a qualification requirement for members of the High Council of Justice and the High Qualification Commission of Judges of Ukraine.

For a long time, society has been expressing distrust in a number of justice system authorities. The main factors that influenced the level of trust in such agencies were doubts expressed in the mass media about the integrity of their members and the possibility that they made decisions in the conditions of conflicts of interest.

To build trust in judicial authorities and to fulfill Ukraine's international commitments, the Laws of Ukraine *On Amendments to the Law of Ukraine On the Judicial System and Status of Judges and Select Laws of Ukraine on the Restoration of the High Qualification Commission of Judges of Ukraine* and *On Amendments to Select Legislative Acts of Ukraine on the Procedure for Election (Appointment) of Members of the High Council of Justice and the Activities of Disciplinary Inspectors of the High Council of Justice* were adopted in 2021.

To a large extent, the relevant provisions have already been implemented: the Ethics Council and the Competitive Committee for the Selection of Members of the High Qualification Commission of Judges of Ukraine have been established and are now functioning; a one-time evaluation of the current members of the High Council of Justice for compliance with the criteria of professional ethics and integrity as an eligibility criterion for holding the position of a member of the High Council of Justice was conducted; the powers of one member of the High Council of Justice, in respect of whom the Ethics Council issued a conclusion on non-compliance with the above criteria, were terminated. In addition, to form a new composition of the High Qualification Commission of Judges of Ukraine, the Competitive Committee for the Selection of Members of the High Qualification Commission of Judges of Ukraine was established and has already begun its work.

At the same time, the following issues remain unresolved:

the formation of the new composition of the High Council of Justice and the High Qualification Commission of Judges of Ukraine has not been completed. That is why the European Commission's opinion on Ukraine's application for membership in the European Union recommends that "the Ethics Council should complete the verification of the integrity of candidates for the High Council of Justice and select candidates for the High Qualification Commission of Judges of Ukraine". At the same time, the public criticized the lack of transparency in the activities of the Ethics Council;

the existing mechanisms for preventing and resolving conflicts of interest in the activities of members of the High Council of Justice and the High Qualification Commission of Judges of Ukraine were not effective in practice and thus failed to prevent actions or decision-making in conditions of a real conflict of interest. For example, the provisions of part two of Article 35^1 of the Law of Ukraine *On Prevention of Corruption* stipulate a general rule that in case of a real or potential conflict of interest of an official performing the functions of state or local self-government or person in equivalent capacity who is a member of a collective body (committee, commission, board, etc.), they have no right to participate in the decision-making process of this body. At the same time, pursuant to Article 100 of the Law of Ukraine *On the Judicial System and Status of Judges*, the recusal of a member of the High Qualification Commission of Judges of Ukraine in respect of whom there is evidence of a conflict of interest is not unconditional – the decision to recuse (self-recuse) is made by a majority vote of the members of the High Qualification Commission of Judges of Ukraine participating in the meeting. A similar provision also exists with respect to the procedure for consideration of recusal by members of the High Council of Justice (part five of Article 33 of the

Law of Ukraine *On the High Council of Justice*). However, in practice, there may be situations when all members of the High Council of Justice or the High Qualification Commission of Judges of Ukraine will have the same private interest or when the statement of the fact that a conflict of interest exists will lead to the loss of the ability to make relevant decisions;

in practice, there have been problems with the validity and transparency of scoring and decision-making in the High Council of Justice and the High Qualification Commission of Judges of Ukraine during the process of selection of judges of evaluation of their qualifications. For example, during the evaluation of qualifications of judges, the High Qualification Commission of Judges of Ukraine did not specify the number of points assigned separately for each of the ten indicators prescribed by the regulation on the qualification evaluation, making it impossible for the public to control the evaluation process.

Problem 2.1.2. Procedures for qualification evaluation of judges and competitive selection procedures need to be improved and clear and predictable criteria (indicators) of integrity and professional ethics should be developed. Integrity and professional ethics as standard requirements for judges are not sufficiently implemented in practice, and the evaluation of conformity to these requirements is not always transparent and predictable.

Different bodies involved in the evaluation of qualifications of judges (judicial candidates) use different approaches and different standards of proof when evaluating the integrity and professional ethics of judges or candidates. The best practices, in particular those introduced by the Public Council of International Experts, are not properly taken into account by the judicial governance bodies.

There are no requirements and properly defined procedures for evaluating judicial candidates (outside the qualification evaluation process) for compliance with the integrity criterion. The Public Integrity Council does not participate in the selection of judges outside the qualification evaluation process, to the European Parliament called attention in its resolution dated February 11, 2021 on the implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand.

As of today, the qualification evaluation of more than 2,000 judges, as prescribed by the Constitution of Ukraine, has not been completed. There is also a significant number of vacant judicial positions, which exceeded 2,000 as of the end of 2021. The activities of the High Qualification Commission of Judges of Ukraine in selecting judges and conducting qualification evaluation failed to ensure a high-quality and comprehensive evaluation of judges (candidates for judicial positions) based on the criteria of competence, integrity and professional ethics. The reasons for this were, in particular, suboptimal organizational decisions regarding certain stages of the selection and evaluation procedures.

The absence of an approved professional profile of a judge does not allow all stakeholders to form common expectations regarding the evaluation of the qualities of candidates for judicial positions, and does not contribute to an objective and impartial determination of the eligibility of judges (judicial candidates).

The system of assigning points to judges (judicial candidates) during the selection and qualification evaluation procedures by the High Qualification Commission of Judges of Ukraine is not optimal: the distribution of points between objective and subjective components is not balanced; there are no clear rules for assigning points to candidates depending on their demonstrated qualities. This also contributes to the lack of substantiation and inadequate motivation of decisions of the High Qualification Commission of Judges of Ukraine, and creates unjustified excessive discretion.

Problem 2.1.3. Lack of effective mechanisms for maintaining the integrity of the judiciary and responding to established facts of influence, pressure on judges and interference in their activities

The transparency of the review of disciplinary complaints, disciplinary proceedings against judges, as well as the revision of decisions of the Disciplinary Chambers of the High Council of Justice remains insufficient, which reduces the credibility of the relevant bodies. Some of the grounds for bringing judges to disciplinary liability are not defined clearly enough to allow judges to predict their behavior. The relevant GRECO recommendation remains to be implemented.

In practice, there are cases when judges subject to disciplinary proceedings are dismissed from office on the basis of resignations before the proceedings are finalized. There are also no effective mechanisms for maintaining high standards of conduct by retired judges due to the limited range of grounds for termination of their retired judge status.

Dismissal of a judge from office due to failure to confirm the legality of the sources of assets is possible only as a result of disciplinary proceedings, although after the adoption of the Law of Ukraine dated June 2, 2016, No. 1401-VIII *On Amendments to the Constitution of Ukraine (Regarding Justice)*, this reason for dismissal is defined separately and it is advisable to introduce a separate procedure for verifying the legality of the sources of assets outside of disciplinary proceedings.

After the passage of the Ruling of the Constitutional Court of Ukraine No. 7-r/2020 dated June 11, 2020 in the case brought by the constitutional petition of 55 Parliament members of Ukraine regarding the conformity of Article 375 of the Criminal Code of Ukraine to the Constitution of Ukraine (constitutionality), the provision of said Code that established criminal liability for the delivery of a knowingly unjust verdict, decision, ruling or resolution has ceased to be effective. In the past, this provision had been repeatedly used in practice to influence judges, as no effective and efficient procedures had been put in place to prevent this.

Problem 2.1.4. Presence of corruption risks attributable to gaps and flaws of legislation in the system of justice

Despite the legal restriction prohibiting one person from holding an administrative position in a court for two consecutive terms, in practice there are cases of complete disregard of this rule by judges. This necessitates the introduction of other approaches to identifying judges who hold administrative positions to eliminate such situations.

Although the legislation contains provisions on the widespread use of modern information technologies in the administration of justice, they have not yet been implemented in practice, in particular due to the partial implementation of the Unified Judicial Information and Telecommunication System. Without prejudice to the rights and legitimate interests of the parties to the proceedings, the courts could consider a number of cases electronically, regardless of the location of the court and the parties, which would also reduce corruption risks and optimize the workload of judges.

Alternative dispute resolution methods are gradually being introduced: legislation on mediation has come into force, and a draft law on improving the operation of arbitration courts is being considered by the Parliament of Ukraine.

The enforcement of court decisions is not effective enough, in particular due to the limited ability of private enforcement officers to enforce court decisions, as well as unjustified moratoriums on enforcement of decisions where the debtors are state-owned enterprises. Legislation should be amended to ensure effective enforcement of international arbitral awards in Ukraine.

Given the limited financial resources available in the public sector of Ukraine, in particular for the judiciary, there is a need to find ways to use the limited resources more efficiently. After the adoption of the Law of Ukraine dated June 2, 2016 No. 1401-VIII *On Amendments to the Constitution of Ukraine (Regarding Justice)*, the network of local courts was not systematically revised, which is important for ensuring access to justice and efficient use of limited resources.

Problem 2.1.5. Internal administrative processes in prosecutorial authorities are not always transparent and effective.

Administrative processes in prosecutorial authorities are not always transparent and effective. The reasons for the problem include a flawed system of performance evaluation of prosecutors; poor legislative regulation of the grounds for bringing prosecutors to disciplinary liability, guarantees of independence and effective functioning of the body conducting disciplinary proceedings, the procedure for reviewing disciplinary complaints and imposing disciplinary sanctions.

Corruption risks in the system of performance evaluation of prosecutors are caused by the legally defined criteria, methods and subjects of the evaluation of prosecutors.

The flawed legislative regulation of the grounds for bringing prosecutors to disciplinary liability is based on the unclear wording of disciplinary offenses related to the conduct of prosecutors and

their compliance with ethical standards, and the absence of a clearly defined list of types of disciplinary offenses, which may entail the imposition of such disciplinary sanctions as dismissal from prosecutorial authorities, may lead to unjustified and arbitrary imposition of such sanctions.

Problem 2.1.6. Lack of an effective model of appointment to positions, remuneration, career promotion, and review of disciplinary complaints within the system of the National Police

Staffing and internal administrative processes at the National Police are not always transparent and effective. This problem is caused by the ineffectiveness and lack of transparency of the mechanisms of appointment and promotion within the National Police, the ineffectiveness of the procedure for conducting internal investigations and bringing police officers to disciplinary liability, and the absence of a performance evaluation system for National Police officers.

The ineffectiveness and lack of transparency of the mechanisms of appointment and promotion in the National Police system is primarily due to the fact that the legislation stipulates that the competitive selection process is mandatory only for persons who are first joining the police force and appointed to junior police positions. The low effectiveness of internal investigations and disciplinary proceedings against police officers is primarily due to the fact that the key role in this process is played by the manager, who is empowered to impose disciplinary sanctions on police officers; there are no permanent disciplinary committees, and the public is excluded from controlling or participating in these procedures. In addition, the legislation does not provide for any other methods of assessing the quality of work of the National Police officers other than certification, which complicates internal management processes.

The level of salaries of police officers, as well as the mechanisms of financial incentives for police officers, do not ensure the competitiveness of jobs with the police in the labor market, which negatively affects the quality of police personnel and is one of the factors of the rather high level of corruption among police officers.

Problem 2.1.7. The need to improve the process of independent evaluation of the performance of anticorruption agencies and develop mechanisms for holding them liable

The issue of dismissal (termination of powers) following a binding court decision imposing administrative liability for an administrative offense involving corruption is regulated differently for the managers of different law enforcement agencies. This necessitates the unification of approaches with the simultaneous need to maintain sufficient guarantees of independence of such individuals, taking into account the risks of undue influence.

In practice, there was no external independent assessment (audit) of the National Anticorruption Bureau’s performance due to legislative flaws and attempts to politicize the process of determining who will conduct the assessment. This procedure is not mandated by law for the Specialized Anticorruption Prosecutor’s Office.

2.2. State regulation of the economy

Problem 2.2.1. Failure to implement the digital transformation of the exercise of powers by government agencies and local self-government bodies as a basis for ensuring transparency and minimizing corruption risks in their activities

The insufficient level of digital transformation of the state adversely affects the efficiency of government agencies and local self-government bodies, the speed and convenience of services for citizens and businesses, and fosters a number of corruption risks. This problem in Ukraine is caused by the following factors: ineffective preparation of tender documents for public procurement in the field of information technology development, and insufficient interoperability of information systems of government agencies and local self-government bodies.

The ineffectiveness of the process of drafting tender documents for public procurement in the field of information technology development is due to the lack of sufficient technical knowledge and experience in procurement of high-tech goods and services by the authorized representative of the customer and the absence of a special tool that would provide customers with analytical information and facilitate the process of formulating the procurement conditions, in particular regarding the price and the requirement for the procurement process participant to have an electronic communication network.

Insufficient interoperability of information systems of government agencies and local self-government bodies is caused by the fact that some information systems of government agencies and local self-government bodies are maintained at a low technical level (often in the form of ordinary spreadsheets) and cannot be connected to the Trembita system for electronic interaction of state electronic information resources.

Problem 2.2.2. Arbitrary application of mandatory rules for businesses, which is accompanied by attendant corruption risks

The problem of unfair and selective application of mandatory rules to business entities is caused by the incomplete transition to a preventive and risk-oriented system of state supervision (control), excessive discretion on the part of executive authorities and local self-government bodies in granting access to a limited public resource, lack of effective tools for business entities to verify information about contracting parties, lack of full access to data on a limited public resource.

The incomplete process of transition from a punitive and repressive system of state supervision (control) to a preventive and risk-oriented system is due to ineffective legislative regulation, the fact that every agency defines its own performance indicators, which are often discriminatory to businesses and foster corruption risks, and the lack of an effective tool for identifying and calculating risks.

In matters of access to a limited public resource, excessive discretion on the part of executive authorities and local self-government bodies does not ensure equal access of business entities to natural resources. In addition, in many sectors, information about natural resources is classified, as no inventory of natural resources (particularly aquatic bioresources and forest resources) has been conducted. The lack of information at the disposal of the relevant government agencies about the available limited public resources and those that have been leased, their quantity and quality, failure to apply appropriate regulatory instruments leads to chaotic allocation of limited public resources for use, non-transparent use of natural resources, while selective application of rules to businesses leads to the fact that the full potential of limited public resources is not used, and the resources in use are not always used rationally and sparingly.

There are also problems associated with formally justified but selective audits of business entities. Such audits are often triggered by doing business with "suspicious" contracting parties. The problem of the lack of access to open data from registers and services, access to which is restricted due to the institution of martial law in Ukraine, needs to be addressed.

Problem 2.2.3. Excessive and unjustified regulatory burden on businesses, which contributes to a high level of corruption in this sector

The excessive regulatory burden on business entities, which significantly complicates the process of their establishment and conduct of business and fosters a number of corruption risks, is caused by the presence of a large number of instruments regulating access to markets. This problem is caused by the inability to start common types of business online in accordance with the principle of life situations, duplication of information provided by a business entity in different types of reports, and the lack of effective channels of cooperation between state authorities and the Council of the Business Ombudsperson aimed at implementing systemic recommendations provided by the Council.

The existence of a large number of instruments regulating access to markets is caused by the lack of interaction in matters of deregulation between government agencies and representatives of the business environment. In addition, the lack of interconnectedness of market access instruments, which in turn leads to an excessive administrative burden on businesses, is caused by the absence of a single legislatively enshrined doctrine at the state level that would regulate an integrated (holistic) permit issuance system and its instruments, as well as an effective systematic review of existing regulatory acts, in particular by local self-government bodies and officials.

Problem 2.2.4. Ineffective government regulation, which hinders the growth of honest businesses and fosters corrupt practices

The lack of essential reliable information and reasonable recommendations based on it significantly complicates decision-making in the field of public policy, including regulatory policy.

The main reasons for the problem are: insufficient quality of analytical documents; improper requirements for the supporting documents; the lack of knowledge, skills, and abilities of public policy makers; the lack of established methods for conducting analysis, consultations and preparation of reasonable recommendations; flawed public consultation procedures; the lack, irrelevance, and unreliability of data; the lack of traditions and public demands to justify the feasibility of decision-making and the substance of decisions.

The current system of remuneration of civil servants is characterized by significant disproportions, unjustified incentive payments, and low wages at the local level. Vesting managers with a significant amount of discretionary powers in determining the amount of salary leads to corruption risks. There is no functional classification of civil service positions, which makes it impossible to remunerate staff based on the functional specialization, complexity, and responsibility of the position.

The current mechanism of formation and allocation of the civil service payroll is not transparent. There is no legal certainty about the mechanism of planning and allocation of the payroll fund among state bodies.

The existing system of remuneration at local self-government bodies results in local self-government officials receiving different salaries for performing the same work (job duties) at the same local self-government body. The structure of salaries and the algorithm of their formation have led to unreasonably high or low salaries of officials.

In the forestry sector, there are problems with high corruption risks associated with illegal deforestation, a non-transparent and non-competitive timber market, and poor traceability of timber origin from the site of harvesting to the place of sale and export. This is due to weak control over the activities of forestry enterprises engaged in forestry, logging, sale and export of timber.

The imbalance in the system of legal relations between forestry entities is manifested in conflicts of interest in the management of state and municipal enterprises, and a low level of public trust when it comes to corruption risks in the forestry sector.

A key condition for implementing reforms in the telecommunications sector, as well as fulfilling the commitments under the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand (in particular, Directive (EU) 2018/1972), in this area is to ensure the independence and administrative capacity of the industry regulator.

At present, there is still a problem with the practical implementation of the reform, which is due to the lack of some of the bylaws necessary for the reform envisaged by the Law of Ukraine *On Electronic Communications*.

Problem 2.2.5. Insufficient information about the activities of the Antimonopoly Committee of Ukraine and the fact that it is vested with a number of discretionary powers complicate public control over its activities and cause a high level of corruption risks. There is no effective program to mitigate the liability of cartel members who have reported the cartel and provided evidence.

There are several groups of factors, the elimination of which will contribute to a significant reduction of corruption risks in the operations of the state authority tasked with protecting competition, and will make it possible to increase the effectiveness of the economic competition protection system in Ukraine as a whole:

insufficient information on the activities of the Antimonopoly Committee. This concerns the unregulated issue of unimpeded public access to discussions of decisions, draft normative legal acts, plans and results of the Antimonopoly Committee’s activities; the obligation of the Antimonopoly Committee to publish its recommendations, publish the list of cases it is examining, and inform the public about the gist of the case, the stages and progress of its examination is not defined;

the Antimonopoly Committee is vested with a number of unjustified discretionary powers. These include, in particular, the discretion to determine the timeframe for examination of cases involving violations of economic competition protection laws and to extend this timeframe; the lack of a transparent mechanism for determining and replacing state commissioners responsible for examining cases involving violations of economic competition protection laws, which would take

into account their professional qualities and experience, and promote impartiality, independence, legality and validity of their decisions; discretion in determining the amount of fines imposed for violations of economic competition protection laws;

the leniency program for cartel members is not effective enough. In the EU and the US, the leniency program is one of the most effective ways to detect and combat cartels. Due to flawed legislative regulation, this program is effectively nonexistent in Ukraine.

The Law of Ukraine *On the Protection of Economic Competition* contains general provisions on the leniency program, but does not elaborate the mechanisms for implementing this program. The Law also fails to define leniency mechanisms for other members of the cartel in exchange for their cooperation with the investigation. The inability to effectively use the leniency program complicates the process of detecting and putting a stop to illegal activities of cartel members.

Problem 2.2.6. A significant number of administrators of government aid for business entities provide government aid that is illegal and has been recognized by the Antimonopoly Committee as inadmissible for competition, which has a negative impact on competition and may stem from prior corrupt arrangements.

The main reason why administrators of government aid provide aid to business entities that is illegal and has a negative impact on competition is the lack of statutory liability for providing government aid without prior notification of the relevant authority (the Antimonopoly Committee). As a result, new government aid in respect of which the administrators do not submit the relevant notifications to the Antimonopoly Committee of Ukraine remains outside the scope of control and is illegal.

In the absence of state control, such government aid can be provided in cases when it is not really needed, provided in excessive amounts, or provided on a discriminatory basis that denies access to government aid to business entities that actually need it. Such circumstances create conditions provoking managers and other officials of government aid administrators to commit corruption or corruption-related offenses.

Problem 2.2.7. The ineffective mechanism of preliminary inspection and assessment of the impact on competition during the establishment and operation of business entities causes a negative impact on competition.

The main reason for the low effectiveness of the mechanism of preliminary control and assessment of the impact on competition during the establishment and operation of business entities is the lack of safeguards that would prevent government agencies, local self-government bodies, administrative and economic management and control authorities from avoiding evading control during the establishment of municipal and state-owned business entities, establishment and modification of the rules governing their behavior on the market.

In the absence of effective state control, the number of such business entities is constantly and uncontrollably increasing. At the same time, the operations of such business entities are characterized by low efficiency, leads to numerous violations of the law, in particular the law on the protection of economic competition, and results in an increase in the number of corruption offenses or corruption-related offenses.

2.3. Customs and taxation

Problem 2.3.1. Insufficient transparency and effectiveness of customs authorities, excessive discretionary powers of customs officers

The problems of effective, transparent, and predictable functioning of the customs authorities, digitalization and automation of their workflows, as well as the presence of corruption factors in the customs legislation attract broad attention from both the academic, expert (professional) community and practitioners. Taking into account the main publications in this field, it is safe to say that the activities of the State Customs Service fall short of its potential effectiveness. Therefore, there is a need to improve the effectiveness of this activity, taking into account the principles underlying the 2021-2025 Anticorruption Strategy.

Such improvement should take into account the need to address the following issues:

the existence of cases of unreasonable and unjustified use of the backup method of customs value determination by customs officers;

a large number of violations of intellectual property rights during the import of goods;

insufficient digitalization and automation of process of the customs authorities;

the need to improve the public control body at the State Customs Service.

Problem 2.3.2. Nontransparent approaches to classification of goods, determination of their customs value, and scheduling of audits

The analysis of the practical application of customs legislation and judicial practice prompts the conclusion that one of the most common factors fostering corruption in the customs process is the lack of transparency in the classification of goods and the determination of their customs value.

The solution to this problem should be consistent with the steps taken by Ukraine in the process of the customs reform aimed at harmonizing national customs legislation with EU customs legislation.

Over the years, there is a discernible systemic ineffectiveness of decisions and actions of customs officials, as well as large-scale abuse of power, which affects business in the form of financial losses, time costs and other costs. The lack of response to ineffective decisions and/or abuses, the lack of assessment of such ineffectiveness and the failure to respond perpetuate the trend of ineffective work of the customs authorities inflicting losses on businesses.

Problem 2.3.3. Flawed procedure for filing administrative appeals against actions of customs officials

A survey of entrepreneurs conducted by the American Chamber of Commerce in Ukraine as part of the study titled “Guidelines for Customs in Ukraine” found that 80 percent of the companies surveyed stated that the existing administrative appeal system is ineffective.

One of the main reasons for this ineffectiveness, according to companies, is that the review of an appeal is biased: in practice, a higher-level body often defends the opinion of the body whose decision is being appealed without properly evaluating the evidence.

Studies by the IMF and the World Bank suggest that the problem of conflict of interest in administrative appeals can be resolved by excluding from the appeal review process those officials who made the decision being appealed, were involved in any way in its adoption, or directly coordinate the activities of the bodies whose decisions are being appealed.

The foregoing makes it safe to say that there is problem involving the ineffectiveness of the mechanism for reviewing complaints against the actions of customs officials.

At the same time, significant changes have recently taken place in the process of implementing the customs reform aimed at harmonizing Ukrainian customs legislation with EU legislation.

At present, proper implementation of these changes in practice remains challenging.

Problem 2.3.4. Interference by law enforcement agencies in the work of customs authorities and abuses committed when an order to carry out re-inspection of goods is communicated

One of the main problems of customs operations is the interference of law enforcement agencies in the customs inspection procedure. Law enforcement officers, in particular the Security Service of Ukraine and the National Police, are authorized to initiate a wide range of actions involving access to the declarant’s goods, reloading, unpacking, etc. At the same time, the Customs Code of Ukraine stipulates that interference by law enforcement officers in the customs inspection procedure is expressly prohibited.

The available statistics indicate that the quality of law enforcement agencies’ orders concerning possible violations of the law during customs clearance of goods is low, and in some cases these orders do not meet the requirements of the law and therefore cannot be performed by the customs authorities. This situation creates additional factors that foster corruption, and business entities incur additional losses.

Problem 2.3.5. Excessive scope of discretionary powers of employees of tax authorities

Annual public opinion polls show that citizens perceive tax authorities as corrupt organizations. At the same time, there has been a positive trend in this field in recent years, as respondents note a decrease in the level of corruption at these agencies. However, continued improvement of taxation in

this area involves eliminating the flaws of tax legislation, as some of its provisions are complex and non-transparent, which gives rise to manifestations of corruption. This is due to the fact that in some cases the legislation provides tax officials with a wide range of discretion.

In particular, a number of subjective factors influence the exercise of powers by officials, since, given the lack of clear legal limits of discretion, the final resolution of a particular situation is often influenced by such factors.

At the same time, Ukraine ranks 130th in the economic freedom ranking among the countries of the world and 122nd in the corruption perception ranking. Senior fiscal officials are periodically named in criminal cases involving various abuses. The state has accumulated significant debts to businesses and has a history of imposing unjustified fines. At least half of the taxes received by the state in the form of payroll taxation are withheld from the salaries of persons financed from the state budget and state-owned enterprises. Relations with tax authorities can be a decisive factor in gaining a competitive advantage in the business environment. It is critical to introduce a set of changes that will reduce corruption risks, discretionary powers of the authorities and guarantee that the state fulfills its obligations to entrepreneurs.

Problem 2.3.6. The fact that the tax authorities have functions that involve imposing financial penalties and excessive focus of the efforts of these authorities on imposing such penalties lead to corruption risks.

The tax authorities are responsible for performing the fiscal function, but the prioritization of this particular function of the tax authorities leads to a number of problems.

For example, in the past, the authorities that conducted pretrial investigations of financial crimes exerted unreasonable pressure on taxpayers by sanctioning them for violations of the law. For a long time, financial crimes had been investigated by several agencies, including the Security Service of Ukraine, the National Police, and the Tax Police, which led to overlapping powers of these bodies and excessive pressure on taxpayers. The situation changed after the establishment of the Bureau of Economic Security, but there are a number of problematic aspects in the activities of this agency, which may not foster a high level of public confidence in its activities.

In addition, another problematic aspect is that in order to reflect the high growth of additional tax revenue to the budget, the tax authorities use all possible measures, including sanctions, to put pressure on taxpayers and in this way properly perform their fiscal function. At the same time, tax officials pay much less attention to preventive measures. This leads to a number of negative consequences, including corruption risks, which give rise to situations in which agreements have to be reached in order to avoid prosecuting the taxpayer; conflicts between taxpayers and tax authorities; taxpayers develop distrust of the tax authorities; a declining number of taxpayers who voluntarily pay taxes.

A low level of activity is observed when it comes to providing generalized tax consultations because the tax authorities prefer to provide consultations through a publicly available information and reference resource, since it, unlike generalized tax consultations, does not formally have any legal force. In addition, this leads to a lack of understanding and the formation of a unified approach to certain problematic issues that are not regulated by law, but for which there are no clarifications from the tax authorities or generalized tax consultations. In this case, the local tax authorities have discretionary powers when considering such situations – they can apply different approaches that will significantly affect the tax implications for taxpayers. Accordingly, the presence of discretion in such situations entails corruption risks.

2.4. Public and private sectors of the economy

Problem 2.4.1. The existing governance model at public sector entities is ineffective, resulting in losses and corruption.

The state ownership policy has not been formalized, and there are no individual ownership policies for state unitary enterprises and business companies in which the state owns 50 percent or more of the shares or equity (hereinafter in problem 2.4.1 – state-owned enterprises). In practice, the functions of the owner, regulator and policy-maker are not segregated at some agencies, which leads to conflicts between these functions.

The criteria for mandatory annual independent audits at state-owned enterprises are not defined, and the criteria for mandatory establishment of independent supervisory boards need to be updated. The legislatively defined principles for the formation and operation of supervisory boards of state-owned enterprises need to be aligned with OECD standards. In practice, there is a nominal independence of supervisory boards of state-owned enterprises from the owner, which makes it more difficult to create a model of transparent and productive management of the public sector of the economy.

OECD corporate governance standards have not been implemented at the vast majority of state-owned enterprises, particularly those of strategic importance for the nation's economy and security or those with the highest level of corruption risks or enterprises that are the most critical business entities in the defense industry.

At the legislative level, there is a need to clearly define the requirements for the introduction of efficient and effective internal control and risk management systems in the operations of state-owned enterprises, the correlation between internal control and corruption risk management, and the powers of supervisory boards to exercise internal control.

Problem 2.4.2. Insufficient transparency of privatization procedures and failure by buyers to comply with the terms of the sale of the privatized asset

There is a need to analyze and take into account in the practice of privatization authorities the most common problems that arise at the stage of fulfilling the mandatory conditions for the sale or operation of a privatized asset.

Small-scale privatization and leasing of state and municipal property is carried out using an electronic system administered by the state enterprise Prozorro.Sale. At the same time, the problem of low competition at property lease auctions remains unresolved. There is also a need to make property lease procedures more professional. The transparency and efficiency of the procedures can be improved by ensuring data exchange between electronic systems used for the lease of state property.

At the same time, there is a need to legislatively define the list of state-owned property that is not subject to privatization.

Problem 2.4.3. The insufficient scope of publicly available information about business entities in which the state has an ownership stake significantly reduces the transparency of their activities, complicates public control and fosters corruption.

Despite the introduction of requirements for disclosure of financial and non-financial information about the activities of state-owned and municipally owned enterprises, compliance with such requirements remains problematic in practice. There are no effective, proportionate, deterrent sanctions for non-compliance with the established requirements. Information is often published in different scopes, formats and on different platforms, which makes it difficult to analyze (including using modern technologies). Existing registers and databases remain incomplete, the scope of information provided is limited, and the methods of ensuring such access are outdated. Different information platforms lead to duplication of data, fragmentation or even discrepancies in data from different sources.

Problem 2.4.4. A high level of tolerance of corruption in the private sector of the economy

The institution of anticorruption compliance in the private sector in Ukraine is underdeveloped, which hinders the implementation of anticorruption standards. The main reasons for this include: a lack of effective administrative, procedural, and legal incentives for businesses to adopt integrity practices; a lack of systematic interaction between business representatives and civil society institutions and government agencies; a lack of a common vision regarding the implementation of anticorruption standards in the operations of private sector companies among representatives of legal entities, civil society institutions, and government agencies; an insufficient level of methodological assistance to legal entities in matters of application of anticorruption standards and implementation of anticorruption programs; complexity of the process of developing and implementing the Code of Integrity for legal entities; a lack of effective mechanisms for verifying information contained in the Unified State Register of Legal Entities, Individual Entrepreneurs, and Public Associations about the

ultimate beneficial owner of a legal entity; slow de-bureaucratization of business processes; widespread corrupt practices in the form of unofficial payments; absence of a clear and specific legal requirement for internal auditors of legal entities to report the facts of corruption and corruption-related offenses they have discovered; difficulty in timely and effective restoration of the rights and legitimate interests of business entities violated by government agencies.

Failure to address the problematic aspects of liability of legal entities for corruption offenses, an insufficient number of non-monetary sanctions, and the lack of the possibility to conclude an agreement on deferral of judicial prosecution result in ineffective administrative, procedural, and legal incentives for the adoption of integrity practices in the private sector. The low level of interaction between business community representatives and civil society institutions and government agencies does not contribute to the proper protection of legitimate interests of businesses, solution systemic problems of business interaction with the government, and promoting a culture of doing business in a fair, ethical, and responsible manner.

The lack of a unified vision among representatives of legal entities, civil society institutions, and government agencies on how to integrate anticorruption standards in the activities of private sector companies and the insufficient level of methodological assistance provided to legal entities by government agencies result in fragmented and inconsistent implementation of anticorruption standards.

The absence of codes of integrity at the majority of Ukrainian private law entities makes it impossible to ensure proper implementation of ethical business standards, which significantly limits the opportunities for domestic producers to become more competitive and impedes the attraction of foreign investment.

The verification of information contained in the Unified State Register of Legal Entities, Individual Entrepreneurs, and Public Associations regarding the ultimate beneficial owner of a legal entity is not properly implemented due to the lack of proper bylaws, which hinders the further promotion of the principles of transparency of the ownership structure of legal entities and limits the capability to detect financial and other offenses.

The slow de-bureaucratization of business processes has a negative impact on the economic climate in Ukraine. The relations between business entities and the state, whereby the state defines the rights and obligations of such entities, are still regulated by several hundred laws and many other normative legal acts, which leads to abuse and corruption (each institution establishes its own rules of interaction with businesses). Therefore, it is much easier, faster, and often more profitable for businesses to tolerate corrupt conditions during administrative procedures than to resist and use legal instruments.

Unofficial payments are a widespread corrupt practice that leads to tolerance of corruption in the private sector of the economy. The reason for the emergence of these payments is the non-transparent and unorganized system of legislation on administrative fees.

The absence of a separate legal provision that would define the obligation of internal auditors of a private legal entity to report the facts of corruption and corruption-related offenses they have discovered, as well as cases of incitement to commit a corruption offense associated with the operations of a legal entity, often leads to ineffective fulfillment of this obligation.

Another reason for the high level of tolerance of corruption in the private sector is the difficult process of restoring the rights and legitimate interests of business entities violated by government agencies in a timely and effective manner. The controlling authorities often abuse their powers by using the coercive administrative instruments at their disposal. The judicial system does not always provide adequate protection of violated rights of entrepreneurs. This situation leads not only to a low level of trust of business representatives (both domestic and international) in the state authorities of Ukraine, but also to a low level of respect for economic freedoms.

2.5. Construction, land relations, and infrastructure

Problem 2.5.1. The lack of publicity surrounding the information in the field of urban development and land management fosters corruption and makes construction in violation of the law possible.

The introduction of the Unified State Electronic System in Construction was a positive step towards overcoming corruption in urban development. At the same time, it should be noted that at this stage, the implementation of the entire functionality of the Unified State Electronic System in Construction is not complete, and therefore the achievement of all the positive results of the Unified State Electronic System in Construction has not yet been ensured. In addition, during the practical implementation of the Unified State Electronic System in Construction, certain shortcomings were identified: additional functions in the Unified State Electronic System in Construction in the field of construction that are not aligned with the law; it is possible to obtaining an approval / permit in the absence of actual grounds for this.

Data entry into public registries and systems is inconsistent and uncoordinated, and there is no unified platform of databases and registries. Current legislation provides for the creation of local registers and cadasters that are populated according to different data parameters and in accordance with different terms of reference ("technical assignments") for their creation, making their systematization and interoperation impossible. In addition to urban development, such related areas as land management, ecology and natural resources, cultural heritage protection, and real estate have their own separate types of documentation that define the conditions for urban development activities. This information and data are not combined in a single information space, which leads to separate, independent departmental permit issuance procedures, each of which is an additional obstacle to businesses and carries a significant corruption risk.

In terms of publicity of information in the field of urban development, the issue of urban development documentation remains problematic. Access to it is limited: not all urban development documentation is made public, and the one that is made public is not presented in full and mostly only in text form, while the graphic portion is only partly included and without the possibility of zooming in for detailed viewing. Therefore, when obtaining the initial data, in particular urban development conditions and restrictions, the applicant does not always have the opportunity to check whether urban development conditions and restrictions are compliant with the urban development documentation, and the ability of an official to interfere with the text of urban development conditions and restrictions is a significant corruption factor and creates the risk of illegal construction at all subsequent stages. Being merely a "projection" of the requirements of urban development documentation at the local level to a specific land plot, urban development conditions and restrictions have become a factor of pressure on the applicant, since it is the text of urban development conditions and restrictions that determines what conditions and restrictions must be observed during design and construction in general and what type of construction is possible. In addition, the possibility of manual interference with the text of urban development conditions and restrictions provides leads to the possibility of obtaining urban development conditions and restrictions that permit construction, even though this permission is not granted in urban development documentation.

Insufficient publicity of information in the field of urban development creates a situation in which it is possible to approve plans for spatial development of the territory (urban development documentation) and drastically different programs of socio-economic development of the territorial community in such territory. Also, the correspondence and mutual coherence of these two documents is not mandated by law. This leads to a situation in which different, inconsistent, and sometimes mutually exclusive strategies and policies can exist and be implemented at the level of a population center. Meanwhile, the existence of programs and policies in two different areas potentially carries major corruption risks, allows choosing the most favorable conditions outlined in such documents, while ignoring the requirements of the other documents, and creates a potential opportunity for unjust enrichment for government agencies and local self-government bodies.

Problem 2.5.2. The absence of public information on cultural heritage sites and conflicts in urban development and landmark protection laws result in abuses and development of cultural heritage sites.

Ukraine has a significant number of cultural heritage sites. In order to determine whether a particular landmark has legal protection and the status of a cultural heritage site, it is necessary to create a single public data source – an electronic register containing information on immovable cultural heritage sites of national and local significance, as well as newly discovered sites that also receive legal protection on a par with the cultural heritage sites included in the register. The absence of a publicly available, reliable (recognized by the state) and complete source of information creates major hurdles for business entities (investors, developers) due to the inability to determine whether a particular site belongs to cultural heritage landmarks, while making it difficult for cultural heritage protection authorities and architectural and construction control and supervision authorities to determine the correct permit issuance procedure.

In addition to the absence of a single and complete list of cultural heritage sites, challenges are also presented by the failure to establish the conditions of use and boundaries of historic areas of population centers, the boundaries and conditions of use of protection zones around cultural heritage sites approved by research and design documentation, and the fact that they are not mapped out *in situ*. After all, without clear boundaries of historic areas, it is impossible to determine within which territory it is necessary to obtain approvals and permits from the cultural heritage protection authority, and without conditions of use of historic areas, conditions of use of protection zones around cultural heritage sites it is impossible to give a clear answer regarding the permitted type of activity (and permitted type of construction that will not have a negative impact on cultural heritage sites).

There is no clear legislatively prescribed procedure for granting permits and approvals in the field of cultural heritage protection and no exhaustive list of documents to be submitted for obtaining approvals, permits, or the conditions for obtaining approvals, permits and grounds for refusal to grant them. Regulation of this issue at the level of bylaws contravenes the approaches prescribed by the rule of law and creates significant hurdles for applicants. At the same time, services are provided without sufficient transparency of the procedure, which makes it impossible to verify its correctness or compliance with the law.

In addition, the cultural heritage protection authorities are granted broad discretionary powers where there should be only an obligation to act in a certain way, i.e., the legislation provides only for the possibility (right) to respond to violations, but not the obligation to take measures to stop the violation and bring the perpetrator to justice. The lack of publicly available information on measures taken by cultural heritage protection authorities, decisions made, permits issued, approvals, orders, etc. regarding a cultural heritage site deprives the public of control, which (in addition to the existence of a number of discretionary powers) creates extensive opportunities for abuse.

Problem 2.5.3. The flawed system of state oversight and regulation in the construction sector fosters corrupt practices.

There are established corrupt practices in the fields of construction and project management in Ukraine. All specialists involved in the construction process (experts, architects, designers, technical supervision engineers, consulting engineers, authorized legal entities – controllers) should prevent both completely illegal construction and low-quality construction and abuse by the developer seeking to illegally increase the scale of construction. However, these very persons who are dependent on the developer often become part of the scheme, covering up certain violations, and drafting documents and issuing conclusions that are favorable for the developer, while violating the requirements of the law, building codes, and urban development documentation. This situation has arisen precisely because there is no effective mechanism for revoking the certificates of such persons. Despite high-profile scandals involving illegal construction, the implicated contractors are not held accountable, which allows them to continue their activities and commit violations.

For more than a decade, the problem of so-called defrauded investors has been one of the main issues in the construction sector, but no effective steps have been taken to address this problem directly over the years. All processes aimed at improving the legislation in the field of urban development involve making the process of obtaining permits in construction more transparent and public, prohibiting contacts with representatives of government agencies and local self-government bodies, etc. Attempts are also being made to create mechanisms for a transparent and safer procedure

by which funds can be raised from individuals and legal entities as investments in construction (in particular, to prevent double sales and sales in a construction project without permits). However, the problems of defrauded investors do not end here. In particular, the law does not provide for proper financial control over financial intermediaries when buying a home. At the same time, there are unfortunate statistics on a large number of cases where construction financing fund managers cease to operate without fulfilling their obligations to investors, and there are no precedents where perpetrators have been prosecuted or the investors fully refunded. The issue of dishonest companies has not been resolved at all; it is quite easy to set up such a company, as well as to avoid liability for not finishing a construction project or not providing a refund. Individuals cannot be the factor that ensures proper control over the activities of managers; meanwhile, such control is nonexistent on the part of the state and the market. Also, the issue of exercising tighter control over the targeted and phased spending of funds, construction schedule slippage, or failure to meet the technical parameters of the construction project has not been resolved.

Significant corruption risks in the construction sector also lie in the failure to establish the mandatory verification of documentation submitted for obtaining permits, in particular, the mandatory verification of such documents prior to the issuance of a permit. In the absence of a direct obligation to verify the merits of documents, it is easy for an officer of the architectural and construction control and supervision authorities to overlook inconsistencies in documents and avoid liability for issuing a construction permit in violation of the requirements of the law, urban development documentation, and construction standards. However, in other cases this situation allows the officer to deny a permit due to non-compliance of the documents with the requirements of the law, urban development documentation, construction standards and to expect unjust enrichment for subsequent issuance of the permit. Given the time required to conduct an inspection (if ordered) and for the judicial examination, most unlawful permits remain unrevoked until the facility is put into operation. Post-permit inspections also carry a corruption component, as inspections are not ordered for every facility. This selectivity creates conditions for undue pressure on developers by threatening them with an inspection and its possible consequences, or helps unscrupulous developers by allowing them to give bribes and avoid an inspection (or have applications requesting an inspection to be recognized as unfounded) and keep the permit in force until the facility is put into operation. In addition, this situation is not favor the stability of relations in the construction sector, as the construction project may already be built at the stage of revocation of the permit in court, so it is the investor, not the developer, who will be punished. The absence of a direct obligation to verify the merits of documents before issuing a permit and the absence of a mandatory follow-up inspection is a corruption component inherent in the legislation that creates opportunities for improper actions and opportunities for obtaining unjust enrichment.

Procedures for architectural and construction control and supervision contain a significant amount of discretionary powers, which is recognized by experts in this area as one of the biggest problems. The fact that an official has the right, but not the obligation, to act in a certain way (amending urban development conditions and restrictions, suspending/revoking the right to perform pre-construction and construction work, etc.) provides a legal landscape for abuse and artificial obstacles for the developer seeking to obtain documents. The use of "may" in the law gives the authority a choice of conduct: to exercise its right to suspend/revoke the permit in specific cases or not. Such an important issue for the developer as the ability to perform (continue) construction work, the resolution of which depends essentially only on the will of the official, creates an overly fertile turf for corruption. At the same time, there is no liability for failure to perform certain actions, because without a clearly established obligation, a person cannot be held liable (no obligation means no violation).

Another important aspect of state architectural and construction control is the market oversight of construction materials and products used in construction.
In order to reform and harmonize the legislative and regulatory framework of Ukraine with the European one, the Law of Ukraine *On the Placement of Construction Products on the Market* was adopted on September 2, 2020, which implements Regulation (EU) No. 305/2011 into national

legislation and also provides for other essential amendments to the laws of Ukraine. This Law came into force on January 1, 2023. It is worth noting that the quality of these legislative amendments depends on how fully the entities covered by said Law master the terms, processes, and procedures of the new rules. Therefore, only practical application of laws will show how market supervision will work, since now it is up to market supervision to improve the safety of buildings and structures and the competitiveness of national producers in general.

A pressing issue in the construction sector is connection to utility networks. At present, there is no publicly available information on the availability of electricity, water, gas and sewerage networks, as well as their characteristics (length, capacity, reserve capacity, etc.). This information is not systematized in general. This allows network owners (monopolists) to provide technical conditions to developers for connecting construction projects at their own discretion. Information on the availability or absence of connections is available exclusively to the owner of the relevant networks and cannot be controlled. Similarly, although the connection fee is calculated on a formulaic basis, it is impossible to verify the accuracy of the initial data used for the calculation, which allows the monopolist to set the price at its own discretion. In addition, the hardcopy format of submission and processing of the documents for connection to networks, the need to submit separate applications for each type of network to connect one construction project complicates the interaction between network operators and consumers, leads to unnecessary contacts between applicants and officials and gives rise to attendant corruption risks. Insufficient transparency and certainty of such procedures puts an additional financial burden on customers and gives rise to corrupt practices, while the lack of reliable information on the actual state of the networks (available capacity) may lead to unreasonable requirements for the customer connection in the technical specifications for non-standard connection, which is not actually necessary.

There is a significant corruption risk in the allocation of funds from the State Fund for Regional Development. This is due to the completely non-transparent procedure for selecting and monitoring investment programs and projects implemented at the expense of the State Fund for Regional Development, the non-public application process, the non-public process of reviewing and selecting applications, the absence of committee specialists and experts who can properly evaluate projects and programs in the vast majority of cases, and the lack of a system for monitoring the implementation of regional development programs and projects. However, one of the biggest problems in this area is the politicization of the process, as at least 50 percent of the committee’s members are Parliament members, which calls into question the objectivity of the outcome of such selection. Given the non-public nature of the entire process and the chaotic timing of applications, the selection of projects and programs turns into a competition between committee members depending on their level of influence and political weight, rather than a professional selection of projects and programs based on their feasibility and potential.

Problem 2.5.4. The procedure by which land plots are formed is overcomplicated and involves an excessive amount of discretion.

One of the major problems of land management in Ukraine is the extremely high level of corruption in the process of approval of land management documentation, registration of land plots, etc.

Over the past decades, a kind of "corruption culture" in the field of land relations has become widespread, when manipulation of requirements for land management documentation has led to refusals to register land plots, approve land management documentation, and delays in issuing permits for citizens and businesses to acquire rights to land plots. The practice of land management contractors shows that the "cost of approvals" included in the price of land management documentation is ultimately paid by the customer, and recently it often exceeds half of the contractual cost of the work.

A systemic problem for both developers of land management documentation (certified land management engineers) and officials of licensing authorities responsible for its review, approval and endorsement is the lack of clear technical requirements for the content and formatting of even the most common types of land management documentation, or even a corresponding checklist. This

results in divergent application of land legislation in different regions, artificial manipulation of the requirements for the composition and content of land management documentation by local officials and cadastral registrars.

The registration of land in the State Land Cadaster is an important prerequisite for its proper use, ensuring the collection of land rent payments, avoiding "shadow" use and redistribution of land. At the same time, the State Land Cadaster is only 71 percent complete, meaning that almost a third of Ukraine's land is not registered in the Cadaster. Some studies show that 4.3 million hectares of fields still remain unregistered in the State Land Cadaster. This may indicate that this part of the land is actually outside of taxation, and may also be occupied by squatters.

Problem 2.5.5. The procedure of collecting land tax and leasing out state and municipal land is accompanied by corruption risks because they can be made available for use at a cost below the market value.

One of the most crucial economic regulators of land relations in Ukraine is the normative monetary appraisal of land plots, which is based on methodological principles established in the second half of the 1990s and uses indicators unrelated to the market benchmark of appraisal. As a result, the normative monetary valuation of land plots is almost always either lower or higher than the real market value of such plots.

The use of a non-market valuation basis for taxation of land plots and especially for setting the amount of rent for tenants of state and municipal land creates extensive opportunities for corruption. Under conditions when the monetary value of a land plot is determined based on regulations, it is not uncommon for the actual amount of rent paid for a state or municipally owned land plot to be significantly (sometimes tenfold) lower than the market rent charged on the secondary market for such land.

The formula and methodology for calculating the normative monetary valuation are extremely complex and do not ensure the appropriate quality of the results of such calculations, and they lack clear and simple algorithms for quality checks, which leads to abuse by authorities and officials.

Significant corruption risks are also inherent in the legislation on determining the amount of rent for state-owned and municipally owned land plots. The provisions of the Law of Ukraine *On Land Appraisal* stipulate that the normative monetary valuation is also used to determine the amount of rent for such land plots. The flawed nature of the normative monetary valuation leads to a number of negative consequences (including corruption) when it comes to leasing state-owned and municipally owned land plots.

The Tax Code of Ukraine allows setting the rent for state-owned and municipally owned land plots in an unreasonably wide range: from 0.3 percent to 12 percent of their normative monetary value. This situation allows unscrupulous officials to lease out state and municipal land by setting rent amounts that can be significantly below market rent levels, and therefore leads to corrupt practices resulting from this opportunity.

Problem 2.5.6. The free-of-charge procedure for changing the designated purpose of land plots fosters corruption in the process of making the relevant decisions.

For a long time, the system for establishing and changing the designated purpose of a land plot has been characterized by archaic, cumbersome procedures and provided fertile soil for various corrupt practices. This problem is due to:

a flawed procedure for changing the designated purpose, as the legislation did not provide clear criteria for officials to be guided by when making relevant decisions. As a result, the refusal to approve was discretionary and could be granted using general provisions of the law or regulations that do not directly regulate the preparation of land management documentation;

the prevalence of the interests of an individual (group of individuals) over the needs of the respective territorial community. This practice had a negative impact on the economic development of the regions and failed to ensure the proper allocation, use, and protection of land in a particular area.

The legislator attempted to change this approach by harmonizing the use of land plots with integrated development of the territory. Thus, in 2020, the groundwork was laid for a comprehensive

procedure for managing urban development of the entire territory of a territorial community, which aims to simplify the procedure for changing the designated purpose of a land plot. However, the designated purpose is currently changed according to the old procedure, since the development and approval of comprehensive plans for the spatial development of the territory of territorial communities is almost never carried out, and therefore, information about functional zones or information from an extract from urban planning documentation is not entered into the State Land Cadaster. This is due to the difficulty in securing funding for the development of such plans, in particular, the provision of a subvention from the state budget, since one of the conditions for its provision is the availability of an updated cartographic substrate in digital form in the USK-2000 state geodesic coordinate system. As a result, territorial communities are unable to immediately start developing a comprehensive plan with state support, as they must first spend their own resources on developing an updated cartographic substrate, whereas this could be one of the stages of developing a comprehensive plan.

Problem 2.5.7. Lack of a procedure for the sale of state-owned and municipally owned land plots or rights to them (lease, superficies, emphyteusis) through electronic auctions in the conditions of free circulation of agricultural land

Until 2021, land legislation mandated that land plots be sold through auctions. Such auctions for the sale of land plots were outdated auctions that required people to physically come to the premises to participate in the auction, raise signs with bids, and other do other things that were not merely outdated but also contained a number of corruption factors, including influence of stakeholders on the outcome of the auction, falsification of the results of land auctions by staging a "sparring partner", entering false information about a land lot in order to avoid a competitive auction procedure, non-transparency of land auctions and restrictions on public control over them, etc. To change this corrupt practice, a more modern, transparent and effective mechanism, electronic land auctions, was introduced in 2021. From now on, the sale or lease of state-owned and municipally owned land plots is carried out in the form of an electronic auction in real time through an electronic trading system administered by the state-owned enterprise Prozorro.Sale. These changes significantly minimize a number of corruption risks that were common during conventional land auctions. At the same time, most of the corruption risks that led to their introduction have been effectively eliminated, but some flaws still need to be resolved.

Thus, the provisions of the Land Code of Ukraine establish cases in which certain land plots are not subject to sale or lease at land auctions. One of such cases is when the land plot is occupied by real estate (buildings, structures) owned by individuals or legal entities. This exception can be used by dishonest officials who, in collusion with private developers, avoid land auctions and transfer rights to a state asset at a significantly reduced cost. This significantly undercuts revenues to local budgets, violates the rights and interests of land users, and reduces investment attractiveness. The same applies to such exceptions as the transfer of land plots to enterprises, institutions and public organizations in the field of culture and arts (including national creative unions and their members) for creative workshops, as well as to citizens for haying, grazing and gardening.

Negative consequences were also caused by the armed aggression of the Russian Federation, which resulted in the suspension of land auctions in respect of agricultural land and the return to the "manual" procedure making land plots available for use in commercial agricultural production, according to which such land plots are transferred for use for a period of one year with fixed lease terms, and the lease agreement itself is subject to registration in the ledger of registration of land ownership and land use, which is maintained by the district state (military) administration in hardcopy and electronic forms. At the same time, government agencies and local self-government bodies are effectively vested with unlimited discretion in transferring such land plots to the respective users, which may create obvious corruption risks.

However, the Law of Ukraine *On Amendments to Select Legislative Acts to Restore the System of Registration of Lease Rights to Agricultural Land and Improve Land Protection Legislation* was adopted on October 19, 2022, which proposes, among other things, to resume land auctions for the transfer of state-owned and municipally owned agricultural land for use. However, electronic land

auctions will not be held if the State Land Cadaster is not operational for 30 business days. In this case, the leasing of land plots will be carried out in accordance with the specified rules.

Problem 2.5.8. Free privatization of land under state or municipal ownership is a source of corruption in land relations.

One of the significant sources of corruption in Ukraine in recent decades has been the free privatization of state and municipal land, which has been in place since the 1990s. The mechanism of such privatization is extremely flawed: it does not provide citizens with equal opportunities to exercise their rights guaranteed by law, and it causes unequal redistribution of land resources in both regional and human dimensions, which reduces the right of everyone to receive a free plot of land into their ownership to a mere declaration. Instead, the provisions on free privatization have been widely used by unscrupulous officials of government agencies and local self-government bodies that manage state and municipal land for the shadow redistribution of valuable state and municipal land.

Among the factors justifying the gradual phasing out of free land privatization or its transformation into other forms of state social support for the population, the following factors should be highlighted: social injustice; low level of transparency of the procedure due to minimal digitalization of the procedure, which makes it impossible to exercise proper public control and creates unlimited opportunities for corrupt manipulations during the free privatization procedure; the lack of a mechanism for obtaining information on the location of vacant land plots, which gives rise to corruption risks; the possibility that free privatization will be blocked by government agencies and local self-government bodies at any stage, which leaves the applicant virtually deprived of effective means of protecting his right to privatize the land plot; free privatization, which is a tool exploited by unscrupulous private developers. At the same time, it is impossible to completely abolish free privatization today, given the provisions of Article 22 of the Constitution of Ukraine, which requires finding optimal approaches to solving this problem.

Problem 2.5.9. Excessive concentration of powers within the central executive authority implementing public policy on land relations causes conflicts of interests and massive abuses.

The State Service for Geodesy, Cartography, and Cadaster is a central executive authority implementing state policy in the field of geospatial data, topographic, geodetic and cartographic activities, land relations, land management, the State Land Cadaster, state control over the use and protection of land of all categories and forms of ownership, and soil fertility. The relevant authority disposes of land and at the same time directly influences land management and the entry of information about land plots into the State Land Cadaster, which creates a conflict between its various tasks. At the same time, the function of state control over the use and protection of land cannot be objectively exercised by such an agency in relation to itself if its activities involve violations and/or abuses in the course of land disposition or land management. The relevant problem was partly resolved by the Law of Ukraine dated April 28, 2021, No. 1423-IX, *On Amendments to Select Legislative Acts of Ukraine on Improving the System of Management and Deregulation in the Field of Land Relations*, which eliminated the most corruption-plagued functions of the State Service for Geodesy, Cartography, and Cadaster: multiple procedures for approving land management documentation, state examination of land management documentation, special permits for the removal (transfer) of the topsoil of land plots, etc. were abolished.

The complexity, fragmentation, and conflicting nature of Ukraine's land legislation creates conditions under which the acquisition and full exercise of land rights by citizens, entrepreneurs and local self-government bodies becomes virtually impossible without the "blessing" of State Service for Geodesy, Cartography, and Cadaster officials. In addition, the State Service for Geodesy, Cartography, and Cadaster retains a decisive influence on the qualification committees that conduct professional certification of land management engineers and geodesic engineers, which has a wide level of discretion in making decisions on issuing and revoking qualification certificates, in particular, evaluating the "grossness" of violations in the activities of the relevant engineers at its own discretion.

Thus, there is a need to segregate the powers of the State Service for Geodesy, Cartography, and Cadaster to dispose of state-owned land, control land use and protection, regulate land

management, and maintain the State Land Cadaster between separate bodies, institutions or organizations.

Problem 2.5.10. Imperfection of existing control instruments and lack of transparency of road construction, repair, and maintenance processes

The national network of public roads is 169,652 kilometers long, and most of them are in poor condition and require repair. This problem has been significantly complicated by the armed aggression of the Russian Federation. According to the draft Recovery Plan for Ukraine, as of June 8, 2022, about 23.9 thousand kilometers of public roads of national importance were damaged as a result of hostilities. At the same time, the flawed nature of existing control tools and insufficient transparency of road construction, repair and maintenance processes can be a significant obstacle to ensuring proper, fast and high-quality road reconstruction in particular and improving the condition of roads in general.

The reasons for the flawed nature of the existing tools for controlling road construction processes include, in particular: insufficient transparency of procurement processes and disclosure of data and procurement information in a suitable (viewable, copyable) format; difficulty in obtaining up-to-date information on the construction, repair and operation of roads; limited access to the results of monitoring of the quality of road works, data on the results of audits, inspections and penalties imposed; inefficient approaches to planning road construction works; inadequate weight and size control.

For these reasons, the processes of road construction, maintenance and repair in Ukraine are not always carried out with integrity, transparency, efficiency and up to standards. This results in poor road quality, repeated work on the same sections, inefficient spending of budget funds, and corruption.

The lack of effective tools for monitoring the quality of road works, planning requirements, and insufficient transparency of processes (failure to ensure proper disclosure of data) in the road sector negatively affects the effectiveness of raising and spending of funds and, as a result, the quality of roads.

Despite the fact that automated dimension and weight control tools (automatic weighing-in-motion (WIM) stations have already been introduced, there is a need to expand and maintain their continuous and uninterrupted operation to ensure proper road maintenance.

In addition, to ensure that consignors and carriers comply with the weight and dimension standards on the roads, it is necessary to ensure that administrative liability for the relevant violations is inevitable.

2.6. Defense sector

Problem 2.6.1. Nontransparent and ineffective usage and disposition of defense land, immovable properties in the defense industry, as well as surplus movable property of the army, intellectual property; uncontrolled consumption of fuel procured for the needs of the Armed Forces

From the Soviet era, Ukraine inherited a huge military-industrial complex, as well as a network of state-owned enterprises tasked with providing logistical support to the army. At the same time, the difficult economic situation in the 1990s and early 2000s made it impossible to keep defense enterprises busy with the necessary volumes of state orders for their development. The absence of proper privatization and corporate governance reforms meant that not all state-owned defense enterprises were able to reorganize their production processes for the private and export markets. These factors led to the gradual economic decline of many state-owned enterprises.

The absence of a systemic policy in the defense sector regarding the inventorying of state property has led to the fact that land, assets, production facilities, leisure and recreation centers, and other property have become the target of corruption offenses.

A similar situation exists with the storage and protection of intellectual property at state-owned enterprises of the defense industry. Unique designs became the property of private and foreign entrepreneurs through dubious contracts. Ukraine has not created a unified digital register of

intellectual property of the defense industry, which would be appraised and protected from unauthorized transfer to third parties.

Another problem for the defense sector was uncontrolled fuel consumption. The mechanisms for distributing and controlling the use of fuel and lubricants in the Armed Forces are cumbersome and outdated and do not envisage the use of modern electronic fuel accounting.

Problem 2.6.2. Procurement of goods, work, and services for defense purposes is carried out under conditions of excessive secrecy and has a low level of competition, which contributes to abuse and unjustified spending of budget funds.

Since 2014, after the first acts of armed aggression by the Russian Federation, the volume of procurement of weapons, ammunition and other military goods has been steadily increasing. In 2021, the budgetary expenditures of the Ministry of Defense as part the State Defense Order reached UAH 26.4 billion, which is almost five times more than in 2014, when the Ministry of Defense spent UAH 5.6 billion on modernization and procurement of weapons.

The Ministry of Defense planned to spend more than UAH 95 billion on modernization of weapons and military equipment until 2024.

At the same time, most defense procurement procedures were carried out in violation of the principles of competitiveness, openness and transparency, which gave rise to a number of corrupt practices. For example, intermediaries who had no production facilities and did not perform any actual work were often involved in filling the state defense order. Often, the price of the state contract was artificially inflated, and the delivery of products was fictitious or substituted with a lower quality equivalent or used equipment.

On January 1, 2021, the Law of Ukraine *On Defense Procurement* was supposed to take effect and replace the State Defense Order. However, the implementation of this Law has been delayed for the entire year due to the slow process of adopting the necessary regulations. Additional amendments to the legislation on secrets of state were not developed to ensure transparency and competitiveness of most defense procurements, the disclosure of which would not harm national security and defense. Also, the Electronic Register of Competitive Selection Bidders and Contractors Performing Government Contracts (Agreements), which was supposed to serve as a filter against fictitious companies and ensure competition, has not been put into commercial operation.

Problem 2.6.3. The ineffective model of control over defense products in the production process does not make it possible to completely rule out the supply of defective weapons and military equipment in a timely manner.

The national system of quality assurance of defense goods, services and works was based on the Soviet principles of the planned economy. This is the so-called system of military representative offices of the Ministry of Defense, which is more commonly known in the industry as “military acceptance”. Under this system, representatives of the Ministry of Defense were stationed at private and state-owned defense industry enterprises to control the process of product manufacture under contracts within the framework of the state defense order. Officials of “military acceptance” were vested with such broad discretionary powers that they even approved the calculations and estimates that determined the cost of manufacture of weapons. They controlled not only the production results, but also the financial and economic decisions of the enterprise. Such excessive discretionary powers often led to a significant increase in the cost of defense products. After all, in addition to the costs of production, the company also had to include contingency corruption costs in the price of the products. The Law of Ukraine *On Defense Procurement* replaced the military representative offices of the Soviet past with the introduction of a system of state quality assurance for defense products.

Problem 2.6.4. Ineffective spending of budget funds and abuses committed while providing housing for military personnel.

Low availability of housing for military personnel and their families has long been an unsolved problem. This is due to a number of factors, including: flawed processes of registration of individuals in need of better housing due to the lack of transparent and modern procedures for maintenance of the relevant register; discrepancy between legal regulation in this field and the current needs of society, as it was formed in Soviet times; ineffectiveness of the current system for allocating housing

to military personnel, as in its current form it is unable to meet the needs of military personnel; a lack of a conceptual vision of mechanisms for meeting housing needs in the current environment.

All of the above makes it impossible to ensure transparency and competitiveness of the procedure for allocation of housing to military personnel as such, and also gives rise to many corrupt practices in this area.

Problem 2.6.5. Corruption risks during the formulation and implementation of staffing policy in the field of defense, conscription (admission) to military service, admission to higher military educational institutions, education and service outside the country, organizational and staffing activities, and awarding of state awards

In 2020, Ukraine was recognized as a member of NATO's Enhanced Opportunities Program, which means further deepening cooperation between Ukraine and the Alliance. In view of this, it is necessary to adapt the basic principles of the Armed Forces to the international principles of the armed forces of NATO member states.

One of the priority areas of reforming the Armed Forces in accordance with NATO principles is personnel management. To date, a number of legislative acts have been adopted (draft acts have been developed) to introduce transparent, fair and clear procedures for the enlistment of citizens for military service under contract in the Armed Forces, recruitment, placement, assignment of regular military ranks, appointment to positions and awarding of state decorations to military personnel, and the creation of an effective system of military career management based on NATO principles.

However, some issues remain unresolved.

In practice, as a result of a formal approach to determining whether candidates meet the requirements for conscription or admission to military service in the Armed Forces, there are cases of enlistment persons who are unfit (partly fit) for health reasons, with psychological disabilities, various types of addictions, low level of physical fitness, moral and psychological qualities, etc. When assigning military ranks to military personnel, appointing them to positions, sending them abroad for military service and training, or discharging them from military service, subjective decision-making may be present in the process of making relevant personnel decisions, which leads to the spread of corrupt practices in this area. Regulatory acts do not establish clear and understandable procedures for rotation (transfer) of military personnel between positions in order to improve their skills and help them gain experience or to use them more efficiently. Therefore, decision-making in these aspects may be subjective and lead to abuse by individual officials in making the relevant personnel decisions. Another problem is the procedure for paying the military personnel a relocation allowance. The peculiarity of calculating this allowance is that the timeliness and completeness of its payment to military personnel depends entirely on the human factor.

2.7. Healthcare, education, science, and social security

Problem 2.7.1. Patients and doctors do not receive medications and medical devices in a timely manner and in full, in particular due to the incomplete transition to the new system of organization and control of medical procurement, and the incomplete regulation of the processes of identifying the needs for and accounting of medications.

The information on the stock of medications and medical devices handled at the central level is updated infrequently, inaccurately and incompletely (it is not clear which medications are available in hospitals and in what quantity). This sometimes makes it difficult for patients to receive free treatment, and for the state to effectively procure and distribute goods.

It should be emphasized that public procurement is carried out at the expense of the state budget according to the predetermined list of medications and medical devices. This is preceded by extensive work of groups of experts and specialists involved in the development of nomenclatures, terms of reference ("technical assignments"), etc. This process involves experts with relevant specialist knowledge – doctors and other healthcare professionals, as well as representatives of NGOs and patient organizations in whose activities private interests may prevail.

In addition, the relevant experts issue their recommendations and comments during the approval of procurement terms of reference ("technical assignments"), which should be taken into account by the State Enterprise Medical Procurement of Ukraine when formulating the final terms of reference,

which, given the potential presence of private interest of the relevant experts, may negatively affect the objectivity of the approval of the relevant requirements.

As for decentralized (regional) procurement, there are different approaches of different customers to the procurement of the same type of medicinal products, which may lead to corruption risks both at the stage of tender documentation development and at the stages of bidding and contract execution.

Issues of interaction between pharmaceutical companies and healthcare professionals remain insufficiently regulated; proper regulation of these interactions would make it impossible to abuse the prescription of medicines to patients.

In addition to the procurement procedures themselves, an important aspect of preventing corruption risks in this field is the independence of the supervisory board of the state enterprise Medical Procurement of Ukraine. It should be emphasized that the state enterprise Medical Procurement of Ukraine falls under the criterion of critical enterprises, so the formation of a supervisory board is mandatory.

Problem 2.7.2. Patients are unable to receive medical treatment abroad or medical care with the use of transplants, due to corrupt practices caused by insufficiently regulated procedures and non-transparent accounting.

The legal and regulatory framework for sending Ukrainian citizens for treatment abroad, as well as for transplanting human anatomical materials, needs to be improved, given that the registration of Ukrainian citizens in need of treatment abroad and the sequence of review of relevant applications are not transparent.

A state audit revealed cases of delays in granting permission for treatment abroad to certain citizens, which sometimes leads to delays in medical care.
An electronic register of applications is still being developed. In practice, there are cases when legislatively prescribed timeframes for the review of applications are exceeded.

In addition, the procedure for choosing a foreign healthcare facility to which a Ukrainian citizen is to be sent for treatment remains unregulated, which jeopardizes the effective spending of budget funds and the high quality of medical services provided.

Similar problems exist in the area of human anatomical transplantation. Thus, according to Article 11 of the Law of Ukraine *On the Application of Transplantation of Anatomical Materials to Humans*, it is necessary to introduce state transplantation information systems, which include the Unified State Information System of Organ and Tissue Transplantation and the State Information System for Transplantation of Hematopoietic Stem Cells.

The Regulation on the Unified State Information System of Organ and Tissue Transplantation was approved by the resolution of the Cabinet of Ministers of Ukraine dated December 23, 2020. No. 1366.

However, it should be noted that the Regulation on the State Information System for Transplantation of Hematopoietic Stem Cells has not yet been approved.

Problem 2.7.3. The electronic healthcare system is not sufficiently integrated with other databases, which creates opportunities for abuse during the use of specific functions (including the awarding of disability benefits, preventive and compulsory medical examinations, and assignment of the disability group).

In recent years, there have been a number of systemic changes and digital transformations in the healthcare sector of Ukraine that mitigate corruption risks in it. In particular, the electronic healthcare system, an information and communication system that allows automating the workflows of healthcare entities, creating, reviewing, and exchanging medical information in electronic form, has been launched.

Given the need to ensure patient access to the management of their own medical data, as well as the quality, safety and accessibility of medical services, and to reduce the number of corruption risks, the electronic healthcare system should be improved.

First of all, the electronic healthcare system should be integrated with other information systems and state information resources, as otherwise it will lead to consolidation of unverified information

in the register, as well as to the need for cooperation in manual mode, which carries risks of subjective interference and errors, as well as slow data exchange. In addition, as the Accounting Chamber found that the inadequate integration created conditions for payments in respect of declarations of citizens who did not actually have the opportunity to see a primary care doctor (due to conviction, staying abroad, enlistment for military service, etc.)

In addition, medical professionals and healthcare facilities are forced to use inefficient tools related to maintaining a large number of hardcopy forms of medical records, including medical charts, and collecting statistical information. This leads not only to the parallel existence of hardcopy and electronic forms, including two routes for a patient – the old one (paper-based) and the new one (electronic), which often contradict each other, but also to the continued existence of other sources of information about medical services provided in Ukraine, besides the electronic healthcare system.

It is worth separately mentioning the need to implement tools for assessing the functional status of a person according to the adapted International Classification of Functioning, Disability and Health in the electronic healthcare system. The main advantage of the classification developed by the World Health Organization is a conceptually new approach to health assessment: looking at a patient not from the point of view of a diagnosis, but from the point of view of the potential for recovery and needs (surgical interventions, rehabilitation, etc.) in order to improve the patient's productivity.

For a long time, one of the most common corrupt practices in the healthcare sector has been making unofficial payments to a healthcare worker (cash or gifts) or providing services to them for issuing medical certificates. For example, the Internet and bulletin boards are full of information about the availability of such certificates through intermediaries without having to undergoing a medical examination (falsified or valid, but definitely issued without legal grounds).

The problem of corruption in medical and social examination procedures has long been recognized as an important task in the complex of health care reforms. For example, the current procedure allows dishonest members of medical and social expert commissions to subjectively vary which disability group to establish and for how long.

The process of issuing sick leave certificates is accompanied by unfair practices and corruption (e.g., the "sale" of forged documents by third parties, or doctors entering false information to simulate a person’s incapacity for work). They are facilitated by the hardcopy form of sick leave certificates, which is easier to reproduce by third parties and does not record the time of their issuance.

Problem 2.7.4. Insufficiently transparent recruitment procedures at healthcare institutions hinder competition and create opportunities for manifestations of corruption in appointments to such positions.

Corruption risks in the healthcare sector are associated with the conduct of dishonest healthcare professionals. Therefore, an important aspect of anticorruption policy in this field is to prevent unscrupulous persons from providing medical services by improving medical staff recruitment procedures at healthcare institutions.

Information on vacant positions of managers of municipal healthcare institutions is available in a large number of different sources. The scale of this dispersion is even greater when taking into account the total number of all vacant positions at state and municipal healthcare facilities. At the same time, it is common practice for healthcare institutions to post information about vacancies in the news sections of their official websites, where this information quickly moves down and is not visible, or its publication is delayed. This situation makes it difficult to exercise effective control over the selection of medical staff and artificially restricts competition. The most dangerous consequence of this problem is the emergence of corrupt practices.

Since 2018, in accordance with the Procedure for conducting a competitive selection process to fill the position of the manager of a state or municipal healthcare institution, approved by Resolution No. 1094 of the Cabinet of Ministers of Ukraine dated December 27, 2017, for the first time, members of the public can elect the manager of a hospital, as they make up one third of the members of the competition committee. Despite this, in practice, representatives of independent civil society organizations experienced difficulties accessing the competitive selection process. Moreover, Ukrainian courts have repeatedly found that candidates submitted false information to participate in

the competitive selection process, which points to the need to improve the competitive selection procedure.

Problem 2.7.5. Corruption risks are present when it comes to access to educational institutions and the educational process. The awarding of academic degrees and academic titles often happens with significant use of corrupt practices and other forms of dishonesty.

For a long time, one of the key problems of distrust in the system of higher education has been the phenomenon of corruption during admission to institutions of higher education, which has been significantly addressed through the introduction of external independent testing. The success of this tool and its support by stakeholders is evidenced by opinion polls. Nevertheless, there are still admission paths with high corruption risks (e.g., creative competitions and internal enrollment exams). Such admission rules pose an extremely high risk of unjustified distortion of grades.

Another corruption factor in admission to institutions of higher education involves unjustified granting of privileges and preferences. For example, the privileges of taking an internal exam instead of an external independent evaluation test were used unfairly by individuals whose health condition actually made them eligible for testing under the general procedure.

It is also worth recalling that for more than 10 years, the admission conditions allow submitting applications for participation in the competitive selection process for enrollment at institutions of higher education in electronic form. This practice is not only convenient for entrants, but also ensures proper transparency, efficiency, and avoidance of unnecessary contact with members of the admission (selection) committee. However, to date, some categories of people can still submit applications only in hardcopy form. For example, if there are discrepancies between the entrant's data in the Unified State Electronic Database in Matters of Education (last name, first name, patronymic (if any), date of birth, gender, citizenship, etc.) and the relevant prior proof of education and in the certificate of external independent testing, or when a foreign proof of education obtained at a foreign educational institution is submitted, the person is forced to appear before each admission (selection) committee, which theoretically can make different decisions on the same issue – admission of the applicant to the competitive selection process.

Another problem characterized by a high level of corruption risks in higher education is the issue of admission of foreigners and stateless persons to domestic institutions of higher education. In particular, the system of obtaining study invitations for foreigners and stateless persons is not sufficiently transparent. Thus, every foreigner or stateless person must apply to a higher education institution to receive such an invitation, which creates an opportunity for officials of institutions of higher education to receive unjust enrichment or satisfy their private interests.

The process of obtaining a higher education and evaluating learning outcomes also entails a number of corruption risks. The opportunity to demand or receive unjust enrichment in return for a passing grade during end-of-semester exams or artificially inflated grades for current academic performance is a complex and large-scale problem in the educational activities of institutions of higher education. The consequence of this problem manifests itself in unqualified graduates of institutions of higher education, and the main reason is the non-transparent and ineffective management of the educational process at institutions of higher education.

Corruption risks are equally inherent in the process of writing and defending qualification and research papers. At the same time, the legal means of holding people accountable for academic dishonesty, including academic plagiarism, are not perfect. For example, Ukrainian legislation does not contain procedural rules governing the procedure for holding students legally accountable for manifestations of academic dishonesty. This has resulted in the judicial overturning of more than one decision of the Ethics Committee of the National Agency for Higher Education Quality Assurance regarding possible violations of academic integrity rules in texts of theses.

It is worth separately emphasizing the uncertainty of the statute of limitations for liability when it comes to academic dishonesty. On the one hand, the public insists that the legislation should explicitly state that there is no statute of limitations for stripping a person of their a degree for academic plagiarism, fabrication, falsification, and other violations of academic integrity. There is no statute of limitations applicable to theses defended after the Law came into force (i.e., on September

6, 2014). This creates a situation where such papers can be reviewed at any time, while earlier papers cannot be subjected to review under any circumstances.

Another factor that causes corruption risks is the existence of provisions in some laws that provide for the possibility of additional allowances for academic degrees or academic titles for individuals whose functions do not directly involve academic or research work.

Problem 2.7.6. Conflicts of interest are present in the sector of education and science during formulation and implementation of state policy.

The emergence of a conflict of functions in the formulation and implementation of state policy in the field of education and science is primarily due to the fact that the same executive authority is vested with powers that may contradict each other.

For example, the functions of licensing of educational activities in higher education, state oversight over compliance with the requirements of license conditions by the relevant license holders (powers in the field of inspection and oversight activities) are vested in the agency that simultaneously exercises the powers to manage many of the license holders and is therefore certainly interested in their successful licensing.

At the same time, one of the principles of state policy in the field of licensing is its application only to such kinds of economic activity, the implementation of which poses a threat of violation of the rights, legitimate interests of citizens, human life or health, the natural environment and/or security of the state, and only if other means of state regulation are insufficient (clause 4 of part one of Article 3 of the Law of Ukraine *On the Licensing of Kinds of Economic Activity*), which clashes with the licensing procedure in the field of higher education.

Moreover, a number of laws contain certain provisions that are not clearly defined (do not contain specific powers of the central executive authorities), which creates factors fostering corruption.

The education legislation does not clearly regulate the powers of other central executive authorities, local state administrations, and local self-government bodies as governing bodies in the field of education and as founders of state and municipal institutions of education (research institutions). Specifically, at the level of the Law of Ukraine *On Local Self-Government in Ukraine*, the powers of executive bodies of village, town, and city councils are defined according to the outdated Soviet concept as "management of educational institutions". This concept is vague, which is why it is often interpreted broader than the exhaustive list of powers in specialized laws, and thus leads to a conflict of powers between different governing bodies in the field of education.

In addition, provisions of other laws also contain outdated norms that are not consistent in terms of their substance with education and budget legislation, and thus create factors fostering corruption.

The procedure for the allocation of public funds for the training of specialists with higher education and for research among educational institutions and research institutions also contains corruption risks due to insufficient legislative regulation and therefore needs to be improved.

Problem 2.7.7. There is a lack of proper accounting and transparency in the spending of funds allocated in the budgets of all levels for social protection for all categories of social aid recipients.

The problems in the social security sector include the ineffectiveness of the mechanism of accounting treatment of funds allocated for social support, which leads to a number of corruption risks, which generally consist in the possibility of abuse of the social security system by both recipients of social support and civil servants who can make subjective decisions based on the data of recipients, causing unjustified expenditures of budget funds. This problem is caused by the ineffectiveness of the social support mechanism and the complexity of the process of providing services in the social sphere, as well as the unfair and discriminatory procedure for allocating budget funds for financial support to public associations of individuals living with disabilities.

The ineffectiveness of the social support mechanism and the complexity of the process of providing social services are caused by the duplication of social support instruments, as well as the maintenance of registers of persons in need of social support and receiving cash payments without verification of information contained in other registers. The main factors contributing to these reasons include the existence of legislative provisions that provide for kinds of social assistance that are

largely overlapping and the absence of a unified register of persons receiving different kinds of social assistance. Moreover, corruption risks in the process of providing social services are caused by the lack of proper accounting of the spending of funds earmarked in the state budget for social support for all categories of recipients.

Unfair distribution of financial support among public associations of individuals living with disabilities is caused by the lack of a clear legal requirement to provide the above-mentioned financial support from the budget exclusively on a competitive basis, insufficient transparency of existing competitive procedures and the absence of a legislatively prescribed ban on granting privileges to certain public associations of individuals living with disabilities in the course of providing state financial support.

Moreover, one of the additional factors behind the flawed and ineffective nature of the existing mechanism of financial support for public associations of individuals living with disabilities is failure to comply with the requirements of guidelines on the implementation of institutional support for public associations of individuals living with disabilities at the state level exclusively on a competitive basis (in addition to the project support currently provided).

3. ENSURING THE UNAVOIDABILITY OF LIABILITY FOR CORRUPTION

3.1. Disciplinary liability

Problem 3.1.1. Violations of the requirements of anticorruption legislation are not always treated as a disciplinary offense in practice; a large share of individuals subject to the Law of Ukraine *On Prevention of Corruption* manage to avoid disciplinary penalties.

The institution of disciplinary liability is characterized by a high anticorruption potential, as it makes it possible to not only respond swiftly and effectively to violations of anticorruption legislation, encouraging honest individuals to perform their duties properly, but also to disqualify individuals who systematically violate their duties, make biased decisions, use the powers granted to them in their own interests, and engage in corrupt practices from performing the functions of state or local self-government.

At the same time, this potential is virtually untapped in Ukraine, as violations of anticorruption legislation are not always treated as disciplinary offenses in practice, due to both flaws in legislation (including contradictions in some of its provisions) and low legal awareness of officers who are authorized by law to impose disciplinary sanctions.

This circumstance, coupled with the low effectiveness of administrative liability for such offenses, has led to the fact that a significant number of entities covered by the Law of Ukraine *On Prevention of Corruption* that violate the requirements of anticorruption legislation are not brought to any type of legal liability and continue to hold their positions.

3.2. Administrative liability

Problem 3.2.1. Some of the rules, prohibitions, and restrictions established by anticorruption legislation are not backed up by legal liability measures. Articles 172^{4}—172^{9}, 212^{15}, 212^{21} of the Code of Ukraine on Administrative Offenses contain a number of shortcomings that significantly impair their injunctive and preventive potential as well as the effectiveness of the National Agency, the National Police, prosecutorial authorities and courts.

Some of the rules, prohibitions and restrictions established by the anticorruption legislation are not currently backed by legal liability measures, which leads to a low level of compliance in practice. This primarily concerns the requirements concerning the handover of enterprises and corporate rights to third parties for management, prohibitions and restrictions applicable to individuals who have stopped performing functions of state or local self-government, as well as requirements that mandate taking steps to resolve a real or potential conflict of interest.

The torts mentioned in Articles $172^{9\text{-}1}$ and $172^{9\text{-}2}$ of the Code of Ukraine on Administrative Offenses were mistakenly attributed to administrative offenses related to corruption.

Articles 172^4 – 172^9 of the Code of Ukraine on Administrative Offenses contain flaws that significantly impair their injunctive and deterrent (preventive) potential as well as the effectiveness of the National Agency, the National Police, prosecutorial authorities and courts in this area.

The provisions of Articles212^{15}, 212^{21} of the Code of Ukraine on Administrative Offenses are not fully consistent with the provisions of the Law of Ukraine *On Political Parties in Ukraine* and the Election Code of Ukraine. There are conflicts between these articles and Article 159^1 of the Criminal Code of Ukraine, which significantly complicate the correct classification of these offenses and results in numerous mistakes in practice. Sanctions for such administrative offenses are too lenient.

Problem 3.2.2. The majority of individuals guilty of corruption-related offenses as well as offenses in matters relating to the funding of political parties and submission of financial statements by political parties avoid administrative liability and/or penalties by exploiting systemic loopholes in the existing system for holding individuals administratively accountable as well as the flaws of the judicial system.

The absence of a centralized electronic procedural record keeping system in courts as well as the Unified State Register of Enforcement Documents leads to significant corruption risks caused by abuse of administrative influence as well as risks in the field of documenting and monitoring the enforcement of decisions to hold individuals liable for administrative offenses, and other enforcement documents.

3.3. Criminal liability

Problem 3.3.1. Certain provisions of criminal law relating to criminal liability for corruption-related criminal offenses contradict international standards in this field, are not coordinated with each other and with the provisions of the criminal procedure legislation and the Law of Ukraine *On Prevention of Corruption*. As a result, in a significant number of cases, perpetrators of corruption-related criminal offenses are relieved of criminal liability and/or punishment.

Numerous academic, practical, and analytical studies and reports, as well as official statistics of pretrial investigations and court proceedings involving corruption and corruption-related criminal offenses prompt the conclusion that there is a problem that the legislation in this field is currently unbalanced, contains terminological inconsistencies, conflicts and manifestations of unjustified competition between the norms.

In particular, anticorruption experts have identified the following problems:

the list of criminal offenses contained in the note to Article 45 of the Criminal Code of Ukraine contains references to certain criminal offenses that are not corruption-related, and vice versa – it does not provide references to criminal offenses that contain signs of corruption.

The consequence of this is that in some cases, the perpetrators of corruption and corruption-related criminal offenses will not face special legal consequences – the impossibility of exemption from criminal liability, the impossibility of exemption from serving a sentence with probation, its mitigation, etc., and in other cases, on the contrary, for committing acts that are not corrupt, individuals will be subjected to excessive legal restrictions, which negatively affects the inevitability of criminal liability for corruption in general;

the wording of the elements of crimes of corruption and corruption-related offenses should be aligned with the wording of international conventions;

certain provisions concerning the consequences of crimes of corruption and corruption-related criminal offenses are contradictory and cannot be interpreted unambiguously;

the lack of up-to-date summaries of court practice of the Supreme Court and the High Anticorruption Court relating to corruption and corruption-related criminal offenses, as well as publicly available summaries of investigative practice.

Problem 3.3.2. Poor efficiency and quality of pretrial investigation of corruption and corruption-related criminal offenses (a significant number of such proceedings last for years) is due to excessive complexity of certain procedural formalities.

A number of procedures for conducting investigative (detective) activities are burdensome and could be simplified in line with the case-law of the European Court of Human Rights. Certain

requirements for temporary access to items and documents and searches can be revised without prejudice to the interests of individuals. One of the investigative activities – monitoring of bank accounts – cannot be carried out in practice due to flaws in legal regulation.

The electronic criminal proceedings system ("iCase") is already used by the National Anticorruption Bureau and the Specialized Anticorruption Prosecutor's Office, but not yet by the High Anticorruption Court. This system is not currently integrated with the Unified Register of Pretrial Investigations and the Unified Judicial Information and Telecommunication System, and is not used in criminal proceedings where the pretrial investigation is being conducted by other agencies.

The National Anticorruption Bureau and the Specialized Anticorruption Prosecutor's Office have not yet been provided with sufficient guarantees of institutional and operational independence. For example, the National Anticorruption Bureau cannot independently collect data from electronic communication networks, and the Bureau faces obstacles in conducting expert examinations as part of criminal proceedings. The National Anticorruption Bureau lacks staff despite a significant increase in the workload compared to the volume at the beginning of the agency's work. The powers of the management of the Specialized Anticorruption Prosecutor's Office need to be optimized. Procedures for selecting the head of the Specialized Anticorruption Prosecutor's Office need to eliminate the risks of politicization of the selection process.

The effectiveness of the National Anticorruption Bureau and the Specialized Anticorruption Prosecutor's Office is impaired due to limited opportunities for plea bargaining in proceedings under the jurisdiction of the National Anticorruption Bureau, as well as a lack of incentives for suspects and the accused to enter into plea deals. The problem of unreasonable failure to respect the jurisdiction of the National Anticorruption Bureau, in particular in criminal proceedings with a high public profile, remains a systemic one.

The low effectiveness of the summarized materials provided by the State Financial Monitoring Service to the National Anticorruption Bureau necessitates an analysis of the reasons for this state of affairs. The issue also arose about the need to exchange information in electronic form – so far, the procedure for data exchange provides for the possibility of exchanging data also in hardcopy form.

Problem 3.3.3. The legislation governing the activity of the ARMA contains numerous gaps and corruption risks. Low effectiveness of the processes of transferring assets to ARMA for management to preserve their economic value, as well as the processes of combating and preventing money laundering

The guarantees of ARMA’s independence and institutional capacity need to be significantly strengthened. The established procedure for the competitive selection of the Head of ARMA does not ensure proper impartiality and merit-based selection, and the procedure for forming the selection committee contains risks of being recognized as being in contravention of the Constitution of Ukraine. The list of grounds for dismissal of the Head of ARMA is too broad and does not guarantee his independence from undue interference in his activities. One of the mechanisms of control over the agency's activities – an external independent performance evaluation – has never been conducted.

Despite some progress in eliminating contradictions, gaps and inconsistencies in the legislation on the management of seized assets transferred to ARMA, flaws still remain and are significant. This gives rise to risks of abuse during the process of determining the manager of seized assets, as well as control by ARMA over the effectiveness of management of such property. The Unified State Register of Assets Seized in Criminal Proceedings has not yet been put into permanent (commercial) operation, which does not give one confidence in the completeness of the information contained therein, the protection of information, etc.

Cooperation and coordination of efforts among ARMA, the State Financial Monitoring Service, pretrial investigation authorities and the prosecutorial authorities are not systemic and real-time in their nature, which slows down the identification, tracing and securing of assets that may serve as evidence or be subject to confiscation/special confiscation to prevent their concealment. In addition, the legislation does not provide for effective pre-seizure planning mechanisms for assets that will be transferred to ARMA, which reduces the effectiveness of measures towards their subsequent preservation.

There is potential for strengthening ARMA's international cooperation and data exchange, in particular within the framework of Europol.

Despite the significant progress made by Ukraine in implementing the FATF recommendations, which is recognized in the MONEYVAL assessment reports, there are still recommendations that have been only partly implemented.

A significant challenge for the national competent authorities is the lack of a Unified Register of Accounts of Individuals and Legal Entities and Individual Bank Safe Deposit Boxes in accordance with European standards and best practices. This complicates the prompt identification of assets and conduct of financial investigations. The digitalization of financial monitoring information exchange processes has begun and should be continued. Preventing and combating money laundering will be more effective through the systemic implementation of measures identified in the national risk assessment.

Problem 3.3.4. The overall progress of court hearings involving corruption and corruption-related criminal offenses is slow. There is no established practice of consideration of criminal proceedings in this category. There are numerous cases of abuse of procedural rights by litigants.

Ensuring the proper speed of judicial examination of criminal proceedings involving corruption and corruption-related offenses is one of the recommendations in the European Commission's opinion on Ukraine's progress to membership in the European Union. However, all of this still remains a challenge: the number of pending cases is increasing, and the number of cases reviewed by the courts is less than the number of cases submitted to the court. Proceedings get discontinued due to the statute of limitations.

In practice, flaws of legislative regulation give rise to situations where procedural rights are abused by parties to criminal proceedings, where parties to proceedings systematically fail to appear in court, and where the court lacks effective mechanisms to influence such parties. Revision of the provisions of the Criminal Procedure Code of Ukraine dealing with the procedure for summoning individuals who are abroad, the requirement to read the full text of the verdict, and the possibility of holding court hearings in the presence of at least one defense counsel for each suspect or the accused will also help ensure the proper speed of the judicial examination. At the High Anticorruption Court, a positive impact on the dynamics of the trial can also be achieved by revising the requirements for review of all criminal proceedings in the court first instance by a panel of judges.

In 2021, the substantive jurisdiction of the High Anticorruption Court was already narrowed down due to an increase in the size of the object of the crime or the harm caused by it, and the need for more changes along this path requires analysis. If the analysis findings point to this need, the relevant measures will be included in the State Anticorruption Program towards implementation of the Anticorruption Strategy during its revision.

Practice shows that some cases falling under the substantive jurisdiction of the High Anticorruption Court were examined by other courts. In order to prevent such practices and achieve the goals for which the specialized court was established, legislative amendments should be made with respect to the jurisdiction of the Appeals Chamber of the High Anticorruption Court in all cases falling under the substantive jurisdiction of the High Anticorruption Court. Moreover, the High Anticorruption Court should be empowered to resolve issues related to the enforcement of verdicts handed down by this court.

Anticipated results and measures of Program implementation

The anticipated strategic results to be achieved are defined for each problem addressed by the Program.

For each of the anticipated strategic results, the Program defines indicators of achievement, which will be used to assess the cumulative quantitative and qualitative impact of activities implemented by government agencies, local self-government bodies, and other entities responsible for the implementation of the Program (hereinafter referred to as "actors responsible for the

implementation of the Program") on the status and progress made in achieving the anticipated strategic result as component of the problem solution.

A description of the problems, anticipated strategic results of Program implementation, as well as indicators of their achievement are provided in Annex 1.

The Program implementation activities aimed at achieving the anticipated strategic results and solving the problems identified in the Program are mandatory.

The descriptions and scope of the activities, indicators and deadlines for their implementation, actors responsible for the implementation of the activities, sources and amounts of financial resources required for their implementation are given in Annex 2.

Coordination of Program implementation

The National Agency coordinates the implementation of the Program.

The coordination of actions of government agencies towards implementation of the activities envisaged by the Program is facilitated by the Coordinating Taskforce on the Issues of the Anticorruption Policy, co-chaired ex officio by the Head of the National Agency and the Minister of the Cabinet of Ministers of Ukraine.

Monitoring of Program implementation

The National Agency shall monitor the implementation of the Program by systematically collecting, summarizing and analyzing information on the implementation of activities envisaged by the Program, in particular using the means of the information system for monitoring the implementation of the state anticorruption policy.

Those actors responsible for the implementation of the Program shall annually (by February 15 and July 15) submit to the National Agency information on the status of implementation of the activities, which shall be published by the National Agency.

Specially authorized anticorruption entities responsible for the implementation of the Program within their terms of reference shall annually (by February 15) submit to the National Agency statistical information on the results of their work, indicating the data specified in part two of Article 183 of the Law of Ukraine *On Prevention of Corruption*.

Evaluation of Program implementation effectiveness

The annual evaluation of the effectiveness of Program implementation is carried out by the National Agency by determining the total quantitative and qualitative impact of the activities implemented on the status and progress made in achieving each anticipated strategic result as a component of the problem solution. This evaluation is based on the indicators of achievement of the anticipated strategic results listed in Annex 1.

The overall effectiveness of implementation of the Anticorruption Strategy and the Program shall assessed based on the following indicators:

the status of implementation of the activities envisaged by the Program;

improvement of Ukraine's ranking in the Corruption Perceptions Index;

increase in the share of the population with a negative attitude towards corruption;

reduction of the share of the population that had their own corruption experience;

increase in the number of citizens willing to report corruption, as well as citizens who have reported corruption to the relevant authorities.

The report on the status of Program implementation, indicating the activities completed, the activities in progress, as well as the activities not yet implemented and those responsible for the failure to implement them and the reasons for the failure to implement these activities shall be reflected in

the national report on the effectiveness of implementation of the state anticorruption policy, which is prepared by the National Agency in the final year of the Anticorruption Strategy.

The National Agency publishes the National Report on the effectiveness of the implementation of the state anticorruption policy on its official website and submits it to the Cabinet of Ministers of Ukraine, the Parliament of Ukraine, and the President of Ukraine no later than April 1, 2025.

Program implementation time frame

The implementation of the Program is limited to the period of implementation of the Anticorruption Strategy and is designed for 2023-2025.

Amount and sources of funding for the Program

Funding for the Program to the extent of the activities undertaken by the National Agency towards Program implementation, coordination and monitoring of its implementation, and performance evaluation comes from the state budget, particularly funding provided under the Budget Program “Implementation of Anticorruption Strategies”, as well as other sources not prohibited by law, including international technical assistance.

Funding for the Program to the extent of implementation of activities by actors responsible for their implementation shall be provided out of the state and local budgets as well as other sources that are not prohibited by law, including international technical assistance.

Revision and amendment of the Program

The National Agency has the right to initiate a review of the Program based on the results of monitoring and evaluation of the effectiveness of implementation of the Anticorruption Strategy and the Program.

Amendments to the Program shall not be made without their public discussion and approval by the National Agency.