

**Programmatic Cooperation Framework for  
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus**



**CoE/EU Eastern Partnership Programmatic Co-operation Framework (PCF)  
PCF-Project: “Fight Against Corruption in Ukraine”**

**Expert Opinion on:**

**Financial Control of Asset Declarations in Ukraine  
(Section VII of the Law “On Prevention of Corruption” – LPC)**

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## 1 EXECUTIVE SUMMARY

On 14 October 2014, Ukraine adopted the Law “On Prevention of Corruption” (hereafter “LPC”). The LPC contains provisions on the **disclosure of finances** by public officials, also called “asset declarations”. The Chair of the “Parliamentary Committee on Corruption Prevention and Counteraction” has asked the Council of Europe on 9 September 2016 to provide this **expert opinion** regarding Section VII of the LPC, titled “Financial Control”. Basis of this opinion are Council of Europe standards and good practices, including GRECO recommendations and human rights aspects.

The LPC foresees by and large **strong** legal provisions for the financial disclosure of public officials. In many points, it follows a highly advanced standard, by covering a wide range of public officials, by requiring declaration of detailed data, and by foreseeing online publication of the declarations in machine-readable format.

The effectiveness of the LPC will largely depend on how it will be implemented. However, there are a few **regulatory** points where the LPC would benefit from further improvements, such as:

- The threshold for **movables** (i.e. precious objects such as jewellery) from Article 46 part 1 clause 3 should be extended to also include a threshold for all movables acquired within one year, and above which declaration is required (e.g. € 9,000 – see below at 5.3).
- The **minimum monetary value** thresholds that trigger the administrative and criminal offences for providing false information in a declaration should be reconsidered. This would include: a) that they should only apply in case the declarant has to provide an estimation (e.g. for a used car received as a gift) and not where there can only be one defined amount (e.g. a bank account balance or a purchase price); b) that they should be lowered (see below at 5.7); c) that they should only apply if the estimated value **falls short** of the true value, not if it exceeds it; and d) that they should apply not only to each declaration item, but also to all declaration items **combined** (for example all real estate, vehicles, bank accounts, etc. combined).
- It would be necessary to foresee criteria on how a court can decide whether the administrative or criminal offence of providing false information in a declaration applies in case the false information does **not** have a **monetary** value.
- The regulation of procedure for declarations by public officials working **undercover** and/or in **intelligence** services should not depend on approval of intelligence agencies, as is the stipulated now, but should only be coordinated with them.
- The offence of Article 366-1 of the Criminal Code (knowingly providing false information) should be added to the list of offences for which **effective regret** does not apply (see below at 5.7). Article 172-6 Code of Administrative Offences – COA should similarly be excluded from effective regret.
- The law needs to clarify whether declarants who **correct** their **declarations** within 7 days can still be held criminally liable for their original, faulty/false declaration (see below at 5.7).
- The minimum threshold of inexplicable wealth for the criminal offence of **illicit enrichment** should either be abolished or set not higher than 5-10 times untaxed minimum personal incomes. It should also apply only to all declaration items combined.
- The amount of inexplicable wealth should be factored into the **sanctions** for illicit enrichment (Article 368-2 Criminal Code).
- The clause regulating the transition from the **previous Law** of 2011 to the current legislation (Section XIII) should be rephrased to avoid any ambiguities (for a proposed wording, see below at 5.9). This would also implement a specific recommendation contained in a European Union report.<sup>1</sup>

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<sup>1</sup> European Commission, 18 December 2015, SWD(2015) 705 final, [Sixth Progress Report](#) on Ukraine's implementation of the action plan on visa liberalisation, available at <http://ec.europa.eu>, accessed 29 September 2016.

Legislators also need to review possible textual or technical **ambiguities** discussed in sections 5.2, 5.5, and 5.7 of this Opinion and consider where and whether additional legislative initiative is needed.

Compliance with **human rights** will mainly be an issue of implementing the LPC in practice. The publication of declarations concerns the **privacy** of public officials (Article 8 European Convention on Human Rights – ECHR). However, the European Court of Human Rights has decided already in 2005, that the online publication of asset declarations of public officials is justified by the legitimate interest of citizens in transparency. The offence of illicit enrichment (Article 368-2 Criminal Code) leaves the burden of proof with prosecutors. Therefore, it does not interfere with a defendant's right to a **fair trial** (Article 6 ECHR).

## 2 TERMS OF REFERENCE AND BACKGROUND

On 14 October 2014, Ukraine adopted the Law “On Prevention of Corruption” (hereafter “LPC”). The LPC contains provisions on the **disclosure of finances** by public officials (asset declarations).

The Chair of the “Parliamentary Committee on Corruption Prevention and Counteraction” of the *Verkhovna Rada* (the Parliament) of Ukraine has asked the Council of Europe on 9 September 2016 to provide an **expert opinion** regarding Section VII of the LPC, titled “Financial Control”. Basis of the opinion are Council of Europe and other international standards and good practices, including GRECO recommendations and human rights aspects.

The Chair asked for the expert opinion to be available on short notice in order to inform the legislature at the beginning of the Parliamentary session period. In view of the short notice, and as a general remark, the following **caveats** are in order:

- This expert opinion focuses on whether the LPC contains all necessary elements for a good asset declaration system. The expert opinion does not review each article of the LPC and it does not look at its relation to other laws of Ukraine. The focus of the expert opinion is on **international asset declaration standards and good practices**. It leaves it up to the Ukrainian legislators to assess issues of Ukrainian legal drafting and all ramifications the LPC could possibly have when applied in connection to other laws of Ukraine and corresponding practices as they are best placed to do so.
- Whether an asset declaration system is effective depends to a large extent not only on legislation but also on **implementation**. For assessing this, a review would be necessary of the asset declaration form; the guidance;<sup>2</sup> the concrete method of verification; and other aspects of implementation.
- An **electronic system** for the declaration of assets by public officials was introduced in March 2016. The e-system has been developed in co-operation with UNDP and the World Bank as an open data system connected to other data bases, allowing for the detection of false declarations.<sup>3</sup> The system was officially launched on 1 September 2016.<sup>4</sup> This expert opinion cannot take into account regulatory needs that may have resulted from the design and implementation of the e-system. To this end, consultations with practitioners implementing the e-system would be necessary.
- While the expert opinion will take notice of obvious **human rights** issues, it cannot review all possible aspects. The main focus will be on the right to privacy and the public transparency of the declaration content, as well as on the right to a fair trial and the illicit enrichment offence.
- As much as this assessment aims at bringing the Ukrainian system in line with European standards, it **cannot anticipate** or replace opinions and decisions rendered by the GRECO,<sup>5</sup> MONEYVAL,<sup>6</sup> or any other competent organ of the Council of Europe (e.g. the European Court of Human Rights and the Venice Commission).

The Council of Europe standards relevant for this Technical Paper are:

- Criminal Law Convention on Corruption (ETS 173);<sup>7</sup>
- Resolution (97)24 Concerning Twenty Guiding Principles on the Fight against Corruption;<sup>8</sup>

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<sup>2</sup> See the respective section on the [website](#) of the National Agency for Prevention of Corruption (NAPC), available at <https://nazk.gov.ua>, accessed 29 September 2016.

<sup>3</sup> 71st GRECO Plenary Meeting (Strasbourg, 14-18 March 2016), [Meeting report](#), Greco(2016)8, at no. 67, available at [www.coe.int](http://www.coe.int), accessed 29 September 2016.

<sup>4</sup> TI Ukraine (1 September 2016), [Press release](#), TI Ukraine Welcomes the Launch of the Electronic Asset Declaration System, available at <http://ti-ukraine.org>, accessed 29 September 2016.

<sup>5</sup> “Group of States against Corruption”.

<sup>6</sup> “Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism”.

<sup>7</sup> Council of Europe [website](#), accessed 29 September 2016.

- Recommendation (2000)10E 11 May 2000 on Codes of Conduct for Public Officials;<sup>9</sup>
- Recommendation 60(1999)1 on a European Code of Conduct on political integrity of local and regional elected officials;<sup>10</sup>
- Recommendations provided by GRECO with regards to asset declarations, in particular during its Fourth Round Evaluations.<sup>11</sup>

Further international standards relevant are the following:

- United Nations Convention against Corruption (UNCAC);<sup>12</sup>
- Organisation for Economic Co-operation and Development (OECD), Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service (2003; hereafter: OECD Guidelines);<sup>13</sup>
- Western Balkans Recommendation on Disclosure of Finances and Interests by Public Officials (2014; hereafter: Western Balkans Recommendation);<sup>14</sup>
- Organisation of American States (OAS), “Model law on the declaration of interests, income, assets and liabilities of persons performing public functions” (2013, developed with input from the World Bank; hereafter: OAS Model Law on Declarations).<sup>15</sup>

The following assessment is based on an unofficial **translation** of an excerpt of the LPC provided by the Chair of the “Parliamentary Committee on Corruption Prevention and Counteraction”. The **vetting** under Section IX itself is not subject of this expert opinion as it constitutes a separate topic.

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<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Council of Europe [website](#), available at [www.coe.int](http://www.coe.int), accessed 29 September 2016.

<sup>11</sup> GRECO [website](#), available at [www.coe.int](http://www.coe.int), accessed 29 September 2016.

<sup>12</sup> UNODC [website](#), available at [www.unodc.org](http://www.unodc.org), accessed 29 September 2016.

<sup>13</sup> OECD [Guidelines](#), 28 May 2003 – C(2003)107, available at [www.oecd.org](http://www.oecd.org), accessed 29 September 2016.

<sup>14</sup> ReSPA [study](#), available at [www.respaweb.eu](http://www.respaweb.eu), accessed 29 September 2016.

<sup>15</sup> OAS [Model Law](#), 22 March 2013, SG/MESICIC/doc.344/12 rev. 2, available at [www.oas.org](http://www.oas.org), accessed 29 September 2016.

### 3 HISTORY OF THE LAW

Ukraine **introduced** asset declarations for the first time in 1993.<sup>16</sup> Related to an earlier and different law of 2011, regulating asset declarations (“On Principles of Preventing and Combating Corruption”, No. 3206-VI), the Council of Europe provided an assessment at the time.<sup>17</sup>

On 14 October 2014, Ukraine adopted the Law “On Prevention of Corruption”. It came into force on 26 April 2015. Following its introduction, some amendments were made in December 2015, and withdrawn again in February 2016.<sup>18</sup> By Law of 15 March 2016 (No. 1022-VIII), Ukraine amended the Law “On Prevention of Corruption”. The amendments came into force on 18 March 2016. The **amendments** address the following three areas:<sup>19</sup>

- The amendments eliminate legislative hurdles towards the introduction of the system of e-declarations (organisational and procedural issues).
- Declarations and verifications
  - o Increasing the threshold for declaring valuable movable property from 50 times the minimum statutory monthly salary (“minimum salary”) (presently UAH 68,900 or ≈ € 2,300) to 100 minimum salaries (presently UAH 137,800 or ≈ € 4,600);
  - o Increasing the threshold for declaring expenses from 20 minimum salaries (presently UAH 27,560 or ≈ € 900) to 50 minimum salaries (presently UAH 68,900 or ≈ € 2,300);
  - o Extending the period during which the e-declarations are open for full audit from 90 days after filing to the entire term of a public official and three years after leaving office;
  - o Establishing a full audit using information obtained from third parties, the media and other sources.
- Criminal and administrative liability for providing false information
  - o Administrative liability if the discrepancy between the declared and real wealth is more than 100 minimum salaries (presently UAH 137,800 or ≈ € 4,600) but less than 250 minimum salaries (presently UAH 344,500 or ≈ € 11,500);
  - o Criminal liability if the discrepancy exceeds 250 minimum salaries.

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<sup>16</sup> Council of Europe (December 2012), [Country Risk assessment – Ukraine](#), “Financial Supervision of Public Officials”, available at [www.coe.int](http://www.coe.int), accessed 29 September 2016.

<sup>17</sup> Ibid.

<sup>18</sup> Baker McKenzie, [Newsletter March 2016](#), Ukraine makes significant step forward towards electronic declaration of income and assets by public officials, available at [www.chamber.ua](http://www.chamber.ua), accessed 29 September 2016.

<sup>19</sup> These bullet points are largely based on the above mentioned Newsletter.



#### **4 REPORTS OF INTERNATIONAL BODIES ON THE ASSET DECLARATION SYSTEM IN UKRAINE**

The following monitoring reports review the state of implementation of asset declaration system after adoption of the LPC in October 2014. Of these, only the OECD Report examines the LPC (in its un-amended version of 2014) itself and finds it largely compliant with international standards. As of yet, none of the recent international monitoring reports has reviewed the amendments of March 2016.

##### **Council of Europe Parliamentary Assembly**

Information note, Fact-finding visit to Ukraine from 19 to 20 January 2016: the first case study:<sup>20</sup>

“One of the cornerstones of the anti-corruption system is the system of electronic asset declarations. An untruthful asset declaration is a criminal offence. However, for the moment this mechanism remains a dead letter given that the National Bureau for the prevention of corruption, which has to approve the form, cannot be constituted. Another recent scandal related to asset declarations concerned an amendment tabled at the latest meeting of the Parliamentary Committee on Budget which proposed that the system of electronic asset declaration not be introduced before the 1st January of 2017. Even though the ‘hidden’ amendment had been discovered and removed from the draft law, the text adopted on 16 February 2016 contained a set of last minute amendments which weakened the initial wording and therefore attracted several criticisms.”

##### **GRECO**

There are no recommendations from previous assessments regarding the Law “On Prevention of Corruption” of October 2014. GRECO is currently conducting its Fourth Round Evaluations, which covers “prevention of corruption in respect of members of parliament, judges and prosecutors” and will look at declaration of assets, income, liabilities and interests.<sup>21</sup> Ukraine is expected to be assessed shortly.

##### **OECD**

The Round 3 Monitoring Report of the Istanbul Anti-Corruption Action Plan of 24 March 2015 contains 8 pages of assessment of the asset declaration system. The Report monitors the implementation of the following recommendation 3.2 of the Round 2 Report:

“Asset declarations

- Review the current system of asset declarations and ensure focus at high level officials/specialise by sector/branch/risk areas;
- improve the list of requested information;
- provide some verification and publication;
- ensure effective sanctions for not filing or filing knowingly false or incomplete information;
- introduce a system of exchange of information with law enforcement and
- consider accepting asset declarations as evidence in illicit enrichment proceedings.”

The Report reviews the LPC (in its un-amended version of 2014), also in light of findings by the Council of Europe Eastern Partnership Project, and concludes that Ukraine is compliant with all above recommendations, except the following last recommendation: “By starting to introduce a proper

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<sup>20</sup> Committee on Political Affairs and Democracy (9 March 2016), AS/Pol(2016)05, [Corruption as governance regime: a barrier to institutional efficiency and progress](#), available at <http://website-pace.net>, accessed 29 September 2016.

<sup>21</sup> GRECO [website](#), available at [www.coe.int](http://www.coe.int), accessed 29 September 2016.

system of exchange of information and by revising the illicit enrichment offence, Ukraine is partially compliant with the above [last] part of the recommendation 3.2.”

### **International Monetary Fund**

Government of Ukraine Report on Diagnostic Study of Governance Issues Pertaining to Corruption, the Business Climate and the Effectiveness of the Judiciary, Prepared with the Assistance of the Legal Department of the International Monetary Fund, 11 July 2014 states:<sup>22</sup>

“Income and Asset Declarations: An effective income and assets declaration mechanism should be put in place. It would particularly aim at preventing illicit enrichment and would include adequate verification powers and sanctions for noncompliance and fraudulent information. In order to be effective, the disclosure framework should focus on persons who are high-level public officials as well as those most at risk of high-level corruption. The FATF definition of domestic politically exposed persons (PEPs) is relevant in this respect. The declaration form should clearly capture all relevant information, including information on beneficial ownership and control of assets, and information from family members and close associates. These PEPs should submit their disclosures before taking office, and annually until the third year after the end of their public functions. Disclosures should be filed electronically and available to the public on a single website shortly after the deadline for submission and stay accessible during the period of disclosure requirement. Verification should be an independent process, and rely on sufficient powers to obtain, without court order or prosecutor’s approval, any relevant public or private information related to persons subject to declaration, their family members and close associates and to consider information received from the public. If declarations are inconsistent, false or missing, relevant information should be communicated to anti-corruption investigative officers. Proportionate, enforceable and transparent sanctions should be introduced, including dismissal from office and criminal sanctions for fraudulent disclosure or failure or delay in submitting declarations. The World Bank and the EU have general conditionality requiring an effective system for verification of declaration of assets. The EU requires that such a system be in place by the second quarter of 2015, which gives a reference period within which Fund staff can work with the authorities to develop specific measures (which are not outlined in the EU conditionality).”

### **European Union**

Commission Staff Working Document, Sixth Progress Report on Ukraine's implementation of the Action Plan on Visa Liberalisation (December 2015)<sup>23</sup> notes:

“In relation to preventing corruption, the National Agency for Prevention of Corruption (NAPC) will be in charge of designing and implementing anti-corruption programmes, and checking on asset declarations and conflicts of interest for public officials. The Law on Corruption Prevention defines the new agency as a central executive authority with a special status under the Government. After a selection process which was re-run due to allegations of manipulation, a new selection committee has been appointed. The five members of the Selection Board are expected to be appointed in December 2015. The selection and appointment process for members of the Agency and their support staff should include safeguards of their professional independence. As regards checks on asset declarations and conflicts of interest for holders of public office and managers of state owned/controlled companies, no progress has been made since the last VLAP [Visa

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<sup>22</sup> IMF [Report](#), page 16, at no. 34 (footnotes omitted), available at [www.imf.org](http://www.imf.org), accessed 29 September 2016.

<sup>23</sup> European Commission, 18 December 2015, SWD(2015) 705 final, [Sixth Progress Report](#) on Ukraine's implementation of the action plan on visa liberalisation, available at <http://ec.europa.eu>, accessed 29 September 2016.

Liberalisation Action Plan] report. These checks are the responsibility of the State Fiscal Service, but in practice they are not being conducted. Once established, the NAPC will take over this task. It is nevertheless imperative to ensure that assets declared before that date and potential conflicts of interest before that date are also subject to scrutiny and followed up.”

## **UNCAC**

The Country Review Report of Ukraine dates from 2013 and is based on a country visit in 2012. It thus contains no reference to the LPC, which was adopted only in 2014.

## 5 EFFECTIVENESS OF THE LAW

### 5.1 Purpose

The LPC serves **two** purposes: preventing and detecting illicit enrichment, as well as conflicts of interests among public officials (financial aspect and conflict of interest aspect). This double function makes full use of the declared data and is thus commendable.<sup>24</sup>

### 5.2 Coverage

The LPC seems to cover a **wide range** of public officials from all three branches of powers but this is not fully certain from the English translation of Article 1 which reads: “declarants – persons referred to in clause 1, sub-clause a) of clause 2 of part 1 of Article 3 of this Law, other persons who are obliged to file declarations under this Law”. The enumeration of these clauses and sub-clauses and references from one to another make the identification of actual declarants very hard and leaves room for possible interpretations. Only if the original text of the Ukrainian version, as amended, reads as follows: “declarants – persons referred to in clause 1 [*of part 1 and*] sub-clause a of clause 2 of part 1 of Article 3 of this Law, [*and*] other persons who are obliged to file declarations under this Law” the comment on wide coverage will be applicable. The legislators may wish to consider simplification of this article that would add to clarity and certainty of rules.

Other categories of affiliated persons seem also to be covered (Article 45 part 3). **Family members** as well as household members are included, which is a development commended by GRECO in its evaluation of Turkey.<sup>25</sup> It is nonetheless not fully clear whether managers of **state-owned** or state-subsidised **companies** are part of the categories of persons obliged to declare (possibly under Article 3 part 1, clause 2, sub-clause a). In this context, one should recall the following recommendation provided by the Council of Europe in respect of the earlier piece of legislation: “Managers of state-owned or state-subsidised companies should declare their assets even when they are not civil servants.”<sup>26</sup> Legislators should review whether there is a respective corruption risk related to these categories of persons and whether the LPC requires amendment.

### 5.3 Declaration content

#### 5.3.1 Financial aspect

Regarding the financial aspect of declarations, the LPC provides a basis for collecting all data necessary to get a full picture of the incoming and outgoing cash-flows of a public official. The following chart<sup>27</sup> shows the cash-flows as defined in Article 46 part 1 of the LPC:

Incoming cash flow during period	Outgoing cash flow during period
Cash (incl. savings, deposits) at the start of the period (clause 8)	Cash (incl. savings, deposits) at the end of period (clause 8)
Salary and any other income including gifts (clause 7)	+ New real estate (clause 2)
+ Assets transformed (sold) during period – clause 10	+ New movables (clause 3)

<sup>24</sup> [Western Balkans Recommendations](#), at A., available at [www.respaweb.eu](http://www.respaweb.eu), accessed 29 September 2016.

<sup>25</sup> GRECO (2015), Fourth Evaluation Round, Evaluation Report Turkey, at no. 76, available at [www.coe.int](http://www.coe.int), accessed 29 September 2016.

<sup>26</sup> Council of Europe (December 2012), [Country risk assessment – Ukraine](#), “Financial Supervision of Public Officials”, page 16, available in English and Russian at [www.coe.int](http://www.coe.int), accessed 29 September 2016.

<sup>27</sup> For further details of this cash-flow, see Council of Europe Eastern Partnership Project (2014), Practitioner manual on processing and analysing income and asset declarations of public officials, [Technical Paper](#), available at [www.coe.int](http://www.coe.int), accessed 29 September 2016.

	+ New securities and other rights (clauses 4, 5)
	+ Other high expenses (luxury vacation, etc.) – clause 10
+ Loans (received/paid back to official) – clause 9	+ Loans (given/paid back by official) – clause 9
= Subtotal incoming	= Subtotal outgoing

If the outgoing subtotal is higher than the incoming subtotal (=total balance), then there is a suspicion of illicit wealth not supported by the legitimate (declared) income of the public official.

There is a new threshold for **expenditures** of about € 2,300 under the amendments to the LPC of March 2016 (50 minimum salaries, presently UAH 68,900). This is by and large in line with an earlier recommendation provided by the Council of Europe (€ 1,900).<sup>28</sup>

The threshold for **movables** is the same as the one for expenditures.

There appears to be only a threshold for each movable, but not an overall threshold for **all** movables bought within one year. This is problematic from three angles. First, the threshold is already high (100 minimum salaries ≈ € 4,600). Second, a public official could buy within one year for example 50 movables worth € 2,000 € each, thus € 100,000 in total, without having to declare this. Third, the public official could use this threshold to cover up illegal income. A public official might be asked how he/she was able to buy a car of € 20,000 (with an annual salary of € 4,000). He/she could claim he/she had a multitude of movables below the declaration value (e.g. 10 pieces of antique furniture each worth around € 2,000), which he/she sold for a total of € 20,000. Each of the selling transactions would not have to be declared as they are below the threshold value. Therefore, it is recommended to include an alternative threshold for all movables bought within one year, for example double the current threshold (€ 9,000), where each is above minimal value (e.g. € 50).

The LPC puts **incoming** and **outgoing** cash flows into one and the same clause. This is fine from a legal point of view. However, in practice, incoming and outgoing cash flows should be separate in the declaration form. Otherwise it will not be possible to automatically calculate the plausibility of the declaration within a given period (e.g. the past year) or over time (e.g. since assuming office), as shown by the above formula. Although this is a question of implementation of the LPC it is an important one.

The declaration of property and legal persons under **beneficial ownership** is a commendable feature of the LPC (Article 46 part 1 clause 5-1, part 3), as is the extension to **foreign** cash flows (Article 46 part 2, Article 51 part 1).

### 5.3.2 Conflict of interest aspect

Most financial data of the declaration relates also to aspects of conflict of interest (for example shares in a company – they indicate money spent as well as an interest in the company). There are two categories of data that relate only to non-financial interests: employments and memberships (Article 46 part 1 clauses 11 and 12). This covers the two main sources of non-financial interests<sup>29</sup> and is thus commendable.

<sup>28</sup> Country risk assessment, *ibid*.

<sup>29</sup> World Bank (2013), *Conflicts of Interest, A Background Primer*, available at <https://agidata.org>, accessed 29 September 2016.

## 5.4 Submission

Declarations are submitted when **applying** for office, **annually** during office, and after **leaving** office (Article 45). This is in line with international standards.<sup>30</sup>

In addition, Article 52 part 2 obliges declarants to notify the Agency “in case of a **significant change** in the declarant's assets situation, namely – receipt of income, purchase of property for the sum exceeding the 50 minimum wages established as of January 1 of the respective year, the mentioned declarant within 10 days from the receipt of income or purchasing the property is obliged to notify about it in writing the National Agency. This information shall be included in the Unified State Register of Declarations of Persons Authorised to Perform the Functions of the State or Local Self-Government and shall be published on the official website of the National Agency.” This allows for an even tighter control of public officials. Thus, for example, a public official caught with a large amount of undeclared cash, will have to find an excuse for how he/she came legally into possession of this cash within the last 10 days (as opposed to having the entire time span since the last regular declaration available – up to one year – for fabricating an excuse).

Furthermore, a declarant is obliged to notify the Agency within 10 days if he/she “or his/her family member opens a **foreign currency** account in a non-resident bank” (Article 52 part 1). The provision is useful as foreign bank accounts are obviously a frequent vehicle for hiding financial flows from domestic oversight bodies. The media abound with anecdotal evidence for public officials using foreign bank accounts for hiding illegal wealth.<sup>31</sup>

The submission in **electronic** form and to a **unified** register is good practice.<sup>32</sup>

## 5.5 Verification

The verification is foreseen in **four steps**:

1. Timeliness of submission;
2. Accuracy and completeness (formal control);
3. Logical and arithmetic control (plausibility check);
4. Full audit (comparison of declared data with other sources, such as databases).

The combination of these four steps is in line with international standards.

The LPC provides the National Agency with the necessary **powers** to conduct the verification. This concerns in particular:

- “direct access to the **databases** of state authorities [...]” (Article 12 part 1 clause 2);
- right of **information** towards state authorities, business entities, citizens, associations (Article 12 part 1 clause 1);
- right of obtaining “written **explanations** [...] about the authenticity of information specified in the declarations” (Article 12 part 1 clause 9);

The **direct access** to databases is a commendable feature of the LPC. It remains to be seen how quickly and smoothly state bodies will grant the National Agency access in practice.

The right of information in Article 12 part 1 clause 1 is **broadly** formulated, in particular insofar as it concerns private subjects (businesses, citizens, associations). In principle, such broadly formulated

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<sup>30</sup> Western Balkans Recommendation, *ibid*, D.1.

<sup>31</sup> See for the prominent example of a Supreme Court Judge: Tilman Hoppe, [The case for asset declarations in the judiciary: Identifying illicit enrichment and conflicts of interests](#), U4 Brief May 2014 No. 5, page 3, available at [www.u4.no](http://www.u4.no), accessed 29 September 2016.

<sup>32</sup> Western Balkans Recommendation, *ibid*, D.2.

competencies are found in many laws regulating administrative or criminal investigations.<sup>33</sup> However, in most cases there are further provisions regulating further details (procedure in case of refusal, judicial review, etc.). To what extent provisions of this and other laws possibly regulate further details of such information requests towards private entities could not be assessed within this expert opinion.

In principle, Article 12 part 1 clause 1 could also be the general basis for requesting **banking data**, since they are “business entities”. Obviously, access to banking data is of great practical advantage for any oversight body trying to trace financial flows.<sup>34</sup> To what extent this is possible in conjunction with other provisions of this and other laws are beyond the scope of this expert opinion.

The details of the **verification procedure** are subject to an internal regulation of the National Agency (Article 48 part 3). This concerns, *inter alia*, the sequencing of the four steps, how to deal with late submissions (step 1), how to deal with inaccuracies (step 2), how to calculate inexplicable wealth in practice and what formula to use (step 3), and the methodology for full audits, including red flags of hidden wealth, tracing cash-flows, etc. (step 4). It is usual practice to subject these details to regulation by the oversight body.

As a commendable feature, the LPC foresees full verification mandatorily in the following five cases:

- for positions with high levels of corruption **risks** (Article 50 part 1 paragraph 2);
- in case “**discrepancies** [are] discovered as a result of logical and arithmetical control” (Article 50 part 1 paragraph 3);
- on the “basis of **information** received from individuals and legal entities, from media and other sources about possible indication of false data in the declaration” (Article 50 part 1 paragraph 5);
- in case a **family member** refuses to provide data (Article 50 paragraph 4, 2<sup>nd</sup> alternative);
- for “**candidates** for responsible and especially responsible positions and positions with high corruption risk” (Article 56 part 1, part 3 clause 3, Article 57 part 3 clause 3).

In addition, **random** selection is also recommended *inter alia* by GRECO. For example, where GRECO found verification mechanisms to be missing, it recommended “coupling the disclosure system with an effective control mechanism (including random verifications)”.<sup>35</sup> It seems that the LPC allows for random selection in Article 50 part 1 paragraph 4, giving the National Agency apparently autonomy over full verification. However, in paragraph 5, verification is based on “information received from individuals and legal entities, from media and other sources about possible indication of false data in the declaration.” If paragraph 5 is only complementing paragraph 4, then the National Agency has the possibility to also select declarations for full audit on a different basis, such as random selection.

Article 51 foresees “selective **monitoring of lifestyle** of declarants in order to establish conformity between their level of life and assets and income received by them and their family members according to the declaration”. From the wording of Article 51 it is not clear what this monitoring of lifestyle entails. The term has no international definition (including variations such as lifestyle checks<sup>36</sup> or audits<sup>37</sup>) and is not used with any coherent meaning. It can simply mean an external

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<sup>33</sup> See, for example, Section 161 German [Criminal Procedure Code](#): “[Information and Investigations] (1) For the purpose indicated in Section 160 subsections (1) to (3), the public prosecution office shall be entitled to request information from all authorities and to make investigations of any kind, either itself or through the authorities and officials in the police force provided there are no other statutory provisions specifically regulating their powers. The authorities and officials in the police force shall be obliged to comply with the request or order of the public prosecution office and shall be entitled, in such cases, to request information from all authorities.”, [www.gesetze-im-internet.de](#), accessed 29 September 2016.

<sup>34</sup> Western Balkans Recommendation, *ibid*, E.7: “Banking secrecy should not be an obstacle to using banking data for verification purposes”.

<sup>35</sup> See for example GRECO Evaluation Report Bosnia and Herzegovina ([Eval IV Rep \(2015\) 2E](#)), recommendation v, available at [www.coe.int](#), accessed 29 September 2016.

<sup>36</sup> World Bank (2012), [Public Office, Private Interests: Accountability Through Income and Asset Disclosure](#), page 3, available at [https://star.worldbank.org](#), accessed 29 September 2016.

inspection of an asset (“taking a look at a house from the street”), a full audit by desk review of data, or secret surveillance of the declarant, or all three. Part 3 of Article 51 prohibits “excessive interference with the right to privacy and family life of a person”; this could be intended to set boundaries to surveillance or to prohibit it at all.

As far as can be seen, **none** of the oversight bodies in Council of Europe member states have the power to conduct **surveillance** of the declarants in the context of verifying asset declarations. **Hungary** is the only partial exception. It conducts surveillance on the members of its security services.<sup>38</sup> However, this surveillance targets the “impeccable conduct of life” of these officials for which asset declarations are only one part and only optional. Security checks of members of the security services, in particular intelligence services, are a common feature in probably all countries, and they may include open or undercover data collection.<sup>39</sup> However, from this special procedure in a particular public sector one cannot draw conclusions for general public officials outside the intelligence sector.

In addition, there is a long-standing and comprehensive set of case law by the **European Court of Human Rights** (ECtHR) on secret surveillance. Under this case law, in particular the suspicion of a serious crime would be necessary as well as a solid legal basis.<sup>40</sup> While the legal basis does not necessarily have to be a statutory law, nonetheless it appears that Article 51 would probably not be a clear and sufficient basis for surveillance in line with the ECtHR case law.

Thus, as Article 51 stands today, it could probably only serve as a basis for **on-site inspections**. Such inspections provide added value. Therefore, the Western Balkans Recommendation foresees the possibility of such on-site visits (E.6).<sup>41</sup> The National Agency could use it as a legal basis, for example in the following real life case from another country:<sup>42</sup> A citizen complaint to the Agency that a declarant lives in “a big villa with swimming pool” although the property is declared as a low-value property in the declaration. The Agency might not be able to discern from the real estate registry whether the allegation of the citizen is true or not (depending on whether the registry is accessible, up to date, and contains reliable information on construction developments). Thus, the Agency could take a look at the property as it is visible by any citizen from a public space. If indeed there was a villa and swimming pool on the property, the declaration would be wrong, and the Agency could take the next steps (such as referring the case to law enforcement authorities).

There is a special provision for public officials working **undercover** and/or in **intelligence** services (Article 52-1). Declaring and verifying “shall be organised and carried out in a way that makes it impossible to disclose the fact that such persons belong to such agencies (formations)”. This goes without saying. Among the challenges in this context are the following: Shall intelligence officers submit their declaration under their real or their fake identity or both? Are declaration items registered in state databases under the intelligence officers’ real or fake identity or both (e.g. property register)? What security clearance is needed for handling the declarations? Can declarations by intelligence officers be published under their fake identity and does this provide any added value? The necessary “procedure [is] to be determined by the National Agency upon approval of the said agencies (formations).” This may be problematic. The provision gives the intelligence agencies a right to veto. The refusal by one of these agencies to approve the procedure could endanger the financial control for

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<sup>37</sup> The Star (Kenya), 1 April 2016, [EACC plans random integrity checks and lifestyle audits](http://www.the-star.co.ke), available at <http://www.the-star.co.ke>, accessed 29 September 2016.

<sup>38</sup> National Protective Service, [website](http://nvsz.hu) on lifestyle monitoring, available at <http://nvsz.hu>, accessed 29 September 2016.

<sup>39</sup> See for example in the United States: Partnership for Public Service, [website](http://gogovernment.org) on Background checks and security clearances for federal jobs <http://gogovernment.org>, accessed 29 September 2016.

<sup>40</sup> Council of Europe (2012), [Protecting the right to respect for private and family life under the European Convention on Human Rights](http://www.coe.int), pages 36 following, available at <http://www.coe.int>, accessed 29 September 2016.

<sup>41</sup> Western Balkans Recommendation, *ibid*.

<sup>42</sup> ReSPA/Tilman Hoppe (2013), [Comparative study – Income and asset declarations in practice](http://www.respaweb.eu), at page 145, available at [www.respaweb.eu](http://www.respaweb.eu), accessed 29 September 2016.



all agencies. At the same time, press reports indicate that corruption risks could be a relevant occurrence in Ukrainian intelligence services.<sup>43</sup> The National Agency is bound by state secrecy laws, and disclosing classified information will subject its members to the risk of criminal prosecution. Thus, it appears sufficient that the National Agency has to submit the draft procedure for comments by the intelligence agencies prior to adoption.

## 5.6 Public access

The centralised online transparency of the declarations is a commendable feature of the LPC. As **GRECO** noted recently regarding Turkey: “Moreover, the asset declarations are not subject to any form of public scrutiny as they will remain confidential documents in the personal files of each MP [Member of Parliament]. This weakens the system even more.”<sup>44</sup> Article 47 part 1 paragraph 3 is also in line with the advanced standard of public access set out in a legislative toolkit by the Council of Europe PCF Project: “Declarations are published online and are freely accessible, with data in searchable, **machine-readable** format.”<sup>45</sup> The same toolkit states that some personal data can be **edited**. Article 47 part 1 paragraph 4 serves this purpose.

## 5.7 Sanctions

### 5.7.1 Offences

The LPC foresees sanctions in the following cases:

- Late filing of a declaration, apparently including non-filing (Article 172-6 COA);
- Late or non-notification of foreign bank accounts (Article 172-6 COA);
- Knowingly providing false information (Article 172-6 COA and Article 366-1 Criminal Code);
- Illicit enrichment (Article 368-2 Criminal Code).

This variety of offences covers in principle the entire spectrum necessary in the context of asset declarations.<sup>46</sup>

The administrative and criminal offences of providing false information each contain a **minimum threshold**. Article 172-6 COA applies if the difference between the declared and the real value is between 100-250 minimum wages ( $\approx$  € 4,600-11,500), while Article 366-1 Criminal Code applies if the difference is higher than 250 minimum wages ( $\approx$  € 11,500). It is not fully clear, if the threshold applies only to items where a value has to be “estimated” (such as gifts) as opposed to items where there is a contractual value (e.g. purchase prize). As the English version reads, the threshold applies to all items. This is problematic:

- In the context of asset declarations, **market values** or any similar estimates are irrelevant. What is relevant, however, is how much money a public official earns, and how much money he/she spends in a given period.<sup>47</sup> An increase in value of his/her shares, gold coins, real estate, etc., as per market movements is completely irrelevant. Only where this market value translates into a concrete financial flow (e.g. the sale of this real property) does it become relevant. In other words: all relevant transactions in an asset declaration contain purchase

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<sup>43</sup> Преступности.НЕТ (18 September 2015), “[The SBU found in the ranks of the bribe taker in shoulder straps of the colonel is already 17-ü the employee of department who committed a crime](https://news.pn)”, available at <https://news.pn>, accessed 29 September 2016.

<sup>44</sup> GRECO Report, Turkey, *ibid*.

<sup>45</sup> Council of Europe PCF-Project (2015), [Legislative Toolkit on Conflict of Interest](https://www.coe.int), Article 15 para. 2, available at [www.coe.int](https://www.coe.int), accessed 29 September 2016.

<sup>46</sup> Western Balkans Recommendation, *ibid*, G.

<sup>47</sup> Council of Europe Practitioner Handbook, *ibid*.

deals with a clear monetary amount defined for each of these deals. It is therefore not necessary to provide public officials with a room for discretion in their declarations, at least not of such value.

- It also appears that the threshold applies to each **separate item** in the declaration: “regarding property or other objects to be declared that have value [...] when such information differs from the true information by a sum of 100 to 250 minimum wages” (Article 172-6 COA). This would mean that for a declaration with 100 items, the public official has a room for discretion of up to € 430,000 without being subject to even administrative liability. For criminal liability, this room for discretion is as high as € 1.150,000.

It is thus **recommendable** that the administrative offence applies if the **total** of all differences combined in one declaration exceeds, for example, 10 minimum wages for the administrative offence, and 50 minimum wages for the criminal offence.

In addition, public officials may also come into possession of real estate other than purchased, e.g. through **inheritance** or as a gift. How shall they assess the value of the property in this case, since there is no purchase value? And what if the value is wrongly estimated? A deviation could easily be more than 100 minimum wages in the case of real estate. It is thus advisable that the National Agency provides guidance on such cases as to how a value can be assessed (for example by relating to the tax value if available).<sup>48</sup>

Furthermore, it is not clear how a court should decide whether the administrative or criminal offence of providing false information in a declaration applies in case the false information does **not** have a **monetary** value, for example if it concerns an unpaid job or an unpaid position on a supervisory board (Article 46 part 1 clause 11 and 12 LPC).

The wording of the Note to Article 172-6 CAO states: “when such information differs from the true information”. This should be “when such information ~~differs from~~ **falls short** of the true information”. Usually, there is no harm if a public official goes to high with his/her estimate (e.g. setting the value of a car received as a gift at € 20,000 instead of the true market value of € 15,000).

In general, offences are not effective if they are imprecise. This could lead to unnecessary discussions during court procedures. In this regard, one should note that Article 172-6 COA does not define the term “**reasonable excuse**”. However, this could be acceptable. Usually, there is either case law or a definition of this term in other legislation, such as in procedural law (e.g. non-appearance of witnesses). This aside, criminal codes of European Union countries contain similar wordings in criminal offences (e.g. “excusably left the scene of the accident”).<sup>49</sup>

Article 45 part 4 allows the following: “Within 7 days after submission of the declaration the declarant may submit a **corrected declaration**.” This provision apparently addresses situations where declarants submit the declaration, and shortly after remember on their own that they forgot to include for example a foreign bank account. However, the provision should in principle only apply to cases where the declarant voluntarily, i.e. on their own, remember that they included a mistake in the declaration. By contrast, where a declarant learns immediately after the intentional submission of a false declaration that his/her “lie” has been uncovered e.g. by a journalist, the declarant should not be released from liability for false declaration. Thus, it appears relevant to review whether Article 45 part 4 could be amended by a sentence following the first sentence such as: “If the submission of the corrected declaration is not the result of his/her false declaration being detected but the result of the declarant’s own realisation, he/she is not liable for submission of a false declaration.”

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<sup>48</sup> See the respective section on the [website](https://nazk.gov.ua) of the National Agency for Prevention of Corruption (NAPC), available at <https://nazk.gov.ua>, accessed 29 September 2016; the respective guidance provided has not been reviewed by this expert opinion as it goes beyond its scope.

<sup>49</sup> Section 142 paragraph 2 “Leaving the scene of an accident without cause”, [German Criminal Code](#), available at [www.gesetze-im-internet.de](http://www.gesetze-im-internet.de), accessed 29 September 2016.

Article 45 Criminal Code foresees “discharge from criminal liability in view of **effective regret**”. The discharge is mandatory under its current wording. GRECO has repeatedly voiced concerns about such an automatic mechanism mostly related to the offence of bribery:

“GRECO’s concern about this defence stems in essence from its potential to be abused, which is a product of some of the recurring key features of its operation. Many reports dealing with this issue refer to its automatic and mandatory nature, which in its most susceptible form means that so long as the relevant reporting conditions are met the accused is automatically exonerated [...]”<sup>50</sup>

Article 45 Criminal Code exempts a list of corruption offences from the provision of effective regret, including illicit enrichment. This would avoid any of GRECO’s possible concerns applying to this Article. However, the offence of Article 366-1 Criminal Code (knowingly **providing false** information) is not included in the list of offences. This seems problematic for the following reason: Article 45 Criminal Code would render Article 366-1 Criminal Code practically ineffective. Declarants could always rectify their declaration in order to gain impunity. It seems questionable if not unlikely that a declarant would have to make any payment, e.g. of an undeclared amount, in order for Article 45 to apply. Undeclared amounts are not necessarily “damage” or “losses inflicted” in the sense of Article 45 Criminal Code. In addition, intentional false declarations do not necessarily have to correspond to hidden wealth, but can still be an act of serious corruption. For example, public officials could declare that they own a substantial amount of cash, even though it is not true. The false declaration would be the preparation for generating income from bribes during office. Whenever any cash from the bribes is found later with the official, he/she could claim that it is the funds (falsely) declared in the beginning. Furthermore, declarants have already the possibility for “effective regret” under Article 45 part 4 of the LPC by submitting a corrected declaration within 7 days. Adding a double layer of effective regret on top of this provision could cause confusion regarding the regulatory hierarchy of both norms. Therefore, it seems advisable to include Article 366-1 Criminal Code in the list of corruption offences excluded from the scope of Article 45 part 4 of the LPC.

It is not clear whether the **COA** contains a provision similar to Article 45 Criminal Code. If so, it should be reviewed whether the same problem exists in relation to Article 172-6 COA as in relation to Article 45 Criminal Code.

Regarding the effectiveness of the offence of **illicit enrichment**, one should note that it only applies in case “assets of significant amounts” are unlawfully acquired wealth. The term “shall mean monetary funds or other property, as well as proceeds from them, if their amount (value) exceeds 1,000 untaxed minimum personal incomes.” (Article 368-2, Note 1 Criminal Code). This is the equivalent of € 46,000. This threshold appears to be far too high. The threshold is the equivalent of about 10 annual incomes of a public official. It seems simply to send the wrong policy signal that a public official who manages to accumulate illegally even only one annual income would go unpunished. This is a significant amount of money for public officials, and even more for ordinary citizens in Ukraine.

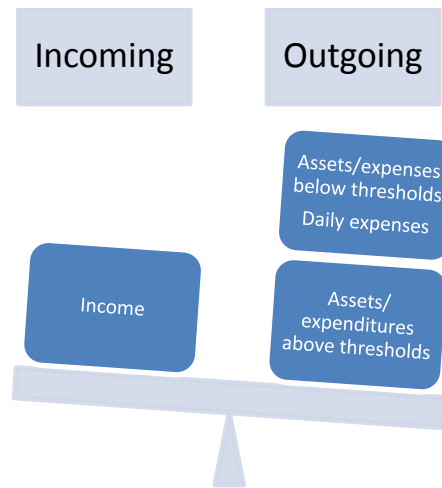
In addition, one has to keep in mind that the effectiveness of the offence will largely depend on the method of calculating the “significant amount”. In practice, this will usually be done by proving in court that the public official declared an amount x of income (e.g. € 10,000) during his/her time in office, while his/her assets in fact increased by a higher amount y (e.g. € 30,000). Often, illicit enrichment is calculated by the difference of the two (€ 30,000 minus € 10,000 = € 20,000).

However, it would be a mistake to assume that the illicit enrichment equals the difference between the two (€ 20,000). It is in fact much higher. A large part of assets/expenditures is already exempt from

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<sup>50</sup> GRECO (2012), *Incriminations* (thematic review of GRECO’s Third Evaluation Round), no. 58, available at [www.coe.int](http://www.coe.int), accessed 29 September 2016.

having to be declared: all expenditures **below thresholds** (furniture, entertainment electronics, vacations, etc.). Furthermore, all daily expenses such as food, clothing, and transportation are also not taken into account in the above balance. If the stated categories were included, expenditures of public officials would end up being much higher, raising the question as to where the money is coming from to cover the expenditures:



In other words, all public officials spend a significant amount of money each year which is not shown in the declaration. It seems thus advisable to abolish the threshold in Article 368-2, Note 1 Criminal Code, or to set it at something not higher than 5-10 untaxed minimum personal incomes.

In this context, one should also note the following: “Specifying a threshold for illicit enrichment in statutes may prevent prosecutions where the amounts concerned are trivial. However, it may also send a signal that a certain level of corrupt conduct will be **tolerated**, unless the threshold sets an extremely low bar.”<sup>51</sup>

Provisions on confiscation are not included in the law excerpt (see Annex). It is assumed that false declaration or the offence of illicit enrichment lead to **confiscation** of undeclared wealth.

### 5.7.2 Effectiveness

As for the **effectiveness** of sanctions, one can make the following observations:

- **Late submission:** The maximum fine equals € 4,600. This raises the question as to whether a public official could simply pay off his/her duty to submit a declaration by paying this fine. However, one can assume that the offence also leads to disciplinary consequences, as was at least the case under previous legislation.<sup>52</sup>
- In case of **repeated perpetration**, the sanction can be tripled (€ 13,800). However, the wording appears too narrow. The offender has to be “punished with an administrative sanction during a year for the same violations” (Article 172-6 Criminal Code). It is unclear whether this means committing the offence within the same year; being sanctioned by the administrative body within the same year; or reaching a final judgment within the same year. Anyhow, in all three cases it will be difficult for a declarant to commit the offence twice within one year. For example, the declaration of 2015 might have been 2 days late, the declaration of 2016 10 days. Strictly speaking, both delays would not be within the same year,

<sup>51</sup> The World Bank/UNODC (2012), *On the Take, Criminalizing Illicit Enrichment to Fight Corruption*, page 18 (emphasis by author).

<sup>52</sup> Country risk assessment Ukraine, *ibid*, page 14.

but set apart more than 364 days. It seems advisable to reword this provision into for example “the same violation within two consecutive years”.

- The “deprivation of the **right to hold** certain **offices** or to engage in certain activity for one year” of Article 172-6 COA is a commendable feature. It is not clear, though, why it does not apply to cases of intentional false declaration, or, at the minimum, to cases where the false information is significant (e.g. where the difference between the false and correct declaration is higher than 50 minimum salaries = € 2,300).
- The sanctions for illicit enrichment are **sequenced** by the importance of the position the public official holds (Article 368-2 Criminal Code). In principle, this is a feasible criterion. However, it should not be the only one. A policeman found with illicit enrichment of € 300,000 should not automatically receive a more lenient sanction than a head of department found with illicit enrichment of € 10,000. In other words: the amount of illicit enrichment should also factor into the sanctions. For example, one could add a sentence that extends the maximum term of imprisonment for each category of official in case the illicit enrichment is a certain multitude of “significant amount”. It is assumed that the list of public officials falling into each of the **categories** of Article 368-2 Criminal Code is defined in the same way as indicated in the Note to Article 50 of the LPC.

## 5.8 Cooperation

In case of declaration of false information, Article 50 part 2 foresees that the National Agency notifies the head of the body where the public official holds office/works and the “specially authorised entities in the area of countering corruption”. There are at least two more law enforcement bodies relevant in this regard:

- **Tax** authorities, since hiding assets always corresponds to hiding illegal income and thus regularly entails tax evasion;
- Financial Intelligence Units (**FIU**), since hiding assets also regularly entails money laundering.<sup>53</sup>

It is probably fair to say that the National Agency would still be in a position to notify above agencies if need be, even if these are not included in Article 50 part 2.

On an **international** level, one needs to keep in mind that hiding assets often involves foreign destinations. For example, how could the National Agency follow up on a complaint that a public official holds a foreign bank account? There are mainly two avenues: the National Agency cooperates directly with foreign oversight bodies, or it receives assistance from law enforcement bodies who can use cooperation mechanisms in the criminal sphere. International cooperation will require a case-by-case agreement or a more long-term oriented memorandum of understanding with a foreign oversight body.<sup>54</sup> Domestically, the Agency would need to have the power to cooperate with foreign oversight bodies. Article 72 of the LPC provides a legal basis for the international exchange of data. It appears that the Agency can exchange data as long as it complies in particular with data protection legislation. In addition, Article 43 paragraph 2 sentence 2 UNCAC could serve as a legal basis in an international treaty for this administrative exchange of data.

## 5.9 Relation to previous legislation

Section XIII part 4 clause 1 of the LPC renders the previous legislation on asset declaration “invalid with the beginning of functioning of the system of submission and publication” under the new LPC. The wording “**invalid**” appears to be too far-reaching: Does this clause relieve declarants who failed to declare in the past under the previous legislation from any obligation or sanction? Are declarations

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<sup>53</sup> Council of Europe Practitioner Manual, *ibid*, page 41; Western Balkans Recommendation, *ibid*, F.2

<sup>54</sup> See for example: RAI [website](#) on Regional Data Exchange on Asset Disclosure and Conflict of Interest.

under previous legislation still valid? Can the agency use declarations under the old system for verification purposes or even publish parts of them in line with the new legislation?

In this context, one should note that verification in Article 51 part 1 relates to “declarations”, without specifying from which period they stem. However, from the context of Section VII a lawyer defending public officials might argue that only declarations submitted under the new law, the LPC, are covered. It thus appears that a clause similar to the following wording would have been **less ambiguous**: “Declarations up to the period of 2014 are governed by the Law [title of previous law], while declarations starting with the period of 2015 are governed by this Law. The National Agency can include declarations up to the period of 2014 into verification and publication mechanisms under this Law (Articles 47 to 51).”

Such a clarification is also important regarding the above mentioned recommendation by a **European Union** report of December 2015: “It is nevertheless imperative to ensure that assets declared before that date [NAPC becoming operational] and potential conflicts of interest before that date are also subject to scrutiny and followed up.”<sup>55</sup>

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<sup>55</sup> European Commission, 18 December 2015, SWD(2015) 705 final, [Sixth Progress Report](#) on Ukraine's implementation of the action plan on visa liberalisation, available at <http://ec.europa.eu>, accessed 29 September 2016.

## 6 HUMAN RIGHTS

Application of any law can touch on human rights in ways one cannot always foresee. In other words: whether a law complies with human rights depends to a large extent also on the way in which it is **implemented**. However, the following two issues stand out as relevant for human rights, regardless of how the LPC will be implemented.

### 6.1 Privacy

The publication of personal data falls under the privacy protection of Article 8 paragraph 1 ECHR.<sup>56</sup> Any such interference with privacy needs justification in line with Article 8 paragraph 2 ECHR. The European Court of Human Rights (ECtHR) decided already in 2005, that the online publication of asset declarations of public officials is justified.<sup>57</sup>

In general, the ECtHR would require the following, in order for an interference with privacy to fall under “measures in accordance with the law” (Article 8, paragraph 2 ECHR):

- a legal basis;
- a legitimate aim;
- proportionality.<sup>58</sup>

As for the **legal basis**, a legal provision which allows for an interference with privacy as protected by Article 8 ECHR has to be accessible; sufficiently clear as to the circumstances under which interference may be justified; and consistent with the rule of law. These criteria are met by the LPC. In particular timing and procedure of the publishing, as well as the scope of data and public officials are clearly subscribed.

The fight against corruption through an asset declaration regime certainly serves several **legitimate aims** under Article 8 paragraph 2 ECHR: “national security”; “public safety”; “the economic well-being of the country”; “prevention of crime”; and “morals”. In this context, the preamble of the Council of Europe Criminal Law Convention on Corruption<sup>59</sup> almost literally enumerates the aims of Article 8, paragraph 2 ECHR:

“[C]orruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society.”

As for **proportionality**, one should mention that the ECtHR has regularly granted the member states of the Convention wide discretion when it came to the protection of the state:

“However, the Court recognises that the national authorities enjoy a margin of appreciation, the scope of which will depend not only on the nature of the legitimate aim pursued but also on the particular nature of the interference involved. In the instant case,

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<sup>56</sup> See, for example, ECtHR, *Z. vs. Finland* (No. 22009/93), judgement of 25 February 1997, available at <http://hudoc.echr.coe.int>, accessed 29 September 2016.

<sup>57</sup> *Wypych v. Poland* (No. 2428/05), decision of 25 October 2005: “[T]he general public has a legitimate interest in ascertaining that local politics are transparent and Internet access to the declarations makes access to such information effective and easy. Without such access, the obligation would have no practical importance or genuine incidence on the degree to which the public is informed about the political process. [...] [T]he Court considers that it is precisely this comprehensive character [of declared data] which makes it realistic to assume that the impugned provisions will meet their objective of giving the public a reasonably exhaustive picture of councillors’ financial positions.”

<sup>58</sup> Council of Europe (2012), *Protecting the right to respect for private and family life under the European Convention on Human Rights*, pages 36 following, available at <http://www.coe.int>, accessed 29 September 2016.

<sup>59</sup> *ETS 173*, available at <http://conventions.coe.int>, accessed 29 September 2016.

the interest of the respondent State in protecting its national security must be balanced against the seriousness of the interference with the applicant's right to respect for his private life. [...] In these circumstances, the Court accepts that the margin of appreciation available to the respondent State in assessing the pressing social need in the present case, and in particular in choosing the means for achieving the legitimate aim of protecting national security, was a wide one.”<sup>60</sup>

At the same time and as stated already, international law by the Council of Europe acknowledges that corruption poses a risk to the **existence** of the state itself: “corruption threatens the rule of law, democracy and human rights”.<sup>61</sup>

In addition, the ECHR and case law by the ECtHR grant public officials sometimes **less protection** of human rights than ordinary citizens, for example in the realm of freedom of expression,<sup>62</sup> or freedom of assembly and association.<sup>63</sup> More specifically, it has put the “personality right” of public officials behind the interests of a public watchdog to receive information from state agencies.<sup>64</sup>

Publishing declarations would be disproportionate if an **equally effective** but **less intrusive** alternative existed. Such alternatives could, for example, include allowing access to declarations under freedom of information legislation without actively publishing them online. However, such a measure would not allow the public at large to scrutinise declarations. Freedom of information requests require considerable administrative effort and entail costs. They only produce paper, as opposed to machine-readable data which journalists or NGOs can analyse for inconsistencies. Such limited freedom of information access would thus appear to be less effective than publishing declarations online. Proactive publication of declarations therefore seems to be proportionate. It is assumed in this context, that core personal data such as number of bank accounts is exempt from publication as is the case in all asset declaration systems as far as can be seen.

In this context, one should also note a decision by the **European Court of Justice** concerning data on income of members of the European Parliament. The Court decided in favour of making this data available to the public under the European Union's freedom of information legislation.<sup>65</sup>

## 6.2 Presumption of innocence

The offence of illicit enrichment as per international standards requires the defendant to “reasonably explain in relation to his or her lawful income” any “significant increase” of wealth (Article 20 UNCAC). There is a discussion among experts to what extent this could interfere with the defendant's right to a fair trial, in particular the presumption of innocence (Article 6 paragraph 2 ECHR). However, this discussion is irrelevant for the Ukrainian version of the offence. Under Article 368-2 Criminal Code, the burden of proof is still fully upon the prosecution. However, the presence of asset declarations can make it easier for prosecutors to prove that the defendant did not acquire assets

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<sup>60</sup> See [Leander v. Sweden](#), judgement of 26 March 1987, Series A, No.116, available at <http://hudoc.echr.coe.int>, accessed 29 September 2016.

<sup>61</sup> ETS 173, *ibid*.

<sup>62</sup> [Vogt v. Germany](#), application no. 17851/91, judgement of 26 September 1995: “[W]henever civil servants' right to freedom of expression is in issue the ‘duties and responsibilities’ referred to in Article 10 para. 2 (art. 10-2) assume a special significance, which justifies leaving to the national authorities a certain margin of appreciation in determining whether the impugned interference is proportionate to the above aim.”, available at <http://hudoc.echr.coe.int>, accessed 29 September 2016.

<sup>63</sup> See Article 11 para. 2 s. 2 ECHR: “This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

<sup>64</sup> [Társaság A Szabadságjogokért \(Hungarian Civil Liberties Union\) vs. Hungary](#), application no. 37374/05, decision of 14 April 2009. The Court stated that it would be fatal for freedom of expression if public figures could prevent public debate by referring to their personality rights, available at <http://hudoc.echr.coe.int>, accessed 29 September 2016.

<sup>65</sup> Judgment of the General Court (Second Chamber) of 7 June 2011, [Ciarán Toland vs. the European Parliament](#), Case T-471/08, Reports of Cases 2011 II-02717, T-471/08, available at <http://curia.europa.eu>, accessed 29 September 2016.



legally. If, for example, the total declared income of a public official during time in office was only € 25,000, but investigators find cash or bank accounts in the public official's possession of € 300,000, there is strong evidence that for at least € 275,000 there are no "lawful grounds" in the sense of Article 368-2 Criminal Code.

## 7 CONCLUSION

The LPC foresees by and large strong legal provisions for the financial disclosure of assets of public officials. In many points it follows a highly advanced standard, for example regarding the online publication or the availability of the data in machine-readable format for further analysis by journalists and other interested stakeholders. There are a few points where the LPC would benefit from improvements. This concerns in particular some declaration items and sanctions, where the thresholds for application could be lowered. Furthermore, there are several aspects through which the sanctioning regime could be strengthened.

In light of this, it is recommended that:

- The threshold for **movables** (i.e. precious objects such as jewellery) from Article 46 part 1 clause 3 should be extended to also include a threshold for all movables acquired within one year, and above which declaration is required (e.g. € 9,000 – see above at 5.3).
- The **minimum monetary value** thresholds that trigger the administrative and criminal offences for providing false information in a declaration should be reconsidered. This would include: a) that they should only apply in case the declarant has to provide an estimation (e.g. for a used car received as a gift) and not where there can only be one defined amount (e.g. a bank account balance or a purchase price); b) that they should be lowered (see below at 5.7); c) that they should only apply if the estimated value **falls short** of the true value, not if it exceeds it; and d) that they should apply not only to each declaration item, but also to all declaration items **combined** (for example all real estate, vehicles, bank accounts, etc. combined).
- It would be necessary to foresee criteria on how a court can decide whether the administrative or criminal offence of providing false information in a declaration applies in case the false information does **not** have a **monetary** value.
- The regulation of procedure for declarations by public officials working **undercover** and/or in **intelligence** services should not depend on approval of intelligence agencies, as is the stipulated now, but should only be coordinated with them.
- The offence of Article 366-1 of the Criminal Code (knowingly providing false information) should be added to the list of offences for which **effective regret** does not apply (see below at 5.7). Article 172-6 Code of Administrative Offences – COA should similarly be excluded from effective regret.
- The law needs to clarify whether declarants who correct their **declarations** within 7 days can still be held criminally liable for their original, faulty/false declaration (see below at 5.7).
- The minimum threshold of inexplicable wealth for the criminal offence of **illicit enrichment** should either be abolished or set not higher than 5-10 times untaxed minimum personal incomes. It should also apply only to all declaration items combined.
- The amount of inexplicable wealth should be factored into the **sanctions** for illicit enrichment (Article 368-2 Criminal Code).
- The clause regulating the transition from the **previous Law** of 2011 to the current legislation (Section XIII) should be rephrased to avoid any ambiguities (for a proposed wording, see below at 5.9). This would also implement a specific recommendation contained in a European Union report.<sup>66</sup>
- Legislators review possible textual or technical ambiguities discussed in sections 5.2, 5.5, and 5.7 of this Opinion and consider where and whether additional legislative initiative is needed.

As far as human rights are concerned, the online publication of asset declarations is supported by a decision of the ECtHR of 2005 (Article 8 ECHR – privacy). Also the offence of illicit enrichment does not interfere with Article 6 ECHR, as it leaves the burden of proof with the prosecutors.

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<sup>66</sup> European Commission, 18 December 2015, SWD(2015) 705 final, [Sixth Progress Report](#) on Ukraine's implementation of the action plan on visa liberalisation, available at <http://ec.europa.eu>, accessed 29 September 2016.

## 8 ANNEX: LAWS (EXCERPTS)

[Unofficial translation of an excerpt of the LPC as provided by the Chair of the “Parliamentary Committee on Corruption Prevention and Counteraction” for the purpose of this expert opinion.]

### **Law of Ukraine “On Prevention of Corruption” (excerpts)**

Adopted on 14 October 2014 and enacted on 26 April 2015.

Text up-to-date as of 1 September 2016.

Last amendments by the Law of 15 March 2016 (No. 1022-VIII).

#### **Article 1. Definitions of terms**

1. The terms listed below shall have the following meaning in this Law:

...

corruption offence – an act that has signs of corruption that was committed by a person referred to in Part One of Article 3 of this Law and for which criminal, disciplinary and/or civil liability is stipulated;

corruption – the use by a person referred to in Part One of Article 3 of this Law of granted to him/her official authorities or associated with them opportunities in order to obtain unlawful benefit or receiving of such benefit or acceptance of a promise / offer of such benefit for himself/herself or others, or respectively promise / offer or giving of an unlawful benefit to the person referred to in Part One of Article 3 of this Law or upon his/her demand to other natural or legal persons with a view to persuade the person to unlawfully use granted to him/her official authorities or associated with them opportunities;

unlawful benefit - monetary funds or other property, advantages, privileges, services, intangible assets, any other intangible or non-monetary benefits which are promised, offered, given or received without legal grounds therefor;

potential conflict of interest – presence of a person’s private interest in the area in which he/she exercises his/her official or representative powers that could affect the objectivity or impartiality of his/her decisions or affect the commission or non-commission of actions in the exercise of the mentioned powers;

gift – monetary funds or other property, advantages, privileges, services, intangible assets that are given/received free of charge or at a price below the minimum market price;

an offence that is related to corruption – an act that does not have signs of corruption but violates established by this Law requirements, prohibitions and restrictions, committed by a person referred to in the Part One of Article 3 of this Law, for which the law establishes criminal, administrative, disciplinary and / or civil liability;

...

real conflict of interest – contradiction between a private interest of a person and his/her official or representative activities which affects the objectivity or impartiality of his/her decisions or commission or non-commission of actions in the exercise of the mentioned powers;

specially authorised subjects in the area of counteraction to corruption – authorities of the prosecution service, the National Police, the National Anti-Corruption Bureau of Ukraine, the National Agency for Corruption Prevention;

declarants – persons referred to in clause 1, subclause "a" of clause 2 of Part One of Article 3 of this Law, other persons who are obliged to file declaration under this Law;

family members – persons who are married, as well as their children, including adult ones, parents, persons under guardianship and trusteeship, other persons who live together, are bound by common household, have mutual rights and obligations (other than persons whose mutual rights and obligations are not of a family nature), including persons who live together but are not married;

...

### **Article 3. Persons covered by this Law**

1. The persons covered by this Law are:

1) persons authorized to perform functions of the State or local self-government:

a) President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine, its First Deputy and Deputy, Prime Minister of Ukraine, First Deputy Prime Minister of Ukraine, Vice Prime Ministers of Ukraine, ministers, other heads of central authorities of executive power who are not members of the Cabinet of Ministers of Ukraine and their deputies, the Head of the Security Service of Ukraine, the Prosecutor General of Ukraine, the Head of the National Bank of Ukraine, the Head of the Accounting Chamber of Ukraine, Verkhovna Rada's Commissioner for Human Rights, Chairman of the Verkhovna Rada of the Autonomous Republic of Crimea, the President of the Council of Ministers ARC;

b) people's deputies of Ukraine, deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, deputies of local councils, village, locality and city chairmen;

c) civil servants, officials of local self-government bodies;

d) military officials of the Armed Forces of Ukraine, the State Service for Special Communication and Information Protection of Ukraine and of other military formations established under the law, except for military conscripts;

e) judges of the Constitutional Court of Ukraine, other professional judges, members, disciplinary inspectors of the High Qualifications Commission of Judges of Ukraine, officials of the Secretariat of this Commission, the Head, Deputy Head, secretaries of sections of the High Council of Justice and other members of the High Council of Justice, people's assessors and jurors (in the course of performing these functions by them);

f) persons of ranking and senior staff of the State Penitentiary Service, the tax police, persons of senior staff of authorities and regional offices of the civil defence, State Bureau of Investigations, National Anti-Corruption Bureau of Ukraine;

g) position-holding and official persons of the public prosecution authorities, Security Service of Ukraine, State Bureau of Investigations, National Anti-Corruption Bureau of Ukraine, diplomatic service, state forestry protection agency, nature reserve fund protection agency, the central executive body ensuring formation and implementation of the state taxation policy and the state policy with customs affairs;

h) members of the National Agency for Corruption Prevention;

i) members of the Central Election Commission;

j) policemen;

k) position-holding and official persons of other state authorities, authorities of the Autonomous Republic of Crimea;

2) persons who are equalled for the purposes of this Law to the persons authorized to perform functions of the State or local self-government:

a) position-holding persons of public law legal entities who are not mentioned in paragraph 1 of Part One of this Article;

b) persons who are not civil servants or officials of local self-government but who provide public services (auditors, notaries, appraisers and experts, official receivers, independent brokers, members of labour arbitration, arbitrators in the course of performing these functions by them, other persons stipulated by law);

c) representatives of civic associations, academic institutions, educational institutions, experts of the relevant qualification who are members of the selection panels set up according to the Law of Ukraine "On Civil Service";

3) the persons who permanently or temporarily hold positions related to the exercise of organizational-administrative or administrative-economic duties or who are specifically authorized to perform such duties in the private law entities regardless of their organizational and legal form, and also other employees who are not official persons and who perform work or provide services according to a contract with an enterprise, establishment or organization - in cases specified in this Law.

...

### **Article 11. Powers of the National Agency [for Corruption Prevention]**

1. The National Agency has the following powers:

...

6) monitoring and control over implementation of legislation on ethical behaviour, the prevention and resolution of conflicts of interest in the activities of persons authorized to perform the functions of the state or local self-government and persons equated to them;

...

8) implementation in the manner stipulated by this Law of control and verification of declarations of persons authorized to perform the functions of the state or local self-government, storage and publication of such declarations, conducting lifestyle monitoring of persons authorized to perform the functions of the state or local self-government;

9) ensuring maintenance of the Unified State Register of Declarations of Persons Authorized to Perform the Functions of the State or Local Self-government and the Unified State Register of Persons who Committed Corruption or Related to Corruption Offences;

...

15) providing clarifications, methodical guidance and consultations on issues of application of legislation on ethical conduct, prevention and resolution of conflicts of interest in the activities of persons authorized to perform the functions of the state or local self-government and persons equated to them;

...

20) other powers stipulated by a law.

### **Article 12. Rights of the National Agency**

1. The National Agency for the purpose of carrying out its powers has the following rights:

1) to obtain in accordance with a procedure stipulated by law upon written requests information necessary to fulfil its tasks from state authorities, authorities of the Autonomous Republic of Crimea, local self-government bodies, economic entities regardless of ownership form and from their officials, citizens and their associations;

2) to have direct access to the databases of state authorities, authorities of the Autonomous Republic of Crimea, local self-government bodies, to use state, including government communications systems and special communications networks, as well as other technical means;

...

5) to adopt binding normative legal acts on issues within its competence;

6) to receive statements from natural and legal persons regarding violation of this Law, conduct upon its own initiative verification of possible facts of violations of this Law;

...

8) to issue orders on violations of legislation on ethical behaviour, the prevention and resolution of conflicts of interest, other requirements and restrictions stipulated by this Law;

9) to obtain from persons authorized to perform the functions of the state or local self-government written explanations about circumstances that may indicate a breach of ethical conduct, prevention and resolution of conflicts of interest, other requirements and restrictions stipulated by this Law, about the authenticity of information specified in the declarations of persons authorized to perform state functions or local self-government;

...

12) to initiate an internal investigation, taking of measures to hold liable persons guilty of corruption or related to corruption offences, to send to specially authorized subjects in the area of countering corruption materials that show evidence of such offences;

12-1) draw up protocols on administrative violations which are referred by the law to the National Agency's competence, to apply measures of securing proceedings in administrative violations cases as provided in the law;

13) other rights stipulated by law.

2. In case of identifying violation of this Law regarding ethical behaviour, prevention and resolution of conflicts of interest in the activities of persons authorized to perform the functions of the state or local self-government and persons equated to them, or any other violation of this Law, the National Agency shall issue to the head of the body, enterprise, institution an order instructing to eliminate violations of the law, to conduct an internal investigation, to bring the guilty perpetrator to the liability provided by the law.

The order of the National Agency is mandatory for execution. Official to whom the order of the National Agency was addressed shall inform the Agency on the results of its fulfilment within 10 business days after receipt of the order.

3. In case of detecting signs of an administrative offence related to corruption, the authorised persons of the National Agency shall draw up a protocol on such violation and refer it to the court according to the decision of the National Agency. If signs of another corruption or related to corruption offence are detected the National Agency shall adopt a justified conclusion and send it to other specially authorised subjects in the area of counteraction to corruption. The conclusion of the National Agency is mandatory for consideration, upon results of which the Agency should be notified not later than five days after the receipt of the notification of the violation.

4. State authorities, the authorities of the Autonomous Republic of Crimea, local self-government bodies, natural and legal persons are obliged to provide the documents or information requested by the National Agency within 10 business days upon receipt of the request.

...

## **SECTION VII FINANCIAL CONTROL**

### **Article 45. Submission of declarations of persons authorized to perform the functions of the state or local self-government**

1. Persons referred to in clause 1, subclause "a" of clause 2 of Part one of Article 3 of this Law are required to file annually before 1 April through the official website of the National Agency the declaration of a person authorized to perform the functions of the state or local self-government (hereinafter – the Declaration) for the past year in the form, which is determined by the National Agency.

2. Persons referred to in clause 1, subclause "a" of clause 2 of Part one of Article 3 of this Law who terminate activity related to the performance of functions of the state or local self-government shall submit a declaration of the person authorized to perform the functions of the state or local self-government for the period not covered by the previously submitted declarations.

Persons who terminated activity related to the performance of functions of the state or local self-government are required the next year after the termination of the activity to file in accordance with the procedure stipulated in Part One of this Article a declaration of the person authorized to perform the functions of the state or local self-government for the past year.

3. A person who is a candidate for position specified in clause 1, subclause "a" of clause 2 of Part one of Article 3 of this Law, prior to appointment or election to the respective position, shall file in the manner prescribed by this Law a declaration of a person authorized to perform functions of the state or local self-government for the past year.

4. Within 7 days after submission of the declaration declarant may submit a corrected declaration.

If declarant is held liable for non-submission, untimely submission of the declaration or when false information is detected in the declaration, the declarant is obliged to submit the declaration with correct data.

### **Article 46. Information to be included in the declaration**

1. The declaration shall contain information on:

1) last name, first name and patronymic, registration number of the taxpayer registration card (series and number of the passport of a citizen of Ukraine, if person due to his religious beliefs refuse to accept the registration number of the taxpayer registration card and notify the respective central executive authority responsible for tax policy about it, and have a stamp in the passport of the citizen of Ukraine about it) of the declarant and his family members, the registered place of residence, as well as the place of actual residence or the postal address to which the National Agency can send correspondence for the declarant, place of work (service), or place of future work (service), current position, or aspired position, and category of the position (if applicable) of the declarant;

2) real estate belonging to the declarant and his family members on the right of private ownership, including joint ownership, or rented by them or used by them based on other right of use, irrespective of the form of the transaction, by which such a right was acquired. The information shall include data on:

a) the type, property characteristics, location, date of obtaining the property into ownership, rent or other right of use, value of the property on the date when it came into ownership, possession or use;

b) if the real estate property is in joint ownership, the information specified in clause 1 of part one of this Article shall be provided for all the co-owners of such property, or name of the respective legal person with its code in the Unified State Register of Legal Persons and Natural Persons - Entrepreneurs. If the real estate property is rented or the other right of use is applicable, the information specified in clause 1 of part one of this Article shall be provided about the owner of such property or name of the respective legal person with its code in the Unified State Register of Legal Persons and Natural Persons - Entrepreneurs;

2-1) unfinished construction objects, objects not put into operation or ownership for which has not been registered in accordance with the law, which:

a) belong as ownership to the declarant or his family members under the Civil Code of Ukraine;

b) are located on land plots belonging to the declarant or his family members on the right of private property, including joint property, or are at their lease or on other right to use, irrespective of legal grounds for obtaining such right;

c) were completely or partly constructed with materials or at the expense of the declarant or his family members.

Such data shall include:

a) data on location of the object;

b) data on owner or user of the land on which construction of the property is carried out;

c) in case the object is in joint property, data about all co-owners as specified in the clause 1 of part one of this article or the name of the relevant legal entity with the code of the Uniform State Register of Legal Entities and Individuals - Entrepreneurs shall be specified.

3) valuable movable property the value of which exceeds 100 minimum wages established as of 1 January of the reporting year and which belongs to the declarant or members of its family on the right of private ownership, including joint ownership, or is in its possession or use regardless of the form of the transaction by which such right was acquired. Such data includes:

a) information on the type of property, characteristics of the property, the date of obtaining the property into the ownership, possession or use, value of the property on the date when it came into ownership, possession or use;

b) information on the vehicles and other self-propelled machines and mechanisms, as well as data on their make and model, year of manufacture, the identification number (if any). Information on vehicles and other self-propelled machines and mechanisms should be reported regardless of their value;

c) if movable property is in the joint ownership the information required in clause 1 of part 1 of this Article shall be provided for all the co-owners of such property or name of the respective legal person with its code in the Unified State Register of Legal Persons and Natural Persons - Entrepreneurs. If movable property is in the possession or use, the information required in clause 1 of part 1 of this Article shall be provided for the owners of such property or name of the respective legal person with its code in the Unified State Register of Legal Persons and Natural Persons – Entrepreneurs.

Note: The declaring of valuable movable property specified in this paragraph (except for vehicles and other self-propelled machines and mechanisms), the rights to which had been acquired before the submission by the declarant of the first declaration in accordance with the requirements of this Law, shall be carried out with the mandatory indication whether such property was acquired before the period of performance of functions of the state or local self-government or during such period. At the same time, indication of data on the value of such property and the date of its acquisition in ownership, possession or use shall not be mandatory;

4) securities, including stocks, bonds, checks, certificates, promissory notes belonging to the declarant or his family members, including information about the securities type, their issuer, the date of obtaining ownership of securities, quantity and par value of the securities. If the securities are transferred to another person's management, the information required in clause 1 of part 1 of this Article shall be provided on that person as well or the name of the respective legal person with its code in the Unified State Register of Legal Persons and Natural Persons - Entrepreneurs;

5) other equity rights that belong to the declarant or his family members, with indication of the name of each business entity, its organizational and legal form, code of the Unified State Register of Legal Persons and Organizations of Ukraine, the share in the authorized (share) capital of the company, enterprise, organization, in monetary and percentage terms;

5-1) legal persons of which the declarant or his family members are ultimate beneficial owners (controllers).

The term "ultimate beneficial owner (controller)" is used as defined in the Law of Ukraine on Prevention of and Counteraction to the Legalisation (Laundering) of the Proceeds from Crime, to Terrorist Financing and Financing of Weapons of Mass Destruction;

6) intangible assets owned by the declarant or his family members, including intellectual property objects that can have value in monetary terms. Information on intangible assets include data on the type and characteristics of such assets, the value of assets at the time of obtaining them into ownership, and the date when the right to them appeared;

7) received (accrued) income, including income in the form of salaries (monetary allowance) obtained at the main place of work, and concurrently for other work, honoraria, dividends, interest, royalties, insurance payments, charitable aid, pension, income from sale of securities and equity rights, gifts and other income.

Such information includes data on the type of income, source of income and its size. Information on gifts is included only if its value exceeds 5 minimum wages established as of 1 January of the reporting year, and for gifts in the form of money – if amount of such gifts received from one person (group of persons) during a year exceeds 5 minimum wages established as of 1 January of the reporting year;

8) available monetary assets, including cash, funds in bank accounts, contributions to credit unions and other non-banking financial institutions, funds lent to third parties, as well as assets in the form of precious (bank) metals. Information on monetary assets includes information on the type, size and currency of the asset, as well as the name and code of the Unified State Register of Enterprises and Organizations of Ukraine of the institution where respective accounts were opened or to which respective contributions were made. Available monetary assets (including cash, funds in bank accounts, contributions to credit unions and other non-bank financial institutions, funds lent to third parties) and assets in the form of precious (bank) metals, the cumulative value of which does not exceed 50 minimum wages set as of 1 January of the reporting year, are not subject to declaring;

9) financial obligations, including credits, loans received, leasing obligations, the size of funds paid towards the principal amount of the loan (credit) sum and interest on the loan (credit), obligations under insurance contracts and non-state pension provision contracts, money lent to other persons. Information on financial obligations include data on the type of obligation, its size, currency of obligation, details about the person in whose favour such obligations arose in accordance with clause 1 of part one of this Article or name of the respective legal person with its code in the Unified State Register of Legal Persons and Natural Persons – Entrepreneurs, and the date when the obligation appeared. Such information is provided only if the obligation's value exceeds 50 minimum wages set as of 1 January of the reporting year. If the value of the obligation does not exceed 50 minimum wages set as of 1 January of the reporting year, only the overall value of such financial obligation is indicated.



If real estate or movable property constitute the collateral of the transaction to ensure the performance of the obligation, the declaration shall indicate the type of property, its location, price and information about the owner of the property, in accordance with clause 1 of part 1 of this Article or name of the respective legal person with its code in the Unified State Register of Legal Persons and Natural Persons – Entrepreneurs. If guarantee is the means of ensuring the received obligation, the declaration must indicate information about the guarantor that is specified in clause 1 of part 1 of this Article or name of the respective legal person with its code in the Unified State Register of Legal Persons and Natural Persons – Entrepreneurs;

10) expenditures and all transactions made within the reporting period, based on which the declarant obtains or terminates the right of ownership, possession or use, including joint ownership, of real estate or movable property, intangible and other assets, as well as of financial obligations referred to in clauses 2-9 of part 1 of this Article.

Such information shall be specified if the amount of the corresponding expenditure exceeds 50 minimum wages established as of 1 January of the reporting year; such information includes data on the type of transaction, its subject matter. Upon written request of the National Agency the declarant shall provide information about the name of the counterparty;

11) position or job, that is being or was performed concurrently: data on position or job (paid or not) that is performed under the agreement (contract), name of the legal entity or individual for whom the person is or was employed concurrently with indication of the code of the Unified State Register of Legal Persons and Natural Persons - Entrepreneurs, or last name, first name and patronymic of an individual with indication of his registration number of the taxpayer registration card;

12) participation of the declarant as a member in managing, auditing or supervisory bodies of civic associations, charities, self-regulatory or self-governing professional associations, membership in such associations (organizations) with indication of the names of the respective associations (organizations) and their code of the Unified State Register of Legal Persons and Natural Persons - Entrepreneurs.

2. The information referred to in Part one of this Article shall be provided regardless of whether the object of declaring is in Ukraine or abroad.

3. The declaration should also include information about objects of declaring that are mentioned in clauses 2 – 8 of part 1 of this Article and belong on the right of ownership to third persons, if the declarant or his family member receives or has the right to receive income from such object or can directly or indirectly (through other natural or legal persons) take with regard to such object actions that are identical to the right of disposal of the object.

Information provided for in this part shall not be included in the declaration if mentioned objects are in the ownership of the legal person mentioned in clause 51 of part 1 of this Article and their main purpose is to be used in the economic activity of such legal person (industrial equipment, special machinery, etc.).

Provisions of this part shall apply to officials who hold responsible and especially responsible positions, and to declarants who hold positions associated with high level of corruption risks, in accordance with Article 50 of this Law.

4. Information referred to in clause 10 of Part one of this Article shall not be included in declarations of persons who are candidates for positions specified in clause 1, subclause "a" of clause 2 of Part one of Article 3 of this Law.

5. Income and expenditures of the declarant shall be stated in the currency of Ukraine.

The value of property, property rights, assets, other objects of declaring, provided for in Part one of this Article, shall be indicated in the currency of Ukraine at the moment of their acquiring in the ownership or at their last monetary valuation.

The value of property, property rights, assets, other objects of declaring that are in possession or use of the declarant shall be indicated in case it is known to the declarant or should have been known as a result of entering into relevant transaction.

6. Income/expenditures received/made in foreign currency for the purposes of indication in the declaration shall be calculated in the national currency of Ukraine based on currency (exchange) rate of the National Bank of Ukraine effective on the date of receipt of income/making expenditures.

As regards income/expenditures received/made abroad, the declarant shall indicate the country where they were received/made.

7. If a family member of the declarant refuses to provide all or part of the information for filling in the declaration, the declarant shall state this in the declaration, while reflecting all information he/she knows about such family member as required by clauses 1-12 of Part one of this Article.

#### **Article 47. Registration and publication of declarations**

1. Submitted declarations shall be included in the Unified State Register of Declarations of Persons Authorized to Perform the Functions of the State or Local Self-government that is formed and maintained by the National Agency.

The National Agency shall ensure an open 24-hour access to the Unified State Register of Declarations of Persons Authorized to Perform the Functions of the State or Local Self-government at the official web-site of the National Agency.

Access to the Unified State Register of Declarations of Persons Authorized to Perform the Functions of the State or Local Self-Government at the official web-site of the National Agency shall be provided by making possible viewing, copying and printing of the information, as well as in the form of a dataset (electronic document), organized in a format that allows its automatic processing by electronic means (machine-reading) for reuse.

Information in the declaration about the registration number of the taxpayer's registration card or series and number of the citizen of Ukraine passport, residence address, date of birth of natural persons regarding whom information is contained in the declaration, location of objects that are listed in the declaration (except for the region, district, city where the object is located), shall constitute information with restricted access and shall not be available in the open access.

2. Information about the person in the Unified State Register of Declarations of Persons Authorized to Perform the Functions of the State or Local Self-government shall be stored during all the time when the person performs functions of the state or local self-government and for five years after the termination of performance of such functions by the person, except for the last declaration filed by the person which shall be stored indefinitely.

#### **Article 48. Control and verification of declarations**

1. The National Agency shall conduct the following types of control with regard to declarations filed by the declarants:

- 1) control with respect to timeliness of filing;
- 2) control with respect to the accuracy and completeness;
- 3) logical and arithmetic control.

2. The National Agency shall carry out a full verification of declarations in accordance with this Law.

3. Procedure for conducting types of controls provided for by this Article, as well as of the full verification of declaration shall be determined by the National Agency.

#### **Article 49. Verification of timeliness of declaration filing**

*Part one was deleted by the Law of 15 March 2016.*

2. State bodies, authorities of the Autonomous Republic of Crimea, local self-government bodies, as well as legal entities of public law are obliged to verify the fact of submission by the declarants working in them (who used to work in them) of declarations according to this Law and notify the National Agency of the cases of non-submission or untimely submission of such declarations following the procedure to be defined by the National Agency.

3. If as a result of control it is found that the declarant did not submit a declaration, the National Agency shall notify in writing such declarant of that fact, and the declarant shall submit declaration within ten days upon receipt of such notification in the manner specified in Part One of Article 45 of this Law.

At the same time, the National Agency shall notify in writing about the fact of failure to file the declaration to the head of the state authority, authority of the Autonomous Republic of Crimea, local self-government body, head of their staff, head of legal entity of public law, where the relevant declarant is employed, and to the specially authorized subjects in the area of countering corruption.

#### **Article 50. Full verification of declarations**

1. The full verification of a declaration is meant to ascertain the accuracy of the declared data, accuracy of evaluation of the declared assets, examine for the presence of conflict of interests and signs of illicit enrichment and can be conducted during the period when the declarant carries out activity related to performance of functions of the state or local self-government and during three-year period after termination of such activity.

Declarations of officials that hold responsible and especially responsible positions, of declarants who hold positions associated with high level of corruption risks, the list of which is approved by the National Agency, are subject to mandatory full verification.

Declarations filed by other declarants in case of discrepancies discovered as a result of logical and arithmetical control shall also be subject to full verification.

The National Agency shall conduct full verification of the declaration, as well as shall independently conduct full verification of information to be indicated in the declaration with regard to family members of the declarant in cases stipulated by Part seven of Article 46 of this Law.

The National agency shall verify declarations on the basis of information received from individuals and legal entities, from media and other sources about possible indication of false data in the declaration.

2. When results of the full verification of the declaration indicate that false information was included in the declaration, the National Agency shall notify in writing the head of the relevant state authority, the authority of the Autonomous Republic of Crimea, local self-government body, head of their staff, head of the public legal entity, where the respective declarant works, and specially authorized entities in the area of countering corruption.

Note. Official persons who hold responsible and especially responsible positions in this Article shall mean the President of Ukraine, Prime Minister of Ukraine, member of the Cabinet of Ministers of Ukraine, First Deputy and Deputy Ministers, member of the National Council on TV and Radio Broadcasting, National Commission on Regulation of Financial Markets, Anti-monopoly Committee, Head of the State Committee on TV and Radio, Head of the State Property Fund, his first deputy and deputy, member of the Central Election Commission, member of parliament, Ombudsman, Director of the National Anti-Corruption Bureau of Ukraine, Prosecutor General of Ukraine, his first deputy and deputy, Head of the National Bank of Ukraine, his first deputy and deputy, member of the National Bank's Council, Secretary of the National Security and Defence Council, his first deputy and deputy, Permanent Representative of the President of Ukraine the Autonomous Republic of Crimea, his first deputy and deputy, adviser or assistant to the President of Ukraine, Speaker of the Parliament, Prime Minister of Ukraine, persons whose positions belong to civil service positions of categories "A" and "B", and persons whose positions are assigned in accordance with Article 14 of the Law of Ukraine "On Service in the Local Self-Government Bodies" to 1-3 categories, as well as judges, prosecutors and investigators, heads, deputy heads of state authorities which jurisdiction covers the whole territory of Ukraine, heads of their staff and heads of their independent structural subdivisions, heads and deputy heads of state authorities, authorities of the Autonomous Republic of Crimea which jurisdiction covers the territory of one or more regions, the Autonomous Republic of Crimea, Kyiv and Sevastopol, heads of state authorities, authorities of the Autonomous Republic of Crimea which jurisdiction covers the territory of one or more districts, of the city of republican significance in the Autonomous Republic of Crimea or regional significance, the district in the city, cities of district significance, military officials of senior officer ranks.

#### **Article 51. Lifestyle monitoring of declarants**

1. The National Agency conducts selective monitoring of lifestyle of declarants in order to establish conformity between their level of life and assets and income received by them and their

family members according to the declaration of a person authorized to perform functions of the state or local self-government that is submitted in accordance with this Law.

2. Lifestyle monitoring of the declarants is carried out by the National Agency on the basis of information received from natural and legal persons, as well as from the media and other open sources of information, which contains information about the discrepancy between the level of life of the declarants and their declared assets and income.

3. Procedure for lifestyle monitoring of the declarants shall be determined by the National Agency.

Lifestyle monitoring shall be carried out in compliance with the legislation on personal data protection and should not involve excessive interference with the right to privacy and family life of person.

4. Establishing an inconsistency between the level of life and assets and income declared by the declarant shall be a ground for conducting full verification of his/her declaration. If the National Agency finds a discrepancy in the level of life, it shall give opportunity to the declarant within 10 business days to provide a written explanation about this fact.

If the lifestyle monitoring reveals signs of the corruption or related to corruption offence, the National Agency shall inform thereof the specially authorized subjects in the area of countering corruption.

#### **Article 52. Additional measures of financial control**

1. If a declarant or his/her family member opens a foreign currency account in a non-resident bank the respective declarant is obliged to notify in writing within 10 days the National Agency according to the procedure it established, indicating the account number and location of the non-resident bank.

2. In case of a significant change in the declarant's assets situation, namely – receipt of income, purchase of property for the sum exceeding the 50 minimum wages established as of January 1 of the respective year, the mentioned declarant within 10 days from the receipt of income or purchasing the property is obliged to notify about it in writing the National Agency. This information shall be included in the Unified State Register of Declarations of Persons Authorized to Perform the Functions of the State or Local Self-Government and shall be published on the official website of the National Agency.

3. Procedure for informing the National Agency on opening of a foreign currency account in a non-resident bank, as well as on significant changes in the property situation shall be determined by the National Agency.

#### **Article 52-1. Special provisions on financial control with regard to certain categories of persons**

1. With regard to persons mentioned in clause 1, subclause "a" of clause 2 of Part one of Article 3 of this Law who belong to the staff of intelligence agencies of Ukraine and/or hold positions that are classified, in particular, in military formations and state authorities conducting operative and detective activity, counter-intelligence, intelligence activity, as well as persons who are candidates for such positions, measures as provided for in Section VII of this Law shall be organized and carried out in a way that makes it impossible to disclose the fact that such persons belong to such agencies (formations) – according to the procedure to be determined by the National Agency upon approval of the said agencies (formations).

[Article was added by the Law adopted on 14 July 2015]

...

### **SECTION IX**

#### **Other mechanisms for preventing and countering corruption**

#### **Article 56. Special verification [vetting]**

1. A special verification, including with regard to information submitted personally, shall be conducted with regard to persons who are candidates for responsible and especially responsible positions and positions with high corruption risk, the list of which shall be approved by the National Agency.

Special verification shall not be conducted with regard to:

1) candidates for the position of the President, candidates for People's Deputies of Ukraine, candidates for deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, deputies of local councils and for positions of village, settlement and city heads;

2) citizens who are drafted to the military service upon conscription of officers and upon conscription to military service during mobilization, during the special period, or involved in the execution of their duties in accordance with staffing tables of a wartime;

3) candidates who hold positions in state authorities, authorities of the Autonomous Republic of Crimea, local self-government bodies and are appointed as a result of transfer or promotion to positions within the same authority or appointed as a result of transfer to positions in other state authorities, authorities of the Autonomous Republic of Crimea, local self-government bodies;

4) candidates who hold positions in state authorities, authorities of the Autonomous Republic of Crimea, local self-government bodies which are terminated and therefore such people are appointed as a result of transfer to other authorities which inherit powers and functions of authorities being terminated;

5) persons when considering their inclusion in the lists of people's assessors and jurors.

If the appointment, election or approval for positions is carried out by a local council, a special verification is conducted in the manner stipulated by this Law with regard to appointed, selected or approved for the relevant positions persons.

2. The head (deputy head) of the state authority, authority of the Autonomous Republic of Crimea, local self-government authority or their staff, where the person is a candidate for a position, is responsible for organizing special verification, except for instances determined by law. ...

Peculiarities of conducting special verification regarding candidates for positions of judges shall be stipulated in the Law of Ukraine "On the Judicial System and Status of Judges".

...

3. Information about a person who is a candidate for the position referred to in the Part one of this Article, shall be subject to special verification, in particular with regard to:

1) existence of the court decision which came into force and according to which such person was held criminally liable, including for a corruption offenses, as well as with regard to prior convictions, their lifting or expunging;

2) the fact that the person was sanctioned by administrative sanctions for related to corruption offenses;

3) the authenticity of information specified in the declaration of a person authorized to perform the functions of the state or local self-government;

4) person's possession of equity rights;

5) health condition (specifically regarding person's registration with psychiatric or drug rehabilitation institutions of health care), education, the presence of an academic degree or an academic rank.

6) person's relation to the military duty;

7) whether the person has access to state secrets, if such access is required under the qualification requirements for the position;

8) whether the person is covered by the ban to hold the relevant position envisioned by the Law of Ukraine "On Cleansing of Power (Lustration)".

...

#### **Article 57. Procedure for carrying special verification**

1. Special verification shall be conducted upon the written consent of the person who is a candidate for the position within a period not exceeding twenty-five calendar days from the date when the consent for the special inspection was given.

If the person does not grant such consent the question of his/her appointment to the position shall not be considered.

Procedure of conducting the special verification and the form of consent for the special verification shall be approved by the Cabinet of Ministers of Ukraine.

2. For carrying out special verification the person who is a candidate for the position, shall submit to the respective authority:

- 1) a written consent to carrying out special verification;
- 2) an autobiography;
- 3) a copy of citizen of Ukraine passport;
- 4) copies of documents on education, academic ranks and academic degrees;
- 5) medical certificate on health condition according to the form approved by the Ministry of Healthcare of Ukraine regarding person's registration with psychiatric or drug rehabilitation institutions of health care;

6) a copy of a military service card (for military persons or persons liable for call-up);

7) a certificate of access to the state secret (if available).

A person who is a candidate for a position shall also submit to the National Agency, in the manner specified by part one of Article 45 of this Law, the declaration of a person authorized to perform the functions of the state or local self-government.

...

3. After obtaining the written consent of the candidate an authority where such person seeks the position not later than the next day shall send to the appropriate state authorities in charge of conducting special verification the information provided in the part three of Article 56 or to their territorial bodies (in case of any) the request for inspection of information about a person who is a candidate for the respective position in accordance with a form approved by the Cabinet of Ministers of Ukraine.

...

4. Special verification shall be carried out by:

1) the National Police and the State Judicial Administration of Ukraine – regarding the information about bringing a person to criminal liability, criminal record, its lifting, expunging;

2) Ministry of Justice of Ukraine and the National Agency on Securities and Stock Market – regarding the ownership of equity rights;

3) the National Agency [for Corruption Prevention] – regarding the presence in the Unified State Register of persons who have committed corruption or corruption related offenses of the information about the candidate; as well as about the authenticity of information indicated by the person in the declaration of the person authorized to perform the functions of the state or local self-government for the past year;

...

Other central executive authorities or specially authorized subjects in the area of countering corruption may be involved in conducting special verification in order to verify information about the person referred to in this Article or the authenticity of documents provided for in this Article.

#### **Article 58. The results of a special verification**

1. The results of the special verification signed by the head of the authority which carried out the inspection and in his absence - a person who performs his duties, or deputy head of the body according to the distribution of functional responsibilities, shall be submitted to the authority that sent the appropriate request within seven days upon the receipt of the request.

...

2. The decision on appointment (election) or on refusal of appointment (election) to the position connected with performing the functions of the state or local self-government shall be taken after the special verification has been carried out.

If the results of the special verification establish a fact of discrepancies present in the autobiography and/or declaration of a person authorized to perform the functions of the state or local self-government for the previous year the official (agency) that organizes special inspection shall

provide the candidate for the position with the opportunity to provide a written explanation of such fact and/or to fix this discrepancy within five working days.

If the results of the special verification establish information about the applicant for the position that does not meet the requirements established by the legislation for the position, the official (agency) that is responsible for the appointment (election) to this position shall refuse the appointment (election) to the position.

If the results of the special verification and of review of the above mentioned explanations by the candidate for the position establish a fact of submission by him of forged documents or false information the official (agency) that is responsible for the appointment (election) to this position, shall report to the law enforcement agencies within three business days about this and shall refuse the appointment (election) to the position of the applicant.

The person regarding whom the results of the special verification found circumstances which constitute grounds for denial of his/her appointment (election) shall be deemed as the one who have not passed special inspection.

...

Decision refusing the appointment (election) to the position taken as a result of the special verification may be appealed in court.

...

### **SECTION XIII**

#### **Final Provisions**

1. This Law shall enter into force on the day following the day of its publication and shall be enacted in six months after the day it entered into force.

2. Until beginning of functioning of the system of submission and publication in accordance with this Law of declarations of persons authorized to perform functions of the state or local self-government, the declarants should submit declarations on assets, income, expenses and financial liabilities according to the procedure set in the Law of Ukraine on the Principles of Corruption Prevention and Counteraction. Such declarations should be published in accordance with the procedure set in the Law of Ukraine on the Principles of Corruption Prevention and Counteraction.

The National Agency for Corruption Prevention shall make a decision on the beginning of functioning of the system of submission and publication in accordance with this Law of declarations of persons authorized to perform functions of the state or local self-government.

In 2016, persons who at the time of launching of the mentioned system occupy according to Article 50 of this Law responsible or particularly responsible positions shall submit annual declarations for the previous year in the order specified by this Law, within 60 calendar days from the launch of the system.

...

4. The following laws shall be considered invalid:

1) The Law of Ukraine on the Principles of Corruption Prevention and Counteraction, except for provisions on financial control which become invalid with the beginning of functioning of the system of submission and publication in accordance with this Law of declarations of persons authorized to perform functions of the state or local self-government.

...

## **Code of Ukraine on Administrative Offences**

### **Chapter 13-A. Administrative offences related to corruption**

...

#### **Article 172-6. Violation of financial control requirements**

Untimely submission without reasonable excuse of the declaration of the person authorised to perform functions of the state or local self-government -

shall lead to imposing of a fine in the amount of 50 to 100 untaxed minimum personal incomes.

Failure to notify or untimely notification about opening of a currency account in a non-resident bank or about significant changes in the assets, -

shall lead to imposing of a fine in the amount of 100 to 200 untaxed minimum personal incomes.

Actions provided for in paragraphs 1 or 2 of this Article when committed by a person who has been punished with administrative sanction during a year for the same violations -

shall lead to imposing of a fine in the amount of 100 to 300 untaxed minimum personal incomes with confiscation of income or remuneration and with the deprivation of the right to hold certain offices or to engage in certain activity for one year.

Submission of knowingly false information specified in the declaration of persons authorized to perform the functions of the State or local self-government -

shall be punishable by a fine of one thousand to two thousand five hundred non-taxable minimum incomes of citizens.

Note. Persons who are liable under this Article shall be persons who according to paragraphs 1 and 2 of Article 45 of the Law of Ukraine “On Prevention of Corruption” are obliged to submit declaration of the person authorised to perform functions or the state of local self-government.

Responsibility under this article for submission of knowingly false information in the declaration of person authorized to perform the functions of the State or local self-government regarding property or other objects to be declared that have value is imposed in case when such information differs from the true information by a sum of 100 to 250 minimum wages.

...

## **Criminal Code of Ukraine**

...

#### **Article 45. Discharge from criminal liability in view of effective regret**

A person who has committed a minor crime or an unintentional crime of moderate severity for the first time, except for corruption crimes, shall be discharged from criminal liability if, upon committing that offense, he/she sincerely repented, actively facilitated solving of the offence, and fully compensated the losses or repaired the damage inflicted.

Note. Corruption crimes according to this Code should be considered crimes provided for in Articles 191, 262, 308, 312, 313, 320, 357, 410 – in case they were committed through abuse of one’s official position, as well as crimes provided for in Articles 210, 354, 364, 364-1, 365-2, 368 - 369-2 of this Code.

...

### **Chapter XVII. Crimes in the Area of Official Activity and Professional Activity connected with Provisions of Public Services**

...

#### **Article 366-1. Declaring of false information**



Submission by the declarant of knowingly false information in the declaration of a person authorised to perform functions of the state or local self-government, which is provided for in the Law of Ukraine “On Prevention of Corruption”, or wilful non-submission by the declarant of such declaration -

shall be punishable by a fine from 2500 to 3000 untaxed incomes or by public works from 150 to 240 hours or imprisonment for up to two years with the prohibition to occupy certain positions or perform certain activities for up to three years.

Note. Declarants mean persons who according to paragraphs 1 and 2 of Article 45 of the Law of Ukraine “On Prevention of Corruption” are obliged to submit declaration of a person authorised to perform functions of the state or local self-government.

Responsibility under this article for submission of knowingly false information in the declaration of person authorized to perform the functions of the State or local self-government regarding property or other objects to be declared that have value is imposed in case when such information differs from the true information by a sum of more than 250 minimum wages.

...

### **Article 368-2. Illicit enrichment**

*[Last amended by the Law of 12 February 2015 (No. 198-VIII)]*

1. Acquiring by a person authorised to perform functions of the state or local self-government in ownership of assets in significant amount, the lawful grounds of acquiring of which was not confirmed by evidence, as well as transfer by him/her of such assets to any other person –

shall be punishable by deprivation of liberty for the term of up to two years with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years and with special forfeiture and forfeiture of property.

2. The same acts when committed by a service person occupying a position of responsibility - shall be punishable by deprivation of liberty for the term of two to five years, with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years and with special forfeiture and forfeiture of property.

3. Acts provided for in paragraph 1 of this Article when committed by a service person occupying a position of particular responsibility -

shall be punishable by deprivation of liberty for the term of five to ten years, with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years and with special forfeiture and forfeiture of property.

Note. 1. Persons authorised to perform functions of the state or local self-government shall mean persons specified in clause 1 of part one of Article 3 of the Law of Ukraine “On Prevention of Corruption”.

2. Assets in the significant amount in this Article shall mean monetary funds or other property, as well as proceeds from them, if their amount (value) exceeds 1,000 untaxed minimum personal incomes.

3. The transfer of assets in this Article shall mean concluding any agreements based on which right of ownership or right of use of assets emerges, as well as providing other person with monetary funds or other property to enter into such agreements.