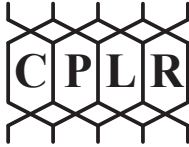


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Фонд "Демократичні ініціативи"

Corruption and Fraud Unit  
Department of Information Society and Action Against Crime  
Directorate of Co-operation  
Directorate General of Human Rights and Legal Affairs  
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# **CORRUPTION RISKS IN THE FIELDS OF ADMINISTRATIVE SERVICES AND CONTROL-SUPERVISION ACTIVITIES OF PUBLIC ADMINISTRATION IN UKRAINE**

**Analytical report prepared by Centre for Political and Legal Reforms of Ukraine**

**Sociological report prepared by Democratic Initiatives Foundation**

The views expressed in this document are authors' own and do not necessarily reflect official positions of the Council of Europe

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**ANALYTICAL REPORT  
OF THE CENTRE FOR POLITICAL  
AND LEGAL REFORMS  
OF UKRAINE**

# 1. SUMMARY

The subject report presents the results of the study of risks of corruption in two spheres of activities of public administration bodies, such as delivery of administrative services and control and supervision. The above was the purpose of desk study of potential risks of corruption, development of recommendations concerning the elimination (minimization) thereof, and also, assessment of the relevance of subject risks and proposed recommendations using survey (polling) of the public, focus groups with entrepreneurs and extended interviews with public officials of central and local government bodies.

The analytical part of this study was carried out by the Centre for Political and Legal Reforms non-governmental organization during January 2008 – April 2009.

The sociological part was carried out by the Democratic Initiatives' Foundation on March 2009. This Project was implemented within the UPAC Project implemented by the Council of Europe and funded mainly by the EC ("Support to good governance: Project against corruption in Ukraine").

Considering the results of sociological studies, the following can be referred to corruption risks in the area of delivery of administrative services:

- 1) Overall complexity of the procedure of delivery of administrative services;
- 2) Unjustified long time for delivery of some administrative services;
- 3) Lack of information concerning the procedure of rendering administrative services;
- 4) Limited access to administrative bodies rendering services (limited open hours, visitors standing in lines, etc).

The following were found to be the major corruption risks in the area of control and supervision:

1) Unjustified broad interference powers of many administrative bodies particularly where suspension/halting of business operations is concerned;

2) Some administrative bodies exercise unjustified powers related to conducting field inspections;

3) Control and supervision bodies focus more on punishment rather than corrective action or prevention.

In order to eliminate (minimize) corruption risks in the areas of public administration under review appropriate recommendations (attached hereto) for various political entities (Verkhovna Rada of Ukraine, Cabinet of Ministers, Ministry of Justice) and also, for the leadership of public administration bodies (in part of organizational integrity) were developed. The latter is particularly critical for Ukraine considering that numerous measures could be implemented without modifying the legislation.

Also, it should be noted that the absolute majority of expert recommendations concerning minimization of corruption risks was supported by public at large, entrepreneurs as specific target group and representatives of government bodies.

One of the general conclusions of this analytical study is recognition of the critical role of administrative reform in prevention of corruption (reform of executive branch and local self-government, reform of public service, adjustment of political decision-making processes and adjustment of administrative procedure), since it is the first and foremost priority to eliminate conditions conducive to corruption, rather than fight the effects thereof. The judicial reform is no less important in combating corruption.

## 2. INTRODUCTION

*“Corruption constitutes a major threat to democracy, the rule of law, social progress and national security<sup>1</sup>”*

The subject study reviews major corruption risks in such areas as delivery of administrative services and control and supervision of the government. On this basis recommendations concerning the elimination (minimization) of corruption risks in the areas under review were developed.

In their study the research team relied on understanding **corruption** as the phenomenon caused by intentional *abuse of office by public officers for unlawful private gain* of pecuniary and non-pecuniary nature or benefits in any form, and also bribery of such officers.

Based on the above definition of corruption and for the purpose of this study it is suggested that **corruption risks** are understood as any legal, organizational and other factors and causes producing or encouraging (stimulating) corruption in the area of administrative services and control and supervision of the government.

The subject study primarily focuses on institutional corruption risks, i.e. factors affecting the conduct of public officials transforming it into ‘corrupt’ behavior, and elimination of such risks falling under the competence of the administrative body where such official is employed or which is headed by such official. The systemic (or ‘external’) corruption risks, i.e. those related to common gaps in public administration, are analyzed only in part where they have specific impact on the level of corruption in the areas of administrative services and control and supervision of the government.

The substance of the category of **administrative services** in the subject study is understood as activity of administrative body carried out at the

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<sup>1</sup> *Concept of Countering Corruption in Ukraine “On the Way to Integrity” of September 11, 2006, No. 742/2006, approved by Decree of President of Ukraine.*



request of private person (physical or legal entity) resulting in legal execution of any rights, freedoms and legitimate interests of the person (e.g., issuance of permits, licenses, certificates, registration etc) and, also, performance of obligations of the person.

***Control and supervision of the government*** means such authority to interference, which is initiated by administrative body in order to identify (verify) compliance of certain activity (conduct) and to apply administrative sanctions in case violation has been found. The current legislation and the national legal science refer to this activity as ‘public control/supervision’ or ‘administrative control (supervision)’. The above authority to interfere includes document review, actual performance evaluation; regular obtaining of information (reports), and is carried out in the form of “review”, “audits” and “inspections”.

Where control and supervision is concerned, corruption may occur as a result of refusal from carrying out inspection, inappropriate inspection, non-disclosure of findings and inspections with the single purpose to gain unlawful benefits.

The main objective of the study was to identify corruption risks of systemic nature, which constitute the biggest threat to private persons in exercising their rights in their relationships with administrative bodies (executive agencies and local self-government bodies) in the area of administrative services and control and supervision.

*Vulnerability to corruption risks in two subject areas was affirmed by the public in whose answers to the question (under the project) “where did you yourself or members of your family have to give bribes, make “charity donations” or gifts within the past 12 months, they mentioned in the first place the State Traffic Police– 6.1%; public agencies to obtain certificates (4.1%) and permits (2.7%). The entrepreneurs” answers were really startling: to obtain various permits from public agencies (18.2%), during vehicle registration or inspection processes (18.0%), to obtain certificates (17.7%); at tax inspection agencies(17.2%) and in connection with business activities during audits (15.5%).*

The source reference materials for the subject study included Ukrainian legislation system, including countering and prevention of corruption

conventions and protocols thereto ratified by Ukraine, and also manuals, guides, monographs and scientific publications, popular scientific publications, statistical generalizations and reports of government agencies and institutions, national NGOs and international organizations.

*The methods used in the study* included:

1) Outlining the scope of research through emphasis on two areas of activity of public administration (delivery of administrative services, control and supervision).

Herewith, specific types of administrative services were selected for in-depth analysis, e.g., in the area of entrepreneurial activities, construction, land relations, and the social sphere. In addition, some of those services are rendered by central executive branch; others are rendered by their field offices (branches) or by local self-government bodies.

Analysis of corruption risks in the areas of government control and supervision is based on the type of administrative bodies (and type of inspection, accordingly).

Furthermore, the study contains a separate section focusing on general corruption risks, i.e. those intrinsic to overall public administrative and undoubtedly affecting the level of corruption in both specifically analyzed areas.

2) Desk study of certain categories of cases (administrative services and types of inspection bodies, accordingly). The subject study was based on the source reference materials (legislative acts, publications, research, statistics, as well as former surveys and analytical studies by experts);

3) Identification of potential corruption risks on the basis of such analysis (and also based on analysis of public administration organizational and performance related problem areas and problems related to legal regulation of subject issues), determination of their nature and causes;

4) Development of recommendations concerning the elimination (minimization) of corruption risks in the area of administrative services, government control and supervision;

5) Assessment of the rationale and relevance of conclusions of the desk study using sociological methods, i.e. a sort of ‘testing’ of target social groups.

The survey includes the following elements:

- a) Nation-wide poll of population of Ukraine;*
- b) Interviews with entrepreneurs;*
- c) Focus-groups in 5 towns of Ukraine;*
- d) Extended interviews.*

6) Refinement of the report, including conclusions and recommendations.

Assistance in analytical studies was provided by experts of the *Basel Institute on Governance*.

# 3. ANALYTICAL PART

## SECTION 3.1 COMMON CORRUPTION RISKS IN PUBLIC ADMINISTRATION

### 3.1.1 Institutional and Functional Conflicts of Interest in the System of Public Administration

Public administration efficient structure, transparency, professionalism and integrity of public service, accountability of public administration are all very important factors to ensure protection against corruption risks.

The following are major institutional and functional corruption risks within the system of public administration of Ukraine:

1) **Where one and the same executive agency combines the policy-making and regulation-development functions with current administration functions** (including rendering administrative services, control and supervision activity). Such practice causes problems in the area of by-laws, in particular:

*a) Where executive agencies, which should apply legislation, develop such legislation “for their own use”, being driven by departmental (corporate) interests.*

For instance, the normative acts to be applied by tax authorities are drafted by the State Tax Administration rather than by Ministry of Finance. Another interesting thing is the nature of so-called “*fiscal comments*” described in the law as “publication of official interpretation of specific provisions of tax legislation by controlling bodies within their competence, which is used to substantiate their decisions during appeal proceedings”<sup>2</sup>, videlicet, a party to a dispute issues an actually official interpretation of the tax law.

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<sup>2</sup> Subparagraph “d”, paragraph 4.4.2, Article 4 of Law of Ukraine “On the procedure for repayment by taxpayers to budgets and specialized funds” dated 21.12.2000, No. 2181-III.

*Oksana Prodan, Head of the Entrepreneurs' Council at the Cabinet of Ministers of Ukraine, made a particular emphasis on the problem that 'administrative bodies issue mechanisms on their own and regulate the subject mechanisms for their own use' during her extended interview under the project.*

*b) Executive agencies "broaden" their powers using their acts or the acts they draft by themselves (i.e. they interpret provisions of the law broadly, including by introducing additional powers, which are not set forth by the law, and also tools to accomplish their assigned tasks.*

An example of inconsistency between subordinate normative acts and laws is situation with regulation of relations applicable to wheel clamping of vehicles. In September 2008 Article 265-2 concerning temporary impoundment of vehicles was incorporated in the Code of Administrative Offences. The key elements of the institute of impoundment were as follows:

- *Relocation of vehicles by tow trucks in exceptional cases to apply solely where the subject vehicle is causing obstruction to traffic. Otherwise the vehicle is subject to wheel clamping (rather than "relocation");*
- *the vehicle can only be impounded for a short time to last no longer than 3 days;*
- *Charging fees for claiming the vehicle back and its actual release is prohibited.*

*The Cabinet of Ministers "detailed" the procedure related to short-term impoundment and holding of vehicles within special holding grounds and parking lots in its Resolution of December 17, 2008 <sup>3</sup>. However, provisions of this document are in conflict with requirements of the law. In particular:*

- *Vice versa, the vehicle clamping Resolution actually recognizes this as an exceptional measure to apply when relocation of the vehicle is not feasible (paragraph 5);*

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<sup>3</sup> *Procedure of temporary seizure and holding of Vehicles on special sites and parking lots approved by Resolution of Cabinet of Ministers of Ukraine dated 17.12.08, No. 1102.*

- *The term of impoundment starts at the point when report of administrative offence is issued (paragraph 10), although the time of actual impoundment and the time of issuance of the report may differ significantly. It also introduces the term of holding of vehicles starting from the point when the vehicle is delivered to a special holding ground;*
- *In part of setting forth a fee for the delivery and holding of the vehicle (paragraph 13).*

Although on 11 February 2009 the Government modified some provisions of the Procedure for Impoundment of Vehicles, the subject modifications did not remove the above inconsistencies with the law.

Therefore, ***the authority of public administration should comply with the Constitution of Ukraine and laws of Ukraine and cannot be established by subordinate normative and legal acts or interpreted “broadly” in the acts issued by executive agencies.***

## **2) Combining the functions related to rendering of administrative services and functions of control and supervision (inspection) in one and the same institution (body).**

Combining the powers related to rendering of administrative services and control and supervision in one and the same body produces corruption risks by blurring the mission of a relevant body and decreasing the objectivity of handling and reviewing administrative matters, since apparently the agent (service) and inspection related types of activity require different methods and forms. It is also apparent that in case of violation of rules of issuance of specific permits (licenses) the entity which will be inspecting activity of private person on one hand will not be interested in the detection (recording) of a “mistake” made by its own agency, and on the other hand, it will actually remain outside external controls, which produces a fertile ground for wrongdoings.

It is notable that according to some studies entrepreneurs mentioned the bodies combining the function of issuing permits (administrative services) with inspection functions, in particular, the state sanitary and epidemiological service and state fire inspection service<sup>4</sup>, among the most corrupt licensing authorities in Ukraine.

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<sup>4</sup> *Final report on the results of public performance monitoring of unified licensing centers.* – Ivano-Frankivsk: NGO “Private Initiative Development Agency”, 2009. – P. 49.

Considering the current practice of approval by the Government of ‘lists of chargeable services’ for specific executive agencies (*this problem is described in more detail in section 2.7 of the study*), combining the above functions also results in imposing additional fees and charges (along with the ones established by law) upon the public. It is particularly dangerous when such ‘chargeable services’ are imposed by control and supervision bodies. When person refuses to pay or tries to avoid additional chargeable services, such refusal can grow into additional inspections or particularly “thorough” (biased) inspections. Herewith, private persons are not informed of the optional nature of such additional services (to be more accurate, of the fact that such services are rendered solely at the person’s request), though the legislation sets forth appropriate requirements.

***Institutional (organizational) delineation of administrative services and control and supervision related functions*** will foster mitigation of the subject risk. In our opinion, this will enhance the objectivity of review of administrative matters by administrative bodies and also, will foster detection of incidences of unlawful actions of other administrative bodies.

There are other problems related to the institutional and functional conflicts growing into corruption risks:

a) **Lack of regulation in the system of public administration and no clear delineation of powers between the executive branch and local self-government bodies.** A number of institutional risks are caused by the lack of clarity in the setting of the system of executive branch in terms of referring executive agencies to specific levels (central or local). There is a common tendency in the system of executive branch to continuously establish new bodies, which often causes unbalanced liaison and relationships within the system of bodies of executive power and also, external relationships (primarily creating inconveniences for the public that is unfamiliar with the nuances of public office reform; the burden of additional costs related to reissuance of documents is usually laid upon the public). This creates a ‘vicious circle’ of problems and distress for average individuals, who would rather give up on the official execution of due social benefits, aid or payments, or seek easier ways (which are often of corrupt nature) of handling their problems.

*The system of public administration of the town of Odessa would make an appropriate example in this regard. In addition to Odessa Municipal Council, it includes 5 executive bodies of general competence (an executive committee and 4 district administrations), about 30 executive bodies of special competence, 8 divisions of the Council and executive committee office, 43 civil self-organization entities, 35 coordination entities (commissions, councils, and committees), 71 utility enterprises, 302 public utility institutions and organizations, which employ the total of 1,798 officials of local self-government and about 20,000 employees of public utility enterprises, institutions and organizations. In addition, the system of town administration includes municipal and town district components and field offices of central executive agencies<sup>5</sup>.*

Resolution of these problems requires clear definition of the competence of executive bodies and division of powers between local executive agencies and local self-government bodies. The functional evaluation of public administration aimed at the review (assessment) of the adequacy of existing components of those bodies to perform their assigned functions, tasks and areas of activity will help to accomplish this mission.

**b) Inconsistency of on-going reforms in the areas of responsibility of executive bodies and local self-government bodies.** The lack of political will in implementing reforms of public administration should be referred to the negative factors affecting the current level of development of public administration. Frequent replacement of governments does not contribute to developing a common strategy of public administration development. No institutional continuity in the government activity is ensured. Permanent changes in the system of executive branch result in the lack of accountability for previous decisions.

Approval of draft Concept of the Public Administration Reform in Ukraine may be an effective step aimed at comprehensive public administration reform in Ukraine. If this draft is approved and consistently implemented by the Government, most of institutional and functional conflicts in public

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<sup>5</sup> See the *Concept of municipal administration reform and establishment of the system of quality management in Odessa local self-government, utility enterprises and institutions* approved by resolution of Odessa Municipal Council of 21.12.2007, No. 2087-V. Web-site: <http://www.odessa.ua/acts/council/12065/>



administration and the resulting corruption risks can be eliminated. In its recommendations GRECO<sup>6</sup> also emphasizes on the need to generate a common strategy of public administration reforms in Ukraine.

*Therefore, our recommendations are as follows:*

1. **To ensure delineation of political and administrative functions at the institutional level.**
2. **To terminate the practice of “broadening” the powers of administrative agencies by means of subordinate normative acts.**
3. **To institutionally delineate the functions of rendering administrative services and control and supervision (inspection).**
4. **To approve the Concept of Public Administration Reform and ensure implementation of systemic reforms based thereupon.**

### **3.1.2. Weakness of the Institute of Public Service in Ukraine**

The institute of public service (state service and local self-government service) is a particularly important element of the governance mechanism, which plays an exceptional role in the functioning of the State and ensuring human and civil rights and freedoms. However, the “weakness” and ineffectiveness of public service in countering corruption hampers achievement of the subject objectives mentioned above. In particular, such corruption risks as **non-transparency and inadequate level of remuneration for most public servants, excessive subjectivity in handling the issues of public service and lack of professionalism of many public servants** are common in the organization and functioning of public service in Ukraine.

The primary problem from the standpoint of anti-corruption policy is **remuneration of public servants**. Low salary of most public servants is a commonly recognized cause of corruption. For example, the Public

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<sup>6</sup> See Paragraph 198 of Evaluation Report on Ukraine approved by GRECO at the 32nd plenary meeting (19-23 March, 2007).

Monitoring of Unified Licensing centers' performance mentions low salary of administrators and representatives of licensing entities as the second most important factor directly increasing corruption (in this case, it is notable that employees of those licensing entities give rating to this factor as the first top one)<sup>7</sup>.

*Although increasing salary for officials as a means of countering corruption is supported by rather insignificant number of both general public and entrepreneurs surveyed in our project (8.3% and 19.0% accordingly), according to experts (in particular, MP of Ukraine **Kseniya Lyapina**, Deputy Chair of Industrial and Regulatory Policy and Entrepreneurship Committee of Verkhovna Rada of Ukraine), this is a "number one problem".*

The problem lies in non-transparency of the system of remuneration of public servants and subjectivity of leadership appointing specific amount of salary. According to the Law of Ukraine *On Civil Service* (Article 33), the salary of civil servants includes official salary, bonuses, fringe benefits and increments. Herewith, bonuses, fringe benefits and increments preponderate in the structure of salary. These amounts are established by subordinate acts and paid at the discretion of supervisor. Therefore, increasing the share of basic salary in cumulative total along with appointing an appropriate amount of salary (plus proper conditions) correspondent to similar jobs in private sector will make an significant factor ensuring impartiality and commitment of civil servants.

**Low level of professionalism of many servants** is another problem of public service of Ukraine. The *formality and ineffectiveness of mechanism of competitive selection* for public service is deemed to be one of the factors causing this situation resulting in the actual absence of real competition to fill vacancies. This became possible due to exceedingly poor regulation of competitive processes in current legislation requiring competitive selection for just few categories of positions in civil service (categories 3 – 7) and allowing numerous exceptions. The non-transparent and sham competition naturally resulted in low level of level of professionalism of servants.

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<sup>7</sup> *Final report based on the results of public monitoring of unified licensing centers' performance.* – Ivano-Frankivsk: NGO "Private Initiative Development Agency", 2009. – P. 50-51.

*High fluctuation rates and dismissal of civil servants for political motives* affects the overall professionalism and integrity of civil service personnel. *In particular, according to the Head of Department of Civil Service of Ukraine, while in 2004 38,000 civil servants resigned; in 2005 their number was 48,000*<sup>8</sup>. In addition, 250 heads of central and local executive agencies of categories 1-2 were dismissed in 2005, while in 2006 their number was 169. All heads of oblast state administrations and about 100 % of district state administrations were replaced during this period. In 2005 493 heads of district state administrations were dismissed (98.2% of the total)<sup>9</sup>. The sense of instability in office caused by the risk of potential dismissal at any point of time creates additional corruption risk.

Corruption risks in the sphere of public service are also caused by **excessive influence of the leadership on servants**. This refers to both remuneration of servants and their current activity. In particular, the problem in Ukraine is with the *lack of procedural independence of civil servants* of executive level (specialists, inspectors) due to centralized decision-making in most cases all the way up to decision-making at the level of the head of entity. This can generate corruption risks in terms of further approval of decision by supervisor; unlawful directions from above concerning handling of the matter, etc. Many servants get a sense of serving their supervisor rather than the government (public). Such potential for heads of entities to influence their subordinates creates a problem in itself, since corruption can easily strike the entity (system) on the whole where the head of entity is corrupt and where excessive procedural (office) dependence of personnel exists. *Comparison of public opinion in 2003 and 2009 shows that the idea that corruption in the government is a common thing and that the leadership is primarily responsible for corruption (this item was supported by 82.5% of the public that was interviewed)*. In this context, it is also important to

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<sup>8</sup> I. Vedernikova, *Tymofiy Motrenko: "Whatever coalition would form the government, personnel purges should never take place again" // "Dzerkalo tyzhnia". – 27.05-2.06.2006. – No. 20 (599).*

<sup>9</sup> Presentation made by M. Borsuk, First Deputy Head of State Service Department of Ukraine, at the National workshop for the issues of social dialogue in the training of civil servants of Ukraine dated 18.04.2007. ([http://www.guds.gov.ua/control/uk/publishext/article?art\\_id=67248&cat\\_id=41071&base\\_id=41065](http://www.guds.gov.ua/control/uk/publishext/article?art_id=67248&cat_id=41071&base_id=41065)).

consolidate effective rules of conduct of servants to rely upon, should the legitimacy of order (direction) from supervisor be in question.

Thus, the gaps in current regulations give way to most corruption risks in public service. Therefore, one of the ways to eliminate potential loopholes for corruption is *approval of the new law of Ukraine “On Civil Service” (and also, Law “On local self-government service”)*. New legislation should provide qualitatively new and clear regulation of development of the cadre for the government and performance of their duties. In particular, the legislation should detail the competition procedures and qualification requirements, etc.

Professional training and advance training of servants should be in focus as well.

Also, regulation of declaration of income and spending by public servants and members of their families is of critical importance. It is particularly important to emphasize on the requirement to disclose both the assets owned by public servants and the assets used by such.

It is also necessary to review the instances and procedure of disciplinary action against servants establishing both clear grounds for such disciplinary action and the mechanism of appropriate penalties. One of the grounds for liability of servant should be non-compliance with ethical standards (rules of professional ethics). It is also necessary to regulate the issue of conflicts of interest; for this purpose corresponding legislation (Code of Professional Ethics of Public Servants or amendments to applicable laws on public service and local self-government service) should be adopted. An important step would be the enhancement of actual liability of civil servants for corrupt practices, extending even to dismissal of those who committed corrupt offences from civil service. Presently there is a tendency which is distinctly quite opposite: during 2007 and six months of 2008 only few servants of the total against whom administrative action was taken were terminated in their office in civil service for corrupt offences or other offences associated with corruption, while 85% of those who committed corrupt offences continued working in their office<sup>10</sup>.

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<sup>10</sup> *Analytical information of State Service Department concerning the status of implementation of the Law of Ukraine “On Countering of Corruption” by executive agencies during six months in 2008.* Web-site: [http://www.guds.gov.ua/control/uk/publish/article?art\\_id=78858&cat\\_id=57862](http://www.guds.gov.ua/control/uk/publish/article?art_id=78858&cat_id=57862)

*Due to the actual impunity of civil servants, the people mentioned “dismissal without the right to employment with the government” (55.6% of respondents and 60.1% of entrepreneurs), “more severe criminal liability of civil servants (longer incarceration)” (this idea was supported by 49.6% of the public and 45.4% of entrepreneurs) as the most effective tools in countering corruption.*

GRECO reports and recommendations give a lot of focus on public service reform issues<sup>11</sup>.

***Therefore, our recommendations are as follows:***

- 1. To reform civil service and local self-government service to ensure its professionalism and political neutrality (this requires new legislation on public service to be adopted).**
- 2. Reform the system of remuneration of public servants to ensure its relevance, transparency and sustainability.**
- 3. Enhance procedural independence of public servants of executive level.**
- 4. Regulate the issues of ethics and conflict of interests in public service.**

### **3.1.3 Poor Quality of Legislation, in Particular, Underdeveloped Administrative Procedure Legislation**

Inadequate national legislation is one of the factors causing corruption risks. The following are key elements of such inadequacy:

a) **Ambiguous and sparse regulations included in different regulatory and legal acts, and excessively straddling laws.** The complexity of legal regulation shows through numerous legislative and subordinate, general and special regulatory legal acts concerning each issue.

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<sup>11</sup> See: *Evaluation report on Ukraine approved by GRECO at the 32-nd plenary meeting (19-23 March, 2007).*

For example, the procedure of obtaining permits to re-design an apartment stipulates for a number of subsequent legal steps under at least 13 regulatory legal acts<sup>12</sup>. Therefore, it is notable that the results of recent studies concerning obtaining permits for operations with land and construction mention the need to improve the legal framework legislation as a critical anti-corruption measure (in particular, this idea was supported by 69-78% of respondents)<sup>13</sup>.

Generally, the national law has generated the model where one issue is regulated by several regulatory legal acts. The most common triad is “*law (general regulation) – decree of Cabinet of Ministers (on approval of procedure) – order of a ministry or another central executive agency (on approval of instruction)*”. For example, the procedure of obtaining a customs carrier license is regulated by one law, four governmental resolutions and

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<sup>12</sup> This procedure is regulated by the Housing Code of 30.06.1983, No. 5464-X, Commercial Code of 16.01.2003, No. 436-IV, Laws of Ukraine: “On Site Landscaping and Development” of 20.04.2000, No. 1699-II, “On Architectural Activities” of 20.04.1999, No. 687-XI, “On Sanitary and Epidemiological Well-Being of Population” of 24.02.1994, No. 4004-XII, “On energy saving” of 01.07.1994, No. 74/94-BP, “On Environmental safety” of 25.06.1991, No. 1264-XI, “On Fire Safety” of 17.12.1993, No. 3745-XII, as well as Procedure of issuance of Architectural and Planning assignment and terms of reference for engineering support of architectural site and establishment of the amount of Fees for their issuance approved by Decree of Cabinet of Ministers of 20.12.1999, No. 2328, Regulation on the procedure for issuance permit for construction approved by Order of State Committee for Construction, Architecture and Housing Policy of 25.12.2000, No. 945/5166, Regulation on maintenance of residential buildings and adjacent grounds approved by Order of State Committee of Ukraine for Housing and Public Utility Services of 17.05.2005, No. 76, Procedure for Fire Safety of Construction Projects and Other Documents evaluation approved by Order of Ministry of emergencies of 23.11.2004, No. 186 and DBN A.22-3-2004, Design. “Structure, development procedure, coordination and approval of design documentation for construction” approved by Order of State Construction Department dated 20.01.2004, No. 8.

<sup>13</sup> See the Study of the status of corruption in the sphere of regulatory policy. *Construction and land operations* (Authors: Management Systems International jointly with InMind, Kyiv) – May 25, 2008. – P.26.

orders of central executive agencies<sup>14</sup>. Herewith, the lists of papers to be submitted to the licensing agency to obtain a customs carrier license are dispersed in these normative acts, and the full list of the papers is only provided in State Customs Service<sup>15</sup> reference materials. In practice, there are straddling laws, and more or less specific regulation only appears in subordinate regulatory legal acts.

Large volumes of regulations make it difficult for users to comprehend the overall scope and sequence of steps required from agencies and their own steps. In addition, the limited access to information concerning activities of public administration entities enhances the role of public administration as a single source of information. Such exceptional role of officials in public administration creates the risk of soliciting a reward even for general information.

Therefore, it seems expedient that *regulatory provisions* concerning the procedure of rendering administrative services and control and execution of supervision authority in systemized regulatory legal acts should be *streamlined*. Bringing together separate provisions in systemized regulatory legal acts will enable revocation of others and optimization of legislation in this fashion.

The administrative simplification reform pursuing reduction of corruption took place in USA in the 1990s. In particular, Executive Order of the President of USA No. 12861 of 11 September 1993 ordered executive agencies to cut by half those internal regulations that were not required

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<sup>14</sup> The Procedure is regulated by Law of Ukraine dated 01.06.00, No. 1775-III "On Licensing of Certain Types of Business Activities", provisions of resolutions of Cabinet of Ministers of Ukraine of 20.11.2000, No. 1719 "On Introduction of Licensing of Unified Format for a specific type of business activities", "On Approval of List of Documents to attached to application for the issuance of license for a specific type of business activities" of 04.07.2001, No. 756; "On Approval of Procedure for generation, maintenance and use of licensing register and provision thereof to the Unified Licensing Register" of 08.11.2000, No. 1658; "On term of validity of license for specific business activity, amount and accounting of issuance fees" of 29.11.2000, No. 1755. Some licensing procedure issues are also regulated in Orders of the State Committee for Regulatory Policy and Entrepreneurship and State Customs Service of Ukraine of 25.03.04, No. 34/212 "On Approval of terms of licensing of intermediary activity of customs carrier", and also, Order of the State Customs Service of Ukraine dated 06.04.04, No. 243 "On Approval of Procedure for Issuance of Licenses for Customs carrier intermediary activity".

<sup>15</sup> [www.customs.gov.ua/dmsu/control/uk/publish/article;jsessionid=97573AA0294205](http://www.customs.gov.ua/dmsu/control/uk/publish/article;jsessionid=97573AA0294205).



by law. This simplification resulted in the end in better performance of administrative agencies, fostered prompt delivery of administrative services and better customer services. According to available information, the European Union also implements the policy of de-regulation and simplification currently;

b) **Conflicting clauses in various regulatory legal acts** are also common for national legislation. For example, in case of the above mentioned customs carrier license, there is an apparent discrepancy concerning the point of time, when counting of the time allocated for making a decision concerning the license and its actual issuance should start<sup>16</sup>. This results in discretionary application of different in their substance regulations when dealing with one and the same issue, thus creating corresponding corruption risks;

c) **Many legislative acts are obsolete**. For example, to decision making concerning provision of the state-owned and communal housing is based on the legacy Soviet legislation<sup>17</sup>, which is outdated both in terms of institutional organization of public administration (since it considers the “hierarchy” of executive committees of local councils) and of the delineation of private and public sectors (mixed regulation with regard to the communal and private (departmental) housing resources, etc).

d) **Lack of regulation of the hierarchy of regulatory legal acts**. Unfortunately, due to political struggle the Law of Ukraine “On Regulatory Legal Acts” although adopted several times by the Verkhovna Rada (Parliament) of Ukraine has not been signed by the President up to date.

*The problem of complexity of existing regulation and frequently incongruity of requirements of the legislation is recognized as a corruption risk by entrepreneurs surveyed under the project. In particular, during focus-group discussions in Kharkiv the entrepreneurs mentioned that it is*

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<sup>16</sup> Provisions of Articles 11 and 14 of Law of Ukraine “On licensing of certain types of business activities” and paragraphs 2.7 and 2.11 of “Procedure of issuance of customs carrier intermediary license” approved by the State Customs Service of Ukraine of 06.04.04, No. 243.

<sup>17</sup> Housing Code of Ukrainian SSR of June 30, 1983, No. 5464-X and Regulation on Registration of citizens requiring improvement of housing conditions and provision of accommodation thereto in Ukrainian SSR” approved by Decree of Council of Ministers of USSR of 11.12.1984, No. 470.



*impossible to follow all regulations, standards and rules of fire inspection which have been in place since the Soviet time. “When visiting, the fire safety inspector demands installation of 20,000 UAH fire alarm systems, then control panel, then he requires connection to the control panel and so on and so forth. After a series of negotiations we come to the conclusion that in fact, nobody needs this; instead what they need is a certain amount split on a quarterly basis or paid regularly on a monthly basis, which turns out to be far less expensive than following all fire inspection standards”. Therefore, during focus-group discussions the arguments given by entrepreneurs suggested that the government intentionally uses such language in its rules for business activities that makes it impossible to work without their violation.*

According to our study, lack of regulation of administrative procedures involving relationships between public administration and private persons should be referred to major corruption risks. There is **no legal regulation of general administrative procedure** in Ukraine as yet. Only relatively the 1996 Law of Ukraine “On requests of citizens” can be deemed a general procedure act. However, this a “Soviet” type of legislative act not only in terms of its origin, but also, in approaches it sets forth, in particular:

- a) It covers (protects) no legal entities;
- b) instead, it establishes a single legal approach to reviewing requests from public by both public entities (government and local self-government) and enterprises, institutions, organizations, irrespective of forms of ownership, including private);
- c) The Law ensures no basic rights of private person (e.g. the right to be heard prior to decision-making, rights to access to the case files, etc);
- d) The Law provides no mechanisms for protection of legal interests of interested persons (it does not even contain such category of administrative procedure as “interested persons”) etc.

Naturally, (if we look at the heading), the Law “On requests from citizens” does not regulate the topics of interference procedure whatsoever.

Besides, we should take into account various existing thematic (special) legislation, particularly in the sphere of entrepreneurship, social security services etc. Such thematic (special) legislation is not always aligned

with the Law “On requests from citizens” and often contains conflicting provisions. For example, despite the general approach to determining the term of review of requests from citizens (not-to-exceed 45 days under the Law “On requests from citizens”), foreign passports can be issued to Ukrainian nationals to be able to travel outside Ukraine within *three months*<sup>18</sup>.

However, the acts of subordinate level prevail in regulating relations between public administration and private persons which constitutes even a bigger problem. Therefore, the government agencies developing a regulation or regulating procedure for rendering a specific administrative service are driven primarily by departmental (corporate) interest, which fosters no protection of rights and legitimate interests of private persons.

Thus, it is necessary to adopt a common law for all administrative bodies with description of the administrative procedure that would ensure streamlining, optimization and humanization of the administrative procedure. This requires **adoption of the Administrative Procedure Code of Ukraine within the shortest possible terms**. The subject draft is currently with the Verkhovna Rada (Parliament) of Ukraine<sup>19</sup>.

One of the main objectives of the subject Code should be to streamline relations between public administration and private persons/entities (individuals and legal entities), efficient and fair legal control over the procedure of settlement of administrative matters. Therefore, this Code should establish principles and rules of administrative procedure for public administration, in particular, administrative proceedings at the referral from private persons (rendering of administrative services), interference proceedings (initiated by public administration bodies, including control and supervising divisions), and administrative (pre-trial) appeal.

An important objective of the Code is to establish new procedural safeguards of the rights of private persons, in particular: the right of a private person to be heard prior to adoption of the administrative act (individual

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<sup>18</sup> Article 5 of the Law of Ukraine “On Procedure of departure and entry of Ukrainian nationals”.

<sup>19</sup> *Draft Administrative and Procedure Code of Ukraine* of 18.07.2008 № 2789. Unfortunately, on 31.03.2009 this draft law was reviewed at the Supreme Soviet of Ukraine and failed to obtain sufficient support in the first reading (219 votes against required 226) and has not been submitted for the first reading for the second time.

decision of public administration body) affecting such person; access to the case files making the basis for the decision to be taken; limitation of discretionary powers of administrative bodies; mandatory motivation (justification) of the administrative act to be issued; acknowledgment of the right of private person to aid and representation in administrative procedure; notification of the person of challenging the administrative act and legal assistance in connection with the subject act, etc.

The above mentioned guarantees will facilitate substantial reduction of corruption risks. Thus, a mandatory requirement to hear (take into account) an opinion (position) of the interested person by an official prior to making decision will foster more effective performance of the body and greater extent of consideration of interests of the person.

Ensuring access to the files of the case will substantially reduce the risk of illegitimate actions undertaken by civil servants in this case. The lack of information concerning the case files and no access thereto on no grounds restricts civil rights and creates a corruption risk, thus creating a potential for receiving an additional reward by the servant for the very fact of furnishing such information. No access to case files deprives the person of information concerning the case, thus limiting his/her right to testify or provide additional arguments. Awareness of user of the status of the case at one or another phase enables him/her to project its perspective and to be confident about the expected decision. This is why the mentioned files must be provided to the person at the person's written request to the body or personal approach to an officer or body.

An essential element for elimination of corruption risks in the sphere of administrative services and control and supervision related functions of public administration are to establish the duty of officers to describe the motives for taking a negative decision and communicate this description to the person in writing within reasonable timeframe. The requirement to explain their actions will foster legitimate decisions. The legislation requiring from administrative bodies to notify a person of the procedure to challenge the decision (administrative act) will also correspond to interests of the public. The Code shall also regulate the rules of revision of administrative acts and revocation (voidance) thereof.

Upon adoption of Administrative Procedure Code some specific (thematic) laws will need to be revised to align with the principles and rules of general administrative procedure.

*Oksana Prodan, Chair of Entrepreneurs' Council at the Cabinet of Ministers of Ukraine believes that clear and detailed description of all procedures in terms of description of all processes to be followed by civil servants according to circumstances will make a major barrier for corruption in administrative bodies. Other surveyed experts and entrepreneurs also supported this idea as a major priority in countering corruption.*

***Therefore, our recommendations are as follows:***

- 1. To continuously improve legislation focusing on simplification and systemization thereof.**
- 2. To particularly focus on legal regulation of procedural aspects of relationships between public administration and private persons, and in this part, to have the Administrative Procedure Code of Ukraine approved as soon as possible.**

### **3.1.4 Lack of Proper Tools of Legal Protection and Ineffectiveness of the Institute of Administrative Appeal in Particular**

The lack of effective tools of legal protection against decisions, performance or non-performance of public administration due to inefficiency of administrative appeal institutes and immaturity of administrative legal proceedings in particular constitutes general corruption risks affecting the functioning of the system of public administration on the whole. The key problems in this area are as follows:

1) **Low level of confidence of population in the judicial system**, which causes vulnerability of population related to committing corrupt actions. To a great extent this is caused by projection of corruption experience of some persons on the operation of overall judicial system, disseminating the idea of corruption in Ukrainian courts through mass media. However, the actual level of corruption in judicial system is significant. This is affirmed by the

results of Study of Corruption in judicial System of Ukraine in particular, which mentions that 19 % of the surveyed citizens had actual personal corruption related experience (related to activities of judicial system on the whole – *our comment*)<sup>20</sup>.

No confidence in court is also caused by burdensome and complex procedures of processing cases, long terms of handling disputes in court, and problems related to enforcement of court decisions. Therefore, only a minor part (4.1%) of respondents appealed against actions of officials or law-enforcement authorities officially when dealing with specific cases of corruption. The majority believes such appeal to be useless (51%)<sup>21</sup>.

*Our studies showed that only 6.2% entrepreneurs answered the question “What will you do if a bribe is extorted in order to have you issue settled?” that they would go to court; while with the public this number was 2.7%.*

The results of other expert studies show that the lack of confidence in courts causes entrepreneurs to resort to corrupt actions particularly where their relations with sanitary and epidemiological service are concerned<sup>22</sup>.

Most problem areas of the judicial branch remain unresolved due to the non-systemic approach to the judicial reform, which progresses very slowly. There is a pending problem of the lack of effective fair decision making tools ensuring independence of judges due to significant pressure from corporate interests, favoritism (partiality based on personal relations) in judge’s career management, vulnerability of judges to internal administrative influence of the court leadership. The right of individuals to judicial protection (access to justice, the right to administrative suit); fair and timely processing of administrative cases (in particular, the right to familiarize with the files

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<sup>20</sup> *Study of Corruption in Court System of Ukraine: Courts of General Jurisdiction*. National reviews of the status of corruption in judicial system of Ukraine: Courts of general jurisdiction. The report is prepared under the project “Promotion of active participation of the public in countering corruption in Ukraine “Worthy Ukraine” of 25.06.2008 – P. 15.

<sup>21</sup> Same – P. 24.

<sup>22</sup> *To pay or not to pay...? bribes, or what each Ukrainian faces almost every day* – VERSO-04-2008 – P. 20.

pertaining to the case, furnish evidence, participation in examination thereof, recusals and petitions); ensuring equality of the parties before the law and the court, transparency, recording of court sessions using technical means, active role of the court, legal aid etc; and also, guarantees of lawful and justified judgments in administrative cases, establishment of the procedure and terms of appeal is not fully supported.

The tools of administrative proceedings to appeal against judgments/performance/non-performance of executive agencies and local self-government bodies to administrative courts to decide on the legitimacy of the above need to be specified in special (thematic) legal acts. It is also important to ensure accessibility of administrative courts and to overcome the problem of remote location of administrative courts.

**2) Insufficient effectiveness of internal administrative tools related to challenging the decisions, performance or non-performance of public administration bodies.**

The major problem here is lack of impartiality (objectivity) and “corporatism” showing in particular in the protection of departmental interests (which are often replaced with individual interests of supervisors), including unlawful interests (for example, non-responding to violation of the law in relation to an individual to conceal (avoid) negative outcomes for the management of agency (for the system).

*What is notable is that only 7.2% entrepreneurs and 4.6% public in the survey under the project resorted to the easiest way which was to complain of the employee extorting a bribe to the supervisor. Perhaps, the public has reasons to believe that extorting a bribe is not just the initiative of one civil servant but a common practice in this agency. However, in our opinion, these numbers also show ineffectiveness of administrative appeal institute in itself.*

This problem goes back to the post-Soviet legal institute which has not been reformed, since administrative appeals tool still requires lodging a claim with a higher agency or official within the chain of subordination. However, this simplified approach does not remove the problem of partiality in processing the complaint. The legislation does not take into account that many public administration bodies have no hierarchy whatsoever where

democratic organization of the government is concerned (this applies to local self-government in the first place), and that actually no tools of pre-trial appeal are available.

One of the steps toward elimination of organizational and legal gaps of the appeals procedure would be *adoption of the Administrative Procedure Code* (see more detail concerning this draft law in Subparagraph 1.3 of this law), which includes a specific section concerning regulation of appeals against administrative acts. Herewith one of the options for improvement of mechanisms of administrative appeals is to introduce specific appeals institutions to administer complaints. Such divisions (institutions) should ensure impartial processing of complaints and objective procedure. It would be expedient to form such appeals divisions (institutions) from or with the involvement of the public, thus enhancing objective processing of complaints and confidence of public in administrative (pre-trial) appeals.

The issue pertaining to no access of vulnerable or otherwise disadvantaged people to free legal aid could also be viewed within the context of the lack of effective remedy tools for private persons in their relations with public administration bodies. Establishment of “legal clinics” at higher educational institutions, law offices and public advocacy organizations would be an effective tool to ensure exercise and protection of the rights of vulnerable or otherwise disadvantaged people.

***Therefore, our recommendations are as follows:***

- 1. To implement judicial reform to ensure the right of private persons to effective judicial protection.**
- 2. To reform the institute of administrative appeals to ensure the objectivity (impartiality) thereof.**

### **3.1.5 Weakness of Internal Administrative Controls, Including Ineffective Internal Investigations Procedure**

The inefficient administrative control function is one of the common problems pertaining to the organization and operation of public administration in Ukraine, which impacts the level of corruption. Its inefficiency shows



in rather limited competence of control and audit divisions at ministries and other central executive agencies, as well as in no requirement at the majority of government agencies to control compliance of their employees with rules of professional ethics and anti-corruption laws. For example, it is quite common that control and audit divisions exercise their authority just in the area of reviewing the legality of the use of funds, security and use of assets by the subject agency, accuracy of accounting etc.

However, the competence of the above-mentioned control and audit divisions at executive agencies includes no responsibility to audit administrative activity of the agency, i.e. overall performance evaluation and review of specific elements (areas), effectiveness of implementation of budget programs, achievement of appropriate objectives (goals) pertaining to effective use of public resources.

Even the Accountability Office (which carries out external controls, though) referring its audit to “performance audit” acknowledges the facts of various financial violations and ineffective use of funds due to inefficient managerial decisions, insufficient regulatory framework, planning gaps, etc<sup>23</sup>.

Therefore, the idea of ***broadening the functions of internal control divisions***, in particular through consolidation of the following functions in one component, is worth considering:

- Controls and audits;
- Administrative audit;
- Official (disciplinary) investigations, particularly in part of corrupt practices.

Such broadening of functions requires ***legislative support of independence of internal financial control and counter corruption*** divisions. This refers to independence of supervisors of divisions, which can be achieved through their appointment for a specific period of time and legislative guarantees against unjustified early dismissal; independence of supervisors in personnel and human resources related issues, forming the structure of divisions and operational planning. The procedural independence of employees of such

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<sup>23</sup> See, for example, 2007 *Report of Accountability Office* [http://www.ac-rada.gov.ua/achamber/control/uk/publish/article?art\\_id=1146426&cat\\_id=32826#\\_8](http://www.ac-rada.gov.ua/achamber/control/uk/publish/article?art_id=1146426&cat_id=32826#_8)



divisions in initiating internal investigations against any employee of the agency is also important.

Unfortunately, the current situation is quite opposite: control and audit divisions at ministries and other central executive agencies fully depend on the head of agency where the issues of appointments, operational planning, and off-schedule controls (requiring a specific ministerial order) etc<sup>24</sup> are concerned.

The gaps in the procedure of internal investigations are as follows: investigations can only be initiated by the head of agency, investigation can only be carried out by a collegial unit (investigation requires an internal investigation commission to be established), investigation has stringent time limitations (the term of internal investigation of not to exceed two months), investigation commission depends upon directions from the head of agency, no investigations to be carried out based on anonymous reports, referrals, complaints etc<sup>25</sup>. The “hot lines” for complaints from public operate rather as an exception.

Excessive formality of official investigations (primarily in part of duration) creates a potential for reinstatement of person in office based on court decision. For example, according to former Head of the State Customs Service of Ukraine, 18 officials were dismissed from the State Customs Service dismissed in January-February 2008, but they were promptly reinstated in office by court decisions<sup>26</sup>. According to media, at one time there was a corrupt pattern of reinstatement in office of those who had been dismissed. For a reward from the dismissed person his/her supervisor deliberately made an error in the dismissal order, and this error was sufficient ground for the court to decide on reinstatement in office of subject individual<sup>27</sup>.

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<sup>24</sup> See *Procedure for Internal Financial Controls by ministries and other central executive agencies* approved by Decree of Cabinet of Ministers of Ukraine of 22.05.2002, No. 685.

<sup>25</sup> See *Procedure of official investigations against civil servants* approved by Decree of Cabinet of Ministers of 13.06.2000, No. 950.

<sup>26</sup> *Khoroshkovskiy dismisses customs officers “in bulk”* // 14.03.2008 // Source: <http://portal.lviv.ua/news/2008/03/14/172514.html>

<sup>27</sup> *I. Stepanov. The Customs Revanche* // Topic. – 14.06.2006 // Source: <http://tema.in.ua/article/1010.html>

Considering the above, there is nothing striking about the general statistics of those public servants who have been held liable for corruption. In particular, there was administrative action for corruption against 1,487 persons in 2007, including 557 officials from central agencies and local self-government; criminal action against 1,659 persons, including 606 civil servants and 178 deputies of all levels<sup>28</sup>. In 2008 criminal action for corruption offences was taken against 689 civil servants and 208 deputies of oblast and district levels. 6,200 reports for corrupt practices (9 of administrative nature) were referred to courts. 1,075 civil servants of grades 1-4 were held liable<sup>29</sup>.

Therefore, one of the tools to eliminate this corruption risk is *improvement of the internal investigations procedure* and focusing on the process of dismissal of civil servants. It should be also noted that the above stated weaknesses of internal administrative controls are even more critical for local self-government.

***Therefore, our recommendations are as follows:***

- 1. To develop the function of internal controls (financial control and internal investigations) in public administration bodies.**
- 2. To ensure independence of internal financial control and countering of corruption divisions of public administration bodies.**
- 3. Improve the procedure of internal investigations.**

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<sup>28</sup> *For Protection of civil rights // Uriadovyi Courier*. – 2008. – No. 22. – February 05, 2008 – P. 7.

<sup>29</sup> *Specifics of national corruption // Legal Newsletter of Ukraine* – 2009 – No. 11 (715). – March 11-14, 2009 – P. 4-5.

### **3.1.6 Ineffective External Control of Public Administration Activity**

Usually the weakness of external control (parliamentary control in the first place) of public administration activities also supports corruption factors<sup>30</sup>.

The Verkhovna Rada of Ukraine provides parliamentary control in Ukraine both directly and through various components (profile committees, provisional special and provisional investigation commissions), members of Ukrainian parliament and special supplementary institutions – Commissioner of Verkhovna Rada of Ukraine for Human Rights and Accountability Office. The parliamentary control focuses on the performance of government agencies and local self-government, their officials in terms of their compliance and effectiveness.

Herewith, we can acknowledge here the low effectiveness of parliamentary control due to the politicization of most institutions of parliamentary control and lack of appropriate legal framework. In particular, the Law of Ukraine “*On Provisional Commissions, Special Investigation Commission and Special Provisional Commissions of Verkhovna Rada of Ukraine*” was just enacted in March 2009.

Performance of the *Commissioner of Verkhovna Rada (Parliament) of Ukraine for Human Rights* does not answer expectations or demonstrate same effectiveness as similar institutes in developed countries.

*The Accountability Office* carries out control over the national budget revenues and the use of funds on behalf of Verkhovna Rada of Ukraine (Article 98). Although GRECO generally positively commented on the Accountability Office, but it was also mentioned that “the Office has no specialized personnel to deal with corruption related issues and corruption is not handled as a specific area”<sup>31</sup>.

To a certain degree the *Prosecutor Office of Ukraine* can be referred to the subjects of external control over public administration activities, having the function of “oversight of respect of human and civil rights and

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<sup>30</sup> See details of judicial control in paragraph 1.4.

<sup>31</sup> See paragraph 160 of *Evaluation Report on Ukraine approved by GRECO during the 32nd plenary meeting* (March 19-23, 2007).

freedoms, compliance with laws in this area of executive agencies and local self-government, their officials and employees” (paragraph 5, Article 121 of the Constitution of Ukraine). However, we are convinced that this function should be taken away from prosecutor offices as soon as possible (with corresponding constitutional amendments).

The underdevelopment of the function of external control in local self-government could be mentioned as a separate problem. In particular, the function of external financial control is actually not available at local the level.

***Therefore, our recommendation is as follows:***

- 1. To enhance the mechanisms of parliamentary controls; ensure their specialization and appropriate legal framework.**
- 2. Develop the mechanisms of external control at local self-government bodies.**

## **SECTION 3.2    CORRUPTION RISKS IN THE SPHERE OF RENDERING ADMINISTRATIVE SERVICES**

### **3.2.1. Personal Communication (Contact) of Private Person, a Consumer of Administrative Service with the Public Officials Rendering Administrative Services**

One of the largest corruption risks in the sphere of rendering administrative service is an opportunity (in most cases this becomes a necessity) of personal communication (contact) of a private person-consumer of administrative services with public official of administrative agency rendering the subject administrative service (deciding on the matter in substance or drafting the decision).

In most cases the national legislation forces a private person to apply for an administrative service solely through personal application (personal visit). For example, even to receive a simple administrative service like obtaining a single tax certificate by a small business entity<sup>32</sup> there is no other option of requesting and obtaining such administrative service (administrative act) but to address the administrative agency rendering the subject administrative service in person. This situation on one hand makes it possible for an dishonest civil servant to extort a “reward” and on the other hand it gives no chance for the private person to “motivate the civil servant to “speed up“ the settlement of the matter, etc.

This problem can be resolved through various steps and tools to minimize personal communication between individuals and public servants (at least in the matters where such communication is not required for resolution of the matter).

In particular, we recommend *broad use of mailing for communication between private persons and public officials (administrative bodies) rendering administrative services*. Requesting a service by mail will minimize the risk of extortion and receiving unlawful rewards considering

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<sup>32</sup> Decree of President “On simplified system of taxation, accounting and reporting for small business entities” of 03.07.1998, No. 727/98, and Order of STA of 29.10.99, No. 599 – “On Approval of single tax certificate and issuance procedure”

that a public official receives a letter (or e-mail) from the person of unknown identity. This situation reduces the risk of wrongdoings for public officials by removing the option of not receiving or non-registration of the request (in particular, where the request is sent by registered mail), demanding additional documents or applying additional requirements not required by the law (for example, in practice, when receiving a request or issuing the above-mentioned single tax certificate, tax inspectors often demand “endorsement” to be obtained from components of tax inspection, Pension Fund and other public social funds concerning any existing debts of subject entrepreneur (though these are absolutely illegitimate requirements), trying to “sell” some additional “chargeable services” (for example, like a common practice within the Ministry of the Interior system).

Herewith, it can be made a duty of administrative body to send a reference (confirm) receipt of the request specifying the position and name of the issuing civil servant in the fashion similar to receiving an order).

The rule to both address an administrative body by mail and also, to have the *response (documents) sent by mail* (registered mail, courier service) could be established as another anti-corruption instrument. In this situation the consumer of administrative service has no need or tool offer an “additional reward” to the public official (it is common practice in Ukraine that the very fact of positive attitude of public official is no longer a standard, thus stimulating “rewards”). Therefore, the above will remove any direct contacts with public officials of administrative bodies in terms of rendering administrative services or receiving the results (administrative act).

This is an expedient approach, which is attested by the above example of issuance of single tax certificate, considering that it is frequent practice with entrepreneurs when tax agencies fail to follow the ten-day period for issuance of certificates required by the law. How they motivate such delay includes lack of certificate forms, busy supervisor, who needs to sign the certificate (on business trip, sick leave etc), busy inspector, etc. If certificates were sent by mail, this would enable control of appropriate terms, and tax personnel would have no loopholes for abuse.

***Broad use of information technologies and Internet in particular*** would also contribute to curbing the subject corruption risk. Firstly, general accessibility of and openness of information concerning administrative services eliminates the need for many potential customers of administrative services to seek personal consultation from public official of public administration body. Websites enable consumers to visit a webpage of specific agency via Internet and find information concerning administrative services, required documents etc., while when visiting the administrative body, people involved in direct contacts with the public officials having the necessary information. In practice such consultations give way to corrupt practices at times. Secondly, administrative service (more in the future) can be obtained via Internet and e-mail.

Another effort to minimize such corruption risk as personal communication of a private person with the public official rendering services, would be ***implementation of*** so-called ***“one-stop-shop”*** or offices for public, i.e. administrative offices rendering all (or nearly all) administrative services of certain administrative and territorial level. In this case, the process of rendering administrative services is nominally “broken” since all applications for administrative services are accepted in one spot (at the reception desk) while other employees immediately review and decide on the matter. Customers have no motivation “to encourage” the servant receiving applications, since this employee has no say in either solution or final decision on the matter. Therefore, the link between the customer and the official rendering the administrative service is removed, and the public official responsible for the final decision on subject administrative matter has no tool to extort unlawful reward or to receive such reward. The customer submits the application and all necessary documents to the “one-stop-shop” and in the end he/she will receive in person (or by mail) just the outcome of all efforts taken by other servants. Here we can also use the principle of ***“single window” principle*** when customer of administrative service is not involved in internal administrative steps (endorsements, reports). This is responsibility of “one-stop-shop” employees. Therefore, the above will minimize direct contacts between customers and public officials of public administration

are (without mentioning an ideal option of applications and responses by mail).

The “one window” principle can be implemented without one-stop-shops, in particular, where regulation of some categories of administrative services is concerned. Unfortunately, in practice obtaining construction permit (with no plot of land allotment) requires more than 11 visits to licensing agencies<sup>33</sup>.

*It should be noted that within the framework of our project in our survey of the public we asked whether sending documents by mail or submitting to “one window” rather than personal visits would mitigate the risk of extortion of bribes (expectation of gifts) by public officials. On the whole, the public was skeptical about the proposed novelty (30% supported the idea) while over 53.0% of entrepreneurs referred personal communication of entrepreneurs with public officials rendering administrative services to high corruption risks. The above was either due to the lack of understanding of the very idea or concern that it will be more difficult to receive the service. According to social scientists, the key criterion for evaluation of the degree of risk for entrepreneurs the extent of impediments for business rather than the risk of the need to offer bribes.*

At “one-stop-shops” (and also, in common administrative agencies) the principle of ***dividing the premises (building) of public administration body into “open” and “close” parts*** to include a customer service area open to visitors and restricted area for employees only. As an exception other persons may get access to this area having access permit, which is another security tool as it is always possible to check the identity and destination of visitors. *Unfortunately, the focus-group did not support this idea during their discussions (expert Oksana Prodan was also skeptical about this idea). Therefore, it requires systemic approach, which would ensure proper control over the access procedures, prevention of personal contacts (communication) between personnel and visitors.*

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<sup>33</sup> *Studies of status of corruption in the sphere of regulatory policy. Construction permits and operations with land* (Authors: Management Systems International in cooperation with InMind, Kyiv) – May 25, 2008 – P. 34.



One-stop-shops and other organizational forms of rendering administrative services should ensure *open and accountable communications between visitors and civil servants*. For example, the reception area and “customer service” area will ensure mutual control of servants meeting with visitors. For this purpose, work places of officials of administrative body communicating with visitors should as open as possible (without any barriers or partials between them). This enables visual control as well (including video systems etc).

The way to minimize this corruption risk of personal communication between customer and public servant rendering administrative service is *rotation of personnel of* public administration body. Such rotation can involve relocation within one and the same public administration body. This method of countering corruption makes it more difficult for a public official rendering administrative services “to generate regular customers”, to build up informal relations, and develop “corrupt practices”. Such rotation should apply to any position involving high corruption risk (including positions involving continuous communication with consumers of administrative services). *This idea was supported by under 50% of entrepreneurs. Focus-group also provided a number of comments in this regard. However, the focus group from Dnepropetrovsk is offered a notable comment by stating that “rotations will make the entrepreneurs position even worse” since “when you visit one person this works out all right, but when someone else comes in, you are a nobody to this person and there you are, building up relations with this new person ”.* In our opinion, this latter comment speaks in favor of rotation since when there comes a need to “build up relations”, even those entrepreneur and officials that are not law-obedient have to be more cautious and perhaps they will not dare to resort to corruption.

***Therefore, our recommendations are as follows:***

- 1. Use mail services for rendering administrative services (both in requesting a service, and sending its result (document, response))**

*About 30% of entrepreneurs supported this idea.*

**2. Develop e-governance (in particular, using e-mail for requesting administrative service and consultation)**

*This idea was supported by 74.7% of persons surveyed under the project (16.72% were not sure, and 8.6% were against).*

**3. Establish “one-stop-shops” (“offices for visitors” etc) and implementation of “one window” principle**

*This idea was supported by 84.5% of persons surveyed under the project (10.2% were not sure, and 5.3% were against).*

**4. Zoning of buildings (premises) of administrative bodies into “closed area” (to process documents) and “open area” (for visitors)**

*This idea was supported only by 39.4% of persons surveyed under the project (30.9% were not sure, and 29.7% – were against).*

**5. Accountable personal communications between public servants and visitors**

**6. Rotation of public servants (horizontal relocation within the administrative body).**

*This idea was supported only by 41.4% of persons surveyed under the project (32.4% were not sure, and 23.9% – were against).*

### **3.2.2 Limited Options for Private Persons to Choose Between the Ways of Requesting an Administrative Service**

No choice for the consumer of administrative services constitutes another corruption risk. Legislation offers no options where requesting administrative services is concerned, except direct application of customers to public administration bodies (described above in the section dealing with “personal communication between individuals and the public officer”, where the accent is made on integrity of applicant, and the form of response is ignored). Since in most cases private person is not interested in extra expenses (including corruption related spending), when selecting the form of communication, the person will be driven by the *legitimacy of his /her position* and knowledge of rules of rendering the service. In particular, in case the person has insufficient knowledge, the person is interested in visiting the agency in person (another option would be well established advisory function). In all other cases, the person will avoid visiting administrative agencies and communication with its employees and use *alternative ways such as mailing, e-mailing* etc., wherever possible.

Alternative tools of application for administrative service will reduce personal contacts. Public officers will have no opportunity to give preferences to some customers of administrative services while denying or delaying services for others expecting receipt of unlawful benefits because, since recorded communication (which is communication via mail) always enables control of timeliness of rendering services and adherence to the principle of equality where requests are reviewed in order of their receipt.

Alternative options are efficient and convenient. Using mail or e-mail is not bound to working days and hours. They ensure transparency of operations, and involve no personal contacts. E-mail expedites the process of service delivery in the most time and cost efficient manner for the customer and the state. In this case personnel of administrative body has no opportunity to apply additional requirements, in particular, with regard to additional documents, references etc.

The option of *receiving administrative services by telephone request* is also convenient for customers, though in some cases it requires though identification of applicants.

***Therefore, our recommendations are as follows:***

**Introduce maximum options of requesting administrative services at legislative level:**

- a. Using mail services;**
- b. Using Internet technologies, in particular, e-mail;**
- c. Requesting service by telephone (if possible).**

*This idea was supported by 77.5% of surveyed under the project (16.5% were not sure, and 6.1% – were against)*

### **3.2.3 Overall Complexity of the Procedure of Rendering the Most of Administrative Services**

The overall complexity of the procedure of rendering numerous administrative services constitutes one of major risks in the sphere of administrative services. Involvement of numerous agencies (institutions) in rendering administrative services and numerous documents required make it almost impossible for a private person to obtain positive results in a legitimate manner (or if successful, this takes huge amounts of time and effort).

*Entrepreneurs mention the overall complexity of the procedure of rendering many administrative services as one of the first-ranking corruption risks (68.9% of entrepreneurs consider this risk to be a major one).*

In practice even members of the Government point out that where land related issues and design permits are concerned “this is a terrible situation when it is necessary to collect 300-600 signatures along this “legendary” route”<sup>34</sup>.

*For example, such administrative service as alteration of the designated purpose of a land plot requires:*

- *from land plot owner to submit application and all necessary documents to appropriate town hall or local administration for a permit to re-approval of land plot planning project;*
- *Its actual re-approval by a number of executive agencies (land resources, water supply service, forestry, city construction and architecture,*

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<sup>34</sup> *Government and business – partners? // Uriadovyi Kurier – 2008 – No. 20. – February 01, 2008 – P. 4.*

*environmental agencies, sanitary and epidemiological, protection of cultural heritage);*

- *Public landscaping evaluation by land resources office;*
- *Decision by local council or local administration concerning alteration of the designated purpose of a land plot ;*
- *Issuance of act of state for the title to subject land plot with altered designated purpose*<sup>35</sup>.

The above-mentioned administrative service shows numerous phases of most administrative services, which the customer has to pass on his/her own. Herewith, it is the responsibility of the customer to visit each administrative agency, although if organized effectively, most of these endorsements, issuance of reports and other interim steps should occur inside public administration without participation of customers.

Therefore, it is no surprise that, according to the World Bank in its evaluation of business climate, Ukraine is number 139 in the list of 175 countries: the cumbersome and complex permitting procedures makes Ukraine one of the last on the list due to no encouragement of investments and predetermining corruption<sup>36</sup>.

The way out of this situation is ***simplification of procedures of rendering administrative services***. Over 55 % of entrepreneurs complain of unreasonably numerous formal procedures for obtaining construction permits<sup>37</sup>. Entrepreneurs also mention simplification of procedures in customs area as a priority for curbing corruption<sup>38</sup>. Initial steps with regard to simplification of procedure of rendering some administrative services have been proven in practice. For example, the procedure of registration of entrepreneurs-individuals is believed to quite simple and effective though there have been no major complaints here before.

<sup>35</sup> Regulated by Land Code of Ukraine of 25.10.2001, Procedure for altering designated purpose of land owned by citizens or legal entities approved by Decree of Cabinet of Ministers of Ukraine of April 11, 2002, No. 502.

<sup>36</sup> *Government and business – partners? // Uriadovyi Kurier – 2008- No. 20. – February 01, 2008 – P. 4.*

<sup>37</sup> *Study on the status of corruption in the sphere of regulatory policy. Construction permits and operations with land* (Authors: Management Systems International in cooperation with InMind, Kyiv) – May 25, 2008 – P. 37.

<sup>38</sup> *Corruption in Ukraine. National study on the status of corruption in the sphere of regulatory policy: Customs Procedures* (Authors: Management Systems International in cooperation with InMind, Kyiv) – April 15, 2008 – P. 20, 33.

The most effective form of such simplification is **implementation of the “one window” principle** (mentioned in subparagraph 2.1 of the subject study), where a private person applies submits an appropriate application and documents to the administrative agency, and the rest of communication is carried out within public administration (when the leading element collects all approvals and reports etc).

*The idea of simplification of the procedure of rendering administrative services through “one window” principle is supported by 78.2% of entrepreneurs within our survey (only 4.8% are against).*

The practice of one-stop-licensing centers for entrepreneurs (hereinafter referred to as LC) in Ukraine demonstrates that this is the right way despite any problems. In particular, the problem of the requirement to visit other licensing institutions<sup>39</sup> is still there. Unfortunately, many existing LC in Ukraine do not operate actually. For example, only one center in Brovary of 33 LC’s in Kyiv Oblast partially meets the requirements to LC’s<sup>40</sup>. But whatever gaps and problems, entrepreneurs acknowledge that LC is an effective anti-corruption instrument (in particular, at least 46% of business entities support this opinion)<sup>41</sup>.

The use of *up-to-date informational technologies* will ensure effectiveness of the “single window” principle. Informational technologies will simplify and expedite the process of documentation processing and review, foster transparency of decision making processes. Therefore, it is necessary to create electronic databases (ensuring protection of personal data from unauthorized use), which will ensure that both customers obtaining positive results and civil servants improving their performance will benefit from the latter.

However, even the “single point of contact” principle is not fully feasible, even partial **reduction of number of institutions rendering administrative services** and clear and exhaustive (“not overloaded”) list of documents

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<sup>39</sup> *Study on the status of corruption in the sphere of regulatory policy. Construction permits and operations with land* (Authors: Management Systems International in cooperation with InMind, Kyiv) – April 25, 2008 – P. 42.

<sup>40</sup> *Study on the status of corruption in the sphere of regulatory policy. Construction permits and operations with land* (Authors: Management Systems International in cooperation with InMind, Kyiv) – April 25, 2008 – P. 43.

<sup>41</sup> *Evaluation Report on the results of public monitoring of performance of one-stop-licensing centers* – Ivano-Frankivsk: “Private Initiative Development Agency”, 2009. – P. 4.

required for obtaining desired administrative services can be deemed a considerable improvement.

*It should be emphasized that reduction of the number of institutions on the way to obtaining the service was supported by 94.7% of entrepreneurs surveyed under this project.*

Simplification of procedure of rendering administrative service will ensure its clarity and comprehensiveness. Simplification includes the following: firstly, deletion of unnecessary phases of the procedure; secondly, reduction of time for processing documents by a certain agency/division; thirdly, reduction of the amount of documents to be submitted to trigger action and decision on the matter. Thus, several causes for customers to resort to corruption will be eliminated.

Another element of simplification would be ***introduction of application forms and standard forms*** to apply for administrative service. It will make it easier to fill up mandatory section in application forms than to try to guess which information is required in arbitrary format.

Another way to simplify the procedure of rendering administrative services is introduction of the ***“silent consent” principle*** into national legislation in particular where various statements and approvals are concerned. Such mechanism is proposed in draft Administrative Procedure Code of Ukraine, pursuant to which if no denial has been received from administrative body within the established period of time the latter is deemed to have been received; or if administrative body has not issued a statement within the established period of time and issued no extension, the administrative matter can be resolved without the latter<sup>42</sup>. *In this case it should be emphasized that the “silent consent” principle seemed to have raised some doubts in entrepreneurs (46.9% of entrepreneurs supported the idea and 28.8% were not sure, 24.2% – were against), some believed it to be “unreliable” (“it’s better to have the permit considering that the denial paper might have been lost altogether and you’ll never know”). In our opinion, firstly, what is important here is to ensure appropriate legal protection of the rights of private person, i.e., the presumption of the rightness of private person should be introduced where the agency has to prove the fact of the response*

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<sup>42</sup> Section 2, Article 70, draft Administrative and Procedure Code of Ukraine, registration number 2789 of 18.07.2009



*being sent, and not the person . Secondly, it should be taken into account that this principle might be effective at interim stages of the procedure of service delivery (obtaining approvals and conclusions). Therefore, if “single window” is implemented, both private person and the lead administrative agency responsible for the final outcome, which is an administrative service itself, will benefit from the “silent consent principle”.*

Apparently the above-mentioned approach can also apply to individual administrative services in general. This concerns the so-called **“application (or “notification”) based principle of rendering administrative services.** Unfortunately, it is not common for current legislation. In particular, we might mention here legalization of public organization by announcing that it has been established. However, even registration of the place of residence of private person in Ukraine actually follows the permitting procedure.

***Therefore, we recommend:***

- 1. To simplify the procedure of providing administrative services, including introduction of the ‘single window’ principle.**
- 2. To minimize the number of agencies (institutions) involved in providing administrative services, as well as the number of the documents required to be presented by a person.**

*Reduction of the number of the governmental bodies/offices to be visited in order to receive a service was supported by 94.7% of the entrepreneurs interviewed within the framework of the project.*

- 3. Introduction of forms to apply for an administrative service.**
- 4. Introduction of the ‘silent consent’ principle when giving consent/ agreement or when providing conclusions.**
- 5. Spreading of the application (notification) principle when providing certain administrative services.**

*The idea of further spreading the ‘notification’ principle was supported by almost 70% of the entrepreneurs interviewed within the framework of the project (8.6% of the respondents did not support it; and 21.5% of the respondents could not answer the question).*



### **3.2.4 Lack of Information on the Procedure of Providing Administrative Services**

One of the corruption-related risks is the absence (poor accessibility) of information on the procedure of receiving an administrative service. Unfortunately, at present there is actually no legislative requirements regarding the duty of the public information agencies to publish the information about their activities, including the one on the administrative services. In practice, the scope of information one can get within the premises of an administrative agency or at the official web page varies dramatically and depends, first and foremost, upon organizational factors and initiative of the management of the agency. Even the directory-inquiry service in a public administration is a rare thing, while the consultation offices function only in some agencies that deal with the entrepreneurship issues. Such level of accessibility of information combined with low quality and complexity of the domestic legislation form an additional factor that “fertilizes” corruption.

*Citizens and entrepreneurs remain extremely dissatisfied with the fact that nobody takes pains to clearly explain which exactly documents/papers are required to settle a matter, and, therefore, they are forced to visit a specific governmental body several times. In particular, this is the most often encountered complaint among the entrepreneurs who requested services and remained dissatisfied (57.6%), as well as 48.7% of the population who requested services and remained dissatisfied.*

Therefore, to resolve this problem, the information on the procedure of receiving an administrative service must be complete, understandable and open. A possibility for a person to familiarize himself/herself with such information in advance will contribute to the increase of the level of confidence on the part of the population in the positive result of deciding an administrative case; in other words, this will contribute in a certain way to legal definiteness. That is why, a customer who is confident in the observance of the laws will not be motivated to pay “extra money” for a lawfully expected positive result.

Accessibility of information shall be achieved, first of all, by means of ***installation of information stands in those rooms of an administrative agency that are meant for the reception of citizens***, and which must display the information on providing an administrative service; the specific structural unit/division to be addressed; a list of the required documents/papers;

the schedule of reception days and hours; the period of processing of an application; the size and procedure of payment of charges (fees); information about the legislation regulating the provision of a certain administrative service, as well as the contact phone number dialling which a customer of an administrative service may obtain the specific information he/she needs, samples/templates of the filled in documents, etc. This information must be free and readily accessible to the public. *Incidentally, during the focus-group discussions within the framework of this project, they voiced additional proposals regarding the improvement of informing the entrepreneurs. In particular, a proposal was made to appoint an employee responsible for the information stand (its filling and topicality). In this case, the information about the person in charge must also be displayed on the stand.*

Information on providing an administrative service may also be disseminated by ***publishing booklets (pamphlets)*** and their free distribution in the office of an administrative agency or by mailing it to the customer's address (at his/her request).

One of the ways to minimize this corruption-related risk is ***creation of consultation offices*** (provided there is a considerable number of consultation visits/calls), ***creation of enquiry services, including directory-inquiry ones***. Such services must operate every working day (and, whenever possible, during weekends). Steps must be taken to overcome the situation typical for many governmental bodies – a continuous busy signal or no reply when dialling a telephone number. *Interestingly, during the focus-group discussion, the Kyiv entrepreneurs positively assessed the work of the consultation service at the Shevchenko District State Administration.*

A still more promising way to provide information on the procedure of receiving an administrative service may be ***introduction of online consultations***. To do that it is necessary to equip the officials of the public administration agencies with proper information and communication technologies. With a view to providing the customers of administrative services with the information on the procedure of receiving an administrative service ***it is necessary to create and ensure functioning of web pages and other electronic resources of administrative agencies***. However, in this case, one must pay attention to such a problem as “digital differentiation” – division into those who have an access to Internet and those who do not have it. With this purpose in mind, it seems appropriate to install special

terminals on the premises of the public administration agencies which provide administrative services. With the help of such terminals the visitors coming to those administrative agencies will be able to obtain the same information that is contained on the web page of the given agency. Thus, not a single person will be restricted in his/her right to obtain complete and true information, also with the help of high technologies.

As foreign experience demonstrates<sup>43</sup>, it is also possible to create a separate *(single) website (Web portal)*, which will contain the list of all administrative services provided by the executive power agencies and local self-government bodies, with identification of the name of the agency that provides such a service and other information which may be necessary to receive this administrative service. User friendliness of this approach is obvious, since in one place a person can get information about any service. This information is subject to continuous updating.

*Unfortunately, the reality in Ukraine is far from the ideal. The majority of the official websites of the local state administrations contain only schedules of reception of citizens by the management, however, there are neither the schedules of reception of citizens by the functional units/divisions nor even general provisions as to providing certain administrative services. Even on the websites of those agencies which are known for good practices of creating single permit issuing centers, there is lack of information on administrative services.*

It is possible to oblige the administrative agencies to provide information not just about their services, but also about the support (or “related”) services provided by other administrative agencies.

***Therefore, we recommend:***

- 1. The rooms of an administrative agency that are meant for the reception of citizens shall display the information required by a person to unassistedly address an administrative agency (information stands carrying samples/templates of documents, reference phone numbers, reception hours, procedure and size of payment for the services, etc.).**

*This proposal was supported by 92.5% of the entrepreneurs interviewed within the framework of*

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<sup>43</sup> See, for example, the *Service Canada* website. Source in the Internet: <http://www.servicecanada.gc.ca/eng/home.shtml>

*the project (5.0% of them remained undecided, and 1.7% were against it).*

**2. Introduction of consultation offices and telephone directory-inquiry service.**

*This proposal was supported by 84.2% of the entrepreneurs interviewed within the framework of the project, (11.2% of them remained undecided, and 4.6% were against it).*

**3. Ensuring functioning of the web pages and other electronic resources of the administrative agencies, which have to provide all information required for receiving an administrative service.**

**It is also appropriate to create a single website (a Web portal), which will contain the list of all administrative services provided by the executive power agencies and local self-government bodies in Ukraine, as well as the information on receiving such services.**

*This proposal was supported by 87.3% of the entrepreneurs interviewed within the framework of the project (10.6% of them remained undecided, and 2.0% were against it).*

**3.2.5 Restricted Access to a Public Administration Agency that Provides Administrative Services**

Limited time for the reception of citizens, long queues, disorder in the private reception procedure, lack of comfort, etc., restrict an access to the public administration agency that provides administrative services, and create obstacles on the way to reception of administrative services. All this “scares off” private persons and forces them to seek informal contacts in order not to waste their time and nerves.

For example, even at the single permit issuing centers in large cities, the schedules of their operation cannot be regarded as satisfactory. In particular, in Mykolayiv and Lugansk they have only one reception day a week, and two reception days a week in Chernihiv<sup>44</sup>.

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<sup>44</sup> See *Summary Report Based on the Results of Public Monitoring of Activities of the Single Permit Issuing Centers.* – Ivano-Frankivsk: Public Association “Private Initiative Development Agency”, 2009. – p. 33.

Even more typical is the situation when different structural units/divisions have few hours for reception of citizens during certain days of the week/ For example, at the Obolon District State Administration in the city of Kyiv, specialists of the housing inventory and distribution department receive citizens only for three hours twice a week.

*Few or inconvenient hours of reception became the reason of dissatisfaction of 40.7% of the entrepreneurs (interviewed within the framework of the project) who requested certain services and remained unsatisfied. Moreover, during the focus-group discussion in Kyiv the following example was made: “In order to just register a business it is necessary to arrive at 4 or 5 a.m. and even at those small hours a waiting list is already generated. If you fail to make the first ten on the list, there is no guarantee that you will be received, and if your name is entered among the first twenty – most likely you stand no chance to be received”.*

Therefore, it is necessary **to align citizens visitor schedule**. Certainly, administrative services vary in their content, the circle of the customers they are provided to, hence it is difficult to establish common (unified) recommended reception hours for all administrative services. It is necessary to take into consideration diversity (total number and structure) of the customers of administrative services based on different criteria (e.g., age structure, occupational pattern, etc.), which substantially effects the time required for the reception of citizens and its parameters. In particular, for the administrative services which enjoy the biggest demand among the customers, it is necessary to establish reception hours all the working day long and, if possible, every weekday. At least several reception hours for certain kinds of services should be provided during the weekends. This proposal must be taken into account especially in relation to those administrative services, which are commanded mainly by the employed population, and those which enjoy the biggest demand. Another option to resolve this problem may be providing reception hours in the end of the day (e.g., till 8 or 9 p.m.) or before the beginning of a “normal” working day (e.g., starting from 8 a.m.). Thus, a customer will have more opportunities to apply for an administrative service. *However, in any case, it must be emphasized that almost all interviewed entrepreneurs spoke in favor of a considerable extension of the reception time (increasing the working hours of the governmental bodies).*

In this context, an ideal option, certainly, would be introduction of “one-stop-shop” (which were already mentioned in subsection 2.1 of this Survey), where it would be possible to receive all or the majority of administrative services, in particular, owing to the establishment of such a work schedule that may cover all working days from Monday till Friday, as well as Saturday (and/or Sunday) and during evening hours (e.g., till 8 or 9 p.m.). Besides, it would be reasonable for the “one-stop-shop” (this may also apply to any administrative agency) to work without any breaks (for lunch, for processing of documents, etc.).

Another problem to be resolved is **lack of streamlined procedure of visitor reception** of the customers who request an administrative service. Unfortunately, typical for Ukraine is the practice when the governmental bodies actually delegated to the citizens the duty to “organize” (self-organize) in the course of private reception (oftentimes, including generation of the waiting lists and maintaining the order in the queues). That is why the situation with the long queues also forces the citizens to use informal contacts and incites corruption.

*The problem of long queues is regarded as a top-priority one by 58.1% of the population who applied for services and remained unsatisfied, as well as by 56.0% of the entrepreneurs (interviewed within the framework of the project) who applied for services and remained unsatisfied.*

The way out of this situation is the use of various methods of alignment of visitor reception procedure (orderly waiting line). In particular, owing to introduction of new information and communication technologies, one of the promising methods is the **use of “electronic queue”** (*an electronic queue management system*). According to one of the approaches (in case of availability of the electronic queue), a person himself/herself enters his/her name opposite a certain free reception hour in the electronic register, selecting the time that best suits him/her. Thus, a customer can rationally plan his/her business schedule, counting on the fact that his/her reception at the specific office of the administrative agency will take place exactly at the time specified in the register. Another option is electronic queue control (queueing). In particular, at the reception room, a person must be issued (by an employee or with the help of a special terminal) a tag or a ticket showing his/her number in the queue, while a light panel displaying the number of the customer being serviced at the moment shall be mounted over each reception work place

(a desk, a window, etc.). As soon as a reception place becomes vacant, the number of the next customer must be displayed on the corresponding light panel. Thus, the queue becomes transparent and well controlled.

The above-mentioned mechanisms must be protected against possible misuse. *For, as has been demonstrated even by our survey, they also mentioned negative experience associated with the beginning of introduction of the electronic queue management system at the Central Post Office in Kyiv (the focus group from Kyiv: “There, certain persons collected dozens tickets each and started to sell them”). However, the foreign experience and the experience gained by numerous domestic private companies, regarding the introduction of electronic queues, is mainly positive.*

The electronic queue management system also makes it possible to continuously analyze the work of both an individual administrative employee and that of any division or office as a whole. At any given moment it is possible to see how many visitors have been received, what service was sought by each of them, how much time he/she had to wait in the queue, for how long he/she was serviced by an administrative employee, and how many people requested each individual service.

Besides, video surveillance can be conducted within the bounds of the office, which helps to reduce the corruption risks and makes it possible to continuously improve the activities of an administrative agency.

Another aspect of a restricted access to the public administration agency that provides administrative services is **lack of comfort** for the customers in the rooms where reception per se takes place. A customer who is not provided with proper comfortable conditions during his/her stay at an administrative agency wishes to obtain the desirable result (an administrative act) as soon as possible. If the procedure of application for providing an administrative service and waiting for an administrative act to be issued become dragged out, this customer may choose the corruptive way. In order to minimize such corruption risk, it is necessary to provide at least minimum comfortable conditions for the stay of customers in the office of an administrative agency. In particular, it is necessary to ***ensure an access of the customers to amenities and conveniences*** (measures must be taken to improve the sitting accommodation, to properly arrange the places for filling out the documents, and ensure availability of drinking water, bathrooms, etc.).



*Lack of comfort (in particular, small rooms, insufficient sitting capacity, etc.) has been mentioned as one of the reasons for dissatisfaction with the provided services by 33.5% of the persons who requested the services and remained unsatisfied.*

Another option to resolve the above-mentioned problems is **introduction of alternative ways of application for an administrative service** (which is described in more details in subsection 2.2 of this Survey), since the use of such means of lodging an application as postal service, E-mail, etc., may help to resolve the problems associated with long queues, limited reception hours, lack of comfort, etc.

A restricted access to the public administration agency that provides administrative services includes also the need to **ensure access to the documents (request slips and forms)**, which a customer must fill out in order to receive the desirable administrative service. This can also be done by using modern information and communication technologies, namely by placing standard documents (forms) on the Internet page of the corresponding administrative agency or on the governmental web portal and providing an online access to them. Another positive proposal deals with the creation of a single file (electronic base) of the forms required to receive administrative services, and templates for filling them out. *This proposal was also supported during the focus-group discussions conducted among entrepreneurs within the framework of this project.*

Application of the majority of the above-listed methods in order to minimize such a corruption risk as a restricted access to the public administration agency requires not so much legal (legislative) decisions, as implementation of the corresponding organizational measures.

***Therefore, we recommend:***

- 1. To reconsider the time of reception of citizens at the public administration agencies with a view to ensuring its sufficiency and convenience for the customers of administrative services.**
- 2. To improve the procedure of private reception of the customers at the governmental bodies through introduction of the “electronic queue”, etc.**



*This proposal was supported by 70.5% of the interviewed entrepreneurs (21.9% of them remained undecided, and 7.6% were against it).*

**3. To create proper comfortable conditions/amenities at the rooms designed for private reception of citizens.**

*This proposal was supported by 71.5% of the interviewed entrepreneurs (22.9% of them remained undecided, and 5.5% were against it).*

**4. To resolve the problem associated with the access to request slips and other blank forms required to receive administrative services.**

*This proposal was supported by 84.2% of the interviewed entrepreneurs (14.0% of them remained undecided, and 1.8% were against it).*

### **3.2.6 Unreasonably Long Periods of Time Required to Provide Certain Administrative Service**

The effective legislation that regulates the procedure of providing certain kinds of administrative services, in some cases makes provision for unreasonably long periods of time required to provide certain administrative services, which is one of the reasons why the customers of administrative services commit corrupt acts. For example, according to Article 5 of the Law of Ukraine “On the Procedure for Exiting Ukraine and Entering Ukraine by Ukrainian Citizens” the aggregate period for processing of applications for issuing a passport/ a traveling document for a trip abroad shall be *three months*. Obviously, this term is too long and not justified (especially if one takes into account the fact that 10 working days are enough for the urgent processing of similar applications).

It is also understood that the majority of the customers wish to obtain the desirable result of providing an administrative service (an administrative act) within the shortest possible term. However, an official of the public administrative agency, as a rule, completes consideration of this matter during the last few days of the established period of time. In other words, there is an objective conflict of interests. And when unreasonable (too long) terms for providing administrative services are fixed in the legislation, this stimulates even law-obedient citizens to initiate (or give their consent to)

“additional payments” for expediting the settlement of the matter: either additional official payments for the so called “paid services” or “unofficial” payments to the public officers. In the last case corruption takes place.

*The netrepreneurs interviewed within the framework of our stude referred the problem of unreasonably long terms for providing certain administrative services (issuance of certificates, endorsement, etc.) to high corruption risks – 66.0% of those polled answered that the risk was very high.*

So, it is not incidental that the desire to “expedite settlement of the matter” is also mentioned in the *Review of the activities of the single permit issuing centers*<sup>45</sup> as the main reason for making unofficial payments. The *Study of the situation with corruption in the sphere of regulatory policy. Permits for construction and land transactions* also identifies the problem of procrastination of the documents preparation process as the main (top-priority) one (this was indicated by 53% of the respondents)<sup>46</sup>.

The way to eliminate this corruption risk is obviuos – it is necessary to ***establish, at the legislation level, justified (adequate) and clear periods of time for providing administrative services***, including revisiting of and introducing amendments in the corresponding regulatory and legal acts. Reasonableness (justification) of such terms must be established based on the studies of the time required for providing specific administrative services. In other words, it is obligatory to take into consideration complexity of the administrative matter settlement procedure.

In order to minimize the given corruption risk it is also necessary to ***simplify the procedure or providing an administrative service***, including a wider use of modern information and communication technologies.

Another similar corruption risk (however a more “weighty” one from the point of view of its effect on corruptibility of the officials of the public administration agencies) is the absence, in the domestic effective legislation, of any terms for providing certain kinds of administrative services. For instance, the legislation does not stipulate the time required for issuing a

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<sup>45</sup> See *Summary Report Based on the Results of Public Monitoring of Activities of the Single Permit Issuing Centers.* – Ivano-Frankivsk: Public Association "Private Initiative Development Agency", 2009. – p. 48.

<sup>46</sup> *Study of the situation with corruption in the sphere of regulatory policy. Permits for construction and land transactions.* (Authors: Management Systems International in cooperation with the InMind Company, Kyiv) – Kyiv, May 25, 2008. – p. 32.

state act on the title to a plot of land<sup>47</sup>. In such cases the process of waiting to receive an administrative service becomes absolutely uncertain.

*The existence of this problem is also confirmed by the experts interviewed within the framework of this project. In particular, Kseniya Lyapina says that “the risk associated with the unreasonably long time required for providing services exists also because far from all services have formal execution terms”.*

To successfully deal with the time breach issues it is necessary to provide efficient mechanisms of control and responsibility for violation of the terms of providing administrative services. Establishment of better control over the observance of the terms of providing administrative services may be facilitated by a legislation-fixed obligation of an administrative agency to respond to the requests to provide a certain administrative service by **using the postal service** (this was already mentioned in subsection 2.1). The date stamping on the letter mailed to a consumer of an administrative service and containing the result (an administrative act) is a guarantee that an official of the public administration agency will fulfil his duty in due time. Incidentally, control over the succession of settlement of the matter (the order of sending the response) is efficient also from the anti-corruption point of view, since it allows to reveal the cases when settlement of identical matters takes different period of time (that is, when a request was lodged with the agency later, and the response to it came more promptly). Such information allows to assume the influence of other factors (including illegal ones) on the decision-making process.

*True, the discussion of the proposal to oblige the public administration agencies to mail the responses has demonstrated that people do not trust such “contactless” forms of communication. There are several reasons for that: negligence on the part of many employees and delayed dispatch of information, as well as a hard material and financial situation in many government bodies, when there is no money to buy envelopes, to say nothing of “recommended letters”. However, it seems that for the country it would be cheaper to restore trust to the postal service than to continue to suffer from corruption.*

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<sup>47</sup> The procedure of their issuance is regulated by the Land Code of Ukraine No. 2768-III, dated October 25, 2001, the Guidelines for the procedure of compiling, issuance, registration and keeping of the state acts on the title to a plot of land and the right to permanently use a plot of land, and land lease contracts, approved by the Order of the State Committee of Ukraine for Land Resources No. 43, dated May 4, 1999, as well as by the Provisional Procedure of Keeping the State Land Register, approved by the Order of the State Committee of Ukraine for Land Resources No. 174, dated July 2, 2003.

**Therefore, we recommend:**

- 1. Establishment, at the legislation level, of justified (adequate) periods of time for providing administrative services.**

*This recommendation was supported by 94.1% of the entrepreneurs interviewed within the framework of our survey (1.0% of the respondents did not support it, and 4.8% remained undecided).*

- 2. Obliging the administrative agencies to respond by mail.**

*This recommendation was supported by 55.7% of the entrepreneurs interviewed within the framework of our survey (12.5% of the respondents did not support it, and 31.8% remained undecided).*

**3.2.7 Disorder in the Payments For Administrative Services, Imposition of Additional “Paid Services”**

One of the corruption risks in the sphere of providing administrative services is disorder in the payments for such services, including imposition of additional “paid services” and “charitable payments”. The practice of imposition of additional “paid services” has been legitimized in Ukraine. In particular, under the provisions of the Law of Ukraine “On Company Income Tax”, the lists of the paid services provided by the bodies of state authority and local self-government bodies may be established by the Cabinet of Ministers<sup>48</sup>. The way chosen by the legislators, which run counter to the Constitution of Ukraine, has unreasonably extended the sphere of competence of the Government, since they allowed the latter, through its acts, to actually give extra authorities to the executive power bodies in addition to those established by the laws.

Imposition of additional “paid services” provided by the bodies of state authority and local self-government bodies may result in corruptive activities. Although those “services” are not mandatory, a private person, as a rule, is not informed about that. For example, according to Item 4 of the Procedure for processing applications for issuance of passports of a citizen of Ukraine for going abroad and children’s travelling documents, approved

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<sup>48</sup> See paragraph five of subitem 7.11.8, Article 7 of the *Law of Ukraine “On Company Income Tax”*, dated December 28, 1994.

by the Order No. 1603 of the Ministry of Interior, dated December 21, 2004: “*based on a written application* (set off in italics by *the authors of the report*), natural persons and legal entities may receive the paid services approved by the Resolution No. 795 of the Cabinet of Ministers of Ukraine “On the approval of the list of paid services which can be provided by the agencies and departments of the Ministry of Interior”, dated June 4, 2007. Instead, in reality, on the contrary, all private persons in fact obliged to get the whole set of “paid services”; however, obviously, using informal relations and for “smaller fee” they can release some of the customers from such “services”.

Also, the problems associated with the adoption of such lists of paid services include both establishment of the right of **the government bodies to provide deskwork-related services (e.g., xeroxing)** and **“splitting up” of an integral administrative service into several separate (paid) services**. An example of the latter is introduction of such service as “issuance of blank forms”. In particular, according to Item 85 of the “Amount of payments for the services provided by the agencies and departments of the Ministry of Interior”<sup>49</sup>, providing the customers with the forms of information-registration nature (registration/deregistration cards), for execution of documents required for exiting and entering Ukraine, permits for temporary residence/stay in Ukraine, invitations of foreign citizens to Ukraine, and certificates granting Ukrainian citizenship is payable (the fixed cost of one form is 14.95 Ukrainian hryvnias). It is obvious, though, that these and other blank forms must be freely available at a public administration agency. Also, the amount to be paid either must be included in the total amount of payment for providing the whole administrative service, or must not be collected from customers altogether. ***Therefore, it is necessary to stop the practice of splitting up of an administrative service into several “paid” ones.*** Besides, the payment for administrative services (administrative charges) must be established, as a rule, in a fixed amount for providing a whole administrative service according to the law or the procedure established by law.

The support deskwork-related services (xeroxing, lamination, etc.) are in fact a form of legalized exacting of money from the customers of administrative services (also, as a rule, the prices established at the public

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<sup>49</sup> Approved by the Order of the Ministry of Interior, the Ministry of Finance, the Ministry of Economy No. 369/1105/336, dated October 5, 2007.

administration agencies are higher than the ones in the private sector). In our view, ***providing paid deskwork-related services by government bodies must be prohibited altogether.***

*Interestingly, the entrepreneurs interviewed within the framework of our project did not voice their unanimous support of the idea to prohibit the public administration agencies to provide paid deskwork-related services (for example, for issuing blank forms, xeroxing, etc.). This idea was supported only by 56.2% of the respondents, 26.6% of them remained undecided, and 17.2% were against it. The logic of the entrepreneurs is as follows: it is convenient to acquire a blank form and make a Xerox copy at one place. However, our proposal should not be regarded as an initiative to make the life of customers more difficult. We just propose that those deskwork-related services should be provided by private economic entities (in case this is done on the premises of an administrative agency, the service providers must be selected as a result of an open tender) and not be “imposed” on customers irrespective of their wishes.*

In the context of the “paid state services” it is worthwhile to pay attention to the latest initiatives of the Government of Ukraine, in particular the Draft Law “On Services Provided by the Bodies of State Authority, the Public Authorities of the Autonomous Republic of Crimea, the Local Self-Government Bodies, and the Government-Financed Institutions”<sup>50</sup>, which, among other things, makes provision to fix that the procedure of providing state services by the entities mentioned in the title of the draft law, and the amounts of payment for those services shall be established by the Cabinet of Ministers of Ukraine and the local self-government bodies (unless otherwise provided for by the law). Since other legislative regulation is almost absent, upon the adoption of the above draft law, the effect of the corruption factor described in this section of the Survey may become even stronger.

***Therefore, we recommend:***

- 1. To streamline legal regulation of the issues of paid/free administrative services, mechanisms of establishment of the amounts of such payment and the procedure of their approval through drawing up and adoption of the Law “On Administrative Charges”.**

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<sup>50</sup> Draft Law, Registration No. 4176 of the Verkhovna Rada of Ukraine, dated March 6, 2009.

**2. To stop the practice of splitting up of administrative services into several “paid” ones, to ensure the result-oriented approach.**

*The proposals to streamline the process of determining the payments for providing services and to stop the practice of splitting up of services (for each of which a separate payment is collected) were supported by 78.1 % of the interviewed entrepreneurs (8.8% of them were against, and 13.1% remained undecided).*

- 3. To cancel paragraph five of subitem 7.11.8, Article 7 of the Law of Ukraine “On Company Income Tax”, as regards the powers of the Cabinet of Ministers of Ukraine to establish the lists of the paid services that may be provided by the bodies of state authority and local self-government bodies.**
- 4. To cancel the resolution of the Cabinet of Ministers of Ukraine on the approval of the lists of the paid services that may be provided by the bodies of executive power.**
- 5. To prohibit the public administration agencies to provide paid deskwork-related services.**

### **3.2.8 Territorial Monopolism in Providing Administrative Services**

To some extent, a corruption risk in the sphere of providing administrative services may be considered to be associated with monopolism in providing such services, i.e. delegating the competence (authority) in providing the absolute majority of administrative services to a single and clearly identified public administration agency. Besides, this monopolism is, first of all, of a territorial type and is associated with the situation when a private person seeking a service can address exclusively one agency within the clearly defined administrative-territorial unit, as a rule, in accordance with the place of residence of a natural person (or location of a legal entity).

Certainly, this rule of determining competence is classical from the point of view of the theory of administrative law. However, the development of information technologies and some specific features of the domestic system of registration of the personal place of residence force us to be critical of this rule. In particular, assigning the consumers of services to a specific agency



creates major inconveniences for them, especially under the conditions of in fact “permit-based” system of registration of the place of residence, when many citizens in Ukraine live at the places different from their registered addresses. Such situation causes an increase in a number of corruption risks, since it sometimes forces citizens to deliberately violate the law (for example, earlier there were cases of receiving the card of the State Motor Vehicle Inspectorate, which confirms that the vehicle “passed an annual inspection”, not at the place of its registration) or to suffer even more from inconvenient days and hours of reception (for example, when in order to settle a matter a person has to ask for the permission to leave a job not for several hours but for several days to be able to address the administrative agency at the place of registration of his/her residence), etc.

Today it is difficult to find an excuse for territorial monopolism in case an administrative service is provided by a division of the public authority, which is a part of the single centralized system, or even by a local self-government body with the subsequent consolidation of all information in the single national database. Thus, doubtful is the appropriateness of motor vehicles registration only at the place of residence of a natural person<sup>51</sup> (which in Ukraine means “at the place of registration of a person”). It is also unclear why one has to re-register his/her motor vehicle if he/she moves to a different place of residence (to a different region), because for a private person this is associated with a lot of trouble with temporary registration cards, number plates, and a significant waste of time and money<sup>52</sup>. Since, in case any breach of the traffic regulations is revealed, the State Motor Vehicle Inspectorate of the Ministry of Interior can cancel the registration and bring the guilty persons to responsibility, while the single database makes it possible to exercise control over the proper inventory/registration of all motor vehicles and the change of a person’s place of residence (the information about which could be received in accordance with the notification procedure).

At least partial ***“demonopolization” of providing administrative services (in particular, as regards the territorial principle)*** can help to eliminate this corruption risk. The public administration of Ukraine already has some

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<sup>51</sup> Item 27 of “Rules of state registration and inventory of automobiles, buses, as well as chassis-mounted self-propelled vehicles, motorcycles of all types, brands and models, trailers, semi-trailers and sidecars” approved by the Resolution No. 1388 of the Cabinet of Ministers of Ukraine, dated September 7, 1998.

<sup>52</sup> Items 21 and 22 of the above-mentioned Regulations.



experience in doing away with a territorial monopoly regarding certain administrative services. Thus, in accordance with the provisions of the Family Code of Ukraine (Part 1, Article 28), an application for registration of marriage can be lodged with any state registry office in Ukraine.

In some cases, state agencies themselves create alternative opportunities for the customers to receive certain administrative services. Improvement of the service related to the issuance of foreign passports can serve as an example. In 2008, inter-regional centers for issuing foreign passports were opened in the city of Kyiv, where citizens of Ukraine can receive their foreign passports irrespective of the place of registration of their residence<sup>53</sup>.

However, there are other, less positive examples. In particular, in 2008 they discussed the idea of giving the right to pass an annual test of motor vehicles not at the State Motor Vehicle Inspectorate but at the car service stations (irrespective of the place of registration of the motor vehicle). This resulted, though, in the situation when a person all the same has to pass this test at the State Motor Vehicle Inspectorate at the place of registration of the motor vehicle, but before that he/she first must obtain the car checkup protocol from an economic entity (registered in the State Motor Vehicle Inspectorate). Besides, the number of documents demanded from the owner of a motor vehicle has increased<sup>54</sup>. So, it is no wonder that this service is regarded as a most corruptive one.

In any case, in our view, a number of administrative services can be “demonopolized” already today, given the existence of the centralized state record keeping systems (in particular, this can apply to the above-mentioned procedures of registration of motor vehicles and passing the technical condition test, etc.).

*The “demonopolization” proposal was supported by 75% of the interviewed entrepreneurs, 8.3% of them did not support it, and another 16.7% could not provide a definite answer. Some of the experts (in particular, K. Lyapina) expressed their doubts regarding this idea, that is why we would like to emphasize once again that meant here is territorial demonopolization and, certainly, not of all administrative services but only some of them.*

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<sup>53</sup> For more details see: <http://212.1.76.10/mvs/control/main/uk/publish/article/153757>

<sup>54</sup> See “*Procedure of conducting the state checkup of technical conditions of wheeled motor vehicles*” approved by the Resolution No. 606 of the Cabinet of Ministers of Ukraine, dated July 9, 2008.

In some cases monopolism in providing administrative services is justified, in particular when this is called forth by technical reasons (e.g., the need to keep hard copies of the documents) or in other well-grounded cases. In particular, it seems to be reasonable to provide the administrative services associated with the title to real estate (land, housing, other real property) at the place of its location.

When considering the issue of demonopolization of providing administrative services, it is also necessary to take into account the possibility of providing administrative services not only by the public administration agencies but also by private persons. Such “privatization” of administrative services will definitely create competition with the public administration agencies, which, in turn, will help to decrease the corruption risks. As has been demonstrated by modern foreign experience, involvement of private persons (first of all, legal entities) in providing certain administrative services allows to improve their accessibility and upgrade their quality. In this case, though, we are speaking of not only demonopolization, but also of additional competition for the public sector on the part of the private sector.

*Also, the delegation of certain powers of authority to private and public organizations must be done in an extremely well-weighed manner with provision of proper state control over exercise of such powers. Since, as the polling results demonstrated, only 2.6% of the population and 17.1% of the entrepreneurs support this idea. Moreover, 9.8% of the population and 11.2% of the interviewed entrepreneurs believe that delegation of certain powers of authority to organizations of the private and public sectors may increase the level of corruption.*

***Therefore, we recommend:***

- 1. To refuse from territorial monopolistic approach when providing administrative services (if possible) and offer alternative opportunities to private persons to select an administrative agency for providing administrative services.**

## **SECTION 3.3    CORRUPTION RISKS IN CONTROL AND SUPERVISORY ACTIVITIES OF THE PUBLIC ADMINISTRATION**

### **3.3.1    Unreasonably Broad Interference Powers Given to Many Administrative Agencies As Regards Termination/Prohibition of Activities**

Serving as examples of interference powers given to the administrative agencies regarding termination/prohibition of the activities of economic entities for the violation of the rules and regulations of entrepreneurship, sanitary rules, nature protection regulations, preventive fire-fighting regulations, etc., may be the decision-making powers of such bodies and agencies:

1) *veterinary medicine* regarding:

- limitation of the scope of work of the facilities (projects) which are used for production, processing and storage of products;
- limitation or prohibition of import, transit and export of goods;
- isolation of transit cargo with goods at the quarantine station;

2) *veterinary police* regarding:

- temporary prohibition of circulation of food products;
- termination or limitation of the activities associated with manufacturing and circulation of goods at the facilities (projects);

3) *protection of the consumer rights* regarding:

- termination of shipment, sales and manufacturing of products;
- temporary suspension of activities of the economic entities in the sphere of trade and provision of services;
- sealing of the production, storage, trading and other rooms and spaces of the economic entities in the sphere of trade and services, as well as (sealing) of defective measuring instruments;

4) *bodies of internal affairs, the state control and auditing service, the state price control inspectorate* – regarding sealing of cash registers, cashier's offices, warehouses and archives;

5) *the State committee for regulation of the financial services markets* regarding:

- suspension or limitation of the validity of the insurer licence;
- withdrawal of licences and striking off the state register of insurers (reinsurers);

6) *the state ecological inspectorate* regarding:

- limitation or temporary suspension of the work of enterprises and facilities;
- sealing of the rooms, equipment and instrumentation;

7) *fire inspection* regarding termination or prohibition of the work of enterprises, individual production facilities, production sections, installations, operation of buildings, structures, individual rooms, heaters, sections of the power network, performance of fire-hazardous works, output and sales of flammable products, fire protection systems and means, validity of the issued permits for execution of works;

8) *the state sanitary and epidemiological service* regarding limitation, temporary prohibition or termination of the work of enterprises, institutions, organizations, projects of any purpose and designation, construction, reconstruction and expansion of facilities, investment activities, etc.

Corruptibility lies in the potential possibility to exercise or not to exercise those powers, as well as in the grounds for and terms of application of such measures, the overwhelming majority of which are left at the discretion of the representatives of the inspection agencies. In other words, actually we are talking about broad discretion powers of the administrative agencies.

The polling conducted among entrepreneurs brought the following results: 80.9% of the respondents consider this risk to be very big, 12.8% of them confirmed its existence but recognized only insignificant degree of danger associated with those powers of the administrative agencies. Only 1% of the respondents do not think those powers are corruptive. In all, 5.3% of the total number of the interviewed entrepreneurs could not decide whether the right of the inspection agencies to prohibit performance of certain types of work and activities is a corruption risk or not.

The legal grounds for the corresponding decision-making are established in the normative (regulatory) acts at a too general level:

- “*violation of the legislation requirements*”;
- “*non-compliance with the requirements of the regulatory and legal acts and normative documents*”;

- “*violation of the veterinary and sanitary measures*”;
- “*non-compliance with the sanitary and veterinary-sanitary requirements or technical regulations*”;
- “*suspicion that importation to the territory of Ukraine or transit cargo with goods do not meet the required conditions*”
- “*violation of the trade and service providing regulations, and conditions of storage and transportation of goods*”;
- “*violation of the preventive fire-fighting regulations which is fraught with fire or impedes fire fighting and evacuation of people*”;
- “*non-compliance with the sanitary norms requirements*”, etc.

It is obvious that violation of or non-compliance with the above-mentioned legislation requirements, rules, regulations, conditions and measures have different legal content and are characterized by different degrees of harm and danger for the specific persons or society. However, the regulatory acts do not contain the criteria of limitation of the discretion power given to the inspection agencies and give their employees the authority to prohibit performance of certain activities for any (even the slightest) “violation”.

*This position was confirmed by one of the focus-group participants who described the case,, when revealing of one food product with the expired shelf life led to the threat of closure of the whole enterprise, despite the fact that the range of products included thousands of titkles of various food products.*

Uncertainty is also characteristic of the terms (length of the periods of time) for which the work/activities can be prohibited, limited or terminated. The overwhelming majority of the decisions made by the inspection agencies contains the following formulation: “until the revealed drawbacks (violations) are eliminated” or “until the judgement is made by the court”. There are some examples, though, of using a better practice. Thus, the decisions made by the price control inspectorate and the bodies of internal affairs remain valid till the corresponding ruling is made by the court, but for no longer than 24 hours.

For the legal systems of the countries of Western and Eastern Europe such powers of administrative agencies are considered to be justified<sup>55</sup>. However, the national realities force the legislators to reconsider the

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<sup>55</sup> Administrative Justice In New European Democracies: Practical Study In the Sphere of Administrative Law and Procedure in Bulgaria, Estonia, Hungary, Poland and Ukraine: Translation from English / Editors: D. J. Halligan et al. – K.: ArtEc: Budapest: OSI/KOLPI. – pp. 250-363.

corresponding grounds for making decisions on prohibition of activities (with a view to describing them in more details and providing a more clear definition of conditions), as well as to determine specific effective periods for prohibitions, and improve the procedures of their implementation.

Proceeding from the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms and the corresponding practice of the European Court of Human Rights, such unclear legal regulation also violates the principle of legal definiteness as a component of the rule of law. The analyzed powers of the Ukrainian administrative agencies apply, first of all, to the restriction of the proprietary right of persons. This right is protected in accordance with Article of the First Protocol to the Convention. The provisions of this Article guarantee the right of each natural person or legal entity to peacefully own their property. Disappropriation (dispossession) is allowed only in the interests of the society and under the conditions stipulated by the law or by the general principles of international law.

The notion “law”, on the basis of which the proprietary right can be restricted, has the same meaning as in other articles of the Convention<sup>56</sup>. This reservation is very important, since the requirements for laws were formulated by the European Court mostly when considering the cases on the basis of other articles of the Convention (in particular, Article 8, which guarantees respect for private life).

To recognize a certain regulatory act as “a law”, it is necessary that it should meet the requirements of quality (clarity), be accessible and predictable. *“The Court has always adhered to the opinion that the phrase ‘in conformity with the law’ not just makes reference to the national legislation, but also is linked with the requirement of the quality of ‘law’, that is with the requirement to observe the ‘rule of law’ principle, which is expressly mentioned in the preamble to the Convention”* – this is a quote from the judgement in the “Vолокhy v. Ukraine” case<sup>57</sup>. Besides, the European Court reiterates all the time *“that a norm (standard) of law is ‘predictable’ if it is formulated clearly enough, which enables each person –*

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<sup>56</sup> See § 54 of the *Judgment of the European Court of Human Rights: Špaček, s.r.o. v. the Czech Republic, 9 November 1999.*

<sup>57</sup> See: *Judgment of the European Court of Human Rights: Volokhy v. Ukraine, 2 November 2006.* // web: <http://www.uapravo.net/data2008/base32/ukr32239.htm>

*if necessary, with a help of a corresponding consultation – to regulate his/her behaviour”<sup>58</sup>. Whereas a high-quality law also “... must rather clearly identify the limits of such discretion given to the competent authorities, and the procedure of its implementation with due regard to the legitimate goal of this measure, in order to provide a person with proper protection against arbitrary interference”<sup>59</sup>.*

The Ukrainian legislation analyzed by us does not meet the requirements of clarity, predictability and quality of the regulatory act, as established by the European Court of Human Rights.

In our opinion, this vagueness of legal regulation has its historical reasons. During the Soviet period, all the economy was based on socialist ownership. And enterprises, institutions or organizations could be under the state or collective-farm and cooperative ownership, which were the forms of socialist ownership (Article 10 of the Constitution of the USSR of 1977 and the Constitution of the Ukrainian SSR of 1978). Inspectors, who represented the state when exercising control over the corresponding economic entities, in fact inspected the activities of other governmental organizations. And even temporary closure of enterprises in no way affected the employees of the corresponding institutions, since they were guaranteed the required jobs. Nobody cared about the fact that similar decisions made by the inspection agencies would cause damage to private persons as a result of missing the planned income from the entrepreneurial/business activities. In other words, to make such decisions on prohibition of the work of a certain enterprise, there was no need in a detailed legal regulation, since all problems were resolved in accordance with the interdepartmental (inter-agency) or at the Party level.

Ukraine has preserved up to date a similar imperfect legal regulation, given the situation has radically changed. Now the overwhelming majority in the economy is constituted not by the state-owned but by private companies and enterprises. However, the inspection agencies are guided in their activities mostly by “low-quality” legislative acts that are absolutely inapplicable for the regulation of a new type of relationship – between the public and private entities. Today, protection of the private interests is aimed at (preserving the operation of an enterprise to ensure its profitability), and allows dishonest

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<sup>58</sup> Ibid.

<sup>59</sup> Ibid.



(unscrupulous) representatives of the inspection agencies to demand (expect) unlawful reward, while private persons are encouraged to “settle a problem” using any means that are effective from the economic point of view.

Therefore, any decision made on the limitation of the work of an enterprise means restriction of exercise of the right to private property. That is why approval of such administrative acts must be in line with the fundamental principles of the administrative procedure – lawfulness, justification, timeliness, reasonability, etc.

***Therefore, our recommendations are as follows:***

- 1. To define specific grounds in normative acts for decisions concerning prohibition of activity.**
- 2. Retain the decision making authority of administrative bodies concerning prohibition of activity considering that the subject decision will be subsequently supported by the court decision.**

Options can be as follows:

- ***the subject authority can be exercised only on the basis of initial sanction of administrative court*** (similar to court warrants during criminal proceedings). This decision is issued by the court at the solicitation from appropriate agency without summoning another party and where adversarial procedure is non-existent. It shall not be subject to appeal, and only the effects of enforcement of such decision may be challenged. This approach is not available in Ukrainian legislation. It requires amendment of the Administrative Justice Code of Ukraine;
- ***the subject authority can be exercised based on decision of administrative agency in the form of provisional (short-term) enforcement measures to be further supported by court decision.*** It is implemented in amendments to the Code of Administrative Offences of Ukraine in part of road traffic safety. According to Article 65-1 of the Code, driving licenses may be seized provisional driving license form issued for the maximum term of three months. Within this term, the issue of whether the person should be prohibited to drive vehicles should be decided on; otherwise, the administrative body (Traffic Police Department) should return the seized license at no cost.

This recommendation was supported by 38.6% of entrepreneurs and 38.4% disagreed;



- ***the subject authority can be exercised based on the decision of administrative agency which comes into effect upon expiration of the term of administrative or judicial appeal.*** This considers the introduction of the “delayed” effect of administrative act, having restrictive effect for private person (deprivation of license or permit, termination of activity etc). This approach is non-existent in Ukrainian legislation.

*This recommendation was supported by 47.8% of entrepreneurs and 26.2% disagreed.*

Two latter mechanisms require amendments to normative acts regulating the procedure of issuance and execution of decisions of inspection offices concerning the prohibition of activities.

The legislator can combine the listed options in different areas of administrative and legal regulation taking into account their specifics and combination of public and private interests. *Entrepreneurs and experts surveyed under this project confirmed the need immediately terminate unlawful activity on the grounds of decision of administration in the spheres of manufacture and trade of food products and environmental safety.*

**Another option might be granting the authority to decide on the prohibition of activities to courts based on suits from appropriate administrative agencies.**

*This recommendation was supported by 62.5% of entrepreneurs. 15% disagreed.*

### **3.3.2 Unjustified Broad Powers of Administrative Bodies Concerning Unimpaired Access to Information, Items and Documents, Premises, and Land Sites**

All administrative bodies authorized to conduct control (supervision) of activities of physical and legal entities can receive information concerning potential wrongdoings in two primary ways:

- from reports, documents or other materials concerning specific activity;
- through unimpaired access to premises, land sites or other facilities.

This authority vested in inspection entities is linked to the responsibility of entities subject to audit to provide access to appropriate information or

assets. This duty to provide documents (information) is specified in the Code of Administrative Offences which includes approximately 25 elements of offences (in particular, Articles 52, 82-3, 82-7, 83-1, 91-4, 96, 148-2, 148-5, 156-1, 164, 164-3, 164-14, 166-4, 166-9, 184-2, 186-2, 188-5, 188-11, 188-14, 188-15, 188-18 and 188-19). The above and other articles of the Code also set forth the liability of individuals and officials hampering administrative agencies in exercising their powers. One of such impediments concerns denial of access to premises, warehouses, and operational facilities subject to audit.

In the course of these processes inspectors can have various data at their disposal. There is a risk of corruption here where inspectors might unlawfully conceal or reveal information received according to existing (simplified) procedure, blackmail persons with this data etc., considering that the findings of audits concerning the facts of administrative offences or crimes can be concealed from other control or law enforcement offices for the purpose of corruption “reward”.

The normative acts require referral of appropriate findings to law-enforcement agencies where such findings involve criminal actions. The Criminal Code lists a number of elements of crime detected on the basis of reports from administrative agencies (for example, security market related crimes pursuant to Articles 223-224 of the Code).

On the other hand (although this is no subject of our study), such powers can be used by an investigation agency trying to investigate a criminal case by by-passing complex procedure (requiring mandatory receipt of court warrants). Therefore, the above information can also be obtained at the “request” of appropriate pre-trial investigation agency, i.e. the data obtained during administrative proceeding is used during pre-trial investigation and during the trial. The risk here is that these facts are obtained with no adherence to the criminal and procedural guarantees of protection of the rights of those concerned.

Such interference powers of public administration are the legacy of the FSU and the current economic system in the first place where all production assets were in the socialist ownership by 100%. Therefore, directions of inspection office director to his subordinate or to director of specific enterprise were equally effective.

*The survey of entrepreneurs showed that 55.9% considered this risk very high and 22.7% confirmed its existence but believe that this authority of administrative agencies constitutes low degree of risk; 15.6% did not consider it as corruption practices. 15.6% does not refer these to corruption risks. 5.8 % of entrepreneurs in the survey were not sure whether the right of inspection bodies to unimpaird access to information refers to corruption risk.*

The situation with access to various premises is similar. The sites used to be owned by the state, and residential premises according to Article 42 of the Constitution of Ukrainian SSR were not in private ownership. However, the inviolability of homes declared in Article 53 of the Constitution of Ukrainian SSR could be breached based on “lawful grounds”.

The Constitution of Ukraine dated 1996 (Article 30) introduces international standards in terms of inviolability of home or other property. Home invasion of privacy requires a warrant issued by the court. However, there are two exceptions where invasion, visual inspection and search require no warrant:

- 1) rescue of life and property;
- 2) pursuit of persons suspected in committing a crime.

These grounds include no audit by administrative agencies or suspicion in administrative offence. Therefore, representatives of the state can solely have access to home or private estate at the consent of owner, court decision or under the above-mentioned contingency circumstances.

The situation with the legal status of property of legal entities is more complex. The Constitutional Court of Ukraine in the case on retroactive force of laws and other regulatory legal acts<sup>60</sup> ruled that Section II of the Constitution “Human and civil rights, freedoms and responsibilities ” establishes the constitutional human and civil rights, freedoms and duties and their guarantees in the first place. Based on this conclusion, the Court decided that Article 58 is included in this Section and cannot apply to legal entities.

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<sup>60</sup> Judgment of Constitutional Court of Ukraine in the case related to the constitutional appeal of the National bank of Ukraine concerning the official interpretation of provisions of Paragraph 1 of Article 58 of Constitution of Ukraine (the case concerning retroactive force of laws and other regulatory legal acts) dated February 09, 1999, No. 1-pn/99 // Official Bulletin of Ukraine – 1999 – No. 7. – P. 160.

Article 30 concerning the inviolability of property is also included in Section II of the Constitution, and therefore, following the logic of the court of constitutional jurisdiction it should not apply to the property of enterprises, institutions and organizations. This conclusion seems to be the wrong one.

The plenary meeting of Supreme Court referring to Article 8 of Convention on the Protection of Human Rights and Fundamental Freedoms and the corresponding practice of the European Court of Human Rights decided that the definition of “habitation” should include more than just the individual home. According to the plenary meeting, this definition might extend to office facilities owned by physical persons, as well as offices of legal entities, their branches and other premises. The definition of “other property” should mean such facilities (of natural origin and man-made), which can be entered and store or hide appropriate items (articles and valuables). For example, they can be land plots, garages, sheds, other facilities and other buildings of domestic, manufacturing and other designation, luggage rooms at stations (airports), individual bank safe, vehicle etc.<sup>61</sup>.

These recommendations of the highest judicial instance of the country are fully supported by a number of judgments of the European Court. In particular, the case “Nimitz v. Germany” reads as follows: *“As for the notion of “home” to be used in the text of Article 8, the Court decided that it extends to business premises in some member states, including Germany. Moreover, such interpretation is fully consistent with the French language since the word “domicile” has a wider meaning than “home” and can apply to professional individual office. In this context, it is difficult to demarcate one from another considering that one can carry out professional or business activity from home, or engage in something which cannot be referred to professional activity at the office or commercial facilities. Narrow interpretation of the notions of “home” and “domicile” may result*

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<sup>61</sup> Paragraph 11 of Decree of Plenary Meeting of Supreme Court of Ukraine “On Some Issues concerning the application of legislation by courts of Ukraine for the issuance of permits of temporary restriction of specific constitutional human and civil rights and freedoms during detective operations, inquest and pre-trial investigation” dated March 28, 2008, No. 2 // Buletning of Supreme Court of Ukraine – 2008 – No. 4. – P. 4.

*in the same risk of inequality as might be caused by narrow interpretation of the notion of “private life”*<sup>62</sup>.

Considering the above, one may draw the unambiguous conclusion that in most cases the constitutional guarantees of inviolability of property should extend to premises and other estate owned by legal entities.

Where the duty of physical and legal entities to provide information to various inspection offices, the practice of the European Court based on provisions of Article 6 of the Convention applies. The right to provide or not provide specific information to representatives of the state is viewed as an element of the right not to testify, though this legal right is not directly considered in the Convention. *“The court refers to its standing practice, according to which even if Article 6 of the Convention does not directly mention the rights referred to by the applicants (the right to silence and the right not to testify against oneself), these are the universally recognized international standards, which constitute the substance of the concept of fair proceedings pursuant to Article 6”*<sup>63</sup>.

In this case, it should be understood that the findings resulting from inspections carried out by administrative may result in criminal prosecution. According to the European Court: *“Administrative investigation can be associated with the definition of the “criminal prosecution” in the autonomous meaning of this notion by reference to the practice of the Court”*<sup>64</sup>. Therefore, forcing to furnish information, testify or otherwise prove innocence even during administrative procedure in view of an option of penalty or short-term arrest is viewed as compulsion to self-incrimination which is prohibited based on the provisions of the Convention.

The use of information obtained in coercive manner during initial control and supervision procedure as evidence is prohibited during criminal proceedings.

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<sup>62</sup> See § 30 *Judgment of the European Court of Human Rights: Niemietz v. Germany, 16 December 1992, Published in A251-B*.

<sup>63</sup> See § 40 (*Judgment of the European Court of Human Rights: Heaney and McGuinness v. Ireland, 16 December 1992, Published in Reports of Judgments and Decisions 2000-XII*).

<sup>64</sup> See § 67 (*Judgment of the European Court of Human Rights: Saunders v. the United Kingdom, 17 December 1996, Published in Reports 1996-VI*).

The European Court gave its legal evaluation from the perspective of the right not to testify in several similar situations:

- the requirements of customs agencies to provide statements of foreign bank accounts (case “Funke v. France”)<sup>65</sup>;
- the requirement of inspector of Department of Trade to testify during appropriate investigation (case “Saunders v. the United Kingdom”)<sup>66</sup>;
- the requirement of tax authority to testify and provide documents concerning the origin of moneys contributed to authorized capital of the company (case “J.B. v. Switzerland”)<sup>67</sup>;
- the requirement of bankruptcy commissioner to testify during appropriate investigation (case “Kansal v. the United Kingdom”)<sup>68</sup>;
- the requirement of financial inspector to testify on fraudulent accounting reports (case “Shannon v. the United Kingdom”)<sup>69</sup>.

In all above cases, the European Court identified violation of appropriate rights by using information in criminal proceedings obtained in coercion during inspection related proceedings. It did not take into account the comments of representatives of Government-defendants concerning the need in such duties considering the specifics of regulation in certain areas (customs, tax, trade etc.).

The requirements of the Convention in this part can be introduced into Ukrainian legal system by prohibiting the use of evidence obtained in administrative proceedings during criminal investigations. However, we believe that in this way the implementation of European standards will not be complete considering that the national law-enforcement agencies will

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<sup>65</sup> *Judgment of the European Court of Human Rights: Funke v. France, 25 February 1993, Published in A256-A.*

<sup>66</sup> *Judgment of the European Court of Human Rights: Saunders v. the United Kingdom, 17 December 1996, Published in Reports 1996-VI*

<sup>67</sup> *Judgment of the European Court of Human Rights: J.B. v. Switzerland, 3 May 2001, Published in Reports of Judgments and Decisions 2001-III*

<sup>68</sup> *Judgment of the European Court of Human Rights: Kansal v. the United Kingdom, 27 April 2004*

<sup>69</sup> *Judgment of the European Court of Human Rights: Shannon v. United Kingdom, 4 October 2005*

continue obtaining administrative evidence and using these within criminal investigation in a different format.

*The survey of entrepreneurs shows some lack of understanding of this suggestion. They mentioned where elements of criminal offence have been found, inspector should notify appropriate investigation office, or otherwise there is going to be unpunished breach of the law. The European standards in this sphere will be implemented to restrict the authority of inspection bodies to interfere. These agencies will obtain information **solely at the consent of person or based on court decision**. These should be their only grounds for identifying the circumstances of the wrongdoing. And this information can be and should be involved in criminal investigations.*

The risk of corruption here involves actually unlimited powers of inspection offices.

***Therefore, our recommendations are as follows:***

- 1. To give authority to administrative agencies to have access to premises, documents or items solely on the basis of administrative court decision.** Such access also might be granted at the consent of person, or in exceptional cases where protection of life and property pursuant to the Constitution is concerned.

*This recommendation was supported by 72.8%;  
and 10% disagree.*

- 2. To establish direct prohibition on the use of findings (information/evidence) obtained in the course of control and supervision administrative process in breach of the guarantees (rights) of person to protection from self-incrimination in criminal processes.**

*This recommendation was supported by 47.6%;  
and 10.7% disagree.*

### 3.3.3 Unjustified Authority of Some Administrative Bodies to Conduct Field Inspections

Depending on specific areas subject to audit all inspection entities in Ukraine can be divided into two specific types as follows:

- entities authorized to conduct inspections based on information available in various reports and other documents;
- entities conducting reviews by directly examining specific facilities.

The first type includes *tax inspection, Control and Audit Department, State Price Control Inspection, State Commission for Regulation of Markets of Financial Services, Antimonopoly Committee, State Commission for Securities and Stock Exchange, State Committee for Financial Monitoring of Ukraine*, and other institutions.

The second type includes fire safety, sanitary and epidemiological, environmental inspection, and occupational safety inspection etc.

The proposed classification is still relative considering that survey of accountable facilities should still remains an integral element of the status of any control entity. Only unconditioned and (unlimited) powers of relevant inspection entities to conduct field inspections in whatever case should be subject to reservations.

The departmental orders of State Tax Administration, which are not registered in the Ministry of Justice specify the right of tax inspection to carry out audits of “operational control” type. However, no law sets forth any such audits<sup>70</sup>. *Expert O. Prodan described the practice of “survey” which is not specified in any laws. It involves visual inspection of specific sites and interviewing employees. The findings of such surveys give grounds for off-schedule audits.*

There is a risk of creating objective or intentional barriers (during such surveys) to operations due to seizure of required documentation or sealing of warehouses and premises, therefore creating the need to seek favorable attitude from inspectors etc.

Survey of entrepreneurs showed that 59.1% of respondents *considered this risk to be very high; 25.3% confirmed that it existed, but acknowledged*

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<sup>70</sup> D. Shevchenko. Audits of STAU and how to Fight Them // Legal Week – No. 6 – February 10, 2009 — P.4.



*that such authority of administrative agencies implied little risk. 11.1 % did not believe these to be corruption risks. In addition, 4.5 % of total number of surveyed entrepreneurs had no answer as to whether the authority of inspection entities to conduct field inspection produces any corruption risk.*

These gaps will be eliminated or minimized when audit is carried out on the basis of reports or other information received from private persons. Under such conditions control and supervision of the government will be “depersonalized”, thus reducing corrupt practices. Therefore, the objective to reduce personal contacts between officials and private persons is important not only for administrative services but also for interference powers.

An example of implementation of the depersonalization principle would be the tools of bringing to responsibility for violation of road traffic regulations established by the Law of Ukraine “On amendments to some legislative acts of Ukraine to improve regulation of relations in the sphere of road and traffic safety” of September 24, 2008. Amendments in the Code of administrative Offences enabled the State traffic inspection to impose administrative penalties on drivers for violation of road traffic regulations, which are recorded by photo or video cameras. Therefore, no further personal contact of driver and police officer is required for effective control on the roads today. The only thing required is installation of sufficient number of equipment items.

Being aware of the risks related to field audits, the legislator tries to regulate these efforts, limit their number, and determine specific grounds for off-schedule audits. To support this opinion, we need to refer to the Law “On basic principles of state supervision (control) in the sphere of business activities” of April 5, 2007. On its basis the Cabinet of Ministers of Ukraine established criteria for determination of degrees of risks from business activities, which determine the frequency of scheduled activities in 2008-2009. *25 Decrees of Cabinet of Ministers of Ukraine, which cover the following spheres, have been adopted during this period: fire safety; civil defense and infrastructure security; power and heat supply; energy saving; environmental protection; the use and protection of water and reproduction*

*of water resources; potable water supply and drainage system; quarantine of plants; telecommunications and rendering of mail services; railroad transport; vehicles; price (tariff) formation, establishment and application; cryptographic and technical protection of information; electronic digital signature; activities of arbitration officers (asset managers, sanitation officers, and bankruptcy commissioners); pension insurance; veterinary and sanitary control; civil aviation; operations with precious metals of organic origin, semi-precious gems; physical culture and sport; manufacture, output and sale of products (work performance, rendering of services); protection of sites of cultural heritage; and tourism.*

Depending on the degree of risk, business activities are divided into the following degree of risk categories: high, intermediate and low risk. Such division determines the frequency of audits. However, there are errors here as well. *For example:*

- *Hotels, enterprises for repair of bicycles, motorbikes are at the same level as chemical industry and can be audited annually by officials of Committee for Technical Regulation and Consumption Policy (consumer rights r protection service);*
- *Activities for production and marking of wooden packing material, raising of plants from imported material, storage and processing of plants etc. can be audited by plant quarantine service twice every year, while civil aviation enterprises can be audited once every year and a half.*

We should also keep in mind that this Law covers only business activities and no other spheres of human activity. Control over some industries is regulated with other rules since this legislative act does not cover relations arising during currency control, customs control at the border, control over adherence to budget legislation and use of public and communal assets, bank and insurance supervision, other types of special public control over activities of business entities at the market of financial services, public control over compliance with laws pertaining to protection of economic competition.

During adoption of State Budget for 2008, there was an attempt to restrict this legislative act and exclude customs control across the state, control of

compliance with tax laws, production and circulation of spirits, alcohol drinks and tobacco products, and also procedures described in the Code of Ukraine on Administrative Offences. These innovations clearly showed the trail of intentions of tax authorities to take their operations beyond the Law under review. However, the Constitutional Court of Ukraine declared these changes unconstitutional along with other provisions of the Law on State Budget.

We believe that legislator should seek different ways to depersonalize control and supervision and reduce corrupt practices accordingly. This proposal involves authorizing inspection offices to conduct **field audits** based on written information, though **solely in exceptional cases**. The number of scheduled and off-schedule audits for a particular period of time (one, two and three years) should be limited. These cases can be similar to those established by applicable law as an exhaustive list for off-schedule audits<sup>71</sup>. For example:

- where unreliable data has been found in mandatory reporting documentation;
- monitoring of execution of directions, orders and other administrative documents concerning corrective action;
- referrals concerning wrongdoings;
- failure to submit mandatory reports as applicable.

The main difference of proposed changes from current regulation lies in the requirement to conduct inspections when the administrative body has suspicion of a wrongdoing instead of the requirement to conduct inspection within a certain period of time.

Introduction of audits based on *copies* of accounting, financial and shipping documents and copies of other materials which constitute an element of operation may become another tool of “depersonalization” of control and supervision. However, this idea does not fit in audits of large enterprises or operation requiring execution and issuance of numerous written documents, where on site inspection will be more effective than

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<sup>71</sup> Article 6 of Law “On basic principles of state supervision (control) in the area of business activity), Article 11-1 of Law “On State Tax Authorities in Ukraine” and other acts.

wasting time making copies of necessary documents, to include their delivery and storage at administrative agency.

***Therefore, our recommendation is as follows:***

- 1. To retain the powers for scheduled field (site) audits only with administrative agencies authorized to conduct compliance reviews (e.g., fire safety, sanitary, environmental inspection, occupational safety inspection etc).**

*This recommendation was supported by 82.7% of surveyed entrepreneurs (6.5% were against it).*

- 2. To establish audit procedures for specific administrative agencies (tax authorities, price inspection, Control and Audit Department, Commission for Regulation of Markets of Financial Services, Antimonopoly Committee, Commission for Securities and Stock Exchange, Committee for Financial Monitoring etc) on the basis of received reports. Field (on-site) audits by the above-mentioned inspection bodies should be of exceptional nature.**

*This recommendation was supported by 70.1% of surveyed entrepreneurs (11.6% were against it).*

- 3. Establish an option of documentary (desk) in-office review based on the copies of appropriate documents.**

*This recommendation was supported by 56.4% of surveyed entrepreneurs (16.1% were against it).*

### **3.3.4 Powers Vested in Certain Administrative Agencies to Charge Penalties on the Scene**

Legislation of Ukraine (Article 258 of Code of Administrative Offences and Article 27 of Law “On Exclusive (Maritime) Economic Zone of Ukraine”) sets forth a simplified procedure of bringing to responsibility, which provides an option for administrative office to impose a fine on the scene without issuing a report of administrative offence and without a relevant resolution concerning charging the penalty on the scene. Persons who commit corresponding offences and are required to pay a fine on the scene receive a scrip of due format.

This is common practice for liability in many countries. However, this standard in Ukraine creates situations where a person remains face-to-face with inspector (inspectors), has no knowledge of the amount of fines and is under psychological pressure due to the option of having to go to a police department. This mechanism of application of fines also enables unethical officers to receive money from violators without issuing a receipt.

It should be noted that this standard concerns minor amounts of fines. However, taking into consideration the above-mentioned circumstances of imposing fines and lack of sufficient information, the amounts of unofficial payments can be significant. Informal relations are often beneficial for private persons, considering that they realize the fact of commitment of offence and they have no desire to stand before interior offices. Therefore, the mechanism enables the receipt of unlawful reward by officers.

*The administrative entities authorized to impose fines on the scene include the following:*

*1) **Forestry management authorities**, which impose fines for violations stipulated for by Article 70 “Unauthorized haymaking and grazing of animals, unauthorized gathering of wild fruit, nuts, mushrooms and berries”, Article 73 “Contamination of woods with wastes”, and Article 77 “Violation of requirements of fire safety in forests” of the Code of Administrative Offences of Ukraine;*

**2) Environmental inspections**, which impose fines for violations stipulated for by Article 77 “Violation of requirements of fire safety in forests”, Article 85 “Violation of rules of the use of items of animal world”, Article 153 “Destruction or causing damage to planted lands or landscape vegetation ” of the Code of Administrative Offences, and Articles 22-27 of the Law “on exclusive (maritime) economic zone of Ukraine”;

**3) Hunting management offices**, which impose fines for violations stipulated for by Article 85 “Violation of regulations of the use of items of animal world ” of the Code of Administrative Offences;

**4) State inspection for protection and reproduction of water living resources and regulation of fishing**, which impose fines for violations stipulated for by Article 85 “Violation of rules of the use of items of animal world ” of the Code of Administrative Offences and Article 24 of Law “On Exclusive (Maritime) Economic Zone of Ukraine”;

**5) Veterinary inspection**, which impose fines for violations stipulated for by Article 107 “Violations of regulation of quarantine of animals and other veterinary and sanitary regulations” of the Code of Administrative Offences of Ukraine;

**6) Railroad Transport offices**, which impose fines for violations stipulated for by Article 109 “Violation of rules of security and safety of railroad traffic ”, Article 110 “Violation of regulation of the use of railroad transport”, Article 134 “Exceeding hand luggage weight requirements and unpaid luggage”, and Article 135 “Fraudulent Travel” of the Code of administrative offences of Ukraine;

**7) Maritime and river transport offices**, which impose fines for violations stipulated for by Article 115 “Violation of rules of use of maritime transport”, Article 116-2 “Violation of rules of safe operation of vessels on internal water routes”, Article 118 “Violation of rules of maintenance of bases (facilities) for harboring small vessels” of the Code of administrative offences of Ukraine;

**8) State inspections of navigation safety**, which impose fines for violations stipulated for by Article 116 “Violation of rules of security and safety of river traffic and operation of small vessels”, Article 116-2

*“Violation of rules of safe operation of vessels on internal water routes”, Article 118 “Violations of rules of maintenance of bases (facilities) for harboring small vessels ” of Code of administrative offences of Ukraine;*

*9) Vehicle and electric transport offences, which impose fines for violations stipulated for by Article 119 “Violation of rules of use of vehicles and electric transport ”, Article 133-1 “Violation of rules of services provided by passenger vehicles”, Article 135 “Fraudulent travel” of the Code of Administrative Offences of Ukraine.*

When amending the Code of Administrative Offences in 2008 concerning violations of traffic rules, the intention was to eliminate the institute of fines on the scene. However, the above stated novelties were not fully implemented, and the Code still contains provisions for this tool of charging fines (paragraph 3 of article 238, paragraph 3 of article 241, paragraph 3 of article 242, paragraph 3 of article 241-1, paragraph 2 of article 258, paragraph 3 of article 307, and article 309).

***Therefore, our recommendations are as follows:***

- 1. To eliminate the authority to charge fines on the scene and establish the procedure for the payment of fines exceptionally through bank institutions.**

### **3.3.5 The Focus of Control and Supervision on Punishment Rather than on Elimination or Prevention of Violations**

The practice of secret “plans” of audits, findings and imposed fines is quite common. Implementation of these plans becomes the principal criterion of performance of certain employees, which forces them to demand the largest amounts of fines.

This statement can be confirmed by Article 83 of the Law of Ukraine “On State Budget of Ukraine for 2009”, under which budget allocations of the Ministry of the Interior in the amount of UAH 500 million are supported by actual receipts of administrative fines collected from the



traffic safety area to the general fund of the state budget. In other words, employees of the Traffic Police are put by legislator in such environment where they have to “earn on the roads” for their salary since if they fail to implement the plan (UAH 500 million) the allocations to the Ministry of the Interior will go down. In this situation the mission of collecting fines becomes a priority and comes first before prevention of unlawful behavior on the roads. In this way inspection offices become interested in more violations.

*The survey of the entrepreneurs showed that 78.5% considered this risk very high; 12.3% confirmed its existence but acknowledged low degree of risk that such authority of administrative bodies implies. Only 1.8% believes them to be no corrupt practices. In addition, 7.4 % of the total number of entrepreneurs was hesitant in considering whether the focus of inspection offices on punishment constitutes a corruption risk.*

Other rules of the budget law also force administrative bodies to behave in this fashion. The principal financial document of the country plans proceeds from payment of various fines and sanctions each year. Such public policy provokes control offices to detect the same or continuously increasing numbers of violations and charge similar amounts of fines, or otherwise the level of resources for the office will be affected. The following *budget appropriations should be outlined:*

- *Amounts collected from persons for violation of fire safety regulations (budget classification code: 21080800);*
- *Penalties for violation of legislation on patents, for violation of regulation cash turnover rates and use of enumerators of settlement transactions in the sphere of trade, public catering and services (budget classification code: 21080900);*
- *Fines for non-compliance with terms of payment in foreign economic activities, for non-compliance and violation of requirements of currency regulation rules (budget classification code: 21081000);*
- *Administrative fines and other penalties (budget classification code: 21081100);*
- *Fines for violation of legislation for efficient use of energy resources (budget classification code: 21081200);*



- *Proceeds from selling assets forfeited by customs authorities (budget classification code: 24010100);*
- *Proceeds from selling goods and other items confiscated by law-enforcement and other authorized offices (budget classification code: 24010200);*
- *Receipt of foreign and national currency confiscated by customs authorities (budget classification code: 24010300);*
- *Receipt of foreign and national currency confiscated by law-enforcement and other authorized authorities (budget classification code: 24010400);*
- *Fines for damage caused by violation of legislation for environmental protection resulting from business and other activities (budget classification code: 24062100);*
- *Receipts from fines imposed by the Fund for Elimination of Consequences of Chernobyl Disaster and Social Protection of Population (budget classification code: 50010300);*
- *Receipts from fines imposed by the Pension Fund of Ukraine (budget classification code: 50020400);*
- *Receipts from fines imposed by Fund of Social Insurance of Ukraine for Temporary Disability (budget classification code: 50030400);*
- *Receipts from fines imposed by Fund of General Mandatory Public Social Insurance of Ukraine for Unemployment purposes (budget classification code: 50040500);*
- *Receipts from fines imposed by State Innovation Fund of Ukraine (budget classification code: 50050300).*

This focus does not ensure introduction of the system of prevention of offences, in particular, through advising the public in specific areas of operation. We believe that corruption risks can be reduced if there is a system in place to inform the public subject to control and supervision of common offences in their area of activity and recommendations concerning prevention of the above. For this purpose specific positions for civil servants, divisions or government agencies can be established to be tasked with the mission of explaining legislation concerning the procedure and

rules of specific types of audits, regulations concerning activities subject to control (supervision) etc.

*Entrepreneurs and experts had few comments concerning this recommendation. In their opinion, if specific agencies are established, they will become another source of corruption in terms of performing the function of intermediary between an individual and controller. Besides, only individuals with low qualification level will agree to work for a minor remuneration. The participants were more positive about the responsibility of inspection offices and officials to consult entrepreneurs. At the same time, consultation should not transform into the form of seminars where fees are charged for attendance.*

In order to prevent release of confidential information, the awareness system should be similar to register of court decisions, which includes no names of institutions and offices, positions and names of individuals.

There are no doubts about the need in advising business entities. Some normative acts set forth the option and requirement for consultations: the Law “On State Support of Small Entrepreneurship” of October 19, 2000 (Article 10), the Law “On licensing system in the sphere of business activity” of September 06, 2005 (Article 8), and the Customs Code (Articles 30-33). However, we can come to a general conclusion that consultation should focus on the explanation of regulatory legal acts rather than certain control practices. Other legislation provides no requirement of consultation for those subjects of legal relations, against which interference proceedings occur whatsoever. In this way administrative agencies exercise their powers of control and application of interference measures without undertaking any consultation responsibilities.

Corruption risks are also contained in Article 6 of the Law of Ukraine “On Basic Principles of State Supervision (Control) in the Sphere of Business Activity”. According to applicable legal regulation, audit report includes the list of violations and corrective action. The law requires two types of acts: direction and resolution. Direction establishes the terms for corrective action. When the terms expire and there are no violations, no fine applies. Resolution involves concurrent penalty application. The Law does not establish clear grounds for deciding on which of the above should apply (direction or resolution), which means that This means that representative

of inspection office has an option of choosing the summary document crowning the inspection on no lawful grounds.

In our opinion, the situation can be improved by changing the technique of completion of corresponding audit or inspection. In case violations have been found (depending on their degree), an inspector should have the authority to:

- Restrict/prohibit specific activity with mandatory referral to court where gross, endangering other persons, their health or property violation is concerned; or
- Establish terms for corrective action, causing no threat to public. The above terms should depend on the type of offence. Fine will be imposed solely where corrective action failed.

However, in our opinion, the above mechanism cannot apply to Traffic Police) due to specific nature of their control activity.

***In view of the above, our recommendations are as follows:***

- 1. The purpose of some inspecting authorities should be changed to transform them into agent-type authorities, mostly engaged in giving persons advice with regard to the rules of certain activities and recommendations concerning prevention of violations of law.**

*This recommendation was supported by 84.2% of entrepreneurs-respondents while 5.1% disagreed with it.*

- 2. Priorities of the policy to be implemented should be aimed rather at prevention of violations than at punishment for their commission, in particular, a more sophisticated procedure of should be implemented for application of fines by the inspecting authorities, which should be preceded by a mandatory phase of identification of violations with an opportunity to correct the situation.**

*This recommendation was supported by 82.8% of entrepreneurs-respondents, while 3.5% of them disagreed.*

- 3. From now on the laws on State Budget should not include provisions on funding the governmental authorities at the expense of proceeds obtained from fines imposed by the same authorities.**
- 4. The practice of planning of the State Budget revenues at the expense of proceeds from fines should be stopped. At the same time, the money proceeding from fines should be directed to the general fund of the State Budget.**

### **3.3.6 Identity of Formal Components of Violations Envisaged by the Administrative Code and by Many Sectoral Acts, which are Punished With Fines in Different Amounts**

The Administrative Code envisages sanctions for officials, enterprises, institutions and organizations while sectoral acts, sanctions for legal entities. Such legislative status is implied by the fact that the legal persons are not recognized as administrative code offenders. According to the Soviet tradition, only an official of a legal entity may be held liable. In the socialist period this construct of liability was justified in view of the state-owned status of all enterprises, institutions and organizations, which were represented by their heads (director or chief accountant in specific legal relationship. In order to ensure an efficient operation of a sector of economy and public administration, only officials were subject to sanctions entailing loss of a portion of their salaries. Thus, commission of a violation by an enterprise implied imposition of a fine on its director. Application of sanctions to the legal entities made no sense, because in this case the money would be just moved from one “governmental pocket” to another one. So, under those conditions application of a fine to an enterprise within certain period of the fiscal year would mean withdrawal of money from their accounts while in the following period these accounts would be replenished in order for the state budget to comply with its obligations to the enterprise. Such mechanism is absolutely unfit for the current stage of development of society, economy and law, when both natural persons and legal entities are equal participant of majority of legal relations and most of the legal entities are private law persons and have nothing to do with State Budget funding.

*Entrepreneurs from Odessa (respondents from focus-group conducted within the Project framework) disagreed with suggestion to impose fines on legal entities only because they believe that the whole enterprise should not be liable for an oversight of an employee. Besides, fines for legal entities are bigger than those for the officials. Still, we think that these entrepreneurs' reservation can not be supported, because certain violation by a single employee may entail damage worth many thousand hryvnias caused to health or environment. Sometimes a single natural person has no means to compensate the damage caused. This is why the fine should be applied to legal entities. Hence, it is in the interests of the whole society to hold liable legal entities.*

According to Article 61 of the Constitution of Ukraine, “No person may be brought to legal liability of the same type for the same offence twice”<sup>44</sup>. Review of the Administrative Code and Sectoral Acts allows concluding that persons are brought to liability for the same violations (offences) on the basis of two legislative acts. Of course, there is an official and there is a legal entity, but in many sectors directors of enterprises also own them. In other words, fines are charged to the enterprise and its director at the expense of the same natural person.

This allows the Administrative Authorities, based on results of their inspections, to apply a bigger or a smaller sanction envisaged by the regulatory act, or even both at a time. And where there is a space for unlimited discretion, good ground for corruption appears. *According to the polls of entrepreneurs, 69.3% of respondents believe this risk to be very high, 18% confirmed its existence but stated that the level of danger from such powers of administrative authorities is insignificant. Only 1.8% think they are not corruption factors. And 11% of the total number of the entrepreneurs-respondents were not sure whether the right of inspecting authorities to apply different sanctions for the same violation is a corruption risk.*

The Administrative Authorities, whose officials are empowered to impose two types of sanctions for the same violation, e:

1) ***Environmental Inspectorates***, which impose fines for similar violations as envisaged by Article 59-1 “Violations of Requirements concerning Protection of Territorial and Inland Waters from Pollution and Contamination”, by Articles of Administrative Code of Ukraine and by

*Article 26 of Law of Ukraine “On Exclusive (Maritime) Economic Zone of Ukraine”;*

**2) National Bank of Ukraine**, which imposes fines for the similar violations contemplated by Article 166-5 of Administrative Code of Ukraine (ACU) “Violations of Banking Laws, Legal-regulatory Acts of National Bank of Ukraine or Implementation of Risky Transactions, which Threaten the interests of Depositors or other Creditors of a Bank” and by Point 7 of the National Bank Regulation “On Application by National Bank of Ukraine to Banks and other Financial-Crediting Institutions of Measures of Influence for Violations of Banking Laws”;

**3) State Price Control Inspectorate**, which imposes fines for the similar violations contemplated by Article 165-2 “Violations of Procedure for Establishment and Application of Prices and Tariffs” of ACU and Article 14 of the Law “On Prices and Pricing”;

**4) State Committee for Technical Regulation and Consumer’s Policies**, which imposes fines for the similar violations contemplated by:

- Articles 156 “Violations of Rules of Trade in Alcoholic Drinks and Tobaccos”, 168-2 “Release of Products for Sale with Violations of requirements concerning Medical Warnings to Tobacco Consumers” of ACU and Article 20 of Law of Ukraine “On Measures Aimed at Prevention and reduction of Consumption of Tobaccos and their Harmful Impact over Public Health”;
- Article 156 “Violations of Rules of trade in Alcoholic Drinks and Tobaccos” of ACU and Article 17 of Law of Ukraine “On Governmental Regulation of Production and Turnover of Ethyl, Cognac and Fruit Alcohol, Alcoholic Drinks and Tobaccos”;
- Article 156-1 “Violations of Legislation of Protection of Consumer’s Rights” of ACU and Article 23 of Law “On Protection of Consumer’s Rights”;
- Articles 167 “Release and Sale of Products, which Fai to Meet Requirements of Standards”; 169 “Transfer to Customer or to Manufacturer of Documentation, which Fails to Meet Requirements of Standards”, 170-1 “Release for turnover of Products, which Has no Certificate of Correspondence of Certificate of Recognition of

*Correspondence or Declaration of Correspondence and Unlawful Use of the National Mark of Correspondence” of ACU and Article 8 of resolution of Cabinet of Ministers “On Governmental Supervision of Compliance with Standards, Norms and Rules and Liability for Violations of them”;*

- *Article 172-1 “Violations of the Established Procedure for Issuance of Certificate of Correspondence” of ACU and Article 20 of Resolution of Cabinet of Ministers “On Standardization and Certification”;*

**5) State Sanitary-Epidemiologic Service**, which imposes fines for the similar violations contemplated by Article 42 “Violations of Sanitary-Hygienic and Sanitary-Anti-Epidemic Rules and Norms” of ACU and Article 46 of Law “On Safeguards of Sanitary and Epidemic Well-Being of Public”;

**6) State Inspectorate for Architecture and Construction**, which imposes fines for similar violations contemplated by Article 96 “Failure to Comply with State Standards, Norms and Rules during Design and Construction” and Article 1 of Law “On Liability of Enterprises, their Associations, Institutions and Organizations for Violations of Law in Bridge Construction Sector”.

**7) State Commission for Securities and Stock Market**, which imposes fines for similar violations contemplated by Articles 163-6 “Failure to Submit Documents confirming Right of Ownership of Securities”, 163-7 “Operations on Stock Market without License”, 163-9 “Manipulations with Prices during Transactions with Securities”, 163-10 “Violations of Decision-Making Procedure concerning Transfer of Functions of Keeping register of Owners of registered Securities or of Procedure of Transfer of Functions of Keeping of Register of Owners of registered Securities”, 163-11 “Violations of Procedure for Disclosure of Information at Stock Market” of ACU and Article 11 of Law “On Governmental regulation of Security Markets in Ukraine”;

**8) State Inspectorate for Energy Supervision of Modalities of Consumption of Electricity and Heat**, which imposes fines for similar violations contemplated by Article 188-20 “Avoidance of Compliance or Failure to Comply on Time with Instructions of State Inspectorate for



*Energy Supervision of Modalities of Consumption of Electricity and Heat” of ACU and Article 27 of Law “ON Electric Power Sector”, Article 30 of Law “On Heat Supply”;*

**9) National Commission for Regulation of Electric Power Sector**, which imposes fines for similar violations contemplated by Article 188-21 “Avoidance of Compliance or Failure to Comply on Time with Resolutions of National Commission for Regulation of Electric Power Sector” of ACU and Article 27 of Law “On Electric Power Sector” and Article 30 of Law “On Heat Supply”;

**10) Pension Fund**, which imposes fines for similar violations contemplated by Article 165-1 “Violations of Legislation concerning Universal Mandatory State Retirement Insurance”, 188-23 “Interference with Inspections Conducted by Authorized Persons of Pension Fund of Ukraine” of ACU and Article 106 of Law “On Universal Mandatory State Retirement Insurance”;

**11) Fund for Social Insurance of Temporary Disability**, which imposes fines for similar violations contemplated by Article 165-5 “Avoidance of Registration as Payer of Insurance Fees to Fund for Social Insurance of Temporary Disability, Failure to Pay Insurance Fees in Full or on Time and Violation of Procedure to Use Insurance Funds” of ACU and Article 30 of Law “On Universal Mandatory State Insurance of Temporary Disability and Expenses Related to Birth and Burial”;

**12) State Inspectorates for Motor Transport**, which impose fines for similar violations contemplated by Articles 133-1 “Violations of Rules of rendering Services and of Safety requirements concerning Transportation of Passengers or Cargoes by Motor Transport”, 133-2 “Violations of Conditions and Rules for International Transportation of Passengers and Cargoes by Motor Transport” of ACU and Article 60 of Law “On Motor Transport”.

There are other instances in the legislation when the Administrative Authorities apply fines at their own discretion for similar violations contemplated by Sectoral Laws. At the same time, the same acts identified in Administrative Code are subject to reporting in report on Administrative Violation to be issued by the Administrative Authorities. Based on such Reports, fines are imposed by courts. *Such Authorities are:*



1) **Tax Inspectorates**, which issue Reports on Violations contemplated by:

- Article 155-1 “Violations of Procedure of Settlements” of ACU. Although for similar violations contemplated by Article 1 of Decree of President of Ukraine “On Application of Sanctions for Violations of Norms concerning Circulation of Cash” they impose a fine;
- Article 164 “Violations of Procedure of Business Activities” of ACU. “Violations of Procedure of Business Activities of ACU. Although for similar violations contemplated by Article 8 of Law “On Patenting of Some Kinds of Business Activities” they impose a fine;

2) **National Bank of Ukraine**, which issues Reports on Violations contemplated by:

- Article 162 “Violation of Rules on Currency Transactions” of ACU. Although for similar violations contemplated by Article 16 of Resolution of Cabinet of Ministers “On System of Currency regulation and Control” it imposes a fine;
- Article 166-9 “Violations of Legislation concerning Prevention of and Countering to Legalization (Laundering) of Illicitly Obtained Profits” of ACU. Although for similar violations contemplated by Article 17 of Law “On Prevention of and Countering to Legalization (Laundering) of Illicitly Obtained Profits” it imposes a fine;

3) **State Committee for Technical Regulation and Consumer’s Policies**, which issues Reports on Violations contemplated by Article 177-2 “Production, Purchase, Storing or Sale of Falsified Alcoholic Drinks or tobaccos” of ACU. Although for similar violations contemplated by Article 20 of Law of Ukraine “On Measures Aimed at Prevention and reduction of Consumption of Tobaccos and their Harmful Impact over Public Health” it imposes a fine;

4) **State Inspectorate for Architecture and Construction**, which issues Reports on Violations contemplated by Article 96-1 “Violations of Legislation during Development of Territories”. Although for similar violations contemplated by Article 17 of Law of Ukraine “On Liability of Enterprises, their Associations, Institutions and Organizations for Violations of Law in Bridge Construction Sector” it imposes a fine;

5) *State Commission for Securities and Stock Markets, which issues Reports on Violations contemplated by Article 166-9 “Violations of Legislation concerning Prevention of and Countering to Legalization (Laundering) of Illicitly Obtained Profits” of ACU. Although for similar violations contemplated by Article 17 of Law of Ukraine “On Prevention of and Countering to Legalization (Laundering) of Illicitly Obtained Profits” it imposes a fine;*

6) *Anti-Monopoly Committee, which issues Reports on Violations contemplated by Article 164-3 “Unfair Competition”, 166-4 “Violations of Procedure of Submittal of Information and Fulfillment of Resolutions of Anti-Monopoly Committee of Ukraine and its Territorial Branches” of ACU. Although for similar violations contemplated by Article 50 of Law of Ukraine “On Protection of Economic Competition” it imposes a fine.*

***In view of the above, our recommendations are as follows:***

- 1. There should be no duplication of formal components of offenses in Administrative Code and in Sectoral Laws.**
- 2. Legal Entities should be held liable for administrative offenses (instead of officials of these legal entities) and all formal components of administrative offenses should be included into a single codified act.**

*This recommendation was supported by 50.6% of entrepreneurs-respondents while- 11.6% of them disagreed.*

### **3.3.7 Big Difference in Determination of the Biggest and Smallest Fines**

Based on results of inspections and on uncovered violations of certain legislative requirements, most of Administrative Authorities are entitled to apply administrative sanctions in form of a fine. Traditionally, the Regulatory Acts establish fines indicating the upper and the lower thresholds of admissible amount. This manner to present sanctions in the Articles is aimed at allowing the officials, when applying a fine, to take into account

different circumstances (aggravating and mitigating) of commission of a violation. Among mitigating factors, Article 34 of Administrative Code indicates at:

- sincere penitence of the person;
- prevention of harmful implications of the violation, voluntary compensation of damages or correction of the caused harm;
- commission of the violation under influence of strong mental inquietude or under coincidence of hard personal or family circumstances;
- commission of offence by a minor;
- commission of offence by a pregnant woman or a woman, which has a child younger than one year old.

Administrative Authority may recognize any other circumstance, even if it is not mentioned above, as a mitigating factor.

Aggravating factors (Article 35 of ACU) are:

- continuation of illicit conduct in spite of requirements of authorized persons to stop it;
- repeated commission of a violation of the same nature within a year;
- drawing of a minor into the offence;
- commission of offence by a group of persons;
- commission of offence under conditions of a natural disaster or any other emergency situation;
- commission of offence under condition of alcoholic intoxication.

But in practice the big difference between a mounts of fines established by law allows the Administrative Authorities to apply illicitly the smallest or the biggest sanction in spite of actual existence\absence of any mitigating or aggravating factors. Russian scholars have already drawn attention to a significant corrupting nature of such provisions<sup>72</sup>.

*Polls of entrepreneurs demonstrated that 76,3% of the respondents consider this risk to be very high, 14,8% confirmed its existence but indicated at an insignificant degree of threat due to such powers of Administrative*

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<sup>72</sup> Головщинский К.И. Диагностика коррупциогенности законодательства / Под ред. Г.А. Сатарова, М.А. Краснова. – М., 2004. – С. 20 // web: www.indem.ru

*Authorities. Only 1% believes that they are corruptive. And 8% of the total number of the entrepreneurs-respondents were not sure whether presence of such “bifurcation” in determination of amount of a fine is a risk of corruption.*

*We believe that in Ukraine the following authorities have unreasonably strong discretionary powers to apply sanctions:*

**1) State Inspectorate for Control of Use and Protection of Lands,** which imposes fines in the following amounts:

- *from 10 to 50 of non-taxable minimum income of citizens (hereinafter referred to as NTMI) (for citizens), from 20 to 100 NTMI (for officials) for violations contemplated by Article 53-1 “Unauthorized Occupation of a Land Parcel” of ACU;*
- *from 20 to 50 NTMI for violations contemplated by Article 53-3 “Removal and Transfer of ground topsoil of land parcels without special permission” of ACU;*

**2) Inspectorates for State Geologic Control over Geologic Exploration and Use of Subsoil,** which impose fines in amounts 10 to 100 NTMI for violations contemplated by Part 4 Article 57 “Violations of Requirements concerning Protection of Subsoil” of ACU;

**3) Sanitary-Epidemiologic Inspectorates,** which impose fines in amounts:

- *from 10 to 100, from 100 to 200 NTMI for violations contemplated by Article 95 “Violations of Rules and Norms of Nuclear and Radiation Safety” of ACU;*
- *from 50 to 450 NTMI for violations contemplated by Article 46 of Law of Ukraine “On Safeguards of Sanitary and Epidemiologic Well-Being of Public”;*

**4) State Inspectorate for Architecture and Construction,** which imposes fines in amounts from 20 to 100 NTMI for violations contemplated by Part 4 Article 96 “Failure to Comply with State Standards, Norms and Rules during Design and Construction” of ACU;

**5) State Inspectorate for Motor Transport**, which imposes fines in the following amounts:

- from 50 to 80 NTMI for violations contemplated by Part 2 Article 128 “Release for Operation of Transport Vehicles, Technical Condition of which does not Correspond to Established Requirements or without the required Documents Envisaged by Law” of ACU;
- from 150 to 180 NTMI for violations contemplated by Part 2 Article 128-1 “Violations or Failure to Comply with Rules, Norms and Standards Applicable to Traffic Safety” of ACU;

**6) Bodies of Internal Affairs**, which impose fines in amounts from 17 to 88 NTMI, from 43 to 175 NTMI for violations contemplated by Article 164-4 “Failure to Turn Over on Time Proceeds from Sales” of ACU;

**7) State Inspectorates for Motor Transport**, which impose fines in amounts from 17 to 88, from 20 to 120 NTMI for violations contemplated by Article 133-2 “Violation of Conditions and Rules of International Transportation of Passengers and Cargoes by Motor Transport” of ACU;

**8) National Commission for Regulation of Communications**, which imposes fines in the following amounts:

- from 50 to 200 NTMI for violations contemplated by Article 147 “Violation of Rules of Guarding of Communication Lines and Facilities” of ACU;
- from 50 to 100 NTMI for violations contemplated by Article 148-1 “Violation of Rules of Rendering and Receipt of Telecommunication Services”, Part 1 Article 148-2 “Violation of Procedure and Conditions of Rendering of Communication Services in Common Use Networks”, Article 188-7 “Failure to Comply with Legitimate Requirements (Instructions) of Officials of Bodies of State Inspection for Communications of the National Commission for Regulation of Communications” of ACU;
- from 50 to 150 NTMI for violations contemplated by Article 148-3 “Use of Communication Means for Purposes, which contradict to

*National Interests, with Purpose of Violations of Public Order and Encroachment on Public Honor and Dignity” of ACU;*

- *from 100 to 200 NTMI for violations contemplated by Article 148-4 “Use of Technical Means and Equipment Used in Common Use Communication Networks without Document on Confirmation of Correspondence” of ACU;*
- *from 100 to 300, from 300 to 500 NTMI for violations contemplated by Article 148-5 “Violations of Rules concerning Connection of Common Use telecommunication Networks” of ACU;*

**9) State Commission for Securities and Stock Markets, which imposes fines in the following amounts:**

- *from 200 to 500 NTMI for violations contemplated by Article 163 “Placement of Securities without registration of their Issue or Violation of Procedure of Issuance of Securities”, Parts 1 and 2 Article 163-5 “Concealment of Information concerning Issuer’s Activities”, Parts 3 and 5 Article 163-11 “Violation of Procedure of Disclosure of Information at Stock Market” of ACU;*
- *from 300 to 500 NTMI for violations contemplated by Part 3 Article 163-5 “Concealment of Information concerning Issuer’s Activities” of ACU;*
- *from 500 to 1000 NTMI for violations contemplated by Part 4 Article 163-5 “Concealment of Information concerning Issuer’s Activities”, Article 163-7 “Operations at Stock Market without License”, Part 2 Article 163-8 “Manipulations with Prices during Transactions with Securities”, Article 163-10 “Violations of Decision-Making Procedure concerning Transfer of Functions of Keeping register of Owners of registered Securities or of Procedure of Transfer of Functions of Keeping of Register of Owners of registered Securities”, Parts 4 and 6 Article 163-11 “Violations of Procedure of Disclosure of Information at Stock Market” of ACU;*

- *from 200 to 300 NTMI for violations contemplated by Article 163-6 “Failure to Submit Documents Confirming Right of Ownership of Securities” of ACU;*
- *from 100 to 500 NTMI for violations contemplated by Article 163-8 “Manipulations with Prices during Transactions with Securities” of ACU;*
- *from 500 to 750 NTMI for violations contemplated by Article 163-9 “Unlawful Use of Insider’s Information”, Part 1 Article 188-30 “Avoidance of Compliance with or Failure to Comply on time with Lawful requirements of State Commission for Securities and Stock Markets or of its Authorized Persons” of ACU;*
- *from 50 to 100 NTMI for violations contemplated by Part 2 Article 163-11 “Violations of Procedure of Disclosure of Information at Stock Market| of ACU;*
- *from 750 to 1000 NTMI for violations contemplated by Part 2 Article 188-30 “ Avoidance of Compliance with or Failure to Comply on time with Lawful requirements of State Commission for Securities and Stock Markets or of its Authorized Persons” of ACU;*
- *up to 500, up to 1000, up to 5000, up to 10000 NTMI, up to 150 % of revenues for violations contemplated by Article 11 of Law of Ukraine “On State Regulation of Securities Market in Ukraine”;*
- *from 20 to 50, from 50 to 100, from 50 to 200 NTMI for violations contemplated by Article 13 of Law of Ukraine “On State regulation of Securities Market in Ukraine”;*

*10) **National Bank of Ukraine**, which imposes fines in amounts:*

- *from 50 to 100 NTMI for violations contemplated by Article 166-5 “Violations of Banking Laws, Legal regulatory Acts of National Bank of Ukraine or Implementation of Risky Transactions, which Threaten Interests of Depositors or other Creditors of a Bank” of ACU;*
- *up to 100 NTMI (for Bank Directors) for violations contemplated by Article 73 of Law of Ukraine “On Banks and Banking”;*



- *not more than one per cent of the amount of registered authorized capital (for banks) for violations contemplated by Article 73 of Law of Ukraine “On Banks and Banking”;*

**11) Control and Inspection Service**, which imposes fines in amounts from 40 to 100, from 50 to 120 NTMI for violations contemplated by Article 166-6 “Violations of Procedure of Submittal of Financial Reports and of Accounting Procedures during Liquidation of a Legal Entity” OF ACU;

**12) State Committee for Technical Regulation and Consumer’s Policies”**, which imposes fines in amounts:

- *from 3 to 40 NTMI for violations contemplated by Article 169 “Transfer to Customer or to Producer of Documentation, which does not Meet Standards” of ACU;*
- *from 3 to 88 NTMI for violations contemplated by Article 170-1 “Release for Turnover of Products, which do not Have Certificate of Correspondence or Certificate on Recognition of Correspondence or Declaration of Correspondence and for Illicit Use of National Mark of Correspondence” of ACU;*
- *to 300 NTMI for violations contemplated by Part 7 Article 27 of Law of Ukraine “On Advertising”;*
- *from 50 to 10000 hrivnyas, from 100 to 20000 hrivnyas, from 500 to 10000 hrivnyas, from 1000 to 20000 hrivnyas, from 2000 to 20000 hrivnyas, from 5000 to 50000 hrivnyas for violations contemplated by Article 20 of Law of Ukraine “On Measures Aimed at Prevention and Reduction of Consumption of Tobaccos and their Harmful Impact over Public Health”;*
- *from 1 % to 10 % of cost of completed work (rendered services) for violations contemplated by Article 23 of Law of Ukraine “On Protection of Consumer’s Rights”;*

**13) Inspectorate for Control of Quality of Medications**, which imposes fines in amounts from 3 to 40 NTMI for violations contemplated by Article 169 “Transfer to Customer or to Producer of Documentation, which does not Meet Standards” of ACU;



**14) Inspectorate for Supervisions of Radiation Safety**, which imposes fines in amounts from 10 to 100, from 100 to 200 NTMI for violations contemplated by Article 188-18 “Failure to Comply with Lawful requirements (Instructions) of Officials of Bodies for State Regulation of Nuclear and Radiation Safety” of ACU;

**15) State Environmental Inspectorate**, which imposes fines in amounts from 440 to 1400, from 270 to 880, from 1400 to 4400, from 90 to 450, from 1400 to 2600, from 660 to 1400 NTMI for violations contemplated by Articles 22-26 of Law of Ukraine “On Exclusive (Maritime) Economic Zone of Ukraine”;

**16) State Inspection for Protection and Reproduction of Water Natural Resources and Regulation of Fishing**, which imposes fines in amounts from 440 to 1400 NTMI for violations contemplated by Article 24 of Law of Ukraine “On Exclusive (Maritime) Economic Zone of Ukraine”;

**17) State Border Guard Service**, which imposes fines in amounts from 90 to 450, from 1400 to 2600 NTMI for violations contemplated by Article 24 of Law of Ukraine “On Exclusive (Maritime) Economic Zone of Ukraine”;

**18) Anti-Monopoly Committee of Ukraine**, which imposes fines in amounts:

- up to 10 % of income (receipts), not more than triple amount of unlawfully obtained profit, up to 5 % of income (receipts), up to 1 % of income (receipts), up to 20000, up to 10000, up to 2000 NTMI for violations contemplated by Article 52 of Law of Ukraine “On Protection of economic Competition”;
- up to 3 % of receipts, up to 5000, up to 2000 NTMI for violations contemplated by Articles 21, 22 of Law of Ukraine “On Protection against Unfair Competition”;

**19) National Commission for Regulation of Electricity Sector, Inspectorate for Energy Supervision of Consumption of Electricity and Heat**, which impose fines in amounts:

- up to 1000, up to 5000 NTMI for violations contemplated by Article 27 of Law of Ukraine “On Electric Power Sector”;

- *up to 200, up to 300, up to 500, up to 2000 NTMI for violations contemplated by Article 31 of Law of Ukraine “On Heat Supply”;*

**20) National Commission for Regulation of Operations of Natural Monopolies**, which impose fines in amounts up to 1000, up to 5000 NTMI for violations contemplated by Article 17 Of Law of Ukraine “On Natural Monopolies”;

**21) State Service for National Cultural Legacy**, which imposes fines in amounts from 100 to 1000, from 1000 to 10000 NTMI for violations contemplated by Article 44 Of Law of Ukraine “On Protection of Cultural Legacy”;

**22) State Commission for Regulation of Financial Service Markets**, which imposes fines in the following amounts:

- *from 20 to 50, from 50 to 100, to 500, to 1000 NTMI for violations contemplated by Articles 41, 43 of Law of Ukraine “On Financial Services and State regulation of Financial Service Markets”;*
- *up to 500, up to 1000, up to 5000 NTMI for violations contemplated by Article 16 of Law of Ukraine “On Organization of Development and Circulation of Credit Histories”;*

**23) State Customs Service**, which imposes fines in the following amounts:

- *from 50 to 100 NTMI for violations contemplated by Part 2 Article 329 “Violations of Customs Control Area Mode of Operation” of Customs Code of Ukraine (hereinafter referred to as CCU);*
- *from 500 to 1000 NTMI for violations contemplated by Articles 331 “Release of Goods and Vehicles without Permissions of Customs Body or Loss of them”, 332 “Failure to Deliver to Customs Body Goods, Vehicles and Documents”, 346 “Violations of Procedure of Storage of Goods at Customs Licensed Warehouses and of Transactions with these Goods”, 355 “Acts Aimed at Unlawful Exemption from Duties and Levies or at reduction of their Amounts” of CCU;*

- *from 50 to 200 NTMI for violations contemplated by Article 347 “Violations of the Established Procedure for Destruction of Goods” of CCU;*
- *from 200 to 500 NTMI for violations contemplated by Article 354 “Use of Goods, which were exempt from Duties and Levies, for a Different Purpose” of CCU;*

*24) State Committee for Financial Monitoring, which imposes fines in amounts up to 1000 NTMI for violations contemplated by Article 347 “Violations of the Established Procedure for Destruction of Goods” of CCU.*

***In view of the above, our recommendations are as follows:***

- 1. Unreasonably big difference between the smallest and the biggest amount of fines for the same violation should be eliminated.**

*This recommendation was supported by 77.8% of entrepreneurs-respondents, while 7.3% disagreed.*

### **3.3.8 Coincidence of Formal Components of Administrative Offences and Crimes**

As a rule, the administrative offences and crimes differ by the amount of the caused harm. In order to qualify certain offence as a crime, articles of Special Part of the Criminal Code establish as qualifying elements “significant”, “substantial”, “big”, etc. amount of loses, which entail declaration of a certain act or omission a crime. Quite often these amounts are calculated in specific amounts of 10 thousand hrivnyas, 20 thousand hrivnyas, or expressed through serious (non-monetary) consequences for the environment, public health or lives. At the same time, provisions of the Administrative Code do not use such elements or mention “insignificant” damages.

We firmly believe that this makes it possible for the Administrative Authorities, during their control and inspection operations, to unlawfully qualify an act as an administrative offence with subsequent imposition of a fine, or as a crime with further referral of the collected materials to inquiring

or pre-trial investigation authority for initiation of criminal proceedings. This process may involve other persons (for example, experts to determine the amount of the damages caused by the violation).

*Polls of entrepreneurs demonstrated that 75% of entrepreneurs-respondents believe this risk to be very high, 14.5% confirmed its existence but indicated that the degree of threat from such powers of the administrative authorities is insignificant. Only 24% considers them corrupting factors. And 8.5% of the total number of entrepreneurs-respondents were not sure whether coincidence of formal components of administrative offences and crimes is a corruption risk.*

Similar problems of absence of clear delimitation between crimes and administrative offences were also mentioned during investigation of causes of corruption in Russia<sup>73</sup>. *In Ukraine, officials of the following Administrative authorities are empowered to review cases on administrative offences, which are similar to corpus delictate of crimes:*

**1) State Directorate of Supervision for Compliance with Labor Laws**, which is empowered to review violations contemplated by Articles 41 “Violations of Provisions of Labor Laws and Laws on Labor Safety”, 93 “Violations of requirements of Legal and other regulatory Acts on Safe Operations in Industrial Sectors” of ACU. These actions are similar to crimes contemplated, respectively, by, Articles 175 “Failure to Pay Salaries, Fellowships and other payments established by Law”, 271 “Violations of Labor Safety Laws” of CCU;

**2) Bodies of Internal Affairs**, which are empowered to uncover the following violations:

*b. contemplated by Article 44 “Illegal Production, Purchase, Holding, Transportation and Sending of Narcotic or Psychotropic Substances without purpose to sell them in small amounts” of ACU. These acts are similar to crimes contemplated by Article 309 “ Illegal Production, Purchase, Holding, Transportation and Sending of Narcotic or*

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<sup>73</sup> Головщинский К.И. Диагностика коррупционности законодательства / Под ред. Г.А. Сатарова, М.А. Краснова. – М., 2004. – С. 22, 23 // web: www.indem.ru.

*Psychotropic Substances or their Analogs without purpose to sell them” of CCU;*

- c. contemplated by Article 51-2 “Violations of Intellectual Property Rights of ACU. These acts are similar to crimes contemplated by Articles 176 “Violations of Copyright and Neighboring Rights”, 177 “Violations of Rights to Invention, Useful Model, Industrial Model, Topography of an Integrated Microcircuit, Breed of Plants, Technical Innovation” of CCU;*
- d. contemplated by Article 155-2 “Deception of Buyer or Customer of ACU. These acts are similar to crimes contemplated by Article 225 “Deception of Buyers and Customers” of CCU;*
- e. contemplated by Article 164 “Violations of Business Activity Procedures” of ACU. These acts are similar to crimes contemplated by Article 202 “Violations of Procedures of Business and Banking Activities” of CCU;*
- f. contemplated by Article 164-10 “Violations of Laws regulating transactions with Metal Scrap” of ACU. These acts are similar to crimes contemplated by Article 213 “Violations of Procedure of Operations with Metal Scrap” of CCU;*
- g. contemplated by Article 186 “Arbitrariness” of ACU. These acts are similar to crimes contemplated by Article 356 “Arbitrariness” of CCU;*
- h. contemplated by Article 173 “Disorderly Conduct” of ACU. These acts are similar to crimes contemplated by Article 296 “Hooliganism” of CCU;*
- i. contemplated by Articles 190 “Violations by Citizens of Procedures of Purchase, Storage, Transfer to Other Persons or Sale of Fire, Cold or Pneumatic Weapons, 194 “Violations by Employees of Trading Enterprises (Organizations of Procedures of Sale of Fire, Cold or Pneumatic weapons and Munitions” of ACU. These acts are similar to crimes contemplated by Article 263 “Illegal Handling of Weapons, Munitions or Explosives of CCU”;*

**3) State Traffic Inspectorate**, which is empowered to uncover the following violations:

- a. contemplated by Article 128 “Release for Operation of Transport Vehicles, Technical Condition of which does not Correspond to Established Requirements or without the required Documents Envisaged by Law” of ACU”. These acts are similar to crimes contemplated by Article 287 “Release for Operation of Transport Vehicles in Bad Technical Condition or other Violations of Rules of their Operation” of CCU;
- b. contemplated by Article 128-1 “Violations or Failure to Comply with Rules, Norms and Standards Concerning Ensuring of Road Traffic safety of ACU. These acts are similar to crimes contemplated by Article 287 “Release for Operation of Transport Vehicles in Bad Technical Condition or other Violations of Rules of their Operation” of CCU;

**4) State Inspectorate for Control of Use and Protection of Lands**, which is empowered to uncover the following violations:

- a. contemplated by Article 52 “Spoiling and Contamination of Agricultural and Other Lands of ACU”. These acts are similar to crimes contemplated by Article 239 “Contamination or Spoiling of Lands of CCU;
- b. contemplated by Article 53-1 “Unauthorized Occupation of a Land Parcel” of ACU. These acts are similar to crimes contemplated by Article 197-1 “Unauthorized Occupation of a Land Parcel and Arbitrary Construction” of CCU;

**5) State Inspectorate for Architecture and Construction**, which is empowered to uncover violations contemplated by Article 97 “Unauthorized Construction of Houses of Structures” of ACU. These acts are similar to crimes contemplated by Article 197-1 “Unauthorized Occupation of a Land Parcel and Unauthorized Construction” of CCU;

**6) State Customs Service**, which is empowered to uncover violations contemplated by Articles 351 “Actions aimed at movement of Goods and

*Vehicles through Customs Border of Ukraine beyond Customs Control*”, 352 “*Actions Aimed at Movement of Goods through Customs Border of Ukraine with Concealment from Customs Control*” of Customs Code of Ukraine. These acts are similar to crimes contemplated by Article 201 “*Smuggling*” of CCU;

**7) Inspectorates for State Geologic Control over Geologic Exploration and Use of Subsoil**, which are empowered to uncover violations contemplated by Part 4 Article 57 “*Violations of requirements Concerning Protection of Subsoil*” of ACU. These acts are similar to crimes contemplated by Articles 202 “*Violations of Procedure of Business and Banking Activities*”, 240 “*Violations of Subsoil Protection Rules*” of CCU;

**8) State Committee for Technical Regulation and Customer’s Policies**, which is empowered to uncover the following violations:

- a. those contemplated by Article 42-2 “*Procurement, Processing of Sales of Foodstuffs or other Products with Radioactive Contamination*” of ACU. These acts are similar to crimes contemplated by Article 327 “*Procurement, Processing of Sales of Foodstuffs or other Products with Radioactive Contamination*” of CCU;
- b. those contemplated by Part Four Article 156 “*Violation of Rules of trade in Alcoholic Drinks and Tobaccos*” of ACU. These acts are similar to crimes contemplated by Article 202 “*Violation of Procedure of Business and Banking Activities*” of CCU;

**9) State Commission for Securities sand Stock Markets**, which is empowered to uncover the following violations:

- a. those contemplated by Article 163 “*Placement of Securities without Registration of their Issue or Violation of Procedure of Issuance of Securities*” of ACU. These acts are similar to crimes contemplated by Article 223 “*Violations of Procedure of Issuance or Circulation of Securities*” of CCU;
- b. those contemplated by Article 163-7 “*Activities at Stock Market without License*” of ACU. These acts are similar to crimes



*contemplated by Article 202 “Violations of Procedure of Business and Banking Activities” of CCU;*

- c. those contemplated by Article 166-9 “Violations of Legislation of Prevention of and Countering to Legalization (Laundering) of Criminally Obtained Profits” of ACU. These acts are similar to crimes contemplated by Article 209 “Legalization (Laundering) of Criminally Obtained Profits“ of CCU;*

**10) Fire Inspectorates**, which are empowered to uncover violations contemplated by Article 164 “Violations of Procedure of Business Activities” of ACU. These acts are similar to crimes contemplated by Article 202 “Violations of Procedure of Business and Banking Activities“ CCU;

**11) Tax Inspectorates**, which are empowered to uncover the following violations:

- a. those contemplated by Article 164 “Violations of Procedure of Business Activities” of ACU. These acts are similar to crimes contemplated by Article 202 “Violations of Procedure of Business and Banking Activities“ of CCU;*
- b. those contemplated by Article 163-2 “Failure to Submit or Failure to Submit on Time Payment Orders for Transfer of Due Taxes and Levies (Mandatory Payments) of ACU. These acts are similar to crimes contemplated by Article 212 “Avoidance from Payment of Taxes and Levies (Mandatory Payments) of CCU;*
- c. those contemplated by Article 177-2 “Manufacturing, Purchase, Storage or Sales of Falsified Alcoholic Drinks or Tobaccos” of ACU. These acts are similar to crimes contemplated by Article 204 “Illicit Manufacturing, Storage, Sales or Transportation with Purpose of Sale of Excise-Taxable Goods” of CCU;*

**12) National Bank of Ukraine**, which is empowered to uncover the following violations:

- a. those contemplated by Article 166-8 “Engagement in Banking Activities without Banking License” of ACU. These acts are similar*



*to crimes contemplated by Article 202 "Violations of Procedure of Business and Banking Activities" of CCU;*

*b. those contemplated by Article 166-9 "Violations of Legislation Concerning Prevention of and Countering to Legalization (Laundering) of Criminally Obtained Profits" of ACU. These acts are similar to crimes contemplated by Article 209 "Legalization (Laundering) of Criminally Obtained Profits" of CCU;*

**13) State Inspectorate for Protection and Reproduction of Water Natural Resources and Regulation of Fishing**, which is empowered to uncover violations contemplated by Article 164 "Violations of Procedure of Business Activities" of ACU. These acts are similar to crimes contemplated by Article 202 "Violations of Procedure of Business and Banking Activities" of CCU;

**14) State Directorate for Intellectual Property**, which is empowered to uncover violations contemplated by Article 164-13 "Violations of Legislation Regulating Production, Export and Import of Laser-Reading System Discs and Export or Import of Equipment or Raw Materials for Production of them" of ACU. These acts are similar to crimes contemplated by Article 203-1 "Illegal Turnover of Laser-Reading System Discs, Matrixes, Equipment and Raw Material for Production of them" of CCU;

**15) State Committee for Financial Monitoring**, which is empowered to uncover violations contemplated by Article 166-9 "Violations of Legislation Concerning Prevention of and Countering to Legalization (Laundering) of Criminally Obtained Profits" of ACU. These acts are similar to crimes contemplated by Article 209 "Legalization (Laundering) of Criminally Obtained Profits" of CCU;

**16) Control and Inspection Service**, which is empowered to uncover violations contemplated by Article 164-12 "Violations of Laws on Budget System of Ukraine" of ACU. These acts are similar to crimes contemplated by Article 210 "Violations of Laws on Budget System of Ukraine" of CCU;

**17) Pension Fund of Ukraine**, which is empowered to uncover violations contemplated by Article 165-1 "Violations of Legislation concerning

*Universal Mandatory State Retirement Insurance” of ACU. These acts are similar to crimes contemplated by Article 212-1 “Avoidance from Payment of Insurance Fees for Universal Mandatory State retirement Insurance” of CCU;*

**18) State Environmental Inspectorate**, which is empowered to uncover the following violations:

- a. *those contemplated by Article 59-1 “Violations of Requirements Concerning Protection of territorial and Inland Maritime Waters from Contamination and Pollution” of ACU. These acts are similar to crimes contemplated by Article 243 “Contamination of Sea” of CCU;*
- b. *those contemplated by Article 65 “Illegal Cutting, Damaging and Destruction of Sylvula and Saplings” of ACU. These acts are similar to crimes contemplated by Article 246 “Illegal Cutting of Forest Trees” of CCU;*
- c. *those contemplated by Article 65-1 “Destruction or Damaging of Field-Protecting Forest Belts and Protective Forests” of ACU. These acts are similar to crimes contemplated by Article 245 “Destruction or Damaging of Woodlands” of CCU;*
- d. *those contemplated by Article 78 “Violations of Procedure of Release of Contaminants into Atmosphere or Impact over it by Physical and Biological Factors” of ACU. These acts are similar to crimes contemplated by Article 241 “Contamination of Atmospheric Air” of CCU;*
- e. *those contemplated by Article 79-1 “Failure to Comply with Environmental requirements during Design, Installation, Construction, Renovation and Commissioning of Facilities or Structures” of ACU. These acts are similar to crimes contemplated by Article 253 “Design or Operation of Structures without Environmental Protection Systems” of CCU;*

**19) State Water Committee**, which is empowered to uncover violations contemplated by Article 59 “Violations of Rules of Protection of Water

resources” of ACU. These acts are similar to crimes contemplated by Article 242 “Violations of Rules of Protection of Waters” of CCU;

20) **State Inspectorate for Plants Protection**, which is empowered to uncover violations contemplated by Article 83-1 “Violations of Legislation concerning Protection of Plants” of ACU. These acts are similar to crimes contemplated by Article 247 “Violations of Legislation concerning Protection of Plants” of CCU;

21) **State Inspectorate for Nuclear and Radiation Safety**, which is empowered to uncover violations contemplated by Article 95 “Violations of Rules and Norms of Nuclear and Radiation Safety” of ACU. These acts are similar to crimes contemplated by Article 274 “Violations of Rules of Nuclear and Radiation Safety” of CCU.

So, coincidences between formal components of administrative offences and crimes existing in the legislation need to be eliminated. One of the ways to resolve this problem may be implementation of institution of criminal misdemeanors as a variety of criminally punishable acts, which is envisaged by Concept of Reform of Criminal Justice of Ukraine. Then certain current administrative offences, which have components similar to those of crimes, would be included into category of criminal misdemeanors.

***In view of the above, our recommendations are as follows:***

- 1. Coincidences between formal components of administrative offences and crimes existing in the legislation should be removed.**

*This recommendation was supported by 82,9% of entrepreneurs-respondents, while 1,5% disagreed.*

# 4. CONCLUSIONS

To summarize the results of the survey, the following conclusions can be made.

Corruption in the area of administrative services and control and inspection activities of the country implicates inclusion of Ukraine into the number of countries with high levels of corruption. Corruption in these areas shapes out the public opinion concerning scales of corruption because the public has much rarer opportunities to deal personally with other key corruption-generating sectors: distribution of budget (public) funds (resources), governmental acquisitions, appointments, etc. That is why the results of this survey allow not only separating corruption risks in the areas covered by the survey, but also illustrating corruption risks, which are common for the whole system of public administration.

So, the survey of corruption conducted in the area of administrative services rendered by the public administration bodies allowed for identification of the following major corruption risks:

- unreasonably long terms for rendering of certain administrative services;
- general complication of the procedures to render many administrative services;
- personal contact of a private person-consumer of an administrative service with an official who renders such administrative service;
- limited access to administrative bodies rendering administrative services;

- limited opportunities for a private person to chose the manner of requesting an administrative service;
- lack of information concerning procedure of rendering of administrative services;
- lack of order in procedures of payments for the administrative services and establishment of additional “paid services”;
- territorial monopolism in rendering of the administrative services.

Surveys of corruption in control and inspection activities of the public administration allowed to identify the following major corruption risks:

- unreasonably wide interference powers of administrative authorities with regard to suspension/prohibition of activities;
- the fact that some administrative authorities have ungrounded powers to conduct “on site” inspections;
- orientation of the administrative authorities towards punishment (imposition of fines), rather than at correction or prevention of violations;
- unreasonably wide powers of administrative authorities with regard to unimpeded receipt of information, access to items and documents, parcels of land;
- the fact that some administrative authorities have powers to charge fines right at the scene of commission of offence;
- coincidence between formal components of offences contemplated by the Administrative Code and numerous sectoral laws, which are subject to fines of different amounts;
- big difference in establishment of the smallest and the biggest amounts of fines;
- coincidence between formal components of administrative offences and crimes.

Most of the forementioned corruption risks in Ukraine are implied by its imperfect and non-reformed public administration system, which has remained in its many aspects the Soviet system, as well as by poor quality of the legislation. Under such circumstances, when the private property and market economy faced traditions and rules of command-planned system of public administration and big non-reformed sectors of the public sector, corruption opportunities for dishonest representatives of the government has increased.

That is why one of the major conclusions of our survey is that the administrative reform in Ukraine has been overdue for a long time, because without it we will continue fighting consequences rather than reasons of corruption. At this the first priority anti-corruption steps are: streamlining of system and structure of the public administration bodies, ensuring of professionalization and integrity of the public service, streamlining of the legislation in general and development of laws of administrative procedure in particular, consolidation of functions of internal administrative control, development of tools for legal protection of private persons in their relationship with the public administration bodies. In order to implement the administrative reform it is necessary to have a clear political vision, in particular, to provide for official approval of Concept of Public Administration reform, as well as for introduction of a separate (temporary) position of the member of Cabinet of Ministers, who would be responsible for the administrative reform.

Attention also should be paid to the problems, which are beyond the scope of this survey, but which may be subject to our conclusions in view of the overall monitoring of governmental activities. In particular, it is evident that Ukraine does not have purposeful anti-corruption policy. Some measures taken lack neither proper coordination nor political support. Big number of recommendations and draft resolutions prepared by the authorities, non-governmental organizations and projects of international technical assistance remain non-implemented. Draft Laws, even if they end up in the Verkhovna Rada, do not gain support of pro-governmental

majority<sup>74</sup>. That is why we believe that there should be a member of Cabinet of Ministers responsible for the anti-corruption policy, because it is evident that the problem of corruption is one of the priorities for Ukraine and hence it should be within the sight of the Government. And in view of the fact that matters of anti-corruption policy interfere with areas of responsibility of many executive authorities, the function of its coordination and political promotion becomes one of the highest priorities.

At the same time the anti-corruption policy in Ukraine has big chances for success because a very positive moment is that the number of citizens convinced that bribes need to be given in order to resolve most of issues with public authorities is significantly going down (*in 2003 such opinion was shared by 72.5 % of respondents from the public while in 2009, 53.8%*). Such trends are evidently positive.

This survey resulted in recommendations concerning elimination (minimization) of corruption risks in the area of administrative services and control and inspection activities of the government (*attached hereto*).

The most supported by the public in general and by entrepreneurs in particular were the recommendations related to establishment of clear and substantiated terms for rendering of administrative services (in sense of their reduction), streamlining and formalization of procedure to render administrative services, implementation of “single office” (“one-stop-shop”). The most supported recommendations in the area of control and inspection activities were those concerning restriction of discretionary powers of inspecting authorities with regard to suspension/termination of operations, restrictions on “on-site” inspections, re-orientation of activities of the control and inspection bodies from punishment to prevention of violations.

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<sup>74</sup> An illustrative example of this is voting for draft Law of Ukraine “On Integral Conduct of Persons Empowered to Perform Governmental and Local Self-Government Functions” (Registry number 2362 submitted by the Cabinet of Ministers of Ukraine of Y. Tymoshenko). An interesting sign is that not more than 2 members (out of 156) of BUT faction, 33 of NU-NS and 1 of Block of Litvin voted for adoption of this Draft Law in teh first reading, which took place on 20 March 2009.

*Also, we need to emphasize that, according to results of the survey conducted within the framework of the Project, the absolute majority of the proposed measures to reduce corruption are deemed right by both public in general and by entrepreneurs in particular.*

Finally, it needs to be underlined that some of the anti-corruption measures do not require any legislative changes but can be implemented by decisions of Heads of specific public administration authorities. In particular, it refers to minimization of personal contacts between officials and private persons, assignment of a bigger number of hours to receive public and fight against queues or their streamlining, bigger transparency in activities of public information bodies, strengthening of internal control function, etc. Local self-governments have especially wide opportunities in this regard.



# 5. RECOMMENDATIONS

## **FOR VERKHOVNA RADA OF UKRAINE AND CABINET OF MINISTERS OF UKRAINE:**

### *General Recommendations:*

- Political and administrative functions in the executive authorities should be delimited at the institutional level;
- Functions of rendering administrative services and those of control and inspection should be delimited institutionally;
- Civil service and service with local self-governments should be reformed in order to ensure its transparency and political neutrality;
- The system of remuneration of labor of public servants should be reformed in order to ensure its transparency, adequacy and stability;
- Issues of ethics and conflict of interests in public service should be regulated;
- The legislation should provide for mandatory rotation of public servants, in particular, for positions with high risks of corruption;
- Legislation should be continuously improved in the sense of its streamlining and systematization;
- Code of Administrative Procedure of Ukraine needs to be approved as soon as possible;
- Judicial reform aimed at guaranteeing the right of private person to an efficient judicial remedy needs to be implemented;
- Institution of administrative appeals should be reformed in order to ensure its objectiveness (impartiality);
- Internal control (financial control and internal investigations) function should be developed within the public administration authorities;

- Mechanisms of parliamentary control should be strengthened ensuring their professionalism and appropriate legislative framework;
- Mechanisms of external control to include financial control should be developed at the local self-governments.

***Recommendations concerning rendering of administrative services:***

- For purposes of regulation of the procedure of rendering of administrative services (both to request a service and to obtain results), use of communication by mail should be envisaged (promoted);
- Development of electronic governance, in particular, use of E-mail to request administrative services should be promoted;
- Maximal possible number of ways for a person to request an administrative service (use of regular mail, E-mail, rendering of a service requested by phone (if feasible) should be established at the legislative level;
- Procedure of rendering of administrative services to include implementation of the “single window” principle should be streamlined;
- Wherever possible, the principle of “silent consent” for purposes of issuance of approvals or opinions should be implemented;
- Wherever possible, the principle of sufficiency of request (notification) should be implemented for rendering of certain administrative services;
- Reasonable (adequate) terms for rendering of administrative services should be envisaged and with this purpose the effective legislation should be revised;
- Legislative regulation of the issue of rendering of administrative services at no charge or on the paid basis, of procedures to determine amounts of such payments and procedure to approve such amounts needs to be streamlined by means of adoption of Law “On Administrative Fees”;
- Paragraph Five Subpoint 7.11.8 Article 7 Of Law of Ukraine “On Taxation of Profits of Enterprises” should be cancelled with regard to powers of the Cabinet of Ministers of Ukraine to establish lists of paid

services, which may be rendered by the governmental authorities and local self-governments;

- The governmental authorities and local self-governments should be prevented from rendering paid services of commercial nature;
- In the area of administrative services (when possible) the territorial monopolism should be avoided and private persons should be given alternative options for choice of the administrative body to receive an administrative service.

***Recommendations concerning control and inspection activities:***

- The regulatory acts should clearly indicate at specific grounds for making decisions of prohibition of operations;
- Powers of an administrative authority to terminate certain activity (closure of an entity) should be accompanied by mandatory confirmation of such decision by a court;
- Administrative authorities should be granted the right of access to premises, documents or items only on the basis of determinations of an Administrative court (if there is nor voluntary consent of the relevant person);
- Direct prohibition should be established with regard to use in criminal proceedings results (information/evidence) obtained through control and inspection activities without observation of guarantees (rights) of a person for defense against self-incrimination;
- Powers to conduct scheduled “on site” inspections should be left only for those administrative authorities, which are empowered to provide for actual control of correspondence of certain types of activities (condition of facilities) to legal requirements;
- Practices of implementation of inspections by some administrative authorities on the basis of reports received from persons and of copies of documents (off-site inspections) should be promoted;

- Inspecting authorities should not be entitled to charge fines right on the scene of commission of offense and fines should be paid through banking institutions only;
- Sophisticated procedure of application of fines by some inspecting authorities with preceding stage of requirement to correct violations should be implemented;
- Practice of planning of state budget revenues at the expense of proceeds from fines should be stopped;
- Laws on state budget should not include provisions concerning funding of public authorities at the expense of proceeds from fines imposed by the same authorities;
- There should be no duplication of formal components of offenses in Administrative Code and in Sectoral Laws;
- Legal entities should be held liable for administrative offenses (instead of officials of these legal entities) and all formal components of administrative offenses should be included into a single codified act;
- Unreasonably big difference between the smallest and the biggest amounts of fine for the same violation should be eliminated;
- Coincidence between formal components of administrative offenses and crimes existing in the legislation should be eliminated.

## **FOR CABINET OF MINISTERS OF UKRAINE:**

### ***General Recommendations***

- Public administration reform should be approved;
- Practices of “expansion” of powers of public administration by means of creation of subordinate legislation needs to be stopped;
- Internal control function (financial control and internal investigations) within public administration bodies should be developed;

- Sufficient independence of internal control and anti-corruption units needs to be ensured.

### ***Recommendations concerning rendering of administrative services***

- Electronic governance (in particular, use of E-mail to request administrative services) needs to be developed;
- “One-stop-shops” (“offices for citizens” and the like offices) should be promoted and the “single window” principle in rendering of administrative services should be applied;
- “List of Paid Services” approved for the executive authorities need to be canceled;
- Determination of fees for administrative services needs to be properly regulated (Law “On Administrative Fees” needs to be drafted and passed);
- Practices of unbundling the administrative services into separate (paid) services with the goal to obtain “best” results need to be stopped;
- A single (separate) web-site (web-portal) should be created, which would contain a list of all administrative services, which are rendered by the executive authorities and local self-governments, as well as information concerning receipt of such services;
- Legislative regulation of the issue of rendering of administrative services at no charge or on the paid basis, of procedures to determine amounts of such payments and procedure to approve such amounts needs to be streamlined by means of adoption of Law “On Administrative Fees”;
- In the area of administrative services (when possible) the territorial monopolism should be avoided and private persons should be given alternative options for choice of the administrative body to receive an administrative service.

### ***Recommendations concerning control and inspection activities:***

- Risk levels for most of types of business activities should be revised in order to decrease frequency of scheduled inspections;

- Quantity of scheduled and unscheduled inspections by administrative authorities should be decreased;
- There should be a rule, by which inspections are conducted only on the grounds of reasonable suspicion concerning a violation (except for exclusive categories of entities defined in the law);
- Priority should be given to prevention of violation rather than to punishment for commission of them;
- The purpose of some inspecting authorities should be changed to transform them into agent-type authorities, mostly engaged in giving persons advise with regard to the rules of certain activities and recommendations concerning prevention of violations of law.

### **FOR MINISTRY OF JUSTICE OF UKRAINE:**

In the process of anti-corruption examination of draft legal acts (as well as acts submitted for registration), which would regulate relations of public administration authorities with private persons, attention should be paid to:

- their correspondence to standards of fair administrative procedure (in particular, guarantee of right of a private person to be heard, right to access to materials of the case, to assistance and representation; obligations of the administrative authority to ensure motivation of its decision and determination of the procedure of appeal);
- ensuring convenient ways to request administrative services with priority given to requests and responses sent by mail;
- ensuring of mechanisms for impartial administrative appeal;
- implementation of principle of silent consent for purposes of issuing approvals and opinions;
- promotion of principle of sufficiency of request (notification) in rendering of certain administrative services;

- clear determination of grounds for making decisions concerning ban to conduct certain types of activities;
- correspondence of each type of business activities to the proposed frequency of schedules inspections;
- establishment of clear grounds for powers to conduct “on-site” inspections;
- possibility to conduct an inspection on the basis of reports received from a person;
- elimination of repetition of the same formal components of offences in the Administrative Code and sectoral laws;
- well-substantiated grounds for difference in the smallest and the biggest amount of fines for violations in order to limit discretionary powers of the administrative authorities;
- elimination of coincidence between forma components of administrative offences and crimes.

## **FOR HEADS OF PUBLIC ADMINISTRATION BODIES:**

### ***General Recommendations***

- Ethical standards and control over the conflict of interests should be implemented for the public service;
- Procedural independence of public servants at the executive level (inspectors, specialists) should be ensured;
- Objectivity (impartiality) of mechanisms of administrative appeal needs to be ensured;
- Functions of internal financial control and anti-corruption activity should be developed;
- Independence of internal financial control and anti-corruption units should be promoted.

***Recommendations concerning rendering of administrative services***

- Reduction of terms for rendering of administrative services should be promoted;
- Procedure of rendering of administrative services should be streamlined to include implementation of a “single window” principle;
- The number of bodies (units) engaged in rendering of administrative services and quantity of documents requested from a person should be reduced to a minimum;
- Use of mail should be promoted for purposes of administrative services (both to request a service and to send a response);
- “One-stop-shop” (“offices for citizens”) should be created and “single window” principle should be applied;
- Hours for reception of the representative of the public should be regulated, so that they are convenient and sufficient for consumers of administrative services;
- Procedure for the officials to personally receive representatives of the public needs to be streamlined by means of introduction of “electronic waiting list”, etc.;
- Buildings (premises) of administrative authorities should be divided into “closed premises” (for work with documents) and “open premises” (to receive representatives of the public);
- Process of communication of public servants with representatives of the public needs to be under open control;
- Rotation of officials on positions with high corruption risks should be implemented;
- Questionnaires (blank forms) should be introduced for purposes to request an administrative service;
- Information required to a person to address an administrative body without anybody’s assistance (information booths, sample documents,



brochures, contact phone numbers, hours for visitors, etc.) should be placed in premises of administrative bodies assigned for reception of visitors;

- Advise offices, customer's service offices and phone lines should be implemented;
- Web-sites and other electronic resources of administrative bodies with information necessary to receive an administrative service should function;
- Proper conditions should be created in the premises assigned for reception of representatives of the public;
- Problems of availability of any blank forms necessary to receive administrative services should be resolved on time.

***Recommendations concerning control and supervision activities:***

- Quantity of scheduled and unscheduled inspections needs to be reduced;
- There should be a rule, by which inspections are conducted only on the grounds of reasonable suspicion concerning a violation;
- There should be separate units or special positions, where the relevant persons would have as their major duty giving advice to persons concerning rules of conducting certain activities and issuance of recommendations concerning prevention of violations of law.

# CENTRE FOR POLITICAL AND LEGAL REFORMS

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**REPORT OF DEMOCRATIC  
INITIATIVES FOUNDATION  
ON RESULTS OF THE  
SOCIOLOGICAL SURVEY**

# Introduction.

## THE SURVEY METHODOLOGY

Corruption is one of the most dramatic problems for the young Ukrainian state. The anti-corruption policy should take into account the specific nature of corruption in various areas and suggest concrete mechanisms to reduce corruption risks. The joint initiative of the European Commission and the Council of Europe *Support to Good Governance: Project against Corruption in Ukraine (UPAC)* has conducted a systemic study of corruption risks related to the two functions of Ukraine's public administration, namely provision of administrative services, and control and supervision. The study consists of a research carried out by the Centre for Political and Legal Reform, and a sociological survey conducted by Democratic Initiatives Foundation. The analytical part includes a number of recommendations to eliminate or downsize corruption risks in the researched functions of public administration, the recommendations addressing the Verkhovna Rada, the Cabinet of Ministers, the Ministry of Justice, as well as all the heads of government agencies responsible for organization and implementation. The survey has been conducted to test the attitudes of the general population, and particularly the entrepreneurs, to the recommended legal solutions.

### ***The survey included the following components:***

1. National public opinion poll. The aim was to research the population's attitude to corruption, and to see how far corruption has spread, particularly in administrative servicing. 1,800 respondents were interviewed in every region of the country and the Autonomous Republic of Crimea, representing the adult population of Ukraine (aged over 18) by sex, age, education, type and region of residence. The sampling error does not exceed 2,3 %. The results were then compared with those of the national survey conducted by the Institute for Applied Humanitarian Research in 2003<sup>75</sup>.

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<sup>75</sup> Corruption in Ukraine: 2004. Final report, p.7.

2. Entrepreneur Poll. Entrepreneurs were asked to assess corruption risks in a number of business situations and suggest which of the proposed measures could reduce the risks. The pollsters interviewed four hundred entrepreneurs working in various businesses in the cities of Kyiv, Lviv, Kharkiv, Odessa, Dnipropetrovsk, Donetsk, Vinnytsia, and the Crimea, fifty entrepreneurs from each location. Naturally, the sample does not represent the whole business environment of Ukraine: a truly representative survey should have been based on a single national register of entrepreneurs which, firstly, does not exist, and secondly, such a survey would have required too much time and money. Nevertheless, the poll is statistically convincing as it represents various businesses from the key regions of Ukraine.
3. Focus groups in 5 Ukrainian cities: Kyiv, Kharkiv, Lviv, Odessa and Dnipropetrovsk. The focus groups discussed the motivation behind business attitudes to the proposed measures aimed at decreasing corruption risks in regulation, control and supervision.
4. Ten interviews with government officials, both from legislative and executive agencies, whose job is to deal with entrepreneur problems and who can therefore competently assess the effect of the solutions proposed by the analysts.

**The following experts were interviewed:**

1. *Kseniya Lyapina*, Member of Parliament of Ukraine, Deputy Head of the Committee on Industrial and Regulatory Policy and Entrepreneurship;
2. *Oksana Prodan*, Chairperson of Entrepreneurs Council under the Cabinet of Ministers of Ukraine;
3. *Oleksandra Kuzhel*, Head of State Committee for Entrepreneurship and Regulatory Policy of Ukraine;
4. *Anatoliy Tkachuk*, Deputy Minister for Construction and Regional Policy of Ukraine;
5. *Vyacheslav Kuznetsov*, Deputy Head of Counter-Corruption Department at the State Tax Inspection of Ukraine (the interview was approved by Serhiy Buryak, Chairman of the State Tax Inspection of Ukraine);

6. ***Pavlo Afanasyev***, Head of Organization Section, State Fire Control Department, Ministry for Emergencies of Ukraine;
7. ***Yuriy Shyrko***, First Deputy Chairman, State Committee on Technical Regulation and Consumer Policy of Ukraine;
8. ***Mykola Povoroznyk***, Head of the Central Department for Regulatory Policy and Entrepreneurship of Kyiv City Administration;
9. ***Henadiy Rozhkov***, Deputy Chief Sanitary Inspector of Kyiv City;
10. ***Pavlo Karas***, Director of Department for Economic Policy and Development of the Cherkasy City Administration;
11. ***Oksana Kyrychenko***, Director of Department for Legal Support of the City Administration of the Cherkasy City Administration;
12. ***Ruslan Stempovskiy***, Head of the Economic Permissions Center, Department for Legal Support of the Cherkasy City Administration.

# Section 1.

## PERCEPTION OF CORRUPTION BY GENERAL POPULATION OF UKRAINE AND BY UKRAINIAN ENTREPRENEURS AS A SPECIAL SOCIAL GROUP

Corruption in Ukraine has long been perceived as an integral part of our life. It would be wrong to think that corruption is a recent phenomenon: the lowest corruption perceptions index for Ukraine, as measured by Transparency International, the international organization against corruption, was 1.5 in 2000 by a ten-point scale where zero is the highest corruption perception level and 10 is the lowest one. At that time, only the disintegrating Yugoslavia and Nigeria ranked lower than Ukraine. In 2001, Transparency International said Ukraine's corruption perceptions index was 2.1; in 2002 – 2.4; in 2003 – 2.3; in 2004 – 2.2. Many changes occurred after the Orange Revolution of 2004, when political and civil rights and freedoms improved dramatically. The corruption index also took turn for the better: 2.6 in 2005, 2.8 in 2006, and 2.7 in 2007, though it never got over the 3.0 threshold that would point to galloping corruption in a country.

In September of 2008, Transparency International issued its annual ratings of corruption in the world which showed that Ukraine's index had again dropped to 2.5. Today Ukraine ranks 134<sup>th</sup> in the rating list of 180 nations, sharing its position with Nicaragua, Pakistan, and the Comoros Islands all of which have the same corruption index, while last year Ukraine ranked 118<sup>th</sup>. It means that Ukraine is on an equal footing with the countries that Europe considers the most corrupt ones, where counter corruption methods are inefficient and the scale of corruption keeps growing.

Naturally, such a high corruption level registered by the international organizations is only a reflection of corruption perceptions inside the country, which, in its turn, mirrors the real spread of corruption. Public

opinion surveys prove that perception of corruption in Ukraine is on a very high level and remains stable.

Table 1.1 compares the three national polls conducted in May of 2004<sup>76</sup>, June and July of 2007<sup>77</sup>, in March of 2009<sup>78</sup>, and the entrepreneur poll<sup>79</sup>.

Table 1.1

**How would you assess corruption levels in Ukraine? (%) \***

Corruption level assessment	May 2004	June & July 2007	March 2009, population of Ukraine	March 2009, entrepreneurs
Very high	32.1	38.7	46.4	35.8
High	37.9	34.1	32.7	29.8
Medium	16.8	14.8	7.6	21.1
Low	3.2	2.2	0.6	6.3
Insignificant	1.3	1.1	0.9	1.3
Difficult to answer	8.7	9.1	11.7	5.8

\* In the March 2009 poll, the question was about corruption in “Ukraine’s administrative agencies”, however the authors believe that the results can be generalized as one usually relates corruption to the authorities of various levels

As you can see from the table, the population continuously evaluates the corruption level as high and very high. Interestingly, the corruption level was measured in different times: May of 2004 was the height of President Kuchma’s rule, June and July 2007 saw Yushchenko as the President and Yanukovich as the Prime Minister, while in March of 2009 Yushchenko was the President but Tymoshenko was the Prime Minister. Nevertheless, the corruption index would not go down, and the public opinion increasingly tends to assess it as “very high”. It is curious that the entrepreneurs gave a more moderate

<sup>76</sup> The national poll was conducted in May 2004 by the Democratic Initiatives Foundation jointly with the Social Monitoring Center. 2038 respondents were interviewed by sampling, representing adult population of Ukraine (over 18). The statistic sample error did not exceed 2.2%.

<sup>77</sup> The national poll was conducted in June and July 2007 by the Democratic Initiatives Foundation jointly with the Ukrainian Sociology Service. 2000 respondents were interviewed by sampling, representing adult population of Ukraine (over 18). The statistic sample error did not exceed 2.2%.

<sup>78</sup> The national poll was conducted in March 2009 by the Democratic Initiatives Foundation jointly with the Ukrainian Sociology Service. 1800 respondents were interviewed by sampling, representing adult population of Ukraine (over 18). The statistic sample error did not exceed 2.5%.

<sup>79</sup> The entrepreneur poll was conducted in March 2009 by the Democratic Initiatives Foundation. 400 entrepreneurs in eight Ukrainian cities were interviewed, with 50 respondents each from Kyiv, Kharkiv, Odessa, Lviv, Donetsk, Dnipropetrovs’k, Vinnytsia and the Crimea.



assessment to corruption, and every fifth characterized the corruption level as “medium”, though the share of entrepreneurs that had offered bribes during the previous year was significantly higher than that of the general population. This difference in the population’s approach to the corruption level versus that of the entrepreneurs can be explained by one’s personal bribing experience. 56% of the population who had had to give bribes during the previous year assessed the corruption level at public administration institutions as very high, while 44% of those who had not bribed anyone during that period also considered corruption levels to be very high. The entrepreneurs’ assessments depended much more on their personal experience, thus 53% of those who had had to offer bribes within the previous year considered corruption level to be very high, but the figure reached only 15% among those who had not bribed. 27% of entrepreneurs who had not given any bribes during the previous year estimated the corruption level as medium, while 15% said it was low. One can conclude that the entrepreneurs’ assessments were mostly based on their own experience, while those of the general population would largely be based on stereotypes.

The polled experts, for their part, assessed the corruption level in Ukraine as very high, and some of them labeled the situation as “critical” and “corruption-prone”.

The population is already used to corruption as a common and ordinary phenomenon, almost an integral part of people’s life. This is proved by comparative results of the public opinion polls conducted in January and April of 2003<sup>80</sup>, and in March of 2009 (table 1.2).

Table 1.2

**Assessment of corruption in Ukraine, general population (%)**

	2003, population of Ukraine		2009, population of Ukraine	
	Agree	Do not agree	Agree	Do not agree
Corruption in public administration is a common phenomenon	85.1	3.7	82.6	6.6
Top officials are mostly to be blamed for corruption	85.0	4.7	82.5	6.2
Bribing is necessary to solve a problem with public administration	72.5	11.3	53.8	29.9
The tougher the punishment will be for the officials the less corruption there will be	69.5	14.3	79.2	7.2

<sup>80</sup> The national poll was conducted by the Institute for Applied Studies. 1100 respondents were interviewed by representative sampling. The sample error did not exceed 3%.

As we see by comparing public opinion in 2003 and 2009, it has not changed much as public administration corruption was perceived as a usual phenomenon and top government officials were primarily to blame. At the same time, an extremely positive trend was the significant reduction of the number of people who believed bribes were necessary to solve problems with administration officials. The population became more intolerable of the corrupt officials, and severe punishment was believed to be the main tool to fight corruption.

It should be stressed that the population broadly holds public administration and its officials responsible for corruption. Yet, the question about the reasons for bribing has revealed quite a variety of motivations that goes far beyond the usual blaming of the bureaucrats. The answer “Because they demand it” accounted only for 19% of the answers (table 1.3). Over two thirds of the respondents indicated that that the bribe was not forced but rather offered on their own initiative, in advance, because “it is normal” and “it is a faster and easier way to solve a problem”. Therefore the reasons for corruption are much deeper and more serious than just unscrupulous bureaucrats. Large-scale corruption can change the culture and morals of the society, and though bribery is not praised it is largely tolerated. Corruption is widely spread where bribing is a tradition, and it is difficult to fight corruption if people are used to solving their problems by bribing.

Table 1.3

**Why do you think people bribe? (% , the answers are ranged)**

Reasons for bribing	2009, national poll
Because a problem cannot be solved if you do not bribe	23.3
Because it is easier for people to solve their problems	22.4
Because it has become a norm of our life	20.9
Because officials demand bribes	19.3
Because people often want something that they cannot own by the law	3.1
Sometimes people want to show their gratitude to a person who has helped them solve a problem	1.9
Our legislation is so complex that one cannot understand it on one's own	4.0
Other reasons	0.4
Difficult to say	4.7

*Kseniya Lyapina*, Deputy Head of Verkhovna Rada Committee on Industrial and Regulatory Policy and Entrepreneurship, has expressed an

interesting opinion regarding the reasons for corruption. She suggested that widespread corruption in the society could be caused by global mental factors: Ukrainians had not had a state of their own for centuries, therefore they were not used to treating the state as something they owned and that should serve their interests. *“One habitually treats the state as an alien but a ruling entity, an element of dominance. This mentality leads to the situations where a public servant gets a position and believes at once that he can rule, and that the others should be treated like sheep that he has to guard. And the people would accept it.”*

**Mrs. Lyapina** suggests that an official, i.e. an administration representative, does not consider oneself and his or her job as a public servant who is paid to provide certain useful functions to the society, but rather as means of enrichment. In fact, the civil servant acts as a businessman, selling ones authority. And the people think that *“it should be like that, and it will be. That is the biggest obstacle. It is hard to fight what is popularly believed to be a standard, a tradition.”*

The reasons for corruption were actively and emotionally discussed in the focus groups<sup>81</sup>. Here are some of the most interesting and typical statements:

- *“Corruption is a feeding chain, and the people are at the bottom of the chain”*
- *“You can’t do without it. Corruption is the blood of business”*
- *“No bribe – no job”*
- *“I have a friend, a civil servant, and he says that if you pay when you enter an office, it is a bribe, but if you pay when leaving, it means you are grateful, so one should only pay as one leaves”*
- *“The corruption level has exceeded all bounds. I saw it when I worked at law enforcement, we couldn’t deal with the prosecutor’s office without it. I did not bribe because I had an adviser who told me that if I gave them a bribe I would become their friend and brother, but then I would have to keep bringing bribes. I did not, so the prosecutor and the investigator just kept ignoring me.”*

An entrepreneur from Lviv told his focus group, *“School kids know that their parents bring bribes to their teachers, and they grow with the understanding that bribes are a standard thing. They are the future of the nation.”*

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<sup>81</sup> 5 focus groups were held in Kyiv, Lviv, Dnipropetrovsk, Odessa and Kharkiv, with entrepreneurs working in various businesses.

The idea that corruption is *a norm of life* and a common way of solving problems has not emerged from nothing. The survey has revealed that bribery is extremely widespread in the country: 28% of respondents among general population had offered bribes, or forced services, or forced presents during the previous twelve months, while with the entrepreneurs that figure reached 48%. (Table 1.4).

Table 1.4

**Have you personally or members of your family offered, within the recent twelve months, any bribes or forced services by the principle “you please me, and I will please you”; or made forced presents? (%)**

Did you have to bribe or to offer forced services or presents?	2009, population of Ukraine	2009, entrepreneurs
Yes	27.8	48.1
No	61.2	36.6
I do not want to answer this question	11.1	15.3

It should be noted that “corrupt activities” are spread quite evenly between the population of various regions, both urban and rural ones. Bribing is more common among young and middle-aged people than the older ones, and among those with a medium material status<sup>82</sup>, although even the worst-to-do also have to offer bribes or forced presents.

Among all the social groups that responded to the national poll, entrepreneurs were the group that had to bribe the most – 44%, almost the same number as the one that the entrepreneurs poll produced (47%). This justified the focus of the polls on entrepreneurs and business environment.

The issue of the reasons for corruption and bribery in business was studied comprehensively, through polls, focus groups discussions, and expert interviews.

**Oleksandra Kuzhel**, Head of the Committee for Entrepreneurship and Regulatory Policy, believes that the main reason for corruption in business is the absence of clear legislative rules and standards that would unequivocally describe bureaucratic functions and timeframes. **Mykola Povoroznyk**, Head

<sup>82</sup> The group of respondents with the high or above-medium material status is not large enough for statistically reliable conclusions.

of Kyiv Central Department for Regulatory Policy and Entrepreneurship, suggests that corruption is fueled by the lack of transparency in government agencies in general, and licensing procedures in particular. The same corruption factors have been identified by Cherkasy City Administration experts **Pavlo Karas**, **Oksana Kyrychenko**, and **Ruslan Stempovskiy**. All of them agreed that corruption was mostly provoked by the lack of standards in the provision of administrative services, the absence of effective control mechanisms, and irrationally large number of unwarranted permissions.

**Kseniya Lyapina** suggested that the issue of bribery becomes a problem for entrepreneurs when a certain *acceptable barrier* has been overstepped: *“As a rule, everybody tries to come to some terms first. However, if the bribe is too big and one can’t pay it, then they resort to collective actions of professional associations. The threshold is the amount one can pay.”* She believes that the administrations *“raise the barriers”* to make lawful above-board business unprofitable. *“The higher the barriers, the bigger the bribe. But even so bribes are cheaper than a legal solution.”*

Many focus groups participants expressed similar opinions. In Kharkiv, entrepreneurs said that it was just impossible to comply with all the norms, regulations and standards of fire safety that had been established back in the Soviet times. *“A fire inspector would come and tell me to install a fire alarm system that costs twenty thousand, then get a connection to the fire center, and so on, and so forth. After a round of talks we come to the conclusion that nobody really needs it, what they need is a certain sum of money that would have to be paid regularly, on a quarterly or monthly basis. And it would be much cheaper than comply with the Fire Department’s requirements.”*

An entrepreneur from Odessa said, *“One is lucky when one can bribe and solve a problem, and 95 to 99% of entrepreneurs say so...My children tell me I should pay and stop racking my brains. It’s terrible that the coming generation wants to grow in a corrupt society. You can’t start a business today unless you pay everyone off, and when you’ve paid them off you won’t be able to start it anyway. I feel desperate. I am not allowed to do this, I can’t do that, so tomorrow I will start giving out bribes or else I’ll get broke...”* *“One bribes because one can lose more, and they have imposed such restrictions that one has to keep paying...”*

A Lviv entrepreneur said, *“I wanted to start a trade business and I could not get it through the administration, and nothing would work until I greased them. But that’s not all, you have to know who to grease if you want to save money, because the system makes you look for the important man who knows the shortest way. Especially if you are pressed for time, you can’t do it in any other way.”*

During the focus group discussions, the entrepreneurs maintained that the government deliberately devised such business regulations that would make it impossible to work without violating them. Another Lviv entrepreneur said, *“We cannot work without violations because they have us in a press, they make us break the rules so they can come and tell us, “Hey man, you will do your business or you will shut your mouth.”*

There is the opposite side of the coin, too. Some experts, primarily civil servants, note that the entrepreneurs also provoke corruption. **Yuriy Shyrko**, First Deputy Chairman, State Committee on Technical Regulation and Consumer Policy, put it laconically, *“They offer bribes because they want to bypass the law.”* **Pavlo Afanasyev**, Head of Organization Section, State Fire Control Department, Ministry for Emergencies of Ukraine, was confident that corruption risks in his area were caused by “the entrepreneur’s attempts to lower the cost of one’s business by not complying with lawful standards of fire safety. To turn living quarters into a production shop one needs to commission a design, and install fire protection equipment. That’s where entrepreneurs want to economize. We have to keep explaining to them that they should not cut down their fire safety costs as it is dangerous, it’s better to do it once and for all.”

Yet another expert, **Mykola Povoroznyk**, believes that entrepreneurs often provoke corruption. *“It is not a secret that every entrepreneur has laid out one’s own tracks during ten or fifteen years and now they want to see the tracks turn into wide roads, so they support the current system in every possible way, it is a kind of a business in itself.”* **Mr. Povoroznyk** cited examples of entrepreneurs who took up the roles of *go-betweens* in the bribing process, and the bribes would not always be given away.

The focus groups have discussed the **bribe range** issue.

In **Dnipropetrovsk**, businessmen said it depended on the size of the deal: *“a small deal requires a smaller bribe, and a large deal a larger bribe. It usually ranges between 10% and 50% of the deal volume.”* Interestingly,

the entrepreneurs noted that “*it can even reach 70% during election campaigns.*”

In **Odessa**, they explained that “*everything depends on the administration, and how complicated the problem is, and what the margin is, i.e. if the breach is 850 hryvnias worth you would to pay a 400 bribe so your breach is forgotten. They have one kind of prices for the cities and another one for the countryside. In the villages the kickback can reach 60 or 70% of what you earn because they can demand charity donations, such as a school bus, or a stereo system. The person who issues a permit to open a store is the chairman of the village council, and he can establish such a tax scale that the store owner would have the highest rate to pay. The entrepreneurs are ready to provide social assistance anyway, but they do whatever they want to us.*”

In **Kyiv**, they said that “*everything depends on the appetite of the taking hand. Before the crisis it used to ask for 10%, now it asks for 20%.*”

The questionnaire for the population and for entrepreneurs contained a question regarding the ***situations when people were forced to offer bribes or presents*** (table 1.5).

Table 1.5

**If you or your family members have had to give bribes, or “donations”, or presents within the last 12 months, where did you do that? (All instances of bribing were to be named) (%)**

Where/when did you give bribes or forced presents?	% general population of Ukraine	% entrepreneurs
At medical institutions	16.7	_*
At educational institutions	6.6	_*
At traffic police	6.1	_*
At police (except traffic police)	2.4	_*
When getting a foreign passport	0.9	_*
When getting pension papers	0.9	_*
When getting subsidies or other kinds of government aid or social payments	0.8	_*
At passport departments, when getting a passport or registration	0.7	_*
When privatizing your living quarters	0.7	_*
At government agencies when getting various permissions	2.7	18.2
When registering your car or taking it through technical inspection	2.9	18.0



Table 1.5 (continuation)

Where/when did you give bribes or forced presents?	% general population of Ukraine	% entrepreneurs
At government agencies when getting certificates	4.1	17.7
At tax police	1.7	17.2
During inspections related to your business activities	1.1	15.5
When getting a construction or reconstruction permit	0.9	9.0
When getting a land lot	1.2	8.2
In courts or public prosecutor offices	2.1	7.7
When undergoing customs control or registering customs documents	0.7	5.0
When renting premises	-**	4.9
You bribed officials to get a certain position	0.7	1.7
Other	0.7	3.2

\* entrepreneurs were not asked the question about everyday types of corruption

\*\* the question was put to entrepreneurs but not the general population.

A study of the situations where the general population pays bribes shows that we mostly face routine, everyday corruption. The *leaders* here are medical and educational institutions, and traffic police, i.e., the institutions that people have to deal with in their everyday life. Clearly, there is certain specificity that depends on the respondents' occupation: the retirees would mostly give out bribes, or forced presents, at medical establishments, while students would leave their bribes at schools. As regards the sector of administrative services, common people do not have to use it very often during a year.

Entrepreneurs were not asked questions about everyday corruption as for that group it was important to identify the most widespread types of corruption in their business environments. As you can see from the table, corruption is very widespread in business. It is clear that bribes, forced presents or services are most common in typical business situations when entrepreneurs try to get various licenses or certificates at the government agencies, when registering cars, or dealing with tax inspectors. The figures are somewhat lower for other situations, but not all the entrepreneurs resort to such services when getting permissions for construction, obtaining land, visiting courts and prosecutor's offices, or undergoing customs examination. It should also be noted that not too many entrepreneurs offered bribes when



renting premises; perhaps it can be explained by the current crisis situation that has eliminated excessive demand for that service and one can rent premises today without bribes. The experts have identified land allocation and construction permits as the most corruption-prone areas. Among controlling authorities, standardization agencies have been put in the *high risk zone* as they mostly work without government-approved standards, as a result “they can always find flaws in what you do”.

9% of respondents bribed officials when they tried to get permission for construction or refurbishment. Obviously, only a few categories of entrepreneurs need such services. Yet, the issue of Technical Inventory Bureaus (TIB) was brought up spontaneously by two focus groups, in Odessa and in Dnipropetrovsk.

Dnipropetrovsk: *“I suggest you go to Kyiv with me and try to get something done at the central TIB. It’s a horrible institution that sucks all blood out of you, like an ants nest. Three or six or twelve months and many bribes later they will give you what you need, and you can go to another agency and line up there to get your right of ownership papers.”*

Odessa: *“Nobody wants to deal with TIB. You can never get anything quickly from it as you have to wait for its technician to come to inspect you for a month or two. All those administrative institutions use their authority only to get some extra money, above the tariffs established by the Cabinet of Ministers. You would never see any clearly written lists of the documents you need, or services prices: those surface up later and they tell you, “You know, one more certificate is missing, so give us some money and we will get it for you.” And we pay money to save our time. The aim justifies the means.”*

The questionnaire contained the following important question: ***What would you do if a bribe was directly requested from you?*** The question was critical to see how ready one was, or intended to be, to fight bribery. The results presented in table 1.6 are striking. More than one third of the polled was ready to pay the bribe, without any resistance; one third would not know what to do; and 16% said they would not pay but would not do anything to oppose it either, just give up the idea. Only a few respondents were ready to complain to the managers, or talk to mass media or NGOs. In other words, one can state that people are not ready for any practical actions against corruption, even for non-aggressive ones such as appealing to mass media or higher authorities.

Table 1.6

**If an official asks you for a bribe to have your problem solved, what would you do? (%)**

What would you do?	General population of Ukraine	Entrepreneurs
Pay the bribe	36.5	29.2
Complain to the official's manager	4.6	7.2
Complain to law enforcers (police, Security Service of Ukraine, prosecutor's office)	4.6	11.0
Take it to the court	2.7	6.2
Appeal to the higher authorities (President, Prime Minister, Mayor, etc.)	1.7	4.2
Talk to mass media	1.7	8.5
Talk to an NGO	1.2	9.7
I would not bribe and give up the idea of finding a solution	15.9	6.0
Other	3.1	7.0
Difficult to say	31.1	24.4

Almost one third of the entrepreneurs are ready to bribe right away though a significantly lower number is ready to stop looking for a solution to their problems, which is natural as it concerns their business interests. More entrepreneurs are ready to assert their rights, i.e., complain to law enforcement agencies (10%), NGOs (9%) or mass media (8%). Only 7% of those polled would choose the simplest way, i.e., complain to the manager of the official who has asked for a bribe. Obviously, the entrepreneurs and the general population believe, not without grounds, that bribe requests may not come as an initiative of an individual official but rather be a common practice for a given government agency.

Both the national and entrepreneur polls had a question about the most effective instruments to fight corruption.

Table 1.7

**In your opinion, what are the most effective instruments to fight corruption? (%)** (The number of answers was not limited, and the results were ranged according to entrepreneurs' answers)

What are the most effective instruments to combat corruption?	General population of Ukraine	Entrepreneurs
Dismiss officials with no right to hold government positions	55.6	60.1
Improve legislation to prevent corruption	22.8	52.4
Transparency and openness of all government institutions	15.9	47.6

Table 1.7 (continuation)

What are the most effective instruments to combat corruption?	General population of Ukraine	Entrepreneurs
Introducing <i>one-stop offices</i> where people can bring all the documents at once	9.4	45.6
Increase criminal liability of civil servants (imprisonment terms)	49.6	45.4
Broader use of information technologies (Internet, etc)	3.2	38.2
Civil control of the government	17.6	38.2
Easier access to the courts to have one's rights protected	8.3	35.4
Reduction of personal contacts with officials (wider use of post services, etc)	4.1	33.9
Media coverage of corruption cases	11.2	32.4
Raise requirements for would-be civil servants	8.0	28.7
Introduce a legislative provision stating that the absence of timely response from the administration equals a positive response to an inquiry	6.1	27.9
Provide more possibilities to appeal decisions and actions of the administration with superior authorities	7.6	27.2
Establish civil institutions to hear complaints about decisions of government agencies	7.1	24.9
Increase civil servants' pay	8.3	19.0
Increase internal control by the managers	4.5	18.4
Delegate certain administrative authorities to private and non-governmental institutions	2.6	17.1
Delegate most administrative authorities to local government institutions	2.2	10.5
Other	0.8	5.7
There are no effective means to fight corruption	6.8	5.2
It is hard to answer	6.8	3.2

Table 1.7 shows that, in general, people are sure that the most effective way to fight corruption is to punish bribe-takers more severely, including dismissal and criminal responsibility. Yet, almost one fourth of the population agrees that Ukrainian legislation should be improved to eliminate corruption loopholes. At the same time, a certain part of those polled, though not a major one, believes in the counter-corruption measures that engage the society, such as mass legal education, civil control of the government actions, and media coverage of corruption cases.

The survey has revealed the following trend: the more educated a respondent is, the more ways to fight corruption he/she mentions in addition

to punitive instruments. Yet, the *penalizing approach* is characteristic of all the respondents, whether young or old, poor or well-to-do, rural or urban population, living in the west or in the east of the country, and regardless of whether they have given bribes or have not. In short, the general mood is: *Fire them and put them behind bars.*

Businessmen's position differs from that of the general population as entrepreneurs are a social group that suffers from corruption and bribery most of all. Obviously, entrepreneurs have a better understanding of corruption reasons and origins, therefore they have supported many more instruments to counter that complex phenomenon. In addition to the dismissal and imprisonment approach, entrepreneurs favor improved legislation, transparency and openness of all the government agencies, civil control of their actions, legal education, introduction of *one-stop offices*, reduction of personal contacts with the officials, wider use of information technologies, including Internet, media disclosure of corruption cases, and easier access to the courts. It should also be noted that, although the number of answers was not limited and the respondents could select any number of the suggested counter-corruption measures, only a small percentage in both polls have supported the idea of raising salaries for public servants or strengthening internal managerial control at the government agencies.

Both the general population and entrepreneurs were asked whether they thought that some of the proposed ways to fight corruption were "detrimental", i.e. they would not only fail to help but even harm the efforts. As shown by table 1.8, a great majority of the proposed instruments to reduce corruption were supported both by the broad population and business community.

Table 1.8

**In your opinion, which of the proposed measures can be counterproductive, increase corruption levels and therefore damage public position in its relations with the government? (%) (The number of answers was not limited, and the results were ranged according to entrepreneurs' answers)**

Which measures can increase corruption levels?	General population of Ukraine	Entrepreneurs
Delegate most administrative authorities to local government institutions	13.9	19.7
Increase civil servants' pay	12.8	14.5
Delegate certain administrative authorities to private and non-governmental institutions	9.8	11.2

Table 1.8 (continuation)

Raise requirements for would-be civil servants	6.1	10.5
Increase internal control by the managers	4.3	9.0
Provide more possibilities to appeal decisions and actions of the administration with superior authorities	3.8	7.7
Establish civil institutions to hear complaints about decisions of government agencies	3.7	7.7
Introducing <i>one-stop offices</i> where people can get various services	4.2	6.2
Dismiss officials with no right to hold government positions	8.1	5.2
Increase criminal liability of civil servants (imprisonment terms)	7.9	6.2
Civil control of the government	4.7	3.7
Media coverage of corruption cases	1.9	3.7
Easier access to the courts to have one's rights protected	3.8	4.2
Introduce a legislative provision stating that the absence of timely response from the administration equals a positive response to an inquiry	2.8	4.2
Reduction of personal contacts with officials (wider use of post services, etc)	4.4	4.0
Broader use of information technologies (Internet, etc)	2.4	1.7
Other	1.3	1.7
None of the proposed measures is detrimental	12.0	17.5
It is hard to answer	35.8	27.4

Some of the measures mostly failed to gain popular support, primarily the proposal to delegate most administrative authorities to local government institutions. Obviously, the population and entrepreneurs mostly have to deal with local agencies rather than the central ones, and those dealings often take up the form of bribes. As a result, one fears to be left alone with the local bureaucrats, without any control of the center. Another proposal that was hardly popular with the respondents was to increase public servants' pay, which in our view reflected people's emotional attitude to the bureaucrats rather than any rational considerations. The proposal to delegate some administrative authorities to private and non-governmental institutions did not receive much support either: half of the polled entrepreneurs said it was a useful instrument to fight corruption though the other half believed it was detrimental, while the general population was clearly against the idea. A most probable explanation is the existence of some private agencies that charge the population for the services that should be freely provided by the government.

All the other proposed measures have mostly received positive response. The experts and focus group participants expressed similar opinions as to the instruments that can help or harm counter-corruption efforts, though some of their views differed.

**Kseniya Lyapina** was skeptical about punitive methods to fight corruption as in her view they were of little effect in Ukraine. *“I am not suggesting to cancel criminal liability for bribery, but I am certain that we would only have a few cases like that in this country, and they will be politicized, too, as one would want to show how well they fight it. When corruption is a total phenomenon, we should combat it with reforms instead of catching two or three bribe-takers and saying that we are fighting hard. People will always say “Put them behind bars” as the best remedy, but they are not too sincere as the next day they will offer bribes, too. Yes, prison sentences should be delivered, but to those who give bribes as well as to those who take them. “No,” they would say, “you should lock up the bribe-takers”, though they are ready to accept bribes in their own positions. That’s double morals. For that reason, punitive measures would not work here. There have been several symbolic cases when corrupt officials went to jail, but they were an exception rather than the rule.”*

At a focus group discussion in Lviv, entrepreneurs pointed out four main prerogatives to fight corruption:

- *Clear and comprehensive legislation;*
- *Adequate financial situation of public servants;*
- *Effective agency control;*
- *Personal responsibility of every official for doing damage to entrepreneurs.*

**Kseniya Lyapina** identified two main factors that, in her opinion, should reduce corruption. The first factor is **the public servants’ salary**, the issue that was not popular with the general population and the polled entrepreneurs. Lyapina believes that *“the low salaries of the civil servants with a high level of authority provoke corruption as the servants pull up their revenues with bribes to match their authority.”* If the salary adequately reflected the level of decisions that the public servant had to make, the said servant would care more about one’s position than about the one-time bribe opportunity.

Almost all the experts have agreed that increasing public servants’ pay is a necessary precondition to fight corruption. Expert **Pavlo Afanasyev**

suggested the following illustration: a young college graduate who starts working as fire brigade lieutenant makes 1,500 hryvnias a month at the most, so naturally half of the graduates leave the firefighting service within the first month and take jobs in private companies. Expert **Vyacheslav Kuznetsov** considers inadequate material situation of the State Tax Inspection officers to be a major corruption risk: *“The salary of a tax inspector should satisfy his basic needs, stimulate his initiative, increase his labor productivity, and enable him to improve his wellbeing. However, in the recent years the pay that tax inspectors have received was far from adequate, and you cannot compare it with the real earnings made by private company employees of the same qualification who, in most cases, would not even pay taxes as the salary is paid under the counter. When the economic crises came, the financial situation of the officers became even worse”*.

Not all the experts agree, however, that increasing public servants' salary would reduce corruption. **Anatoliy Tkachuk**, Deputy Minister for Regional Policy and Construction, believes that there is no direct link between the pay level and corruption: *“Who are the most outspoken lobbyists of various scandalous construction projects? They are members of the Ukrainian Parliament whose salary is more than decent.”* Besides, he adds, *“the country with such a low per capita GDP cannot have extremely high salaries for some people and too small salaries for the others.”*

Odessa entrepreneurs have offered an interesting comment to the suggestion that decision-makers should have sufficient earnings, *“The bureaucrats are tormented by the thought: other people are doing business while I have to sweat here for a couple of kopecks.”*

Another factor is the **high barriers that the government sets up for entrepreneurs** which can be lowered with bribes. The higher the barrier is, the more profit it brings if overcoming it in corrupt ways is easier than doing it legitimately. As **Kseniya Lyapina** said, in Ukraine there are ten times more such barriers than in civilized countries. She suggests abolishing most of the barriers that cannot be abolished completely for subjective reasons, e.g., one cannot take possession of any land one wants, and someone will obviously have to make a decision to that effect. *“That is why there should be clear regulations as to, first, who allocates the land; second, within what time; and third, what formal restrictions there are, so it should not be possible for an official to arbitrarily reject a request, without any arguments, though the*



*truth is he has not been bribed. By removing the barrier and giving a free hand to the entrepreneur we would stop bribe demands.”*

Almost all the experts have stressed the **importance of strict procedures regulating permissions, control and supervision.**

**Oksana Prodan** believes that the main instrument to prevent corruption in administrative institutions is a clear and detailed list of all procedures that administration officials should follow in all situations. *”Officials should not have any right of choice. They should act in strict compliance with the documents, so if the light is red, one must stand still, if the light is green, one can go, and that’s it. When we deprive officials of the right to make personal decisions, they will have to know that if a paper has been submitted, properly filled in accordance with a form, they receive it and have to make the exact prescribed step, like they do it in America, step by step.”*

The experts from Cherkasy expressed similar opinions: *”The administrative function should be minimized as much as possible, and decisions should be made by an algorithm, yes or no, and then it’s the court to decide. The bureaucrat should be removed from decision making”*, said **Pavlo Karas**, while **Oksana Kyrychenko** suggested that *”a system of service management should be introduced, and the services have to be provided by an algorithm with a clear division of responsibilities.”*

**Oleksandra Kuzhel** noted that the State Committee on Entrepreneurship and Regulatory Policies that she chaired was in the process of developing, on instructions from the Cabinet, a single register of administrative services that would regulate all of that.

Expert **Henadiy Rozhkov** suggested that control agencies would be less corrupt if the procedures were strictly regulated. After an inspection, an act should be compiled containing a list of the problems, the timeframe to solve them, and the date when the next inspection would come to check the implementation. He pointed to sanitation control where, in his view, a systemic list of commercial enterprises was badly needed with a *sanitation passport* for every facility that would have clear and comprehensive requirements to the facility, *”including where the washing basin should be.”* This should be the job of a department at the Health Ministry, the facilities should be classified by the risk degree, and the frequency of inspection visits should be regulated accordingly: once a month, or once a year, and so on.



Expert **Anatoliy Tkachuk** stressed that the officials should bear *responsibility for the signatures* they put on the papers. He cited an interesting technique used by some public servants to avoid responsibility: the bureaucrat can sign a paper adding, “provided the request complies with the legislation.” Should the case go to the court, he can always say, “Why are you blaming me, haven’t I written that it must comply with the law?” Such tricks should be put under control. The expert believes that the key factors to fight corruption are *professionalization and independence of the civil service*, “so MPs would not kick public servants with their feet, call them names, humiliate them, and force them to make the necessary decisions.”

**Anatoliy Tkachuk** suggested that to reduce corruption in the area of administrative services, the *number of various documents that entrepreneurs are to provide should be cut down dramatically*. The mechanism should be simple. “*Today one comes to the administration and asks for a paper, but the paper is not for the person who asks for it, he gets the paper at one agency to show to another one. And he would come and go in rounds like that. Why? The papers should move between the agencies, inside the system, and then there would be no bribes. Then one would have no more than a contact or two with the administrative permit system. That is the first thing, and a very important one. Another thing is clarity of the legal provisions so no one should be able to interpret them in different ways. And the third thing is that by-laws should not run counter to the laws. Unfortunately, we often see administrative agencies write their own instructions and thus develop parallel legal systems for themselves, and this must never happen.*”

The focus groups and the experts often brought up the subjects that reflected the general situation in Ukraine and its political troubles that were largely the root of the country’s corruption problems.

The experts stressed that corruption was a multifaceted phenomenon that was generated not only by the government and its agencies but other factors of a more general nature. **Vyacheslav Kuznetsov** said those factors included “*perception of corruption by the society and the effect of punishment for corrupt actions.*” He suggested that “*to fight corruption effectively, citizen education should be introduced and conditions should be created when taxpayers would not want to take corrupt actions, and tax inspection officers would find it profitable.*”

Expert **Oleksandra Kuzhel** emphasized that officials who carry out inspections should be personally responsible, *“If you have “raided” a company and did not find any justification for your suspicions, you have to compensate the damage you have inflicted.”*

**Kseniya Lyapina** commented the proposed instruments to fight corruption and noted that some of them can already be found in the legislation. *“The question is how to enforce the laws, and there is no answer to that question. Our leaders are not consolidated, and the low-level corrupt officials feel at ease because they know they can always find someone to grease and be protected.”*

**Oleksandra Kuzhel** believes that the campaign against corruption will have no effect unless government officials have to declare not only their income but expenditures as well.

An important suggestion was made by expert **Yuriy Shyrko** who said that what was really needed to fight corruption was political will, *“and if that political will is strong, corruption will be defeated.”*

Focus group discussions showed that despite the general support of the proposed measures to reduce corruption, the entrepreneurs were quite skeptical as to their effect. A businessman from Odessa said, *“a gravely sick man is dying, and they ask him if he needs any aspirin or feet massage...”*

A Lviv entrepreneur offered an even more pessimistic comment, *“We can answer any number of poll questions, but corruption is a systemic thing in the country, and we won’t change anything with focus groups or seminars. I am confident that the current legislation we have is enough to take care of that, but there are bureaucrats everywhere who are tied to one another with a corrupt knot. We know about judge Zvarych now, however we have Zvaryches not only in the judiciary system but in law enforcement, administration, and local government systems, too. And we can’t blame Yushchenko or anybody else for that because it is a system, and one can’t fight it. We cannot fight it either because we have no levers, no resources, while the system is like a matrix, it survives by reproducing itself. We should infect it with some kind of a virus.”*

## Section 2.

# CORRUPTION RISKS IN THE AREA OF ADMINISTRATIVE SERVICES FOR GENERAL POPULATION AND ENTREPRENEURS, AND ATTITUDES TO PROPOSED INSTRUMENTS FOR RISK REDUCTION

The general poll showed (Table 2.1) that quite a large number of people seek administrative services: within the recent twelve months 36% of the surveyed population had to come to various government agencies for all kinds of certificates, permits, subsidies, pensions, etc. Among entrepreneurs the percentage was much higher, which is natural as they have to constantly get such services from the administrative agencies.

*Table 2.1*

**Have you asked any government agencies for any services within the last 12 months, i.e. certificates, permits, subsidies, pensions, etc.? (%)**

Have you asked for any services within the last 12 months?	General population of Ukraine	Entrepreneurs
Yes	35.9	90.9
No	64.1	9.1

Both the general population as well as entrepreneurs were largely dissatisfied with the services and the way they were delivered: 40% of the population were mostly satisfied while 54% were mostly or completely dissatisfied, and, similarly, 40% of entrepreneurs were mostly or completely satisfied while 54% were mostly or completely dissatisfied.

Table 2.2

**If you had to ask government agencies for services or decisions, were you satisfied with the service and/or decisions? (%)**

	General population	Entrepreneurs
Yes, I am fully satisfied	9.0	6.1
I am mostly satisfied	31.1	34.1
I am mostly dissatisfied	32.7	38.0
I am fully dissatisfied	21.8	15.6
Difficult to say	5.4	6.1

Table 2.2 compared the level of satisfaction with administrative services that both polled groups had, and the share of the completely dissatisfied general population was higher than that of entrepreneurs: 22% of the population were “fully dissatisfied” against 16% of the entrepreneurs.

The questionnaire had a question to find out the reasons for people’s dissatisfaction with the administrative services. Table 2.3 expressively demonstrates the problems that people face when getting administrative services at the country’s institutions.

Table 2.3

**If you were dissatisfied with the service, what exactly were you dissatisfied with? (%) (results are ranged according to entrepreneurs’ answers)**

	% of population applying for services and dissatisfied	% to entrepreneurs applying for services and dissatisfied
Nobody explained clearly what documents were required and I had to come several times	48.7	57.6
There were long queues	58.1	56.0
It took too long	24.6	50.2
Reception hours were too short or poorly chosen	20.2	40.7
I had to visit too many offices (institutions)	25.1	37.4
I had to buy blank forms	15.4	37.4
The premises were too small and too crowded, there were no chairs to sit on and no toilet.	33.5	35.0
I had to pay for some additional services (information services, urgency, etc)	12.8	35.0
Officials treated me brutally	17.3	33.7
There was no reference information and no document templates	13.9	32.9
Officials requested additional documents beyond legal requirements	5.8	29.2

Table 2.3 (continuation)

I had to give a bribe	11.3	23.9
I was rejected without any explanations	5.8	12.8
A bribe was requested from me	7.6	11.9
Other	1.3	3.7

Both polled groups noted the discomfort one feels at the administrative agencies, such as the absence of information about the required documents, long lines, crowded rooms with no available seats, and often without a toilet. At the same time, the table shows that the entrepreneurs have identified many more issues than the general population. The reasons are that, first, they have to ask for various services much more frequently than common Ukrainians and, second, the success of one's business, and often its very existence depends on the timely provision of a service one needs. Therefore, entrepreneurs have put considerably more emphasis on such "inconveniences" as slow service delivery, short visiting hours, lack of information one needs to receive a service, and demands to submit papers that are not required by the law. Besides, entrepreneurs are a more solvent group than most of the population and it is probably for that reason that they have to pay more often for various *additional services*. As to the bribes, the entrepreneurs who were not satisfied with the service had given twice more bribes than the common people. An interesting fact deserves our attention: two times more entrepreneurs said they had given bribes than the number of businessmen who claimed bribes had been requested, which can lead to the conclusion that at least half of the entrepreneurs offered bribes on their own initiative when receiving services.

It is interesting to see which problems related to administrative services provoke most dissatisfaction, of the kind "I am fully dissatisfied". In the general population group, the most dissatisfied respondents were the ones who had confronted a direct request for a bribe (72%), who had been rejected without any explanation (50%), who had faced demands to submit documents not required by the law (55%), while the absence of standard conveniences was put by most polled into the column "mostly dissatisfied." Among the entrepreneurs, the radical assessment "I am fully dissatisfied" was only expressed by the people who had been rejected without any reasons.

The broad poll asked the people whether it would help reduce the risk of getting bribe demands, or present requests, from administration officials if one

did not have to contact them personally but could instead mail one's papers or submit them to a one-stop shop. In general, people had a skeptical reaction to that proposal, or perhaps they did not understand its meaning as table 2.4 showed little difference in the responses of those who had asked for administrative services and those who had not. Moreover, the novelty was mostly supported by those who were quite satisfied with the administrative services (30%), while only 13% of those completely dissatisfied supported it, and 35% concluded that "it was pointless as nothing would stop corruption." Even among the most appalled respondents who had been requested to pay a bribe, only 17% backed the proposed measure, and 38% tended to believe that "nothing would stop corruption." However, 30% of the people who had had to bribe the officials agreed that it was better not to have personal contacts with the bureaucrats engaged in administrative services, although they were also convinced that corruption could not be prevented (30% of those who had offered bribes).

Table 2.4

**Do you think it could help reduce the risk of getting bribe demands, or present requests, from administration officials if one did not have to contact them personally but could instead mail one's papers or submit them to a one-stop shop? (%)**

	Those who have asked for services	Those who have not asked for services
I think it could help	22.1	20.3
It would be good if the response (papers) were also sent by mail	8.4	7.3
Perhaps it could reduce corruption but it is not convenient for the public	11.2	12.1
It can work if complete and accessible information is provided about available services and assistance	16.2	12.2
There is no point in it as nothing will stop corruption	24.6	20.3
I am happy with the current system	1.4	1.7
Difficult to answer	18.8	28.2

One can conclude that the population of the country is deeply convinced that everything is hopeless and it is very hard to change anything. It means that, to effectively introduce any new approaches, people have to be clearly told how they can benefit from such approaches and, most importantly, success stories should be made public.

The questionnaire for entrepreneurs contained many questions to find out their attitudes to various measures that could reduce corruption risks in the administrative service system.

First the entrepreneurs were asked whether they could clearly understand the functions performed by different administrative agencies and where they should go to get a service they need. Only 22% of those polled said they had no problem with that, 23% said it was difficult to understand all that, while the majority picked the answer “it is difficult to understand but quite possible.” We should bear in mind that the polled entrepreneurs had a higher level of education than the average ones, i.e. 78% of them were university graduates, and 17% technical college graduates, as the questions were difficult enough and required a proper level of comprehension and response.

The survey asked the entrepreneurs to assess corruption risks in different situations related to the provision of administrative services. The scale varied from the highest level: “there is high corruption risk”, to medium: “there is some corruption risk”; and to the lowest level: “there is no corruption risk”. Table 2.6 demonstrates a correlation of corruption risks in different situations the entrepreneurs face when applying for administrative services.

Table 2.5

**Entrepreneurs’ assessment of corruption risks in different situations (%)**

Situation	High risk	Some risk	No risk	Difficult to say
<b>Very high corruption risks</b>				
Overall complexity of the procedures to get administrative services	68.9	22.0	2.5	6.6
Unreasonably long terms to get administrative services (certificates, licenses, etc)	66.0	24.6	1.8	7.7
<b>High corruption risks</b>				
Absent or insufficient information on administrative service procedures	54.6	31.4	5.4	8.7
Limited access to providers of administrative services (limited reception hours, long queues, etc)	54.3	31.3	7.0	7.5
Entrepreneurs have no access to information on progress of their cases	53.1	27.2	4.0	15.7
Personal contacts between entrepreneurs and officials providing administrative services	53.0	32.8	7.5	6.8
<b>Medium corruption risks</b>				
Establishment of additional payments and paid services	45.8	31.5	11.5	11.5
Monopolism in provision of administrative services, only one administrative agency to apply for a service	45.1	28.1	10.0	16.8

We can see from the table that the respondents attribute the highest corruption risks to the overall complexity of most administrative procedures and groundlessly long terms it takes to get a service. It is natural, as there is a high probability that a bureaucrat will offer his/her *help*, for a bribe, in a situation when an entrepreneur does not understand what agencies one should apply to, how to do it, and why it takes so long. Paradoxically enough, the entrepreneurs relate the lowest corruption risks to additional payments and paid services, as well as monopolism in the provision of administrative services: almost one third of those polled said the risk was insignificant.

The entrepreneurs' assessment of the risks in various situations related to the provision of administrative services leads to the conclusion that the main criterion of corruption risks is not so much the need-to-bribe risk but rather the obstacles that hamper business activities. It is obvious that personal contacts of entrepreneurs and officials providing administrative services are the basis for corruption risks. 52% of the interviewed consider the risk to be very high, and 33% believe the risk is insignificant. Evidently, personal contacts allow the entrepreneurs to *find common language* with the officials, get what they need and overcome business barriers. On the other hand, the need to have personal contacts with the officials emerges in the situations which the interviewed have assessed as a "very high risk", when the services procedure is not clear, or it is too long and there is no fixed timeframe for processing cases.

Going ahead, we should mention that the polled entrepreneurs have supported nearly every proposal that they were asked to assess, although some of the proposals received a convincing majority of the votes while others won by a small margin. Besides, during focus group meetings the entrepreneurs filled in a questionnaire describing their attitudes to the proposed measures and then discussing them. The most important results of the discussion can be found in the comments to every proposal.

We start with the risks that the entrepreneurs have pointed as the gravest ones.

## **2.1 Overall Procedural Complexity of Many Administrative Services**

69% of the interviewed entrepreneurs believe that high corruption risks are caused by complicated procedures of administrative servicing, 22%



consider the risk to be insignificant, and only 2.5% see no risk there. Focus group discussions showed that the entrepreneurs approached the problem in a broader way and spoke not only about the pure procedural complexity of service provision but about the whole process of administrative servicing being corruption-stricken, and complicated interactions between entrepreneurs and public officials.

Table 2.6 shows the entrepreneurs' attitudes to the proposed measures to reduce corruption in the process of administrative service provision.

Table 2.6

**Corruption risks related to complicated administrative procedures: what measures can reduce the risk? (%)**

Proposal	I support	Do not support	Difficult to say
Simplify administrative procedures by introducing the one-stop shop principle	78.2	4.8	17.0
Cut the number of agencies that should be visited to get a service	94.7	1.8	3.5
Implement the notification principle, i.e., it is enough for an entrepreneur to notify the authorities about his intention to carry out an activity	69.9	8.6	21.5
Introducing the <i>consent by default</i> principle: if a request has not been rejected within a certain period, it should be considered as granted	46.9	24.2	28.8

As you can see from the survey results, almost all the entrepreneurs agree that the number of agencies providing administrative services should be reduced. Considerable support has been given to the proposals to introduce the one-stop shop and notification principles, while the default consent approach received much less support.

Introduction of the one-stop shop principle was supported by all the experts who considered it a key instrument to overcome corruption in administrative service area.

**Kseniya Lyapina** believes that to fight corruption in the area of administrative services, “*priority number one is one-stop offices with a very clear and formal working structure. Theoretically such offices exist, with an administrator who has the function of overseeing entrepreneurs and*

*government agencies. In reality we have about five working one-stop shops throughout Ukraine. All the others are nominal, which means the sign with the name is there, and there is a lady inside who works at another office but formally holds the administrator's position, too. She does nothing at all, but paper reports go out regularly. All over Ukraine we have some six hundred one-stop offices like that, but in reality the offices only work in few cities where the mayor is strong and personally controls them. Why? Because one can choose today where to get the permit, either directly or through the one-stop office. The entrepreneurs are afraid of one-stop shops, they think it's a place for bribes. And the administrative agencies stage a kind of a strike: you want to go through the one-stop shop? your request will be rejected one hundred times for unclear reasons. Why? So that you come to us directly. It will continue like that as long as they have a choice. My legislative proposal was to provide services only through the one-stop office."*

Expert **Oksana Prodan** supports the proposal to provide administrative services through the one-stop office, however she believes that it can only be useful if the office administrator is a qualified expert who can assess the quality of all the submitted documents and whether they comply with the requirements. *"It is necessary to have such a person in that one-stop office that would have certain authority and would be able to assess the document package at once. We are trying to do that, because we often see people bringing their papers and then coming again a week later only to hear that that they are short of this, and short of that... In other words, when submitting the papers one should be told at once how to package them properly, and then the process would be smooth. If the papers have been accepted, that's the guarantee they will be processed – that's how the one-stop offices should work."*

Expert **Oleksandra Kuzhel** suggests the Government should adopt a resolution on the one-stop shop principle that would clearly identify the responsibilities of the local administrations and executive agencies and contain a list of the permits they should deliver through the one-stop offices.

Some experts had reservation when supporting the one-stop shop approach. Two of the three **Cherkasy experts** have only agreed to the one-stop offices on condition that *"effective provisions should be created to make one-stop offices work."* **Anatoliy Tkachuk** has supported the principle

in general but commented that it “*was not a panacea*” and there could be exceptions, such as issuing housing construction licenses. Expert **Pavlo Afanasyev** noted that entrepreneurs must have the right to choose where the procedure would be faster, through the one-stop office or the usual agencies, as permission centers are not open every day, there are too many visitors there, they are not manned properly and employees of other sections take their turns at the office... Sometimes a young girl would work there without any proper experience. Some regions have the so-called *run-about lists* that turn the one-stop shop into a sham. So should an entrepreneur want to get a permit from an agency and not from the one-stop office, he must have the right to turn there as the Law on Citizen Applications allows one to do it.

During focus group discussions, the one-stop shop proposal was unanimously supported in Lviv and Dnipropetrovsk, though in Odessa, Kyiv, and Kharkiv opinions differed. The rejection of the one-stop shop principle could mostly be explained by inadequate practice.

In **Lviv**, entrepreneurs suggested that the one-stop office should only *find solutions* and not receive one’s papers, “*because then you would still have to visit every official who issues a permission to have your issue solved. In addition, you have to make sure your papers get onto the right man’s desk.*”

In **Kharkiv**, entrepreneurs said that people would form lines to the one-stop office since early night hours. “*Before the one-stop office came into being, all the procedures had taken place at the Executive Committee, the usual way. Then they started the one-stop office. We had to have a certificate changed, so when my accountant saw the lines that other people had formed since the night before, we found a friend of that one-stop office, and cash solved the problem.*”

In **Odessa**, entrepreneurs also said that the one-stop shop approach did not work although the idea behind it was good. “*It should be the same way as in America. Over there, a friend came to an office to have his business registered. He paid \$250 and two hours later he came back to receive his document package. They asked him how many jobs he intended to create, he said two or three, and they even thanked him.*” The entrepreneurs concluded that “*with the one-stop shop everything should be written down clearly, to leave no doubts. If this is not done, everything will be futile. Besides, one has two options now, the one-stop shop and the voluntary way, and where there are two options none will work.*”

The principle of *consent by default*, i.e. a request is considered granted unless it has been rejected within a certain period of time, was not really turned down by the entrepreneurs, but they clearly mistrusted it as, in their view, it was “unreliable”: it is safer to have the requested permission in your hands because the letter with the rejection may have been lost, and the entrepreneur would think his request has been accepted. A focus group participant in Kyiv said, “*Suppose another entrepreneur comes and tells me, sorry man, but here, I have my permit. And what do I have? My default?*”

Expert **Vyacheslav Kuznetsov** noted that Tax Administration was already applying the consent by default principle in the situations when taxpayers appealed against the Administration’s decisions to impose tax sanctions. Should the Administration fail to respond to the taxpayer’s appeal within a fixed timeframe, the appeal would be automatically considered granted in favor of the taxpayer.

## **2.2 Unreasonably Long Terms to Provide Certain Administrative Services**

The interviewed entrepreneurs called unreasonably long terms to provide certain administrative services a high risk factor. The reason is obvious: entrepreneurs need to solve their issues quickly, and if it takes too much time they usually *fuel up* the process.

Expert **Kseniya Lyapina** said that the risks related to unreasonably long terms to provide services could also be explained by the absence of formally fixed terms for many services. She agreed that a clear timeframe for service provision should be established legislatively, as other options can already be found in the laws but they are not enforced.

The same opinion was expressed by expert **Oleksandra Kuzhel**. She suggested that it did not matter whether the fixed terms would be short or long, it was important to have them clearly defined, well calculated for every given service, and liability should be established for violation of the terms.

Expert **Oksana Prodan** supported the proposal to establish liability for failure to comply with the terms. She said that “*a draft act has been submitted to the Verkhovna Rada that has summed up all the things we have long wanted to do in that field. According to the current Law on Civil*

*Service, public servants have no responsibility at all, which is strange. We have studied the practice of the Single Economic Space countries, and they use fines. We submitted such a proposal #3429 suggesting that fines be added to the Law on Civil Service. We proposed the fines should range between 10% and 30% of the public servant's salary, it should be imposed by the manager, and dismissal should be another sanction. All that is in line with modern European law.*” The importance of having liability for violation of the terms was highlighted by all the three experts from Cherkasy.

At the same time, expert **Vyacheslav Kuznetsov** maintained that the issue of compliance with the timeframe was regulated by the law, and Article 24 of the Law of Ukraine “On Citizen Applications” has already established public servants’ liability for failure to comply with requirements to properly process applications. Expert **Anatoliy Tkachuk** agreed that almost all the laws or by-laws imposed certain timeframes to process documents, and if they are not complied with, the reason was the “arrogant attitude of the agency employees”. Besides, conflicts also arouse because thirty days was established as the general term, though several documents often had to be approved within that period. The law provides a possibility to submit several documents in parallel, but the local managers would usually impose consecutive procedures, and as a result they could last much more than a month, sometimes a whole year. **Anatoliy Tkachuk** also noted that different types of business activities could require a differentiated approach to the procedural timeframe, and construction permits, in particular, would require more than a month to study the circumstances of a project. **Oksana Kyrychenko**, the expert from Cherkasy, did not accept the wording *unreasonably long terms* and said that it was impossible, “I have never had that problem.”

The other proposed measures to reduce corruption that enjoyed unconditional support of the interviewed entrepreneurs were legislative establishment of clear terms to provide services, establishment of liability for failure to comply with the terms, and initiatives for public servants who comply with the terms. A somewhat smaller number of the entrepreneurs supported the proposal to oblige the administration agencies to provide responses by mail, and opinions differed as to the proposal to establish accelerated procedures.

Table 2.7

**There are corruption risks caused by unreasonably long terms to provide administrative services (certificates, licenses etc). Do you support the following measures to reduce corruption? (%)**

Proposal	I support	I do not support	Difficult to say
Legislative establishment of clear terms for provision of administrative services	94.1	1.0	4.8
Institute liability for violation of administrative terms and encourage officials complying with the terms	87.3	3.3	9.4
Oblige administrative agencies to reply by mail	55.7	12.5	31.8
Introduce accelerated procedures for additional fees	47.3	35.7	17.0

The issue of the timeframe for administrative service provision has provoked animated discussions in every focus group. The participating entrepreneurs suggested that when the papers were submitted, beside the stamp with the admission date another stamp should be put, stating the date when the papers would be ready (proposed by the focus group in Kyiv). The participants complained that even the formal period of thirty days was too long as usually administration officials would not start processing the papers at once but rather toward the end of the period (focus group in Odessa). Besides, the entrepreneurs believed it was wrong to have those formal timeframes established with the internal agency decisions rather than with the legal acts. They said that the *supreme law* for a bureaucrat was often not the real law but the instructions coming from his boss (focus groups in Kyiv and Odessa).

The focus groups wholeheartedly supported the proposal to punish the failure to comply with the terms of service provision, and the participants would only dispute who should be punished, the responsible official or the administrative office manager.

The discussion of the proposal to oblige administrative agencies to reply by mail showed that people do not have much confidence in such *contactless* forms of information delivery. “*Mail is not safe. When I was a civil servant, the time to process documents was often very long because hundreds of letters were sitting on the desks waiting to be mailed out*” (a focus group in Kyiv); “*The human factors plays a big role here: one gives a letter to the*

*secretary, she puts it in the envelope, and then just forgets to mail it, while the time goes by...*" (a focus group in Kharkiv).

The entrepreneurs also know from their own experience that administrations usually do not have the money to mail registered letters, while simple mail may just not arrive, and it may be difficult to prove later that it had not been mailed at all. Two Cherkasy experts did not support the proposal to oblige administrations to respond by mail either.

The opinions of the respondents differed as to the proposed introduction of fast services for extra fees. Some entrepreneurs supported the proposal saying that they had to pay extra for accelerated procedures anyway as such acceleration is sometimes vital for business, and they would prefer to pay more into the budget rather than to bribe. Other entrepreneurs maintained that if additional fees for fast procedures were introduced, the usual terms would become so long that free services would just disappear so as to make entrepreneurs pay for *acceleration*. Anyway, why should one pay for the services provided by public administration agencies that are funded by the taxpayers? Are those services provided by public servants in their free time? Expert ***Oksana Prodan***, however, has supported the proposed introduction of fast procedures for an extra fee. However, she said, the time required for a usual procedure should be well justified so one could clearly understand how much time a *normal* procedure would take, and how much a fast one. Expert ***Oleksandra Kuzhel*** also shared the proposed additional fee to accelerate the service procedure, "If you want it faster, you should pay for it"; and the three Cherkasy experts agreed to it, too.

### **2.3 Limited Access to Providers of Administrative Services**

Limited access to the agencies providing administrative services (limited reception hours, long queues etc) was marked by the entrepreneurs as a high risk factor, while expert ***Kseniya Lyapina*** dubbed it as a very high risk.

The following comment comes from a focus group in Kyiv: "*If you want to have your business registered in a legitimate way, without any corruption, you have to come to the agency at 4 or 5 a.m., and you would already see a list with the names of the others ahead of you. If you are among the first ten visitors you might make it into the office, but if you are*



*among the first twenty, most probably you won't. It seems that there are quite a few officials receiving the visitors, and the line should move quickly. Instead, some strange people appear, they enter the office through some strange doors, and then they exit through the usual ones. You understand that they are ordinary people, just like you, but they pay to get registered quickly. Everyone knows that there are special companies that can get you registered within a couple of days. Everything is done in such a way that you should get sick of it, lose your patience, call somebody and say that you are ready to pay, get me registered."*

The entrepreneurs have told many stories about bribery and corruption, as well as about disrespectful and irresponsible attitude of the administrative agencies. *"You can come to the office on reception day, and the official is just not there. Where is he? On vacation. And who's replacing him? No one. So people start crowding in front of the manager's office, which doesn't make him happy either..."* (a focus group from Kharkiv).

All the proposed measures to reduce corruption risks caused by limited access to the administrative agencies were supported by the polled entrepreneurs and the focus groups (table 2.8).

Table 2.8

**Corruption risks caused by limited access to administrative service providers (limited reception hours, long queues, etc): do you support the following measures to reduce the risks? (%)**

Proposal	I support	I do not support	Difficult to say
Improve access to administrative offices by introducing <i>electronic queues</i>	70.5	7.6	21.9
Introduce proper conditions for visitors at the agencies	71.5	5.5	22.9
Provide access to all blank forms	84.2	1.8	14.0

The entrepreneurs also proposed to extend significantly the working hours of the agencies providing administrative services to meet people's needs. *"All the five days should be open for visitors. I cannot understand why the architect can only receive people on Monday morning and Friday afternoon. This could be the case with the top officials who have all kinds*



*of conferences, but medium-range bureaucrats should have reception days all week long”* (a focus group from Lviv).

Introduction of electronic queues was supported by most entrepreneurs in the focus groups. The group in Kharkiv cited a number of success stories, for example the electronic lines that had been introduced at Kyivstar Company, at UkrSotsbank, etc. Evidently, such positive experience could mostly be attributed to private businesses. However, a negative case was also cited by a focus group from Kyiv, when the electronic queue principle had been introduced at the Central Post Office: some swindlers would collect up to a dozen tickets and sell them. It means some administration officials must have sold those dozen tickets! Obviously, even if the national budget cannot allocate the funds to introduce electronic queues in the nearest future, something will have to be done to the line problem as it is not only a breeding ground for bribes. The queues have more serious consequences as they produce the feeling of alienation between the people and the state. Expert **Oleksandra Kuzhel** suggested to improve the situation by introducing impersonal forms of communication between entrepreneurs and the administration.

The issues of inadequate conditions for the visitors at the agencies and access to the necessary blank forms was regarded by the entrepreneurs as a matter of making people’s life more or less comfortable rather than a corruption risk. The experts from Cherkasy also noted that improving people’s comfort in the waiting area was hardly a factor to reduce corruption. The focus groups also discussed the shameful problem of the *office toilets* that could only be used by the administration officials and not the visitors, which vividly demonstrates the attitude of the government agencies to Ukrainian citizens.

As to the access to blank forms, the entrepreneurs believe that the easy solution of the problem is to publish the forms on the web sites for everyone to download them. At the same time, the expert interviews showed that in certain areas of administrative services where the form was a strictly controlled and numbered document, e.g. confirming one’s property rights, the issue of access to the proper forms could become a source for unlimited corruption. Expert **Anatoliy Tkachuk** cited the case of the land title forms: during two years there had never been a sufficient number of those, and it

created an insurmountable barrier for thousands of people in Ukraine who had purchased land. “When there is no form, there is no act, when there is no act, you do not have the land title and you can’t do business,” said Tkachuk. The case of the *disappeared* land title forms was also brought up by expert *Oleksandra Kuzhel*.

## 2.4 Personal Contacts Between Entrepreneurs and Officials Providing Administrative Services

53% of the entrepreneurs think that personal contacts with the officials providing administrative services are a high corruption risk factor, 27% believe that the risk is insignificant, and 7% think that there is no risk. All the experts agreed that personal contacts between entrepreneurs and public servants provoke corruption risk. *Anatoliy Tkachuk* says, “*Obviously, the less contact there is, the better. The contact should be minimal.*”

The interviewed entrepreneurs did not back every proposed measure to eliminate the risk of personal contacts between entrepreneurs and officials (table 2.9).

Table 2.9

**Corruption risk provoked by personal contacts between entrepreneurs and public servants: what measures can reduce the risk? (%)**

Proposal	I support	I do not support	Difficult to say
Use different communication channels to request and receive services (mail, e-mail, fax, telephone)	77.5	6.1	16.5
Use Internet to request services and consultation, and properly manage government web sites	74.7	8.6	16.7
Establish one-stop <i>service stores</i> where one can get all necessary services	84.5	5.3	10.2
Break up administrative offices into areas open for everybody and closed working areas	39.4	29.7	30.9
Rotate officials from one position to another to prevent them from abusing authorities	41.4	23.9	32.4

The interviewed entrepreneurs did not back every proposed measure to eliminate the risk of personal contacts between entrepreneurs and officials. They unanimously supported all impersonal communication forms to request

and receive services and consultation (mail, e-mail, fax, telephone). They emphasized the importance of proper content management for government web sites. However, clearly written, simple, and user-friendly procedures are required to make the impersonal forms of service provision work. Expert **Oleksandra Kuzhel** proposed that entrepreneurs should also get the right to electronic signature when submitting their papers.

A particular opinion was expressed by the Cherkasy experts who supported the proposal to properly manage government web site content but did not support the idea of requesting and receiving services through various impersonal communication channels. They maintained it was unrealistic as it would require a dramatic change of the whole system of administrative services.

The focus groups suggested that if those measures were implemented, one could cut the number of bureaucrats: *“instead of a hundred bureaucrats receiving crowds of people they can keep one who would work with the computer”*, said a participant of the Lviv focus group.

In every city, the entrepreneurs complained that they often had to come personally to the agencies to get consultation as public servants would turn down their requests to communicate information by telephone. *“All the organizations should be obliged to provide advice and consultation by phone the way Tax Administration does it, because now when I call them and ask something they tell me they do not provide information by telephone, “you should come here and we’ll tell you everything””* (a focus group from Odessa).

The focus group participants also supported the proposed introduction of service stores, i.e. one-stop offices where one could get all the required administrative services. A Kyiv entrepreneur praised the approach of Moldova, *“Over there, they get a state certificate for business registration. One goes to a special office, fills in a form, submits the original certificate and a copy, fills in a questionnaire about what he does, pays the duty right there, and some time later one would get all the permits and papers. That’s it – no police, no other agencies, and no headaches. It’s called the Ministry for Information Development.”*

Focus group participants did not support the idea to break up the premises of the administrative agencies into open areas with free access for public and closed zones reserved for the officials. The entrepreneurs said redesigning

would require too much money and, secondly, such office rearrangement would not prevent corruption: “one can take bribes at home, when hunting, in a café, and even in a bus”, said a focus group member in Dnipropetrovsk. Participants of a focus group in Kharkiv even suggested that the *closed zone* would be reserved for giving bribes.

**Oksana Prodan** was also skeptical about the proposed office rearrangement, and she cited the experience of customs offices. *“They introduced a one-stop shop system there, and all the new customs stations were built as open areas after 2005, so employees of every department could walk around and one could see everything. In reality it was not that one could see everything, because those who wanted to negotiate could always walk out, so basically it did not help much. When we had started the system, I was one of the people who insisted on that mechanism, and it looked like it should work. It failed to do so. Another thing that did not work was the ban for all customs officers to have more than a hundred hryvnias in their pockets, and then they banned mobile phones at the checkpoints. Various measures were introduced, but Ukrainians are smart, and they outwitted them all.”*

Among the experts, only the Cherkasy experts supported the proposal to break up the administrative offices into two areas.

As to rotation of public servants between positions so they would not be stuck at a certain desk, the idea was supported by less than a half of the interviewed entrepreneurs. The focus groups made many comments about that proposal. In Lviv, the participants said public servants often lacked the necessary qualifications and gained them only with years of experience, therefore at least the medium link should work in a stable way. The Dnipropetrovsk focus group noted that rotations would only aggravate businessmen’s situation because *“you have your contacts with the same person and everything is all right, but if another official replaced him you would be no one for the new man, and you would have to start getting good terms with him.”*

Kyiv focus group participants maintained that public servants rotation would not change anything because *“if a person was corrupt in a certain position that person would quickly find new sources for profits in another position as well.”* The Dnipropetrovsk focus group agreed, *“People would move around and bring their suitcases along.”*

Expert *Oksana Prodan* did not support the rotation principle either as, in her view, all the public servants know one another well and the rotation would not have any effect.

Expert *Anatoliy Tkachuk*, however, was confident that rotation should be introduced, *“I am sure that five years is the maximum period one can hold a position. Even if the public servant is absolutely honest with no signs of corruption, one develops professional routines and stops reacting to new ideas.”*

The issue is controversial, as was proved by the difference of opinions of the Cherkasy experts: one of them supported the rotation proposal, while two others did not.

An important comment was made by a Dnipropetrovsk entrepreneur, *“It does not really matter what bureaucrat will be there, he should not necessarily be a super-specialist. The service itself should be so clearly written that anyone should be able to deliver it and put a stamp. The beginning and the end of the service procedure should be controlled, and the bureaucrat should be penalized if there is a delay.”*

## **2.5 Absent or Insufficient Information on Administrative Service Procedures**

55% of entrepreneurs said that absent or insufficient information on administrative service procedures was a very high risk factor, 31% considered it a high risk; 5% said there was no risk at all.

During focus group discussions, the entrepreneurs illustrated the emergence of that risk because of insufficient information, *“They would keep some information away so that later they can fine you, and get a bribe instead of the fine”* (a focus group in Kharkiv).

Both in the polls and the focus groups the entrepreneurs generally backed up all the proposals to increase the amount of information provided to entrepreneurs and thus reduce corruption risks. The proposals included placement of information stands at the administrative agencies with the document forms, pamphlets, and contact telephone numbers, setting up consultant offices and information services, proper management of the websites containing all the necessary information (table 2.10).

Table 2.10

**Corruption risks related to absent or insufficient information on administrative service procedures: what measures can reduce the risks? (%)**

Proposal	I support	I do not support	Difficult to say
Place information boards with document templates, pamphlets, telephone numbers, etc. at administrative agencies	92.5	1.7	5.0
Set up information services and consultant offices	84.2	4.6	11.2
Manage websites with all necessary information	87.3	2.0	10.6

The experts supported all the proposed measures too, “*When you come to an agency to get a paper, you should see at once a board telling you what you should have and do before you enter an office,*” said expert **Anatoliy Tkachuk**. “*This should be automatic, and it should be controlled.*”

Expert **Oleksandra Kuzhel** suggested that the most important element of the information system for entrepreneurs was information service register, which is what she was developing now on request of the Prime Minister. Any entrepreneur must be able to consult it to see what permits are issued by various agencies and what one needs to do. She emphasized that the content of the information boards should be controlled as corruption could find its ways into them as well, and she illustrated it with the example of a municipal agency whose board featured information on just one private agencies service provider.

**Kseniya Lyapina** made an important comment about the information boards. “*First an agency must develop its methodological regulations, procedures, and standard documents. Fire safety rules should be the same in any region, with the same requirements, and even the way the documents look must be the same. Some can not do that properly, so the Cabinet should formalize the methodology which should then be put on the boards. At the moment we do not have that, and every organization devises its own rules and regulations.*”

The focus groups also made a number of proposals as to the ways of improving information for entrepreneurs. A participant of the focus group in Lviv said that the boards could be found presently at some agencies but the information was mostly outdated and no one was personally responsible

for updating it, therefore an official should be given personal responsibility for it and the board should say, “Mr. Ivanov is responsible for the board”, so that Mr. Ivanov could be sanctioned if the information was incorrect. The same comment was made in Dnipropetrovsk: “The boards are there, but they are old and nobody would update anything.”

The proposal to set up information services and consultant offices was also widely supported. The entrepreneurs from different cities complained that one could dial contact telephone numbers or even hot line numbers and never get through, “You find it everywhere...” Administration officials are not obliged to provide advice and consultation, that is why they would do it as a *favor* and expect a favor in return. Expert **Vyacheslav Kuznetsov** wrote about a positive solution of the problem: the State Tax Administration had set up the Information Department, and any taxpayer could call it and immediately get information on taxation issues. Kiev entrepreneurs praised similarly the work of Shevchenkivsky District Administration Information Service.

All the focus groups stressed the importance of establishing such information services that would make it unnecessary for the entrepreneurs to beg public servants for any favors. They also favored the development of websites for the administrative service providers and said it would be useful if consultation could be provided through the websites, too.

Expert **Vyacheslav Kuznetsov** proposed to introduce interactive communication and survey instruments at the administration websites. He cited the State Tax Administration whose official website ran an interactive survey called *Methods of Civilized Civil Pressure on the Authorities to Protect Taxpayers' Rights in the Time of Financial Crisis*.

Obviously, when developing web resources one should study web practices in the countries where Internet is widely used. “*Web services are wonderful,*” said **Oksana Prodan**. “*English government sites have business links that entrepreneurs can access easily and find out what requirements they have to meet in various situations. You can see in the Internet what you have to do, step by step, how much you have to pay, and where. I liked that business link system in Great Britain very much.*”

Almost all the entrepreneurs, 84.3%, have supported the proposal that entrepreneurs should have access to their files as they are processed. Only 3% did not agree, while 12.8% were unable to answer the question. The



focus group in Odessa has suggested to add that one should have access to the files “*at every stage*”.

The experts, however, did not back that proposal. “*If the entrepreneurs see their files they will start looking for solutions,*” said **Oleksandra Kuzhel**. **Oksana Prodan** maintained that getting access to one’s files could only boost corruption as the entrepreneurs would know where and how they can *push up their case*. “*In an export or import operation a declaration passes at least five offices, and if I know where it is at the moment, I can speed it up.*”

Expert **Vyacheslav Kuznetsov** noted that the Tax Administration did not have that problem because the entrepreneurs would get a copy of the inspection act and thus be aware of all the documents in their files. Should a criminal case be commenced, the current laws on criminal procedures stipulate that an entrepreneur should get access to all the materials in one’s case.

## 2.6 Introducing Additional Payments and Paid Services

The interviewed entrepreneurs considered that to be a medium corruption risk factor as less than half of them, i.e. 46%, pictured it as a very high risk factor, 31% as a medium risk factor, and 11.5% did not see any corruption risk there. The three experts from Cherkasy did not qualify it as a corruption risk either.

Table 2.11

**Corruption risks related to introduction of additional payments and paid services: what measures can reduce the risks? (%)**

Proposed measures	I support	I do not support	Difficult to say
Forbid administrative agencies to provide paid services (e.g. sell blank forms, photocopy papers, etc.)	56.2	17.2	26.6
Regulate service charges and ban service breakup when every service is paid separately, and charge for the end service instead	78.1	8.8	13.1

The focus group discussions have shown that the absence of necessary forms is a frequent problem. The entrepreneurs supported the proposal to



regulate service charges and put an end to the practice of breaking up the services each of which is charged separately, introducing an end service charge instead.

At the same time, the entrepreneurs did not think it was a big problem and did not consider charges for the forms to be an element of corruption: *“It is easier to pay a few kopecks for it”* (Lviv). Kharkiv entrepreneurs said they would want to know what the end service charge consisted of.

The polled entrepreneurs have also supported the proposed ban on paid services for the administrative agencies, such as selling forms or photocopying documents. However, focus group discussions showed a controversial attitude to the ban idea. *“It is convenient,”* said a Kiev businessman, *“Perhaps a photocopy would cost more at a tax administration office, but I would not have to go out and look for it.”* At the same time the businessman realized that the photocopy operator was a *tax office’s man*.

Expert ***Kseniya Lyapina*** was more categorical than the entrepreneurs regarding the issue of paid administrative services. *“I would suggest that as many public services as possible should be free. One should only be charged for obviously specific services, while mass services that the entrepreneurs and others mostly use should be free, because the entrepreneurs pay taxes and therefore sustain the administrative institutions. One should prohibit delegation of such services to commercial companies though, because everybody sets up commercial municipal companies, especially on the local level, and everything is delegated to them.”*

Expert ***Vyacheslav Kuznetsov*** was even more categorical: he insisted that Article 21 of the law “On Citizen Applications” clearly said that charges for the services were illegal.

The ***Cherkasy experts*** did not agree that a ban should be imposed on the services that administrations can provide, though they did agree that charges for the services should be regulated. Expert ***Oksana Prodan*** said that paid services were not an element of corruption but rather a tool to increase revenues. *“It’s even better when they earn money for the budget in this way, but it happens very rarely. The Cabinet has developed a draft law about such services, and a Government resolution was adopted a week or two ago that obliged all the executive agencies to submit a written report about the organizations that provide services and transfer their accounts to*

*the Treasury. This is going to stop the mechanism that allows private firms to feed on government institutions and make money.”*

Should a public agency be set up to provide certain services, the government must control it, – said expert **Oleksandra Kuzhel**, and it must impose a limit on the charges. *“The agencies cannot establish the prices on their own. If they don’t, public servants would just do their work and nothing else.”* She stressed however that often *service provision* would be a mask for business operations performed by government institutions, such as the *paid services* provided by the Ministry of Defense that included pig breeding, medicine production, housing construction, and so on. All that is the job for private companies that should bid for the contracts.

The entrepreneurs supported the proposal that could reduce corruption risks caused by *monopolism* in providing administrative services, i.e. a single agency that one can ask for a specific service. 75% of the interviewed supported the idea to give private persons an alternative in choosing the service provider so they would not be constrained, for example, to pick the one working in their area; 8.3% did not support the idea while 16.7% could not answer. *“It is always good to have many sources,”* said a participant of the Kharkiv focus group, *“rather than a stubborn monopolist against whom you can’t do anything.”*

The majority of the experts, however, maintained that monopolies should be preserved. Cherkasy experts **Pavlo Karas** and **Oksana Kyrychenko** underlined that *“monopolism is justified by the areas of responsibility, and an administrative service is a product of authorities. So what alternatives can one have?”* Anatoliy Tkachuk was certain that *“if it is the government that is responsible for security, these can only be government organizations.”* Expert **Vyacheslav Kuznetsov** noted that the services are provided to taxpayers in accordance with their location they have identified, which is clearly regulated by tax law provisions. However, when services are provided to the taxpayers by phone, the provider would not ask the taxpayer’s registration address.

Expert **Kseniya Lyapina** was afraid that service demonopolization could lead to increased corruption as entrepreneurs would try to find easier solutions that could be provided by someone they know. *“What makes an administrative service distinctive is that it is monopolistic,”* said Lyapina.

*“I can’t really imagine how one could have an alternative there. Say, one wants to put a kiosk in the area controlled by the village council, so where else can one go for permission if not to the village council? What will it come to if a number of providers can offer an administrative service? It will not be an administrative service then.”*

Expert ***Oksana Prodan*** was less categorical, and she suggested that it depended on the nature of the service. *“If it is a notary, then one can choose between a public and a private one. But if it is a passport-related service, it should somehow be linked to one’s official address.”*

Expert ***Oleksandra Kuzhel*** made an important proposal that some services, such as control, licensing, certification and the like, should be delegated to accredited civil organizations of entrepreneurs as they know the processes *from inside*. *“Who can certify auditors better than the auditors? Who can certify forwarding agents better than the forwarding agents? Nobody can do it better.”*

## Section 3.

# CORRUPTION RISKS RELATED TO CONTROL AND SUPERVISION, AND ATTITUDES TO PROPOSALS OF RISK REDUCTION

Corruption risks related to control and supervision have traditionally been considered high. Expert **Oksana Prodan** believes that bribery is most common here, even much more so than in the regulatory agencies. In her opinion, “...*this is because many entrepreneurs do not know either their own rights or the inspection officers’ rights, therefore, when inspection officers come, entrepreneurs do all they can to get rid of them. On the other hand, inspectors take advantage of those people who do not know their rights and obligations*”.

The survey showed that 15.5% of entrepreneurs had bribed inspectors during their visits and 17% had had to offer bribes at the Tax Inspection office.

During focus group discussions, entrepreneurs from different cities regularly mentioned widespread bribery in various inspection agencies.

Here’s what an entrepreneur from Kyiv had to say: “*As a retailer, I want to stress that retail trade is infested with corruption on the part of Sanitation Service, Fire Control Department, and other controlling authorities. They won’t let you work unless you serve them dinner, have a conversation with them, and pass a certain sum of money to them.*” Said another participant: “*A friend of mine owns a restaurant. Two sanitation inspectors came and plainly named the sum they wanted him to pay, 1,400 hryvnias plus a dinner later that evening. After the dinner was served, those two phoned someone and said that no one else should come to that place.*”

Entrepreneurs were asked to assess the degree of corruption risks related to control and supervision in different situations and circumstances which

ranged from maximum (high corruption risk) to medium (some corruption risk) to no corruption risk (shown in table 3.1). It should be noted that entrepreneurs assessed the degree of corruption risks related to control and supervision as being generally much higher than corruption risks related to regulation.

Table 3.1

**Entrepreneurs' assessment of the degree of corruption risks related to control and supervision (ranked by the degree of risk) (%)**

Situation	High risk	Some risk	No risk	Unable to answer
Administrative authorities can suspend or ban a business due to violation of sanitary, fire safety and other rules at their own discretion	80.9	12.8	1.0	5.3
Controlling agencies work to detect violations and penalize for them rather than eliminate or prevent them	78.5	12.3	1.8	7.4
There is a broad discretion in determining fines which range from 1 to 1000 tax-free minimum wages	76.3	14.8	1.0	8.0
The same violation may be classified as either administrative or criminal offence (depending on the extent of damages)	75.0	14.5	2.0	8.5
Different laws (i.e. the Administrative Code or sectoral laws) stipulate different penalties for the same violation	69.3	18.0	1.8	11.0
The majority of inspection agencies conduct undue on-site inspections not based on reports	59.1	25.3	4.5	11.1
When conducting an inspection, controlling agencies have the right to unlimited access to information, documents, offices, and premises	55.9	22.7	5.8	15.6

Let us examine the risks related to control and supervision and see the entrepreneurs' attitudes to possible risk reduction measures.

### **3.1 Administrative Authorities Can Suspend or Ban Entrepreneur's Activities Due to Violations at Their Own Discretion**

Entrepreneurs believe that the right of administrative agencies to suspend or ban a business at their own discretion poses an extremely high corruption risk. 81% of respondents agreed with that, and only 13% assessed the risk

as insignificant. Besides, as the entrepreneurs pointed out, the risk grows as the controlling agencies follow their own internal instructions rather than the law and can shut down enterprises based on these instructions alone. Of the three legislative proposals aimed at risk reduction, the entrepreneurs supported only one, namely *“the exclusive right to suspend or ban entrepreneur’s activities shall be given to administrative courts after suits have been filed by the controlling agencies”* (table 3.2).

Table 3.2

**Corruption risks related to suspending or banning entrepreneur’s activities due to violations: in your opinion, what proposals would best reduce them?**  
(%)

Legislative proposals	Yes	No	Don't know
The exclusive right to suspend or ban entrepreneur’s activities shall be given to administrative courts following suits filed by the controlling agencies	62.5	15.0	22.5
The controlling agencies shall have the right to temporarily suspend or ban entrepreneur’s activities but the decision shall be confirmed or revoked by a court	38.6	38.4	23.0
The controlling agencies shall have the right to suspend or ban entrepreneur’s activities but the decision shall take effect after the time needed to appeal the decision	47.8	26.2	26.0

*Kseniya Lyapina* shares the entrepreneurs’ opinion: *“All cases not involving health risks should be investigated by administrative courts only, while the activities that have such risks should be temporarily suspended by the controlling agency. However, the suspension procedure, the reasons for suspension, and the suspension period should be clearly defined, and then the administrative court can rule”*.

Expert *Yuriy Shyrko* is also of the opinion that such cases are best settled in courts. On the other hand, he believes that *“a new network of special courts needs to be established”*, as under the existing system administrative courts are extremely congested and thus can not provide for rapid settling of cases which, in turn, may also provoke corruption in courts.

All the three experts from Cherkasy chose the second of the proposed mechanisms, i.e. when the controlling agencies can have the right to

temporarily suspend or ban businesses whereupon their decision shall be confirmed or revoked by the court.

Expert **Oksana Prodan** believes that *“it all depends on the type of control. If a medical inspection reveals unsanitary conditions at cooking places, then this has to be stopped immediately as people actually eat at such places. All other activities that are not harmful to customers need to be regulated, if not by court decisions then by some sort of warning, a notification about possible consequences”*.

**Pavlo Afanasyev** believes that the Fire Control Department has already developed a mechanism that reduces the chance of corruption during inspections. *“Inspectors are not empowered to shut down enterprises. Such decisions are strictly within the competence of higher authorities of district, oblast, or national level whereas an inspector can only suspend business activities. After that, an entrepreneur will receive a list of rules that have been violated and a notification stating that unless these violations are eliminated the enterprise will be shut down. A certain period of time, i.e. 15 to 20 days, is there to eliminate the violations. In case no measures have been taken, the resolution to shut down the enterprise is issued which may be appealed within 10 days, whereupon the case is brought to the court.”*

**Oleksandra Kuzhel** shared some of the experiences of the former Expert Operational Council at the State Committee for Entrepreneurship half of which was made up of business associations’ representatives. Entrepreneurs who believed that they were unduly harassed by the controlling agencies could complain to the Council and ask for protection without going to the court.

As focus group discussions in different cities revealed, the entrepreneurs favored the first option which was to ***give the exclusive right to suspend business activities to administrative courts***. Any other option which would enable controlling agencies to shut down enterprises or at least temporarily suspend their activities was deemed unacceptable by entrepreneurs as they believed it would create opportunities for blackmail and therefore open the door for corruption. The focus group in Kharkiv described such possible developments clearly, *“Bring us the money and we will let you work again”*.

Yet, both entrepreneurs and experts realize that certain violations, when detected, require immediate suspension of activities before any court decision can be adopted. A good example of this would be production and

retail of food products where there is a danger that many people may end up poisoned before a court can rule. Another example would be inflicting damage to the environment, e.g. illegal deforestation where all the trees can be cut down by the time a court decision is adopted.

That is why entrepreneurs from different cities agreed that violations should be differentiated. If a violation poses a threat to people's life and health, the enterprise's activities may be temporarily suspended but only for a clearly determined period of time; then it will be the controller's responsibility to prove its case in court. A register of strictly defined violations shall be developed to prevent officials from defining them at their own discretion which could also provoke corruption.

On the other hand, nothing is quite that simple, even as far as food products are concerned. An entrepreneur from Odessa said, "*if sanitation officers find one expired food item out of a thousand, does it mean they will have to shut down all of my business?*"

At the same time, the focus group discussions showed quite a controversial attitude to possible defense of the entrepreneurs' rights in the court. Some of the participants have had successful experience while defending their rights in the courts, while others are wary of the Ukrainian judiciary and its independence from the local governments. Entrepreneurs say that conflicts would be best resolved in courts, however on condition that "*the courts were fair*" (the focus group in Lviv).

### **3.2 Unlimited Access of Controlling Agencies to Entrepreneurs' Property**

The majority of respondents (56%) assessed corruption risks related to unlimited access of controlling agencies to entrepreneurs' property as very high but still significantly lower compared to other risks. Almost every fourth entrepreneur (23%) assessed the risk as insignificant, 6% claimed they saw no risk at all. A big share of the respondents (16%) was unable to answer this question.

Expert *Oksana Prodan* added that a new form of control called *examination* which was not stipulated by the law was becoming more widespread. "*It is not stipulated by the law. A controlling agency issue a directive for a 10-day examination of an enterprise, and tax inspectors*



would come and examine it. One may think it is a trivial thing, an inspector would come once and check whether alcohol is sold there or not, and later come back for an unscheduled checkup. In practice, though, and I had witnessed this myself when entrepreneurs called me and complained, such examinations are in fact real inspections when inspectors file reports, interview employees etc. I think that controlling agencies should work according to the criminal law principle: unless something is allowed by the law, everyone must know it is 100% prohibited.”

Of the two proposed measures for reduction of corruption risks related to unlimited access of controllers to entrepreneurs’ property, one was supported by respondents while the other saw mixed reaction. (table 3.3).

Table 3.3

**Corruption risks related to unlimited access of controlling agencies to entrepreneurs’ property: do you support the proposed risk reduction measures? (%)**

Proposed measure	Yes	No	Don't know
Give controllers the right of unlimited access to entrepreneurs’ property and documents on the basis of the administrative court rulings only	72.8	10.0	17.3
Prohibit the use of findings, made in the course of control and supervision procedures, in criminal proceedings	47.6	10.7	41.7

Concerning the right of unlimited access to entrepreneurs’ property on the basis of the administrative court rulings, some participants claimed that such a legislative norm did in fact exist, but, as others pointed out, nobody respected it: *“It happened once with my colleague. Three tough guys came to her office, showed their id’s, and then proceeded to get into her computer and did whatever they wanted with it. What was she supposed to do?”* (the focus group in Kharkiv). The Kharkiv focus group participants suggested that inspectors should be given access to computers and other equipment on presentation of the court warrant only, otherwise one should call the police.

**Oleksandra Kuzhel** stressed that, according to law, each controlling agency can conduct inspections only within its competence, i.e. *“a fire inspector can only inspect the building, he has no right of access to*

*documents*”. In Kuzhel’s opinion, part of the problem lies in the fact that *“businesses do not know their rights”* which makes them an easy prey.

**Yuriy Shyrko** also confirmed that there was a detailed list of documents, approved by the Ministry of Justice, that fall within the competence of each controlling agency. In practice, though, the controllers may act outside their competence: *“For example, the police have come to check whatever they were supposed to, and they see that the company does not have a board with consumer rights. Once they’ve seen this, they inform us with a letter, and then we come with our own inspection. I agree that inspectors should only check what their agency specializes in, nothing more.”*

Regarding the risk of the *“use of findings, made in the course of control and supervision procedures, in criminal proceedings”*, the focus group discussions showed that entrepreneurs did not understand how it could be possible *“to prohibit the use of information they received on criminal activities”*. Focus group members pointed that ignoring such information would mean that violations may go unpunished. On the other hand, such findings may be used to frame up a case. Therefore, the measure was deemed controversial and unclear.

Expert **Vyacheslav Kuznetsov** believes that at least as far as the Tax Inspection is concerned, this issue has already been legislatively regulated: any information on an entrepreneur’s activities submitted to the Tax Inspection is confidential and can be shared with other authorities only with the entrepreneur’s consent.

Three experts from Cherkasy said they did not see any corruption risks related to unlimited access of controlling agencies to information and offices, and therefore they did not support any of the proposed measures.

### **3.3 Undue On-Site Inspections of Enterprises Not Based on Reports**

Corruption risks related to undue on-site inspections were assessed as very high by 59% of the respondents, while 25% assessed the risk as insignificant, 4% claimed there was no risk, and 11% failed to give a definitive answer.

Of all the measures to reduce corruption risks related to undue on-site inspections, 83% of the entrepreneurs supported the proposal to give the

right only to those controlling agencies whose field may require it, i.e. fire inspection, sanitation inspection etc.

Table 3.4

**Corruption risks related to undue on-site inspections:  
do you support the proposed risk reduction measures? (%)**

Proposed measures	Yes	No	Don't know
The right to conduct on-site inspections should be retained only for those controlling agencies whose field requires it (i.e. fire inspection, sanitation inspection etc.)	82.7	6.5	10.8
Establish inspection procedures for the Tax Inspection, Price Inspection etc. based on submitted reports	70.1	11.6	18.2
Establish inspection procedures for controlling agencies based on report copies	56.4	16.1	27.6

During some focus group discussions, the entrepreneurs unanimously said “yes” when answering the question whether the right to conduct on-site inspections should only stay with those controllers whose field of work required it, such as. fire inspection, sanitation inspection, etc. Generally, the proposal was supported by all the focus groups. Entrepreneurs also agreed with the idea to establish inspection procedures for such agencies as the Tax Inspection, Price Inspection, etc. based on submitted reports, and on report copies in the areas where controllers are based. However, the entrepreneurs did not clearly understand the difference between those two types of inspections.

Expert *Yuriy Shyrko* has also supported the proposal: “*Sanitation Service can conduct on-site inspections, and as for Tax Inspection, reports should be enough for them*”.

*Oleksandra Kuzhel* believes that Ukraine should implement the same tax reporting standards as the ones used in most countries, which would “*forever eliminate the need for on-site inspections of the enterprises*”. Investigations are to be conducted only when one doubts the company’s integrity. As an example, she cited the experience of the U.S.A.: “*When a tax inspector does come in person, it means serious trouble, because everyone knows that they would never do that unless they have serious reasons.*”

Some entrepreneurs noted that in many situations it was impossible to bring copies of documents to the controlling agencies for inspection, e.g.

bringing cash register receipts to the Tax Inspection. In this regard, expert *Oksana Prodan* suggested that only the documents directly related to the objective of the inspection should be easily accessed. It turned out that a legislative provision to that effect did exist but, in practice, it was not observed. Besides, *Oksana Prodan* noted that it might be dangerous to take the original documents outside the enterprise, as she had personally found out, therefore if inspectors needed to see the original documents they should visit the enterprise.

All the three experts from Cherkasy said they did not see any corruption risk related to on-site inspections carried out by most controlling agencies, and hence refused to support any of the proposals.

### 3.4 Controlling Agencies Work to Detect Violations and Penalize for Them Rather than Eliminate or Prevent Them

Corruption risks were assessed as very high by 76% of the interviewed entrepreneurs, while 15% believed it was insignificant, 2% thought it was absent, and 7% were unable to answer. Practically all the experts also found a high corruption risk in such a *punitive bias* of the controlling agencies.

All of the proposed measures to reduce the risk of punitive inspections were largely supported by the entrepreneurs (table 3.5).

Table 3.5

**Corruption risks related to inspections: do you support the proposed risk reduction measures? (%)**

Proposed measures	Yes	No	Don't know
Alter the functions of certain controllers and establish national agencies responsible for providing free consultation to physical persons and promoting compliance with regulations	84.2	5.1	10.7
Oblige inspection agencies to provide regular consultations to entrepreneurs on business regulations	83.2	6.3	10.4
Introduce a penalty procedure whereby fines are imposed unless the detected violations have been eliminated first	82.8	3.5	13.6

Focus group participants had a mixed reaction to the proposed measures: they largely supported the idea to change the penalty procedures but questioned the feasibility of establishing special national consulting agencies.

A number of experts also spoke against the idea of *establishing special consulting agencies*. *Kseniya Lyapina* feared that such agencies might become a source for hidden corruption. *Oksana Prodan* was of the same opinion. She stressed that such agencies, if attached to the controlling agencies and serving as an intermediary between the latter and entrepreneurs, would become hotbeds for corruption. Besides, the staff at such agencies is usually underqualified because of low wages. *Yuriy Shyrko* also said that consultancies at the controlling agencies might be abused, i.e. “officially this would cost you this much but I can tell you how you can make it cheaper”. All the three experts from Cherkasy did not support the idea of establishing special consulting agencies either.

During the focus group discussion in Dnipropetrovsk, the question was raised as to how such consultancies would be funded, implying that government-financed consultancies could not warrant the quality of consulting services for which they take no responsibility.

On the other hand, practicability of establishing such consulting agencies obviously depends on the type of business activities. According to *Henadiy Rozhkov*, Deputy Chief Sanitary Inspector of Kyiv, one of the main corruption factors in the area of sanitary inspection is that the companies that develop premises for business activities are not aware of the related sanitary requirements. The companies should be trained whereupon they can be accredited and licensed. Sanitary inspection agencies could provide necessary training for such intermediary companies. As such services are not budgeted by the agency it will have to charge for them.

Expert *Vyacheslav Kuznetsov* believes that all available consulting methods should be used, such as publishing instructions in professional magazines and on official websites, arranging workshops, round tables etc.

Both entrepreneurs and experts were much more positive about the idea to *oblige controlling agencies to provide consultation* on business regulations. They stressed that such consulting services should formally enter public servants’ job description, or else they can “charge a lot as if they were real consultants.” The entrepreneurs also suggested that when any changes to the regulations were introduced, the controlling agencies

should conduct *free* workshops, or charge a small fee, unlike it happened in Kharkiv where, reportedly, the workshop fee was “*a thousand hryvnias for three hours*”.

It was also suggested that administrative and controlling agencies should schedule regular consultations and workshops for entrepreneurs, free of charge or for a small fee, and they should be obliged to provide such services rather than do it at their own discretion.

As before, the entrepreneurs complained that it was impossible to receive any advice by phone. Instead, they were usually told to come in person. The consulting agencies would also request the name of the company which some entrepreneurs were reluctant to give.

Many entrepreneurs pointed to ***the need to reform the penalty system***. The emotional discussions clearly showed that it was a serious and urgent problem. “*Because of the current crisis, fiscal agencies are eager to impose fines even for the slightest errors*” (the focus group in Dnipropetrovsk). “*This country’s control system is absolutely perverted, it has no other purpose but impose fines*” (the focus group in Lviv). “*In Ukraine, one may be fined for submitting a tax report late, though one has paid all the taxes on time. In no other part of the world will you find anything like this*” (the focus group in Lviv). “*Tax Inspection never gives you any notice, they just fine you immediately*” (the focus group in Dnipropetrovsk).

“*Inspectors from the Agency for Consumer Rights Protection came and did not find any violations as I’m a responsible person, so they openly said: “Well, we have to impose some fine anyway, we cannot just leave without it”. And they did impose a fine of 85 hryvnias for a sign allegedly attached at the wrong place because they had to fulfill their fines plan*” (the focus group in Odessa). The entrepreneurs claimed that the reason for that practice was that the local budget revenues were based on plans for fine collection, which was unacceptable.

The experts confirmed that special accounts existed to which money from the paid fines were transferred, and that the amounts were planned in advance. Expert ***Mykola Povoroznyk*** said it was because the budgets relied heavily on fine collection. According to ***Yuriy Shyrko***, “*at the beginning of each working day, traffic inspectors receive a list of fines they must impose during their shift*”.

**Oksana Prodan** and **Kseniya Lyapina** also wholeheartedly agreed with the proposal to introduce a procedure whereby the detected violations must be eliminated first and, if one fails to do so, a fine would be imposed.

Expert **Vyacheslav Kuznetsov** proposed to use the Tax Inspection's experience when a taxpayer can identify one's own mistakes or contraventions and notify the Tax Administration of the corrections one has introduced. In this case, such self-corrected mistakes would not entail punitive sanctions.

Expert **Mykola Povoroznyk**, however, noted that "*violation and penalty should go hand in hand*", and that "*if a fine for a certain violation is stipulated by the law, no one should be free to choose whether to pay the fine or not, but strictly follow the law*". Two experts from Cherkasy, **Oksana Kyrychenko** and **Ruslan Stempovskiy**, were of the same opinion noting that "*the fine is a penalty for a violation already committed*".

### **3.5 Corruption Risks Related to Penalty Collection**

The interviewed were asked to assess a few situations where corruption risks were related to penalty collection, and the majority of the entrepreneurs assessed the level of corruption risks in all of those situations as very high. Corruption risks related to broad discretion in determining fines for violations were assessed as very high by 76% of the interviewed entrepreneurs, while 15% considered them insignificant, and only 1% said there was no risk there. Corruption risks related to the possibility to categorize the same violation as either an administrative or a criminal offence, depending on the extent of damages, were assessed as very high by 75% of the interviewed entrepreneurs, insignificant by 14.5%, and nonexistent by 2%. Corruption risks related to a difference in penalties for the same violations stipulated by different laws were assessed as very high by 69% of the interviewed entrepreneurs, insignificant by 18%, and absent by 2%.

Among the proposed measures to reduce corruption risks related to the penalty system, the proposal to legally delimit administrative and criminal offences received almost a unanimous support of the interviewed entrepreneurs (table 3.5). The idea to eliminate the existing legislative discretion in



determining fine amounts was also widely supported. Half of the interviewed entrepreneurs supported the proposal to place responsibility for administrative offences on legal entities instead of public servants and develop a unified code of administrative offences, however the issue was evidently not clear to all of them as 38% of respondents were unable to answer.

Table 3.6

**Corruption risks related to penalty collection: do you support the proposed risk reduction measures? (%)**

Proposed measures	Yes	No	Don't know
Place responsibility for administrative offences on legal entities rather than public servants and develop a unified code of administrative offences	50.6	11.4	38.0
Legally eliminate discretion in determining fine amounts	77.8	7.3	14.9
Legally delineate administrative and criminal offences by nature rather than by damage extent	82.9	1.5	15.6

The group discussions focused primarily on the discretion in determining fine amounts. The entrepreneurs see a very high risk in the fact that *different laws stipulate different penalties for the same violation*, and every one seems to take advantage of this and take bribes—“*judges, prosecutors, and the police,*” (the focus group in Odessa). As far as discretion in determining fines was concerned, The entrepreneurs believe that fines can vary in size, but the fines should be strictly defined, i.e. “*this violation is worth 100 hryvnias and that is worth 150*”.

The entrepreneurs also mentioned a widespread practice of imposing overlapping penalties for the same violation: “*Tax inspectors, if they find any violations, impose a fine and also a few administrative penalties*” (the focus group in Lviv).

The entrepreneurs believe that the Law should not only clearly define the forms and amounts of fines to be imposed for various violations but also take into account whether the violation in question is one-off or a systemic one: “*like in the criminal code, a crime committed for the first time and a repeated crime should entail different punishment*” (the focus group in Lviv).

Expert *Mykola Povoroznyk* was critical about the broad discretion in determining fine amounts. On the other hand, expert *Yuriy Shyrko*



believed that discretion was necessary as the scale of violations could vary. He attributed corruption risks in the field to *“the quality of staff selection”*. **Mr. Shyrko** also stressed that large fine margins were common in many countries and could not be regarded as a key source of corruption. **Oleksandra Kuzhel** also advocated discretion in determining fine amounts so that an inspector could impose a minimum penalty for violations which in essence were mistakes as opposed to abuse. **Vyacheslav Kuznetsov** also supported fine margins considering that *“imposing a minimum penalty for a violation committed for the first time is a preventive measure, and it cannot be equally applied to a taxpayer who has submitted a tax declaration late for the first time and a repeated offender”*.

Expert **Henadiy Rozhkov** is convinced that discretion in determining fine amounts would not present any problems if the fines were clearly defined, as is the case with the Sanitary Inspection where all penalty sizes are approved by the Cabinet of Ministers. Expert **Pavlo Afanasyev** believes that Fire Inspection does not have the problem either as it has a clear list of fines which are not that big to provoke corruption in the first place, the biggest fine being a thousand hryvnias for the most serious violations. Expert **Vyacheslav Kuznetsov** said he didn't see any problem with fine margins as the range of fines was not big and based on tax-free minimum wage which at the time was 17 hryvnias. Therefore, there was no significant difference between the highest and the lowest fines.

The experts from Cherkasy disagreed about the corruption risks related to discretion in determining fines: **Pavlo Karas** said he did not see any corruption risks while **Oksana Kyrychenko** and **Ruslan Stempovskiy** agreed that such risks did exist, however, they noted that it was *“impossible to make provisions for every situation in a normative document”*.

**Oksana Prodan** believes that the current situation needs to be changed. She said that she had developed draft amendments to the Criminal Code for consideration of the Verkhovna Rada, proposing to increase fines. *“The current fines are too small, so when the choice is between imposing a 50 dollar fine and putting the person in jail for two years, that person would most certainly end up in jail, because the fines for serious violations are too small. One should better pay bigger fines, but in most cases there is no need to put one behind bars”*.

Expert **Oleksandra Kuzhel** also stressed the need to increase fines for certain violations. *“There are no big fines in Ukraine. For example, compare the penalties for a violation of shipping rules: confiscation of a vehicle in Russia, a 15,000 euro fine in Poland and a 370 hryvnya fine in Ukraine”*. Incidentally, Ukrainian entrepreneurs called for increasing fines for shipping rule violations so that foreign companies would not abuse them. According to **Oleksandra Kuzhel**, fines for violation of traffic regulations also need to be increased as in that case people’s lives are at stake: *“Fines should serve as a deterrent.”*

The entrepreneurs also saw a significant corruption risk in the **possibility to categorize violations as administrative or criminal offences** based on the extent of damage rather than on their nature. During focus group discussions, the entrepreneurs unanimously agreed that the situation when the same violation could be qualified as either administrative or criminal offence, depending on the inflicted damage, could provoke corruption. It is not rare that an inspection officer may *“propose to qualify the violation as an administrative rather than a criminal offence in return for a gratification”* (the focus group in Odessa). The entrepreneurs insisted that criminal and administrative offences should be clearly delineated so it would not be possible to impose different sanctions for the same fault.

The entrepreneurs in Kharkiv agreed that crimes and administrative faults should be clearly delimited and that only one penalty should be applied for an offense, stipulated by either the Criminal or the Administrative Code, otherwise the penalty for the same violation, even for the same extent of damages, might be either a fine or a sentence to jail which may indeed provoke corruption.

During a focus group discussion in Kharkiv legislative *loopholes* were also mentioned as corruption risk sources. *“Our commercial law does not agree with the civil law. This is the key problem. There are big discrepancies between administrative and civil provisions, and quite often the judges do not know which ones to follow. That leaves too much room for their choice, and they bear no responsibility for the choice”*.

The entrepreneurs in Dnipropetrovsk, however, maintained that there was no need to “clearly delimit administrative and criminal offences” as they were regulated by different codes and therefore properly delimited. The real problem was that the *extent of inflicted damage* was never actually taken

into account as all controlling agencies would impose maximum possible fines to pump up the budget.

All the three experts from Cherkasy said that administrative and criminal offences were adequately separated.

During focus group discussions, the idea *to place responsibility for administrative offences on legal entities rather than public servants* was met with mixed reactions.

In Kharkiv, the entrepreneurs expressed the opinion that the issue of who should be responsible for the violation, a legal entity or an official, should be settled once and for all. If a legal entity commits an offence, the responsibility should be placed on the company and not on the accountant.

The entrepreneurs from Odessa, however, found this proposal arguable: “Let’s assume I work at a store and one of the cashiers has forgotten to give the customer a receipt, why then the whole company must suffer?” They said that placing responsibility on legal entities would not help reduce corruption but would foster it instead as fines were much bigger for legal entities than for individual persons.

# DEMOCRATIC INITIATIVES FOUNDATION

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