



Memorandum

Re: Threats and risks caused by newly introduced obligation for anti-corruption activists to file asset declarations of public officials

Date: March 31, 2017

The new amendments to the Law of Ukraine "On prevention of corruption" introduced the obligation of anti-corruption activists to file the same asset declarations as public files. However, the way the amendments are designed, they may subject to persecution and public harassment not only activists of anti-corruption non-governmental organizations, but also their subcontractors and any recipients of international aid.

Summary

The amendments create extensive burden on the private citizens and invades their privacy. Not only anti-corruption activist, but also all their subcontractors and providers of day-to-day works and services are obliged to disclose their income and asset. The same requirement also extends to all the recipients of international technical assistance or other forms of foreign aid that in some way aimed at anti-corruption reforms. Violation of obligation to file the asset declarations is punished by a fine or imprisonment term for up to two years. This form of the obligation of anti-corruption activists leads to obstacles in their work. It also may lead to difficulties in receipt and distribution of foreign aid.

Facts

1. On 29 March 2017, the newspaper "Voice of Ukraine" published the final version of the Law of Ukraine "On amendments to some laws of Ukraine concerning the peculiarities of financial control of certain categories of officials" signed by the President of Ukraine " (Draft Law No. 6172 submitted by the President of Ukraine as urgent in order to exempt certain categories of military personnel from obligation to declare assets). Although the Draft law was adopted with major procedural violations, on 30 March 2017, the Law came into force.

2. However, apart from the objectives defined by the President and the rules proposed on the exemption of certain categories of military personnel from the obligation to declare assets, during the second reading MPs submitted amendments later adopted by the Parliament that greatly extended the scope of the Law. As a result, the adopted Law introduces a number of innovations (changes) that contradict the basic legal principles of the Constitution of Ukraine and international legal acts that are



mandatory for Ukraine.

3. The Law extends the rules of financial control that regulate activities of Ukrainian officials to several groups of private citizens who are not performing public functions. Firstly, that are members of supervisory boards of various state enterprises or organizations¹. Currently, the supervisory boards of some state banks and enterprises are composed of prominent international experts recommended by leading international financial institutions. Consequently, the norm makes them file asset declarations. That may result in refusal to fulfil their functions by such persons as they need to publicly disclose their income and assets in Ukraine and abroad.

4. The financial control is also extended to all persons who are members of public councils within state bodies². It covers all the levels of government, starting from the ministries to local authorities, which significantly and unnecessarily increases the number of persons subject to submission of declarations.

5. The other group that is obliged to submit e-declarations consists of all the recipients (direct or indirect) of international technical assistance or any other form of international aid that is aimed at anti-corruption efforts³. The way the Law puts it down, it is impossible to define an exhaustive list of individuals subject to the regulation due to too abstract and vague wording of the norm. The range of persons is very broad and needs to be clarified by the government in each and every case. The legislation does not define any criteria that can separate anti-corruption technical assistance from other forms of foreign aid. The only normative document which defines issues of international technical assistance is Decree of the Cabinet of Ministers No. 153 dated

¹ "Individuals who are the part of the supervisory board of a state bank, state enterprise or state for-profit organization", see para 2 of Article 1 of Law of Ukraine "On amendments to some laws of Ukraine concerning the peculiarities of financial control of certain categories of officials" dated 27 March 2017 // <http://zakon5.rada.gov.ua/laws/show/1975-19>

² "Representatives of Civic Integrity Council formed under the Law of Ukraine "On the Judicial System and Status of Judges", public councils, boards of public control that formed within the state bodies and involved in the preparation of decisions on staffing, training, monitoring, and evaluation of anti-corruption programs.", see para 2 of Article 1 of Law of Ukraine "On amendments to some laws of Ukraine concerning the peculiarities of financial control of certain categories of officials" dated 27 March 2017 // <http://zakon5.rada.gov.ua/laws/show/1975-19>

³ "Individuals who receive the funds or assets as part of implementation in Ukraine of programs (projects) of technical (including irrevocable) or other assistance in the sphere of prevention, combating corruption (both directly and through third parties or in any other way provided by the relevant program (project)", see para 2 of Article 1 of Law of Ukraine "On amendments to some laws of Ukraine concerning the peculiarities of financial control of certain categories of officials" dated 27 March 2017 // <http://zakon5.rada.gov.ua/laws/show/1975-19>



15 February 2002⁴, which is outdated and does not include necessary definitions. Secondly, the criteria of being subject to financial control are the fact of receipt of money or assets from technical assistance even through third parties. In practice, this rule means that the rules of financial control cover workers and individual contractors of donors engaged implementation of relevant projects in Ukraine and for Ukraine, employees and individual contractors, recipients and executors of these projects, students that receive scholarships in such projects or citizens receiving equipment for the project, or journalists who receive grants for writing anti-corruption articles. Huge danger is that in many cases the recipients of the money and assets, so-called "third parties", may not have the relevant information about the origin of money and assets, and therefore may not be aware of their responsibilities and relevant consequences (e.g., publishers or translators, that supply services to civic organization and may not know that the money is part of the technical assistance).

6. The legislator also failed to determine at what point individuals are subject to declarations. Is at the start of the project of international assistance? Since the receipt of money or assets? At the moment, this issue will be decided by National Agency on Prevention of Corruption ("NAPC"), police or courts. As a result, NAPC actually becomes a body that is authorised to control the use of international technical assistance. The NAPC and law enforcement agencies receive tools to persecute huge range of persons on vague and unclear reasons. This may limit the international assistance due to the excessive burden imposed by demands of compulsory asset declarations.

7. The Law also requires all the individuals systematically working on the implementation of anti-corruption policies or receive funds through third parties⁵. The legislation does not provide for the definition of "systematic" works or services as well as criteria of works or services being provided for the anti-corruption field. The wording "third party" also creates a risk of uncertainty and not knowing the people about the

⁴ See Decree of the Cabinet of Ministers of Ukraine No. 153 dated 15 February 2002 "On creation of unified system of involvement, use, and monitoring of international technical assistance. //

<http://zakon2.rada.gov.ua/laws/show/153-2002-%D0%BF>

⁵ "Individuals, that systematically during the year perform works or provide services in the implementation of anti-corruption standards, the monitoring of anti-corruption policy in Ukraine, and the preparation of proposals on the formulation and implementation of such policy, if the funding of or payment for such works or services is carried out directly or through third parties from technical assistance (including irrevocable) or other aid, in the field of prevention or combating of corruption.", see para 2 of Article 1 of Law of Ukraine "On amendments to some laws of Ukraine concerning the peculiarities of financial control of certain categories of officials" dated 27 March 2017 // <http://zakon5.rada.gov.ua/laws/show/1975-19>



need to declare their assets. For instance, it is not clear whether the services are considered such as systematic if the person makes anti-corruption research once or writes two articles or messages on the topic of anti-corruption.

8. The last group of the individuals that falls into the scope of the regulation of the Law is the management of anti-corruption organisations⁶. This rule extends the financial controls of persons by belonging to the governing bodies of the anti-corruption organizations and participation in anti-corruption activities. The concept of what is anticorruption organizations and anticorruption event remains uncertain. Accordingly, can the meeting held by patients due to the lack of medicines because of corruption schemes be attributed to anti-corruption measures? Or meeting held by the activists because of lack of personal voting in the Parliament? Or meeting held by the citizens because of rise of tariffs due to inflation? These questions would be answered not by MPs through the relevant legislation but by the NAPC, police and courts.

9. The financial control imposed over the abovementioned individuals mean that:

- in 2018 they are obliged to submit asset declaration for the period from 30 March 2017 to 31 December 2017⁷;
- starting from 30 March 2017 they are obliged to submit the statements of "significant changes in the property state" meaning simultaneous acquiring of any funds or assets exceeding 50 living wages (80 thousand UAH);
- they are obliged to inform the NAPC regarding opening of any accounts in the foreign banks;
- starting from 30 March 2017 the NAPC has a right to monitoring of the lifestyle of private individuals, meaning to check whether their income corresponds their spendings
- starting from 2018 after the submission of annual declarations the NAPC will have a right to Check the asset declarations of those individuals, receive all the necessary information from the state authorities, receiving banking information

⁶ "Individuals who are the heads or members of executive boards, or other governing bodies of the NGOs, or other non-profit organizations that are involved in activities linked to prevention or combating of corruption, the implementation of anti-corruption standards, the monitoring of anti-corruption policy in Ukraine, the preparation of proposals on the formulation and implementation of such policies, and/or those who take part in or join in measures linked to prevention or combating of corruption.", para 2 of Article 1 of Law of Ukraine "On amendments to some laws of Ukraine concerning the peculiarities of financial control of certain categories of officials" dated 27 March 2017 // <http://zakon5.rada.gov.ua/laws/show/1975-19>

⁷ See Article 45-46 of the Law of Ukraine "On prevention of corruption" // <http://zakon2.rada.gov.ua/laws/show/1700-18>

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through the courts, receive explanations from those individuals, initiate administrative or criminal proceedings for late submission or non-submission of a declaration. The late submission or non-submission of a declaration is punished with a fine or the imprisonment of up to two years.

- they are obliged to provide full details of any financial payments conducted by them following the request of any person⁸.

⁸ See Article 60 of the Law of Ukraine "On prevention of corruption" // <http://zakon2.rada.gov.ua/laws/show/1700-18>