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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION)

DRAFT LAW ON INTEGRITY CHECKING

OF UKRAINE

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This Law defines the legal principles of integrity checks of persons authorized to perform the functions of state or local government, the procedure of such checks and of registration of their results, as well as the legal consequences of such checks.

Section I GENERAL PROVISIONS

Article 1. Definitions

1. The terms in this Law have the following meanings:

Integrity – performance of official duties by a person authorized to perform the functions of state or local government on the basis of compliance with the rules of ethical conduct and with prevention of corruption or corruption-related offences;

Integrity check (hereinafter - check) – a set of measures envisaged by this Law and aimed at establishment of compliance of persons authorized to perform the functions of state or local government with the integrity criteria defined in this Law;

Undue influence – illegal interference of third parties with the official activity of a person authorized to perform the functions of state or local government, by means of pressure, threats, requests, etc. in order to encourage such person to commit or not commit certain actions, to delay or accelerate such actions, or to make or not make decisions;

Reasonable risk – a risk unavoidable in achieving the socially important goal of objective registration of the behavior of a person authorized to perform the functions of state or local government during the check and acceptable where the person conducting the check has taken all possible measures to prevent any harm to the lawfully protected interests.

2. The terms "corruption offence", "corruption-related offence", "undue benefit" and "conflict of interest" in this Law have the meanings as defined in the Law of Ukraine "On Prevention of Corruption" and the term "corruption crime" has the meaning as defined in the Criminal Code of Ukraine.

Article 2. The purpose of integrity checks

1. Integrity checks are conducted:

- 1) to ensure integrity in the government bodies and local authorities in terms of compliance with the legislation on prevention of corruption;
- 2) to determine compliance or non-compliance of persons authorized to perform the functions state or local government with their duties regarding:

prevention of corruption crimes in the performance of official duties;

prevent of other corruption or corruption-related offences in the performance of official duties;

prevention of violations of the rules of ethical behaviour;

immediate notification of the competent authorities about any attempt at their involvement in corruption or corruption-related offenses;

written notification of the supervisor about any fact of undue influence;

- 3) to identify, assess and eliminate the risks that contribute to perpetration of corruption or corruption-related offences, as well as any instances of non-integrity;
- 4) to prevent undue influences.

Article 3. The basic principles of integrity checks

- 1. Integrity checks are conducted in obligatory compliance with the following principles:
- 1) legality;
- 2) respect of the fundamental human and civic rights and freedoms;
- 3) objectivity;
- 4) impartial and fair treatment of persons undergoing a check;
- 5) presumption of integrity of the officials undergoing a check;
- 6) competence and efficiency;
- 7) confidentiality.

Article 4. Objects of integrity checks

- 1. Integrity checks are conducted with regard to persons authorized to perform the functions of state or local government, as defined in the Law of Ukraine "On Prevention of Corruption" and who by law fall under disciplinary liability procedures, except judges of the Constitutional Court of Ukraine and other judges.
- 2. Integrity checks are conducted:
- by the National Anti-Corruption Bureau of Ukraine with regard to persons authorized to perform the functions of state or local government as defined in the first part of this Article, except employees of the National Anti-Corruption Bureau of Ukraine;
- by the internal control unit of the National Anti-Corruption Bureau of Ukraine with regard to employees of the National Anti-Corruption Bureau of Ukraine;
- by the Security Service of Ukraine with regard to employees of the internal control unit of the National Anti-Corruption Bureau of Ukraine.

Article 5. The rights of persons undergoing integrity checks

- 1. Persons undergoing integrity checks have the following rights:
- 1) to tolerant, impartial and fair treatment during the check and to respect for their dignity;
- 2) to be informed about the procedures of appeal, as established by law, against disciplinary penalties based on the integrity check;
- 3) to appeal the penalties based on the integrity check in accordance with the procedure established by law.

Article 6. The rights and duties of the heads of state bodies and local authorities in connection with integrity checks

- 1. The heads of state bodies and local authorities have the right to be informed about the results of integrity checks of their employees within the period established in this Law.
- 2. The heads of state bodies and local authorities are to properly register all notifications about undue influence in accordance with the regulations approved by the National Anti-Corruption Bureau of Ukraine and to grant access to such information to persons who undergo integrity checks.

Article 7. The rights and duties of persons conducting integrity checks

- 1. Persons conducting integrity checks have the following rights:
- 1) to identify, jointly with the coordinator of the check and in accordance with this Law, those persons authorized to perform the functions of state or local government who are subject to integrity checks, and to establish the frequency of such checks;
- 2) to conduct integrity check measures according to the plan approved by the coordinator of the check;
- 3) to receive special training on the means, methods and techniques used during integrity checks;
- 4) to make use, in the course of integrity checks, of the undercover documents for individuals, units, agencies, facilities and vehicles, including undercover support for individuals indicated in the third part of Article 11 of this Law.
- 2. Persons conducting integrity checks are obligated:
- 1) to comply in the course of conducted checks with the requirements of this Law and of other laws and regulations governing the integrity checks procedure, as well as with the plan approved by the coordinator of the check;
- 2) to ensure confidentiality of the integrity check;
- 3) to take measures for prevention of possible negative effects or damage to third parties in connection with the check;
- 4) to ensure destruction of the audio and video recordings made in the course of the check, within the time specified in the first part of Article 17 of this Law.

Article 8. The principles of integrity checks

- 1. It is forbidden to disclose, publicize or provide any data collected during the check or any information regarding an integrity check or a decision not to conduct such check with regard to a specific person authorized to perform the functions of state or local government, prior to approval of the report on the results of the check. The procedure for providing such information after approval of the report is regulated by this Law.
- 2. The results of the check that constitute a secret protected by law and any data of private nature are not subject to disclosure or transfer. Persons conducting integrity checks and other persons who were trusted with such data in the course of a check or became aware of such data in connection with performance of their official, professional or contracted duties are held liable, as established by law, for transfer and/ or disclosure of data, except instances of disclosure of unlawful acts in violation of human rights.
- 3. The results and materials of integrity checks may not be used as evidence in criminal proceedings or in administrative offense proceedings against a person authorized to perform the functions of state or local government who underwent an integrity check.
- 4. Integrity checks and their methods, techniques and registration do not constitute detective operations as defined in the Law of Ukraine "On Detective Operations" of February 18, 1992, No. 2135-XII.
- 5. If an integrity check establishes any facts that evidence a crime or offence of the checked individual or a third party the person conducting the check accordingly notifies the coordinator of the check for further notification of the competent authorities and their appropriate action.

Section II PROCEDURE OF INTEGRITY CHECKS

Article 9. Initiation of an integrity check

1. Conduct of an integrity check and selection of the persons authorized to perform the functions of state or local government who are subject to the check are initiated on the basis of:

- 1) corruption risks identified in the performance of the respective state bodies or local authorities;
- 2) available information and petitions that evidence possible lack of integrity of persons authorized to perform the functions of state or local government;
- 3) grounded requests from heads of state bodies or local authorities.
- 2. The decision on conduct of a check is made by the coordinator of the check without prior notification of the head of the respective state body or local authority, regardless of availability or unavailability of his/ her earlier request of a check in such state body or local authority.
- 3. If necessary and in order to obtain full and objective information the person conducting the integrity check interacts with representatives of the state body or local authority where the checked individual works, in accordance with the procedure established by this Law and in the special regulations that govern cooperation in this sphere.

Article 10. Management and coordination of integrity checks

- 1. Integrity checks are managed by the Director of the National Anti-Corruption Bureau of Ukraine, Head of the Security Service of Ukraine and chief of internal control unit of the National Anti-Corruption Bureau of Ukraine, as respectively required.
- 2. For each check the Director of the National Anti-Corruption Bureau of Ukraine, Head of the Security Service of Ukraine and chief of internal control unit of the National Anti-Corruption Bureau of Ukraine confidentially appoints an own employee as coordinator of the check, who ensures the conduct of all measures in the course of the check and is responsible for making the plan of the check and for submission of the report on its results.
- 3. The plan of the integrity check is a confidential document approved by the coordinator of the check and is to contain the following information:
- 1) grounds for the check and a properly reasoned decision on its initiation;
- 2) information on the persons authorized to perform the functions of state or local government who will be subject to the integrity check;
- 3) envisaged measures;
- 4) information on the location, duration, participants and logistic support of the check;
- 5) probable scenarios, hypothetical behaviours and response options, with regard to persons conducting and undergoing the check;
- 6) actions prompted by considerations of reasonable risk;
- 7) other information necessary for the check.
- 4. The person conducting the check may, by virtue of vested powers and/ or if so needed, amend the plan upon emergence of additional information.
- 5. Any amendments to the plan of the integrity check are agreed with the coordinator.

Article 11. Methods, techniques and registration of integrity checks

- 1. An integrity check is conducted by simulation of a situation with artificial conditions where a person authorized to perform the functions state or local government is given a possibility to break the rules of ethical behaviour or to commit a corruption or corruption-related offence.
- 2. Integrity checks are conducted confidentially.
- 3. In exceptional cases, where appropriate, an integrity check may involve other persons, with their prior consent and guarantees regarding non-disclosure of their activities.
- 4. Participation in integrity checks is not allowed to any person who, according to the circumstances, may have a personal interest in the results of the check.
- 5. For objective evaluation of the check its course is obligatorily recorded by audio/ video or communication means used by the person conducting the check.

- 6. The course of the check may feature making or use of documents to support undercover activities or the used legend, including documents for undercover individuals, units, agencies, facilities and vehicles.
- 7. Integrity check measures may involve transportation, audio/ video recording and communication means as well as other undercover surveillance equipment of the National Anti-Corruption Bureau of Ukraine and the Security Service of Ukraine. If necessary and when the use of the equipment of the National Anti-Corruption Bureau of Ukraine and the Security Service of Ukraine is impractical or impossible, integrity checks may involve the use of such means from other sources with prior consent of their owner/ holder but without notification about the true purpose of their use.
- 8. In order to ensure availability of full evidence during the check and if a person authorized to perform the functions of state or local government solicits or accepts an undue benefit the person conducting the check may provide such benefit. Such actions are obligatorily indicated in the plan of the integrity check.

Article 12. Report on the integrity check results

- 1. On the basis of the results of an integrity check the person who conducted such check makes a report approved by the coordinator of the check and containing the following information:
- 1) the grounds for the check and the reasoned decision on its initiation;
- 2) description of the measures conducted in accordance with the plan of the check and other information on the conduct of the check;
- 3) the behaviour and actions of the checked person during the integrity check;
- 4) conclusions on the vulnerabilities and risks that urge or may urge a person authorized to perform the functions of state or local government to fail in the performance of duties indicated in paragraph one of the first part of Article 2 of this Law;
- 5) the results of the check;
- 6) the findings and grounded proposals based on the results of the check.
- 2. The report is made in a manner preventing disclosure of information about the individuals who participated in the integrity check, about the techniques, sources, methods and plans of the National Anti-Corruption Bureau of Ukraine and the Security Service of Ukraine and of other classified information.
- 3. The original audio/video recordings made during the check are attached to the report and obligatorily stored with it during the period indicated in Article 17 of this Law. If such recordings contain information classified as secrets protected by law, storage and management of such materials is effected in accordance with the legislation on protection of such secrets.

Section III RESULTS AND LEGAL CONSEQUENCES OF INTEGRITY CHECKS

Article 13. Positive result

- 1. The result of an integrity check is deemed positive if the person who underwent the check demonstrated integrity in the course of the check and performed the duties specified in paragraph two of the first part of Article 1 of this Law.
- 2. The coordinator of the check notifies the head of the state body or local authority that employs the person authorized to perform the functions of state or local government about the positive result of the integrity check of such person six months after the approval of the report on the results of the check, in full confidentiality. Notification of the result is conducted without disclosure of information about the checked employee and without any attachments of the report and the materials of the check.

3. The head of the state body or local authority that employs the person authorized to perform the functions of state or local government who underwent the check informs other employees of such body or authority about the result of the check within ten working days as of acknowledgement of the notification on the result of the check.

Article 14. Negative result

- 1. The result of an integrity check is deemed negative if the person who underwent the check failed to demonstrate integrity in the course of the check and failed to perform the duty of prevention of corruption crimes in the performance of official duties.
- 2. The report with the negative result of the check is within ten working days from the date of its approval provided by the coordinator of the check directly to the head of the state body or local authority that employs the person authorized to perform the functions of state or local government who underwent the check, for application of disciplinary measures in accordance with the law.
- 3. The head of the state body or local authority that employs the person who underwent the check has the right to familiarize with the audio/video recordings of the check and with other materials that confirm the negative result of the check, with proper confidentiality measures with regard to the person who conducted the check and other persons involved in the check. Within fifteen days as of acknowledgment of the report with the negative result of the check the head of state body or local authority that employs the person who underwent the check notifies the agency (unit) that conducted the check about the measures taken and penalties imposed, with attachment of the copy of the relevant decision.

Article 15. Consequences of negative results of integrity checks

- 1. The negative result of a check of a person authorized to perform the functions of state or local government entails disciplinary liability with account of the provisions of the legislation on prevention of corruption, labor legislation and particularities of the legal status of such persons under the Constitution and laws of Ukraine.
- 2. The decision on the disciplinary penalty is to reflect the gravity of committed violations, the behavior of the person authorized to perform the functions of state or local government who underwent the integrity check and information about the previous disciplinary sanctions and rewards of such person.
- 3. The penalty of dismissal is obligatorily applied if the results of the check established lack of a person's integrity manifested in failure to perform the duty of prevention of corruption crimes in the performance of official duties.
- 4. The head of the state body or local authority that employs the person who underwent an integrity check with a negative result dismisses such person not later than three days after acknowledgement of the negative result of the check.
- 5. Persons dismissed on the grounds specified in this Law are forbidden to occupy positions related to performance of the functions of state or local government for three years from the date of dismissal.
- 6. Penalties other than dismissal are imposed if the results of the integrity check reveal failure to perform the duties indicated in subparagraphs three through six of paragraph two of the first part of Article 2 of this Law.
- 7. During the period from acknowledgement of the report with the negative result of the integrity check and until completion of disciplinary proceedings the person who underwent the check may not be dismissed at own will or transferred to another state body or local authority.
- 8. The money and/ or other assets received by a person authorized to perform the functions of state or local government as a result of a conducted integrity check are returned/ refunded by such person.

- 9. In case of refusal of voluntary return/ refund of such money and/or other assets they are recovered by way of judicial proceedings.
- 10. Account of integrity checks is taken by the National Anti-Corruption Bureau of Ukraine and the Security Service of Ukraine, in accordance with the relevant regulations approved, respectively, by the National Anti-Corruption Bureau of Ukraine and the Security Service of Ukraine.

Article 16. Appeals against decisions on penalties in connection with negative results of integrity checks

1. A decision on imposition of a penalty in connection with the negative result of an integrity check may be appealed by the person authorized to perform the functions of state or local government who underwent the check, in accordance with the procedure established by law.

Article 17. Storage of recordings made during integrity checks

- 1. Audio/ video recordings made during integrity checks are stored:
- 1) in case of a positive result until notification of the head of the state body or local authority about the conducted check;
- 2) in case of a negative result until the effect of the relevant court ruling or, if the agency (unit) that conducted the check has no information about possible appeal until the expiry of the established period for appeal.
- 2. Audio/ video recordings made during integrity checks are destroyed upon expiry of the terms specified in the first part of this Article.

Section IV FINANCING OF INTEGRITY CHECKS

Article 18. Financing of administrative arrangements for integrity checks

1. Administrative arrangements for integrity checks as well as registration, storage and systematization of information obtained during integrity checks are financed from the State Budget of Ukraine.

Section V FINAL AND TRANSITIONAL PROVISIONS

- 1. This Law comes into effect as of January 1, 2016.
- 2. The below indicated legislative acts of Ukraine are amended as follows:
- 1) in the Code of Labour Laws of Ukraine (Newsletter of the Supreme Council of the UkrSSR, 1971, Supplement to No. 50, p. 375):

Article 36 in its first part is supplemented with new paragraph 7³ as follows:

- "7³) on the grounds established by the Law of Ukraine "On Integrity Checks"; in the second part the language "and in the instance specified in paragraph 7², the person is dismissed from office under the procedure established by the Law of Ukraine "On Purification of the Authorities" is replaced with the language "and in the instances specified in paragraphs 7² and 7³ the person is dismissed from office under the procedure established by the Laws of Ukraine "On Purification of the Authorities" and "On Integrity Checks".
- 2) Article 9 of the Code of Ukraine on Administrative Offences (Newsletter of the Supreme Council of the UkrSSR, 1984, Supplement to No. 51, p. 1122) is supplemented with a new part as follows:

- "Action or inaction with the attributes of a corruption-related offence under this Code is not an administrative offence (breach) if committed in the course of an integrity check according to the Law of Ukraine "On Integrity Checks";
- 3) in the Criminal Code of Ukraine (Newsletter of the Verkhovna Rada of Ukraine, 2013, No. 9-13, p. 88):

Article 11 is supplemented with a new part as follows:

- "3. Actions under this Article do not constitute a crime if committed in the course of an integrity check according to the Law of Ukraine "On Integrity Checks";
- 4) Article 24 of the Law of Ukraine "On the Security Service of Ukraine" (Newsletter of the Verkhovna Rada of Ukraine, 1992, No. 27, p. 382) is supplemented with a new paragraph 10 as follows:
- "10) to conduct integrity checks, within the competence defined in the legislation";
- in this conjunction paragraphs 10 through 17 become paragraphs 11 through 18, respectively;
- 5) in the Law of Ukraine "On Prevention of Corruption" (Newsletter of the Verkhovna Rada of Ukraine, 2014, No. 49 (12.05.2014), p. 2056)

part three of Article 56 is supplemented with new paragraph 9 as follows:

"9) the fact of disciplinary liability based on the results of an integrity check"; in part four of Article 57:

paragraph 6 reads as follows:

- "6) by the Security Service of Ukraine with regard to a person's access to state secrets, to a person's relation to military duty (in terms of personal and professional accounting of Security Service of Ukraine personnel fit for military service) as well as to information about conduct of integrity checks, in accordance with the vested competence, and their results"; and is supplemented with new paragraph 8 as follows:
- "8) by the Security Service of Ukraine with regard to information about conduct of integrity checks, in accordance with the vested competence, and their results".
- 3. Prior to application of this Law the National Anti-Corruption Bureau of Ukraine is to check on the state bodies and local authorities regarding their accounting of notifications on undue influence, with provision, if appropriate, of methodological guidance.
- 5. The laws and other regulatory acts adopted before the effect of this Law apply where not inconsistent with this Law.
- 6. The Cabinet of Ministers of Ukraine is, within three months from the date of the effect of this Law.
- 1) to submit to the Verkhovna Rada of Ukraine its proposals on bringing the legislative acts of Ukraine into conformity with this Law;
- 2) to bring own regulations into conformity with this Law;
- 3) to ensure compliance of the regulations of Ministries and other central executive bodies with this Law.

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COMPARATIVE TABLE (amendments proposed in the draft Law of Ukraine "On Integrity Checks")

Proposed amendments	aws of Ukraine	Article 36. Grounds for termination of labour	contract	A labour contract may be terminated on the following	grounds: 1) agreement of the parties;	7 ²) the grounds established by the Law of Ukraine "On Purification of the Authorities";	7) on the grounds established by the Law of Ukraine "On Integrity Checks";	8) on the grounds specified in the contract.	In the instances specified in paragraphs 7 and 7 ¹ of the first part of this Article the person is subject to dismissal within three days as of acknowledgement of the copy of the relevant effective court ruling by the state body, local authority, enterprise, institution or organization, and in the instance specified in paragraph 7 ² and 7 ³ the person is dismissed from office under the procedure established by the Laws of Ukraine "On Purification of the Authorities" and "On Integrity Checks".	Code of Ukraine on Administrative Offences	Article 9. The Notion of Administrative Breach	Action or inaction with the attributes of a
Current language	Code of Labour Laws of Ukraine	Article 36. Grounds for termination of labour		A labour contract may be terminated on the following	grounds: 1) agreement of the parties;	7 ²) the grounds established by the Law of Ukraine "On Purification of the Authorities";	8) on the grounds specified in the contract.		In the instances specified in paragraphs 7 and 7 ¹ of the first part of this Article the person is subject to dismissal within three days as of acknowledgement of the copy of the relevant effective court ruling by the state body, local authority, enterprise, institution or organization, and in the instance specified in paragraph 7 ² , the person is dismissed from office under the procedure established by the Law of Ukraine "On Purification of the Authorities".	Code of Ukraine on	Article 9. The Notion of Administrative Breach	

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	administrative offence (breach) if committed in the
	course of an integrity check according to the Law of
	Ukraine "On Integrity Checks".
Criminal Code of Ukraine	e of Ukraine
Article 370. Provocation of bribery	Article 370. Provocation of bribery
1. Provocation of bribery, i.e. intentional creation by an	1. Provocation of bribery, i.e. intentional creation by an
official of conditions and circumstances conducive to	official of conditions and circumstances conducive to
solicitation, promise or granting of an undue benefit, or	solicitation, promise or granting of an undue benefit, or
	acceptance of such offer or promise, or acceptance of such
benefit, in order to later detect the person who offered,	benefit, in order to later detect the person who offered,
promised or granted the undue benefit or accepted the offer or	promised or granted the undue benefit or accepted the offer
promise of the undue benefit or accepted the due benefit, -	or promise of the undue benefit or accepted the due benefit, -
	3. Actions under this Article do not constitute a
	crime if committed in the course of an integrity check
	according to the Law of Ukraine "On Integrity Checks".
Law of Ukraine "On the Se	kraine "On the Security Service of Ukraine"
Article 24. Duties of the Security Service of Ukraine	Article 24. Duties of the Security Service of Ukraine
In accordance with its principal tasks the Security	In accordance with its principal tasks the Security
Service of Ukraine is to:	Service of Ukraine is to:
:	· ·
10) assist the State Border Control Service of Ukraine in	10) to conduct integrity checks, within the
the protection of the state borders of Ukraine;	competence defined in the legislation;
	11) assist the State Border Control Service of Ukraine
	in the protection of the state borders of Ukraine;
Law of Ukraine "On Prevention of Corruption"	evention of Corruption"
Article 56. Special review	Article 56. Special review
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3. Special review extends onto information about a	3. Special review extends onto information about a person seeking an official position indicated in part one of
person scenning an othera position maicated in part one of this	

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personal and professional accounting of Security Service of 9) the fact of disciplinary liability based on the regions, cities of Kyiv and Sevastopol - in terms of a person's relation to military duty (except instances of 6) by the Security Service of Ukraine – with regard to a person's access to state secrets, to a person's relation to | person's access to state secrets, to a person's relation to commissariats of the Autonomous Republic of Crimea, to information about conduct of integrity checks, in accounting of Security Service of Ukraine personnel fit for accounting of Security Service of Ukraine personnel fit for military service) as well as to information about conduct 8) by the Security Service of Ukraine – with regard military duty (in terms of personal and professional military duty (in terms of personal and professional of integrity checks, in accordance with the vested 7) by the Ministry of Defence of Ukraine, military accordance with the vested competence, and their results. Article 57. The procedure of special review Ukraine personnel fit for military service); this Article, specifically with regard to: 4. Special review is conducted: competence, and their results; results of an integrity check. commissariats of the Autonomous Republic of Crimea, regions, cities of Kyiv and Sevastopol – in terms of a person's professional accounting of Security Service of Ukraine relation to military duty (except instances of personal and | 6) by the Security Service of Ukraine - with regard to a 7) by the Ministry of Defence of Ukraine, military Article 57. The procedure of special review 4. Special review is conducted: Article, specifically with regard to: personnel fit for military service). military service);