

Explanations
for the definition of the persons who shall file as provided in subparagraph
«и» of paragraph 1 and paragraphs 2, 3 of section 1 of Article 3
of the Law of Ukraine “On prevention corruption”
(concerning public officials)

According to Article 3 of the Law of Ukraine “On prevention corruption” (hereinafter “the Law”) persons who shall file **are persons provided in paragraph 1, subparagraph «а» of paragraph 2 of section 1 of Article 3 of this Law** and others who are required to declare their income according to this Law.

According to section 1 of Article 3 persons who are subject to this Law are –

1) state or local officials:

а) the President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine, his/her First Deputy and the deputy, the Prime Minister of Ukraine, the First Vice Prime Minister of Ukraine, the Vice Prime Minister, the ministers and other executives who are not the members of the Cabinet of Ministers of Ukraine, and their deputies, the Head of the Security Service of Ukraine, the Prosecutor General of Ukraine, the Chairman of the National Bank of Ukraine, the Chairman and other members of the Accounting Chamber, the Ukrainian Parliament Commissioner for Human Rights, the Chairman of the Supreme Council of the Autonomous Republic of Crimea, the Chairman of the Council of Ministers of the Republic of Crimea;

б) people’s deputies of Ukraine, deputies of the Supreme Council of the Autonomous Republic of Crimea, deputies of the City Council, the Chairman of the Village and Settlement Councils, mayors;

в) government officials, local government officials;

г) the military officials of the Armed Forces of Ukraine, of the State Service of Special Communications and Information Protection of Ukraine, and of other military formations established in accordance with the Law of Ukraine, except conscripts;

р) the judges of The Constitutional Court of Ukraine, other professional judges, members, Inspectors of the High Qualification Commission of Judges of Ukraine, officials of this Commission, the Chairman, the Deputy of the Chairman, secretaries of the Supreme Council of Justice, and also other members of the Supreme Council of Justice, people's assessors and juries (while performing professional duties);

д) members and senior officials of the State Criminal -Executive Service of Ukraine, the Tax Police, members and senior officials of the civil protection bodies and units, the State Bureau of Investigation, the National Anti-Corruption Bureau of Ukraine;

е) executives and officials of the Public Prosecution Service, the Security Service of Ukraine, the State Bureau of Investigation, the National Anti-Corruption Bureau of Ukraine, the diplomatic service, the State Forest Protection Center, the Nature Reserve Fund of Ukraine, the Central Executive Body which develops and ensures the implementation of the state tax policy and the state customs policy;

є) members of the National Agency for Prevention of Corruption;
ж) members of the Central Election Commission of Ukraine;
з) policemen;
и) executives and officials of other state bodies, Executives of the Autonomous Republic of Crimea;

2) persons who for the purpose of this Law are considered state or local government officials:

a) public officials who are not mentioned in paragraph 1 of section 1 of this Article.

Thus, persons mentioned in the other provisions of Article 3 of this Law, such as persons mentioned in subparagraphs «б» and «в» of paragraph 2, in paragraph 3 of section 1 of Article 3 of this Law, are not considered public officials and shall not file.

According to paragraph 3 “Explanations with respect to the particular provisions of the Law of Ukraine “On prevention corruption” concerning financial control measures” affirmed with appropriate modifications by the National Agency for Prevention of Corruption decision № 3 of 11 August 2016, for the purposes of defining persons who are subject to this Law (according to subparagraph «и» of paragraph 1 of section 1 of Article 3 of this Law), the term “executives and officials of other state bodies” means servants who serve as public officers or carry out executive or administrative functions.

It is therefore crucial to define the scope of the functions (duties) of every servant.

Thus, administrative functions (duties) are duties related to management or disposal of state, municipal property (establishment of a procedure of keeping, processing of this property, keeping under control these activities etc.).

Executive functions (duties) are duties related to management of the manufacturing, staff, some work, and production activity of some personnel at factories, offices or organizations regardless of ownership.

In accordance with Article 1 of this Law, persons who shall file are, in particular, persons mentioned in subparagraph «а» of paragraph 2 of section 1 of Article 3 of this Law, **in particular public officials who are not mentioned in paragraph 1 of section 1 of Article 3.**

In accordance with Article 81 of Civil Code of Ukraine, a public entity is created by an executive order of the President of Ukraine, the public authority, the authority of the Autonomous Republic of Crimea or the local government. According to Articles 167 and 169 of Civil Code of Ukraine, the state and communities can create public entities (public enterprises, utilities etc.) in the cases and manner established by the Constitution of Ukraine and law.

Thus, public enterprises, utilities and other entities created by an executive order of the President of Ukraine, the public authority, or the local government are public entities. The executives of such enterprises (of other public entities) are persons who shall file and who are subject to Title V (“Financial Control”) of the Law in terms of the peculiarities required by section 5 of Article 45 of the Law.

The Law of Ukraine “On prevention corruption” does not give definition to the term “officials”. According to paragraph 3 “Explanations with respect to the particular provisions of the Law of Ukraine “On prevention corruption” concerning financial control measures”, for the purposes of defining persons who are subject to this Law, the term “public officials” (in accordance with subparagraph “a” of paragraph 2 of section 1 of Article 3 of this Law) means employees of public entities who are empowered to carry out executive or administrative functions.

However, defining the officials of public enterprises or utilities it should be taken into account the provision of the Economic Code of Ukraine. In accordance with section 3 of Article 65 of the Economic Code of Ukraine and company rules, the head of the enterprise, the chief accountant, the members of the supervisory board (if it is formed), the executive body and other management bodies of the enterprise are the officials of the enterprise. In accordance with company rules, others can be appointed the enterprise officials.

Thus, public or utility enterprise officials who shall file are the head of this enterprise /utility, his/her chief accountant, the members of the supervisory board (if it is formed) the executive body and other management bodies of the enterprise required by company rules. A list of officials as provided in the Economic Code of Ukraine cannot be changed by company rules or the enterprise decision.

Furthermore, in conformity with the company rules, some other persons can be additionally appointed enterprise officials who shall file in accordance with the Law.