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## **SUPPORT TO JUSTICE SECTOR REFORMS IN UKRAINE**

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### **FINAL REPORT**

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## **Content**

<b>I Chapter</b>	
<b>December 2015 - March 2016 Report</b>	<b>3</b>
<b>II Chapter</b>	
<b>April 2016 - November 2017 Report</b>	<b>24</b>
<b>PART 1</b>	
<b>Development of the Address Register</b>	<b>24</b>
<b>PART 2</b>	
<b>Development of Enforcement Case Management System</b>	<b>32</b>
<b>PART 3</b>	
<b>Development of other electronic services</b>	<b>37</b>
<b>Annex 1</b>	<b>39</b>
<b>Annex 2</b>	<b>44</b>

## **I Chapter December 2015 - March 2016 Report**

### **Introduction**

Management of registers in Ukraine is not systematic, i.e. about 100 registers are established, which are managed by different ministries and state authorities (hereinafter referred to as the Authorities)<sup>1</sup>, therefore their administration becomes difficult. Executing its functions, the Ministry of Justice of the Republic of Ukraine (MoJ) administers and regulates some of the state registers (Civil Status Acts Register, Register of Rights to Real Property, Register of Legal Entities and Individual Entrepreneurs, Register of Public Organizations, Register of Legal Acts, Register of Notaries, Register of Enforcement Proceedings, Register of Inheritance, Register of Special Notarial Document Forms, etc.).

Legislation necessary for operation of the said registers has been drafted and adopted in Ukraine; infrastructure for the registers has been developed; data are being provided to the users. A concept of a unified state register is used in the legislation of Ukraine, which defines an automated system for collection, aggregation, accounting, storage and provision of data on the statutory objects. Registers are established by law. Currently, the Law on State Registration of Legal Entities and Individual Entrepreneurs, Law on the State Registration of the Proprietary Rights for Real Property and Encumbrances over Real Property, etc. have been adopted.

It is important to mention that review of the registers administered by the Ministry of Justice has been limited by several factors. First of all, legal and institutional reorganisation of the system of the Register of Legal Entities and Individual Entrepreneurs and the Register of Rights to Real Property is still going on: registers are being decentralised; the State Registrars' Service has been liquidated; legislation has been amended, which revise the functions of notaries, local authorities, enforcement agencies and other accredited entities. Authority to register is now transferred from the Ministry of Justice of Ukraine to (i) the executive bodies of villages, towns or city councils; (ii) state administrations in cities and districts; (iii) legal entities established by the government authorities or municipal authorities which shall be accredited and further monitored by the Ministry of Justice of Ukraine; and (iv) enforcement officers (only in the process of enforcement proceedings). According to the new law the state registrars (who previously worked for the Ministry of Justice of Ukraine) will be employed by the registration authorities listed in (i) – (iii). The notaries' authority to perform registration actions shall remain and, under the new law, is no longer related to a notarial action (the notaries may currently perform the registration actions only as a result of a notarial action). For example, currently local authorities are in the process of hiring employees – registrars; they also organise their training, establish technical facilities, etc. In reality, local authorities still do not perform registration functions. Secondly, some of the registers and information systems are implemented as pilot projects (Register of Legal Entities and Individual Entrepreneurs; Register of Enforcement Proceedings, etc.). Thirdly, the old registers are being transformed into new registers (for example, the State Register of Rights to Real Property replaced the old version of the register on 1 January 2013. However, the information on the title to Real property could not be automatically transferred from the old

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<sup>1</sup> In this report, the notion “state authorities” is used in generalising manner. “State authorities” shall mean all authorities (including institutions, enterprises), through which the State exercises its functions; which incorporation rights are possessed by the State (its institutions) regardless of how certain institutions are called in laws and/or by-laws.

register to the new register. Currently Register of Rights to Real Property is using two databases: the old one and the new one). It is difficult to assess the efficiency and optimality of registers' reorganisation in such a rapidly changing context. However, the expert study has proved that the currently existing register management system is sustainable, but it does not meet the needs of the public and market participants; separate components of the system hinder the implementation of the objectives pursued, and the system itself is inefficient.

Registers in the justice sector were assessed and the recommendations were formulated taking into account the following principles: e-Government, accessibility and user-orientation of public services, transparency, effective governance, cost/benefit ratio and efficiency of public services, reduction of State budget expenditure, interoperability between public and private agencies and services, deregulation and other principles. Recommendations were formulated in view of the short-term and long-term perspectives for the implementation of proposals. If accepted, some proposals can be implemented in a short time (to 1 year). However, some of the recommendations will require more time (from 3 to 5 years).

### **I. Assessment of Registers' Interaction**

1. Figure 1 shows that Ukraine has different registers (not all registers are given in Figure 1; it shows only those relevant for the analysis), which are not integrated; there are no possibilities of moving from one register to another. For example, final court decisions are registered in the Register of Court Decisions; however there is not data exchange between the said Register and the Register of Rights to Real Property, Land Cadastre, etc.; i.e. when a court makes a decision to seize real property or to impose other restrictions or encumbrances on real property or rights thereto, the party to the case should apply to the enforcement officer and deliver a certain document for commencement of enforcement proceedings. When the enforcement officer starts enforcement proceedings (through the Register of Enforcement Proceedings), the actions related to enforcement proceedings are performed. When the court seizes property, seizure is registered in the Register of Rights to Real Property only after a long time. Enforcement process is still complicated in Ukraine partly due to lack of integration between the registers (this issue will be described in a more detailed way in other paragraphs of the Report).

Recommendation: it is necessary to ensure greater interoperability between the state registers and information systems. On-line transfer of data from the Register of Court Decisions to the Register of Rights to Real Property and other registers should be implemented.

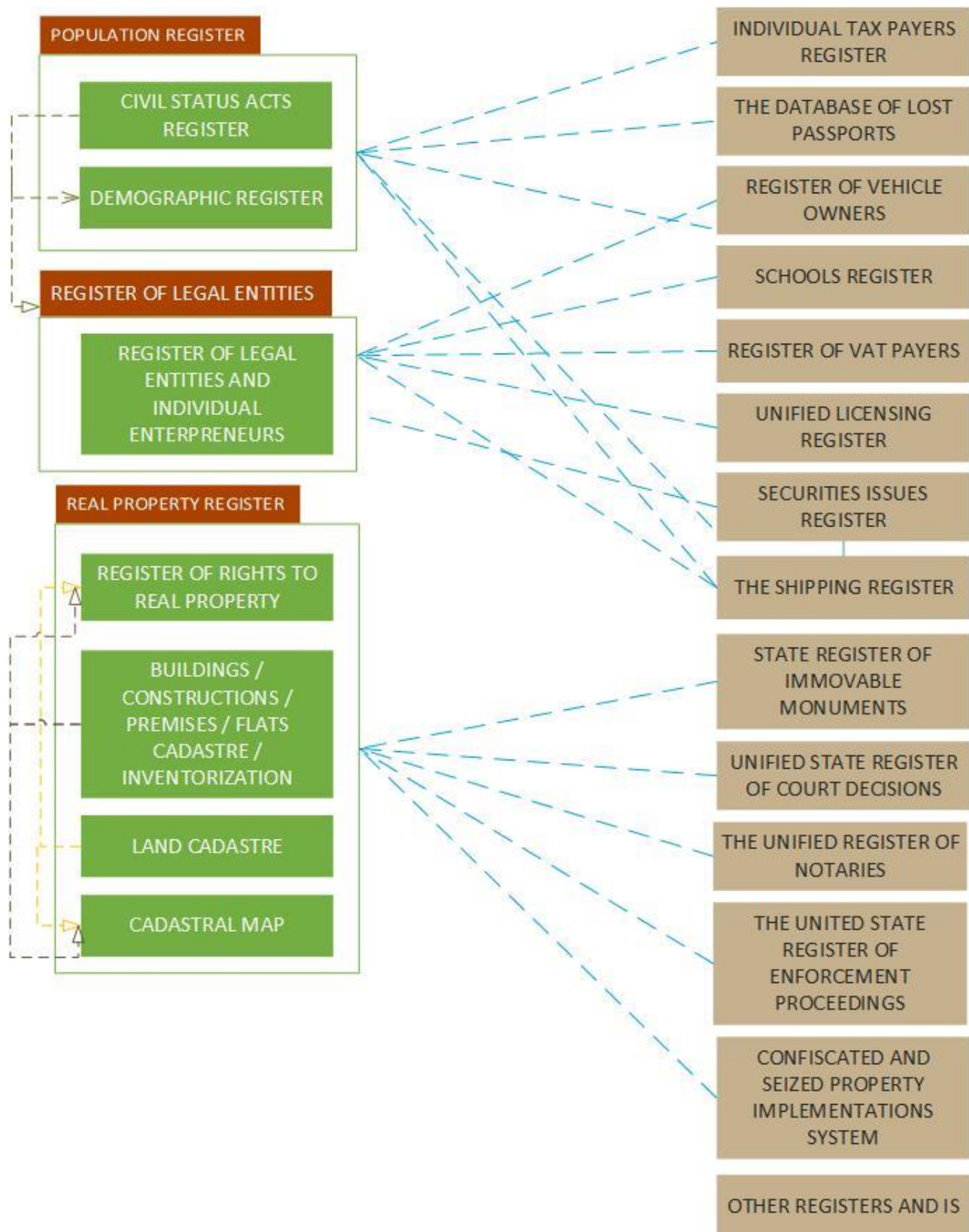


Figure 1. The current situation of registers in Ukraine.

Interoperability between the base state registers in Lithuania is given in Figure 2 (a more detailed description is provided in separate paragraphs of the Report).

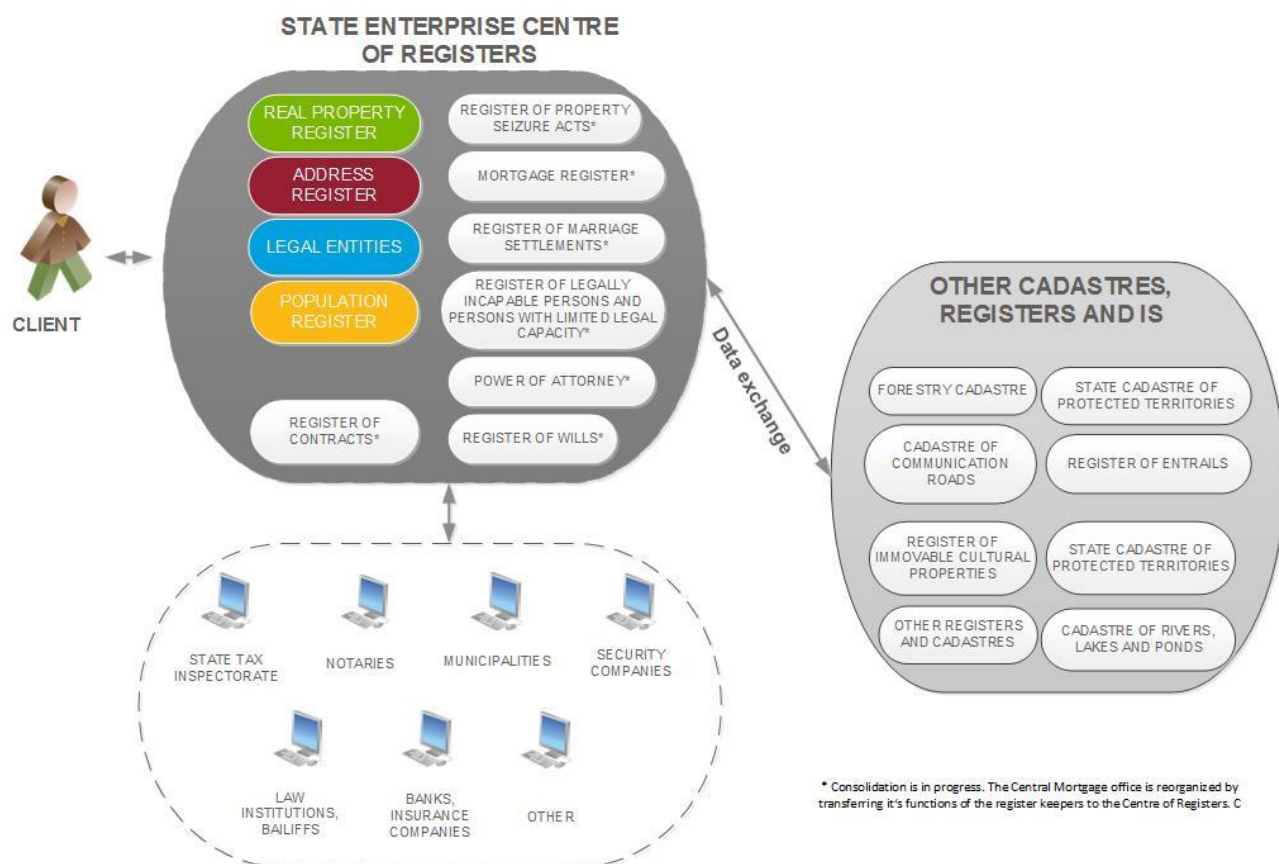


Figure 2. Key registers and their relations in Lithuania.

2. Registrars stated that exchange of data to ensure operation of registers exists; however the interaction between the registers is not sufficient. The reasons for insufficient interoperability of the registers are as follows: data stored in the registers are incomplete; some of the data are inaccurate or missing (for example, Land and Buildings are not linked in the Land Cadastre; about 70% of land is registered in Ukraine; about 69% of land of Ukraine is registered in the Land Cadastre, however, only 22.6% of the state-owned land and agricultural land is registered in the Land Cadastre; 70.6% of land in private ownership is registered in the Land Cadastre; not all land parcels are given cadastral numbers; not all data have been moved to new databases; there is a problem with historical data, etc.); inefficient tools for interoperability of registers are used. To ensure this process, special applications and accesses are being developed; however, software is incompatible, applications are not updated; no training is provided, etc. The functions of notaries have been extended; however a small number of notaries have access to the Register of Legal Entities and Individual Entrepreneurs. Registrars are not involved in the reform process. Due to inaccuracy of data and bottlenecks of technologies used direct interoperability of registers, i.e. on-line transfer of data from one register to other registers, is not fully realised.

To the opinion of experts, when implementing reforms related to registers, the main task is to ensure that the participants were well informed and had the necessary qualification for the implementation of novelties; that registrars or other participants were able to identify themselves with the reform objectives, and that these objectives were

based on the favourable environment and the resources available. Therefore, not only legislation should provide for the obligations to perform certain functions; it is also necessary to evaluate technical background of individuals and the existing technical facilities to carry out such a task. It is recommended to involve the representatives of all institutions, which according to the laws are obliged to perform registration, into the reform process already at the development phase. It is also important to think about the better quality software applications that the registrars could pay for. It is suggested to take appropriate steps to encourage the training of registrars to use and work with applications.

3. As shown in Figure 3, the current legal framework does not prevent from the duplication of information (for example, Land Cadastre and the Register of the Rights to Real Property; registration of court decisions in the register and registration of seizures arising from the court decision; registration of civil status acts and granting personal identification code when issuing a document proving personal identity, etc.).



Figure 3. The scattered authentic data on register objects.

*Recommendation: to reduce duplication of data and activities (separate proposals on reducing duplication are given in other paragraphs of the Report).*

4. In Ukraine the real property administration system has a fragmented infrastructure where Land cadastre is separated from the Cadastre of buildings and other structures. There is a difference between the cadastre system and the system of registration of rights to real property. Land cadastre collects data on land (area of land

parcel, boundaries, location, purpose, etc.), also data about the owner/user. Register of Rights to Real Property collects data on the rights of owner/user (natural person or legal entity) which are associated with a concrete real object (as illustrated by Figure 3). When databases are different, the process of receiving data becomes complicated, while data verification process is time-consuming. For example, for attesting the real property transaction a notary must obtain data from the Land cadastre, from the Register of the Rights to Real Property, etc. When data are obtained from different sources, there exists a possibility to make wrong decisions. Such system is also inconvenient for data users who want to get full and true information about the register objects.

Securing ownership rights undoubtedly refers to the object of ownership rights, about which information must be comprehensive and complete. The Register of the Rights to Real Property cannot operate without data from the Land cadastre, and vice versa. If users and customers cannot obtain all data about legal situation of real property from a single database, this means that institutional and technological environment of registers does not support the implementation of one-stop-shop principle.

When different databases are in operation, the process of creating applications for the provision of integrated data becomes complicated (or it is difficult to implement). The administration of several registers can result in inefficient and ineffective use of human, financial and technical resources; moreover when obtaining information from several registers, users spend more money and time.

In Lithuania, a modern Real property administration system has been in operation since 1997. By that time, there was also a fragmented institutional infrastructure where Land cadastre and Register was completely separated from the management of buildings and structures, and registration of rights thereto. Different data processing centres were in operation and decisions were made by different authorities. Economic changes, restitution process of ownership rights and privatisation led to essential legal, institutional and other changes. Currently, Lithuania has one state authority responsible for Real property registration and cadastre. The integrated multipurpose real property cadastre and register system functioning in Lithuania provides for data storage in one central database, i.e. in the Real Property Register. Legal, technical and geographical information is kept by one state authority in a single system. The integrated real property cadastre and registry system consists of: 1) descriptive data (property position, main qualitative and quantitative characteristics, type of use, value and price), 2) graphic description (cadastral map), and 3) legal data (information about owner, user, etc., type of property possession, restrictions of rights and other data). Lithuanian real property register administration system is shown in Figure 4.



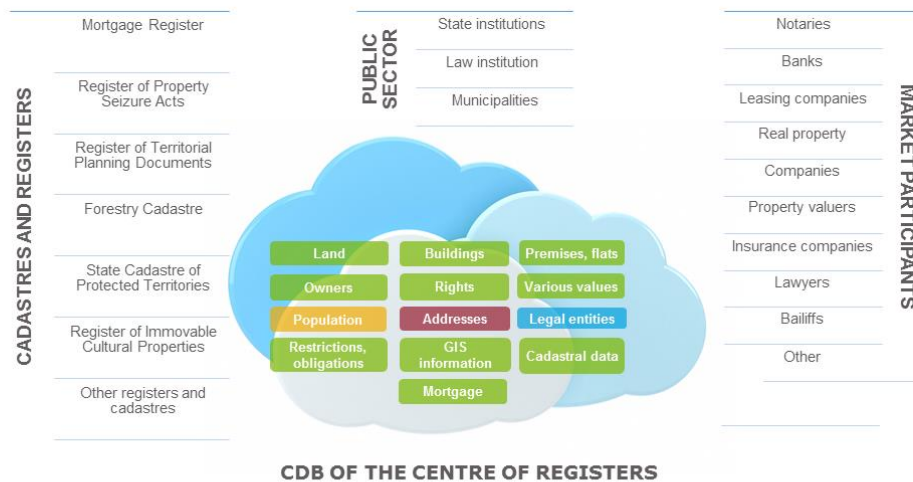


Figure 4. Real property Register administration system in Lithuania.

The State Enterprise Centre of Registers stores a lot of data about real property in Lithuania (qualitative and quantitative characteristics of property, data about transactions, their values and so on), which serve a basis for monitoring the real property market. The State Enterprise Centre of Registers performs mass valuation of land. The results of mass valuation are used for calculation of taxes.

Property owners, possessors and/or investors can avoid uncertainty due to the effective real property administration system. Security promotes economic and financial development; whereas guarantees, which are provided by real property registration, encourage crediting. Efficiency of property market increases and property transactions are concluded in a secure way and at low costs, etc.

Recommendation: cadastre of land, buildings, structures, premises and apartments as well as registration of rights thereto and their restrictions should be integrated into one real property information system. Keeping and management of legal, technical and geographical information in one system would enable to ensure a more transparent property conveyance process, to use information for fiscal purposes and encourage the development of credit market in the country.

5. Population registration in Ukraine is performed in two ways: by collecting data of the civil status acts in the Register of Civil Status Acts administered by the Ministry of Justice and in the Demographic Register which is being created at the moment on the basis of personal documents (passports, personal identification cards, etc.) administered by the Ministry of Interior. State authorities of the Ministry of Justice administer the Register of Civil Status Acts and issue the following documents: certificate of birth, certificate of marriage, certificate of death, etc. Whereas state authorities of the Ministry of Interior issue personal identity documents in Ukraine (passports: of a citizen, a diplomatic passport, foreign passport, personal identity card, etc.).

Moreover, some local authorities are contemplating the creation of a competing Citizen's Register alongside the MOI Demographic Register. A joint vision is necessary to avoid overlap and provide credible data about a person.

Service Centres of the Ministry of Interior (MOI) will be created in various regional departments of MOI. They will make accessible various types of information, including certificates on (lack of) conviction, vehicles, arms, and persons. But the issuance of passports, registration of foreigners, biometric identification will remain the domain of a separate central MOI department, Migration Department. Similarly, the issuance of driver's licences will remain the domain of the police. The fragmentation of this developing institutional/ functional set up may give rise to concerns.

The Population Register in Lithuania was created on the basis of data of passports of the citizens of the Republic of Lithuania, and from 1992 - by collecting data of civil status acts. There is no separate register established in Lithuania for the registration of civil status acts, and all data about a person and the issued documents and place of residence are stored in the single Population Register. The data to the Population Register are provided by civil status registration institutions, migration office and other entities; while the data of the Population Register is used by public authorities and other users. In 2014, the Ministry of Justice became the managing institution of the Population Register, which took over the Register supervision functions from the Ministry of the Interior. Accordingly, the Register keeping institution has also changed, i.e. gradually the functions of keeping the Population Register were transferred to the State Enterprise Centre of Registers, and the Population Register Service was liquidated as of 1 January 2016. In Lithuania, the functions of institutions keeping base state register are being centralised in one state authority, resulting in optimisation of activities of state authorities, a more rational use of material and financial resources, elimination of duplication. The consolidation of state authorities and registers reduces the need for exchange of data between different state authorities and the need to pay for the provision of data, as data of related registers are being processed in a single database. It should be noted that at present the Population Register in Lithuania is being upgraded and modernised to improve the quality and relevance of the Register object data, by automation of data management and delivery processes and implementing the necessary interfaces with other registers and information systems. Modernisation is targeted at expanding electronic public and administrative services provided by the Population Register.

It is recommended to assess functions and the role of a newly established Demographic Register of Ukraine and to check whether its functions do not overlap with the functions of the Register of Civil Status Acts. Since the data on a person's birth, name, surname, etc., are stored both in the Register of Civil Status Acts and in the Demographic Register, perhaps the better idea would be to improve the Register of Civil Status Acts, which is already in operation, rather than to establish a new register. Such structure would provide users with a single access to the complete, comprehensive and official information about a person. It is proposed to review processes related to registration of civil status acts and data management. It is recommended to create automated data exchange interfaces with other registers and information systems.

Taking into account the recommendations of the European Commission on optimisation and activation of the patients' register, which are currently being implemented in Lithuania, it is suggested to establish the Patients' Register in Ukraine on the basis of the Register of Civil Status Acts. Data of the Register of Civil Status Acts on birth and death could serve as a basis for integration of various registers and information systems.

6. There is still no solution achieved with regard to exchange of data between the Demographic Register which is being set up and which is managed by the Ministry of Interior and the Register of Civil Status Acts, the Register of the Rights to Real Property, the Register of Legal Entities and Individual Entrepreneurs and other registers managed by the Ministry of Justice. It should be noted that the courts, notaries, enforcement officers do not have access to the Demographic Register and the Register of Civil Status Acts. It was also stated that the civil status acts, for example, marriage, children born, are found in paper documents (e.g. passports or other documents submitted by the person). These documents are also used for identification of the place of residence. An real property transfer procedure is still much formalised. A person has to deliver a lot of various certificates and documents issued by different authorities to the notary. Such procedures could be simplified by providing notaries and other users with direct access to the relevant and up-to-date registers. At the same time one should think about the implementation of a new electronic service based on one-stop-shop principle, which would help a person to collect information and documents from various state authorities.

To the opinion of experts, technical potential and economic possibilities should be offered for the registrars to connect electronically to the Register of Civil Status Acts and the Demographic Register and receive data in different and flexible ways (enquiries by one or more objects, or their groups, provision of database replications, automatic updates, etc.). Accordingly, it is necessary to have a pricing regime, under which fees for the provision of state register data should be based on the fixed costs of the register keeping office and differentiated taking into consideration the amount of data and use of technical solutions. According to experts, generally binding taxes for the information stored in the registers would ensure the effective maintenance of the registers and would solve the problem of unstable funding to the state authorities, which depends on the political situation in the country.

Lithuanian legislation provides for the data dissemination (public register) principle. Articles 27 and 29 of the Law on the State Information Resources Management of the Republic of Lithuania stipulate that the register data, register information, documents and/or their copies submitted to the register are public; however, they are provided for a fee with exceptions established in the legal acts (e.g. for tax administration, law enforcement state authorities and the courts). Many years of experience of the Centre of Registers in distributing data showed that accumulation of data and their preparation for public distribution (in particular, processing of personal data that cannot be disclosed to the third parties, document “anonymisation”) creates costs, for which reimbursement sources are not clearly defined in the legislation. According to the experts, funds received for the data provision services should cover the costs of the state authority (regardless of whether it is funded from the budget or not) and strengthen technical framework of that organisation. Therefore, fees for the provision of register data, register information, documents and/or their copies that were delivered to the state authority should be based on fixed costs and should be differentiated taking into consideration the amount of register data/information/ copies of documents provided and use of IT update solutions.

7. We should separately mention the use of a personal identification number, which is one of the key personal identifiers. Ukraine is using a taxpayer’s code (tax code) and a personal identification number, which was introduced on 26 November 2014 and which reveals personal information (date of birth, sex) and is unique. The personal identification number is stored in the Demographic Register and is recorded in the issued identity documents. The personal identification number is a handy feature in order to identify the person in all state registers and information systems; however it is not clear

how the use of a personal identification number will integrate personal data processed in the various registers and information systems. Currently, the personal identification number has been assigned only a small part of the Ukrainian population (about 5%).

In addition to the personal identification number, a person's name, surname, patronymic, passport number or tax payer's code are used as personal identifiers. Names and surnames of people can be the same; a person can change his name and surname; personal identity documents expire and are replaced by new documents having new numbers; tax payer's code issued by the tax inspectorate is granted not to all persons; therefore the registers might need more information for better identification of people. Moreover, dynamic information must be regularly monitored and updated.

There is no unified personal identification system created and used in the Population Register, the Register of Legal Entities and Individual Entrepreneurs, the Register of Rights to Real Property and other registers. In such a system when a person is given different identifiers for different administrative purposes, the administration can be very expensive, especially when information systems need modernisation and updating. The use of unique identifier would significantly facilitate work of state authorities. This means that when collecting or verifying information, which was previously delivered by a person, there is no need every time to contact him/her. A unified personal identification number is significant because it allows easily and reliable identification of personal data of an individual; it can be quickly and technically easily entered; it is constant and does not change. Therefore the personal identification number is inseparable from any integrated personal information storage system. In addition, the unified identification number is ideal for searching information in different registers. Using such a number, the data is easily accessible and can be checked with no problem. These technical advantages increase efficiency of both data processing systems, using an identification number, as well as the administrative and service operations. Such system also saves time and money of those who provide data because it helps to avoid duplication of data. The proposed used of a unified identifier is shown in Figure 5.

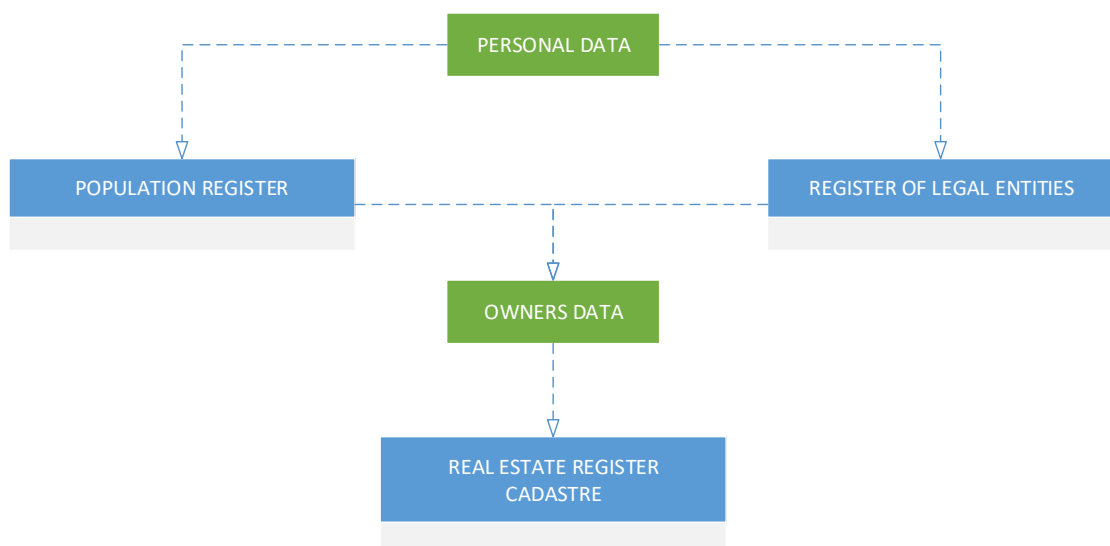


Figure 5. Personal data (PIN) as an instrument for harmonization of main registers data.

In Lithuania, personal identification code is regulated by the Law on the Population Register of the Republic of Lithuania. Personal identification code is a unique sequence of eleven decimal digits used to identify a person and ensure interoperability of registers and state information systems. The primary source of a personal identification code is the Population Register, which was mainly established on the basis of the civil status data. Lithuania provided for the use of a personal identification number in all state databases. Personal identification code is a tool that gives access to practically all personal data contained in the state databases. This code is a unified, accurate and reliable identifier (see Figure 6). These features make the personal identification code an attractive and useful tool in the e-government context, particularly, in relationship “Government to Citizens” when reliable personal identification is necessary. Compared to Ukraine, a formal, mandatory personal identification code used in Lithuania is a great attribute in legal regulation of personal identification in Lithuania.

Recommendation: implementation of a unified personal identifier in Ukraine.

8. Register users encounter with personal identification when they are involved in online authentication process. Electronic signature is used for access to Registers administered by the Ministry of Justice, in particular for the registration of: Certificates of civil statutes (official records of births, deaths and marriages); Legal entities (business) and private entrepreneurs; Property rights; Will of the decedent and hereditary contracts; Enforcements proceedings. Online identification is performed by using an electronic signature based on a qualified certificate. Ukraine has several electronic certificates and providers of qualified electronic signatures. Only the use of devices issued by the state accredited institutions for signing of documents is recognised as legitimate (there are 18 accredited key certification centers in Ukraine plus one additional center for the National Bank of Ukraine.) Ministry of Justice is currently using services of Accredited key certification center for justice sector, within State Enterprise "National Information Systems". Representatives of the Ministry of the Interior said that electronic personal identity cards will be also issued, i.e. the personal identity card would contain electronic certificates. Electronic personal identification devices can be also developed by non-state authorities. E-banking services have their own elements of identifying a person online, but they are not recognised in using register services.

Online access to the information system and the authentication process are complicated because of a variety of systems and software processes. Compatibility of identification systems used by different state authorities and other entities has not been completely clarified. There is a risk that different certification service providers maintain different electronic signature formats that are usually incompatible, i.e. the state authorities solve the issue of recognising qualified certificates individually. Different electronic signature creation and verification software is developed to recognise only one or another format. There is a draft Law on Electronic Communication registered in the Verkhovna Rada of Ukraine (No 3549-1), which deals with an electronic signature with a time stamp and provides for synergies with the EU standards. Experts believe that this new regulation will solve the identified threats.

In Lithuania, the electronic signature verified by electronic certificate is a legally recognised and regulated means of personal identification online. The electronic signature and electronic certificate as a means of personal identity verification online is regulated by the Law on Electronic Signature of the Republic of Lithuania and the Law on Personal Identity Card of the Republic of Lithuania. Under Lithuanian legislation governing the identification of a person, the means of personal identification established by the state in the physical space (when identity is established on the basis of documents) corresponds

to the electronic signature in cyberspace (verified by the qualified certificate) (a secure identification method regulated by the state), or personal identification using banking systems (identity recognised by the state).

It is recommended to improve legal framework and standardisation of the electronic signature and timestamp to attain recognition and compatibility, taking into account the EU requirements and legal practice of the most advanced countries in the field of electronic signature. It is recommended to facilitate the use of electronic signatures and promote inter-institutional recognition. It would be possible perhaps to solve the identified problems by adoption of new standards, full implementation of recognition and verification equipment and devices of all the service providers, etc. It is proposed to legalise personal identification by using the banking systems.

9. Information about real property is the main component of many databases, and it is used in various ways to satisfy the needs of separate sectors of the economy and the needs of society. According to the experts, address is the most important element for the integration of information. The address system in Ukraine is not properly managed; there is no Address Register. The address data are collected in a fragmented way, i.e. data are collected about location of legal entity; place of residence of a natural person; location of the land parcel, etc., but there is no automatic exchange of data implemented when the street name is changed, etc. It is not possible to accurately specify position of the registered object when there is no address.

In Lithuania, the Address Register was established in 2004 after reorganisation of the State Register of Territorial Administrative units, Residential Areas and Streets of the Republic of Lithuania, which has been already managed by the State Enterprise Centre of Registers since 1999. The Address Register database is regularly updated on the basis of data and documents received from other base state registers, which serve as a basis for giving street names, allocating, revising or abolishing addresses, as well as other documents, which according to legal acts serve as a basis for the revision of the Address Register object data. The goal and the main idea of allocating addresses to the objects and registering them is to ensure uniqueness of the address, which is attained through uniqueness of the street name in the residential area, uniqueness of the building number in the street, uniqueness of premises in the building, granting unique and unchangeable address code and uniqueness of the address place (coordinates). Accumulation of addresses and ensuring their uniqueness provides for the accurate information necessary for the declaration of the natural person's residential place and the headquarters of legal persons, for the registration of real property and for solutions of other issues related to the provision, receipt and planning of services. In Lithuania, both the address and the use of personal data are the means of ensuring registers' interoperability (Figure 6).

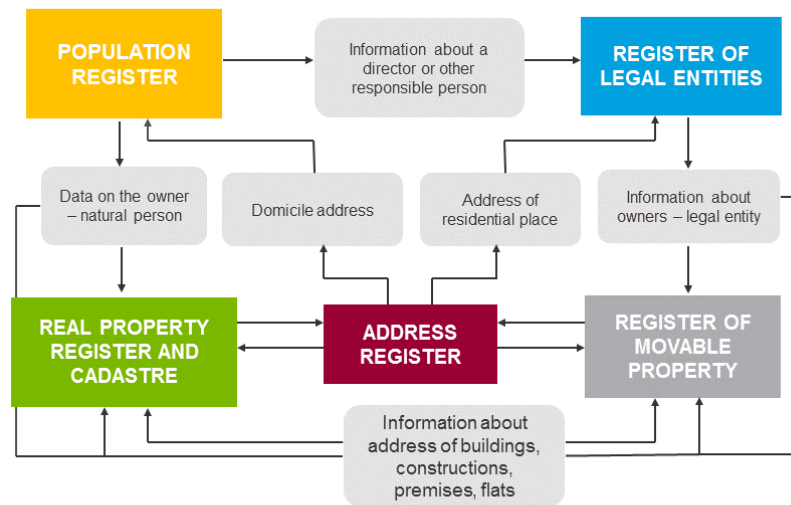


Figure 6. Links between key registers in Lithuania.

There is an interactive map of the register objects – REGIA – developed in Lithuania, which operates on the basis of the Address Register. Its purpose is to make the objects (i.e. counties, municipalities, residential areas, streets and addresses) registered in the Address Register of the Republic of Lithuania and their geographical location public. The goal of REGIA is to create favourable conditions for decision-making based on geographical location and facilitate exchange of information.

Data from the Register of Legal Entities and Real Property Register is visualized in the regional geo-information environment service (REGIA). REGIA is based on the cadastral map of Lithuania, with its built-in three main state registers: Address, Legal Entities and Real Property, data (Figure 7).

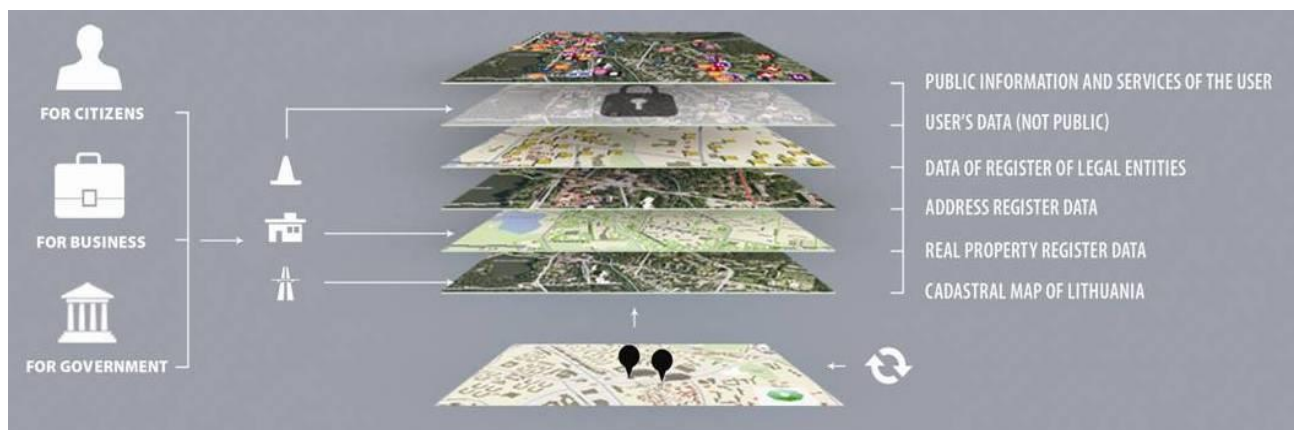


Figure 7. REGIA principal scheme.

The recommendation is to collect data necessary for the formation of addresses. It is necessary to validate and give legal effect to the Address Register, which should be a component of the information system of the Real Property Register and the Real Property Cadastre in order to optimise system management of the base registers and their interoperability. The creation of address system should be inseparable from consolidation of the land cadastre and the Register of the Rights to Real property (as noted earlier in the Report).

10. It is recommended to make each object to be legally registered only once (in a single register), whereas further data movement should be implemented using electronic means of communication. It is proposed to distinguish the base registers where the most important objects are recorded, such as persons (legal or natural), land and other property (cadastre, register and addresses). The main (base) registers would make a core of the integrated register system, while other registers would use data from the base registers for the description of their objects. The base register is the register where the objects belonging to a concrete category are registered for the first time, and the secondary register is the register where the objects belonging to a concrete category are re-registered using the data of the base registers and supplementing them with the own data. In such a way, data of the base registers become the elements integrating registers.

A system of key registers can be defined as a coherent group of mutually related registers on information – essential for the basic functions of government. In Lithuania, the Netherlands and some other EU countries the most important data collection objects are, among others: natural persons (including residents foreigners), legal persons (companies, NGOs, other institutions, foundations, etc.), real property (including land and buildings), and their geographical location and addresses.

It is proposed a base register interaction model consisting of the following registers: **the Register of Legal Entities, the Population Register, the Real Property Register and Cadastre (with addresses)**. These four registers can be considered as the core elements allowing the integration of various registers' data by the natural persons or legal entities. The data of these registers are used in many other registers and information systems; therefore quality of their operation leads to efficiency of information infrastructure in the country (Figure 8). As mentioned above, a similar system exists in Lithuania. The base state registers (Real Property, Address, Population and Legal Entities) are kept by one organisation, i.e. the State Enterprise Centre of Registers. In Lithuania, the Ministry of Justice is the manager of the said registers.



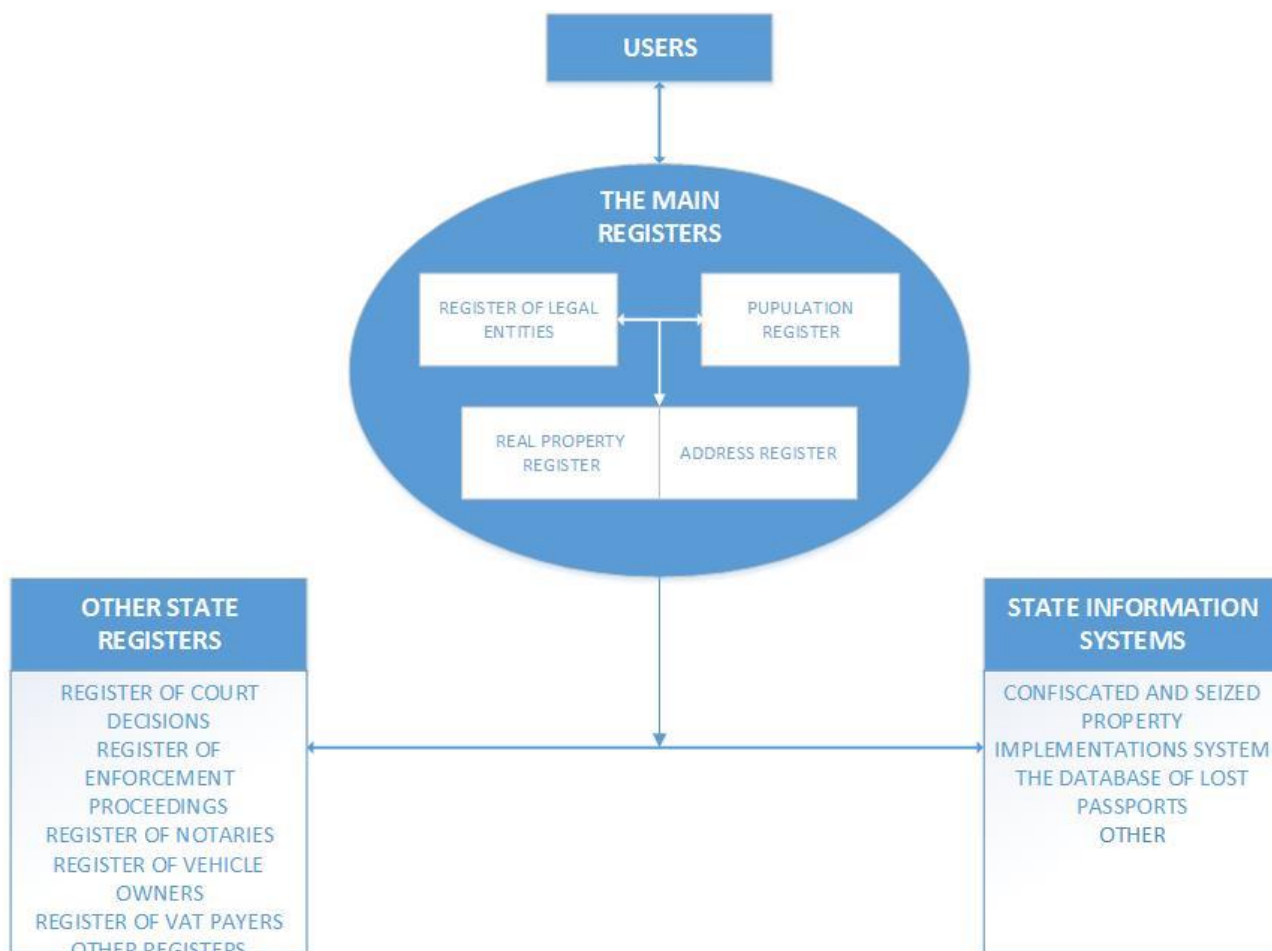


Figure 8. General perspective of key registers in Ukraine.

In Ukraine, the Ministry of Justice also could become a keeper of the mentioned registers, but the managers of base registers may be different ministries. It is suggested to be more specific in appointing the register managing body and the register keeping body. It must be established that in all cases, where the register is kept by the state enterprise, the register managing body must be appointed, i.e. the relevant state authority that will carry out state supervision of the register and will be responsible for adoption of legislation regulating the register activities. A user usually does not care what ministry manages the register; the most important thing for the users is available, reliable and inexpensive services. There is no need to worry about inputs (credibility of data), as the market will take care of it, in due time. But it will be cheaper to consolidate the registers now than keep the *status quo* and risk higher expenses later.

In Lithuania, the Law on State Registers of the Republic of Lithuania as of 2004 established the principal provision according to which it was prohibited to repeatedly collect associated register data from primary sources (currently, the Law on the State Information Resources Management of the Republic of Lithuania). Given the implementation of the said provision, an integrated system of the registers has been created where registers exchange data and do not require the data provider to submit

repeatedly the data to different registers. When implementing the Law on State Registers, legislation framework was developed to regulate the creation and integration of registers.

The systematic arrangements of the register (data) bases should be based on a general law on registers, which should regulate (1) the establishment, administration, reorganisation and liquidation of state registers (cadastres); (2) the system of state registers and general principles of interaction among state registers; (3) duties and powers of leading state registrar institutions, state registrar institutions, supervisory institutions of state registers, administrators of state registers, providers and beneficiaries of state register data, etc.

It is recommended to encourage state authorities in Ukraine to use the data kept and processed by other authorities, and not to require these data from primary sources. Thus, quality of administrative services provided by the authorities must be increased and the key provision should be implemented which says that authorities, when keeping the registers, must obtain the necessary data primarily from other state information systems and registers and only collect data from other sources that are not processed by other state information systems and registers and cannot be obtained through the state information systems and registers. It is proposed to establish the rules on payment for the inter-institutional data exchange. It is recommended to set a requirement that fees for the exchange of data or state funding for the provision of the kept and processed data must be based on the cost of operations (Activity-Based Costing).

## **II. Additional observations on some of the problematic aspects of separate registers**

### **Subjects performing registration of legal entities and rights to real property**

Currently, registration in Ukraine is performed by the state registrars, whose functions will end on 1 April 2016. The functions related to registration of legal entities and rights to real property have been separated from the maintenance and management of register databases as well as provision of information. This model was used to increase competition in the market, to provide better services for the users and reduce corruption. Under the new legislation, the registration subjects will be notaries, local authorities, accredited registrars (e.g. a utility company can become an accredited registrar) and enforcement officers (enforcement authority). Registrars must meet the established requirements. Notaries are subject to the sufficiently high qualification requirements (higher legal education; 3 years of legal work experience; they have to take exams, etc.). Registrars of local authorities are also subject to the qualification requirements (e.g. legal education), but these requirements are lower compared to the requirements for notaries.

It is too early to evaluate the reform on separation of registration functions, but according to the experts, certain risks still exist: 1) whether execution of registration functions shall not be interrupted; 2) whether the users of services will face better conditions; 3) whether register keeping and maintenance costs and the cost of services to their users will be adequate to the obtained benefits; 4) whether security of registers and data will remain at least the same.

It is proposed to introduce monitoring and supervision of registrars' activities. It is necessary to ensure management and control of access to the data, i.e. to establish the identification and authentication conditions. It would be appropriate to introduce a service related to the operation of registers, i.e. the owner should be offered a possibility to obtain a list of persons who were interested in his/her property, or order a subscription of register events, etc., resulting in a greater security of the register data.

### **Register of Legal Entities**

The Register of Legal Entities collects data on the shareholders only in case when the company's shares belong to a single person (by 100%). Currently in Ukraine there is no database, which collects reliable and complete data as well as changes in the data about shareholders of the company or other legal entities' participants, which can have influence in making important decisions related to the company activities. When there is no such database, the authorities collect, exchange information in paper form, which is very inconvenient and ineffective. Queries are submitted to the Register of Shareholders, the Stock Exchange, etc.

A separate information system of legal entities' participants (JADIS) was launched in Lithuania on 1 August 2014. The goals of this system are to collect, process, manage, analyse lists of legal entities' participants, data and information on legal entities' participants and to provide this information to the persons who are entitled to get it.

It is recommended to collect data on shareholders having shares in the companies, other legal entities' participants in the Register of Legal Entities or in a separate information system, to ensure updating of such data and their provision to the competent authorities. This would help to avoid duplication of data collection.

### **Register of Legal Acts**

There is a different procedure for legal acts to come into effect; also different official publications to publish them exist (currently there four of them). The Ministry of Justice performs obligatory registration of legal acts of ministries and other authorities in the state register. Those acts are related to personal rights, freedoms, lawful interests, also interdepartmental acts or in case of other cases.

The current system for publication of legal acts is not based on a modern approach of official registration and publication of legal acts. Due to constant amendments to legal acts their official editions in paper form do not meet the needs of modern society. Since 2014 legal acts in Lithuania are no longer published in the Official Gazette. Any legal act, including the Constitution, laws, decrees of the President, Government resolutions, international treaties, legal acts of municipal authorities, is considered officially published after it is registered and published in the Register of Legal Acts. Therefore all interested persons can quickly access the official texts of legal acts; also the principle of law publicity is implemented. Valid text registered in the Register of Legal Acts becomes an official source.

It is advised that all legal acts are registered in the Register of Legal Acts, namely the legislation of the President, the Government and other authorities. This should be regulated by law. Registered legislation must be immediately transferred to the electronic space (Register of Legal Acts) by gradually phasing out of paper official publications. It is proposed to collect and store a much greater variety of types of legislation (draft laws, legislation adopted by local authorities, international treaties, and so on).

The Law of the Republic of Lithuania on Legislation, which came into effect on 01-01-2014, states that objects of the Register of Legal Acts are the Constitutional Court rulings and decisions, reports of the Constitutional Court President on the contested act suspension and renewal of suspended act, the decisions, rulings and resolutions of the Supreme Court of Lithuania and the Lithuanian Supreme Administrative Court, as well as valid decisions of administrative courts on the lawfulness of administrative acts. Integrated interface between the Lithuanian Court Information System and the Register of Legal Acts is being implemented.

Since 01-01-2006 the Register of Court Decisions is in operation in Ukraine. The law provides for a duty to publish all court decisions, unless the hearing is not public;

however in reality it is not known whether all court decisions are made public. Publication of court decisions is left to the discretion of courts. The Ukrainian state court administrations are only technical keepers of the SE Court Information System. Private entities have systems for the search of court decisions as well, such as *Houselegal* and others that use data of the mentioned register. Access to the Register of Court Decisions is free of charge; however it is limited to a search by IP address. Search is made by court, by period, by the context, by legal act and so on. Court decisions are published in the Register of Court Decisions without indicating personal data.

It is proposed to publish court decisions in the Register of Legal Acts as well. Experts assume that this will enable users to easily access the necessary legislation and other documents. Absolute anonymity, where no names of persons and entities are published in the court proceeding decisions, causes many discussions, as it is in contrary to the principle of publicity of court proceedings. Anonymous court decision becomes an abstract one and loses much of essence of the legal conflict. The process of making the court decisions anonymous requires great human and financial resources as well as increases the likelihood of occurrence of errors. Anonymity of the parties in the court case, where no surnames or names are indicated, cannot be absolute; it must depend on specific circumstances of the court case (public or private person, the period of conviction, etc.) and the principle of proportionality should be applied. It is proposed to improve the search system in the Register of Legal Acts and the Register of Court Decisions. Information system must be user friendly to any user. Data must be public; nevertheless the experts think that not all data must be provided free of charge (e.g., lawyers professionals need an integrated system of law sources, which incorporates additional metadata, or private subjects need to receive huge amount of information, and similar; therefore it is reasonable to set a fee for such services). It is suggested to consider the e-legislation information system containing all data of the legislation process where any participant of the legislation process has a possibility to access the system and provide data (for example, draft laws, conclusions, explanatory notes, etc.).

Implementation of the proposed measures requires deeper analysis.

### **Possibilities to perform proceedings of the enforcement officers electronically**

In Ukraine enforcement officers have problems in obtaining information about the debtor's property, particularly from the registers of banks, vehicles, ships, securities and so on. Orders on cash restrictions and write-off to the credit institutions are delivered in a decentralized manner and in paper form. Often the recovery from debtor's funds is inefficient.

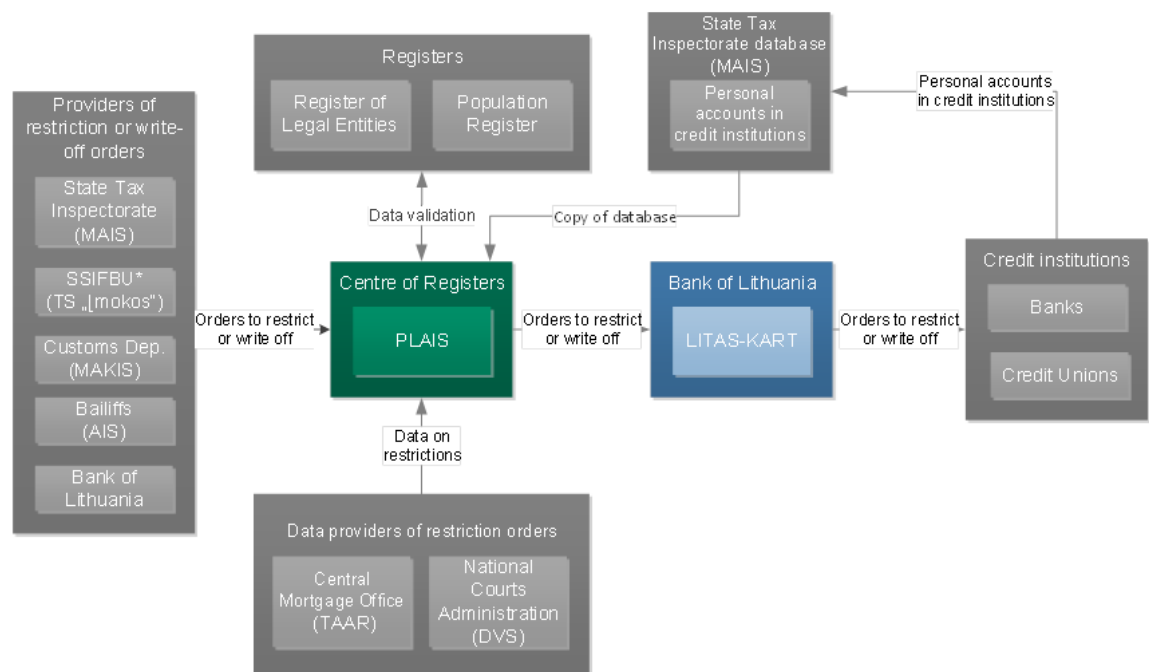
To the experts' opinion, the enforcement orders and procedural documents of the enforcement procedure must be in electronic format only; there is a need to create an efficient, transparent and accessible information system of the enforcement proceedings or the existing register should be updated and modernised so as to increase efficiency of the enforcement officers, to save money as well as to ensure protection of rights and interests of judgment creditors and debtors in the process of enforcement: reliable and efficient delivery of enforcement orders/procedural documents by electronic means, making it possible by the use of information technologies to access the process of enforcement, documents of the enforcement proceedings by moving some procedural actions of a bailiff to the virtual environment.

Considering the fact that most of enforcement orders are issued by court, first of all it is advised to make use of the Register of Court Decisions or the existing court information system by enabling enforcement officers technically access the system of

court decisions and electronic enforcement orders therein. It is necessary to consider a need to specify in legal acts the legal force of an enforcement order and its concept. Integrated information systems/registers of bailiffs and other institutions issuing enforcement orders should be developed. Legal acts should specify the access of third parties (banks, credit institutions etc.) to provide bailiffs with document in electronic form as well as the duty to exchange data with enforcement officers.

There is an information system of bailiffs and electronic enforcement proceedings operating in Lithuania. A service of electronic forced auctions was implemented on 1 January 2013 and from 14 September 2015 the information system of cash restrictions is in operation. State Enterprise Centre of Register is the keeper of these systems.

Cash restrictions information system (PLAIS) aims at centralised processing of data about the process of debtors' cash restrictions, at giving orders to banks on restrictions and write-offs and proportional allocation of debtor's cash among the entities giving orders to write-off, as well as at automating the debtor's cash restrictions/write-off processes and their control, at summarising the debtor's cash restrictions/write-off processes, their analysis and statistics (Figure 9). Entities give orders on restrictions and write-offs only in a centralized and electronic way as well their changes or cancellations. This system generates enquiries to registers and information systems (Registers of Legal Entities, Population, Real Property, Property Seizure Acts, etc.). It generates orders on restrictions to credit institutions and sends them.



\*State Social Insurance Fund Board Under the Ministry of Social Security and Labour

Figure 9. Operation model of Cash restrictions information system.

The review and legal assessment of the process of enforcement reform requires a more detailed analysis.

### **Block-chain technology**

At the meetings technicians referred to the block-chain technology as an alternative to use technological means to compensate the organisational disorder in state authorities. Experts see certain threats here. Block-chain technology is at a very early stage of maturity, although it may have a great potential. Its principles have been used in creating the crypto currency Bitcoin; however there are no other applications of this technology in practice. Currently, the experts are not aware of a newly created large system. Nevertheless, large companies (in particular, the global financial industry) are actively analysing the possibilities of this technology. It means that the technology could be suitable for the first practical use after the year of 2018 (in case its existing problems are solved successfully), yet more realistic that this will happen after 2020. Therefore it is assumed that the use of block-chain technology in the Ukrainian state institutions would be in principle a scientific research project, if implemented now, which would require 3-4 years, and only afterwards it would be clear how and to what extent it is suitable for use in the public information systems or registers.

The use of this technology in the public sector and the solutions offered require more detailed and special analysis.

### **Management and organisation of the state information resources**

State information systems and registers in Ukraine duplicate each other, they are not properly integrated, usually are isolated and do not interact with each other. This is due to ineffective use of information and communication technologies. In some foreign countries (the United Kingdom, USA, Australia and other) the infrastructure of state information resources is consolidated. One of the priority tasks established in the programme of the Lithuanian Government for 2012-2016 is the consolidation of public sector information technology infrastructure and optimisation of its management. The government decided that instead of 99 data centres there will be 4 consolidated data centres, which will be managed by the Ministry of Justice, Ministry of the Interior, Ministry of Social Security and Labour, and the Ministry of Finance. Consolidation aims at reducing infrastructure operation, maintenance and management costs and improving the information and communications technology infrastructure optimisation, interoperability, security and development.

In Ukraine the need remains the same: to improve public e-services, their quality and infrastructure. Therefore, there is a need to reform and find ways to optimise the public sector information resources infrastructure and possibly to consolidate it. Stakeholders do not have a vision on the infrastructure main components, such as *GCloud* and similar.

There are several models for reform: 1) *status quo* (remains as it is); 2) IT services are provided by the IT service providers established by the state; 3) there are both public and private IT service providers: the public ones provide services to manage the state information resources of state significance with established restrictions and security; while private ones provide services to manage those state information resources which are not subject to security and other restrictions. Political will is required to assume the responsibility in the long-term perspective as well as consistent vision and work to take decisions.

To choose a reform model requires more comprehensive evaluation and analysis of the current Ukrainian state information resources management and organisation model. There is also a need to assess the implementation of alternative model.

## **II Chapter April 2016 – November 2017 Reports**

### **Introduction**

We have chosen a few main directions on the basis of our recommendations and discussions with the Ministry of Justice of Ukraine. The first is the work on the Address Register, which in fact is one of the main registries of the country, where it will be possible to receive information about all legal and natural persons' addresses.

The second is the improvement of e-services: standardization and automation of the notary and enforcement officers' business process, collection, storage, exchange and publication of all registers information, e-signature and mobile signature, development of integrated information systems, strengthening capacities in the provision of front office and back office services, and better definition of regulatory efforts of the Ministry of Justice in all these areas.

## **PART 1**

### **Development of the Address Register in Ukraine**

#### **Abstract**

In the experts reports from early 2016 it was recommended to validate and give legal effect to the Address Register, which should be a component of the information system of the Real Property Register, Land Cadastre and etc., in order to optimise system management of the base registers and their interoperability. The concept of the Address Register is based on the experiences of work on standardization, legislation and geocoding in the field of address data in Lithuania<sup>2</sup>.

#### **Current situation in Ukraine**

To the opinion of experts, the address system in Ukraine is not properly managed. The address data are collected in a fragmented way, i.e. data are collected about office place of legal entity (Register of Legal Entities and Individual Entrepreneurs etc); place of residence of a natural person (Demographic Register); location of the land parcel (Register of Rights to Real Property, Land cadaster), etc.

The existence of a common data format gives no guarantee of a sufficient consistency between the data contained in the various registers. The result is that inconsistencies arise between the individual address collections, so that buildings, land parcels, businesses etc. that ought to carry the same address throughout the different registers, in fact do not. Furthermore, each registers, cadastre or information system creates its own - slightly different - definition of an address. The result of this is that the different address registrations are not fully comparable even on a context level.

Addresses are not unique both on the national and municipality scale. Address within the municipality are collected and stored in different locations what does not allow ensuring the uniqueness of the address. For example, individual municipalities collect and store their own Address information system (Odesa<sup>3</sup>). Since 2016, FDI specialists are

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<sup>2</sup> Lithuania is 1st in all Europe and Central Asia for registering property (ranking positions in Doing Business 2018: New Zealand – 1st, Rwanda – 2nd, Lithuania – 3rd), Lithuania also ranks high in the field of Enforcing Contracts (the 4th position) and paying taxes (the 18th position). It was the only country in the Central and Eastern European region to have improved its position in the Doing Business index this year. Such countries as Germany, Austria, France, Netherlands and Poland have lower overall ranking.

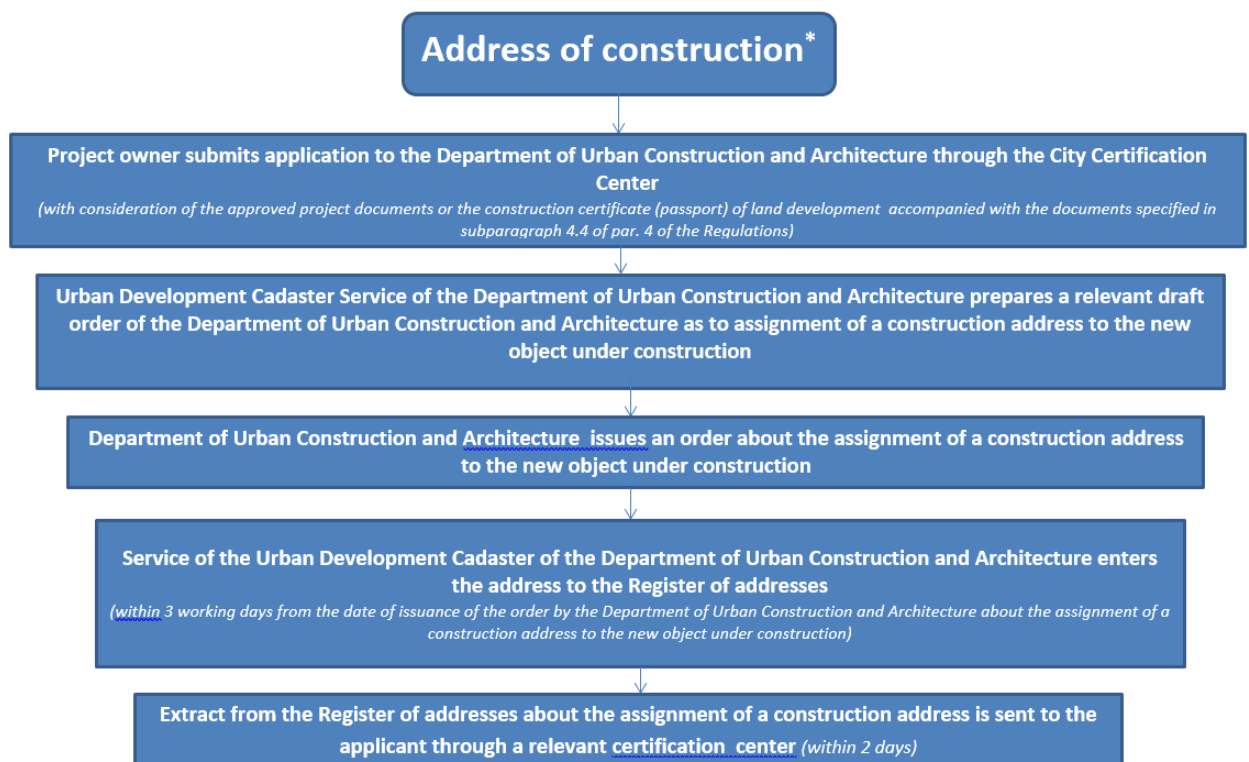
<sup>3</sup> <http://omr.gov.ua/projects/5926>



working on automation and electronic document management projects for the city of Kyiv, basically creates the Address information system for the Kyiv city municipality.

There is no unified legal regulation in Ukraine on how to give addresses and street names. Each municipality has its own local legal acts. There are no legal acts regulating on how to notify of allocating, change or liquidation of addresses or street names. There is no legal regulation mechanism on how to transfer information on the allocated changed or liquidated addresses or streets to the state institutions, municipalities, enterprises and organizations.

One more problem is that there are few types of addresses in Ukraine, for example, address of construction, postal (mail) address (Figure 3, Figure 4).



\*The address shall be considered assigned from the moment of entering to the Register of addresses and shall become valid before the end of construction and commissioning.

*Figure 3. Real Estate Address Assigning Scheme, City of Kyiv (Regulations on the register of addresses in the city of Kyiv (Annex 1 to the Decision of Kyiv City Council of 22.05.2013 No. 337/9394 "On Certain Issues of Maintenance of Registers of Addresses, Streets and Other Named Objects in the City of Kyiv")*

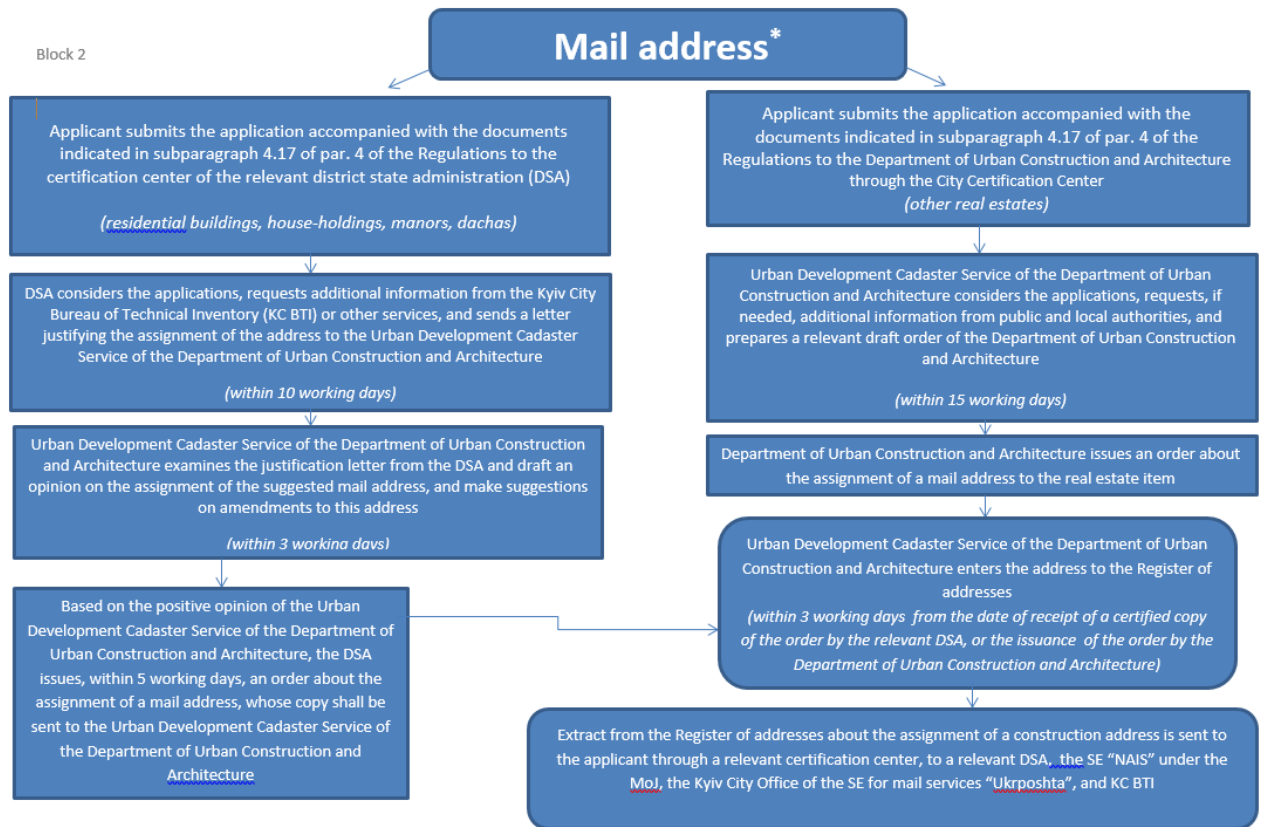


Figure 4. Post (mail) Address Assigning Scheme, City of Kyiv

Such a situation is confusing and allows for corruption. Citizens have to visit municipalities and ask for addresses; however, it is a bad practice. An address should be allocated once until something happens with an address object.

### Benefits:

The creation of the Address Register would allow reducing the scope of problems associated with the registration of real property. Currently, many risks exist, allowing, for instance, practices of double sale of same flat in new building simply as there is no proper control of assignment of addresses at central level.

Creation and existence of the Address Register in Ukraine would help to ensure correct and right data in the Real Property Register as well as in the Demographic Register and Business Register.

An address should be considered, in the broader sense, as the description of a location, not only for postal delivery, but for all kinds of service delivery, ranging from 'physical' services such as utility services, goods delivery, and emergency dispatch; to more 'abstract' services such as credit application, tax collection and land administration.

Address could serve as an integration point between the state registers and information systems.

Currently, the classifiers of address components are used that are stored only in textual format. There is no connection with geographical location of the address, street, etc. Addresses are important not only for their uniqueness but also because of the knowing where the specific address is located. Connection of the Address Register objects with geographical coordinates is likely the most important direction increasing the possibilities to use such data. This is especially important for planning the logistics of

services and goods, the work of operational and emergency services, various notifications relating to taxation, delivery of goods, postal and courier services.

There is no doubt that the function of the address is an *administrative key*.

A well-formed, address system contributes to the physical infrastructure of a modern society, enabling ordinary people, postal services, rescue teams and utility companies etc. to navigate without coordinates.

#### **Main principles:**

Address Register is a Main State Register. The Address Register should be created separately from the Real Property Register. It would be much more convenient to solve the issues of registration of the place of residence of persons, building or construction permits etc. This is in fact a multi-purpose register, because the address is important for any natural and legal person.

Addresses should be administered as a single quantity.

Address is uniquely and defined by co-ordinates.

The addressing is unified. The address system shall be uniform over the whole country and include towns as well as rural areas in all municipalities.

The Address Register shall record and store the textual and graphical data.

#### **Insights and suggestions for the development of the Address Register**

According to the current situation and the distribution of functions between the authorities in Ukraine, developing of the Address Register recommended divide into two phases (See *Figure 5*). During first phase should be prepared legal acts related to the Address Register data flow, responsibilities, collecting and providing data, and of course legal acts related to Address Register objects formation rules, authorities responsible for it, data quality control. It is also should be filled up the Address Register database from existing data about the Address Register objects. The main sources to collect these data should be existing data in Real Property Register and data that have municipalities. We are talking only about textual data but data providers can use various sources (including spatial databases) at first phase.

During second phase of developing of the Address Register should be add spatial data to collected Address Register objects textual data and verified quality of data.

Finally, all data about Address Register objects should be open for society to ensure that all collected data correct. After it is possible to create many e-services based on geographical location for citizens, local and central authorities, organizations, etc.

## DEVELOPING THE ADDRESS REGISTER IN UKRAINE

### 1 PHASE

- Legal acts related to the Address Register and Address Register objects
- Filling up the Address Register database:
  - data from Real Property Register
  - data from municipalities

### 2 PHASE

- Checking of filled up data in the Address Register database
- Spatial data of Address Register objects

Legal steps towards the establishment of the Address Register:

- Law on the Address Register
- Regulations of the Address Register
- Address Register Objects Formation Principles
- Address Register Objects Formation Procedures

The legal basis for the establishment of the Address Register can be defined in a separate law.

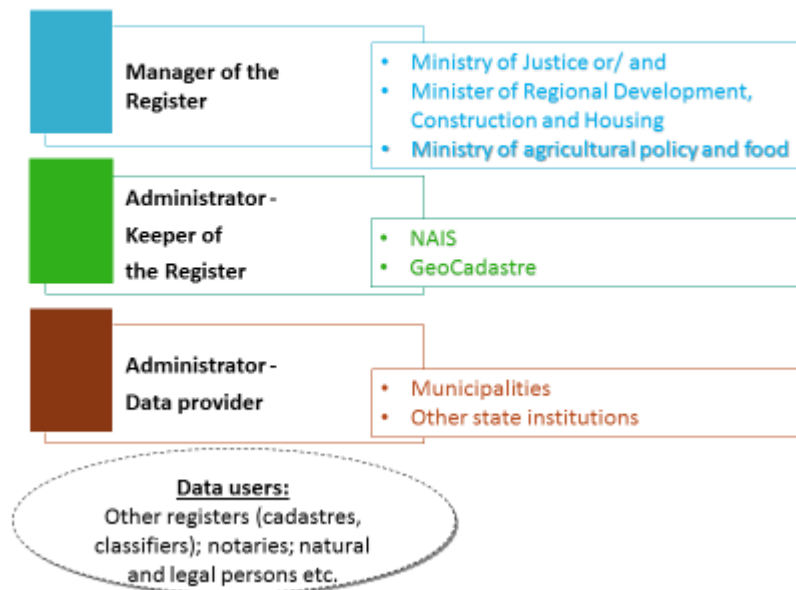
Draft regulations of the Address Register shall indicate the objectives, the manager/s of the register, administrator/s of the register, interaction with other registers and state information systems, data planned to be received from them and other information describing the register to be established, the information describing data and information re-use conditions and procedures.

Determination of authority is needed. A legal framework must be established which ensures the best possible diffusion of the register, including formal agreements between parties and perhaps also legislation. Agreements and rules must ensure participation.

Manager of the register shall mean the ministry/ ministries within which sphere of management or area of activity the register is assigned and which methodologically directs the administrator/s of the register and coordinates the functioning of the register. The supervising Register administration (manager) institution shall be The Ministry of Justice and/ or the other Ministry.

The register shall have a few administrators. See *Figure 6*:

## MANAGEMENT MODEL OF THE ADDRESS REGISTER



It has to be quite clear who has the competence and the duty to establish, maintain and if necessary abolish addresses and other components of the address system. That part of process could be decentralized: Ukrainian municipalities should be required to allocate new addresses but through dedicated software and at centrally-run database.

Interoperability with Real property register and Land cadastre would also help. Each time new building is constructed, any property sale or lease transaction is done, new address will be allocated in the Address Register at central level.

Certain common definitions, concepts, formats is needed. Formal standards required and/or legislation.

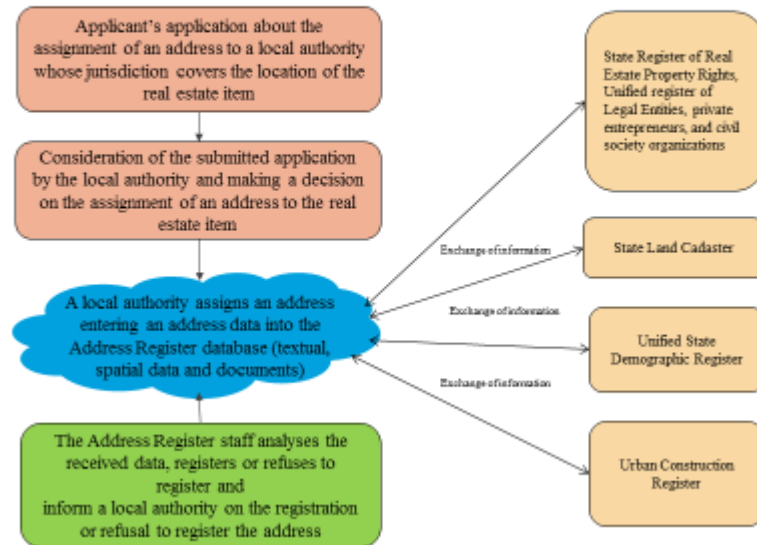
- Address – specific location of a natural person, legal person or a real property in the territory of country, expressed in codes, coordinates (spatial data), and text data
- Address must be unique
- It is recommend to refuse using the address of construction, which is allocated before the construction of a building

It is not clear what an address object in Ukraine is. Legal acts, to be adopted in the future, must clarify that. Members of the Working Group on Development of Address Register expressed many different opinions what an address object in Ukraine should be. However, they found it difficult to reach an agreement on that issue. To the opinion of experts, Address objects:

- Land parcels where the construction of buildings is allowed;
- Land parcels with the buildings already erected on them;
- Buildings formed as an immovable property;
- Residential or non-residential premises within a building formed as a separate immovable property.

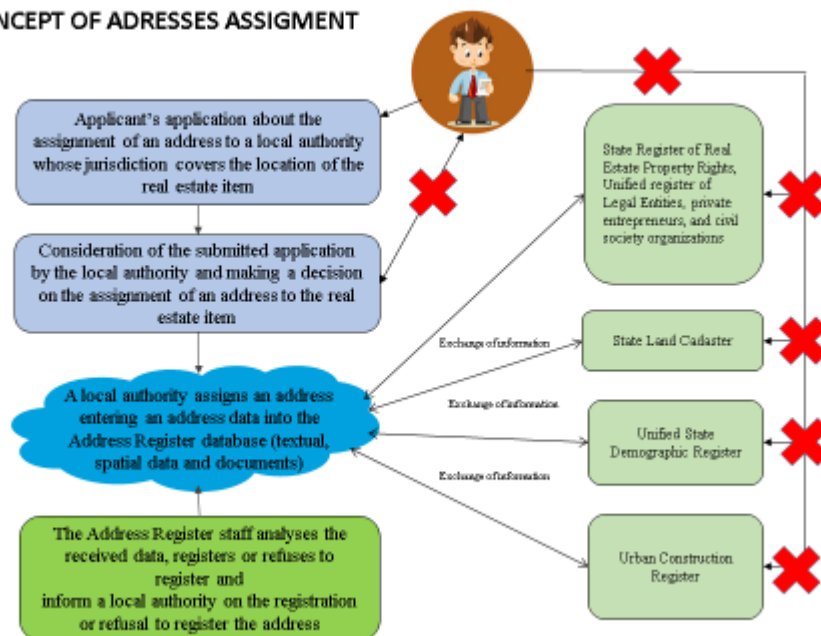
It should be decided what objects will be registered in the Address register in Ukraine. To the opinion of experts, the objects of the Register shall be: administrative divisions (Regions, Oblasts of Ukraine, Cities with special status, Raions etc); Residential areas (cities, towns, villages); Streets; Other Address objects (buildings, flats etc).

### CONCEPT OF ADDRESSES ASSIGMENT



One-stop-shop service should be established to get address in Ukraine. Customers who are interested in getting an address should avoid visiting many institutions, they should have a possibility to hand application only in one place. On-line data providing would allow establishing one-stop-shop- service to get an address in Ukraine. Figure

### CONCEPT OF ADDRESSES ASSIGMENT



During second phase of developing of the Address Register should be add spatial data to collected Address Register objects textual data and verified quality of data. The Address Register collects and stores textual and spatial data about all objects of the Register.

During the meeting of the Working Group on Development of Address Register several opinions have been expressed, namely, that it is not necessary that an address must have geocode (coordinates). It means that a list of addresses will be created instead of the Address Register in Ukraine. Such a solution is not good because the target is to develop the Address Register in Ukraine. As we have mentioned before, connection of the Address Register objects with geographical coordinates is likely the most important direction increasing the possibilities to use such data.

**Outcomes/Follow-ups:**

The further development of the Address Register should be discussed.

To draft the missing legal acts.

To create IT solutions for data to the Address Register.

## **PART 2**

### **Development of Enforcement Case Management System**

#### **Key background issues/context:**

The major problem of the Ukrainian judiciary is the inefficient system for the enforcement of court judgements. In the civil process, the number of non-enforced judgments is more than 90%. To date, according to various estimates, the undistributed debt based on judgements in Ukraine amounts to about 400 billion hryvnas.

In 2016 the Ukrainian parliament decided to create a mixed system of execution of judgements. Currently, several private enforcement officers are already operating in Ukraine. About 100 lawyers have passed the qualification examination and may start private activities in the near future. To the opinion of experts, empowering private enforcement officers will ensure proper enforcement of court decisions. A private enforcement officer is more interested in obtaining results. Private enforcement officer has no reason to drag out the process, because from effectiveness of work she/he will receive interests from the amount received through the enforcement of the judgment.

On the other hand, private enforcement officers have to compete with the entrenched public enforcement officers, which undermined the financial incentives and resulted in confusion. The main problem is that private enforcement officers may not handle cases where the state is a collector or a debtor. The majority of enforcement cases are the cases where debtor is the state. To the opinion of experts, the following reform should be based on such principles: freedom to choose an enforcement officer; in performing their functions private enforcement officer shall be independent; the freedom of competition must not be limited; equal operating conditions must be guaranteed etc. It is suggested to strengthen the private Enforcement Officers' Institute, promoting the level of authority and confidence, and creating the same conditions for competitiveness. There is a need strengthened capacities of enforcement officers through multidisciplinary trainings and specialized courses.

On November 14, 2017, the first congress of the private enforcement officers took place at the Ministry of Justice and the Association of Private Enforcement Officers of Ukraine was established. The congress elected a chairman of the Enforcement Officers Association, approved its Charter and the Code of Ethics for Enforcement Officers, and established the management structure. The new challenges will be in the areas of increased use strategic governance and effective leadership, relationships with MoJ and other institutions, introduction of new techniques (IT tools and possible use of data base) etc.

Enforcement of court judgements is a key element to ensure that property rights in the country are protected. For the full enforcement of judgments it is very important to create electronic registers of all assets. One of the reasons why judgments in the European countries are executed and enforced quickly is that there are well formed registers<sup>4</sup> where you can quickly find all the assets, simply entering the name or code of a particular debtor, and to seize his/her property.

NAIS is working on new (2017) Information System of Enforcement Proceedings. The new system is still under development. Information System of Enforcement Proceedings

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<sup>4</sup> In 2003 Lithuania had a political will to focus on progressive western execution of decisions. According to the clear priorities, today Lithuania have one of the most modern system in Europe, integrated with state institutions, official registers, banks. The system now effectively works as a single electronic point of debt collection in the country to which all banks, bailiffs, tax and other authorities are connected, and money is exchanged automatically between creditors and debtors. The creditors recover actually about one third or more debts.



has already been implemented and certain information has already been transferred to it. The new system *represents* a comprehensive reform in the field of the enforcement system. The introduction of new system is a necessary and positive step in general. New system is to be used by all enforcement officers - both State and Private. *It is very encouraging that there will be* a possibility to all the enforcement officers to participate in the process of the distribution of enforcement documents. Interim results by NAIS are satisfactory. It is commendable that NAIS chose approach proposed by Lithuanian experts, opting for *web-based* rather than desktop-based software and services.

#### **Main observations:**

Stakeholders stated that the Information System of Enforcement Proceedings, administrated by NAIS, is not flexible. There is lack of consistency and continuity.

Data of enforcement cases was not transferred from the old system. Current situation allows enforcement officers to decide themselves when to perform the import of the enforcement case file. Where the enforcement officer needs to perform an action in the file of the old case, it will be necessary to import the file to the new system. Enforcement officers are not obliged to import files to the new system and it might the basis for abuse. It is necessary to create a tool or to ensure by current means the replication of all enforcement case files to the system in order to assure proper and relevant statistics.

The enforcement officer enters the data from the documents submitted to him and it is likely that he does not crosscheck the data (for example, name of natural and legal persons, codes, addresses, etc.) and enters only the data that is indicated in the document. Enforcement officer has no obligation to check such data and there is a possibility of errors. There is no data exchange with other State registers and information systems, since there is no legal provisions. It is recommended to improve legal framework.

There is no tool in the system that collects queries and replies from registers. Another important observation is that documents are only generated from the file and printed in the system. Documents are not signed by electronic signature. In the system such document without a signature has no legal force, it simply remains a draft.

The system does not have a consistent module for financial accounting. There is no data export from the system to the bank tool, there is no data import from the bank to the system tool either. It is proposed to create a separate financial accounting module covering the entire process of distribution and transfer of funds recovered. The Ukrainian representatives told that currently the enforcement officers prepare paper payments and take them to the bank for processing. Currently enforcement officers experience a significant time and material costs associated with the conduct of the proceedings (communication and exchange of information is carried out in written form).

*There is no proper statistics formation tool in the system.* Proper statistics formation tool in the system enables to generate statistical data on various periods, by different kind of information, by selecting a separate enforcement officer or in the context of all enforcement officers (according to the categories, amounts to be recovered and exacted, judgement creditors, debtors, etc.). This tool provides a possibility to see the number of enforcement proceeds in reality and to evaluate efficiency of the enforcement officer.

#### **Insights and suggestions**

There is a need to create an efficient, transparent and accessible information system of the enforcement proceedings, or the existing registers (e.g. the Register of Enforcement Proceedings) should be updated and modernised to increase efficiency of the enforcement officers. New system should be based on principles of integration, consolidation and synergies.

The system of Enforcement Proceedings should simplify processes and speed up data exchange considerably, reducing the need for paper documents. Legal acts should specify the access of third parties (banks, tax and other authorities, etc.) to provide enforcement officers with document in electronic form as well as the duty to exchange data with enforcement officers. On-line transfer of data from the Register of Court Decisions should be implemented too.

We presented the idea and model on the electronic document flow. The main goal is to establish quick electronic exchange of information between banks (as a creditors) and private enforcement officers. This electronic request is then spread real time to block and/or write off restrained amounts in bank accounts of debtor. Such automation will accelerate the return of money to creditors (banks) immediately after a court decision.

The System of Enforcement Proceedings in operation should ensure *interoperability and automated data exchange*. The new Law declares that enforcement officers shall have direct access to official state databases and registers to obtain information on debtors' assets, income and funds (including confidential information) and shall have the right to register the imposition and removal of arrests. However, the *rules* about interoperability have *only declarative* effects. The system has the opportunity to request the Pension Fund and the banks concerning the debtor. It is not possible to request other registers electronically in order to receive online replies. It is suggested to resolve the issue of integration with the operating registers. With the help of built-in integration with registries, the enforcement officers would have the opportunity to submit a request and receive an answer immediately. This would ensure a prompt, effective search of the debtor's assets and allow immediate execution of all proceedings related to the seizure of assets or funds. Enforcement officers should have access to the information about movable and immovable property objects and parties (debtor, their family members, creditors) stored in the Civil Status Acts Register, Demographic Register, Rights to Real Property Register, Land Cadastre, Register of Legal Entities and Individual Entrepreneurs and other registers. To increase operational capability of the System of Enforcement Proceedings, functionalities should be created that enable data exchange among several information systems, such as information systems of commercial banks, credit institutions, the State Fiscal Service, etc.

Integrated enforcement information systems should serve as *a dynamic information platform* through which all other registers and institutional databases are not only *exchanging the data but also automating and streamlining the decision-making*. *Integrated environment means that all actions are performed within the framework of one system*.

The development of *new electronic services* should *inspire changes in legislation* (laws, etc.), and not *vice versa*. Currently Ukraine has too detailed regulation; therefore, there is no space for conceptual development of information system and no possibility to develop additional services which were attractive for enforcement officers and other users.

In the system, documents are only generated from the file and printed out. Documents are not signed using electronic signature. In the system, such document without a signature has no legal force, it simply remains a draft. It is suggested to resolve the issue on the introduction of an electronic signature. In addition, the issue regarding the delivery of documents signed by electronic signature should be resolved.

The Ukrainian stakeholders were primarily interested in the summary and analysis of enforcement officers' activities. The System of Enforcement Proceedings should allow the MoJ and other controlling bodies or the system administrator to develop research and *analytical products* by way of use of aggregated data and statistics.

The basic principles of the enforcement officer's activity are based on the efficiency and speed of debt recovery; therefore, it is necessary to seek optimization in the work of both enforcement officers and banks and to shorten the process of recovery of funds from bank accounts. It is suggested that, until the implementation of Cash Restrictions Information System (See Annex 1), it should be specified in the instructions that the enforcement officers has the right to seize and write-off the funds based on one procedural document. The issue of over write-offs should also be addressed by legislation. It would be enough to establish a term, for example three or five days, during which the enforcement officer must repay the excess amount to the borrower.

The Ministry of Justice plans to introduce a system of electronic Bank accounts of arrests, based on the experience of Croatia. Experts note that the introduction of a unified system of electronic arrests of Bank accounts is critically needed Ukraine. The introduction of the seizure of the Bank accounts will greatly contribute to the improvement of the situation with enforcement of court decisions, because, despite the fact that in the framework of the reform of enforcement set strict, short time of Commission of enforcement procedures, arrest of the debtor is still heading performers in the banking institution by mail or delivered in person. But it takes time and may lead to the withdrawal of funds from the accounts of the debtor.

*Legislation does not foresee system maintenance and support fee.* For example, Resolution of the Cabinet of Ministers 8 September 2016, № 643 regulates the order for bonuses for the enforcement officers. According to the order, State enforcement officers receive 2 percent from the recovered amount or property value, also 0,5 percent is paid to the Head officer and his deputies of the State enforcement officers' authority. It is recommended to provide for the system maintenance and support fee which could include certain percent from the recovered amount or property value (for example, 0,2 percent) or could be calculated having regard to the annual system maintenance and support expenditure, and eligible costs.

The NAIS emphasised the need for a *greater financial support*. They were hoping to benefit from the experience of *Lithuanian Centre of Registers*. The Centre of Registers in Lithuania was set up to be a self-funding enterprise, meaning no budgetary funding, except for the payments for works and services commissioned by the government agencies acting as a client (e.g., mass valuation of property for taxation purposes). When all operations are paid for by the State (budgetary support), it can be difficult for the institution operating in this way to respond to changes in the market because of the need to seek governmental approval for any variation to their budgets. The NAIS should be a self-financed organisation and minimally use (or not use at all) the state budget. Self-financing basis means that the collected funds are used for improving the system, promoting operation progress and satisfying the client needs. (As a result, the swot analysis (Annex 2) was prepared).

### **Conclusions/summary:**

Strengthening of the institute of private enforcement officer and possibilities to enlarge the functions and make them equivalent to the status of a public enforcement officer with the goal to ensure efficiency, quality and transparency in the enforcement process.

As it was already mentioned, the enforcement officers' information system must be flexible and adapted both to public and private enforcement officers. The focus should be given on standardisation and automation of enforcement officers' business processes (the Enforcement Case Management System).

Building of the future integrated system of enforcement proceedings is an important area, where more consolidated steps in the reform could be considered.

Discussions should be centred on the next steps and means of cooperation with regard to the development of regulatory framework and software of the cash restriction system. Further development of the pilot service platform should be implemented.

Continuing the proper implementation of the Enforcement officers' reform, it is necessary to organize trainings aimed at both state and enforcement officers. Asset and asset seizure training should be organized at the same time.

## **PART 3**

### **Development of other electronic services**

#### **Key background issues/context:**

Information technology enables improvements of the public sector performance. State institutions have accumulated a large amount of various electronic information, however, they do not make full use of the possibilities of automated inter-institutional data exchange and re-use of information technology solutions already available at the institutions. Skilful management of the state information resources requires that their management model is based on internationally accepted standards, methodologies and best practices in information technology management.

E-Government development is currently based on strategic plans designed under the responsibility of Governments, which all specify the same targets for Public Administration modernization: cost and time minimization during public service execution and the development of an improved, citizen-centered Public Administration. Current e-Government solutions offer a limited number of public services, for example On-line Justice House<sup>5</sup>, where you can receive documents from the Civil Status of Citizens Register: birth certificates, marriages, dissolution of marriage, death, change of name, as well as corresponding extracts; carry out state registration of a public organization, with the status of a legal entity. If there are several or even several tens of portals, through which the services are provided, this is confusing and difficult for consumers to use. Experience shows that only moderate and uniform electronic services that are equally promoted by all authorities increase the number of users considerably more efficiently than when authorities are competing and individually developing their own electronic services.

A citizen accessing this E-Government gateway should see the names of enterprises providing public services, including the tree of their services. It should be noted from the experience that the absence of a unified and well-known authentication portal, through which natural persons and legal entities and services would be authenticated, impedes giving a clear message about services that can be obtained through the use of electronic signature.

The Ukrainian stakeholders stressed that building legislation governing the functioning of trust services in Ukraine raises many problems. This case is influenced by the current political situation.

The *new electronic services* should *be implemented*. Mobile ID – mobile user authentication that allows the subscriber to use his mobile phone installed therein a SIM card for secure electronic identification. Mobile ID can be used to access to protected electronic documents and to put digital signatures on documents. Such a standard could improve the quality of provision of administrative and other services.

At the moment, electronic services related to qualified/advanced identification are not massively widespread in the public sector. In order for electronic services to develop, it is not enough to create services and have tools (electronic signature). A common, moderate and sustainable policy is needed and this policy must be defined by the State. As soon as the rules of the game become understandable to all concerned, electronic signature and services will start spreading of their own accord. However, if bigger mistakes are made, the desired goals may not be achieved.

The staffs of individual authorities do not quite imagine how to adapt electronic services in everyday life and how these services can save the State a lot of money. In addition to saving money, citizens would have all opportunities to communicate with public

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<sup>5</sup> <https://online.minjust.gov.ua/>

authorities directly, quickly and securely. In order to ensure the development of electronic services, it is necessary to include electronic signature in the daily life of the State, both in the activities among public authorities and in the interaction with citizens. Identification of persons through the use of electronic signature certificates must in the long run become a key identification tool also for the commercial services sector, such as electronic banking, online shop portals, etc.

It is necessary to review the laws of Ukraine and the whole chain of players on the market from the law on electronic signature to certification authorities (CAs), as well as the electronic services regulator, on which the development of electronic services in the country, as well as fair competition, ensuring access to services for citizens, is very much dependent.

It should be noted that the long-term goal of Ukraine is membership in the European Union, and therefore proper supervision of certification authorities in accordance with the eIDAS Regulation would enable Ukraine to easily integrate into the flow of electronic services of the EU without additional costs in the future.

The launch of electronic services must begin with a “key service” that would encourage the first wave of electronic signature development. For example, the key driver for the development of electronic signature services in Lithuania was the obligation imposed by the State Social Insurance Fund Board (SoDra) on companies with more than 100 employees to submit their financial statements only electronically and the forms submitted to be signed by the executive director and chief financial officer of the company. In the later stage, the requirement was extended to companies with up to 10 employees, and later on – to all companies, irrespective of their number of employees. In the long run, electronic services began to encourage the emergence of new electronic signature users, which directly stimulated the development of other electronic services. It is very important to understand that there is often a dispute between electronic service providers and electronic signature distributors – one side claims that they do not create services because of a small number of electronic signature users, while the other side claims that the number of electronic signature users is small because of a small number of services. Therefore, the turning point should be encouraged by the State.

#### **Outcomes/Follow-ups:**

It is prepared the Work-Plan with specific steps. Experts temporarily will transfer to the MoJ 10 special Sim-cards for practical acquaintance with Mobile ID services in the field of access to registries. The Ministry of Justice will return the indicated Sim-card at the first request of the Project.

Notary Chamber requests Project to assist in transfer of Lithuanian web-based Notary Case Management System. Discussions should be centred on the next steps and means of cooperation. Further development of the pilot service platform should be implemented.

The further development of an electronic document flow system should be discussed.

#### **Final Solutions:**

- ✓ **Strengthening the responsibility of public officials providing administrative services;**
- ✓ **Decentralization: transferring to the local level the most massive services;**
- ✓ **Optimization processes of providing services through implementation of standardized information systems and interoperability between government bodies.**

## **Annex 1**

### **Cash Restriction Information system**

#### **General comments**

A. The development of *automatic system for the seizure of funds in civil and commercial cases* was started in Ukraine without having chosen a clear management model.

B. Different local institutions and authorities have different views, who should be the 'owner' (administrator) of the *system for the seizure of funds* in Ukraine (MOJ/NAIS, Central Bank (CB), or possibly the State Judicial Administration (SJA). For example, in Lithuania PLAIS is linked to commercial banks and other credit unions operating in Lithuania via LITAS-KART system (Central Bank), however PLAIS system is administered by SE Center of Registers (manager of the system is the Ministry of Justice). Currently is unclear potential list of Ukrainian users and data providers (MOJ/State Enforcement Service, PEOs, Asset Recovery and *Management Office* (Agency is being created right now; it will act as the criminal enforcement service with regard to any proceeds of crime – whether seized or confiscated), SJA, tax authorities, customs, etc.).

C. Local stakeholder (member of parliament Ruslan Sydorovych) stated against The State Fiscal Service participation despite the State Fiscal Service is currently holding summary on bank accounts of enterprises, institutions and organizations and the natural persons' tax payer code. The State Fiscal Service as the possible participant or data transporter is not suitable due to its huge apparatus and the cooperation is not possible at the moment. It is stated, that the reform for the institution is necessary.

D. Ukraine has a two-tier banking system, comprising the central bank (National Bank of Ukraine) or CB) and commercial banks. The CB main function is to ensure the stability of the national currency of Ukraine. Other functions, such as banking sector regulation, include the issue of money and arrangement of money circulation, regulation of banking transactions, a consolidated banking regulation and supervision. The role of the National Bank is quite possible, but just in case of proper legislation.

E. Commercial banks operate upon the authorization and the supervision of the CB. They are established as public joint-stock companies or as mutual saving banks, and require a license from the CB to operate. The National Bank of Ukraine announced a target of approximately 80-100 banks at the market. There are state-owned banks like Oshadny, Ukrexim or Ukgas, but the vast majority of banks is in private property. There are some problems in banking system recently (Ukraine nationalizes the biggest Ukrainian bank called Privat Bank to maintain financial stability).

F. The orders to write-off should reach the system by the order of the court representatives, courts, the State Fiscal Service, etc. It is necessary to evaluate that the biggest order providers and the biggest flows of orders should be initiated by the Enforcement officers and not by the courts themselves. That is why the information system should be linked to Enforcement Proceedings IS, and the courts should only appear as the participants of the system.

G. The new system should be reached by the data of the court decisions (or e-courts), mortgage register, Residents' register and Legal persons' register etc.

#### **Scenario I**

#### **Cash Restriction Information system created on NAIS side by the integration of Enforcement officers' information system**

- ✓ **The Administrator of the system is NAIS.**
- ✓ **MOJ is Manager of the register.**

<i>Strengths</i>	<i>Weaknesses</i>
<ul style="list-style-type: none"> <li>❖ Consolidation of IT resources (MOJ delegated to the NAIS administration of 22 registers);</li> <li>❖ Experience and competence in administration registers and IS;</li> <li>❖ NAIS administrates registers and IS, which are necessary for communication with other registers and IS;</li> <li>➤ Enforcement officers are the main and biggest users of the system (with reference to the number of enforcement officers and the number of seizures),</li> <li>❖ Accumulated registers' data which can be transferred into the new systems;</li> <li>➤ Established infrastructure and sufficient number of employees.</li> <li>➤</li> </ul>	<ul style="list-style-type: none"> <li>➤ Lack of Financing;</li> <li>➤ Functionality of the administered systems (registers) of Enforcement Proceedings is not clear, as well as the use of their interface with the creation of Cash Restriction Information system;</li> <li>➤ It is not clear if the newly created system could be linked to already existing registers and IS;</li> <li>➤ The existing dispersion of registers.</li> </ul>
<i>Opportunities</i>	<i>Threats</i>
<ul style="list-style-type: none"> <li>➤ Creation of a single system with direct inclusive interface with information system of operators;</li> <li>➤ Creation of interface with other administered registers</li> <li>➤ Appropriate conditions for infrastructure development;</li> <li>➤ Ensuring data security;</li> <li>➤ Experience in data archiving, keeping etc;</li> <li>➤ Appropriate preparation of technical base;</li> <li>➤ Creation and development of future inclusive interface with other system users (courts, customs, tax inspectorate, etc.).</li> </ul>	<ul style="list-style-type: none"> <li>➤ Insufficient legislation;</li> <li>➤ Attitude of NAIS specialists to the creation of new IS;</li> <li>➤ Limited financing threatens appropriate IS supervision.</li> <li>➤ Possible technical failures and inadequacies.</li> </ul>

**Scenario II**

**Cash Restriction Information system created within the infrastructure of the National Bank**



- ✓ Central Bank- The administrator of the system.

## SWOT

<i>Strengths</i>	<i>Weaknesses</i>
<ul style="list-style-type: none"> <li>➤ Storage and collection of data about the accounts of natural and legal persons;</li> <li>➤ Experience in collection, storage, processing, protection, supervision of information;</li> <li>➤ Provision of information about natural and legal persons to state institutions.</li> <li>➤ Established relationship of trust with commercial banks.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Uncertain financial possibilities;</li> <li>➤ Lack of experience of system administrator;</li> <li>➤ Infrastructure is not suitable for IS realisation, having too many participants and users.</li> <li>➤ No mechanism for automated attachment of funds.</li> </ul>
<i>Opportunities</i>	<i>Threats</i>
<ul style="list-style-type: none"> <li>➤ Use of the copy of accumulated data or exchange with other IS;</li> <li>➤ Improvement of infrastructure and application to newly created IS.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Insufficient legislation;</li> <li>➤ Possible delay of data provision;</li> <li>➤ Problems of IT security and reliability.</li> </ul>

## Scenario III

### **Cash Restriction Information system created on E-court platform**

- ✓ The administrator of the system is SJA or a unitary enterprise appointed by the State Judicial Administration of Ukraine.

A. The E- court pilot project is implemented in accordance with the Decision No 74 of the Council of Judges of Ukraine dated July 22, 2015, with the support from USAID New Justice Project together with the State Judicial Administration of Ukraine, territorial department of SJA in the Odessa region and in cooperation with the Odessa Regional Centre on providing free secondary legal aid.

B. The main goal is to establish quick electronic exchange of information between judicial institutions, participants of the court proceedings, and other government agencies to ensure a fair and impartial justice in Ukraine.

C. Three court of Odessa region (namely Ovidiopol District Court of Odessa region, Kyiv District Court of Odessa city and the Court of Appeals of Odessa region) were chosen to participate in this Project by decision of the Council of Judges of Ukraine. They received an updated technical basis for the implementation of idea on the electronic document flow.

D. The results of the Pilot Project were presented in Odessa on July 18, 2016.

## SWOT

<i>Strengths</i>	<i>Weaknesses</i>
<ul style="list-style-type: none"> <li>➤ Creation of direct interface between E-Courts and Cash Restriction Information system;</li> <li>➤ Automated and electronic data transfer via inclusive interface.</li> </ul>	<ul style="list-style-type: none"> <li>➤ “Human factor” issue: conservative approach, lack of openness to novelty;</li> <li>➤ Court activities is extremely formalized and regulated procedure;</li> <li>➤ Uncertain financial possibilities;</li> <li>➤ Lack of experience of system administrator;</li> <li>➤ Infrastructure is not suitable for IS realisation, having too many participants and users;</li> <li>➤ There would be new duties for the users of the system – judges and their legal secretaries;</li> <li>➤ Courts are not ready to accept the fully electronically created process.</li> </ul>
<i>Opportunities</i>	<i>Threats</i>
<ul style="list-style-type: none"> <li>➤ Further development of the court portal for electronic services adding new functionalities and electronic services;</li> <li>➤ Creation of Interface with Enforcements officers’ information system and automatic process of the delivery of enforceable documents;</li> <li>➤ Improvement of infrastructure and application to newly created IS;</li> </ul>	<ul style="list-style-type: none"> <li>➤ Coordination and administration of all users and participants;</li> <li>➤ Ensuring control process;</li> <li>➤ Lack of computer literacy, conservative attitude to E-Courts system;</li> <li>➤ Avoiding new innovation for IS;</li> <li>➤ Problems of IT security and reliability;</li> <li>➤ Lack of unanimous and common policy.</li> </ul>

### Comments on the Draft of the Law № 3768 and recommendations:

1. Based on the Draft amending proposal, the automatic seizure system is foreseen which would be functioning in the courts. The courts are identified as the users of the system. Draft laws also foresees the automatic seizure system functioning in the system of Enforcement officers. Enforcement officers are identified as the users of the system. Administration of two systems is not appropriate. Draft laws should provide, that the forced write off of recovery cash is carried out in a single system – the Cash Restrictions Information System (*or IS of automatic seizure of funds or other*). Information about the restrictions of accounts and the requirements to forced write off of the cash from these accounts, *would be managed on a centralized basis*.

Maintenance of a few information systems, with regard to the transfer of orders to credit institutions, would require additional financial and human resources from the Enforcement officers and other institutions or officials and may complicate the recovery process in that way. *A single Administrator* for the system should be considered.

2. It is necessary to solve the question regarding the creation of the system for the automatic seizure of funds, the operation of which should interact with courts and Enforcement officers step by step connecting and other users of the system: State Fiscal Service, customs, the prosecution and other organs, which have the right to imply the seizure of funds.

3. It is necessary to remark, that there is no clear legislation about the data accumulated by the banks or other credit institutions on natural persons' accounts, balance of accounts and the provision of such data to automatic seizure of funds system. It is foreseen in the draft Law to give the obligations to the banks to transmit the information about the debtors' accounts, however the process regarding the write-offs proportionally dividing all the funds is not foreseen. The principle of proportionality for the cash write-off should be provided. This means, when there is the debtor without sufficient cash to meet all the requirements, all the collectors of the same ranking would get the proportionate amount of the recoverable cash.

4. Many other issues regarding the migration of seizure orders to the system are not solved. In order to solve the issue it is necessary that the banks have a clear vision and plan of data structuring and transfer.

5. The funding system should be considered, e.g., in Lithuania, system maintenance and support costs are covered by the debtor's cash, the debtor paying the system administrator the fixed system maintenance and support fee. The amount of the fee should be determined by the system manager (for example, in Lithuania it is done by the Ministry of Justice).

6. The Draft provides an opportunity to seize only the bank accounts of the debtor's cash. Enforcement officers and other institutions or officials in order to seize accounts or holding the right of recovery from debtor's accounts in other credit or financial institutions (e.g. credit unions, investment funds), would not be able to use the Cash Restrictions Information System, and would have to install separate tools for giving orders to the above mentioned institutions.

#### **Conclusions and Follow-ups:**

1. Based on the best practices of other countries while implementing automated fund seizure system, it is necessary to carry out an analysis of the legislation and to make recommendations for automatic fund seizure system implementation.

2. To resolve the question regarding the creation of automatic fund seizure system as a unified, interconnected system operating on the basis of appropriate and safe infrastructure.

3. To clearly define the issue of financing and to foresee resources for the appropriate system administration.

4. To accept amendments or additions of the legal acts guaranteeing the availability of funds to which automated fund seizure is directed (social and other benefits).

5. To clearly define the process, conditions, algorithm of fund distribution and other factors for automatic fund seizure.

6. Extensive inter institutional cooperation is necessary.

**Annex 2  
NAIS SWOT**

<i>Strengths</i>	<i>Weaknesses</i>
<ul style="list-style-type: none"> <li>➤ Subordinated to the MOJ with clearly delegated tasks;</li> <li>➤ Experience in administration of registers and other IT services for public sector and general public;</li> <li>➤ Experience and competence in administration of main state registers (Civil Status Acts Register, Register of Rights to Real Property, Register of Legal Entities and Individual Entrepreneurs);</li> <li>➤ Administrates other registers and IS, which are necessary for communication with other registers and IS;</li> <li>➤ Consolidation of IT resources (MOJ delegated to the NAIS administration of 22 registers);</li> <li>➤ Accumulated registers' data which can be transferred into the new systems;</li> <li>➤ Established infrastructure and facilities covering whole territory of Ukraine;</li> <li>➤ Established work procedures;</li> <li>➤ Sufficient number of employees;</li> <li>➤ Reform of personnel staffing in territorial divisions (initiated consolidation of financial and personnel management).</li> </ul>	<ul style="list-style-type: none"> <li>➤ Insufficient budgetary funding;</li> <li>➤ Surplus top management apparatus (e.g. deputy director for one department);</li> <li>➤ Overlapping functions of certain departments and unclear division responsibilities among them;</li> <li>➤ Outsourcing of IT specialists for IS development and modernisation considering huge number of IT specialists working in the enterprise;</li> <li>➤ Limited resources for raising qualification of employed IT staff;</li> <li>➤ Non-competitive IT staff salaries in comparison to private market;</li> <li>➤ Plausible frequent turnover of IT staff;</li> <li>➤ Long decision-making process;</li> <li>➤ Targeted to this day, limited awareness of long-term perspectives;</li> <li>➤ Lack of interest in the adoption of innovations (reluctance to change or develop the current registers, IS etc.)</li> <li>➤ Unreasonable fear (unawareness of new IS, of interest in helping etc.).</li> </ul>
<i>Opportunities</i>	<i>Threats</i>
<ul style="list-style-type: none"> <li>➤ Consolidation of State's Information Resources;</li> <li>➤ Development and handling of eGovernment services &amp; IS;</li> <li>➤ Integration of data from different state registers and IS thus expanding number of e-services for citizens and governmental sector;</li> <li>➤ Use of available international financial assistance for institutional</li> </ul>	<ul style="list-style-type: none"> <li>➤ Insufficient legislation governing state information resources;</li> <li>➤ A significant political influence;</li> <li>➤ Lack of political will in taking necessary decisions;</li> <li>➤ Limited budgetary funds assigned to NAIS puts at risk proper maintenance of current IT assets;</li> <li>➤ Global demand for IT</li> </ul>

building and development of IT systems; ➤ Raising staff qualification using international and bilateral funds.	specialists might lead to further loss of better-skilled personnel to private sector thus deteriorating quality of provided services.
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## **Main problems and Recommendations**

### **A. *Having analysed human resources of the NAIS following facts were observed:***

1. The total number of staff of NAIS is 643 (248 are employed in the central office, 395 work in the branch offices).
2. Formally, out of the number of the total staff 458 are IT specialists (117 are employed in the central office, 395 work in the branch offices).
3. Having completed detailed analysis of the staff of NAIS we found out that in fact only 195 specialists directly work with the maintenance of IT systems (77 in the central office and 118 in the branch offices).
4. There are 6 deputy directors in NAIS.
5. Overlapping of functions among different departments/divisions, unclear divisions of tasks.
6. No strategic planning, project management or similar division.
7. Insufficient salary funds (non-competitive salaries in comparison to private market), frequent turnover of IT staff.

### **Recommendations:**

1. The overall recommendation is to carry out performance audit of NAIS (either by the auditors of the Ministry of Justice or by independent auditors) with the aim of assessment of the structure of the entity, management practices, number of employees, functions of staff, activities of departments and divisions.
2. NAIS should review the concept of an IT specialist and make a clear distinction between IT staff of the entity and other employees. As a result, job descriptions of IT staff should be prepared and approved. This will facilitate highlighting of weak spots in IT systems management and will help to determine how many of IT specialists are required to administrate all 24 registers and IS assigned to NAIS;
3. As all IT systems are administrated in the central office the need to have 395 IT specialists in the branch offices (or according our findings, 118 IT specialists) is doubtful. This issue should be addressed having completed performance audit mentioned in point 1.
4. We recommend to establish within NAIS Strategic Planning Division or similar (including Project Management Subdivision) which would be responsible for preparation of mid-term/ long-term performance strategies of NAIS, their follow up and control, also will be delegated with the task to search for available international funds (e. g. EU, World Bank, etc.) for financing modernisation of IT systems, development of e-services, and other tasks.
5. Upon the results of the performance audit issues of financing of staff and size of salaries should be addressed looking for possibilities to make salary level competitive with existing market salaries.

### **B. *General observations on the financial mechanisms of the NAIS:***

1. NAIS has the legal *status* of state enterprise, but *on the other hand is a budgetary organisation, since NAIS receives majority funding from the State budget* (most of operations are paid for by the State). Majority of payments return to the State budget<sup>6</sup>, which means that Registers' administrator cannot earn money from these services and operations. In such case State is obliged to finance NAIS.

2. NAIS returns 75 percent of annual revenue to the State (after deduction of revenue taxes). For the period from the 3rd quarter of 2016 and the first two quarters of 2017 NAIS is allowed to pay 30 percent of the revenue to the budget.

3. When majority operations are paid for by the State (budgetary financing), it is difficult for institutions operating in this way to respond to changes in the market because of the need to seek governmental approval for any variation to their budgets.

4. When organization is funded by the State, it "works to the budget" and as a rule shows no incentive to seek efficiency. Even when organization seeks to make improvements, limited assigned budget might hinder to take up foreseen tasks.

5. NAIS works strictly within the limits of its budget (MOJ determines annual budget for NAIS). MOJ allocated NAIS 378.000.000 UAH (approximately 13.964.349 EUR) for 2016 for operating of State Registers.

6. The MoJ commenced the registers reform by opening the registers information to the public. The data in some registers are free. User do not pay full cost of registers work and services.

7. NAIS has the right to invest only in infrastructure.

#### **Recommendations:**

1. *NAIS should be reorganised on the basis of business-oriented model*, where the State will not have obligation to finance its activities from the state budget. Such reform would encourage NAIS to search for alternative sources of funding and will reduce the State share of the burden of maintaining similar entities.

2. The NAIS should be a self-financed organisation and minimally use (or not use at all) the state budget. Self-financing basis means that the collected funds are used for improving the system, promoting operation progress and satisfying client needs.

3. Information should be available in a form that fulfils customers' needs and expectations, i.e. what they want and what prices they are prepared to pay taking into consideration *cost-recovery principles*. Some countries have freedom of information acts, but *data are not "free"* (for example, Lithuania). Payment must come from either from the user or from taxes. Except where there are statutory requirements for free exchange or supply of information, *all users should pay for data, information or services*. Register information may be very costly to collect and to keep updated. The user or taxation should fully fund the collection and maintenance of registers' data. The availability of financial mechanisms to ensure efficient makes the administration system more resilient. Before a pricing strategy and the setting of fees and charges are defined, the real costs of the operations concerned have to be identified. The charges should be set to recover costs plus a reasonable return on investment, wherever this is allowed.

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<sup>6</sup> According to the Law of Ukraine 15.05.2003 № 755-19, Resolution of The Cabinet of Ministers of Ukraine № 1272 14.07.1999, the money earned from providing the access, usage, entering and receiving information from registers that are held by the MoJ *goes to the state budget*.