

WHITE PAPER

Roadmap for preventing registration raiding and enforcing restrictions on land concentration in Ukraine



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Executive summary

The protection of property rights is a condition for sustainable economic development, as it affects the level of risks of the national economy and investment attractiveness. Ukraine's efforts as a state are not fully sufficient to protect property rights. In particular, the phenomenon of land registration raiding of agricultural land continues to exist in Ukraine, as a result of which farmers lose their harvest illegally and sometimes even their land rights. Particularly medium and small agricultural farms suffer from raider attacks, due to factors such as their remoteness, lack of resources and political influence.

This study was conducted by Better Regulation Delivery Office to determine the existing «schemes» of registration raiding in Ukraine and the reasons for their occurrence, the risks of violating restrictions on land concentration: gaps in legislation, the effectiveness of the state control and appeal system. Based on the results of the analysis, we have prepared a risk matrix and a list of initiatives to prevent registration raiding (i.e., measures to reduce risks).

This document contains recommendations in the field of legal policy, which relate to the management of the Ministry of Justice and the Ministry of Agrarian Policy and is not an official position of these bodies or the World Bank. The details and implementation plan of each of the recommendations and initiatives may need further clarification.

The planning horizon is about 2 years, with a focus on eliminating urgent risk factors, as well as on creating tools to respond to new risk factors. The document does not describe judicial reform, law enforcement reform, the fight against corruption in the country, the right personnel policy and economic incentives for state registrars. All this is also obviously necessary but does not relate directly to the subject of study.

The recommendations resulting from the analysis are as follow:

- 1) The phenomenon of registration raiding continues to exist in Ukraine. The risk factors are gaps in the legislation and the lack of certain functions of the software of state registers. Indirect reasons are the lack of judicial reform and the lack of state efforts to protect property rights. The introduction of a risk-based model of raid prevention is a way to effectively improve the above situation.
- 2) Modernize real estate register and business-register by creating risk management subsystems that will provide the following functions:
 - Automatic monitoring of risky transactions;
 - Performing registration actions exclusively according to «step-by-step scenarios», so that during any registration action it was necessary to specify and load the list of documents required for acceptance, without which it is impossible to complete the action or move to the next step during registration. To do this, it is also necessary to summarize and approve standardized lists of documents for all business processes of real estate register and business-register;
 - “Four eyes principle” or “double check”, i.e., additional check of risky transactions by another registrar, identified at random (requires additional discussion and pilot project);
 - Owner's electronic cabinet, i.e., a web page for each owner, which allows you to receive information, receive administrative services, as well as - with the ability to block or confirm registration actions (requires additional discussion).

- 3) Continue the implementation of the following already planned initiatives, as well as to implement the following new initiatives in the field of justice:
- Create an Electronic Notary System and integrate it with other registers (implement “E-notary”);
 - Temporarily, for the period of operation of the institution of administrative appeal, increase its efficiency by granting the authority to cancel the “chain” of re-registrations;
 - Develop and implement a business process for verifying documents dated before 2013 and not registered;
 - Harmonize the rules for checking special forms;
 - Implement the missing integrations between registers (according to p.4.3 of the Report).
- 4) Improve the legislation, legal policies and software of state registers in the field of land relations, namely:
- Assignment of the lease agreement to significant transactions;
 - Expanding the effect of paragraph 21 of the Transitional Provisions of the Land Code on the transfer to communal ownership of collectively owned collective agricultural enterprise lands, which are in the process of termination, or reorganized
 - Settlement of disputes concerning the farm land of permanent use right after the founder’s death
 - Recovery of missing state land cadastre data due to their loss during land re-registration from 2013 to 2018
 - Introduce safeguards for illegal registration of land plots by surveying engineers
 - Elimination of opportunities for legal circumvention of legislative restrictions on land plots concentration
 - Extension of the procedure for checking the concentration of more than 10 thousand hectares, to check of the concentration for more than 100 hectares
 - Implementation of automated verification of concentration limits.

Glossary

API	Application programming interface
ARMA	Asset Recovery and Management Agency
ASC	Administrative Service Centre
AWP	Automated workplace
CAE	Collective Agricultural Enterprise
CFH	Commercial farming household
CMU	Cabinet of Ministers of Ukraine
DB	Database
EB	Executive body
IFH	Individual farming household
LG	Local governments
LLC	Limited Liability Company
LoU	Law of Ukraine
Media	Mass media
MIA	Ministry of Internal Affairs of Ukraine
MinRegion	Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine
MJU	Ministry of Justice of Ukraine
NABU	National Anti-Corruption Bureau of Ukraine
NACP	National Agency on Corruption Prevention
NAIS	State Enterprise “National Information Systems”
QES	Qualified electronic signature

RA	Regulatory act
SBI	State Bureau of Investigation
SJA	State Judicial Administration
SLC	State Land Cadaster
SRIPR	State Registry of Immovable Property Rights
TIB	Technical Inventory Bureau
UREN	Unique Registry Entry Number
USDR	Unified State Demographic Register
USESCS	Unified State Electronic System in the Construction Sector
USR	Unified State Register of Legal Entities, Individuals - Entrepreneurs and Public Associations
USRCD	Unified State Register of Court Decisions

Infographics “The strategic goal is to reduce the number of cases of registration raiding”

2019

2020-2021

- liquidation of accredited entities
- introduction of two factor authorizations
- communication activity
- work of the Ministry of Justice with complaints

Proposed initiatives

- gaps elimination
- creating fair economic incentives for registrars

- introduction of e-notary
- an effective mechanism for appealing the re-registration chain

- introduction of an electronic risk management system

Part 1.

The importance of preventing registration raids

The protection of property rights is a condition for sustainable economic development, as it affects the level of risks of the national economy and investment attractiveness. Ukraine's efforts as a state are not fully sufficient to protect property rights.

In particular, the phenomenon of registration raiding continues to exist in our country, although its number decreased slightly during 2020 and 2021, due to the exclusion from the legislation of the institute of accredited subjects of registration and work of the Ministry of Justice. A significant part of registration raiding takes place in the agriculture field, which is the basic sector for the economy of Ukraine. One of the groups that suffer the most from registration raids are medium and small agricultural enterprises, farms. This is due to factors such as their remoteness from institutions, lack of large resources and political influence to provide protection, vulnerability due to the possibility of rapid illegal harvesting.

The effectiveness of the institutions in Ukraine to ensure property rights is not at the necessary level, namely:

- litigation is time-consuming due to the workload of the judicial system and repeated changes in the Supreme Court's legal position on remedies;
- police and other law enforcement agencies lack the organizational capacity to respond quickly to raiding cases and investigate complex cases;
- The Ministry of Justice, as an administrative appeal body, does not always deal with complaints promptly and expeditiously, and is deprived of the opportunity to effectively restore rights in the registers due to formal reasons and lack of authority.

Fraudsters adapt their illegal practices, using both the inefficiency of legal regulation and the vulnerabilities in the software and business processes of registration. Currently, there is a trend of raider attacks not only by forging some documents, but also by committing obviously illegal registration actions by registrars. The appendices to this document provide a detailed analysis of risks and their ranking depending on the assessment of potential damage from a negative event (raider attack), as well as the assessment of the frequency of negative events.

The opening of the land market most likely did not significantly increase the number of raider attacks, however, their existing number before the opening of the land market required and requires the implementation of systematic measures aimed at preventing them.

The introduction of a risk-based model of raid prevention is a way to effectively improve the above situation. In the field of management of the Ministry of Justice (USR and SRIPR) the risks associated with the following have been identified:

- Possible commission of obviously illegal actions by the state registrar without the necessary list of documents, as well as alienation of assets against the owner's will, which can be solved by introducing risk management subsystems for USR and SRIPR;
- Possible errors in the identification of a physical or legal person or real estate object, which can be solved by integration with other registries;
- Possible registration actions on the basis of forged documents, which can be solved by implementing the Electronic system of notaries, deepening the integration of USR and SRIPR with the court register, the introduction of a business process of verification of historical documents;
- Impossibility of an effective appeal of the real estate re-registration chain after the first illegal registration, which can be resolved temporarily, for the period of the institute of administrative appeal, by expanding the powers of the Ministry of Justice.

The field of land relations regulation identified the risks related to:

- Possibility of registration on the basis of a forged agreement on termination of the agreement (including the legal entity signed by the former director), as well as the agreement on the sale of the right to lease;
- The risk of a dispute regarding land on the right of permanent use of farms after the death of the founder of the farm;
- Disadvantages of restrictions on the concentration of agricultural land;
- The possibility of illegal registration in the SLC, given the pilot project with the granting of surveying engineers the rights of cadastral registrars;
- Possibility of registering the right of private ownership of the reserve land, which remained after the sharing of the CAE lands through several reorganizations.

These risks can be minimized by making the necessary changes to the legislation. This document sets out in detail the strategic priorities, as well as initiatives and projects that will significantly reduce the number of raider attacks associated with illegal registration actions.

Part 2.

Strategic priorities for improving property rights protection and preventing registration raids

Strategic priority 1.

Modernize SRIPR and USR by creating risk management subsystems

1.1. Justification of the need to create risk management subsystems

The most effective generally accepted practice for reducing the number of adverse events is to build a risk management system. The elements of risk management systems, in particular, risk monitoring subsystems are implemented in the field of construction relations, customs and tax administration. Risk management methods are also used in anti-corruption programs and strategies, in many other areas.

DSTU ISO 31000:2018 "Risk Management. Principles and guidelines" (ISO 31000:2018, IDT) provides principles for building the following systems: integration, structure and completeness, adaptability, involvement, dynamism, the best available information, taking into account the factors of human behavior and culture, continuous improvement. Therefore, the risk management subsystems of SRIPR and USR must organically complement the current electronic systems of SRIPR and USR, reduce the most significant and widespread risks, be able to make operational changes according to the situation, be built with a balance of stakeholders' views and interests, based on reliable risk assessment, take into account the "human factor" and have the organizational and technical capacity to improve.

The following are the basic solutions for the risk management systems of these registers, while the design of risk subsystems requires additional research.

Solutions for the risk management system of SRIPR and USR

1.2. Automatic monitoring of risky transactions

The legislation already provides for the need for automatic monitoring of risky registration actions according to the criteria set by the Cabinet of Ministers of Ukraine.

For the implementation of automatic monitoring, it is necessary to solve the following tasks:

- Definition of filters or search queries by means of which there will be a selection of risky operations (i.e., Risk criteria);
- Development of software that will search the databases of various state registers.

It is advisable to implement automatic monitoring of subsequent operations in the registry.

Possible approaches to defining criteria for automatic monitoring

No.	Category of registration actions	Possible criteria, filters and comment	Goal
1	<p>Monitoring of the most significant registration actions and registration actions that are more often committed with violations</p>	<p>Regarding USR: change of participants/director of a legal entity with significant assets (corporate rights of subsidiaries, real estate, significant ¹ authorized capital or income according to financial statements, non-resident owner, used foreign power of attorney to draw up an act of acceptance-transfer of shares), increase of the authorized capital at the expense of the contribution of the third party.</p> <p>Regarding SRIPR: registration of ownership of newly built real estate without obtaining data from the USESCS, increase of more than 10% without obtaining data from the USESCS, registration of real estate contributions to the authorized capital on the basis of a power of attorney, registration of termination on the basis of land lease termination; registration by a court decision (or a court decision that is not in the register of court decisions), registration of rights on the basis of documents dated before 2013 (rights for which were not registered in the BTI and SLC), acquisition of ownership on the basis of a mortgage, alienation followed by a quick resale.</p>	<p>Effective detection of risky transactions.</p>
2	<p>Monitoring of compliance with standardized scenarios (field "grounds for state registration", etc.).</p>	<p>If standardized scenarios are developed for each operation, monitoring can be performed on the criterion of any deviation from the scenario.</p> <p>Until then, it is possible to monitor the list of documents in the field "grounds for state registration", the list of supporting documents to the application, documents in the field "description of the object", and by comparing other data of the state register.</p> <p>The filters for comparison can be: availability of a document on acceptance for operation and assignment of a postal address when registering ownership of newly built property; the presence of a cadastral number for land plots, the presence of duplicate registrations with the same or similar addresses, etc.</p> <p>A pilot project to implement such monitoring can provide more pairs of options for search and comparison, as well as provide an understanding of the quality of the data in the field "grounds for state registration" for monitoring purposes.</p>	<p>Effective detection of risky transactions.</p>

¹ Requires additional research, depending on the assessment of the minimum value of the company for which raids are possible

No.	Category of registration actions	Possible criteria, filters and comment	Goal
3	Monitoring by comparison with other registers	<p>The following options can be considered: comparison of the data in the field "grounds for state registration" of the SRIPR with the data of the Unified Register of Powers of Attorney, Unified State Demographic Register, USESCS; comparison of data in the SRIPR and SLC, etc.</p> <p>The software that compares data with other registries will allow other risk factors to be considered, such as the presence of a complaint to the Ministry of Justice or a lawsuit, or criminal proceedings.</p>	<p>Effective detection of risky transactions. The software can be modified for use for other purposes, such as verifying compliance with land concentration limits.</p>

The automated monitoring solutions can also be transformed into technical safeguards and applied to other elements of the risk management subsystem, for example, to determine the categories of registration actions to be sent for "double-checking". Information on risky transactions can then be sent to the relevant departments of the Ministry of Justice, authorized to exercise control. It must be possible to configure and adapt the system, depending on the number of operations found as a result of searches for the relevant filters.

1.3. "Step-by-step scenarios"

The essence of this decision is to improve the software for performing registration actions only in "step-by-step scenarios", so that during any registration action it was necessary to specify and to load a list of mandatory documents, without which it is impossible to complete the action or move on to the next step during registration. The role model of the rights of the state registrar in the software of the state registers must be limited only to that list of actions, which is allowed by the legislation.

As of now, registration actions are already being performed in the SRIPR and the USR with partial application of this principle. For example, actions in the SRIPR regarding land plots have similar restrictions - they are possible only if there is an information exchange with the SLC.

Currently, in the process of developing initiatives that are part of the "step-by-step scenarios", namely: "Development of updated directories of SRIPR accompanying documents", "Modernization of the classifier in accordance with applicable law", Technical prevention of actions in SRIPR in the presence of active arrests (encumbrances), "Change in the business process of submitting the owner's application for a ban on registration actions (introduction of the review stage and lack of possibility of a decision to refuse)".

Also, for implementing this principle, it is necessary to: conduct a detailed audit and generalization of business processes, highlighting standardized lists of documents for each business process; to discuss and check standardized lists of documents; develop a design of technical constraints for each of the business processes; develop the necessary software and regulatory framework.

1.4. «Four eyes principle» of risky transactions by a randomly determined registrar

The essence of this decision is to improve the software and business process of the registration action so that the riskiest transactions will be further verified by another registrar, identified at random. The registry software already has the functionality to transfer registration rights between registrars. The information on possible approaches to identifying risky transactions in registries has been provided above.

The functionality for the “four eyes principle” should be implemented gradually, after verification with a pilot project. The categories of registration actions for referral to the “four eyes principle” should be discussed with stakeholders. If the Ministry of Justice prepares standardized lists of documents and requirements for all business processes, the number of disputes will not be significant.

1.5. Owner's electronic cabinet

The essence of the solution is the possibility for the owner to receive administrative services and information by accessing a certain personal web page with secure access, or with access through “DIIA”. The software is currently being developed to receive notifications in DIIA application regarding changes to the SRIPR. If this service is introduced, then together with the electronic service of filing the owner’s application for prohibition of registration actions, it can be an effective way to prevent raiding.

Directions of implementation and Action Plan for strategic priority No. 1

	Name and description of actions	Expected results	Responsible organization	Assessment of the execution term or already specified period	Actual results and key performance indicators (KPI)
Short-term priority actions					
	Develop and approve standardized lists for each business process in the USR and SRIPR	There are lists of documents that help to avoid controversial situations	Ministry of Justice	Approximately 3 months	Standardized lists have been submitted to NAIS

	Name and description of actions	Expected results	Responsible organization	Assessment of the execution term or already specified period	Actual results and key performance indicators (KPI)
	<p>Improve the software for automatic monitoring of risky registration actions according to the criteria set by the Cabinet of Ministers of Ukraine - regarding the USR</p>	<p>Prompt detection of risky transactions</p>	<p>Ministry of Justice, NAIS</p>	<p>Approximately 1 year, already provided by the Presidential Decree</p>	<p>The software is put into operation</p>
	<p>Develop criteria for automatic monitoring and approve them by the Resolution of the Cabinet of Ministers of Ukraine, as well as changes to the Procedure for control, approved by the Resolution of the Cabinet of Ministers of 21 December 2016 No. 990</p>	<p>Prompt detection of risky transactions</p>			<p>The Resolution of the Cabinet of Ministers was developed and adopted with changes to the procedure for exercising control</p>
	<p>Improve the software and legislation for the implementation of the "Owner's Electronic Cabinet", with the possibility of submitting an application for prohibition of registration actions.</p> <p>Make amendments to the law, which may predetermine the status of the electronic cabinet for SRIPR</p>	<p>Prevention of illegal transactions that are committed against the owner's will</p>	<p>Ministry of Justice, NAIS</p>	<p>From 3 months</p>	<p>The software was put into operation, the draft law was developed and submitted to the Verkhovna Rada</p>

	Name and description of actions	Expected results	Responsible organization	Assessment of the execution term or already specified period	Actual results and key performance indicators (KPI)
	Improve software and legislation to implement a “double check” or “four eyes principle” of all risky actions, performed by a state registrar, by another state registrar, determined randomly	Prevention of illegal transactions, identification of illegal among risky	Ministry of Justice, NAIS	Approximately 6 months	The software is put into operation, the draft law was developed and submitted to the Verkhovna Rada

Medium-term priority actions

	Improve the software, develop and approve legislation for registration actions only in “step-by-step scenarios”, to indicate during any registration action a list of documents required for acceptance, without which it is impossible to complete the action or move to the next step during registration	Impossibility of registration actions without scanning the full list of documents	Ministry of Justice, NAIS	Approximately 1-2 years	The software was put into operation, the Resolution of the Cabinet of Ministers was developed and adopted with changes to the order of registration, the order of maintaining the register
	Improve software and legislation to implement a “four eyes principle” of all risky actions, performed by a state registrar, by another state registrar, determined randomly	Prevention of illegal transactions, identification of illegal among risky	Ministry of Justice, NAIS	Approximately 6 months	The software is put into operation, the draft law was developed and submitted to the Verkhovna Rada

Strategic priority 2.

Create an Electronic Notary System integrated with other registers (“E-notary”)

Cases of registration raiding are often related to forgery of documents that are subject to notarization, such as a power of attorney or an act of contribution to the authorized capital. Thus sometimes the spending code of the notarial form is selected by malefactors so that during check of the form the fact of forgery could not be revealed.

To prevent forgery, an Electronic Notary System is currently being developed, which includes an electronic register of notarial acts, which will be integrated with the Unified Register of Special Forms of Notarial Documents and the Unified Register of Powers of Attorney. This project can significantly reduce the number of cases of registration raiding, so it is a priority. A detailed description of the project is not provided, as this project is already under implementation.

Directions of implementation and Action Plan for strategic priority No. 2

	Name and description of actions	Expected results	Responsible organization	Assessment of the execution term or already specified period	Actual results and key performance indicators (KPI)
1	Creation of the Notary Electronic System	Each notarized document can be checked, all registers used by notaries are integrated	Ministry of Justice, NAIS, Notary Chamber	Until 2023, according to the Order of the Cabinet of Ministers of 17 February 2021 No. 365-r	The software is put into operation

Strategic priority 3.

Ensuring an effective administrative appeal through temporary cancellation of the “chain” of re-registrations

The essence of the initiative is to temporarily grant the Ministry of Justice the right to cancel the chain of registration actions, if these actions are committed within one month after the first illegal registration action, and the first registration action is committed against the will of the owner or other authorized person.

Ensuring an effective administrative appeal of the re-registration chain will significantly increase the likelihood of property restitution, so a significant proportion of attackers will abandon their

plans due to the increased risk of a failed raider seizure. Judicial appeals are also less effective, due to repeated changes in the legal positions of the Supreme Court and changes in legislation. As a result, the persons, whose property rights were violated, could not obtain protection of their rights for formal reasons or were forced to re-apply for protection of the violated right.

Raider seizures are usually accompanied by a chain of further re-registrations, such as fictitious sale (possibly repeated) of real estate, further fictitious division of objects, as well as their encumbrance with a fictitious mortgage. Or in the case of actions in the USR - the resale of shares in the share capital, repeated changes in the head, the creation of fictitious debts and subsequent bankruptcy.

The Ministry of Justice usually proceeds from the concept of assessing the formal compliance of the state registrar's actions with the law. Therefore, if after the illegal registration there was a notarial act, for example, certification of the contract of sale of real estate, cancellation of registration of ownership of the final purchaser and return of property to the owner does not occur, as the Ministry of Justice in this case has no right to verify the legality of the notarial act, and cannot interfere with the rights of the purchaser.

This approach is justified from a dogmatic point of view, but from an empirical point of view, the main task of the appellate bodies is to counteract raiding, not formal errors. Judicial practice in Ukraine has developed in such a way that property is claimed from a bona fide purchaser if it has been taken "from the possession of the owner or the person to whom he transferred the property into possession, not by their will in any other way". Thus, the court can claim the property from a bona fide purchaser, and the appellate body of the Ministry of Justice cannot cancel the chain of registration actions. This situation makes the Ministry of Justice ineffective in countering the raid.

The Verkhovna Rada of Ukraine recently adopted in the first reading the draft law No. 3774, which proposes to give the appellate body of the Ministry of Justice the right to prohibit registration actions during the period of consideration of the complaint ("red button"). However, the resale of a company's property or corporate rights in the event of a raider seizure is usually made the day after the first illegal registration or on the same day. In such circumstances, the "red button", although it will not allow alienation in the chain in a number of situations but does not solve the problem of the effectiveness of the appeal.

If the legislation is amended and the Ministry of Justice is authorized to cancel the chain of registration actions in all situations, such a tool can also be used for raider "schemes". An unscrupulous seller can artificially create a defect in the registered property for sale, receive money, and then return the property to himself after a long period of time by filing a complaint to the Ministry of Justice.

Therefore, it is proposed to give the appellate body the right to cancel the chain of registration actions committed in a short period of time, such as a month - if the first illegal registration action was committed against the will of the owner or other authorized person. As an additional safeguard, the period during which the Ministry of Justice may revoke registration chain actions from the moment of the first illegal action can be limited to one year.

One month is enough in most situations to understand the problem and file a complaint to the Ministry of Justice. In this case, such a period will not significantly limit the civil turnover, because: 1) the right of the Ministry of Justice to revoke registration actions within a month does not mean a formal ban on the sale or performance of registration actions during this period; 2) there will be no significant damage to the legal relationship from the delay of one month during the resale of the property if the seller before the second sale decides to postpone the conclusion of the agreement for this time for reasons of reinsurance.

Of course, this initiative can be criticized - as it proposes to expand the powers of the Collegium of the Ministry of Justice, and recently there was a discussion about the feasibility of this institution, there

are also political and corruption risks. At the same time, the current situation with the protection of property rights clearly needs to be resolved, when a court appeal takes an unreasonably long time, and the actions of the Collegium of the Ministry of Justice in most cases do not lead to the return of property to owners. Other initiatives, such as the creation of a separate court to protect investors' rights, require an unreasonably long time to implement and substantial additional funding, so they have a lower priority.

Therefore, it is expedient to improve the institution of administrative appeal in the above-mentioned manner, while increasing the accountability and transparency of the Collegium of the Ministry of Justice. The extension of the powers of the Ministry of Justice applies only to the period during which the institution of an administrative appeal is appropriate. As the number of raider attacks decreases or the effectiveness of judicial appeals increases, the power of the Ministry of Justice to cancel registration actions should be gradually narrowed, and in the long run, this legal institution must be excluded from the law.

Directions of implementation and Action Plan for strategic priority No. 3

	Name and description of actions	Expected results	Responsible organization	Assessment of the execution term or already specified period	Actual results and key performance indicators (KPI)
1	Development, discussion of the draft law on amendments to the law No. 1952-IV to ensure effective administrative appeal of the re-registration chain according to the proposed option	Ensuring the possibility of effective return of property	Ministry of Justice, Verkhovna Rada	From 3 months	The draft law was developed and submitted to the Verkhovna Rada

Strategic priority 4.

Eliminating legal gaps and enabling interoperability between state registries and the USR and SRIPR

4.1. Develop and implement a business process for verifying documents dated before 2013

There are cases when illegal registrations are carried out on the basis of forged title documents dated before 2013, the ownership of which was not registered.

Therefore, it is advisable to develop and implement a procedure for mandatory verification of the fact of filing an application for registration of a title document (which was not registered in the SRIPR, State Register of Proprietary Rights to Immovable Property or SLC) by sending a request to the authority that issued it (if possible, through information interaction).

4.2. Harmonize the rules for checking special forms

The legislation on the legal entities' registration has a direct and clear obligation for state registrars to verify compliance with the date, the spending code of special forms, as well as the validity of the power of attorney. At the same time, such clear and direct rules are absent in the legislation on registration of property rights. It is advisable to add to the legislation on registration of property rights the rules of verification of forms and powers of attorney, similar to the legislation on registration of legal entities, which will complicate registration raiding.

4.3. Implement missing integrations

The introduction of automated, direct access of state registrars to registers, automated information systems, the holder (manager, owner, administrator) of which are state bodies, already provided by law, at the same time, has not been started.

List of integrations that need to be implemented:

- Access of registrars to registers that contain data on individuals, namely, the Unified State Demographic Register for identification by UREN, the integration of SRIPR with USR to ensure the possibility of identification of the head of the legal entity and its powers,
- integration of the USR with the Unified Register of Court Decisions, as well as the introduction of a procedure for sending a scanned copy of a court decision dated before the beginning of information interaction, with the help of information interaction with the register of court decisions,
- Create an address register based on the USESCS, develop software for information interaction with SRIPR
- Implement the information interaction (integration) with the State Register of Civil Status Acts - by providing access similar to that available to notaries.

Directions of implementation and Action Plan for strategic priority No. 4

	Name and description of actions	Expected results	Responsible organization	Assessment of the execution term or already specified period	Actual results and key performance indicators (KPI)
1	Development, discussion of the draft law on amendments to the law No. 1952-IV for introduction of business process of checking the fact of document registration till 2013	There are no cases of raiding by forging historical documents	Ministry of Justice, Verkhovna Rada	From 3 months	The draft law was developed and submitted to the Verkhovna Rada
	Development and approval of procedures for information interaction between registers	The number of raider attacks by forging documents has decreased	Ministry of Justice, NAIS, SJA, Ministry for Regional Development, Building and Housing of Ukraine, MIA	From 6 months	Approved procedures for information interaction
	Development of software for integrations between registers	The number of raider attacks by forging documents has decreased	Ministry of Justice, NAIS, SJA, Ministry for Regional Development, Building and Housing of Ukraine, MIA	From 6 months	The software is put into operation

Strategic priority 5.

Eliminate regulatory gaps on land registration, land concentration restrictions and their automated verification

5.1. Assignment of the lease agreement to significant transactions

Law 1423-IX, amended the Land Code, which provides for the secondary circulation of lease rights through the sale of rights under a contract in simple writing. The draft law No. 3774, which has already been adopted in the first reading, provides for the assignment of agreements on termination of the land lease agreement to significant transactions, which will require the consent of the general meeting for their conclusion. The need for this rule is explained by cases of forgery of termination agreements, as well as the signing of such agreements by former directors of legal entities, indicating the invalid date of drawing up. These risks also apply to the lease agreement. This implies the need for similar regulation.

5.2. Dissemination of p. 21 of the Transitional Provisions of the Land Code on the transfer to communal ownership of collectively owned CAE lands

Currently, there are many cases of registration of private ownership of reserve land, which remained after the unbundling of Collective Agricultural Enterprise (CAE) lands and had to be transferred from collective ownership to private ownership through several reorganizations. At the same time, a large number of CAEs are still in the process of termination. Therefore, it is necessary to change the wording of p. 21 of the Transitional Provisions of the Land Code so that the lands of communal property are considered to be CAE lands, which are in a state of termination or reorganization.

5.3. Settlement of disputes concerning the farm land of permanent use after the founder's death

There are cases of litigation, as well as cases of consideration of complaints by the Ministry of Justice due to the adoption by the territorial bodies of the State Geocadastré of orders to terminate the rights of permanent use of farm lands due to the founder's death. Their position can be explained by the identification of the legal status of the farm household and the individual - the founder.

The farms themselves point out that due to the founder's death, the rights of a legal entity cannot be terminated, and this position is supported by the Grand Chamber of the Supreme Court in the decision of 23/06/2020 No. 922/989/18. Given that such cases continue after the adoption of this resolution, it is advisable at the law level to determine directly the consequences of the death of the founder of the farm household, noting that the founder's death does not result in termination of the farm rights.

5.4. Recovery of lost SLC data due to their loss during land re-registration from 2013 to 2018

During the period from 2013 to 2018, the records in the SLC on land lease rights were “erased” due to technically incorrect data exchange with the SRIPR. It is necessary to study the technical possibility to return to the SLC that part of this data that does not contradict the records in the SRIPR, made after the loss of data.

5.5. Introduce safeguards for illegal registration of land plots by surveying engineers

Law 1423-IX provides for a pilot project to grant surveyors the rights of cadastral registrars. At the same time, there are no safeguards for illegal actions. The system of appealing against the decisions of cadastral registrars, like the Office of Anti-Raiding, needs to be implemented.

5.6. Elimination of opportunities for legal circumvention of legislative restrictions on land plots concentration

The design and formulation of restrictions on the concentration of agricultural land helps to circumvent these restrictions in some way. Thus, the restriction of the acquisition of a citizen’s property of only 100 hectares of land for commercial agriculture can be circumvented by changing the purpose of personal farming and sale. Thus, one person, both natural and legal, will be able to concentrate agricultural land up to 10 thousand hectares.

The access of foreigners and legal entities to the acquisition of agricultural land is limited, which obviously affected the demand and negatively affected the prospects for rising prices for such land. In such circumstances, in unequal conditions are those potential buyers who, for reasons of transaction security or ethics, are not ready to use this opportunity - to concentrate on a legal entity more than 10 thousand hectares of land under IFH. Therefore, it is advisable to prohibit the change of purpose of the CFH lands until January 1, 2024.

5.7. Extension of the procedure for checking the concentration of more than 10 thousand hectares with checking the concentration of more than 100 hectares

In accordance with the provisions of the Law of Ukraine “On amendments to certain legislative acts of Ukraine on the conditions of circulation of agricultural land”, amendments are made to the Land Code of Ukraine, which provides for the following restrictions on the concentration of land:

- prohibition of any person to acquire ownership of more than 10,000 hectares of agricultural land (Part 2 of Art. 130), including through indirect control through a share in the authorized capital;
- prohibition of the acquisition of commercial agricultural land by legal entities (as well as land for the management of personal farm household, allocated to the owners of shares) and

commercial farming land by citizens of Ukraine with an area of more than 100 hectares (p. 15 in Section X “Transitional Provisions”).

At the same time, part 4 of Article 130 of the Land Code (from 01/07/2021) provides for approval by the Cabinet of Ministers of the procedure for verifying compliance of the purchaser or owner of agricultural land with the requirements, specified in this article, but not the requirements of transitional provisions.

Therefore, it is advisable to make changes to the legislation:

- Initiate amendments to Article 130 of the Land Code of Ukraine, which provides for the right of the Cabinet of Ministers to establish the procedure for inspection not only the requirements of this article, but also other requirements;

or

- Add a rule on the need to check the concentration of 100 ha (requirements of p. 15 in section x “transitional provisions” of the land code of Ukraine) to the procedure for notarial acts by notaries of Ukraine, approved by the order of the ministry of justice of 22/02/2012 no. 296/5.

5.8. Implementation of automated verification of concentration limits

The Resolution of the Cabinet of Ministers of 16 June 2021 No. 637 provides for the procedure for verifying the concentration restrictions, established by Article 130 of the Land Code of Ukraine. This procedure provides that the notary manually searches a large number of registers and databases, compares data between different registers, and if necessary - calculates the area of land, including indirect control (through legal entities). The complexity of these searches leads to the possibility of errors, so it is necessary to implement an IT solution to automate them. The software, which will search and compare data from different registers, can be further refined and used for automatic monitoring.

Directions for implementation and Action Plan for strategic priority No. 5

Name and description of actions	Expected results	Responsible organization	Assessment of the execution term or already specified period	Actual results and key performance indicators (KPI)
Development and discussion of the bill and the necessary bylaws: on referring the contract of sale of land lease to significant transactions, changing the p. 21 of the Transitional Provisions of the Civil Code,	Reducing opportunities for raider attacks	State Geocadastre, Ministry of Agrarian Policy, SE “Center of the State Land Cadastre”, Ministry of Justice	From 6 months	The draft law was developed and submitted to the Verkhovna Rada

	Name and description of actions	Expected results	Responsible organization	Assessment of the execution term or already specified period	Actual results and key performance indicators (KPI)
	the consequences of the farm founder's death, safeguards of illegal registrations by surveying engineers, on checking the concentration of more than 100 hectares, ban on changing the purpose from CFH to IFH until 2024				
	Improvements to SRIPR, SLC and USR, which will enable automated inter-registry searches to verify concentrations		State Geocadastre, Ministry of Agrarian Policy, SE "Center of the State Land Cadastre", Ministry of Justice, NAIS	From 6 months	The software is put into operation
	Development and implementation of a technical solution in the SLC to restore lost data on lease rights from 2013 to 2018	Lost data restoration	of the Ministry of Agrarian Policy, State Enterprise "Center DZK"	From 6 months	The software was put into operation, the data was restored

Strategic priority 6. Enable and support monitoring by Non-Governmental Organizations

The activities of state bodies, including the Ministry of Justice, are associated with corruption risks, especially during political turbulence. This necessitates monitoring of raids by non-governmental organizations.

It is advisable to carry out the following monitoring:

- 1) monitoring based on indirect quantitative indicators. For example, the number of cases, the number of satisfied applications, the number of rulings in criminal proceedings for crimes related to raiding (Art. 2062 of the Criminal Code of Ukraine). Data for this purpose can be collected by special software on the basis of open data sets, data of the Unified Register of Court Decisions, published data of the Ministry of Justice on registration of complaints in the field of registration, statistics of criminal proceedings from the website of the Prosecutor General's Office.

The concept of such monitoring is described in detail in the RaidBarometer project.

- 2) monitoring in terms of raiding schemes and case-study.

For this, the analytical center or its lawyers can get access to the USR and SRIPR with the ability to access electronic copies of documents on state registration (such a possibility is provided by law). In addition, it is advisable to periodically carry out a case-study according to the example set out in the annex to this document.

The increase in transparency in the activities of the Ministry of Justice, which took place in 2019, in particular the publication of the decisions of the Board of the Ministry of Justice, provided opportunities for analysis of statistics, as well as case studies.

It is advisable to increase the degree of transparency of the Ministry of Justice, as well as support for public monitoring initiatives. The RaidBarometer will provide an opportunity to monitor the scale of the raiding phenomenon, monitoring in terms of raiding schemes and case-study - the existence or termination of certain schemes, phenomena, risks.

Part 3.
Next steps

The action matrix that was provided at the document for each of the initiatives contains actions that were formulated similarly to the wording of the Government's strategic documents and action plans. It is also obvious that the implementation of each of the initiatives requires a detailed project plan, advocacy, more detailed development, discussion, approbation by pilot projects. In addition, clarifications may be needed, taking into account progress on other projects. Therefore, only a high-level generalized plan with next steps can be presented in the document. As can be seen from the order of presentation of priority initiatives, it is expedient to divide them into two sections: the first - in the field of management of the Ministry of Justice, the second - in the field of management of the Ministry of Agrarian Policy.

Within the sphere of management of the Ministry of Justice, we propose the following next steps:

- 1) Regarding the elements of risk management subsystems for SRIPR and USR, which do not require further discussion (automatic monitoring, «step-by-step scenarios», «electronic cabinet» in part of communications and administrative services) to:
 - make the description and schemes of all business processes of registration actions in SRIPR and USR, the standardized lists of documents for each business process;
 - develop a design of changes to the functions of the software and additional validators (where possible), as well as technical requirements for further development of the software, which will include automated monitoring, «step-by-step scenarios», «electronic cabinet» in the part of notifications and administrative services);
 - prepare significant changes or a new version of the Procedure for registration of rights and the Procedure for maintaining the register, with a description of scenarios and standard lists of documents for each scenario (already on the basis of previously developed lists of documents and detailed descriptions of all business processes);
 - prepare significant changes or a new version of the Control Procedure (with monitoring criteria);
 - prepare amendments to the law to provide a legal basis for the functioning of the «electronic cabinet» in part of communications and administrative services.
- 2) Regarding the elements of risk management subsystems for SRIPR and USR, which require further discussion («Four eyes principle», «electronic cabinet» in part of blocking and confirmation of registration actions by the owner):
 - to conduct additional discussion, and further - advocacy of these initiatives;
 - prepare a package of amendments to the laws in the part of the «Four eyes principle» and the «electronic cabinet» in the part of blocking the transfer of ownership - for such a discussion.
- 3) According to the existing project plans to continue work on the creation of the Electronic Notary System and its integration with other registers (to implement «E-notary»), as well as the implementation of the missing integration between registers (according to the list).
- 4) Prepare, discuss and advocate for amendments to laws to:
 - temporarily, for the period of operation of the institute of administrative appeal, increase its efficiency by granting the authority to cancel the "chain" of re-registrations;
 - introduction of the business process of verification of documents dated before 2013, the right to which was not registered;
 - harmonization of the rules for checking special forms, by introducing for SRIPR rules similar to the USR.

Within the sphere of management of the Ministry of Agrarian Policy, we propose the following next steps:

- 1) Prepare, discuss and advocate for amendments to laws to:
 - assignment of the lease agreement to significant transactions;
 - dissemination of paragraph 21 of the Transitional Provisions of the Land Code on the transfer to communal ownership of collectively owned CAE lands (collective agricultural enterprise), which are in the process of termination, or reorganized;
 - settlement of disputes concerning the farm lands of permanent use after the founder's death;
 - elimination of opportunities for legal circumvention of legislative restrictions on land plots concentration;
 - extension of the procedure for checking the concentration of more than 10 thousand hectares, to check the concentration of more than 100 hectares.
- 2) Carry out a technical assessment of the possibility of Recovery lost SCC data due to their loss during the re-registration of land ownership from 2013 to 2018.
- 3) Develop a design of safeguards for illegal registration of land plots by surveying engineers.
- 4) Develop software design and specifications for automated concentration limit checks.

ANNEXES

Annex 1. Analysis of gaps in legislation and identification of risks

1.1. Legislation on property rights registration

- Law of Ukraine “On state registration of real rights to immovable property and their encumbrances”
<https://zakon.rada.gov.ua/laws/show/1952-15#Text>
- Resolution of the Cabinet of Ministers of Ukraine “On Approval of the procedure for maintaining the state register of real rights to immovable property”
<https://zakon.rada.gov.ua/laws/show/1141-2011-%D0%BF#Text>
- Resolution of the Cabinet of Ministers of Ukraine “On state registration of rights to immovable property and their encumbrances”
<https://zakon.rada.gov.ua/laws/show/1127-2015-%D0%BF#Text>
- Order of the Ministry of Justice “On approval of the Procedure for using the data of the Register of property rights to immovable property, the Unified Register of prohibitions on alienation of property rights, the State register of mortgages and the state register of encumbrances on movable property”
<https://zakon.rada.gov.ua/laws/show/z2102-12#Text>
- Order of the Ministry of Justice and the Ministry of Economy “On approval of the Procedure for interaction of information systems of the State register of real property rights and the state land cadastre”
<https://zakon.rada.gov.ua/laws/show/z1177-20#n397>
- Order of the Ministry of Justice “On regulating relations on state registration of real rights to immovable property and their encumbrances, state registration of legal entities and individuals – entrepreneurs”
<https://zakon.rada.gov.ua/laws/show/z1568-15#n21>
- Order of the Ministry of Justice “On Dictionaries of the State Registry of Immovable Property Rights.”
<https://zakon.rada.gov.ua/laws/show/z1150-12#Text>
- Order of the Ministry of Justice and the Ministry of Regional Development “On approval of the Procedure for information interaction between the State Registry of Immovable Property Rights and the Unified Register of Documents that give the right to carry out preparatory and construction work and indicate the acceptance into operation of completed construction projects, information about returning for revision, refusal to issue, cancellation and annulment of these documents”
<https://zakon.rada.gov.ua/laws/show/z0270-17#top>
- Order of the Ministry of Justice and the SJA of Ukraine “On information interaction between the State Registry of Immovable Property Rights, the Unified State Register of Legal Entities, Individuals - Entrepreneurs and Public Associations and the Unified State Register of Court Decisions”
<https://zakon.rada.gov.ua/laws/show/z0118-19#top>

1.2. Legislation on land plots registration

- Law of Ukraine “On Land Management”
<https://zakon.rada.gov.ua/laws/show/858-15/print1359360373962868#Text>
- Land Code of Ukraine
<https://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2768-14&p=1243760142497024#Text>
- Law of Ukraine “On State Land Cadastre”
<https://zakon.rada.gov.ua/laws/show/3613-17#Text>
- Resolution of the Cabinet of Ministers “On approval of the Procedure for maintaining the State Land Cadastre”
<https://zakon.rada.gov.ua/laws/show/1051-2012-%Do%BF#Text>
- Resolution of the Cabinet of Ministers “On approval of the Procedure for conducting an inventory of land management documentation, making changes and recognizing as invalid some acts of the Cabinet of Ministers of Ukraine”
<https://zakon.rada.gov.ua/laws/show/948-2020-%Do%BF#n240>
- Order of the State Geocadastre “On approval of standard Information and Technological cards of administrative services provided by the State Service of Ukraine for Geodesy, Cartography and Cadastre”
<https://zakon.rada.gov.ua/rada/show/vo215877-17#Text>
- Resolution of the Cabinet of Ministers “On the State Service of Ukraine for Geodesy, Cartography and Cadastre”
<https://zakon.rada.gov.ua/laws/show/15-2015-%Do%BF#Text>
- Order of the State Geocadastre “On issues regarding the disclosure of data sets”
<https://zakon.rada.gov.ua/laws/show/15-2015-%Do%BF#Text>

1.3. Legislation on legal entities registration

- Law of Ukraine “On State Registration of Legal Entities, Individuals - Entrepreneurs and Public Associations”
<https://zakon.rada.gov.ua/laws/show/755-15/page#Text>
- Resolution of the Cabinet of Ministers of Ukraine “On some issues of providing information from the Unified State Register of Legal Entities, Individuals - Entrepreneurs and Public Associations”
<https://zakon.rada.gov.ua/laws/show/593-2016-%Do%BF#Text>
- Order of the Ministry of Justice “On approval of the Procedure for state registration of legal entities, individuals - entrepreneurs and public associations that do not have the status of a legal entity”
<https://zakon.rada.gov.ua/laws/show/zo200-16#Text>
- Order of the Ministry of Justice “On approval of the Procedure for providing information from the Unified State Register of Legal Entities, Individuals - Entrepreneurs and Public Associations”
<https://zakon.rada.gov.ua/laws/show/zo839-16/page#Text>

- Order of the Ministry of Justice “On regulating relations on state registration of real rights to immovable property and their encumbrances, state registration of legal entities and individuals – entrepreneurs”
<https://zakon.rada.gov.ua/laws/show/z1568-15#n21>
- Order of the Ministry of Justice “On approval of the Procedure for functioning of the portal of electronic services of legal entities, individuals – entrepreneurs and public associations that do not have the status of a legal entity”
<https://zakon.rada.gov.ua/laws/show/z0427-16#Text>
- Order of the Ministry of Justice “On approval of the Requirements for writing the name of a legal entity, its separate subdivision, public formation that does not have the status of a legal entity, except for the organization of a trade union”
<https://zakon.rada.gov.ua/laws/show/z0367-12#top>
- Order of the Ministry of Justice and the SJA of Ukraine “On information interaction between the State Registry of Immovable Property Rights, the Unified State Register of Legal Entities, Individuals - Entrepreneurs and Public Associations and the Unified State Register of Court Decisions”
<https://zakon.rada.gov.ua/laws/show/z0118-19#top>
- Order of the Ministry of Justice “On approval of the List of information to be disclosed in the form of open data, managed by the Ministry of Justice of Ukraine”
https://zakon.rada.gov.ua/laws/show/v897_323-16#Text

Annex 2. Prerequisites and history of “registration raiding”

Today, “registration raiding” is widespread in Ukraine, which consists in seizing business and assets (or control over them) by illegally interfering in the work of state registers and manipulating their information, including by forging documents. Registration raiding usually involves changing data in two registers: USR and SRIPR.

This section provides information on the prerequisites and development of “registration raiding”.

2.1. Prerequisites for “registration raiding” in SRIPR

Until 1 January 2013, the registration of property rights was carried out on decentralized basis. In particular, the rights to immovable property were registered by several hundred technical inventory bureaus, which were subordinated to territorial communities, and land rights were registered by the state land cadastre bodies.

The procedure of alienation of immovable property and land plots was long and complicated, as it required obtaining an extract (certificate-characteristics), a notarial transaction, an ownership registration. As the TIB as an institution existed for many years and was subordinated to the local community, and the function of property registration was combined with the functions of technical inventory, there were few cases of registration raiding (obviously illegal re-registration of property rights).

Corruption was mostly in the service sector, that is, corruption services were “speeding up procedures” or “skipping the line”, etc. Illegal re-registrations were mostly carried out on the basis of court decisions: either illegal or forged (less often). The main problems in the field of immovable property were the lack of a centralized state register and maintaining a register on paper (the speed of data digitization depended on the will of each individual TIB), as well as the excessive complexity of procedures.

As for the bodies of the state land cadastre, the same could be stated – a small number of cases of registration raiding before 2013 and service corruption. The reasons for this situation are the complexity and duration of the procedures, the “technical” nature of the function of the SLC bodies for registration of rights to land, which arose on the basis of decisions of other bodies (the decision on the allocation of land plots was taken by the relevant LG and EB).

After 1 January 2013, the powers to register rights were transferred to the state registrars of the territorial bodies of the Ministry of Justice, while the staff of the registration bodies was formed, as a rule, with the involvement of new personnel, the organizational and technical base had to be created anew. So, from this point, three problems arose: 1) unfilled “new” register with data, 2) loss of institutional capacity and institutional memory of TIB enterprises and SLC bodies, 3) lack of connection between registration of property rights and technical inventory. The lack of integration between the rights register and the SLC register was added to this.

At the same time, clearly corrupt rules were introduced, in particular, the need to register ownership of objects with an area of more than 5 thousand square meters and, according to decisions of economic courts, by a nationwide body - the State Registration Service of Ukraine.

Since 2013, the electronic system of the state land cadastre has also been in operation. As with the story of the SRIPR, one of the problems of transition to the new system was and remains the problem of incomplete data in the system, which are stored on paper. At the same time, it is possible to quickly fill with historical data – taking into account the need to develop technical

documentation for land. In addition, for a long time, there was a problem of errors and failures in the integration of SLC and SRIPR.

The State Registration Service of Ukraine was liquidated in 2015. The subdivisions of the Ministry of Justice, which were responsible for the state policy in the field of state registration, were subsequently reorganized several times with significant changes in the personnel. After the liquidation of the territorial subdivisions of the State Registration Service, due to organizational reasons, a certain part of the archive of registration cases was probably lost and not transferred to the appropriate storage places.

On 1 January 2016, the principle of extraterritoriality was introduced and a system of accredited entities (utilities and state-owned enterprises and their branches, to which the powers of state registration of property rights were delegated) was introduced. Improving service functions and speeding up procedures also resulted in an increase in the number of illegal registrations of rights. The cases of unauthorized registrations have also become frequent.

2.2. Prerequisites for registration raiding in USR

Until 2011, the schemes for illegal registration actions were usually limited to forging a power of attorney or obtaining a clearly illegal court decision. Another way of illegal redistribution of assets at that time was pressure through law enforcement agencies.

During 2011-2016, the law on state registration contained a rule according to which any registration actions, including actions to change the participants of a legal entity, could be registered on the basis of "a copy of the original (photocopy, notarized copy) of one of such documents: application, agreement, other document on the transfer or transfer of a participant's share in the authorized capital of the company".

That is, it was possible to submit a photocopy of a forged document on the transfer of the right to a share and to carry out registration actions on its basis. Subsequently, there were repeated changes in the location of the legal entity, which resulted in the sending of the paper version of the case to another region. During sending, the case was "lost" at the post office, which made it impossible to conduct an examination of forged documents - given their absence.

From 2016 to August 2019, according to media reports, illegal actions in the USR were carried out mainly by state registrars of so-called accredited registration entities, i.e., state or municipal enterprises, which received the right to conduct state registration activities under a special procedure. Often such actions were carried out by unknown persons as a result of unauthorized access to the register due to the theft of electronic keys, interference in the information systems of authorized users of the register. In such cases, these actions could be carried out even without drawing up any documents.

According to the media, there were even cases of "fictitious" accredited entities, as well as the work of "fictitious" registrars in them. For example, when, after illegal actions, it turned out that the person during the entire existence of the registrar's powers was actually located in the uncontrolled territory of the Donetsk or Luhansk region and did not go to the controlled territory.

2.3. Anti-raider initiatives

Due to the negative reaction of society to cases of raiding, the Ministry of Justice initiated changes to the legislation in several stages (the so-called “anti-raider laws”):

- Law of Ukraine “On amendments to certain legislative acts of Ukraine concerning the improvement of state registration of real estate rights and protection of property rights” of 6 October 2016 No. 1666-VIII2;
- Law of Ukraine “On amendments to certain legislative acts of Ukraine on resolving the issue of collective land ownership, improving land use rules in agricultural land, preventing raids and stimulating irrigation in Ukraine” of 10 July 2018 No. 2498-VIII3.

The effective measures were the restriction of the principle of extraterritoriality (within the oblast), as well as the termination of the existence of branches of accredited entities as a scheme to circumvent the restriction of extraterritoriality.

In autumn 2019, in pursuance of the Decree of the President of Ukraine No. 542/2019 of 22/07/2019 “On Measures to Counter Raiding”, amendments were made to the legislation. In particular, the Law of Ukraine “On amendments to certain legislative acts of Ukraine on the protection of property rights” dated 03/10/2019 9159-IX4 excluded the legal institute of accredited subjects of registration from the legislation. In 2020, two-factor authorization was introduced for access to SRIPR and USR, which reduced the number of cases of registration raiding.

However, a significant number of measures provided for by the Decree of the President of Ukraine No. 542/2019 and the Law of Ukraine of 03/10/2019 No. 159-IX4 have not been implemented yet or have not been fully implemented. For example, automated monitoring of risky transactions, integration between registers and providing full access to other registers.

It can be stated that the phenomenon of registration raiding in the SRIPR and the USR also takes place as of the time of this report, but so far, it mainly consists in the commission of obviously illegal actions by state registrars, but not in unauthorized registrations.

Annex 3. Analysis of existing “schemes” of registration raiding and gaps in legislation

In this document, we consider cases of unauthorized and other illegal actions in the USR and SRIPR. Information on actual and possible illegal schemes is presented in accordance with the following categories: unauthorized registrations, illegal registrations on the basis of allegedly forged documents; obviously illegal actions of registrars. The case studies presented in this section were conducted selectively. Namely, the cases of raiding covered in the media, the conclusions of the Ministry of Justice for January 2021 and July 2021 (partially) were analyzed.

3.1. Unauthorized registrations

Before the introduction of two-factor authentication, unauthorized registration actions were common. The last case of unauthorized registrations known from media publications is dated August 2020, i.e., immediately before the USR update (the update provided for two-factor authorization). The case was accompanied by an application by the registrar, whose key was allegedly stolen, to the Ministry of Justice with a request to cancel all unauthorized actions. The registration actions were canceled. More information at the link:

<https://minjust.gov.ua/files/general/2020/08/07/20200807212210-31.pdf>

We also note that situations with theft of electronic keys, as a rule, are not properly investigated. Therefore, it is not clear whether the key was actually stolen by an intruder, or the story of the key theft is really a “cover story” for the registrar or notary himself. However, there were cases when the keys theft was established by investigation.

In September 2019, police officers exposed a criminal scheme in which former employees of the state executive service removed information about encumbrances from the registers for a fee with the help of stolen keys. Technically, the theft of keys was carried out by phishing emails with the virus. At the same time, access to the register was carried out from the forest belt using the mobile Internet, SIM cards were used once. For several years of the existence of the scheme, several thousand operations were performed to cancel encumbrances.

<https://www.npu.gov.ua/news/kiberzlochyni/pravooxoronczi-zatrimali-organizatoriv-masshtabnoji-sxemi-pererejstraczi-areshtovanogo-majna/>

The absence of cases of unauthorized registration after the introduction of two-factor authorization is confirmed by NAIS and the Ministry of Justice.

3.2. Regarding registrations based on allegedly forged documents

The most common cases of registration raiding in SRIPR, which are related to forgery ² of documents, are:

- forgery of court decisions;
- forgery of “historical” documents;
- forgery of additional agreements on termination of land lease agreements.

3.3. Regarding forgery of “historical” documents

The scheme with forgery of “historical documents” in general was that, using the lack of data in the “new” as of 01/01/2013, the attackers forged either a notarial document or a court decision of the gos (or made a duplicate of the real, but cancelled document) and registered the right of ownership on their basis. In April 2021, the lease right was registered on the basis of a presumably forged lease agreement for 2005, indicating the date that preceded the state act on the right of ownership:

<https://minjust.gov.ua/files/general/2021/07/12/20210712111052-86.pdf>

Another case may serve as an illustration of this situation. The Ministry of Justice revoked the registered ownership of the recreation center in the absence of any documents, only a technical passport was available. At the same time, no information of the rights registered before 01/01/2013 was required. The right of another person (the complainant) was registered on paper.

<https://minjust.gov.ua/files/general/2021/01/19/20210119105959-60.pdf>

As of now, such cases have become less common due to the filling of the register and the addition of data from the electronic registers of the TIB to the SRIPR. However, we received information about the following schemes from anonymous interviews:

- Forgery of the title document, the ownership of which was not registered in the TIB until 2013. In this case, the state registrar must not make a request to the TIB.
- Forgery of a contract certified on the stock exchange or a contract in simple written form. Until 2004, real estate could be sold under contracts, certified on the stock exchange (for contracts for apartments between individuals) or under contracts in simple written form (contracts between legal entities). According to the Central Committee of the Ukrainian SSR, only the contract of purchase and sale of a residential building is subject to mandatory notarization.
- Agreements on the compensation for release from obligations under Article 600 of the Civil Code of Ukraine.

² The Board of the Ministry of Justice does not have the tools to establish the fact of forgery of documents - due to the lack of appropriate authority and because only electronic copies of documents are investigated. Therefore, when referring to the forgery of documents, we mean complaints with a reference to forgery, or a high probability of forgery.

3.4. Other cases of forgery, in addition to historical documents

- Forgery of powers of attorney. The link below shows the conclusion of the Collegium of the Ministry of Justice, which indicates the possible forgery of powers of attorney, there is a mention that the Ministry of Justice is not authorized to investigate the facts of forgery, the registrations based on notarial actions cannot be canceled due to the absence of cancellation of the most notarial actions. The complaint was partially satisfied due to violation of territorial jurisdiction.
<https://minjust.gov.ua/files/general/2021/01/05/20210105190337-35.pdf>
- Probable forgery of a court decision. The state registrar registered the ownership as a result of the transfer of real estate rights on the basis of a court decision, although, in fact, the court decision was made on the real estate at another address.
<https://minjust.gov.ua/files/general/2021/01/12/20210112155959-73.pdf>
- State registration of termination of a prohibition on the basis of a court decision in respect of which the Unified Register of Court Decisions contains information on the prohibition of its publication, in the absence of a duly certified copy of this decision. The decision was probably forged.
<https://minjust.gov.ua/files/general/2021/01/19/20210119104637-50.pdf>

The Law of Ukraine “On amendments to certain legislative acts of Ukraine concerning the protection of property rights” dated 03/10/2019 No. 159-IX⁴ introduced a rule on the need to state notarial documents on special forms of acts of acceptance-transfer, statements of withdrawal, decisions of the general meeting. In addition, part 2 of Article 6 of the Law of Ukraine “On state registration of legal entities, individuals – entrepreneurs and public associations,” included paragraph 33, which obliges the state registrar to verify the use of special forms of notarial documents according to the register.

However, such rules do not make it impossible to forge, since it is not excluded that an attacker selects the number of the notary form, which was used for the same purpose as the forged document. According to media reports, it is also possible to illegally acquire notary forms, which will be stamped with the corresponding use in the register.

In the conclusion of the collegium of the Ministry of Justice, which became the basis for the publication of order No. 260/5 of 21/01/2021, a similar scheme is just illustrated. In particular, the Ministry of Justice established that the act of acceptance and transfer of the share was created on a notarial form, according to which another purpose of use in the Unified Register of special forms of notarial documents was indicated.

<https://minjust.gov.ua/files/general/2021/01/21/20210121131450-87.pdf>

As noted, the Ministry of Justice avoids concluding that documents have been forged, even in obvious circumstances, and cancels such registration actions on formal grounds.

In the case of the following link in the Unified Register of Special Notarial Forms it was indicated that it was spent on a date different from the date of the document submitted for registration:

<https://minjust.gov.ua/files/general/2021/01/19/20210119182039-67.pdf>

3.5. Regarding the obviously illegal actions of the registrars

The number of cases of apparently illegal actions of state registrars is increasing, compared to cases of forgery. Below is a detailed description of such cases. Based on the results of consideration of complaints, in most of the above cases, the Ministry of Justice canceled (forever, which indicates the degree of insolence of the violation) the access for state registrars.

SRIPR:

- **Registration of rights in the absence of documents.** The following are registrations made obviously in the absence not only of the necessary and correct documents but also sometimes any supporting documents. After considering complaints about these registration actions, in most cases, the Ministry of Justice canceled (forever) the access to the register for state registrars and notaries.

So, for January 2021, the following cases are available:

- Amendments to the registered rights to real estate in the ARC, without statements of the owner and no documents. Technically, the registration was carried out on the basis of an application for registration of rights to land that had nothing to do with the real estate in respect of which the register was amended.
<https://minjust.gov.ua/files/general/2021/01/19/20210119105849-35.pdf>
- Termination of encumbrance in the absence of any documents.
<https://minjust.gov.ua/files/general/2021/01/19/20210119104004-57.pdf>
- Registration of ownership of the apartment on the basis of only one technical passport.
<https://minjust.gov.ua/files/general/2021/01/19/20210119182458-14.pdf>
- Registration of ownership by changing the address of the object in the ARC, without making electronic copies, with inconsistencies with valid data. Probably without any documents at all.
<https://minjust.gov.ua/files/general/2021/01/12/20210112160001-71.pdf>
- Registration of ownership on the basis of a mortgage warning, although the ownership has already passed to another owner, which is different from the mortgagor.
<https://minjust.gov.ua/files/general/2021/01/19/20210119104046-66.pdf>
- **Illegal legalization of construction and reconstruction, seizure of attics and basements of apartment buildings, registration of common areas.** These schemes also provide for the illegal actions of a technical inventory engineer, who notes that, for example, the reconstruction of a building with a doubling of the area did not need a building permit or includes common areas to the area of the apartment, but indicates that the area has increased as a result of reconstruction. As an illustration of the possibility of such violations, we present the following case. The Ministry of Justice canceled the registration with the opening of the section without documents confirming the assignment of a postal address and land rights.
<https://minjust.gov.ua/files/general/2021/01/19/20210119104340-50.pdf>
- **Illegal registration of land rights.** In this area, illegal registration is usually carried out for the purpose of illegal seizure of crops or obtaining reserve land for use or ownership.

We can cite the following cases:

- Registration of the right to permanent use of a land plot by a farm ³ is contrary to the law.
<https://minjust.gov.ua/files/general/2021/01/05/20210105190335-30.pdf>

³ The issue of farm land, in particular inheritance and succession of permanent use rights, needs additional regulation.

- Registration of termination of the right to lease and sublease in the absence of documents.
<https://minjust.gov.ua/files/general/2021/01/12/20210112160000-89.pdf>
- Registration of the transfer of the right to lease agricultural land as a result of inheritance, although the terms of the lease agreement provided for its termination in the event of the death of the testator. Electronic copies are missing.
<https://minjust.gov.ua/files/general/2021/01/19/20210119103741-51.pdf>
- Registration of the termination of the lease right, although it was valid until 2027 according to the contract.
<https://minjust.gov.ua/files/general/2021/01/19/20210119182406-85.pdf>
- Registration of the right to lease land in the absence of registration of property rights for individuals - lessors.
<https://minjust.gov.ua/files/general/2021/01/21/20210121131345-20.pdf>
- Registration of the right to lease land in the absence of the fact of concluding a lease agreement. There are no electronic copies.
<https://minjust.gov.ua/files/general/2021/01/19/20210119103815-31.pdf>
- **“Collective-private property” scheme (reserve lands).** By the Law of Ukraine dated 10 July 2018 No. 2498-VIII, clause 21 of the Transitional Provisions was introduced into the Land Code of Ukraine, according to which the lands of collective agricultural enterprises are terminated (except for land plots that were in private ownership on the date of entry into force of this Law), are considered the property of territorial communities on the territory of which they are located. This norm did not regulate the situation with the lands of collective farms that are reorganized or are in a state of termination. This makes it possible, through several reorganizations of collective agricultural enterprises, to transfer the reserve lands, which in theory must be communal property, to the private ownership of a legal entity. We provide links to the conclusions of the collegium of the Ministry of Justice, which illustrate this problem:
 - <https://minjust.gov.ua/files/general/2020/12/22/20201222110020-46.pdf>
 - <https://minjust.gov.ua/files/general/2020/12/17/20201217160518-23.pdf>
 - <https://minjust.gov.ua/files/general/2021/02/17/20210217124648-26.pdf>

The situation differs in that in one case, the reorganization of the collective agricultural enterprise (CAE) was completed, and in the other, it was not. This situation makes it possible to register ownership of the LLC in the following steps: 1. CAE is reorganized into a production cooperative. 2. The cooperative is reorganized into a private lease enterprise. 3. The enterprise is reorganized into a limited liability company by allocation. The land is registered as property allegedly on the basis of “succession”.

As a result, the land, which was previously the collective property of individuals – collective farmers, was registered in private ownership.

- **Illegal registration of rights under mortgage warning.**
 - Registration of ownership on the basis of a mortgage warning in violation of the rules of the moratorium on foreclosure on mortgage property provided as security for foreign currency loans.
<https://minjust.gov.ua/files/general/2021/01/12/20210112160001-22.pdf>
 - Registration of property rights under a mortgage warning in the absence of delivery of a claim for payment of a debt. It should be noted that the legislation has already changed,

and now there is enough evidence only of sending such a request, in contrast to the legislation, which was in effect at the time of the impugned registration, which provided for the provision of evidence of delivery (receipt) of such a request.

<https://minjust.gov.ua/files/general/2021/01/15/20210115151923-20.pdf>

- Registration of the transfer of ownership of the mortgage clause on the basis of improper documents on the service of the notice of the claim for payment of the debt.
<https://minjust.gov.ua/files/general/2021/01/19/20210119104416-54.pdf>

- **Registration of ownership of an object that is not subject to registration.** The Ministry of Justice abolished the ownership of such an object (power line).
<https://minjust.gov.ua/files/general/2021/01/19/20210119104523-97.pdf>

Based on the analysis, we can state that very common cases are the commission of intentional actions by state registrars, despite the subsequent punishment.

USR:

- **Taking registration actions on the basis of a court decision that is absent in the Unified State Court Register of Court Decisions** (most likely, it was fake). The state registrar, on the basis of a non-existent court document, canceled the registered injunctions, after which the private notary registered the change of owners and the chief.
<https://minjust.gov.ua/files/general/2020/12/18/20201218155141-41.pdf>
- **Violation of quorum.** In the case of the link, the registration was carried out by the state registrar in accordance with the decision of the conference of the garden society, which had 12 members, although there should have been a minimum of 14.
<https://minjust.gov.ua/files/general/2021/01/19/20210119103929-97.pdf>
- **Taking actions in violation of a court injunction.** In January 2021, the Ministry of Justice cancelled more than 20 decisions of the same state registrar on the complaints of the same applicant, where it was a question of taking registration actions in violation of a direct court order.
<https://minjust.gov.ua/files/general/2021/01/15/20210115142020-27.pdf>
- **Taking actions on the basis of unsigned documents.** According to this link, there is information about the fact of increase of the authorized capital in favour of a third party, change of the chief on the basis of the minutes of the general meeting with missing signatures:
<https://minjust.gov.ua/files/general/2021/01/19/20210119104802-73.pdf>
<https://minjust.gov.ua/files/general/2021/01/19/20210119104559-58.pdf>
- **Making a record of the prohibition in accordance with the court decision in the absence of such a decision.** The link contains the order of the Ministry of Justice to cancel the decision of the private notary, who registered such a prohibition. Moreover, in the Unified register of court decisions, there was a decision on refusal in application of such prohibition.
<https://minjust.gov.ua/files/general/2021/01/19/20210119103852-49.pdf>
- **Execution of the registration action by the decision of the general meeting, signed under powers of attorney that were not actually issued.** The complainant indicated that the powers of attorney had not been valid for a long time. At the same time, the powers of attorney were not presented to the state registrar at all.
<https://minjust.gov.ua/files/general/2021/01/15/20210115151922-34.pdf>
<https://minjust.gov.ua/files/general/2021/01/15/20210115151922-20.pdf>

Annex 4. Conclusions on the results of the analysis of gaps in the legislation on registration, as well as the resolution of the Cabinet of Ministers on land concentration ⁴

4.1. Gaps in legislation on registration:

- Possibility to perform a notarial act of registration of property rights on the basis of presenting a forged identity document (passport).

Reasons:

- the absence in the legislation of the obligation of the state registrar to scan the passport (another identity document);
 - lack of access by state registrars to the State Demographic Register of Ukraine;
 - the lack of filling this register with electronic data (applications for a passport with photographs are often stored exclusively in paper form);
 - the lack of additional human verification mechanisms (such as the owner's e-cabinet).
- Possibility of registration of the right on the basis of the forged power of attorney, or another document which is subject to the notarial certificate (for example, the act and the decision on contribution to the authorized capital).

Reasons:

- the possibility of ambiguous interpretation of the rules on the obligation of the state registrar to scan the power of attorney, the lack of direct indication of such an obligation;
 - the state registrar has no obligation to check the use of special forms, the absence of scans of powers of attorney in the registry.
- Possibility of registration of rights on the basis of fake title documents dated before 2013, the ownership of which was not registered.

Reasons:

- lack of registration data in the SLC and SRIPR carried out on paper;
 - there is no obligation to further verify such title document by applying to the entity that issued it.
- Possibility of registering the termination of the right to lease a land plot on the basis of a fake termination agreement.

Reasons:

- since such an agreement is not subject to notarization;
- the lack of additional methods, lack of additional mechanisms for verification of the person whose right is terminated (such as the owner's e-cabinet).

⁴ This section presents preliminary results of the analysis, which were previously sent to the World Bank, with corrections based on the comments of the Ministry of Justice. The final results are provided in the risk matrix.

- The possibility of registering the termination of the right to lease a land plot on the basis of an agreement on termination of an agreement, signed by the director in excess of his powers, when there is no information on the restriction of powers in the USR, or it is indicated “in accordance with the statute”.

Reason:

- lack of integration of the SRIPR with the USR for verification by the state registrar of the rights to limit the powers of the director, including under the statute.
- Possibility of registration of rights on the basis of an incomplete set of documents/in the absence of documents.

Reasons:

- The SRIPR software does not provide for the function of “step-by-step scenarios” in order to indicate a list of documents, mandatory for acceptance of applications during any registration action, without which it is impossible to complete the action or go to the next step during registration.
- Possibility of registration of the right and registration of change of the director/participants of LLC on the basis of the forged document, which is subject to notarization with a selection of date and code of spending of the special notarial form, which was used for the present document (i.e. checking the date and code of the form does not help to establish forgery).

Reason:

- Lack of additional fields in the Unified Register of special forms of notarial documents/database with scanned copies of notarized documents.
- Possibility of registering the right of private ownership of the reserve land, which remained after the sharing of the CAE lands through several reorganizations.

Reason:

- lack of wording in the law in p. 21 of the Transitional Provisions of the Land Code of Ukraine, according to which the lands of collective agricultural enterprises that are terminated (except for land plots that were privately owned on the day of entry into force of this Law) are considered the property of territorial communities in which they are located. However, the lands of collective agricultural enterprises that are in a state of cessation, are not taken into account.

4.2. Possible gaps for registration in the Laws No. 1423-IX and No. 552-IX

- Opportunity to legally circumvent the restriction of the acquisition of a citizen's property of only 100 hectares of land for commercial agriculture by changing the purpose for personal farming and sale.

Reason:

- there is no legal prohibition to change the purpose of land from CFH to IFH or other protectors.
- The possibility to circumvent the restriction of the acquisition of ownership of only 100 hectares of land under the CFH by using “nominal” individuals and a controlled bank, provided

that the plot is encumbered by a mortgage.

Reasons:

- the difficulty of developing such a rule of law that would make it impossible to act through “nominals”;
- large agricultural holdings very often have controlled banks and a large staff that can be used as loyal “nominals”.
- Secondary circulation of usage rights (sale of lease rights), which is provided by the Law of Ukraine No. 1423-IX of 28.04.2021 “On Amendments to Certain Legislative Acts of Ukraine,” may lead to mass cases of alienation of lease rights on the basis of forged documents.

Reasons:

- since the agreement on the sale of the lease right is not subject to notarization;
- the lack of additional methods; lack of additional verification mechanisms for the person selling the lease (such as the owner’s e-cabinet).
- The pilot project granting surveyors the rights of cadastral registrars, which is provided by the law of the Law of Ukraine No. 1423-IX of 28/04/2021 “On Amendments to certain legislative acts of Ukraine”, together with the lack of safeguards and appeal system creates risks of illegal actions in SLC, in particular, registration of plots on the basis of forged documents (“old” state act on plots, the rights to which are not registered in the SRIPR).

Reasons:

- the system of appealing against decisions of cadastral registrars, similar to the Anti-Raiding Office, has not been implemented;
- the geodesists are subjects of private law, so giving them the functions of the state creates risks of illegal registrations, like accredited subjects of registration of rights (which have been canceled);
- there are no technical protectors against illegal registration of land plots by geodesists.
- It is possible to bypass the ban on the concentration of 100 hectares and 10,000 hectares by means of reorganizations: merger, accession, separation and division of a legal entity.

Reasons:

- lack of certainty in the legislation on whether to consider the transfer of the site during the reorganization as alienation.
- It is possible to circumvent the prohibition of concentration in 100 hectares by simultaneously issuing several agreements, when the excess of 100 hectares occurs at the time of registration of ownership.

Reasons:

- the existing gap in time in the registration of the transaction and registration of property rights;
- lack of technical protectors for exceeding the concentration limits at the stage of registration of ownership.

4.3. Gaps and potential risks of concentration above 100 hectares in the provisions of CMU Resolution 637

- The Resolution of the Cabinet of Ministers of 16 June 2021 No. 637 does not contain any references to the verification of the concentration of 100 hectares and defines only the issue of verification of the requirements of Article 130 of the Land Code of Ukraine, which contains a prohibition on the concentration of 10 thousand hectares and other restrictions. In accordance with the provisions of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Conditions of Circulation of Agricultural Land", the amendments are made to the Land Code of Ukraine, which provides for the following restrictions on the concentration of land:
 - prohibition of any person to acquire ownership of more than 10,000 hectares of agricultural land (Part 2 of Art. 130), including through indirect control - through a share in the authorized capital;
 - prohibition of the acquisition of commercial agricultural land by legal entities (as well as land for the management of personal farm household, allocated to the owners of shares) and commercial farming land by citizens of Ukraine with an area of more than 100 hectares (p. 15 in Section X "Transitional Provisions").

At the same time, part 4 of Article 130 of the Land Code (from 01/07/2021) provides for approval by the Cabinet of Ministers of the procedure for verifying compliance of the purchaser or owner of agricultural land with the requirements, specified in this article, but not the requirements of transitional provisions.

or

- add a rule on the need to check the concentration of 100 ha (requirements of paragraph 15 in section X "Transitional Provisions" of the Land Code of Ukraine) to the Procedure.

Therefore, it is advisable to make changes to the legislation:

- initiate amendments to Article 130 of the Land Code of Ukraine, which provides for the right of the Cabinet of Ministers to establish the procedure for inspection not only the requirements of this article, but also other requirements; performance of notarial acts by notaries of Ukraine, approved by the Order of the Ministry of Justice of 22/02/2012 No. 296/5.
- Paragraphs 14-16 of the Resolution contain rules for checking the origin of funds for the acquisition of a land plot, in particular, the listed possible legal sources of the origin of funds and documents, which confirm them. However, the Resolution does not contain a substantive rule on the amount of funds to be considered sufficient and the period during which these funds were to be acquired (for example, it can be defined as appropriate evidence of the origin of excess funds over expenses, in the amount necessary for the acquisition of land).
- The Regulation does not provide an IT solution for a notary to check a large number of complex restrictions

Annex 5. Risk matrix

Risk matrix	Significance (criticality) of the consequences of a negative event			
		high	average	low
Probability (frequency) of a negative event	high	<ul style="list-style-type: none"> • Technical possibility of committing clearly illegal actions by the state registrar without the required list of documents • Possibility of registering rights on the basis of a forged power of attorney, or other documents subject to notarization (e.g., the act and decision on the contribution to the share capital) • Possibility of alienation of the lease right on the basis of forged documents (according to the of the Law of Ukraine No. 1423-IX the secondary turnover of lease rights is provided) • Possibility of illegal registration of land plots in the SLC (in particular, on the basis of forged documents, for example, an «old» state act), taking into account the pilot project with the provision of cadastral registrar rights to geodesists, which is provided by the Law of Ukraine No. 1423-IX , together with the lack of safeguards and appeal system 	<ul style="list-style-type: none"> • Technical possibility of committing actions in SRIPR in the presence of active arrests (encumbrances) • There is no business process to review the owner’s application for prohibition of registration actions (no stage of review and no decision on refusal) • Ability to register the termination of the right to lease a land plot on the basis of a fake termination agreement • Possibility of registering the termination of the right to lease land on the basis of an agreement to terminate the contract, signed by the director in excess of authority, when the USR has no data on the limitation of powers or it is indicated “in accordance with the statute”. Also, drawing up an agreement of termination with an invalid date of the document, that is, during the term of office of the director, although in fact the agreement is signed after the dismissal 	<ul style="list-style-type: none"> • Technical ability to manually prioritize applications (including encumbrances) • Opportunity to legally circumvent the restriction of the acquisition of a citizen’s property of only 100 hectares of land for commercial agriculture by changing the purpose for personal farming and sale • Possibility to circumvent the restriction of the acquisition of ownership of only 100 hectares of land under the CFH by using «nominal» individuals and a controlled bank, provided that the plot is encumbered by a mortgage • Possibility to circumvent the prohibition on the acquisition of land ownership of legal entities, concentrations of 10 thousand hectares by acquiring land ownership as a result of reorganization (mergers, acquisitions, allocation) • Making a decision on the return of assets in violation of the deadline

Risk matrix	Significance (criticality) of the consequences of a negative event			
		high	average	low
Probability (frequency) of a negative event	high	<ul style="list-style-type: none"> • Non-detection of illegal transactions before their commission • Lack of an effective administrative appeals body • Impossibility of effective recovery of assets by implementing the orders of the Ministry of Justice regarding the cancellation of the decision on registration of ownership registration, if there has been a change of owners • Impossibility of effective recovery of assets in case of resale of immovable property (with notarial acts) 		
	average	<ul style="list-style-type: none"> • Possibility of registering the right of ownership on the basis of a court decision, dated prior to the beginning of information interaction with falsified answer (certificate) of the court on the decision authenticity 	<ul style="list-style-type: none"> • Possibility of parallel registration of the same real estate object twice with different identifiers: address, type of object, section, etc. • Impossibility of effective return of assets in case of raider seizure with a chain of re-registration of shares of subsidiaries/ alienation of property of subsidiaries. 	<ul style="list-style-type: none"> • There is no business process for the registrar to review the fact or condition to which the contract or law links the occurrence or termination of the right (for example, termination of a land lease agreement/ registration of a sublease of land, or registration of a mortgage right with violation of the moratorium or in the absence of a debt)

Risk matrix	Significance (criticality) of the consequences of a negative event			
		high	average	low
Probability (frequency) of a negative event	average	<ul style="list-style-type: none"> • Possibility of registering the right of private ownership of the reserve land, which remained after the sharing of the CAE lands through several reorganizations • Emergence of uncoordinated changes to the legislation/ legal positions of the Supreme Court, which will lead to the impossibility /difficulty of asset recovery 	<ul style="list-style-type: none"> • Impossibility to recover deleted encumbrances in case of change of owners • Technical capability to re-register the lease of land due to the lack of data in the SLC, due to their loss during the re-registration of ownership of land from 2013 to 2018, or due to lack of record of lease for other reasons • The risk of a disputed situation regarding land on the right of permanent use 	<ul style="list-style-type: none"> • Possibility of error or deliberately illegal actions of the notary when calculating the concentration of 10 thousand hectares and checking other restrictions under Art. 130 of the Land Code of Ukraine • Possibility of violating the concentration limit in 100 hectares of CFH due to the lack of rules similar to the verification of concentration limits under Art. 130 of the Land Code (10 thousand hectares of agricultural purpose, sanctions, Russians, etc.)
	low	<ul style="list-style-type: none"> • Possibility to register the right of ownership on the basis of presenting a forged identity document (passport) • Ability to register the right on the basis of forged title documents dated before 2013, the right of which was not registered 	<ul style="list-style-type: none"> • Possibility of adding to the authorized capital of the property of the spouses, which is in joint ownership without the consent of the second member of the spouses 	<ul style="list-style-type: none"> • Possibility to circumvent the prohibition of concentration in 100 hectares by simultaneously issuing several agreements, when the excess of 100 hectares occurs at the time of registration of ownership • Possibility of taking action to stop the consideration of the package of documents or, conversely, illegal refusal to register in the USR due to the lack of software function

Risk matrix	Significance (criticality) of the consequences of a negative event			
		high	average	low
Probability (frequency) of a negative event	low	<ul style="list-style-type: none"> • Possibility of registration of the right and registration of change of the director/ participants of LLC on the basis of the forged document which is subject to notarization with selection of date and code of spending of the special notarial form, which was used for the present document (i.e. checking the date and code of the form used does not help to establish forgery) • Possibility of registration actions in the USR on the basis of a forged court decision 		<ul style="list-style-type: none"> • Non-receipt by law enforcement agencies of information about illegal actions/ commission of a crime

Annex 6. Analysis of the institutions' effectiveness in combating raiding and protection of property rights

6.1. Operation of the administrative appeal system

The Ministry of Justice is trying to respond quickly to illegal registration actions, which have had a significant resonance in the media. In addition, the Ministry of Justice consistently applies the revocation of access to the registers for state registrars, who have committed gross violations.

However, we can state that the vast majority of complaints in the field of state registration are considered with a significant violation of deadlines. The maximum period for consideration of complaints must not exceed 45 days, since the consideration of a complaint in the field of state registration is carried out within the time limits established by the Law of Ukraine "On Citizens' Appeals".

Among the complaints reviewed by the collegium of the Ministry of Justice in January 2021, available complaints are submitted at the end of 2019, a large number of complaints were submitted in the first six months of 2020, which indicates a significant average delay in the processing of complaints. During this period, further registration actions are possible, which significantly complicate the protection of property rights.

According to the analysis of the decisions of the Ministry of Justice for January 2021 (the agreed period), on the consideration of complaints against decisions, actions or inaction of the state registrar, subjects of state registration, territorial bodies of the Ministry of Justice, it was found that 324 decisions were made, including:

- 205 regarding registration actions in the State Registry of Immovable Property Rights (hereinafter - SRIPR), which is 63% of all complaints; 115 regarding registration actions in the Unified State Register of Legal Entities, Individuals - Entrepreneurs and Public Associations (hereinafter - USR), which is 35% of all complaints; 4 decisions were made to correct errors in previous decisions.

Based on the results of the consideration of these complaints, the total was:

- denied 235 times, which is 73% of all complaints, partially satisfied 47 times, which is 15% of all complaints; satisfied in full 38 times, which is 12% of all complaints.

The average time for reviewing complaints is 183 days, the minimum - 9 days, the maximum - 1107 days. Taking into account separately the results of consideration of complaints regarding registration actions in the SRIPR (205 pcs): denied 163 times, which is 80%; partially satisfied 15 times, which is 13%; completely satisfied 27 times, which is 7%.

Taking into account the results of consideration of complaints regarding registration actions in the USR (115 pcs): denied 72 times, which is 63%; partially satisfied 32 times, which is 28%; completely satisfied 11 times, which is 9%. Therefore, we can state significant violations of the complaints consideration term. However, according to the publication and the Anti-Raiding Office, the average delay in reviewing complaints has significantly decreased, especially with regard to complaints about registration actions in the USR.

There is also a legal problem, which is the failure of the Ministry of Justice to comply with its own orders in the event of a change of ownership. As a result of the amendments made to the Law of Ukraine "On State Registration of Real Rights" by the Law of 3 October 2019 No. 159-IX, the procedure for executing orders was identified with the procedure for registering rights and their

encumbrances. With such registration of rights and encumbrances, a contradiction arises with the data of the register (since there is already the data of the new owner), which gives grounds for the Ministry of Justice not to carry out its own orders.

We previously noted that in the autumn of 2019, cyberpolice caught criminals, who deleted records of encumbrances from state registers using stolen electronic keys. Currently, there is no mechanism to return records of such encumbrances back to the register in the event of a resale of property.

Raider actions are usually associated not with a single illegal registration, but with a chain of further registrations to complicate the appeal. Thus, a large number of orders of the Ministry of Justice are not being implemented, since the owners have been changed along the chain of re-registration.

Currently, the Verkhovna Rada of Ukraine has registered draft laws that can resolve this situation (draft law No. 3774) in terms of encumbrances.

Note that in a situation of registration raiding with further fictitious sale of assets, there is a certain conflict of concepts: on the one hand, the Ministry of Justice cannot replace the court and consider the legality of a notarial act (therefore the re-registration chain cannot be revoked), on the other hand there is the need to protect property rights, including from raids with fictitious sale of assets (therefore, the chain of re-registrations must be abolished). Additional research ⁵, discussion and consultation are needed to overcome the conflict.

Given the long deadlines for reviewing complaints and the difficulties in implementing orders from the Ministry of Justice, we recommend improving the efficiency of the control system, namely:

- introduction of a mechanism for the execution of orders of the Ministry of Justice regarding the return of removed encumbrances, if there is a change of owners;
- regulation of the legal policy on the issue of execution of the orders of the Ministry of Justice regarding the cancellation of the decision on registration of ownership, if there is a change of owners;
- regulation of legal policy regarding the abolition of the chain of registration actions as an effective tool for the return of assets in the event of raids with the subsequent fictitious resale of assets;
- increasing the staff of the relevant departments of the Ministry of Justice to ensure timely consideration of complaints.

6.2. State monitoring system

Historically, monitoring of registration actions was introduced in 2016 together with deregulation - the creation of the institution of accredited subjects of state registration, as a form of control, which, in theory, was supposed to reduce the risks of illegal actions.

According to the information available in the media, this control system had certain imbalances and was accompanied by abuses, the essence of which was, first of all, criticism of the "manual" decision-making mechanism.

⁵ Nevertheless, we note that the judicial practice has developed in such a way that the property is subject to reclamation from a bona fide acquirer if it is removed from the owner's possession in a "different" way (interpreted by the courts as "any"). That is, the Ministry of Justice's decision to return illegally expropriated property in the event of its resale is consistent with judicial practice.

The provisions of Article 371 of the Law of Ukraine “On State Registration of Real Property Rights and Encumbrances” and Article 5 of the Law of Ukraine “On State Registration of Real Property Rights and Encumbrances” provide for the powers of the Ministry of Justice of Ukraine to monitor registration actions as a form of control.

The Resolution of the Cabinet of Ministers of 21 December 2016 No. 990 (as amended by the Resolution of the Cabinet of Ministers of 4 December 2019 No. 1125, as amended) approved the Procedure for the Ministry of Justice to control activities in the field of state registration of immovable property rights and their encumbrances and state registration legal entities, individuals - entrepreneurs and public formations.

According to paragraph 6, monitoring of registration actions in registers is a set of organizational and technical measures that, with the help of software tools for keeping registers, ensure that officials of the Ministry of Justice conduct a sample analytical study of registration actions for a certain period of time (week, month or quarter) on the principle of growth (without checking previous periods).

The monitoring criteria changed as follows:

2016	2021
<ul style="list-style-type: none"> 1) violation of the terms specified by the Laws; 2) conducting registration actions during non-working hours; 3) the absence in the registers of electronic copies of documents, submitted for state registration, made by scanning them; 4) conducting registration actions on the basis of court decisions; 5) cancellation (deletion) of records from registers; 6) state registrars and/or subjects of state registration, determined by the Ministry of Justice. 	<ul style="list-style-type: none"> 1) cancellation of entries in the registers; 2) carrying out registration actions in violation of the terms, specified by law; 3) carrying out state registration of the termination of encumbrances of the right of ownership and other property rights, derived of property rights, to immovable property, the object of unfinished construction; 4) registration by the state registrar within one year from the date of receipt of access identifiers to the relevant register in connection with the appointment to the relevant position by the subject of state registration, appointment to the position of state notary or registration of private notarial activity, as well as within six months from the date of restoration of access of the state registrar to the registers; 5) carrying out of registration actions by the state registrar within six months from the date of cancellation in accordance with the law of access of such registrar to one of the registers.

Thus, the so-called “sixth criterion” was removed from the criteria, which made it possible to determine the state registrar at the discretion of the official of the Ministry of Justice, the absence of electronic copies, etc. and the criteria were added for registrars (notaries), whose access was blocked/revoked, as well as for registrars (notaries), who were granted access to the register one year before the monitoring.

Also, in addition to monitoring, the above Resolution of the Cabinet of Ministers of 21 December 2016 No. 990 (as amended by the Resolution of the Cabinet of Ministers of 4 December 2019 No. 1125, as amended) provides for in-house inspections in case of data on violations of legislation - as based on monitoring, and on the basis of appeals, media reports.

In general, the control system (monitoring, verification) at the time of writing of this document, works as an effective tool to respond to obvious significant violations of registrars. Nevertheless, automatic monitoring of risk operations has not been implemented, although it was stipulated by the plans and legislation.

6.3. Court appeal

The Ministry of Justice of Ukraine has repeatedly noted plans to liquidate the commission (collegium) as a body for administrative appeal from 1 January 2022.

However, the effectiveness of judicial appeal is now very low, given the following reasons:

- 1) violation of the terms of cases consideration by courts due to their heavy workload;
- 2) repeated changes in the legal positions of the Supreme Court and the Legislation, which led to the impossibility of appeal or the need to reapply to the court (for example, change of jurisdiction);
- 3) low level of rule of law due to corruption.

The issue of the workload of courts and the rule of law should not be disclosed in this report, given the complexity and scope, but the issue of changes in legal positions and legislation is the subject of the report, as it affects the effectiveness of investment protection.

Changes in the legislation and legal positions of the Supreme Court regarding the SRIPR

№	Date, document, and content of changes	Impact on the effectiveness of judicial protection
1	In the decision of 4 September 2018 in case No. 823/2042/16, the Grand Chamber of the Supreme Court withdrew from its previous conclusions and stated that disputes over the right are the disputes over claims of persons, who were not applicants for registration actions, to the state registrar for cancellation its decisions or entries in the state register regarding the state registration of real rights to immovable property.	A dispute over a right means economic jurisdiction, not administrative jurisdiction. 1714 court decisions in cases of state registration of rights that have entered into force, were canceled in cassation instance, and the proceedings were closed (example at the link). A significant number was forced to re-file the same claims under the rules of economic proceedings.

Changes in the legislation and legal positions of the Supreme Court regarding the SRIPR

№	Date, document, and content of changes	Impact on the effectiveness of judicial protection
2	<p>On 29 May 2019, in case No. 367/2022/15-ts, the Grand Chamber of the Supreme Court formulated a new conclusion: "The decision of the subject of state registration of rights to state registration of rights with the entry in the State Register of Real Property Rights expires. Therefore, the appropriate way to protect the rights or interests of the plaintiff in this case is not to cancel the decision of the subject of state registration of rights on state registration of rights, but to cancel the record of state registration made.</p>	<p>A significant number of persons who applied for protection of the right with a claim for cancellation of the decision of state registration, received denials of claims and were forced to re-apply with claims for cancellation of the record. The example is by link.</p>
3	<p>Since 05/01/2020, amendments to Article 26 of the Law "On State Registration of Real Rights and Encumbrances" came into force, namely, the added imperative norm that the court's decision to cancel the decision of the state registrar on state registration of rights, invalidation or cancellation of documents on the basis of which the state registration of rights, as well as cancellation of state registration of rights, are allowed only with simultaneous recognition, change or termination this decision of property rights.</p> <p>No transitional rules, in the manner of the court's obligation to go beyond the claims, were specified.</p>	<p>The lack of decision on the issue of rights in the court decision gives grounds for the state registrar to refuse to register a court decision on cancellation of records on state registration.</p> <p>The persons, who applied to the court, did not have the opportunity to foresee such changes in advance, the change in the claims is possible only at the beginning of the judicial process, at the request of the plaintiff, while the court, as a general rule, does not go beyond the limits of the claims.</p>

Changes in the legislation and legal positions of the Supreme Court regarding the USR

1	<p>On 17/06/2018, the Law of Ukraine "On Limited and Additional Liability Companies" came into force, which amended Art. 17 of this Law "On state registration of legal entities, individuals - entrepreneurs and public associations", namely, a rule was added that the basis for making changes to the data of the register of company members may be court decisions on determining the size of the authorized capital and the size of the shares of participants in such a company, as well as on the recovery (claim of possession) from the defendant share (part of the share) in the authorized capital.</p>	<p>Until now, the courts have satisfied claims for cancellation of registration and decisions of the state registrar, invalidation of statutory documents, etc.</p> <p>After the legal change, the courts refuse all claims, except for "share size determination" and "demand (recovery) of shares".</p>
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Changes in the legislation and legal positions of the Supreme Court regarding the SRIPR

№	Date, document, and content of changes	Impact on the effectiveness of judicial protection
2	<p>The Grand Chamber of the Supreme Court in its decision of 22/10/2019 in case No. 923/876/16 formulated the conclusion that such claims are the proper way of protection.</p> <p>The resolution of the Grand Chamber of the Supreme Court of 8 October 2019 on case No. 916/2084/17, according to which a legal position was formulated about the impossibility for the participant of the company to file a claim on invalidity of the contract, concluded by the company.</p>	<p>The courts began to refuse claims of the company's participants on the invalidity of the company's contracts, which led to the impossibility of appealing against raiding with a chain of re-registrations, when the corporate rights of the parent company are illegally changed, the rights of the subsidiary are alienated, the director of the subsidiary, who subsequently alienates the property, changes.</p>

Considering the above, the judicial appeal of the seizure of assets (raiding) usually takes an unreasonably long time. Changes in positions may result in a rejection of the claim for formal reasons, and then the need to reapply to the court.

As ways of overcoming these problems, the idea of shortened deadlines for court proceedings to appeal the actions of state registrars, as well as the idea of creating a separate court to protect the rights of investors, are considered. Both of these ideas are associated with difficulties in implementation: the first - due to massive violations by the courts, including reduced terms for consideration of cases; the second - through organizational and financial difficulties with the creation of a new judicial institution.

In any case, the Ministry of Justice is the authorized body for Ukraine's implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Therefore, it will not be an excess of authority for the Ministry of Justice to communicate with the Supreme Court on our country's compliance with Article 13 of this Convention to ensure the right to an effective method of legal protection.

As recommendations to this section, we can formulate the following:

- 1) continue the work of the Collegium of the Ministry of Justice until the moment when the judicial appeal is effective;
- 2) improve communication between the Ministry of Justice and the Supreme Court regarding changes in legislation and changes in legal positions;
- 3) develop an effective mechanism, including judicial protection, to reverse the consequences of a raider seizure with a chain of re-registration of shares in subsidiaries/alienation of property of subsidiaries. This will require, among other things, changes to procedural and substantive law.

6.4. The work of law enforcement agencies to combat raiding

Many cases of raiding contain signs of a crime, as it is accompanied by: forgery of documents (submission of a non-existent document for registration), negligence of state registrars, bribery.

We can state that the numbers of canceled registration actions is gradually decreasing from 2019, and the number of criminal proceedings related to raiding, including those sent to court, is increasing.

For example, under Article 205-1 "Forgery of documents submitted for state registration of legal entities and individuals - entrepreneurs" for 2018, 2019 and 2020, respectively, the next was registered: 269, 478, 635 criminal proceedings, and the following was transferred to the court with the indictment: 160, 181, 233 proceedings.

However, there is obviously a large number of crimes that have not been detected, as the number of canceled registration actions during this period is measured in thousands.

In general, we can pay attention to the following problems that are related to the investigation of crimes:

- the difficulty of establishing and proving the circumstances - due to the lack of paper documents;
- lack of awareness of law enforcement officers regarding the registration procedures;
- lack of integration in the form of full access of law enforcement officers to registers and skills in their use.

In 2020, the Prosecutor General's Office established the Investment Protection Office, which, according to its structure, should analyze crime in this area and organize activities to combat this crime.

At the same time, we have no information on whether the establishment of this department has improved the effectiveness of the anti-raid law enforcement system. It will be possible to talk about the effectiveness of this unit after a long period of time.

In any case, the following is appropriate:

- practical implementation of integration in the form of full access, with the ability to view scanned copies of documents, law enforcement officers to the registers;
- improving communication to share knowledge and skills between the Ministry of Justice and law enforcement bodies.

Annex 7. Anti-raider initiatives: their analysis and ranking

7.1. Analytics and plans

In addition to information on “schemes” and illegal actions with the USR and SRIPR, we analyzed information on initiatives that could improve the situation.

In particular, certain measures were planned in accordance with Presidential Decree No. 542/2019 of 22/07/2019 “On Measures to Counter Raiding” and introduced by the Law of Ukraine of 3/10/2019 No. 159-IX “On amendments to some legislative acts of Ukraine regarding the protection of property rights”.

For example, as noted, two-factor authorization of the USR and SRIPR was introduced, the integration of the SRIPR and the Unified Register of Judgments was initiated, the institution of accredited subjects of state registration was canceled.

Were not introduced, although provided by the last mentioned law:

- automatic monitoring of risky registration actions according to the criteria set by the Cabinet of Ministers of Ukraine;
- automated, direct access of state registrars to registers, automated information systems, the holder (administrator, owner, administrator) of which are state bodies, including those that contain personal data.

In October 2019, with the support of the “Pravo-Justice” project, a study “Technical assessment of registries held by the Ministry of Justice (NAIS – Administrator)” was carried out, the report of this study is available on the project website.

This report provides detailed recommendations, including on countering raiding, namely:

- conducting an information campaign to fill in the register data;
- distribution in time of the procedure for registering the transfer of ownership with the possibility of blocking it by the previous owner;
- promulgation of the announcement of the intention to register;
- introduction of the principle of “double check” so that the state registrar must check every registration, made by a notary.

In addition, on 17 February 2021, the Cabinet of Ministers of Ukraine issued an order “Some issues of digital transformation”, which in the field of immovable property was approved as a project of digital transformation of electronic services for registration of real property rights and the ability to pay administrative fees online, providing electronic interaction with the technical inventory bureau, introduction of digital tools to combat raiding, etc.

In the field of registration of legal entities and individuals - entrepreneurs – the introduction of electronic and automatic services for the registration of businesses, public associations, the submission of data on final beneficiaries, the implementation of electronic interactions with information systems of the State Judicial Administration, the State Tax Service and the State Migration Service, etc.

Therefore, we confirm the need to implement previously planned and recommended measures.

The above measures can be supplemented by the following recommendations:

- 1) introduce a “double check” of all risky actions, carried out by the state registrar, other state registrar, determined automatically (a high likelihood of such an event is expected, given the positive experience of the pilot project for the approval of technical documentation on the land by a randomly elected territorial body of the State Geocadastre);
- 2) introduce additional fields for powers of attorney, minutes of general meetings in the Unified Register, special forms of notarial documents, namely: address or cadastral number in the case of using the form for drawing up a document on real estate, identification code - for drawing up a document in relation to legal entities;
- 3) introduce technical restrictions on registrations without adding a complete package of electronic documents provided by the business process.

Also, we confirm the need to implement initiatives provided by Presidential Decree No. 542/2019 of 22/07/2019 “On Measures to Counter Raiding”, the Law of Ukraine of 3/10/2019 No. 159-IX “On amendments to some legislative acts of Ukraine on the protection of property rights”, as well as those recommended in studies supported by the “Pravo-Justice” project, in particular, but not excluded:

- automatic monitoring of risky registration actions according to the criteria set by the Cabinet of Ministers of Ukraine;
- automated, direct access of state registrars to registers, automated information systems, the holder (manager, owner, administrator) of which are state bodies, including those that contain personal data of a person (in this case, first of all: access to the Unified State Demographic Register for identification by the UREN, the integration of the SRIPR with the USR to ensure the possibility of identifying the chief of a legal entity, the integration of the USR with the Unified Register of Court Decisions);
- conducting an information campaign to fill in the register data;
- distribution in time of the procedure of registration of the transfer of ownership with the possibility of its blocking by the previous owner (needs refinement);
- promulgation of the announcement of the intention to register (needs refinement);
- introduction of the principle of “double check”, so that the state registrar has to check each registration made by a notary (clarifying the verification by a randomly determined registrar of risky registration actions performed by any registrar or notary).

7.2. Description of the initiatives ranking methodology

Annex 2 to this document provides a table with the ranking of initiatives.

The first step is ranking according to the place in the risk matrix, which is determined according to the assessment of the frequency and significance of risks (gaps).

The second is ranking according to efficiency.

The third is ranking according to the estimated time and complexity of implementation.

After the ranking of initiatives, the project concepts were prepared: initiatives were grouped, eliminated, wider ones absorbed narrower ones.

7.3. "Ranking of initiatives"

Nº	Risk (gap)	Negative event	Probability (frequency)	Significance (criticality)	place in the risk matrix	Group (integration, business process, control system, organizational)	Recommendations	Source	Evaluation of the recommendation effectiveness	Assessment of the recommendation complexity and timing	Gaps in SRIPR or USR/SLC, other projects
	Lack of an effective body of administrative appeal	Impossibility of an effective appeal within a reasonable time	3	3	9		Продовжити роботу Колегії Мін'юсту до моменту, коли судове оскарження буде ефективним (була ініціатива припинити роботу колегії з 01.01.2022)	Own analysis	3	1	others
	Technical possibility of committing clearly illegal actions by the state registrar without the required list of documents	Illegal registration, both with loss of control over property (asset) and without loss of control	3	3	9	business process	Запровадження «подвійної перевірки» або «другої руки» усіх ризикових дій, проведених державним реєстратором, іншим державним реєстратором, визначеним автоматично	Own analysis	3	2	others
	Impossibility of effective recovery of assets in case of resale of immovable property (with notarial acts)	Non-return of the asset	3	3	9		врегулювання правової політики в частині скасування ланцюга реєстраційних дій (у тому числі нотаріальних) як ефективного інструменту повернення активів у разі вчинення рейдерських дій з подальшим фіктивним перепродажем активів	Own analysis	3	2	iothers
	Impossibility of effective recovery of assets in case of resale of immovable property (with notarial acts)	Non-return of the asset	3	3	9	control system	"Red Button", the right of the Ministry of Justice to decide on the prohibition of registration actions at the time of the complaint investigation	Draft Law 3774	2	1	others
	Technical possibility of committing clearly illegal actions by the state registrar without the required list of documents	Illegal registration, both with loss of control over property (asset) and without loss of control	3	3	9	business process	Improve the software for performing registration actions exclusively according to "step-by-step scenarios", so that during any registration action to specify the list of documents required for acceptance, without which it is impossible to complete the action or move to the next step in registration	Own analysis	3	3	others

Nº	Risk (gap)	Negative event	Probability (frequency)	Significance (criticality)	place in the risk matrix	Group (integration, business process, control system, organizational)	Recommendations	Source	Evaluation of the recommendation effectiveness	Assessment of the recommendation complexity and timing	Gaps in SRIPR or USR/SLC, other projects
	Possibility of illegal registration of land plots in the SLC (in particular, on the basis of forged documents, for example, an "old" state act), taking into account the pilot project with the provision of cadastral registrar rights to geodesists, which is provided by the Law 1423-IX, together with the lack of safeguards and appeal system	Loss of control over an asset due to criminal alienation by an unauthorized person	3	3	9		Introduction of technical protectors in the SLC on illegal registration of land plots by geodesists, for example, the "double check" of the cadastral registrar (the initiative requires further research)	Own analysis	3	3	SLC
	Non-detection of illegal transactions before their commission	Committing illegal transactions	3	3	9	control system	Introduction of automatic monitoring of risky registration actions according to the criteria set by the Cabinet of Ministers of Ukraine	Law	3	3	others
	Technical possibility of committing clearly illegal actions by the state registrar without the required list of documents	Illegal registration, both with loss of control over property (asset) and without loss of control	3	3	9	business process	Development of updated directories of SRIPR accompanying documents	Plans of the working group of the Ministry of Justice	2	1	others
	Technical possibility of committing clearly illegal actions by the state registrar without the required list of documents	Illegal registration, both with loss of control over property (asset) and without loss of control	3	3	9	business process	Modernization of the classifier according to the current legislation	Plans of the working group of the Ministry of Justice	2	1	others

Nº	Risk (gap)	Negative event	Probability (frequency)	Significance (criticality)	place in the risk matrix	Group (integration, business process, control system, organizational)	Recommendations	Source	Evaluation of the recommendation effectiveness	Assessment of the recommendation complexity and timing	Gaps in SRIPR or USR/SLC, other projects
	Possibility of registration of the right on the basis of the forged power of attorney, or other document which are subject to the notarial certificate (for example, the act and the decision on contribution to the authorized capital)	Loss of control over an asset due to criminal alienation by an unauthorized person	3	3	9	business process	Introducing additional fields for powers of attorney, minutes of general meetings in the Unified Register, special forms of notarial documents, namely: address or cadastral number in the case of using the form for drawing up a document on real estate, identification code – for drawing up a document in relation to legal entities. Until the implementation of the project "E-notary" with an electronic register of notarial acts	Own analysis	2	1	SRIPR or USR
	Possibility of registration of the right on the basis of the forged power of attorney, or other document which is subject to the notarial certificate (for example, the act and the decision on contribution to the authorized capital)	Loss of control over an asset due to criminal alienation by an unauthorized person	3	3	9	integration	Implement information interaction with the Unified Register of Powers of Attorney – by providing access similar to that available to notaries, hereinafter – through the API, to automatically obtain data after a request generated by the USR software. In addition, it is proposed to provide additional fields to it. Until the implementation of the project "E-notary" with an electronic register of notarial acts	Own analysis	2	1	SRIPR or USR
	Impossibility of effective recovery of assets by implementing the orders of the Ministry of Justice regarding the cancellation of the decision on registration of ownership registration, if there has been a change of owners	Non-return of the asset	3	3	9		Regulation of the legal policy on the issue of execution of the Ministry of Justice orders regarding the cancellation of the decision on ownership registration, if there is a change of owners	Own analysis	2	1	others
	Possibility of registration of the right on the basis of the forged power of attorney, or other document which are subject to the notarial certificate (for example, the act and the decision on contribution to the authorized capital)	Loss of control over an asset due to criminal alienation by an unauthorized person	3	3	9	business process	Development of the message service in the DIIA application (through the Owner's Electronic Cabinet)	Plans of the working group of the Ministry of Justice	2	2	others

Nº	Risk (gap)	Negative event	Probability (frequency)	Significance (criticality)	place in the risk matrix	Group (integration, business process, control system, organizational)	Recommendations	Source	Evaluation of the recommendation effectiveness	Assessment of the recommendation complexity and timing	Gaps in SRIPR or USR/SLC, other projects
	Possibility of illegal registration of land plots in the SLC (in particular, on the basis of forged documents, for example, an "old" state act), taking into account the pilot project with the provision of cadastral registrar rights to geodesists, which is provided by the Law 1423-IX, together with the lack of safeguards and appeal system	Loss of control over an asset due to criminal alienation by an unauthorized person	3	3	9		Introduction of a system for appealing against decisions of cadastral registrars, similar to the Anti-Raiding Office	Own analysis	2	2	SLC
	Possibility of registration of the right on the basis of the forged power of attorney, or other document which are subject to the notarial certificate (for example, the act and the decision on contribution to the authorized capital)	Loss of control over an asset due to criminal alienation by an unauthorized person	3	3	9	integration	Introduction of automated, direct access of state registrars to registers, automated information systems, the holder (manager, owner, administrator) of which are state bodies, including those that contain personal data of a person (in this case, first of all: access to the Unified State Demographic Register for identification by the UREN, the integration of the SRIPR with the USR to ensure the possibility of identifying the chief of a legal entity, the integration of the USR with the Unified Register of Court Decisions)	Law	2	3	SRIPR or USR
	Possibility of alienation of the lease right on the basis of forged documents (according to the Law 1423-IX, the secondary circulation of the lease rights is provided)	Loss of control over an asset due to criminal alienation by an unauthorized person	3	3	9		Introduction of the obligation of notarization of the agreement on sale of the land lease agreement (and similar agreements)	Own analysis	2	3	SLC
	Technical possibility of committing clearly illegal actions by the state registrar without the required list of documents	Illegal registration, both with loss of control over property (asset) and without loss of control	3	3	9	business process	Introduction of the principle of "double check", so that the state registrar has to check every registration made by a notary	Research supported by the "Pravo-Justice" project	1	2	others

Nº	Risk (gap)	Negative event	Probability (frequency)	Significance (criticality)	place in the risk matrix	Group (integration, business process, control system, organizational)	Recommendations	Source	Evaluation of the recommendation effectiveness	Assessment of the recommendation complexity and timing	Gaps in SRIPR or USR/SLC, other projects
	Possibility of registration of the right on the basis of the forged power of attorney, or other document which are subject to the notarial certificate (for example, the act and the decision on contribution to the authorized capital)	Loss of control over an asset due to criminal alienation by an unauthorized person	3	3	9	business process	Introducing into the legislation a direct obligation of the state registrar to scan the power of attorney; the obligation of the state registrar to check the use of special forms	Own analysis	1	2	SRIPR or USR
	Technical possibility of committing actions in SRIPR in the presence of active arrests (encumbrances)	Alienation of encumbered property	3	2	8	business process	Technical impossibility of making actions in SRIPR in the presence of active arrests (encumbrances)	Plans of the working group of the Ministry of Justice	2	1	others
	There is no business process of consideration of the owner's application for prohibition of registration actions (absence of a stage of consideration and absence of possibility of the decision on refusal)	Alienation of encumbered property	3	2	8	business process	Changing the business process for filing an application by the owner to prohibit the registration actions (introduction of the stage of consideration and the absence of the possibility of a decision on refusal)	Plans of the working group of the Ministry of Justice	2	1	others
	Possibility of registering the termination of the right to lease land on the basis of an agreement to terminate the contract, signed by the director in excess of authority, when the USR has no data on the limitation of powers or it is indicated "in accordance with the statute". Also, drawing up an agreement of termination with an invalid date of the document, that is, during the term of office of the director, although in fact the agreement is signed after the dismissal	Loss of control over an asset due to criminal alienation by an unauthorized person	3	2	8	integration	Implement information interaction (integration) with State Registry of Immovable Property Rights Automation of verification of legal entities and individuals during property registration	Plans of the working group of the Ministry of Justice	2	1	others

Nº	Risk (gap)	Negative event	Probability (frequency)	Significance (criticality)	place in the risk matrix	Group (integration, business process, control system, organizational)	Recommendations	Source	Evaluation of the recommendation effectiveness	Assessment of the recommendation complexity and timing	Gaps in SRIPR or USR/SLC, other projects
	Possibility of registering the termination of the right to lease land on the basis of an agreement to terminate the contract, signed by the director in excess of authority, when the USR has no data on the limitation of powers, or it is indicated "in accordance with the statute". Also, drawing up an agreement of termination with an invalid date of the document, that is, during the term of office of the director, although in fact the agreement is signed after the dismissal	Loss of control over an asset due to criminal alienation by an unauthorized person	3	2	8	business process	Refer transactions for the termination of the lease of agricultural land to significant transactions that require the permission of the general meeting	draft Law 3774	1	1	others
	Possibility to register the termination of the right to lease a land plot on the basis of a fake termination agreement	Loss of control over an asset due to criminal alienation by an unauthorized person	3	2	8		Implementation of the obligation to notarize an agreement on termination of a land plot lease agreement (and similar transactions)	Own analysis	2	3	SLC
	Possibility to circumvent the prohibition on the acquisition of land ownership of legal entities, concentrations of 10 thousand hectares by acquiring land ownership as a result of reorganization (mergers, acquisitions, allocation)	Concentration of agricultural land over the limit	3	1	7		Clarification of legislation on whether to consider the transfer of land plot during the reorganization as alienation	Own analysis	3	1	SLC
	Technical ability to manually determine the order of applications (including encumbrances)	Alienation of encumbered property	3	1	7		Introduce automatic ranking of applications	Own analysis, discussion in the working group	2	1	others
	Opportunity to legally circumvent the restriction of the acquisition of a citizen's property of only 100 hectares of land for commercial agriculture by changing the purpose for personal agriculture and sales	Concentration of agricultural land over the limit	3	1	7		Introduction of a legislative prohibition to change the purpose of land from CFH to IFH or other protectors	Own analysis	2	1	SLC

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	Making a decision on the assets return in violation of the term	Non-return or excessive delay in the return of the asset	3	1	7		Increasing the staff of the relevant departments of the Ministry of Justice to ensure timely consideration of complaints.	Own analysis	2	1	others
	Possibility to circumvent the restriction of the acquisition of ownership of only 100 hectares of land under the CFH by using "nominal" individuals and a controlled bank, provided that the plot is encumbered by a mortgage	Concentration of agricultural land over the limit	3	1	7		Take the risk	Own analysis	0	0	others
	Possibility of registering the right of private ownership of the reserve land, which remained after the sharing of the CAE lands through several reorganizations	Loss of control over an asset due to criminal alienation by an unauthorized person	2	3	6		Correction of the lack of wording in the law in p. 21 of the Transitional Provisions of the Land Code of Ukraine, according to which the lands of collective agricultural enterprises that are terminated (except for land plots that were privately owned on the day of entry into force of this Law) are considered the property of territorial communities in which they are located. However, the lands of collective agricultural enterprises, that are in a state of cessation, are not taken into account	Own analysis	3	1	SLC
	Emergence of uncoordinated changes to the legislation / legal positions of the Supreme Court, which will lead to the impossibility/ difficulty of asset recovery	Non-return of the asset	2	3	6		Improve communication between the Ministry of Justice and the Supreme Court on changes in legislation and changes in legal positions	Own analysis	2	1	communication
	Possibility of registering the ownership right on the basis of a court decision, dated prior to the beginning of information interaction with falsified answer (certificate) of the court on the decision authenticity	Loss of control over an asset due to criminal alienation by an unauthorized person	2	3	6	business process, integration	Introduction of the procedure of sending a scanned copy of a court decision by means of information interaction with the register of court decisions	Own analysis	1	2	SRIPR or USR

Nº	Risk (gap)	Negative event	Probability (frequency)	Significance (criticality)	place in the risk matrix	Group (integration, business process, control system, organizational)	Recommendations	Source	Evaluation of the recommendation effectiveness	Assessment of the recommendation complexity and timing	Gaps in SRIPR or USR/SLC, other projects
	Technical possibility to re-register the land lease due to lack of data in SLC, due to their loss during re-registration of ownership of land from 2013 to 2018, or due to lack of record of lease for other reasons	Loss of an asset, parallel registration of the lease right under the lease with another person	2	2	5	business process	Introducing a mandatory verification procedure by sending a request for verification on paper for categories of land lease rights for which data on their lease were lost in the SLC (due to re-registration of ownership), or which are missing in the SLC for other reasons (until 2013 and are only on paper)	Own analysis	2	1	SLC
	Technical possibility to re-register the land lease due to lack of data in SLC, due to their loss during re-registration of ownership of land from 2013 to 2018, or due to lack of record of lease for other reasons	Loss of an asset, parallel registration of the lease right under the lease with another person	2	2	5	organizational	Recovery of land lease data that were lost from 2013 to 2018 during land lease re-registration	Own analysis	2	1	SLC
	Risk of a disputed situation regarding land on the right of permanent use	Loss of an asset / long dispute over an asset	2	2	5	organizational	Regulate the legal policy on the turnover of farm lands, in particular, the right of use	Own analysis	2	2	SLC
	Possibility of parallel registration of the same real estate object twice with different identifiers: address, type of object, section, etc.	Loss of control over the asset, physical seizure of the asset	2	2	5	integration	Development of software to expand the exchange with USESCS. Adding an attribute to the object of percentage of readiness to the object of construction in progress. 2 types of property: land, construction, expansion of the directory of the real estate object	Plans of the working group of the Ministry of Justice	2	2	others
	Possibility of parallel registration of the same real estate object twice with different identifiers: address, type of object, section, etc.	Loss of control over the asset, physical seizure of the asset	2	2	5	integration	Introduction of a rule on determining the technical characteristics of real estate object on the basis of interaction with USESCS	Draft Law 3774, BRDO initiatives on the USESCS	2	2	SRIPR or USR
	Possibility of parallel registration of the same real estate object twice with different identifiers: address, type of object, section, etc.	Loss of control over the asset, physical seizure of the asset	2	2	5	integration	Create an address register based on the USESCS, develop software for information interaction with SRIPR	BRDO initiatives on the USESCS	2	2	SRIPR or USR

Nº	Risk (gap)	Negative event	Probability (frequency)	Significance (criticality)	place in the risk matrix	Group (integration, business process, control system, organizational)	Recommendations	Source	Evaluation of the recommendation effectiveness	Assessment of the recommendation complexity and timing	Gaps in SRIPR or USR/SLC, other projects
	Possibility of parallel registration of the same real estate object twice with different identifiers: address, type of object, section, etc.	Loss of control over the asset, physical seizure of the asset	2	2	5	integration	Implementation of obtaining a technical passport and a decision on assigning a postal address from USESCS	Plans of the working group of the Ministry of Justice	2	2	others
	Impossibility to recover deleted encumbrances in case of owners change	Non-return of encumbrances to the register	2	2	5		Introduction of a mechanism for execution of orders of the Ministry of Justice regarding the return of removed encumbrances if there is a change of owners	Own analysis	2	2	others
	Impossibility of effective return of assets in case of raider seizure with a chain of re-registration of shares of subsidiaries/alienation of property of subsidiaries	Non-return of the asset	2	2	5		Develop an effective mechanism, including judicial protection of cancellation of the consequences of raider seizure with a chain of re-registration of shares of subsidiaries/alienation of property of subsidiaries	Own analysis	2	3	others
	Possibility of error or deliberately illegal actions of the notary when calculating the concentration of 10 thousand hectares and checking other restrictions under Art. 130 of the Land Code of Ukraine	Concentration of agricultural land over the limit	2	1	4		Implementation of automated verification of restrictions under Art. 130 of the Land Code of Ukraine based on software	Own analysis	3	1	SLC
	There is no business process for the registrar to verify the fact or condition under which a contract or law links the occurrence or termination of a right	Loss of control over the asset, in the absence of a fact or condition	2	1	4		Introduction of a business process of verification of a fact or condition with the help of the owner's electronic cabinet	Own analysis	3	2	others

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	Possibility of violating the concentration limit in 100 hectares of CFH due to the lack of rules similar to the verification of concentration limits under Art. 130 of the Land Code (10 thousand hectares of agricultural purpose, sanctions, Russians, etc.)	Concentration of agricultural land over the limit	2	1	4		<p>1) Implementation in the Procedure of verification of concentration in 100 hectares</p> <p>2) Initiate amendments to Article 130 of the Land Code of Ukraine, which provides for the right of the Cabinet of Ministers to establish the procedure for inspection not only the requirements of this article, but also other requirements</p> <p>3) Add a rule on the need to check the concentration of 100 ha (requirements of paragraph 15 in section X "Transitional Provisions" of the Land Code of Ukraine) to the Procedure for notarial acts by notaries of Ukraine, approved by the Order of the Ministry of Justice of 22/02/2012 No. 296/5</p>	Own analysis	2	2	SLC
	Possibility to register the ownership right on the basis of presenting a forged identity document (passport)	Loss of control over an asset due to criminal alienation by an unauthorized person	1	3	3	integration	Implement the information interaction with the Unified State Demographic Register – by providing full access (to establish the identity of the applicant), then – through the API, to automatically obtain data after a request generated by the USR software	Own analysis	2	1	SRIPR or USR
	Possibility to register the ownership right on the basis of presenting a forged identity document (passport)	Loss of control over an asset due to criminal alienation by an unauthorized person	1	3	3	integration	Software development for grouping of subjects of property rights, integration with USDR for identification of subjects by UREN	Plans of the working group of the Ministry of Justice	2	1	others
	Possibility to register the ownership right on the basis of presenting a forged identity document (passport)	Loss of control over an asset due to criminal alienation by an unauthorized person	1	3	3	business process	Introduce a business process for the owner to prohibit alienation through the DIIA service, or a business process for confirmation/ additional authentication of alienation through the DIIA service, the owner's electronic cabinet	Suggestions of World Bank experts	2	2	others

Nº	Risk (gap)	Negative event	Probability (frequency)	Significance (criticality)	place in the risk matrix	Group (integration, business process, control system, organizational)	Recommendations	Source	Evaluation of the recommendation effectiveness	Assessment of the recommendation complexity and timing	Gaps in SRIPR or USR/SLC, other projects
	Possibility of registration of rights on the basis of fake title documents dated before 2013, the ownership of which was not registered	Loss of control over an asset due to criminal alienation by an unauthorized person	1	3	3		Introduction of the procedure of obligatory verification of the fact of the submission for registration of the right-establishing document (which were not registered in SRIPR, State Register of Proprietary Rights to Immovable Property or SLC) by sending a request to the body that issued it (if possible, through information interaction)	Own analysis	2	2	SRIPR or USR
	Possibility of registration of the right and registration of change of the director/participants of LLC on the basis of the forged document, which is subject to the notarization with forgery of date and code of spending of the special notarial form which was used for the present document (i.e. checking the date and spending code of the form does not help to establish forgery)	Loss of control over an asset due to criminal alienation by an unauthorized person	1	3	3		Introduction of additional fields in the Unified Register of special forms of notarial documents/database with scanned copies of notarized documents. Until the implementation of "E-Notary" project	Own analysis	2	2	SRIPR or USR
	Possibility of registration actions in the USR on the basis of a forged court decision	Loss of control over an asset due to criminal alienation by an unauthorized person	1	3	3	integration	Implement the information interaction of the USR with the Register of Court Decisions – through the appropriate API, and until then – by providing full direct access	Own analysis	2	2	SRIPR or USR
	Possibility to register the ownership right on the basis of presenting a forged identity document (passport)	Loss of control over an asset due to criminal alienation by an unauthorized person	1	3	3	business process	Distribution in time of the procedure of registration of the transfer of ownership with the possibility of its blocking by the previous owner	Research supported by the "Pravo-Justice" project	1	2	others

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	Possibility to register the ownership right on the basis of presenting a forged identity document (passport)	Loss of control over an asset due to criminal alienation by an unauthorized person	1	3	3	business process	Promulgation of the announcement of the intention to register	Research supported by the "Pravo-Justice" project	1	2	others
	Ability to register the right on the basis of forged title documents dated before 2013, the right of which was not registered	Loss of control over an asset due to criminal alienation by an unauthorized person	1	3	3	organizational	Conducting an information campaign to fill in the register data	Research supported by the "Pravo-Justice" project	1	3	communication
	Possibility to contribute to the authorized capital of the property of the spouses, which is in joint ownership without the consent of the second member of the spouses	Alienation of property without the co-owner's consent	1	2	2	integration	Implement the information interaction (integration) with the State Register of Civil Status Acts – by providing access similar to that available to notaries	Own analysis	1	1	SRIPR or USR
	Possibility of inaction to suspend consideration of the package of documents or, conversely, illegal refusal to register in the USR due to lack of software function	Illegal registration/refusal in the USR	1	1	1	business process	Add the ability to stop the consideration of USR software documents	Own analysis	2	1	SRIPR or USR
	Non-receipt of information on illegal actions/commission of a crime by law enforcement agencies	Failure to prosecute the perpetrators	1	1	1	control system	Add to the register the function of attaching information on sending a notification to law enforcement agencies in case of doubt about the authenticity of the submitted documents, in accordance with the law	Own analysis	1	1	SRIPR or USR
	Possibility to circumvent the prohibition of concentration in 100 hectares by simultaneously issuing several agreements, when the excess of 100 hectares occurs at the time of registration of ownership	Concentration of agricultural land over the limit	1	1	1		Reduction of terms of property right registration for maintenance of uniformity of notarial action and registration	Suggestions of World Bank experts	1	2	others

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