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MAPPING STUDY



CSO ENGAGEMENT IN POLICY FORMULATION AND MONITORING OF POLICY IMPLEMENTATION

UKRAINE

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LIST OF ABBREVIATIONS

AR	Autonomous Republic	PC	Public Council
CA	Community Association (self-governing body)	RSA	Regional State Administration
CC	Civil Council	VR	Verkhovna Rada of Ukraine (Parliament)
CGB	Central Government body (ministries, services, agencies and inspections)		
CMU	Cabinet of Ministers of Ukraine		
CSO	<i>According to Communication 1 from the European Commission, as of 2012 CSOs are defined as follows: “the EU considers CSOs to include all non-State, not-for-profit structures, non-partisan and non-violent, through which people organise to pursue shared objectives and ideals, whether political, cultural, social or economic.” The same statement, however, is prefaced with the acknowledgement that “definitions vary over time and across institutions and countries”. In other words, the meaning of CSO can be quite different depending on the particular context.¹</i>		
FG	Focus Group		
HEI	Higher Education Institutions		
ICT	Information Communication Technologies		
LSA	Local State Administration (at regional and district level, Kyiv and Sevastopol)		
LSG	Local Self-Governing body		
MM	Mass media		
NGO	Non-Governmental Organisation, most widespread type of CSO		

¹ http://ec.europa.eu/research/science-society/document_library/pdf_06/optimising_civil_society_participation.pdf

EXECUTIVE SUMMARY

This mapping study aims to assess the environment in which CSOs function and operate in Ukraine, and evaluate their capacities and needs with regard to influencing public policy-making and monitoring the implementation of policies.

As for the institutional problems of CSOs' activities, there are no serious legal or administrative barriers to their set-up and operation in Ukraine, apart from the following 3 exceptions:

1. Complicated and burdensome procedure of CSO liquidation. Organisations continue to report *de jure* on their activities (mainly to tax authorities) and remain in the State Registry of public associations, even though *de facto* they have closed down. Consequently, official statistics on CSOs appear highly distorted.

2. Existence of the State Register of Not-For-Profit Organisations, which is maintained by tax authorities. In other words, not-for-profit status is not automatically granted to a CSO following successful registration, but rather the final decision to consider the CSO as a non-profit organisation is taken by fiscal authorities. At the same time, the relevant legislation does not establish clear criteria or procedures for obtaining/losing this non-for-profit status.

3. Increased attention to the CSOs' work due to numerous inspections by state agencies during the socio-political crisis in the country and on the eve of election campaigns.

However, the most acute problem for CSOs' activities lies in the sphere of the financial resources required for their work. This relates primarily to:

- the absence of sustainable budgetary support for civil society organisations;
- a low threshold of tax benefits (both for the private sector and for citizens) for voluntary contributions aimed at supporting CSO activity;

- unequal access for CSOs to government funding (not all organisations can access this, nor for is it available for all types of expenses) and a lack of transparency of distribution and allocation of budgetary funds;
- absence of CSO rights to preferential rental of state and municipal property;
- difficulties with administering budgetary funds in cooperation with the State Treasury Service of Ukraine;
- limitations on CSO participation in public procurement.

Preparing this report involved the following: analytical desk research; sociological surveys (408 interviews with CSO representatives (face-to-face) and 32 focus group discussions (for a total of 255 participants)). The field stage of the sociological survey was carried out in all regions of Ukraine, AR Crimea and Kyiv from the 1st to the 28th of February 2014. The analytical desk research lasted from February to mid-April 2014.

The research timeframe coincided with an unprecedented burst of civic activism and socio-political transformations in the modern history of Ukraine, events referred to as "Euromaidan". Anticipating the fundamental changes that will occur in the near future in the social and political life of the country in general and among civil society in particular, we can say that their character, content and specific form could not be analysed within this Report. Rather, it will be focused on the conditions for conducting CSO activity and their interactions with State authorities in Ukraine on the eve of Euromaidan.

The research generally concludes that during the *20 years that Ukraine has been independent, the dialogue between policy-makers and stakeholders regarding the preparation of public policy decisions has not followed the normal practice of cooperation between State and society. Moreover, neither CSO representatives nor policy-makers paid enough attention to this issue.* Separate existing initiatives and mechanisms for the involvement of CSO rep-



representatives and other stakeholders in public policy-making have an unsystematic, sporadic, fragmented, inconsistent and contradictory nature.

The involvement of citizens in public policy-making is limited to periodic participation in elections. During the period between one general election and the next, citizens' participation is in fact at its lowest, with the exception of during a protest – for example following the cancellation of a particular policy decision.

Individual citizens as well as political parties and CSOs express dissatisfaction with their lack of involvement in policy dialogue. A survey of the public sector, reflected in the empirical part of this study, showed that only 13.72% of respondents believe that they significantly influence the policy decisions adopted by LSGs; the proportion falls to 10.05% for decisions taken by LSA, and 3.44% for CGB decisions².

In Ukraine, there are serious obstacles to establishing interaction and cooperation between various stakeholders, including CSOs and policy-makers, policy formulation and monitoring. The key ones are:

1. Policy makers do not see the need to consider and balance the interests of different stakeholders. Since totalitarian times there has been a belief among society that governmental interests should always be taken into account, while any other interests can be ignored.³ Accordingly, currently during the initiation, drafting, coordination, approval, implementation, monitoring and evaluation of public policy decisions, there are no consultations on the content with any of the stakeholders (except for so-called “approvals” from other State authorities).

2. Civil servants have no obligations to respect or consider policy proposals suggested by other stakeholders (no requirements for mandatory consideration and motivated refusal of policy advice suggested on behalf of various stakeholders) – this is not a specification in the job description or responsibilities of public servants. Evaluation of their performance (certification) and the system of incentives (bonuses, allowances, penalties, etc.) does not contain parameters that are associated with organising, conducting or analysing the results of consultations with stakeholders.

² The Empirical Report, Appendix 4, p. 104–105

³ <http://www.kbuapa.kharkov.ua/e-book/db/2009-2/doc/4/05.pdf>

3. A confrontational attitude of CSOs towards State authorities and their officials. The post-totalitarian legacy is most clearly manifested in the reasons for confrontation between State and society. Talking to representatives of CSOs during the course of the research it became clear that CSOs look at public policy and expect to find potential human rights violations and “corrupt officials.”⁴ This has created a confrontational means of communication when CSOs deal with representatives of CGB, LSAs and LSGs together with an almost absolute lack of constructive dialogue on the specific content of public policy. The idea of human rights protection makes it impossible to regard public policy as a platform where the interests of various stakeholders overlap, but one where the balance of these interests in fact still needs to be established.

4. CSOs' lack of awareness of the participants, processes and procedures of public policy formulation and implementation. A lack of knowledge and skills in policy analysis and advocacy. Repeated attempts to create “participation mechanisms” – in the form of advisory and consultative structures within the State authorities (public/scientific expert councils/boards), initiatives such as “open government” and “civil expertise” which fail due to the inability of CSO representative, business associations and industry experts to carry out the critical analysis or explain the “expediency” of their decisions in a given area of State/local policy. Representatives of CSOs are not ready to conduct a real dialogue with both national and local governments about policy content. Most CSOs are able only to “broadcast dissatisfaction”, thereby attracting the attention of the State authorities and the media, and then suggest the most obvious solutions, which are usually limited to the need to “punish those responsible”. This leads to misunderstandings as to why and how one should best use his/her CSO membership when advocating policy proposals. Moreover, there is only a vague understanding of advocacy: at best it is regarded as a tool to impact the agenda, and usually it is simply understood as a way to inform and influence people's behaviour, or as a way to protect their rights. Most CSOs see advocacy as the protection of rights, but not as a political instrument.

Public policy aimed at promoting the development of civil society in Ukraine cannot be considered a success, and though the “Strategy of State Policy for

⁴ FG participant from Zaporizhzhya, Ukraine – The Empirical Report, page 30.

Promoting the Development of Civil Society in Ukraine and Primary Measures for Its Implementation” (hereinafter – the Strategy) was adopted by the President of Ukraine in 2012, it suffers significantly from a declarative nature⁵.

- The Strategy is **not a national target programme**, which is approved by Parliament or by Government decree and **does not provide for types or amounts of resources**, in particular from the State budget;
- Policy objectives, as formulated in the Strategy, resemble **a generalised list of all possible wishes** in order to satisfy everyone and avoid any potential criticism;
- The Strategy is full of **vague and declarative objectives** that are very close to slogans;
- Due to budget deficits, **the actual financing of public policy measures is allocated on a sporadic, random and ‘left-over’ basis** (in the Government’s opinion, most important is that so-called “protected” budget items be fully-funded).

⁵ <http://zakon4.rada.gov.ua/laws/show/212/2012#n11>,
<http://www.president.gov.ua/ru/documents/15829.html>



METHODOLOGY

The research was carried out with the following **objectives**:

1. Determination of the legal, organisational and financial conditions of CSOs' set-up and functioning.
2. Description of the current state of public policy in promoting the development of civil society.
3. Description and evaluation of the tools available to CSOs in influencing the content of decision-making processes.
4. Identification of factors that hinder effective cooperation between CSOs and State authorities in public policy-making dialogue.

Subject of the study: CSOs that actively interact with public authorities or seek such interaction.

Aim of the study: development of a policy dialogue between CSOs and public authorities in Ukraine.

Main methods of data collection: desk research, face-to-face interviews with CSO representatives and focus group discussions.

CSO members were selected as the source of data since they possess comprehensive information about CSO activities, their overall situation and the legal and regulatory framework of their activities in Ukraine. Unfortunately, this information is not available online.

The interviewers and moderators of focus group discussions received special guidelines, including a description of the project and the specific factors to take into account when conducting face-to-face interviews and focus groups, as well as a dictionary with basic concepts and terms. This was in order to ensure a unanimous approach of all interviewers and moderators to their task.

Geography and target sample. According to the Unified State Register of Enterprises and Organisations of Ukraine (USREOU), at the beginning of 2012 there were 71,767 public associations, and 13, 475 charitable foundations and organisations with international, national and local status. This number includes local branches, subsidiaries, representative offices and individual units not registered as separate entities. However, according to the CCC Creative Centre⁶, no more than 3000–4000 organisations are in fact active (at the same time, a lot of new organisations have been registered, with many others ceasing their activities yet remaining registered as legal entities).

Due to the absence of exact data on the number of functioning CSOs, the decision was taken to conduct a study on a target sample that would include at least 400 organisations. To a certain extent, this approach contributed to the quality of the results. It is important to note that the use of a target sample covering all regions (oblasts) of the country made it possible to discuss the representativeness of the CSOs in the study, as they were selected to participate based on the territorial and sectorial criteria that were used.

In particular, this study focuses on 'active CSOs', meaning those organisations that meet the following criteria:

- officially registered, and
- actually functioning (which must be confirmed by reports that have been submitted to the tax authorities, and by the fact that these CSOs are visible in society due to their active participation in various events) and
- have experience of cooperating with executive authorities, local self-governing bodies, or are actively seeking such experience if they do not yet have it).

⁶ <http://ccc-tck.org.ua/eng/>

The study was conducted in all oblasts of Ukraine, AR Crimea and Kyiv. 32 focus group discussions were carried out and 408 people interviewed. The field studies were conducted from the 1st to the 28th of February 2014. The CSOs that participated in the project were selected based on a 'snowball' sampling approach, taking into consideration the databases of the State Committee of Statistics of Ukraine as well as the ISAR Ednannia and the Centre of Social Expertise. Focus group participants were asked to answer questions in a quantitative questionnaire.

The authors faced the following **difficulties during the drafting of the report:**

1. Socio-political. The period of research coincided with an unprecedented burst of civic activism and socio-political transformations in the modern history of Ukraine, known as "Euromaidan." This activity was not limited to the centre of Kyiv, but extended to mass demonstrations across Ukraine in support or opposition of the demonstrations at Maidan Nezalezhnosti. These were also aimed at the events from March and April 2014, related to the annexation of the territory of the Autonomous Republic of Crimea by the Russian Federation and separatist movements in some eastern regions of Ukraine. Euromaidan was largely inspired and driven by civic organisations and movements, rather than by political parties, and stands as an example of an impressive acceleration in processes of self-organisation and social structuring⁷. Obviously, current events in Ukraine will significantly affect the structure and completion of CSOs' activities, such as:

a. **Constitutional reform.** Transition from a centralised presidential system to a parliamentary government. It is clear that constitutional reform will be accompanied by radical changes in the distribution of power and the operating procedures of State authorities (including collaboration with CSOs).

b. **Turnover of administration staff at State authorities.** This includes both co-opting some civil society activists to work for the government, and ensuring appropriate staff turnover in CSOs themselves. State authorities will likely become more open to both citizens' participation and CSOs' involvement in public policy-making.

c. **Radical changes of citizens' mindsets regarding relations with State authorities.** There is a massive transition from "policy-takers" to "policy-mak-

ers", and thus a shift from a passive consumer position to an active interest in the content of decisions in the field of public policy, as well as more requests for "dialogue", "control" and "participation" in relations with State authorities. The above-mentioned transition was observed due to the increasing proliferation of CSOs aiming to reform the country through active participation in policymaking (such as the civic initiative "Reanimation Package of Reforms"⁸, the Reforms Support Centre within the Cabinet of Ministers of Ukraine, etc.).⁹

d. **Significant changes in the structure of CSOs.** This refers primarily to the process of setting up new CSOs in the various regions of Ukraine. It is still not clear how many out of these initiatives will fail to stand the test of time and how many will be legalised or transformed into political parties and so forth. Obviously, the same changes would also affect the existing CSOs.

2. Refusal of state authorities to take part in focus group discussions. Initially, the plan for this research study was to conduct a focus group with representatives of LSAs, in order to establish their views on current problems concerning their cooperation with CSOs and the participation of the latter in public policy-making. However, due to the political confrontations in Ukraine all further communication endeavours were rejected – namely, the authorities refused to communicate with the interviewers during the empirical studies carried out in February 2014 during Euromaidan.

3. Failure to involve "unformalised" CSO members in the focus groups. The main reason for this was the unwillingness of the unformalised CSO leaders to take part in any polls and discussions related to political interaction/cooperation.

4. The need to postpone activities due to the 'hot' socio-political events in Kyiv and in Ukraine in general. The research time-frame coincided with the Euromaidan events, which influenced the responses. Political confrontation significantly interfered with conducting focus groups and interviews – some focus group meetings were postponed three times. During the mass demonstrations it was necessary to reschedule the survey for another time or day (sometimes even to another week) to allow the situation to calm down.

⁷ http://www.niss.gov.ua/content/articles/files/grom_susp-bdf01.pdf

⁸ <http://platforma-reform.org/>

⁹ <https://www.facebook.com/centrereform>



1. STRUCTURE AND LEGAL ASPECTS OF CSO OPERATION IN UKRAINE

1.1. Types of CSOs in Ukraine

The Ukrainian Law on Public Associations¹⁰ and the Law on Charity and Charitable Organisations¹¹ define the following types of CSOs in Ukraine:

- public associations;
- charitable organisations;
- professional and cultural unions;
- organisations of employers;
- self-regulatory organisations and organisations of professional self-government;
- religious organisations;
- self-governing population entities;
- non-state mass media;
- other non-commercial companies and institutions legalised pursuant to the law.

According to the Unified Register of Enterprises and Organisations of Ukraine, published by the State Statistics Service of Ukraine¹², at the beginning of 2012 the number of registered CSOs in Ukraine was 71,767, with 27,834 trade unions and their associations, 13,475 charitable organisations, 13,872 associations of estate owners' unions and 1306 self-governing population entities. Among these, 3526 were legalised organisations with national or international status, 323 were public associations registered by notification, 1118 were charitable organisations registered by notification, 66 were permanent arbitration courts and 22 were cultural unions¹³.

10 <http://zakon4.rada.gov.ua/laws/show/4572-17>

11 <http://zakon3.rada.gov.ua/laws/show/5073-17>

12 http://ukrstat.org/uk/express/expr2012/01_12/13_zip

13 The Empirical Report, p. 5

1.2. Legal Framework for CSO Operation

In 2013, the Ukrainian Law on Public Associations¹⁴ and the Law on Charity and Charitable Organisations¹⁵ came into effect. This legislation was progressive compared to the previous regulation governing CSOs' activities, and envisaged:

- the simplification of procedures for CSOs' economic activity (CSOs registered as legal entities became entitled to carry out entrepreneurial/business activities not only through enterprises and companies created by them, but also directly, so long as this activity was consistent with the goal of public association and promoting its achievement);
- a limit on the number of reasons for refusing to register a CSO and a shorter registration term of seven working days;
- the possibility for CSOs to act as legal entities of private law even without legal entity status;
- determinating the conditions and reasons for CSOs' liquidation, to be included in an exhaustive list.

There have been significantly fewer refusals to register – only 5–10%, whereas the proportion was between 30–40% before the introduction of the new legislation.¹⁶ In general, CSOs regard these innovations positively.

Overall, the legislation determines the procedures and grounds for setting up and registering CSOs, reporting and interacting with State authorities, liability for violation of law and the termination and prohibition of CSO activity. CSOs in Ukraine can be created both as public organisations and as public unions. The following are not considered CSOs: political parties, associations

14 <http://zakon4.rada.gov.ua/laws/show/4572-17>

15 <http://zakon4.rada.gov.ua/laws/show/5073-17>

16 <http://www.niss.gov.ua/articles/1423/>

of local self-governments and their voluntary associations, self-regulatory organisations, organisations carrying out professional self-governance.

The grounds for restrictions and prohibitions of CSOs' activities are also clearly defined. These are:

- CSOs with goals (objectives) or performing actions aimed at abolishing the independence of Ukraine, forcibly changing the constitutional order, violating the sovereignty and territorial integrity of the State, undermining its security, illegally seizing State power, promoting war, violence, inflaming ethnic, racial, or religious hatred, infringing on human rights and freedoms, public health.
- CSOs having paramilitary forces in their structure;
- CSOs vested with authoritative powers.

To achieve its objectives, a CSO has the following rights:

- freely disseminate information about its activity, popularise its goals (objectives);
- appeal to CGBs, LSAs and LSGs, their officials and employees with proposals (comments), inquiries, petitions, complaints;
- obtain public information;
- participate in drafting legal acts issued by CGBs, LSAs and LSGs;
- conduct peaceful assemblies.

The legislation provides that CGBs, LSAs and LSGs may involve CSOs in the process of public policy formulation and implementation. At the same time, it is mandatory to consult with CSOs about drafts of legal acts as regards their legal status, funding and activities. Some focus group participants mentioned the gap between existing Ukrainian laws and their practical implementation¹⁷. They associate this situation with bureaucratic procedures that should theoretically facilitate the process of registration and re-registration of CSOs, but which in reality make the document flow more complex due to the attitude of some public officials toward their work responsibilities, reformation of registries, introduction of registration fees, etc.¹⁸.

¹⁷ The Empirical Report, p.21

¹⁸ The Empirical Report, p. 21

1.3. Registration of CSOs

In order to simplify and accelerate registration procedures, the authorities of registration agencies at different levels were explicitly differentiated. The scope of competence of registration services in the departments of justice of LSAs includes primary registration (or acceptance of notifications about the set-up), acceptance of notifications about changes to the statute/charter, address, administration bodies of public associations, termination and issuance of duplicate documents. Meanwhile, within its scope of competence, the State Registration Service of Ukraine can confirm the all-Ukrainian status of public associations, register their symbols and accredit separate units of foreign CSOs in Ukraine.

To maintain records of public associations and ensure general access to information on them, the authorised registration body keeps the Register of Public Associations. Basic information from the Register of Public Associations is open to free access through the official website (<http://rgo.informjust.ua/>).

During the focus group discussions¹⁹, CSO representatives made some comments regarding the Register of Public Associations. Indeed, the current Register does not allow CSOs to seek partner institutions in an effective manner, nor to find out the results of other associations' activities or acquire access to their reports. The Register only keep records on the associations themselves, without any details as to the content, quality or efficiency of their work not contributing to their transparency. Other drawbacks of the Register include the following:

- inconvenient search system within the Register;
- unpunctual new data entering and updating;
- lack of information about specific CSOs' activities;
- lack of information exchange between the Register and the Unified State Register of Legal Entities and Individual Entrepreneurs.

¹⁹ The Empirical Report, p.20

1.4. Priorities of CSO Activities

According to the survey conducted within this study, most of CSO activities (60.29%) cover the entire population, with 50.74% of CSOs targeting young people. However, a large part of the organisations surveyed had the following as target groups: children (26.47%), civil society organisations (22,06%), local self-governments (17.89%), women (15.2%), elderly people (12.5%) and others. The smallest proportion of those surveyed had CGBs (4,9%) and business structures (3.19%) as their target groups²⁰ (note: the total number of responses to this question exceeds the number of the organisations that participated in the study due to the possibility for each CSO to name several target groups (answers are compatible alternatives)).

When selecting the spheres of their activity, CSOs are primarily guided by “the development strategies of the organisation itself” (73.04%) and “the needs/requirements of the organisation’s beneficiaries” (43.87%). Almost every other CSO surveyed considered the development strategies of Ukraine (46.08%) and the priorities of donors/sponsors (45.1%) “to some extent”²¹.

The table below provides a good illustration²² of the sectors where CSOs operate:

Table 1. **Main activity areas of surveyed CSOs, %**

Main activity areas	%****
Civil society, democracy and public campaigns	34.8
Social services	31.86
Human rights	30.15
Healthcare	27.94
Charity (support of/ carrying out charitable events)	27.94
Education	26.47
Youth	21.81
Culture	17.65
Development of local communities	15.2

20 The Empirical Report, Appendix 4, p. 98

21 The Empirical Report, Appendix 4, p. 98–99

22 The Empirical Report, Appendix 4, p. 97

Environment	12.75
European integration	6.13
Effective governance	4.41
Economics, entrepreneurship	2.45
Agriculture	0.98
Religion	0.49
Other	9.07

Note. *** The total number of responses to this question exceeds the number of organisations that participated in the study due to the possibility for each CSO to choose several areas (answers are compatible alternatives)²³.

1.5. Public Attitudes towards CSOs

Most focus group participants noted that civil society in Ukraine is in the process of active development but has not yet reached the necessary level to effectively influence public life. On the one hand, there are independent non-governmental organisations, active public leaders, and a conducive environment for civil society development. On the other hand, however, a substantial part of the population is inactive and authorities neither understand the role of civil society nor do they want to listen attentively to CSOs. According to the respondents, authorities manipulate the concept of “civil society” and are reluctant to promote the sustainable development of CSOs. One of the participants in a focus group discussion said: “*The authorities make it clear to CSOs: develop, but know your place.*” (FG, Kherson)²⁴. Ukrainian citizens are the most knowledgeable about the CSOs working in the social sector (health, humanitarian assistance/charity, education, women’s rights, legal issues and democracy/governance). In 2012, 66% of Ukrainians were convinced that CSOs worked in those sectors and solved the problems that their government was unwilling or unable to resolve²⁵; 61% of citizens²⁶ (55% in 2011²⁷) consid-

23 The Empirical Report, p. 37

24 The Empirical Report, p. 15

25 Key findings from IFES Ukraine Survey, slide #11 http://www.ifes.org/Content/Publications/Survey/2012/~media/Files/Publications/Survey/2012/Ukraine_Survey_2012_Slides.pdf

26 Key findings from IFES Ukraine Survey, slide #11 http://www.ifes.org/Content/Publications/Survey/2012/~media/Files/Publications/Survey/2012/Ukraine_Survey_2012_Slides.pdf

27 Findings from the IFES 2011 Survey in Ukraine, slide #9; http://www.ifes.org/Content/Publications/Survey/2011/~media/Files/Publications/Survey/2011/Ukraine_Survey_2011_Slides.pdf

ered that CSOs provided valuable input to the development/improvement of the situation in Ukraine; 52% of respondents agreed that CSOs represented Ukrainian society²⁸. Most Ukrainians disagree with the statement that CSOs represent foreigners' interests (37% of respondents do not agree, 40% do not know, 23% agree)²⁹.

In general, **the number of citizens who trust CSOs would have been higher had the CSOs shared more information on their activities with the rest of society – otherwise citizens do not perceive the CSOs as a viable tool for protecting their rights and fail to believe in their efficiency.**³⁰

1.6. Barriers for Participation in CSO Activities

The liquidation of CSOs remains a complicated and burdensome procedure. As a result, even after ceasing its activities, a CSO must continue to report to the tax service in order to avoid fines – due to a simple flaw in the legislation.

*“The problem of closing down a civil society organisation is more crucial today than its registration. Because so many enthusiasts open public organisations due to the ease of registration and they actually cannot fully assess what it means to run a civil society organisation. And if you take statistics in Kherson and Kherson oblast and analyse the number of registered CSOs and working organisations – it’s like night and day. If the founders could close the organisations down, they would have done it long time ago. And there would not have been all these left-wing organisations... And incorrect statistics. People have tried.” (Kherson)*³¹

However, having acknowledged some legislative improvements, the CSO representatives expressed their dissatisfaction as to how these provisions were

implemented by the CGBs, LSAs, and LSGs in the course of their daily work. Here is an illustration, shared by one of the focus group participants:

*“Despite the fact that the law has quite satisfactory rules for the creation and operation of public associations, it does not guarantee that all the existing rules are followed” (Luhansk)*³².

The focus group participants expressed the same dissatisfaction with the terms and cost of registration procedures, as the total cost of direct expenses for an association's registration is at least \$100. This includes fees for notary certification of the signature, opening a bank account, payment of the relevant state fees and all fees for extracts from documents, stamps, etc. Registration is usually delayed for at least 2–3 months, and in some cases up to 6 months.³³

CSOs frequently point out that CGBs, LSAs and LSGs create barriers and obstacles for the CSOs' activities. According to the focus group participants, **the supervisory authorities' activities become more pressing during times of socio-political upheaval in the country and on the eve of election campaigns**³⁴. CSO representatives feel pressure on their activities from the Ukrainian Security Services (so-called “preventive measures before elections”)³⁵, prosecution bodies³⁶, tax inspections³⁷, sanitary and epidemiological services, administration controlling narcotic drug trafficking (for CSOs providing services in the field of replacement therapy) and members of parliament who lobby for setting limits for foreign donors. There are also forms of indirect pressure applied to CSOs, such as selective inquiries from the tax authorities to provide them with detailed personal data of CSO members and their connections.

cations/Press-Release/2011/~//media/Files/Publications/Survey/2011/Public_Opinion_in_Ukraine_2011_Presentation.pdf

28 Key findings from IFES Ukraine Survey, slide #11 http://www.ifes.org/Content/Publications/Survey/2012/~//media/Files/Publications/Survey/2012/Ukraine_Survey_2012_Slides.pdf

29 Key findings from IFES Ukraine Survey, slide #11 http://www.ifes.org/Content/Publications/Survey/2012/~//media/Files/Publications/Survey/2012/Ukraine_Survey_2012_Slides.pdf

30 <http://www.ua.undp.org/content/ukraine/en/home/presscenter/articles/2013/06/16/new-projects-aim-at-improving-ukraine-s-administrative-services/>

31 The Empirical Report, p. 20

32 The Empirical Report, p. 21

33 The Empirical Report, p. 21

34 The Empirical Report, p. 34

35 Freedom House Report “Sounding the alarm: Protecting Democracy in Ukraine”, page 13. https://freedomhouse.org/sites/default/files/inline_images/Freedom%20House_UKR.pdf

36 Report “Making Ukrainian Civil Society Matter”, Institute of Public Affairs, page 34 <http://www.isp.org.pl/uploads/pdf/1965036503.pdf>

37 Report “Making Ukrainian Civil Society Matter”, Institute of Public Affairs, page 33 <http://www.isp.org.pl/uploads/pdf/1965036503.pdf>



However, the so-called “Dictatorship Laws” adopted by the Parliament on January 16th, 2014³⁸ with a large number of violations of the Ukrainian Constitution and legislation, constituted the greatest threat to freedom in general and to CSOs’ activities in particular. Three weeks later these laws were annulled before even entering into force, due to swell in the Euromaidan protests. These laws provided the term “foreign agent” – a kind of a public association carrying out activities in Ukraine, funded (provided with either money or property) by foreign states and their state authorities, non-governmental organisations of other countries, international CSOs, foreign citizens, stateless persons or persons authorised by them who receive money or other property from the stated sources and also involved in political activity on Ukrainian territory.³⁹ Meanwhile, ‘political activity’ was considered as participation (namely through funding) in designing and carrying out political campaigns aimed at influencing the decision-making processes of state authorities, changing their public policies and shaping public opinion for the above-mentioned purposes. In other words, any member of the policy dialogue could in fact be qualified as a ‘foreign agent.’⁴⁰

At the same time, some focus group participants believe that the socio-political developments in Ukraine over the past three months have significantly affected the level of development and future prospects of civil society in the country. Despite the lack of proper institutionalisation, civil society is able to behave in an organised and efficient manner (e.g. Euromaidan) and create a specific model for the authorities and other social institutions.

“I believe that the recent socio-political developments in Ukraine have shown that civil society exists and functions much better than we thought it did, and it should not necessarily be institutionalised. It can exist without formal procedures. I guess that the way Maidan behaves and the way activities are organised there can serve as a model to organise the work of authorities and institutions of any society.” (Lutsk)⁴¹

38 http://uk.wikipedia.org/wiki/%D0%94%D0%B8%D0%BA%D1%82%D0%B0%D1%82%D0%BE%D1%80%D1%81%D1%8C%D0%BA%D1%96_%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD%D0%B8_16_%D1%81%D1%96%D1%87%D0%BD%D1%8F

39 <http://zakon1.rada.gov.ua/laws/show/721-18>

40 <http://www.pravda.com.ua/news/2014/01/16/7009727/?attempt=1>
<http://blog.liga.net/user/vkrupelnytskyj/article/13320.aspx>

41 The Empirical Report, p. 17

1.7. Basic Freedoms of Public Activity

1.7.1. Freedom of Speech

Freedom of speech and thought is guaranteed by the Constitution of Ukraine (Article 34)⁴². In the early 1990s, right after Ukraine was granted independence, the parliament adopted the legislation that guaranteed freedom of thought, religion, belief, activities for religious organisations, and which prohibited censorship of mass media. Freedom of speech and free access to information were ensured by:

- the obligation of all State authorities to inform the public and mass media about their activities and decisions;
- the establishment of special units or responsible persons who were to provide applicants with access to information in all State authorities;
- open access to statistical data, archives, library and museum funds, and other information banks, databases and resources;
- the prohibition of censorship or interference in the professional activities of journalists or those working in mass media.

It is important that “censorship” be defined as any request to a journalist, mass media, its founder (co-founder), publisher, manager and disseminator to agree on information prior to its dissemination; “censorship” could also be used with regard to interference with or prohibition of disseminating or distributing information. Intentionally creating obstacles to lawful professional journalistic activity is punishable by a fine or imprisonment for a term of up to six months, or restraint of liberty for a term up to three years.

42 Constitution of Ukraine, Article 34. Everyone shall be guaranteed the right to freedom of thought and speech, and to free expression of his views and beliefs. Everyone shall have the right to freely collect, store, use, and disseminate information by oral, written, or other means at his discretion. The exercise of such rights may be restricted by law in the interests of national security, territorial integrity or public order, for the purposes of preventing disturbances or crimes, protecting the health of the population, protecting the reputation or rights of other persons, preventing the publication of information received confidentially, or supporting the authority and impartiality of justice. <http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

The CSO representatives interviewed for this research were quite sceptical about the freedom of speech in Ukraine (only 18.63 % of them answered “very good” or “good”). Other aspects of public life do not have high positive assessments either – usually they are rated at the “satisfactory” level: 46.08 % of respondents assessed CSO obligations to fill out annual financial reports as satisfactory, while freedom of speech was given same “satisfactory” assessment by 43.14% of respondents; the registration procedure for CSOs was rated “satisfactory” by 42.89% of CSOs; 40.93 % of respondents found the right to private property and the freedom of assembly and association to be at a satisfactory level.⁴³

Table 2. **The state of affairs in Ukraine on particular aspects (according to the interviewed CSOs), % (N=408)**

	Very good	Good	Satisfactory	Bad	Very bad	Do not know/ Not aware
Safeguarding main civil liberties	1.23	6.86	34.56	32.35	20.34	4.66
Freedom of assembly and association	2.21	15.93	40.93	23.77	12.75	4.41
Freedom of speech	3.92	14.71	43.14	23.77	10.29	4.17
Access to any information of public interest at the level of local authorities	2.21	12.01	37.75	29.41	13.24	5.38
Access to any information of public interest at the level of central authorities	2.45	8.33	31.13	27.94	20.1	10.05

The above assessments, of course, refer to the time prior to the downfall of the Yanukovich administration at the end of February 2014. During the period of his presidency there was a significant decrease in the freedom of speech in Ukraine. Some aspects – which were forgotten after the Orange Revolution – reverted to the way they were in 2010–2013⁴⁴, namely the pressure on mass

media owners⁴⁵, the termination of broadcasting and raids on undesirable mass media outlets, openly false propaganda about regime success at the state mass media, the practice of concealing or openly distorting the positions of political opponents, cynical, manipulative and distorted informing about the scope, content and reasons for holding mass protests, manifestations, etc.

Violations of journalists’ rights and the obstruction of their work became a widespread practice.⁴⁶ This issue was openly boasted about by representatives of law enforcement authorities and private security firms. A huge number of journalists, especially during Euromaidan⁴⁷, suffered injuries⁴⁸, gunshot wounds⁴⁹, some were even killed⁵⁰.

The spread of the Internet and ICT development simplified access to and dissemination of information both by individual citizens and by CSOs. At the end of 2013 ‘public journalism’ – online media that became popular and influential in forming public opinion such as “Hromadske TV”, “Spilnobachennia”, “Espresso TV”, Ukrstream, “Public radio” etc. – significantly diversified access to social and political information for citizens. This tendency has also dramatically enhanced social networks, which are rapidly gaining popularity among Ukrainians.

However, such diversity is only available for some Ukrainian citizens, mainly those younger than 50 years old and who live in large or medium-sized cities (with populations over 100,000) as well as for students and people with higher levels of education. For a considerable part of the population, TV and radio broadcasts are still the main sources of political and policy information. In mid-April 2014 the Parliament adopted a law that provides for the rejection of State television and radio broadcasting and its transition to the public format, which primarily envisages the establishment of supervisory authorities. The latter should include, *inter alia*, CSO representatives, in order to ensure balanced information and satisfy the information needs of different social groups.

45 <http://postup.brama.com/usual.php?what=67998>

46 <http://www.pravda.com.ua/news/2013/11/26/7003088/>

47 <http://fakty.ictv.ua/ua/index/read-news/id/1496958>

48 http://www.rferl.org/content/Concerns_Mount_About_Press_Freedom_In_Ukraine_As_Journalist_Attacked/2164350.html

49 <http://ogo.ua/articles/view/2013-12-02/45119.html>

50 <http://poglyad.te.ua/podii/vbyto-cherkaskoho-zhurnalista-yakyj-pidtrymuvav-evromajdan-i-svobodu/>

43 The Empirical Report, Appendix 4, p. 111–113.

44 <http://urr.org.ua/2010/05/10/3990/>

1.7.2. Freedom of Access to Public Information

In Ukraine there are established parliamentary, public and state controls on access to public information. Citizens or CSOs can appeal the decision, action or inactivity of information providers. The law has defined various types of violations and relevant administrative liabilities for committing these. Those persons who consider their rights and lawful interests to have been violated by information providers have the right to request compensation for material and moral damage.

Despite the fact that new legislation on access to public information entered into force 3 years ago, CSOs and some Ukrainians did not feel the effects of these qualitative changes:

- First of all, neither **public nor – primarily – State authorities were ready to use / implement these instruments**. CSOs conducted many training sessions for staff to enable them use the tools and procedures for accessing public information;
- Secondly, there is a widespread tendency among **civil servants to either not provide or to provide incomplete or late public information**. This is caused by the lack of relevant provisions in civil servants' job responsibilities and job descriptions as well as an absence of mechanisms to sanction for violation of the existing provisions. In order to obtain the necessary data, representatives of mass media and CSOs have used all sorts of tricks, in particular through members of opposition in parliamentary inquiries. The situation changed in March 2014, as new legislation introduced appropriate sanctions;
- Thirdly, **the information requested by journalists and CSOs was highly typical: it mainly related to the living conditions and logistical support of State authorities and property belonging to officials**. Nowadays a request for public information has become more a tool of investigative journalism and anti-corruption expertise than an effective method of obtaining relevant policy data and documents. Since society showed a great interest in the information requested, journalists and CSOs kept requesting same type of information regarding the living conditions of officials.

One of the main accomplishments in public policy advocacy over the last five years has been the adoption of new legislation⁵¹: the Law on Access to Public Information, of January 13, 2011. The latter set in place the mechanisms for gaining access to public policy-related information. In particular, this new legislation obliges State authorities to ensure the systematic and timely dissemination of certain information via the following sources:

- official publications;
- official websites;
- information boards;
- any other means.

At the same time, the new legislation specifically determines what information it is mandatory to disseminate⁵². Namely, this information concerns organisation of work (locations, procedures, conditions, terms of provision of administrative services), general information about a relevant State authority (mission, objectives, functions, address, structure, opening hours for citizens, document flow, information on the administration, etc.), as well as the content of policy decisions that are adopted/ready for adoption or being drafted, such as:

- legal acts, individual acts, draft decisions, all of which are subject to discussion and information on the legal framework of activities;
- information on mechanisms or procedures through which the public can represent its interests or influence the activities of relevant State agencies in other ways;
- the planning and agenda of open meetings of collective bodies (local councils, their executive committees and commissions, panels of CGBs, etc.);
- reports, including those on the implementation of state and regional target programmes (the main type of policy documents in Ukraine).

Specialised information services are being set up by State authorities with this purpose, namely: information departments, informational and analytical units, press services, press centres, departments and centres of public relations, press bureaus, press secretaries and press attachés with appropriate staff. Their task is to collect, analyse, process and provide timely information on the activities of these authorities to the mass media.

51 <http://zakon4.rada.gov.ua/laws/show/2939-17>

52 <http://zakon4.rada.gov.ua/laws/show/2939-17>

However, such requirements to inform about their activities are not introduced solely for public administration bodies, but also apply to:

- legal entities funded from the state and local budgets and the budget of the Autonomous Republic of Crimea – concerning information on the use of budgetary funds;
- persons performing duties delegated by state authorities pursuant to the law or contract (concerning information on fulfilment of their duties);
- business entities occupying a dominant position in the market or endowed with special or exclusive rights or holding the status of natural monopolies – concerning information on conditions of supply of goods, services and their costs⁵³.

In addition to the information mandatory for publication by both public administration bodies and by the other sources mentioned above, citizens/CSOs can make direct requests to gain access to a broader range of relevant policy data and documents. Such **requests can be either individual or collective. Requests can be submitted orally, in writing or in other form (via post, fax, telephone, e-mail) at the applicant's discretion.** Written requests may be submitted in any form.

A crucial factor for this procedure is the opportunity for the requester to ask for any information regardless of whether it relates to him, without the need to explain the reason for such a request. The exact terms to process the request and possible reasons and forms of refusal are clearly defined, as well as the reasons for any delays in the provision of the requested information.

Experts and Ukrainian civil society activists repeatedly stressed the need to do the following:

- abolish the use of restrictive stamps «not for publication», «for internal use»,⁵⁴ etc.; expand information on public procurement;⁵⁵
- “denationalise mass media”⁵⁶ and create public broadcasts.⁵⁷

53 <http://zakon4.rada.gov.ua/laws/show/2939-17>

54 <http://www.khpg.org/index.php?id=1070547941>

55 http://www.petitions247.net/za_2207

56 <http://ukranews.com/news/29345.---.uk>

57 http://stv.mediasapiens.ua/reformuvannya/internet/gromadske_tb_vimagae_zapustiti_suspilne_movlennya_i_peredati_yomu_litsenzii_ta_mayno_kdr_trk/

1.7.3. Freedom of Peaceful Assembly

One of the weakest aspects of the development of democracy in Ukraine is the absence of legislation on peaceful assembly, despite the fact that the Constitution provides for it (Art. 39)⁵⁸ along with several international obligations undertaken by the State, in particular: Article 21 of the International Covenant on Civil and Political rights, Article 15 of the Convention on the Rights of the Child, Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, OSCE/ODIHR and the Venice Commission of the Council of Europe Guidelines on Freedom of Peaceful Assembly.

This issue becomes even more acute in the light of the recent events in Ukraine. Starting in 2011–2012 it became significantly more difficult to employ the right to peaceful protest. The events at the end of 2013/beginning of 2014 (extraordinary increase in political activity and in the number of mass events) significantly intensified this problem. Granting or not granting permission to hold mass campaigns and prohibiting these campaigns in Court were widely used initiatives to provoke public confrontation. Meanwhile, allowing mass assemblies for opposing groups (which would most likely result in confrontations and sometimes even bloodshed) looked equally provocative.⁵⁹

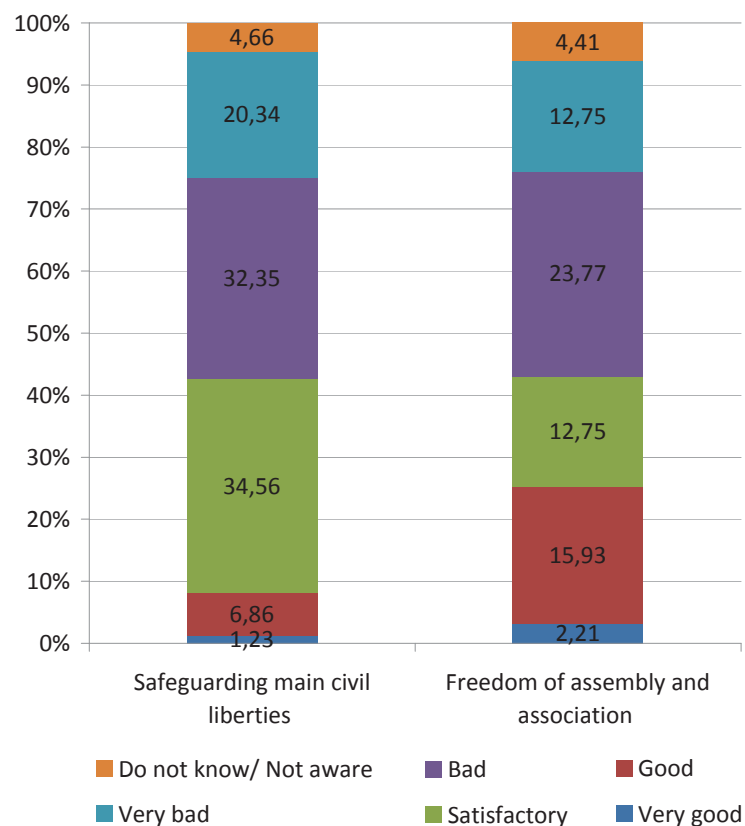
During the CSO survey carried out within this research (at a time when mass rallies in the East and South of Ukraine had not got to the point of military takeovers of administrative buildings and clashes with political opponents) only 18.14% of respondents considered the situation of peaceful assembly in Ukraine as ‘good’ or ‘very good,’ with 40.93% considering it ‘satisfactory’ (Figure 1 below).

58 Constitution of Ukraine, Article 39. Citizens shall have the right to assemble peacefully without arms and to hold rallies, meetings, processions, and demonstrations upon notifying executive or local self-government bodies in advance. Restrictions on the exercise of this right may be established by a court. in accordance with law and only in the interests of national security and public order, for the purpose of prevention of disturbances or crimes, protection of the health of the population, or protection of the rights and freedoms of other persons. <http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

59 <http://www.day.kiev.ua/uk/article/cuspilstvo/pravila-antimaydanu>



Figure 1. **The state of affairs in Ukraine on particular aspects (according to the CSOs interviewed) % (N=408)**



CSOs widely discuss the following issues related to organising and conducting peaceful assemblies:

- who will organise a peaceful assembly;
- the rights and responsibilities of the organisers and participants of a peaceful assembly;
- the procedures for notifying LSAs/LSGs about a peaceful assembly;
- the content and form of notification on holding peaceful assemblies;

- the requirements and restrictions on location, time and other terms and conditions for holding peaceful assemblies;
- agreement among organisers and LSAs/LSGs about the terms and conditions of holding peaceful assemblies;
- the obligations of State authorities and local self-governments to ensure a peaceful assembly takes place, even including spontaneous ones;
- the grounds and procedures of appealing decisions, acts or inaction that violate the right to the freedom of peaceful assembly;
- ensuring the timely judicial consideration of lawsuits and appeals related to the restriction of freedom of peaceful assembly while ensuring the procedural rights of persons involved in such cases, as well as other stakeholders;
- exemption from court fees in cases of restrictions of freedom of peaceful assembly, removal of barriers and prohibition of interference with the freedom of a peaceful assembly;
- additional guarantees for professional activities of journalists and mass media employees during peaceful assemblies;
- the scope of authority of agencies of interior (militia) while ensuring the holding of a peaceful assembly, in particular warning about the use of physical force and special means during a peaceful assembly;
- the replacement of a permissible nature in public worship, religious rites, ceremonies and processions held outside of religious buildings or other premises and adjacent areas with an informing nature, and spreading of scope of legislation on freedom of assembly to include such activities;
- the specifications of holding spontaneous peaceful assemblies.

As of the beginning of 2014, five draft laws concerning implementation mechanisms for the constitutional freedom of Ukrainian citizens to hold a peaceful assembly were prepared with the participation of CSOs. Two of them (Draft Laws No 2508a від 04.07.2013⁶⁰ and No 2508a-1 of 17.07.2013⁶¹) had been submitted to the Parliament.⁶²

60 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=47751

61 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=47925

62 <http://helsinki.org.ua/index.php?id=1382426506>

1.8. Charity and Volunteering

The development of charity in Ukraine has good perspectives and a broad social base. The dominant perception of the purpose of charity in Ukraine has a somewhat specific (so-called 'orthodox') nature. Charity is regarded as aiming to support mainly vulnerable individuals, those facing various difficulties (orphans, sick people, the elderly, talented children from poor or unfavourable families). Charity donors mostly focus on these vulnerable groups by providing care, paying for medical services, buying clothes, food, home repairs, etc. This approach to charity is based on compassion and the principle of "effective assistance". Also, assistance with social problems provided by non-governmental, public efforts (an approach that is common in Western countries) is usually considered as a hidden form of support from political forces.

It should therefore come as no surprise that there are so many different kinds of charitable organisations and foundations. In 2013, over 15,000 charitable organisations were officially registered in Ukraine, and each year approximately 2000 new foundations appear. It is interesting that in European countries there is one charitable organisation per 4500 residents, while in Ukraine the rate is one per 3000. Currently in Ukraine almost every Member of Parliament or successful businessman has his own foundation or public association, and every day each of them gets dozens of letters asking for assistance to vulnerable groups. According to the results (which are far from being full or complete) of the evaluation of the national charity rating, 580,758,000 UAH (about EUR 52 million) was spent on charity in Ukraine in 2012, which is almost 227 million UAH more than in 2011.⁶³

Nowadays there are different types of charitable funds in Ukraine: private and corporate, community foundations and operational/fundraising funds, informal groups of people who care and share common values, who unite around a variety of charitable initiatives (this trend became more visible during the Euromaidan). Charity shops are opening, the first social enterprises have started up and professional associations of philanthropists were set up. New modern forms of collecting donations are emerging: Internet sites for collecting dona-

tions, such as the project "Spilnokosht"⁶⁴ and charitable donations by sms, for example in March and April of 2014 more than 130 million UAH or about EUR 9.5 million was collected in support of the Armed Forces of Ukraine.⁶⁵ According to expert assessments, only about 20% of charitable funds registered in the country really fulfil their main function, i.e. collecting donations to solve various problems. The activities of others are aimed at solving different problems: some funds are in fact fictitious, and some are incorporated with the only aim of laundering money, and thus have nothing in common with voluntary donations.⁶⁶ There are as yet no mechanisms in place for inspecting the activities of charitable foundations and organisations in Ukraine.

However, the current national legislation on charities was only adopted in 2012.⁶⁷ It provides for legally capable individuals and legal entities to be the founders of charitable organisations. State authorities, LSGs and other legal entities of public law are deprived of such opportunities. There is a restriction according to which founders and members of administrations at charity organisations cannot be beneficiaries of charitable programmes. There is an explicit prohibition for charitable organisations to provide assistance to political parties or on behalf of political parties, or to participate in election campaigns.

The relevant legislation also determines the type of charitable organisations, whether they are partnerships, institutions or foundations. It also provides detailed requirements and procedures concerning the statute documents of charitable organisations: their state registration, assets (income), reports, termination of activities, management and types of responsibility.

It is assumed that all charitable organisations will have a Supervisory Board and procedures for avoiding conflicts of interest.

The main problems related to charitable CSOs in Ukraine are:

⁶⁴ www.biggggidea.com

⁶⁵ <http://www.mil.gov.ua/news/2014/06/04/informacziya-stosovno-vikoristannya-koshtiv-otri-manih-ministerstvom-oboroni-z-rezervnogo-fondu-derzhavnogo-byudzhetu-ta-blagodijnih-vneskiv-u-ramkah-programi-dopomogi-armii-stanom-na-3-cherwnya-2014-roku/>

⁶⁶ <http://ua.korrespondent.net/journal/1578671-korrespondent-shirma-dlya-obmanu-bilshist-ukrayinskih-blagodijnih-fondiv-vzagali-ne-zajmayutsya-blag>

⁶⁷ Law of Ukraine "On Charity Work and Charity Organisations" № 5073-VI of 05.07.2012

⁶³ <http://www.niss.gov.ua/articles/1367/>



1. **Actual additional financing for providing social services through the public sector.** This is manifested through the existence of fictitious charitable organisations, set up by principals of schools, heads of hospitals, kindergartens, HEI rectors and heads of other departmental organisations. Almost every such structure has a foundation: the only purpose of this foundation is to legislate payments for services of the institutions, which are financed from the budget and therefore not allowed to engage in commercial activities. Citizens applying to such institutions are directly asked to make a fixed contribution “for the development of the organisation”.

2. **The hidden financing of political activities** aimed at collecting funds for the election campaigns of politicians, which is against the law. In 2012 around 100 foundations that had been masquerading as philanthropic organisations were actually engaged in bribery of voters.⁶⁸

3. Nowadays **tax legislation** creates numerous obstacles to the development of charities in Ukraine, namely:

- recipients of charitable aid have to pay individual income tax. If this aid does not exceed 10 minimum wage packets, the tax is levied at 15%; if it does exceed this, the tax rate is raised to 17%. These are not the final taxation fees, however. If the tax is not paid on time, the recipient has to pay a fine and a penalty. The minimum amount of non-taxable charitable aid in 2013 was only UAH 1610 (less than EUR 150).⁶⁹ Some philanthropists were therefore forced to work ‘in the black’.
- charitable sms – donations are subject to a 60% tax.

4. **A lack of transparency in the activities of most charitable CSOs.** In 2012 only 2.5% of Ukrainian charitable organisations issued public reports on their activities. It is therefore not surprising that in the same year only 21% of Ukrainians expressed support for the charitable activities of such organisations.

CSOs have many proposals for promoting charity in Ukraine, the most popular among them being:

- to encourage charitable organisations to regularly and publicly report on their activities and to encourage citizens to monitor their work;
- to introduce new tax breaks for individuals and legal entities providing charitable assistance;
- to reduce to reasonable limits the state control over the activities of charitable organisations;
- to create several special state funds aimed at supporting the development of new tools to involve the general public in charity;
- to create opportunities for making charitable donations to any charitable organisation through the launch of a unified system for collecting donations through credit cards and sms.

Volunteerism in Ukraine has great potential for development. Primarily it is about organising activities, as only 10% of volunteers were involved in volunteer CSO activities in 2011 in Ukraine, while the remaining 90% provided assistance to vulnerable groups by themselves, with colleagues or neighbours. According to a participant from one focus group, this is partially due to the fact that “the legislation excessively regulates voluntary activities, obliging organisations that involve volunteers to undergo a special registration and provide volunteers with insurance coverage”⁷⁰.

In general, “employment” in the civil society sector is as follows: according to the results of the research presented, the number of people officially employed in the CSOs surveyed ranges from one to 140 (an average of 10 employees); the number of volunteers in various organisations also varies, sometimes it goes up to 2000 people (an average of 37 volunteers). Interestingly, some organisations have no officially registered employees or volunteers at all. In 2012, 24% of organisations had permanent staff, 21% of CSOs had staff working under individual contracts, 14% employed people on a part-time basis – 3% of respondents on a per-hour basis – and 14% of organisations hired staff to perform one-time operations⁷¹. More often, CSOs are forced to register their employees as private entrepreneurs who work in the scheme

68 <http://www.wilsoncenter.org/publication/developing-social-entrepreneurship-ukraine>

69 <http://online.dtkk.ua/Book/%D0%9F%D0%BE%D0%B7%D0%B8%D0%BA%D0%B8%20%D1%96%20%D1%84%D1%96%D0%BD%D0%B4%D0%BE%D0%BF%D0%BE%D0%BC%D0%BE%D0%B3%D0%B0.epub/navPoint-48>

70 The Empirical Report, p. 27

71 “Assessment of the State of Civil Society Development and Citizens’ Participation in Ukraine”, Ukrainian Foundation for Democracy “People First” – Kyiv, 2013, http://ccc-tck.org.ua/storage/books/ukr_final_report_june_2013.pdf

of single tax in order to avoid excessive taxation⁷². Generally, CSOs employ about 1% of the economically active population in Ukraine.⁷³

1.9. Ukrainian Civil Society After Euromaidan

After Euromaidan, the civil activity landscape has changed significantly. More attention is paid to well-known civil movements and campaigns whose activities resulted in the emergence of Euromaidan, such as “My – Europeitsi” (“We are Europeans”), a civil movement in support of Euro-integration; “Chesno” (“Honestly”), a movement in support of a fair and transparent election process; “Stop tsenzura” (“Stop Censorship”), a campaign in support of self-organisation and civil participation in politics; “SAM” (“SELF”), the “Novyi gromadianyn” (“New Citizen”) partnership; the “Demokratychnyi Aliyance” (“Democratic Alliance”); the “Spilna Sprava” (“Common Cause”); and “Pravyi Sektor” (“Right Sector”). In addition to these big alliances, numerous informal civil initiatives also appeared. Most concentrate their efforts on the following:

- fighting disinformation;
- self-organisation to provide/receive help (in critical places and situations);
- mobilisation and coordination of volunteer activities.

A considerable number of the initiatives mentioned above have representatives and supporters in many regions of Ukraine.

The “Reanimation reform package” should be mentioned as a policy dialogue initiative that was launched in March 2014. As of April, more than 120 experts and CSO activists were involved in the drafting process of new legislation. The proposed reform package consists of 2 blocks – the most urgent reforms and the mid-range ones. There are 7 priority reforms:

- Judiciary reform;
- Reform of the prosecutor’s office;
- Reform of internal affairs agencies;

- Anti-corruption reform;
- Reform of electoral law;
- Administrative reform;
- Reform of decentralisation and regional development;
- Tax reform.

5 reforms are due for implementation within mid-range terms:

- Deregulation and stimulation of development of business and investments;
- Pension reform and social protection systems reform;
- Education reform;
- Healthcare reform;
- Land reform.

⁷² http://www.ucan-isc.org.ua/eng/civil_society_and_law/recent_changes_in_law/

⁷³ <http://www.viche.info/journal/4543/>

2. FUNDING OF CSOS IN UKRAINE

2.1. General Overview of CSO Funding in Ukraine

Ukraine has all the main funding instruments that are used in other countries both for public and private CSO funding:

1. **Subsidies** are a form of government funding aimed at supporting CSO in general, rather than specific projects. In Ukraine subsidies are usually given to certain CSOs, such as veterans' organisations;
2. **Grants** are funds allocated on a competitive basis in accordance with the set priorities. This practice is used by various donors and partially by international programmes of technical assistance. Tendering processes for use of budgetary funds are rather new in Ukraine, but now criteria have been defined in the legislation to determine those receiving financial support;
3. **Social services procurement/payment** for providing social services;
4. **Public procurement of goods, works and services;**
5. **Private donations;**
6. **Participation of CSOs and CSO members in events organised by government organisations.**

According to the empirical survey conducted within this research, financial revenues (sources of funding in 2011–2013) for CSOs came from:

Table 3. **Main funding sources of CSOs over the past three years, %**

	Primary source	Secondary source	Source No 3
International organisations, foreign donors	37.5	5.88	3.43
Membership fees	25.25	11.27	8.58
Government funds	5.15	8.09	7.6
Businesses	5.39	12.75	8.58
Donations	16.91	26.47	11.03
Provision of services	2.7	6.13	7.35
Other	4.90	5.15	4.66

International donor organisations remain the key source of financing (for 37.35% of national CSOs this is the principal source of revenue).

This trend is not surprising, since there are a number of unfavourable conditions for CSO funding opportunities in Ukraine, in addition to unfavourable tax legislation for donors. Thus, taxation reform in 2011 led to the closure of more than 600,000 small and medium enterprises,⁷⁴ which resulted in a significant reduction of CSO support. In some regions during the first year after the reform, CSOs received 60% fewer donations from businesses compared with the pre-reform year.⁷⁵ Moreover, CSOs are considerably limited in using their own funds. For example, in Ukraine there is full taxation of the advertising that informs the public about the social services that CSOs provide.

74 USAID, The 2011 CSO Sustainability Index for Central and Eastern Europe and Eurasia, page 210; http://program.counterpart.org/Armenia/wp-content/uploads/2012/07/2011CSOSI_Index_complete.pdf

75 USAID, The 2011 CSO Sustainability Index for Central and Eastern Europe and Eurasia, page 213; http://program.counterpart.org/Armenia/wp-content/uploads/2012/07/2011CSOSI_Index_complete.pdf

2.2. Tax Benefits

According to the current tax legislation, the following **CSOs are exempt from income tax on revenues** received as non-repayable financial assistance:

- charitable foundations and charitable organisations;
- public organisations established with the aim of providing rehabilitation, physical and sports services for the disabled (disabled children) and social services, legal assistance, implementation of environmental, health, amateur sports, culture, outreach, educational and scientific activities;
- public organisations of disabled people, unions of public organisations of disabled people and their local branches;
- religious organisations.

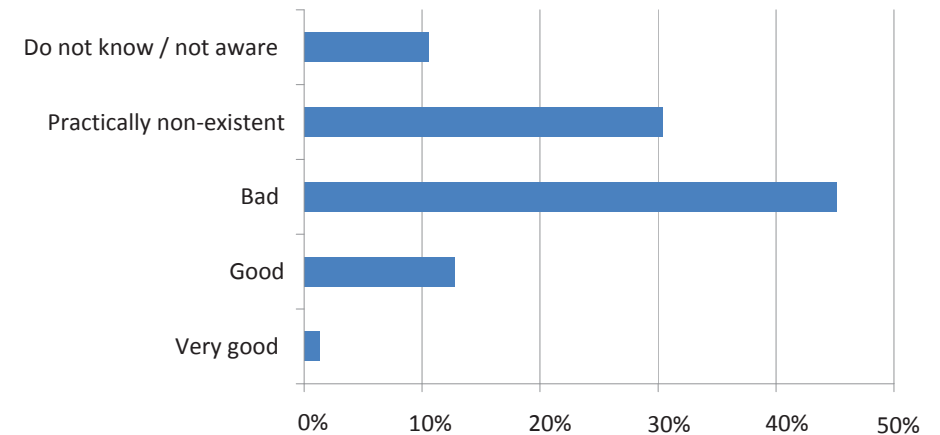
One-time or periodical donations and contributions by founders and members of such organisations are exempt from taxation.

However, **an opportunity to use tax benefits is provided only to organisations that have received not-for-profit status and are included in the Register of not-for-profit organisations by tax authorities.** Obtaining a not-for-profit status remains problematic even after the successful registration of an organisation. **The tax legislation of Ukraine does not define clear criteria or procedures for the granting or withdrawal of the not-for-profit status of organisations. The criteria are determined by the tax authorities themselves,** which obviously constitutes a conflict of interest when it comes to granting tax benefits.

For the private sector (enterprises that are payers of corporate income tax), there are statutory restrictions for including into the gross expenditures the cost of funds or property donated to CSOs in the amount of 2–5% of taxable income of the previous reporting year. This amount can go up to 10% of taxable income if assistance is provided to the all-Ukrainian associations of victims of the Chernobyl disaster. Since 2011, exemption from value-added tax (VAT) on donations as charitable aid has been available only to charitable organisations, but not to other public or religious organisations. For this reason, public organisations that distribute donated goods (except for humanitarian aid) must be registered as VAT payers.

Such selectivity for obtaining a preferential status on taxation of income and access to budgetary funding is not favourable for private donations. As a result, CSOs cannot be satisfied with this public policy. 75.49% of public activists interviewed for this research assessed domestic financial legislation on CSO funding as ‘bad’ and as such that ‘virtually non-existent’. A further 10.5% did not know anything about it. Assessment of the legislation on CSO funding in Ukraine is provided in Figure 2 below.

Figure 2. **Assessment of the legislation on CSO funding in Ukraine (according to the CSOs interviewed), % (N=408)**



These estimates correlate with respondents’ answers regarding the conditions for the financial sustainability of CSOs in the country. 46.57% of respondents believe these conditions to be ‘bad’, and according to 34.8% they are ‘practically non-existent’⁷⁶.

2.3. Access to Budgetary Funding

In accordance with the budget legislation, **only three types of CSOs may receive financial support from the expenditure part of the State budget:**

- CSOs for disabled and veterans that have all-Ukrainian status;
- CSOs that hold events to realise national programmes and activities for children, youth, women and families;
- CSOs working in the sectors of culture and the arts that have national status.

Budgetary legislation clearly defines expenditure items where the funds from the State Budget of Ukraine and, by analogy, from local budgets can be directed in order to provide financial support to CSOs.

No-one is surprised by the low level of state financial support for CSOs in Ukraine. In 2012, the funds that were allocated from the state and local budgets constituted only 8% of the total income of CSOs. It can be stated that the situation has not improved since then. In fact, in 2009 (more recent data have not been released) the budget expenditures amounted to UAH 274.2 billion, while support for some CSOs was about UAH 151.6 million, so only 0.06% of that budget. Moreover, only 12 out of 65 CGBs financed some categories of CSOs.⁷⁷

In addition to the extremely small budgetary funding of CSOs in Ukraine, there are other systemic problems of governmental support for civil society organisations: primarily, the unequal access of CSOs to state funding and a lack of transparency in the distribution and allocation of budgetary funds, but also:

- There is uncertainty in the legislation on the objectives and criteria of state funding for CSOs, as there are no unified techniques for selecting competing programmes. State financing of CSO projects is significantly different from the procedures provided by legislation and has a “departmental” specificity regarding such important issues as the schedule of payments and requirements for contributions to CSOs from themselves;

- The budgetary allocation amounts are in general quite conditional, which means that funds provided *de jure* by the budget may be reduced *de facto*. Of the CGB, LSA or LSG funds, none provide 100% of the costs of CSOs, demanding contributions from the CSO themselves, which must often be only in cash;
- Advance budgetary payments are not used;
- Funding is provided unevenly over time;
- The lack of medium and long-term budgetary planning and frequent changes in the priorities of government bodies and state programmes do not allow CSOs to adequately plan their activities;
- A biased attitude during tendering procedures to newly created CSOs, which do not have experience in project implementation or handling state funding.

There are major problems for CSOs when it comes to **administering State budget funds: there is an intermediary** between CSOs and the State agency, the State Treasury Service of Ukraine, which decides on the allocation of budgetary funding. The State Treasury Service not only performs the functions of a banking institution with a monopoly on the rights to financial servicing of budgetary funds, but also acts as a regulator of financial support, examining the CSO’s documents prior to the allocation of funds and deciding on the priority of obtaining funds based on the budget items, in particular “protected” ones.

2.4. Competitive Selection for Receiving Financial State Support for CSO Projects

In 2011 the Government established a competitive procedure to determine:

- 1) the programmes (projects, events) developed by civil society organisations and
- 2) the financial support needed to implement those programmes.

This procedure provides a number of important requirements for organising competitive selections for State financial support to fund CSO projects.

It is provided that the final amount of budgetary funds for the implementation of the selected programmes (projects, events) be determined by

⁷⁷ Report “Government funding of civil society organisations” Ukrainian Centre for Independent Political Research. – Kiev, 2010, http://www.ucipr.kiev.ua/files/books/finance_NGO_2010.pdf

the competition organiser, with regard to the principle of efficient allocation of budget money. This approach, in turn, does not provide the CSOs with any guarantees that the Government will fulfil its obligations. The law stipulates that a CSO must participate in the cost-sharing of programmes (projects, events) to the extent determined by the organiser of the competition (but not less than 25% of the required funding), which also significantly restricts access to such support for many CSOs.

As practice shows, the selection of the winners of the competition is often based on arbitrary or random criteria, which are met by few if even a single CSO. Additionally, formal features continue to stand as the main criteria (such as the time or place of the CSO's registration, its territorial status, membership in some national or international associations), rather than the quantity or quality of its services. **Some organisations receive subsidies in the capacity of budgetary institutions without any attachments to the services they provide.** Thus, only eight organisations⁷⁸ were assigned over 44% of direct government funding allocated for CSOs in the State budget of 2009 (before even the adoption of relevant government decisions). An analysis of the risks associated with corruption was not conducted, and the rules govern conflicts of interest are absent.

2.5. Indirect Forms of Financial State Support of CSO Projects

2.5.1. Preferential Rent

The fact that CSOs, even those who have won competitions or procurement of social services, are **not entitled to the preferential rental conditions necessary for their activities, remains a sensitive issue** for CSOs. In other words, CSOs should participate in competitions for the lease of state and municipal property, which then leads to an uneven competition against much wealthier representatives from the private sector. However, there are authorities that provide space within their public premises for CSOs (a room, a separate room or an outhouse) without any documentation of the lease on a long-term ba-

sis. These “benefits” can be obtained by a CSO in the case of good personal contacts with the heads of public authority. There are some authorities that provide CSOs with equipment, transportation, rooms, halls, lounges, press clubs, etc. in order to host events for free, while other authorities totally refuse to cooperate with CSOs.

2.5.2. Social Services

All legal entities are allowed to work in the field of provision of social services. There is a separate list with non-state providers that includes public, charitable or religious organisations and individuals, whose activity is related to the provision of social services. While providing social services by non-state actors or individuals who are paid out of state or local budgets, the respective authorities should determine such providers on a competitive basis and sign agreements with them on the terms of financing and requirements for the scope, procedures and quality of social services. No restrictions are set regarding the sources of financing social services, and they may be any of the following:

- state and local budgets;
- special funds;
- funds of enterprises, institutions and organisations;
- fees for social services;
- charitable donations
- funds of the recipients of social services and other sources, provided by law.

As we have seen from practice, CSOs that provide social services have a number of complaints and dissatisfactions regarding the functioning of the mechanisms of service provision. This primarily refers to:

1. **Setting qualification requirements (education, work experience) for social workers that significantly complicate the involvement of volunteers in such activities.** In addition, Ukraine is lacking HEIs to train specialists in social work. The system of further training and periodic attestation of employees of non-state institutions is not even in question.
2. **Public authorities force CSOs out of the market by setting municipal enterprises in order to attract budgetary funds for their activities.**

⁷⁸ Report “Government funding of civil society organisations”, Ukrainian Centre for Independent Political Research. – Kiev, 2010, http://www.ucipr.kiev.ua/files/books/finance_NGO_2010.pdf



3. Financial and administrative difficulties. Currently, most service CSOs cannot even cover the cost of the services they provide. Organisations **are not always able to adequately calculate the cost of their services or find their consumers.** At the same time, some CSOs must conceal the services they provide due to conflicting tax laws and a fear of losing their not-for-profit status.

Today in Ukraine there are a number of Internet portals (such as: “Hurt”⁷⁹, “Civil Space”⁸⁰, “Development CSOs”⁸¹, “CSO marketplace”⁸²) where service providers, including CSOs, can post announcements and information about their activities.

Unfortunately Ukraine has not yet created a proper culture of advocacy for the corporate interests of social service providers. They have not organised themselves nor developed a common stance even on standards for the provision of social services. The absence of these standards makes it impossible to adequately calculate the cost of services.

Regarding the content of public policy in the field of social services, the following measures -which imply the active involvement of CSOs – have been debated in Ukraine in recent years:

- develop and adopt state standards of social services;
- approve the procedure of needs assessment for recipients of certain social services: based on this procedure, the legal framework for state funding of such services will be offered;
- develop short-term and long-term plans of development for social services systems in certain local communities;
- approve the list of social services that are paid by recipients, as defined by the legal framework (through vouchers and other treasury obligations);
- provide a transparent and competitive environment to involve organisations and institutions of various ownership types in the provision of social services at the expense of the State budget;
- approve the list of chargeable social services;

79 <http://gurt.org.ua/>

80 <http://www.civicua.org>

81 <http://CSO.at.ua>

82 <http://CSOmarket.org.ua/>

- involve more non-state agencies and organisations in training, retraining and advanced training of social workers and other professionals that provide social services;
- identify the criteria for the operation of entities providing social services;
- identify the criteria and procedures for state inspections and public reporting for social services providers of all forms of ownership;
- recognise the right of CSOs providing social services to rent State and municipal property without mandatory participation in competitions, or provide for reimbursement of the rental costs of State and municipal property;
- exclude the cost of social services from the taxable income of individuals;
- involve the entities providing social services, including CSOs, in the planning and delivery of social services, monitoring their quality;
- establish clear and explicit criteria for the compliance of CSOs’ main activity types with not- for-profit status.^{83 84}

2.5.3. CSO Participation in Public Procurement

In Ukraine, public procurement procedures traditionally attract a lot of attention, primarily due to the vast amounts of money distributed through such procurement procedures: in 2012 for example, the volume of public procurement was estimated at UAH 571 billion (EUR 56 billion). Secondly, public procurement has become synonymous with “corruption”, abuse and pumping budgetary money into a narrow circle of privileged private companies, spreading a monopoly in many markets of goods and services both on national and local levels.⁸⁵

Legislation on public procurement was adopted only in 2011. Since then it has undergone significant changes on an annual basis but has failed to become more transparent, accountable or allow for more opportunities for CSOs to become real suppliers of goods, services or contractors.

83 <http://gurt.org.ua/news/recent/19572/>

84 <http://auc.org.ua/news/isnue-gostra-potreba-u-zatverdzhenni-derzhavnikh-standartiv-sotsialnikh-poslug>

85 <http://economist.net.ua/node/472>

CSOs have the right to participate in all public procurements on general terms without exceptions. The specialisation of CSOs, their ability to offer the required work, goods or services of acceptable quality at competitive prices, remains a major problem. CSOs can more likely participate as bidders in such sectors as research and development and consulting services. However, the amount of financing available in these areas is negligible: only a **few CSOs are interested or have experience in public procurement.** Thus, according to interviews conducted within this study, over the past three years fewer than 3% of CSOs (within the so-called sociological margin of error) received revenues from the provision of services⁸⁶.

Table 3 (same as earlier). **Main funding sources of CSOs over the past three years, %**

	Primary source	Secondary source	Source No 3
International organisations, foreign donors	37.5	5.88	3.43
Membership fees	25.25	11.27	8.58
Government funds	5.15	8.09	7.6
Businesses	5.39	12.75	8.58
Donations	16.91	26.47	11.03
Provision of services	2.7	6.13	7.35
Other	4.90	5.15	4.66

Unfortunately, statistics on CSO participation in public procurement are not regularly obtained. The last available data goes back to 2009, and at that time only three organisations (or less than 0.004%) out of the registered CSOs in Ukraine won tenders of public procurement, with a total cost of UAH 2.96 million. This is a disproportionately low number compared to business companies, about 26 thousand of which (or almost 5% of registered enterprises) received more than UAH 100 billion of public funds⁸⁷.

CSOs' interest in so-called "minor procurements" (total cost – up to UAH 100 thousand for goods and services and UAH 300 thousand for works) has

increased as there is an on-going large-scale reform of public procurement procedures. CSOs discuss the following options of what can be done for possible optimisation of their access to public procurement:

- in the legislation, determine the principles and procedures of 'minor' procurements and ways of accessing information about these results;
- introduce a single simplified procedure for CSO participation in so-called 'minor' procurements;
- define an exhaustive list of documents required to demonstrate compliance with the qualification criteria from participants in 'minor' procurements or procurements under the simplified procedure;
- clarify the mechanisms of avoiding conflicts of interest in public procurement.⁸⁸

2.6. Proposals for the Creation of Enabling the Financial Environment for CSOs.


There is no doubt that resolving the problem of a lack of public funding is of fundamental importance for creating and strengthening CSO activities in Ukraine. However, respective state regulations in this sector are developing slowly and are definitely weak nowadays. Due to this, there are a lot of political discussions on how to optimise public policy concerning financial assistance by State authorities for improving civil society. The following suggestions, though not unanimously supported by all CSOs, are under discussion:

- provide funding for CSOs from public and private sources to the amount of 1% of GDP;
- guarantee the share of public funding to CSOs to be at the level of 30-40% of their total income;
- cancel the lower limit of 2% to receive tax discounts for those representatives of the private sector who donate to charity and CSOs;
- raise the upper limit on the tax discount of individual donations from 5 to 10%;

⁸⁶ The Empirical Report (Table 2.3., p.37)

⁸⁷ Report "Government funding of civil society organisations" Ukrainian Centre for Independent Political Research. – Kyiv, 2010, http://www.ucipr.kiev.ua/files/books/finance_NGO_2010.pdf

⁸⁸ http://www.ucipr.kiev.ua/publications/marketing-nepributkovikh-organizatcii-abo-chi-zmozhut-gromadski-organizatcii-otrimati-derzhavni-zamovlennia/view_print

- 
- provide various incentives for sponsors: honours, state awards and more.⁸⁹

At the same time, the civil society sector does have proposals – strongly supported by its members – that aim to improve public policy and, consequently, the financial situation of CSOs. They are as follows:

- cancel the Register of Non-profit Organisations and Institutions, or at least adopt a comprehensive list of reasons to refuse a CSO's inclusion in the Register of not-for-profit organisations and institutions;
- provide CSOs with the choice of selecting a simplified taxation system;
- restore the CSOs' right to be exempt from value added tax (VAT) on charitable assistance provided by them in the form of goods and services;
- make the costs of social services and assistance that CSOs provide exempt from tax, at the expense of public funds or as part of state social standards;
- consider CSOs informing the public about the services they provide as social advertising;
- exempt CSOs from rental tax payments for the use of land that is within State or municipal ownership;
- abolish restrictions on CSOs' rights to participate in competitions that are not related to the organisations' abilities to carry out projects, but rather are based on their registration status (territorial status, time and place of registration, etc.);
- involve CSOs in implementation of State and regional programmes. Also, develop a uniform procedure for competitive selection of participating CSOs;
- implement the compulsory planning of subsidies as part of State financial aid to CSOs during budgetary processes at both national and local level;
- develop a national target programme to promote civil society;
- conduct extensive information campaign targeting of CSOs on the opportunities for receiving funding from State executive authorities (indi-

cating the priorities of national/regional funding, timeframes, contact people, etc.);

- establish a regulatory framework for the introduction of so-called “interest” philanthropy, which enables tax authorities, upon individual request, to withdraw a tax payment of a certain percentage;
- establish a separate legal status for endowments, private donors and CSOs; develop guidelines (in collaboration with the National Bank of Ukraine and the National Securities and Stock Market Commission) to encourage banks and other financial institutions to participate in managing endowments.⁹⁰

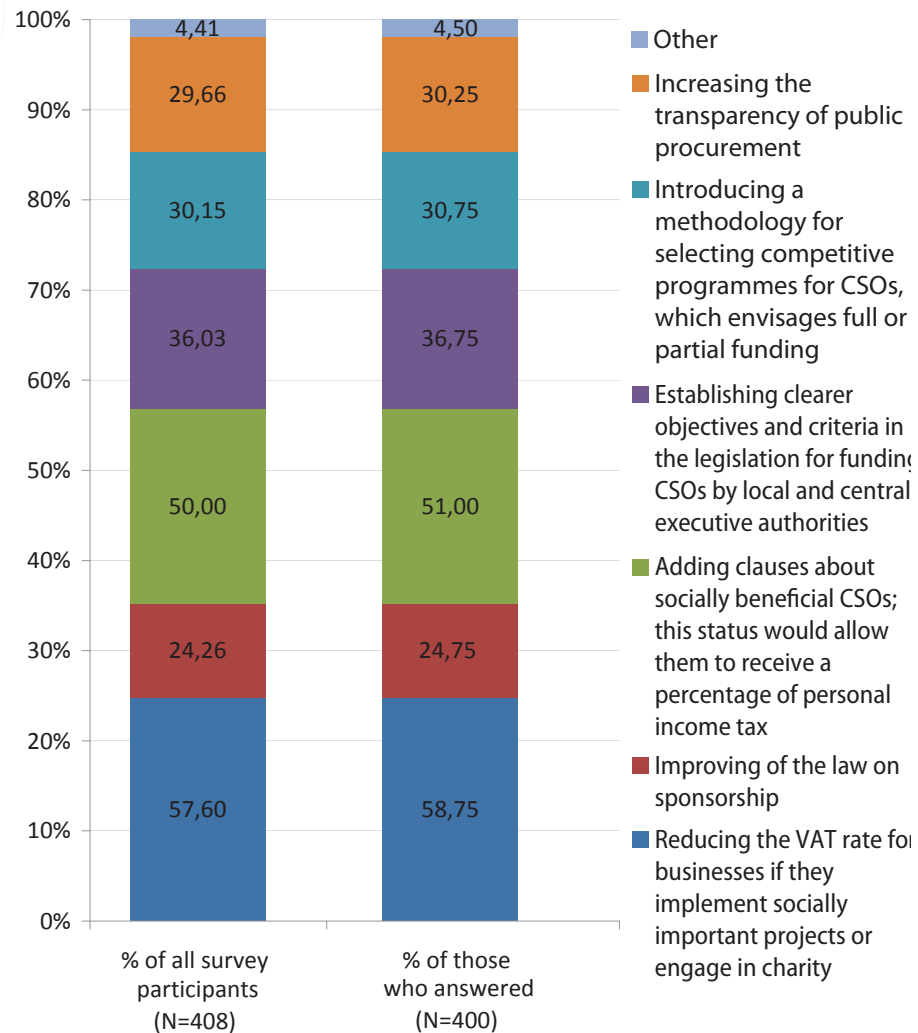
57.6% of CSO representatives interviewed during this research believe that the most effective way of stimulating financial support for the civil society sector is to reduce corporate income tax rates for businesses, given that they are involved in and implement socially important and/or charitable projects. 50% of respondents thought that completing current legislation with new clauses on socially beneficial CSOs – whose status would allow them to receive a percentage of individual income tax (i.e. the taxpayer may send some money to charity instead of paying this amount as personal income tax) – would be effective. Only 30.15% of interviewed CSOs' representatives believe that introducing State methodology for selecting competitive programmes with State funding (full or partial) for CSOs would bring about the desired results.⁹¹

⁸⁹ <http://www.csi.org.ua/www/wp-content/uploads/2009/05/finans-npo-edit-b.pdf>

⁹⁰ <http://www.csi.org.ua/www/wp-content/uploads/2009/05/finans-npo-edit-b.pdf>

⁹¹ The Empirical Report, Appendix 4, p. 113

Figure 3. **Ways to improve the legislation on funding of CSOs in Ukraine, %⁹²**



On the one hand, the victory of Euromaidan – which was driven by registered and informal CSOs – the signing of the political part of the Association Agreement with the EU, and support for Ukraine from democratic states has promoted the liberalisation and modernisation of public policy in this area. On the other hand, the economic crisis, the huge budget deficit and the policy of reducing expenditures and increasing revenues could significantly hinder reform of the respective legislation. Moreover, representatives of the Ministry of Finance as well as tax authorities, regardless of the political affiliation of their heads, tend traditionally to regard financial aid and tax benefits for CSOs as a hidden form of subsidising certain socio-political movements or “optimising the tax burden”.

The prospects for favourable fiscal, budgetary and taxation policies to ensure the financial sustainability of Ukrainian CSOs appear highly contradictory.

⁹² The Empirical Report, Appendix 4, p. 113



3. CSO COOPERATION WITH STATE AUTHORITIES AND LOCAL SELF-GOVERNING BODIES

3.1. State Policy to Support the Development of Civil Society in Ukraine

One of the major achievements of CSOs regarding their influence on public policy during the presidency of Viktor Yanukovich was the adoption of the “Strategy of State Policy for Promoting the Development of Civil Society in Ukraine” (referred to above as – the Strategy)⁹³. The Strategy has become a policy document, approved by Decree of the President of Ukraine in March 2012, envisaging the following priorities:

- achieving maximum transparency and accountability of CGBs, LSAs and LSGs;
- increasing social capital to enhance mutual trust and cooperation in society;
- creating favourable conditions for CSO formation and operation;
- ensuring that CSOs participate in the formulation and implementation of State and regional policies;
- creating the conditions for broad and effective advocacy of public interests in CGBs, LSAs and LSGs;
- holding regular policy dialogues with the general public regarding the most important issues of public policy;
- introducing public control over the activities of CGBs, LSAs, LSGs; strengthening CSOs’ impact on administrative decision-making and its implementation;
- promoting charity and volunteer activities, other forms of public participation and civic culture.

93 <http://zakon2.rada.gov.ua/laws/show/212/2012#n11>

A Coordination Council for the Development of Civil Society was created to ensure the implementation of the Strategy. It consisted of the leaders of CGBs, LSAs, representatives of CSOs and independent experts. The Strategy served as a framework for other **policy implementation documents**:

1. Action aimed at implementing the Strategy, the authorities responsible for carrying them out and the respective timeframes are defined in the **Priority Action Plan** on implementation of the Strategy, and in **the annual plans** submitted by the Coordination Council for the Development of Civil Society, approved by the President of Ukraine.
2. In order to implement this policy, all RSAs, the Council of Ministers of the Autonomous Republic of Crimea, Kyiv and Sevastopol city state administrations should develop **Draft Regional Target Programmes** that aim to promote civil society. As of October 2013, 24 Regional Target Programmes for promoting civil society have been adopted (their implementation is planned for the period of 2013–2015). Unfortunately, due to a lack of funds in 2013⁹⁴ the implementation of around half of these programmes only commenced in 2014. Where the implementation began, LSA and LSG held forums to report on progress achieved.^{95 96}
3. Every year prior to November 15th, CGBs, LSAs and the Council of Ministers of the Autonomous Republic of Crimea must develop and publicly publish on their official websites their **annual action plans** for implementing the Strategy during the course of the following year.

State authorities have already adopted monitoring and reporting procedures, annual plans and regional target programmes for the Strategy’s implementa-

94 <http://civil-rada.in.ua/?p=1411>

95 http://civic.kmu.gov.ua/consult_mvc_kmu/news/article/show/2257

96 <http://www.galychyna.if.ua/publication/society/oblrada-programa-dii/>

tion. Monitoring and evaluation of the Priority Action Plan, annual plans, analysis of the Strategy's effectiveness, preparing proposals for updating its provisions, amendments to the Priority Action Plan and annual plans are the responsibility of the Coordination Council for the Development of the Civil Society.

The **Strategy envisages CSOs not as the sole beneficiaries, but also as implementers of the State policy for promoting civil society through various means:**

- memberships in the Coordination Council;
- submission of proposals on the Strategy's implementation to the Coordination Council, executive authorities and local self-governments;
- involvement of CSOs in the Strategy's implementation, by executive authorities and local self-government bodies;
- monitoring, evaluation and public expertise on the work of executive authorities and local self-government bodies regarding implementation of the Strategy, Priority Action Plan, and annual plans.

At first glance this might look like a systematic approach to the development of civil society as a separate area of public policy; however its practical implementation cannot be considered successful. This is due to the following factors:

- **The Strategy does not meet the proper format of a policy document** (even though it contains the problem description and expected results);
- It is not a State target programme (one that is approved by Parliament by adopting the Law or Government Decree) and does not include the definition of the scope and types of resource support, namely budgetary funding;
- The Strategy contains a large number of tasks without mentioning the necessary resources for their proper implementation;
- The Strategy is filled with vague and declarative goals (improvement, enhancement, promotion, strengthening), which impedes computing the adequate and necessary resources for its implementation and proper assessment of effectiveness. For instance:
 - promoting the establishment and development of a diversified network of civil society institutions;

- establishing the efficient interaction of civil society institutions with the executive authorities and local self-governments;
- introducing European control mechanisms to be used by executive authorities when monitoring the activities of civil society institutions.

The real financing of all policy measures, taking into consideration the lack of budgetary funds, **is rather unsystematic, random and happens in virtue of the “left-over” principle** (i.e. after more important and “protected” budgetary items have received all the necessary funds);

The creation of a system of policy documents, which should specify the Strategy's priorities and objectives, has become another “staged show”. Forcing the preparation of policy documents leads to a formalised approach and a simulation of activities for the sake of reporting, masking and adjusting some activities to match the respective objectives set by the Strategy.

Thus, analysis of the first regional target programmes for the development of civil society which were drafted by the RSA revealed them to be unbalanced and not meeting the needs of the regional CSOs:

- in some regions, the structural units responsible for public relations (which are in charge of the development and implementation of target programmes) do not even attempt to include the expenditures needed to finance most of the programmes in their budget requests; without the latter, it is impossible to predict the relevant expenditures in the following year's budget;
- more than half of the actions in the Poltava and Sumy programmes were designed to meet the needs of the government, which are not directly related to the promotion of civil society;

Up to 70% of funds in the programmes are allocated for activities that are not directly related to the development of civil society (e.g. celebrating various holidays and anniversaries in Sevastopol, funding information campaigns in the Poltava region, funding the CA in Kyiv, upgrading buildings and surrounding areas through cooperatives and condominiums in the Dnipropetrovsk and Kyiv regions, etc.).

- Some programmes still try to conceal the true aim of the funding. For instance, the programme in Poltava included media coverage of good practices in cooperation between authorities, LSGs, CSOs and RSAs, however



the money was provided exclusively for the coverage of the activities of RSAs and the Regional Council.

Due to radical changes in political and public life in Ukraine at the end of February 2014, it is difficult to predict any consistency in the implementation of the policy of State support to promote civil society in the form which was envisaged by the Strategy. This is due to the following factors:

- returning to the 2004 version of the Constitution of Ukraine significantly changes the role and functions of the State authorities in public policy formulation and implementation. Policy-making shifts power from the President to the Government of Ukraine. Thus, acts of the President (the Strategy was actually approved by one – namely by the Decree of the President) will no longer determine public policy.
- the Strategy becomes of low political demand due to the absence of a need to simulate the government's openness to cooperate with the public, as was required during the presidency of Viktor Yanukovich.
- the need for a reduction of the budget deficit at all levels and saving public funds may result in either cancellation of numerous state and regional programmes or in the termination of their funding.
- the absence of significant or noticeable progress in the Strategy's implementation during 2012–2013.

3.2. Peculiarities and Tools of the Public's Influence on Public Policy Content

A demand to “be heard” was the most popular over the last six months in Ukraine. All authorities are blamed for a “lack of dialogue” and the neglect of the point of view of the majority of society. Demands “to be heard” on certain issues show up the obvious fact that dialogue with stakeholders in the course of formulating public policy decisions has not become an everyday practice of interaction between the State and society over more than 20 years of recent history of Ukraine.

At present, it is not just individuals that are announcing their dissatisfaction with current affairs, but political actors (those not in the governing coalition) and CSOs too. The results of the survey among civil society actors have shown that only 13.72% of respondents believed that they significantly af-

ected the policy decisions that LSGs adopted; 10.05% of respondents said they had some influence on the decisions of LSAs, and only 3.44% on CGBs' decisions.⁹⁷ The survey revealed that 53.68% of respondents had hardly any cooperation with CGBs. The situation was slightly better with LSAs – 53.9% of respondents reported an adequate level of cooperation, and with LSGs the situation was even more encouraging – 57.35%.⁹⁸ The following policy-relevant forms of cooperation – “consultations on specific issues”, “consultations in the course of developing strategy and policy” and “participation in decision-making” – are utilised by up to 41% of respondents dealing with LSAs, by up to 43% of respondents when they deal with LSGs, and by up to 13% of respondents in their cooperation with CGBs. At the same time, about 72% of the surveyed CSOs consider their relationship with LSAs and LSGs to be “average” or “good”, while only 40% of respondents could say the same about their relationship with CGBs, and 40% of the surveyed CSOs admitted they had no experience of cooperation with the central governing authorities. A paradoxical situation occurred too, where a significant number of CSOs believe they have good relations with the authorities and actively collaborate with them, but at the same time a much smaller portion of CSOs has experienced this cooperation and only a few can report a successful influence.

Unfortunately, in Ukraine there are serious obstacles to the interaction between CSOs and authorities with regard to policy formulation and monitoring. They can be divided into three areas:

I. General Cultural Constraints and Vicious Practices of the Public Administration System:

1. Confusion between “politics” and “public policy”. Due to the influence of mass media and common perceptions among society, public policy is regarded as being about strategies of political opposition and a fight for power and influence.

2. Identification of public policy with public administration. Public policy is viewed as a set of managerial decisions. Thus, the most fundamental policy issues are disregarded: how problems are determined and prioritised, what goals are set, what tools are used, what results are achieved, how chosen goals,

⁹⁷ The Empirical Report, Appendix 4, p. 104–105

⁹⁸ The Empirical Report, Appendix 4, p. 101

tools and received results affect the problem, the level of public satisfaction/dissatisfaction with the dynamics of the problem, etc. The public generally seems to be missing these issues and not understanding that “administration” is not a self-sufficient stand-alone activity.

3. Excessive focus on documentation. Public policy is viewed through the prism of documents, draft resolutions and draft laws. In other words, not through problems and the ways of resolving them, but rather the provisions of legal acts. Thus, decisions are analysed by focusing on their wording and how they will appear in legal acts, but not on the problem that calls for such decisions.

4. Inadequate forms of consultations. There is a lack of efficiency of “macrostructural” institutions, which are intended to cover all directions of public policy, such as civil councils and the “Partnership “Open Government” initiative. The significant drawback is that they work without being tied to a particular problem or drafting a specific policy decision. In other words, these “overarching structures” cannot identify relevant stakeholders or guarantee a reasoned and meaningful participation in policy dialogue with them.

II. Stereotypes and Inertia in Government Activities:

1. Policy makers do not see the need to consider or balance the interests of different stakeholders. Since totalitarian times it has been believed that there is no need to take into account any interests other than governmental ones. Accordingly, in the current process of initiation, development, coordination, approval, implementation, monitoring and evaluation of public policy decisions, there are no consultations foreseen with any of the stakeholders regarding the content of these decisions.

2. Civil servants have no obligations to consider policy proposals from other stakeholders. Evaluation of civil servants’ performance (certification) and the system of incentives (bonuses, allowances, penalties, etc.) does not include any indicators related to the organisation, conduction or analysis of the results of consultations with stakeholders.

3. Civil servants do not know how to organise consultations at various stages of the policy process, nor do they possess the relevant knowledge and (or) skills. The necessary procedures and practices for conducting con-

sultations simply do not exist (procedures, subject matter, requirements for the invitees, procedures for record-keeping during consultations, etc.).

III. Unpreparedness of CSOs for Policy Dialogue, which is due to the following:

1. The desire of CSOs to “control” rather than to “participate” in public policy processes. The majority of CSOs are motivated to unveil the corrupt practices of politicians and civil servants. These aspirations lead to the desire to “control their activities”. Only a small number of CSOs are interested in the opportunities of policy advocacy, which includes drafting and justifying CSOs’ own policy proposals, as well as further efforts to mobilise society in order to put pressure on policymakers and make them adopt such decisions.

2. The lack of awareness about stakeholders, processes and procedures of policy formulation and implementation. This makes drafting and advocacy of timely and target-specific policy proposals impossible.

3. The provision of excessively “broad” policy recommendations. Policy “advice” that comes from CSOs resembles a set of good and superficial wishes with the following flaws:

- **No forecasts regarding feedback from stakeholders on certain policy proposals;**
- **Inapplicability (unavailability to be used directly).** They do not contain an analysis of the administrative feasibility, necessary resources, policies or politically related risks that might occur as a result of proceeding with the recommended decisions;
- **“One-field” approach.** Policy advice is limited to taking action in one sphere (e.g. legal or economic) and does not take into account other “dimensions” of a problem or its solution. In fact, the analysis of the problem is “isolated” and disregards the processes that occur in adjacent areas of public policy;
- **Absence of the analysis of alternative visions.** CSOs present “the only correct” approach, which does not contain the description, comparison or critical analysis either of different ways of understanding the causes of the problem, the options for its solution, evaluation criteria, advantages and disadvantages of each, etc.;



- **Lack of knowledge and skills of policy analysis and advocacy.** Numerous attempts to create “mechanisms of participation” in the form of advisory and consultative structures affiliated with State authorities (public/scientific and expert councils/boards), initiatives such as “open government” and “public expertise”, face failures of representatives of CSOs and business associations and industry experts to carry out a critical analysis and prepare a study on the “expediency” of their decisions in a given area of State/local policy. Representatives of CSOs are not ready for a real dialogue with both national and local governments about the content of policy. Most CSOs are only able to “broadcast dissatisfaction” with regard to certain issues, attracting the attention of government bodies and the media, and intuitively suggest the most obvious solutions, which are usually limited to the need to “punish those responsible”.

It seems that representatives of CSOs begin to slowly realise their unpreparedness for holding a productive policy dialogue. Our empirical research showed that 57.69% of CSOs feel the need to acquire the necessary skills of ‘problem analysis’, 40.26% would benefit from learning about ‘public policy evaluation’, 58.21% said they had an interest in learning about ‘policy drafting’, 55.9% in ‘policy advocacy’, 58.72% in preparation and participation in public campaigns and 43.85% in monitoring policy implementation.

Table 4. **The most interesting topics and forms of education that CSOs would prefer for each selected topic, %⁹⁹**

Topic	Interest	Forms of education		
	Yes	Interactive	Classical training (in-class)	Form of education does not matter
1. Problem analysis	57.69	32.44	20.44	47.12
2. Policy analysis	40.26	37.58	16.56	45.86
3. Development of proposals on state/regional/local policies	58.21	33.04	19.38	47.58

⁹⁹ The Empirical Report, Appendix 4, p. 107–109

4. Education of citizens	60.26	33.62	18.30	48.08
5. Raising awareness of citizens	72.05	32.03	16.73	51.24
6. Relations with mass media	60.77	32.49	18.57	48.94
7. Public relations	55.9	36.24	16.97	46.79
8. Public campaigns and activism	58.72	35.81	17.47	46.72
9. Monitoring of policy implementation	43.85	28.07	20.47	51.46
10. Monitoring of provision of services	48.72	35.79	16.32	47.89
11. Budget literacy/ budgetary processes and budget monitoring	51.79	29.21	22.28	48.51
12. Proposal writing	61.03	31.93	21.01	47.06
13. Other	0.77	33.33	-	66.67

Before we focus on the policy dialogue instruments in Ukraine that are envisaged by legislation (public councils, public reviews, regulatory impact analysis, public consultations, policy proposals that are addressed by citizens, the «Open Government» initiative, participation in the activities of subsidiary bodies (Working Groups)), we will briefly describe other less widely used instruments, such as:

1. The Decree of the Cabinet of Ministers of Ukraine “On Guaranteeing the Participation of the Public in Public Policy formation” No.996 provides for the possibility of inviting **CSO representatives to meetings of collective LSGs and CGBs**, but in fact this is not that widely used in real life. However, it enables the public to not only see the results of discussions of a policy issue, but also to express their observations and concerns. As our empirical research shows, only 36.76% of CSOs often or regularly participate in the meetings of the executive bodies of LSGs, and 12.75% in the committees of the Parliament of Ukraine.¹⁰⁰

¹⁰⁰ The Empirical Report, Appendix 4, p.99

2. All interested citizens and CSOs are able to some extent to **participate in the discussion of draft policy decisions through the websites** of the Cabinet of Ministers of Ukraine, Verkhovna Rada of Ukraine, CGBs, LSGs and LSAs. Only 26.22% of the representatives of CSOs turned out to be active participants of such discussions.¹⁰¹
3. In Ukraine, the **institution of “public hearings”** has become more prevalent. This was initially introduced in 1997 through legislation on local self-government in Ukraine, and actually implied the right of a territorial community of a city/village/township to discuss local issues on their own, and adopt a resolution as a result of these discussions. The adopted resolution was mandatory for consideration by the respective city/village/township council. “Public hearings” have now become very common – even concerning the questions of appointments (lustration commissions). 48.53% of respondents stated that they had experience of participation in such hearings¹⁰².
4. **Public Initiatives.** Any initiatives “from below”, or that do not come from government, are viewed as public initiatives. 67% of surveyed CSOs imply this broad meaning of “public initiatives” when they use this phrase. Meanwhile, in Article 9 of the Law of Ukraine “On Local Self-government” No 280/97-bp of 21.05.1997, “public initiative” is defined as a tool for influencing the agenda of the local council. In other words, when the deputies refuse to address an issue, the members of the territorial community may force them to do so through the mechanism of a “public initiative”.¹⁰³

Protests against already approved policy decisions with the aim of repealing them are also a specific “negative” form of policy dialogue. According to the results of the survey, 24.26% of CSOs apply these “regularly” or “often”.¹⁰⁴ In Ukraine the number of protests grows every year. In 2013 at least 4822 protests took place, which is 33% more than the number of protests in 2012

¹⁰¹ The Empirical report, Appendix 4, p.100

¹⁰² The Empirical report, Appendix 4, p.100

¹⁰³ <http://zakon1.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80>

¹⁰⁴ The Empirical report, Appendix 4, p.100

(3,636) and more than double the number of protests in 2010 and 2011 (2305 and 2277, respectively).¹⁰⁵

3.2.1. Public Consultations

The government of Ukraine introduced “public consultations” in 2010 (by passing the above-mentioned Decree of the Cabinet of Ministers of Ukraine “On Guaranteeing the Participation of the Public in Public Policy formation” No996) in order to:

- involve citizens in the policy process;
- provide open access to information about the activities of CGBs and LSAs;
- ensure the openness and transparency of these authorities;
- improve the quality of decisions on important issues of public life on the basis of public opinion.

The above-mentioned Decree of the CMU envisages that CGBs and LSAs must come up with annual plans for public consultations. In addition, CSOs can independently initiate consultations on issues not included in these plans. Public consultations are held in Ukraine in the format of public discussions (direct format) and public opinion studies (indirect format). Public consultations in the format of public discussions must be conducted regarding:

- drafting legal acts that are important to society;
- drafting regulations;
- drafting programmes at national and regional level on economic, social and cultural development issues and decisions regarding the status of their implementation;
- reports of principal budget funds’ owners on the spending of funds over the past year.

Open public discussions are organised and conducted by CGBs or LSAs involving public councils, and cover the following topics:

- identifying issues that will be discussed;
- taking measures to ensure stakeholders are properly represented;

¹⁰⁵ <http://www.cedos.org.ua/uk/releases/33>

- collecting and analysing information on assessing the effectiveness of policies proposed by CGBs or LSAs;
- formulating expert suggestions on alternative versions of policy;
- analysing the results of the discussion if the approved decision impacts several stakeholders.

In addition, the respective CGBs and LSAs should publish the results of the discussions on their official websites.

Speaking about the indirect format of public consultations, pursuant to the Decree of the Cabinet of Ministers of Ukraine “On Guaranteeing the Participation of the Public in Public Policy formation” No.996¹⁰⁶, studies of public opinion are carried out by:

- conducting sociological surveys and observations (questionnaires, content analysis of information material, focus groups, etc.);
- creating telephone “hotlines”, monitoring comments, reviews, interviews, and other materials in print and electronic media to determine the opinions of various stakeholders;
- processing and generalising proposals and comments expressed by the public on questions that require studies of public opinion to be carried out.

One of the flaws of this procedure of public consultations is the fact that it can only be used by a limited range of policy-makers – for instance, the mentioned CMU Decree is advisory in nature for LSG authorities. Furthermore, the procedure does not apply to the President or other institutions which do not belong to the executive power branch. This is why in Ukraine it was possible to adopt highly controversial policy decisions without proper public consultations.

The fact that public consultations are not systematic is another significant drawback. In most cases, whether they are held or not depends on the political situation. Conducting public consultations can either be an attempt to get more attention from the electorate due to “the right issues” being in focus (those showing the successes of heads of CGBs/LSAs), or a way of shifting responsibility. Public consultations happen more often on the eve of elections.

¹⁰⁶ <http://zakon2.rada.gov.ua/laws/show/996-2010-%D0%BF>

For public consultations to become an effective instrument of policy dialogue it is necessary to:

- hold discussions on the draft decisions of all state authorities;
- discuss specially prepared “analytical and communication” documents, rather than dry drafts of legal acts;
- use proactive communication: state authorities should directly inform potential stakeholders on draft projects;
- create open working groups consisting of representatives of interested stakeholders only to draft a specific decision impacting those stakeholders. It is important to involve all interested stakeholders in public consultations that are held regarding the decisions that will be influencing them in the future;
- establish penalties for state authorities for failure to comply with established procedures of holding public consultations;
- specify the list of issues regarding which public consultations should be obligatory;
- oblige state authorities to make public all proposals submitted during public consultations;
- provide opportunities for individuals to submit proposals on the issues that can become topics of discussion for public consultations;
- adopt a unified regulatory act that would define the procedures for holding public consultations at all stages of the policymaking process;
- hold public consultations at a time which is convenient to citizens;
- plan the agenda and conduct public consultations regardless of the political situation

Nowadays, following the radical changes brought about by the victory of Euromaidan and the replacement of the administration of CGBs and LSAs, consultations with the general public are becoming more common. Unfortunately, it is not the public policy content that has become the subject of such consultations, but rather the question of appointing the heads of the Courts and law enforcement agencies (e.g. joint commissions on lustration).

3.2.2. Public Councils

Back in the 1990s, public councils (PCs) were introduced in Ukraine as a tool for dialogue between the public and the State authorities. Since then this tool has been reformed twice due to its initial inefficiency. The current form of PCs was established by the Decree of the CMU in 2010.

PCs are permanently operating, collegially elected advisory bodies. It is mandatory for all CGBs and LSAs to have PCs. LSGs are recommended to create PCs. The term of tenure of a PC is 2 years, and the Head and Secretary are elected from the representatives of CSOs who have become members of the PC. The Ukrainian government also established the Council of Heads of Public Councils Affiliated with the Executive Authorities. In general, it is expected that PCs will provide the following possibilities to influence public policy decisions at national, regional, and municipal levels:

- public control of taking into account the submitted policy proposals;¹⁰⁷
- collection and submission of information on public opinion regarding agenda questions;
- conducting public examination and public anti-corruption examination of draft legal acts;
- preparation and submission of proposals calling for public consultations;
- organising public events to discuss issues on the agenda.

As of October 2012 there were PCs attached to 69 central executive agencies, the Council of Ministers of the Autonomous Republic of Crimea, oblasts, Kyiv and Sevastopol city and district administrations.¹⁰⁸ Over 9000 members – representatives of CSOs – reported on their participation in them¹⁰⁹. In PCs attached to CGB, 39% of participants represented CSOs, 32% trade unions and business associations, and 7% charitable organisations.¹¹⁰ However, as practice shows, despite their ubiquitous prevalence, PCs have not become an effective instrument of policy dialogue.

¹⁰⁷ <http://www.viche.info/journal/3165/>, Law of Ukraine «On Corruption Prevention and Counteraction» of 07.04.2011 p., № 3906-17/11

¹⁰⁸ USAID, “The 2012 CSO Sustainability Index for Central and Eastern Europe and Eurasia”, page 5, <http://www.usaid.gov/sites/default/files/documents/1863/UKR.pdf>

¹⁰⁹ USAID, “The 2011 CSO Sustainability Index for Central and Eastern Europe and Eurasia”, page 10 http://program.counterpart.org/Armenia/wp-content/uploads/2012/07/2011CSOSI_Index_complete.pdf

¹¹⁰ <http://gurt.org.ua/articles/11036/>

Primarily, representatives of CGBs and LSAs do not treat them seriously. In fact, PC activities are not mentioned in the relevant laws (“On Local State Administrations”, “On Central Government Bodies”).

The operation of PCs as advisory and consultative bodies in Ukraine has a number of factors which contribute to their inefficiency:

1. **Decisions made by PCs are not identified by legislation as a mandatory part of the procedure of the development and implementation of public policy.** Therefore, the need to organise the work and process policy proposals submitted by PCs is considered by the majority of state servants as a cumbersome extra. Indeed, in the current processes of initiation, development, coordination, approval, implementation, monitoring and evaluation of decisions in the area of public policy, there is no reference to consultations on their content with any interested party (besides other State authorities). Accordingly, none of the officials or employees of State authorities is obliged to consider proposals for the policy content received from the public.
2. Staffing of PCs is the biggest problem for civil society. **Many authorities have encountered conflicts while forming PCs.** PCs of some Ministries and other government bodies counted a hundred or even more members.¹¹¹ This resulted in PCs being inefficient formations, with an atmosphere of deep mutual mistrust causing a general reluctance of State officials to cooperate with civil society.
3. **The real motivation to work in PCs for the vast majority of its members is the “status”.** PC membership card can solve a large range of everyday problems in relations with representatives of the education, health, housing and utilities, law enforcement and other bodies.
4. The actual agenda of PCs shows that **their formation is a part of a simulation campaign initiated by state authorities, solely** to demonstrate their progress as being “transparent”. This results in a vicious tendency of creating new tools of “participation without influence”.
5. **The public does not possess either proper knowledge nor the skills of public policy analysis or policy advocacy for effective work within**

¹¹¹ <http://www.pravda.com.ua/columns/2011/04/8/6088504/>



PCs. CSOs are not ready to handle a real dialogue with representatives of national and municipal governments on policy content.

6. **A lack of real motivation** is attested by the fact that the vast majority of PCs hold only one or two organisational meetings (approval of regulations, work procedures, election of management and formation of working bodies, and sometimes the approval of work plans). After that, a significant portion of PCs actually cease their operations.
7. **Taking over the leadership in PCs by representatives of political parties and MPs** representing the majority in the respective city councils.

Obviously, the deep-laid transformations taking place now in Ukraine after the events of Euromaidan, radical personnel changes regarding the administrations of CGBs and LSAs, a declaration of maximum transparency in the relationship between public administrations and the public can give new impetus to the activities of PCs.

However, a request for public participation in the formation and monitoring of the implementation of public policy through the institution of PCs cannot be adequately implemented without addressing the following issues:

- Refusal to use the generalised term «public» and conducting **consultations aimed at clarifying the positions, interests and expectations of various stakeholders.**
- **Making consultations with stakeholders a mandatory and official stage of the decision-making process.**
- **Including an analysis of proposals on decisions into the job descriptions and responsibilities of most officials.** Also, officials must acquire appropriate knowledge and skills. An assessment of employees (certification) and the system of incentives (bonuses, allowances, penalties, etc.) should contain indicators associated with the organisation, conduct and analysis of the results of consultations with stakeholders.
- **Identifying a clear list of topics and forms for discussion when submitting policy proposals.** The system of argumentation must correlate with the real motivations of policy-makers.
- Representatives of CSOs should **acquire the capacity for public policy analysis and policy advocacy.**

3.2.3. Public Expertise

The adoption of Decree No.976¹¹² of the Ukrainian government in 2008 on the procedure of “public expertise” introduced another tool for influencing policy decisions. This empowers CSOs to carry out the following:

- evaluation of State authorities’ activities;
- monitoring of the effectiveness of the adoption and implementation of decisions by these authorities;
- preparation of policy proposals to be considered by CGBs and LSAs.

Public expertise is initiated by a CSO, which must submit a written request to a State authority. The head of the relevant CGB or LSA issues an administrative order on conducting the expertise and taking the necessary measures, appoints the officials responsible for ensuring cooperation with CSOs and ensures the provision of the requested materials. This governmental order on public expertise is of a recommendatory nature for LSAs.

The results of the public expertise are put into “expert proposals”, which must be submitted to the relevant CGB or LSA. The latter must publish this proposal within a week on its website; discuss it at the next panel meeting involving representatives from relevant CSOs or, in the case of an individual consideration, the Head of the authority should ensure a decision is taken within two weeks; develop and approve the measures to implement experts’ recommendations; provide the CSO that conducted the expertise with a written response on the results the consideration of of experts’ proposals, as well as on the measures to implement them within ten days, and place this information in the media and/or on its website.

During the first 5 years of its existence, public expertise has not been a popular instrument of policy dialogue with the general public. This is due to the following reasons:

- **Public expertise results are not mandatory for consideration** during policy decision-taking;
- **The public in Ukraine prefers verbal communication with the state authorities,** as opposed to drafting documents;

¹¹² <http://zakon4.rada.gov.ua/laws/show/976-2008-n>

- **The lack of CSO capacity to prepare expertise significant enough for policy-makers or corresponding to their motivations;**
- **The limited financial resources of CSOs.** Usually, public expertise is funded by CSOs while a more profound approach requires the involvement of external experts, which can sometimes prove expensive;
- **The “Document-oriented” nature of expertise** without proper attention paid to problem-analysis, assessment of public policy outcomes or the development of policy alternatives;
- **The limited range of topics for public expertise.** In practice, the majority of public expertise is devoted to the following: corruption, human rights and monitoring the effective use of resources allocated for national and regional programmes. Speaking of the latter, most of the public’s attention is focused on development programmes for NGOs and programmes for youth support. Moreover, each year the number of gender and environmental expertise increases;
- **The request to carry out a public expertise can be submitted in writing only** – the use of electronic means of communication is limited;
- **The absence of measures for preventing a conflict of interests during the public expertise.**

To improve efficiency of public expertise as a tool for policy dialogue, the following should be done:

- **type, subject matter and criteria for public expertise** should be clearly defined;
- **standards for various types of expertise** should be developed and **trainings for representatives of CSOs** should be organised on a wide range of methods of public policy-analysis and skills for conducting expertise in various sectors – namely those skills related to problem analysis, determining stakeholders’ positions, predicting their impact on society and on employment, assessing the needs of different stakeholders and the risks of policy implementation, and so on.
- **State authorities should be allowed to initiate public expertise.** The concept of «public» should be reconsidered, in that it establishes the independence of experts conducting expertise and does not identify the initiator of the expertise;

- **sanctions should be introduced for non-compliance with the principles of general consideration and inclusion of public expertise results** when making policy decisions;
- **mechanisms to prevent conflicts of interest during the public expertise** should be provided.

3.2.4. Appeal to State Authorities

So-called “appeals” are the oldest among the currently existing tools for influencing the policy decisions taken by State authorities. This procedure was set up in 1996, immediately after the adoption of the Constitution of the independent Ukraine. The idea was that through this “appeal procedure” society would have a mechanism to exercise their constitutional rights. The relevant law provided that those people who were not citizens of Ukraine but who legally resided in Ukraine, could also use this tool.

Appeals by citizens consist of written or oral proposals (comments), applications (petitions) and complaints. The actual opportunity to submit policy recommendations, both by citizens and by institutions of civil society, is called “proposals (comments)”. This is defined as advice, a recommendation on activities of the State and local governments, deputies at all levels, officials, or as an expression of opinion on the regulation of social relations and living conditions of citizens, improving the legal framework of public and social life, social, cultural or other sectors of activities of the State and society. Compared to the other types of appeals, “proposals (comments)” received the lowest degree of normative regulation.

The obligation to consider an appeal and report on its results applies not only to public administration agencies and their officials, but also to enterprises, institutions and organisations regardless of ownership, and CSOs. If the proposals do not require additional examination, consideration must be completed no later than 15 days after the date of their receipt. This period may not exceed 45 days in complex cases. This tool is often used by institutions of civil society in their dealings with the State authorities. According to the survey,



72.8% of NGOs submit proposals to the government in the form of citizens' appeals from time to time.¹¹³

Although "citizens' appeals" are the most tested tool for communicating public views on policy questions, they still cannot be considered as effective. This is due to the following:

- **"Proposals (comments)" are 'lost' in the array of two other more popular forms of appeals** – "applications" (requests on furtherance of the rights and interests or notification of breach of legislation in force or deficiencies in the activities) and "complaints" (requests for the restoration of rights and protection of the legitimate interests of citizens affected by the action/inaction of the above subjects);
- **The need to take into account the content of the proposals received in the form of "appeals" is not foreseen for public servants;**
- During more than 17 years of its use by CGBs and LSAs, **the system of "formal replies" has developed (officials write formal answers, but do not resolve the issue);**
- Appeals are filed as **free-form applications and mostly do not contain any serious arguments in their favour.** Most of these "proposals" are personal considerations or requests for the most common areas of change, and do not contain either detailed or reasoned advice;
- **Proposals are in no way tied to the current agenda, nor to the time of preparation or consideration of specific policy decisions;**
- **This tool is perceived by the ISC primarily as a means of attracting attention to policy issues rather than to the development of solutions;**

In order to enhance the effectiveness of "citizens' appeals" as a tool for policy dialogue, it is necessary to standardise the application forms (detail the language of the application and the rationale of expediency for taking the decision), and tie the time of their submission and consideration to the process of policy preparation, which takes place in the CGBs, LSAs and CBOs.

One can predict that in the near future the amount of appeals will increase due to staff changes at CGBs and LSAs, and to having a lot of hope in new officials regarding democratic reforms in Ukraine. If this tool does not change,

society will suffer yet another wave of frustration due to the inability of State authorities to use new "breakthrough" ideas generated by community activists, as was the case in Ukraine following the events of the "Orange Revolution" in 2005–2006.

The creation, review and support of community initiatives via the Internet has been an interesting trend. Today, online projects are developing rapidly and were created in order to make public, discuss, and elaborate initiatives so that later they could be collectively presented to the appropriate State authorities.

3.2.5. "Open Government" Initiative

One of the newest and most promising instruments of policy dialogue is the "Open Government" initiative. In 2011, after signing the UN General Assembly Declaration of "Open Government", Ukraine joined the international Partnership Initiative "Open Government". Its aim is to increase the openness and transparency of State authorities, support the involvement of institutions of civil society in the processes of policy formulation and the implementation of high standards of professional integrity in government. Ukraine has set the following "key priorities":

- strengthening the partnership between CGBs, LSAs and CSOs;
- providing access to public information;
- preventing and combating corruption;
- ensuring good governance by improving the quality of administrative services and the introduction of e-governance.

From the CSO side, Public Partnership was formed to support the implementation of the "Open Government Partnership" initiative in Ukraine, consisting of 47 CSOs and 13 individual members.

The way in which the "Open Government Partnership" initiative was implemented during 2012–2013 cannot be characterised as successful.

Firstly, it **does not contain any "added value" and there are no innovations in the field of public policy.**

Secondly, **the government and the public were only active regarding "e-governance"**; however, here the activities were limited to the preparation of the most common conceptual documents.

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Thirdly, **the only “success” of the initiative was its ‘growth’ in terms of organisational and administrative aspects.** In particular:

- a network of regional coordinators was created;
- a special website <http://ogp.gov.ua/> was launched;
- a telephone hotline was launched;
- an informational digest was published on a regular basis.

After changing the composition of the CMU (February 2014), neither the government nor the Public Partnership showed any activity.



SUMMARY

In general, the conditions for CSO registration and operation in Ukraine are acceptable. Refusals to register CSOs became significantly less frequent following the new legislation on CSO in 2013, even though the waiting periods for registration are still too long. Overall, representatives of Ukrainian CSOs regard the new legislation as a positive change. The problem of the burdensome liquidation of CSOs remains unresolved though, and should be addressed by the government.

During the presidency of Viktor Yanukovich there was an attempt to adopt a framework document that would promote the development of civil society, and the “Strategy of State Policy for Promoting the Development of Civil Society in Ukraine and Primary Measures for Its Implementation” was adopted in 2012.¹¹⁴ This public policy document turned out to be less effective than initially expected – mostly due to its declarative nature, vague objectives and goals, and non-indication of resources needed for the programme’s implementation. It is worth mentioning that a positive consequence of the above-mentioned Strategy was that regional target programmes aiming to promote civil society were developed in almost all regions of Ukraine.

CSOs mostly assess the environment in which they operate as “satisfactory”, based on their rating of the situation for freedom of assembly and association, freedom of speech, access to public information and ensuring key civil liberties in Ukraine.

Funding is the most pressing problem for CSOs in Ukraine. The lack of budgetary resources to support the organisations, unequal access of CSOs to limited State funding available, almost no tax benefits for businesses and citizens wishing to make contributions or support CSOs and limited opportunities for CSOs to participate in public procurements cause financial problems for

CSOs in Ukraine. International donor organisations remain the key source of financing for CSOs.

For the longest time, voting in elections was the only way for citizens to participate in public policy-making. However, after the Euromaidan events in Ukraine experts observed a clear shift in society, from a passive position of “policy-taking” to active participation in “policy-making”. Numerous civil society initiatives and organisations were established and started actively participating in policy dialogue with State authorities, and several reforms are now being carried out (judiciary reform, reform of the prosecutor’s office, reform of internal affairs agencies, anti-corruption reform, reform of decentralisation and regional development, education reform, etc.).

Sometimes CSOs are not able to participate in the processes of public policy formulation or participation as they lack the knowledge and skills necessary for policy analysis and advocacy. However, representatives of organisations realise this and are looking at ways to gain knowledge to fill the gaps.

The best level of cooperation exists between CSOs and local self-governing authorities – just over 57% of CSO representatives reported an adequate level of cooperation between them, with CSOs in Ukraine cooperating with central governing bodies the least.

Ukrainian legislation provides several policy dialogue instruments for its society to be engaged in policy-making: public councils, public consultations, public expertise, appeals to State authorities, the “open government” initiative, etc. Ukrainian citizens are definitely starting to use all the available tools more actively after the increase of civic activism witnessed during the Euromaidan events. Experts have developed recommendations on how to make those policy dialogue tools even more effective and widely used by CSOs.

¹¹⁴ <http://www.president.gov.ua/ru/documents/15829.html>

