

# CSO METER

A compass to conducive environment and  
CSO empowerment

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## UKRAINE 2022 COUNTRY REPORT

KYIV





European Center for  
Not-for-Profit Law



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# CSO Meter 2022: Ukraine

## Country Report

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The Ukrainian Center for Independent Political Research (UCIPR) is a non-governmental and non-partisan think tank that develops democratic procedures in public policy, thus promoting the idea of the irreversibility of democratic changes among the public. UCIPR focuses on the study of socio-political processes in Ukraine and the EU Member States, generates ideas and advocates proposals for good governance, and carries out civic and political education activities.

European Center for Not-for-Profit Law (ECNL) Stichting is a leading European resource and research centre in the field of policies and laws affecting civil society. ECNL creates knowledge, empowers partners and helps set standards that create, protect and expand civic freedoms.

The authors would like to express their sincere gratitude to all contributors, including the CSO Hub Members (Human Rights Centre ZMINA, Centre for Democracy and Rule of Law and Digital Security Lab).

The 'CSO Meter: A Compass to Conducive Environment and CSO Empowerment' project is implemented by ECNL and its partners: Transparency International Anticorruption Center in Armenia; MG Consulting LLC in Azerbaijan; Civil Society Institute in Georgia; Promo-LEX Association in Moldova; and UCIPR.

This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of the authors and do not necessarily reflect the views of the European Union.

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# ABBREVIATIONS & ACRONYMS

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AI	Artificial intelligence
AML/CTF	Anti-money laundering and counter-terrorism financing
CMU	Cabinet of Ministers of Ukraine
CSO	Civil society organisation <sup>1, 2</sup>
EaP	Eastern Partnership
ECHR	European Convention on Human Rights
ECNL	European Center for Not-for-Profit Law
EU	European Union
EUR	Euro
GDP	Gross Domestic Product
GDPR	General Data Protection Regulation
ICCPR	International Covenant on Civil and Political Rights
IDP	Internally displaced person
IMI	Institute of Mass Information
ISP	Internet service provider
LGBTQ+	Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, Intersex, Asexual, Ally, etc.
LSGB	Local self-government body
Parliament	Supreme Council of Ukraine ( <i>Verkhovna Rada Ukrainy</i> )
UAH	Ukrainian Hryvnia
UBO	Ultimate beneficial owner
UCIPR	Ukrainian Center for Independent Political Research
USAID	United States Agency for International Development
USD	United States Dollar
UTOG	Ukrainian Association of the Deaf ( <i>Ukrayins'ke tovarystvo hlukhy</i> )
UTOS	Ukrainian Association of the Blind ( <i>Ukrayins'ke tovarystvo slipykh</i> )
VAT	Value Added Tax

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<sup>1</sup> Meaning of 'civil organisation' according to the Law of Ukraine 'On Public Associations', No. 4572-VI, 22.03.2012 last amended 27.04.2021, <https://zakon.rada.gov.ua/laws/show/4572-17#Text>.

<sup>2</sup> Meaning of 'charitable organisation' according to the Law of Ukraine 'On Charitable Organisations and Charitable Activities', No. 5073-VI, 05.07.2012 last amended 02.06.2021, <https://zakon.rada.gov.ua/laws/show/5073-17#Text>.

# I. EXECUTIVE SUMMARY

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## Country context and important trends relevant to the civil society environment

This report reflects the changes in the civil society organisation (CSO) environment during the reporting period from January to December 2022 in Ukraine. Most of these are related to the adaptation of CSOs during the full-scale invasion of Ukraine by the Russian Federation. The full-scale invasion has caused a marked public mobilisation to respond to emerging crises and threats.

The largest share of victims of Russian aggression among Ukrainian citizens active in the CSO space have died as a result of indiscriminate shelling of civilian vehicles used to carry out evacuations or to deliver humanitarian aid. Some of these vehicles were marked with the inscriptions 'Children' or 'Evacuation'. A certain number of people have died as a result of Russian artillery hitting volunteer centres, particularly in Kharkiv, where such centres were located on the premises of the *oblast* (regional) administration and the city council. At the same time, among the Ukrainian citizens active in the CSO space who have died are those who have been kidnapped and tortured by Russians troops, or those who have died under unclear circumstances and their bodies discovered in mass graves in the occupied territories. There are probably many more such cases than those already known, and, with time, the number of incidents will only increase.

According to numerous testimonies from eyewitnesses and victims, the occupying Russian forces have tried to identify Ukrainians with an active public position, including human rights defenders, journalists, as well as persons who have any connection to law enforcement agencies, the armed forces or state authorities in the territories of Ukraine controlled by them. The actual or hypothetical belonging of a person to one of the aforementioned categories has caused acts of brutal violence, including torture, ill-treatment, kidnapping, rape and murder. It is important to note that the detection of persons from these categories was carried out by the Russians not only by means of 'random checks', but also through targeted searches from lists that contained data on these persons places of residence, as well as their family members. Some of this information was also published on Russian resources such as the 'Committee for Protection from Enemies' and 'Independent Information Center Volunteer'. At the same time, data from Ukrainian official registers and open data may appear in doxing. However, for these categories of persons, it was not always possible for those targeted to safely leave the controlled territory due to the threat of being detected at Russian checkpoints or due to cases of indiscriminate shelling of evacuation columns by the occupiers. Because of this, some activists decided to remain in the occupied territories despite the danger. In addition to

threats to the personal safety of activists, the offices of public organisations in the occupied territories have also been attacked through artillery shelling and looting.

The skills and knowledge acquired by CSOs in Ukraine during the Covid-19 pandemic in 2021 helped CSOs to adapt and respond promptly to new challenges. Among the most valuable skills are flexibility, the use of digital tools, and the ability to quickly shift focus to the most pressing needs in society such as humanitarian aid. For example, CSOs have significantly improved the accounting and delivery systems for humanitarian aid, developed systems for collecting applications from potential beneficiaries of humanitarian aid and developed internal software products to identify problems and needs of citizens (in particular, internally displaced persons (IDPs), persons from occupied and de-occupied territories, etc.).

The authorities, being in a time of full-scale war, have a reason to restrict the rights and freedoms of citizens. There is a derogation of the state from the obligation to implement human rights according to eleven articles of the Constitution, which has significantly affected conditions for the activities of CSOs. Due to these derogations, it has become more difficult for CSOs to perform one of their functions: monitoring and supervision of the government's actions.

Despite the challenges of the war, CSOs in Ukraine have done their utmost to put the authorities in a framework, demanding compliance with martial law wherever possible.

## Key developments in the civil society environment

Due to the full-scale Russian invasion, the overall score for the CSO environment in Ukraine is lower in 2022 (4.7 out of 7) than in 2021 (5.2 out of 7). The top three areas with the highest scores remain the same as for 2021: Freedom of Association (5.6), Equal Treatment (5.3), and State-CSO Cooperation (5.2), while the areas with the lowest scores are: Right to Privacy (4.1), State Support (4.3), Access to Funding (4.7) and State Duty to Protect (3.8).

Despite the war, positive changes have taken place in most of the analysed areas, which have made it possible to adapt legislation and practice to the realities and needs of martial law.

From the beginning of the full-scale stage of Russian aggression against Ukraine in February 2022, a legal regime of martial law was introduced in the country. During the period of martial law, a number of changes concerning the activities of CSOs have been adopted. On 24 February 2022, in order to preserve information and prevent its illegal use, access to information from the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organisations, as well as many other registers, was completely blocked. This became

one of the factors that influenced the decrease in score in the area of Digital Rights compared to 2021 (5.2 in 2021 to 4.8 in 2022) despite the high level of available digital services for both CSOs and businesses.

As the full-scale Russian invasion began, Ukrainian CSOs mobilised their forces in large numbers, covering many needs that the state could not provide by itself. The main activities were helping people who suffered as a direct result of the invasion, providing legal assistance, informing citizens about the events of the war, the reconstruction of Ukraine, meeting the needs of the Armed Forces of Ukraine, and documenting war crimes and crimes against humanity committed by the Russian armed forces and pro-Russian proxy forces in Ukraine. The state has also supported the activities of CSOs in the field of state assistance by simplifying CSOs' registration processes and introducing a favourable taxation policy for CSOs' activities. Thus, the activities of CSOs is a significant factor in Ukraine's ability to resist the aggression of the Russian Federation. Accordingly, scores in the areas of Freedom of Association (5.6), Equal Treatment (5.3), State-CSO Cooperation (5.2) and State Support (4.3) did not critically decrease in 2022 despite the military challenges and restrictions posed by martial law.

The volunteer movement is gaining tremendous popularity in Ukraine with volunteers creating local and all-Ukrainian networks of volunteers. The level of trust in CSOs, especially volunteer ones, has increased significantly. For instance, in August 2022, the level of public trust was 44 per cent for CSOs in and 77 per cent for volunteering organisations.<sup>3</sup> Additionally, as the results of sociological research show, 39 per cent of citizens transferred money to charitable funds, while another third of citizens provided money and help to strangers.<sup>4</sup> Overall, 68 per cent were involved in volunteer activities.<sup>5</sup>

CSOs, in cooperation with the authorities, have created many humanitarian initiatives. There have also been changes in the legislation related to volunteering, for example, the Law 'On Amendments to the Law of Ukraine "On Volunteering" to support volunteering' facilitates taxation, promotes the development of a culture of volunteering among students and improves the legislation on volunteering itself. Therefore, the historically high scores in the areas of Freedom of Association (5.6) and State-CSO Cooperation (5.2), have been maintained in 2022 in spite of the war.

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<sup>3</sup> Democratic Initiatives Foundation. 'Trust in the state: How to save national unity for the victory'. Poll conducted by Democratic Initiatives Foundation between 5-12 August 2022, <https://dif.org.ua/article/trust-in-the-state-how-to-save-national-unity-for-the-victory> [last visited 12.12.2022].

<sup>4</sup> Texty.org.ua. 'Ukrainians began to trust each other more during the war' (in Ukrainian), <https://texty.org.ua/fragments/107286/ukrayinci-pochaly-bilshe-doviryaty-odne-odnomu-pid-chas-vijnny-opytuvannya/> [last visited 16.01.2023].

<sup>5</sup> Gradus Research Company. 'Migration and socio-political attitudes during the war' (in Ukrainian), [https://gradus.app/documents/317/Gradus\\_EU\\_wave\\_12\\_UA.pdf](https://gradus.app/documents/317/Gradus_EU_wave_12_UA.pdf) [last visited 16.01.2023].

The activities of Ukrainian CSOs have been recognised on the international stage. The role of civil society in the promotion and oversight of reforms in Ukraine was separately noted in the opinion of the European Commission on Ukraine's application for membership of the European Union (EU).<sup>6</sup>

In addition, the 2022 Nobel Peace Prize was awarded to the Ukrainian human rights organisation Center for Civil Liberties. The organisation has taken a stand to strengthen Ukrainian civil society and to put pressure on the authorities to make Ukraine a full-fledged democracy.

The biggest challenge for CSOs in the reporting period has been ensuring public activists' physical and psychological safety, especially in temporarily-occupied territories. Other threats to CSOs' activities are the termination of funding for some CSOs' projects by international donors or the impossibility of their implementation, the relocation of CSOs' representatives abroad and also within the country, and the loss of organisational stability. Despite this, the majority of CSOs were able to maintain their levels of activity by adapting to the new realities. Therewith, reduction of the State Duty to Protect and State Support areas were objectively reduced comparatively with 2021.

At the same time, since the beginning of the full-scale invasion, the state has made significant efforts to consolidate the capacity of CSOs, volunteers and businesses to support those facing difficulties in the war. In particular, the Ministry of Social Policy, together with the Ministry of Digital Transformation, launched the humanitarian platform *eDopomoga* (eHelp), aimed at establishing a direct connection between volunteers, CSOs and people in need and processing requests for specific assistance by those benefactors who are ready to provide it. By the end of 2022, more than 4,500 volunteers have been involved in providing charitable assistance within the framework of the platform. The main goal of the project was to satisfy the urgent needs of citizens who were suffering or were forced to change their place of residence due to military aggression.

## Key priorities

1. Improving legislation on the registration and operation of CSOs;
2. Digitalization of services and digital environments for interaction between the authorities and CSOs, digitalization of services for volunteers and their organisations;
3. Providing favourable tax conditions for CSOs' activities;

<sup>6</sup> European Commission. 'Opinion on Ukraine's application for membership of the European Union', [https://neighbourhood-enlargement.ec.europa.eu/opinion-ukraines-application-membership-european-union\\_en](https://neighbourhood-enlargement.ec.europa.eu/opinion-ukraines-application-membership-european-union_en).



4. Preventing the adoption of new legislative restrictions for CSOs;
5. Ensuring the state duty to protect, due investigation of attacks on journalists and civil society activists, particularly against LGBTQ+ activists, environmental activists, and the representatives of national minorities;
6. Advancing the practice implementation of the National Strategy for Civil Society Development for 2021-2026 to ensure cooperation between authority bodies and CSOs;
7. Developing various fundraising mechanisms for CSOs, including CSO business activities, the tax designation mechanism, social contracting, etc;
8. Ensuring equal access for CSOs to public funding and that the competitive process for obtaining such funding is transparent;
9. Ensuring transparency in the process of cost circulation and monitoring the vulnerability of CSOs to money laundering; and
10. Ensuring cooperation between CSOs and authority bodies at the national and local levels to strengthen democratic accountability and good governance as part of Ukraine's integration process with the EU.

## II. UKRAINE - IN NUMBERS

Population: 41.167 million (2022)<sup>7</sup> | GDP per capita: No data (2022)<sup>8</sup> | Number of CSOs: 128,614 (2022) | CSOs per 10,000 inhabitants: 31.2 (2022) | Registration fee for CSOs: None | Freedom in the World: Partly Free (61/100) (2022)<sup>9</sup> | World Press Freedom Index: 106 out of 180 countries, score 55.76 (2022)<sup>10</sup>



Country score: 4.7 ↓  
 Legislation: 5.1 ↓  
 Practice: 4.3 ↓

The scores range from 1 to 7, where 1 signifies the lowest possible score (extremely unfavourable – authoritarian - environment) and 7 signifies the highest possible score (extremely favourable environment).

Areas	Overall	Legislation	Practice
Freedom of association	5.6 ↓	5.6 ↓	5.5 ↓
Equal treatment	5.3 ↓	5.4 ↓	5.2 ↓
Access to funding	4.7 ↓	5.0 ↓	4.4 ↓
Freedom of peaceful assembly	4.7 ↓	4.9 ↓	4.5 ↓
Right to participation in decision making	4.7 ↓	5.1 ↓	4.3 ↓
Freedom of expression	4.9 ↓	5.5 ↓	4.2 ↓
Right to privacy	4.1 ↓	4.9 ↓	3.2 ↓
State duty to protect	3.8 ↓	4.0 ↓	3.5 ↓

<sup>7</sup> Finance Ministry of Ukraine data as of 01.01.2022 (in Ukrainian), <https://index.minfin.com.ua/ua/reference/people/>. There are no annual data by the Statistics Committee for 01.01.2023 due to the war. About 7,968,510 refugees from Ukraine living in European countries have been counted by the United Nations Refugee Agency as of January 2023. Source: UNHCR, 'Ukraine refugee situation', <https://data.unhcr.org/en/situations/ukraine> [last visited 10.01.2023]. To compare: 43.79 million people as of 2021 based on the World Bank data, 'Population – total, Ukraine', <https://data.worldbank.org/indicator/SP.POP.TOTL?end=2021&locations=UA&start=1960&view=chart&year=2014>.

<sup>8</sup> There are no data regarding 2022 as of 01.01.2023. Source: International Monetary Fund. <https://www.imf.org/external/datamapper/NGDPDPC@WEO/UKR?zoom=UKR&highlight=UKR> [last visited 05.01.2023]. (4,835 USD in 2021. Source: The World Bank, 'GDP per capita (current US\$) – Ukraine', 2021, <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=2021&locations=UA&start=2019>)

<sup>9</sup> Freedom House. 'Freedom in the World 2022', <https://freedomhouse.org/explore-the-map?type=fiw&year=2022> [last visited 02.01.2023].

<sup>10</sup> Reporters Without Borders. '2022 World Press Freedom Index', <https://rsf.org/en/country/ukraine> [last visited 02.01.2023].

State support	4.3 ↓	4.6 ↓	3.9 ↓
State-CSO cooperation	5.2 ↓	5.6 ↓	4.7 ↓
Digital rights	4.8 ↓	5.1 ↓	4.4 ↓

*The arrows indicate improvement or deterioration compared to last year's scores.*

# III. FINDINGS

## 3.1 Freedom of Association

Overall score per area: **5.6 / 7**

Legislation: **5.6 / 7**

Practice: **5.5 / 7**

Legislation in the area of Freedom of Association is conducive to and stable for CSOs. CSOs in Ukraine are free to determine their objectives and activities. State registration of CSOs is free of charge and the procedure is clearly defined and fast. The state does not create unnecessary obstacles to the activities of CSOs.

Despite the war, the recommendations of the previous CSO Meter report were taken into account almost completely. At the same time, new challenges facing Ukraine and, particularly, Ukrainian civil society, created new problems in the area of Freedom of Association area and, because of this, both the overall score and legislation/practice scores in this area decreased comparatively with 2021. Overall though, in most cases in 2022, the state Government, the Parliament of Ukraine and local authorities responded in a timely manner to urgent civil society calls.

### Standard I. Everyone can freely establish, join, or participate in a CSO.

The right of citizens to freedom of association and a principle of equality of all public associations before the law is guaranteed by the Constitution of Ukraine. The most used forms of CSO in Ukraine are public organisations and charitable foundations. These CSOs are regulated under the Law of Ukraine ‘On Public Associations’<sup>11</sup> and the Law of Ukraine ‘On Charity and Charitable Organisations’.<sup>12</sup>

A public organisation may be registered as a legal entity or act as an informal association. A minimum of two persons can establish a public organisation and both foreigners and stateless persons legally residing in Ukraine can register a public organisation. The founders of a public organisation may be individuals at least 18 years old, and members of those CSOs may be individuals at least 14 years old. Founders of youth and children’s public organisations can be persons who are at least 14 years old. A member of a youth organisation may be a person between the ages of 14 and 35, while members of a children’s public organisation can be individuals between the ages of 6 and 18.

<sup>11</sup> Law ‘On Public Associations’. Law of Ukraine from 22.03.2012, No. 4572-VI, <https://zakon.rada.gov.ua/laws/show/4572-17#Text>. [Last visited 12.01.2023].

<sup>12</sup> Law ‘On Charity and Charitable Organisations’. Law of Ukraine from 05.07.2012, No. 1, 5073-VI, <https://zakon.rada.gov.ua/laws/show/5073-17#Text>. [Last visited 12.01.2023].

The minimum number of founders of a public (civic) union is two legal entities. The founders of a civic union may be legal entities under private law, including public organisations with legal status. Members of a civic union may be legal entities under private law, including public associations with the status of a legal entity, as well as individuals at least 18 years of age and with legal capacity.

A charitable organisation may be established as a charitable union, charitable institution, or charitable foundation as defined by the Law of Ukraine 'On Charity and Charitable Organisations' and other relevant laws of Ukraine. A charitable union is a charitable organisation that is established by at least two founders and operates based on a charter. The founders of charitable organisations may be capable individuals at least 14 years old or legal entities under private law.

Civil servants are not restricted by law from participating in CSOs as ordinary members or as members of their governing bodies. However, civil servants and officials of local authorities are obligated to carry out their duties honestly and impartially and to show no adherence to particular individuals, legal entities, or public and religious organisations. In practice, candidates for a civil service position, as one of the informal criteria for holding the job, have to terminate their membership in the governing body of a public association to avoid a conflict of interest.

Public associations may carry out activities having the status of a legal entity or without such status. Charitable organisations can be registered and may act only as legal entities. Registration as a legal entity allows CSOs to open bank accounts, obtain non-profit status and prospectively obtain state-financed orders.

Non-profit status provides the holders with an exemption from the obligation to pay 18 per cent corporate income tax. Non-profit status can only be obtained by registered organisations with legal entity status. To obtain non-profit status, CSOs should include in their statute: (i) provisions on the prohibition of distribution of income of the organisation among the founders and participants of the CSO; and (ii) the obligation, in case of the liquidation of the CSO, to transfer all assets to another CSO of a similar organisational and legal form, or to the state budget revenue.

One of the legally-established principles of the activities of public associations is the free choice of the territory of its engagement. Consequently, the public association, regardless of location, may carry out activities throughout the territory of Ukraine or beyond, unless otherwise specified by its constituent document.

In Ukraine, the state has not imposed practical obstacles to establishing or joining a CSO or taking part in its activities, and has also made use of digital processes which have been

instrumental in easing the registration process for CSOs as much as possible during wartime. Everyone can freely establish, join, or participate in a CSO.

In general, for the duration of the martial law imposed due to the full-scale Russian invasion of Ukraine, the relevant legal framework on freedom of association has not changed.

### Standard II. The procedure to register a CSO as a legal entity is clear, simple, quick, and inexpensive.

The state of martial law has not impeded CSOs' establishment and registration. The number of CSOs increased under wartime circumstances with a total of 9,502 new organisations established (99,556 CSOs, 2,212 public (civic) unions and 26,846 charitable organisations are registered in total).<sup>13</sup> This data does not include information from temporarily Russian-occupied territories such as Crimea and Donetsk and Luhansk oblasts.

	2021	2022
CSOs	96,543	99,556
Public (civic) unions	2,071	2,212
Charitable organisations	20,498	26,846
<b>Total number of CSOs</b>	<b>119,112</b>	<b>128,614</b>

The procedure for registration of a public association and registration of new legal entities is regulated by the Law of Ukraine 'On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations',<sup>14</sup> the Law of Ukraine 'On Public Associations', and various other regulations and procedures.

The list of documents required for registration of a public association is clearly defined and consists of an application form for founding a legal entity or application form for founding a public association without legal entity status, a decision of the founders on the establishing of an association, the charter, information on the members of the governing bodies and information about the person submitting these documents.

Registration of a public association still takes three business days and is free of charge. The time period for registration (e.g., for additional consideration of registration documents) for

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<sup>13</sup> Number of legal units of registered, by the organisational and legal forms and by gender of the head of the enterprise as of 1 January 2023. State Statistical Service of Ukraine. Information dated 12.01.2023, <https://www.ukrstat.gov.ua/>. [Last visited 12.01.2023].

<sup>14</sup> Law 'On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations'. Law of Ukraine from 15.05.2003 #755-IV, <https://zakon.rada.gov.ua/laws/show/755-15#Text> [last visited 22.12.2022].

public associations can be extended, but not by more than fifteen business days. In practice, registrars rarely use this time extension and review applications within three business days.

Registration is carried out directly by the Territorial Department of Justice in the oblasts of Ukraine and the city of Kyiv (25 departments in total). However, applications can also be submitted to Administrative Services Centres (there are around 936 centres with 104 territorial departments). The Ministry of Justice of Ukraine constantly continues work on expanding the range of facilities that are providers of state registration and also on the types of administrative services provided on the territory of Ukraine where there are no hostilities. From 11 April 2022, seven interregional offices of the Ministry of Justice of Ukraine and state registrars of 17 city councils resumed work on registration activities.

The Decree of the Cabinet of Ministers of Ukraine (CMU) ('on some issues of state registration and functioning of unified and state registers, the holder of which is the Ministry of Justice, in the conditions of martial law') dated 6 March 2022, No. 209<sup>15</sup> establishes specifics, taking into account which state registration is carried out/ensured, in particular of public formations under the conditions of martial law.

This decree provided an opportunity to carry out the most urgent registration actions, namely: creation of charitable organisations and public associations and making changes to information about them; changes in the head of a legal entity due to their death; and changes in the location of a legal entity.

State registration is free of charge for all types of CSO. State registration, regardless of the location of the CSO, began to be carried out in electronic form on the basis of documents sent to the state registrar (an official of the Ministry of Justice) by email (or by using other means of communication). The term of state registration has been shortened; the service is provided immediately following receipt of all of the necessary documents.

The Government established the features of state registration of public formations under martial law<sup>16</sup> in March 2022. State registration of a separate unit of a foreign non-governmental organisation, a representative office, or a branch of a foreign charitable organisation has been carried out through its accreditation, without acquiring the status of a legal entity being necessary. For the accreditation of a separate unit, it is necessary to apply to the Ministry of Justice with a clearly-prescribed list of documents and the procedure takes 20 working days. The registration fee is 28 per cent of the subsistence minimum. For example, the subsistence minimum for a non-disabled person on 1 January 2022, was UAH 2,481

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<sup>15</sup> Decree of the CMU 'On some issues on state registration and functioning of unified and state registers holding by the Ministry of Justice, under martial law'. Cabinet of Ministers of Ukraine, 06.03.2022 #209. Provision 6 (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/209-2022-%D0%BF#Text> [last visited 20.12.2022].

<sup>16</sup> Ibid.

(approximately 77 EUR). Therefore, the registration fee for accreditation of a separate unit is about 21 EUR.

There is the possibility for CSOs in Ukraine to submit papers for obtaining state registration online using the state portal e-service.<sup>17</sup> Unfortunately, due to the facility being disabled due to the war, it has not been possible for CSOs to obtain the electronic papers (an extract) certifying the fact of state registration from the official electronic register. However, CSOs may still obtain this information through such public electronic services as *Opendata*<sup>18</sup> or *Youcontrol*.<sup>19</sup> These two services have access to the official e-registers of Ukraine's Ministry of Justice based on an application programming interface. The system of electronic interaction between digital registers, called *Trembita*,<sup>20</sup> did not start operating in 2022, despite 50 public electronic registries having been connected to the system since October 2021. This activity was not completed in advance of the full-scale Russian invasion in February 2022, and access to public information through electronic registers has been completely disabled due to the war since 24 February 2022.<sup>21</sup>

State registration of charitable organisations takes 24 hours during business days from receipt of the application and is free of charge. For charitable organisations, there is no time period extension available to the registering authority for consideration of the submitted documents. Registration of charitable organisations is carried out by the Administrative Services Centres or by notaries; therefore, the range of entities authorised to register them is as wide as possible. The list of documents required for the registration of a charitable organisation consists of an application form for founding a legal entity, a decision of the founders on the formation of the charitable organisation, and the charter.

The list of grounds for refusal to register a CSO is clearly defined in the Law 'On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations' and refusal on grounds other than those specified by law is prohibited. The decision of the state registrar may be challenged by appealing to the Ministry of Justice of Ukraine, its territorial bodies and the courts. In the current state of full-scale invasion, there is the need to remove barriers to the functioning of civil society as soon as possible.

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<sup>17</sup> IGov. A government e-service portal in Ukraine (in Ukrainian), <https://igov.org.ua/subcategory/1/10/situation/44?anchor8=undefined#anchor3> [last visited 26.12.2022].

<sup>18</sup> OpenDataBot. (In Ukrainian), <https://opendatabot.ua/open/edr> [last visited 22.12.2022].

<sup>19</sup> YouControl. (In Ukrainian), <https://youcontrol.com.ua/catalog/> [last visited 22.12.2022].

<sup>20</sup> Decree of the CMU 'On some issues of electronic interaction between electronic information resources'. Cabinet of Ministers of Ukraine, 08.09.2016, #606 (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/606-2016-%D0%BF#Text> [last visited 12.12.2022].

<sup>21</sup> UCIPR. 'Right to information: international standards, practice of the European Court of Human Rights and national regulation during wartime', Kyiv, October 2022, p. 21, <http://ucipr.org.ua/ua/publikatsii/vydannia/right-to-information-international-standards-practice-of-the-european-court-of-human-rights-and-national-regulation-during-wartime> [last visited 22.12.2022].



Since the widespread hostilities have forced many people to leave their destroyed homes or to reduce the risk to life in the conditions of front-line movements, the burden on registration bodies (territorial bodies of the Ministry of Justice) that work in the western regions of Ukraine has increased.

In September 2022, the Parliament of Ukraine registered the draft Law of Ukraine 'On Regulation of Activities and State Registration of Public Associations'<sup>22</sup> prepared by the Ministry of Justice of Ukraine in cooperation with the UCIPR. The draft Law includes:

- increasing the number of CSO registration bodies;
- reducing the number of documents required for CSO registration;
- reducing registration deadlines from 3 business days to 24 hours;
- establishing a single organisational and legal form for public associations;
- introduction of a 'model option' for registration and a reduction in the mandatory requirements for the applicant's charter; and
- granting CSOs freedom of choice to independently establish the procedure and rules of their decision-making.

Since 2016, aside from registering, CSOs can obtain a non-profit status online. This is enabled by submitting the necessary documents to the State Tax Service using the declarant's digital signature. The service has to be provided within 14 days.<sup>23</sup>

Unfortunately, the principle of extraterritoriality (the possibility for citizens and legal entities to receive state services in any region regardless of their registration place, even if such services are usually available only at the place of registration) does not apply to the full extent. It is not available for CSOs to inform on their inclusion or refusal to be included in the register because the various state registers do not interact with each other and data exchange is complicated due to data security measures in place in wartime conditions. Prior to the Russian invasion, this issue was not so relevant because, firstly, the relevant state registers were open and each CSO had the ability to check information and, secondly, state registers were interacting with each other to some extent.

### **Standard III. CSOs are free to determine their objectives and activities and operate both within and outside the country in which they were established.**

CSOs in Ukraine are free to determine their objectives and activities. Public associations carry out their activities in accordance with the self-government principle, which, among other

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<sup>22</sup> Draft law 'On Regulation of Activities and State Registration of Public Associations'. Draft Law of Ukraine registered 28.09.2022 #8084 (in Ukrainian), <https://itd.rada.gov.ua/billInfo/Bills/Card/40561> [last visited 28.12.2022].

<sup>23</sup> CMU. 'How to get a non-profit status' (in Ukrainian), <https://www.kmu.gov.ua/service/otrimannya-oznaki-nepributkovosti> [last visited 12.01.2023].  
<https://zakon.rada.gov.ua/laws/show/440-2016-%D0%BF#Text> CMU Decree of 13.07.2016, No. 440 (in Ukrainian), [last visited 12.12.2022].

things, provides for their right to independently determine their areas of activity. In addition, there is a principle of non-interference of state authorities, other state bodies and other authorities in the activities of a public association.

There are restrictions on forming and operating public associations whose purpose, goals or actions are aimed at jeopardising Ukraine's independence, overthrowing the constitutional order, violating the sovereignty and the territorial integrity of the state, undermining its security, the unlawful takeover of state power, the propaganda of war or violence, the incitement of interethnic, racial or religious hatred, attacks on human rights and freedoms, threats to public health, propaganda of the Communist and/or National Socialist (Nazi) totalitarian regimes and their symbols.

Ukrainian charitable organisations are limited in defining their goals and activities in comparison to public associations. Namely, they must carry out activities falling within the fifteen areas defined by law for charitable activities.<sup>24</sup>

Wartime has called for an urgent need for existing CSOs to shift their priorities and activities to new challenges, and also for foreign CSOs to become registered in Ukraine. This is especially the case for foreign CSOs with a humanitarian or charity mission, which have been supported by the Government via the possibility for establishing a separate subdivision of a foreign CSO that may operate in Ukraine in accordance with a legally-established procedure.

#### **Standard IV. Any sanctions imposed are clear and consistent with the principle of proportionality and are the least intrusive means to achieve the desired objective.**

CSOs may be dissolved by a court, but this rarely happens in practice. The sanctions for non-profit CSOs are clearly defined (in the Tax Code of Ukraine, provision 133.4),<sup>25</sup> but can be applied without warning. CSOs that have non-profit status can lose it if their founders or members use the income of the organisation for their own benefit or in cases of violation of any other prerequisite for non-profit status. Such CSOs are then considered as regular taxpayers of corporate income tax and must submit the respective reports required of a profit-

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<sup>24</sup> These are: 1) education; 2) health care; 3) ecology, environment and animal protection, prevention and elimination of natural and man-made disasters, assistance to victims of disasters, armed conflicts and accidents, as well as refugees and persons in difficult life circumstances; guardianship and custody, legal representation and legal assistance; 6) social protection, social security, social services and poverty eradication; 7) culture and art, protection of cultural heritage; 8) science and research; 9) sports and physical culture; 10) human rights and fundamental freedoms; 11) development of territorial communities; 12) development of international cooperation of Ukraine; 13) stimulating the economic growth and development of the economy of Ukraine and its individual regions and enhancing Ukraine's competitiveness; 14) promoting the implementation of national, regional, local and international programs aimed at improving the socio-economic situation in Ukraine; and 15) promotion of the country's defence and mobilization readiness, protection of the population in emergencies of peaceful and martial law.

<sup>25</sup> Tax Code of Ukraine from 02.12.2010 #2755-VI (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/2755-17> [last visited 17.12.2022].

making organisation to the State Tax Service. The CSO does not receive any warning prior to its status being withdrawn, but can re-apply for the status in the future.

In general, violations of the provisions on reporting and other procedures established for all legal entities do not provide for specific sanctions for CSOs. Therefore, responsibility for violations of the law, including in relation to the different types of reporting requirements, is standardised. A public association may be dissolved by the court, but only in cases of breach of the provisions of the Constitution of Ukraine or the Law on Public Associations.

Legal entities, including CSOs, are required to disclose their ultimate beneficial owner (UBO) for anti-money laundering and counter-terrorism financing (AML/CTF) purposes. The requirements cause problems as the definition of a CSO's owner is unclear and CSOs do not have to share the benefits among their members, founders or other governing bodies. The beneficiaries of public associations' and charity organisations' goods are also not specific persons.

The amount of the fine for failure to provide information on a CSO's UBO ranges from UAH 17,000 (around 546 EUR) to UAH 51,000 (around 1,640 EUR).

In September 2022, as a result of CSO-led campaign, the Parliament of Ukraine adopted beneficial amendments<sup>26</sup> according to which organisations registered during the war are not immediately required to provide details of their UBO.

#### **Standard V. The state does not interfere in the internal affairs and operation of CSOs.**

The state does not create unnecessary obstacles to the activities of CSOs. The reporting procedures and forms are clearly defined, easy to understand and can be submitted online.

The majority of active CSOs in Ukraine have non-profit status, which determines the procedure and form of their reporting. CSOs with non-profit status submit an annual report to the tax authorities on the taxes paid. The CSO's financial statements should be attached to the report. CSOs with non-profit status can benefit from submitting simplified financial statements consisting of a balance sheet and an income statement. At the request of a non-profit CSO's founders, donors, etc, and when appropriate depending on, for instance, its turnover and scope of activities, the CSO is also entitled to prepare full (not simplified) financial statements.

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<sup>26</sup> Draft law 'On Amendments to Certain Laws of Ukraine on Simplifying the Procedure for Submitting Information Necessary for Financial Monitoring' and the draft Law 'On amendments to Article 166-11 of the Code of Ukraine on Administrative Offences'.

CSOs with non-profit status are exempted from the obligation to provide statistical information on their activities, which, though exempting them from burdensome additional reporting to the state, has made it impossible to obtain at least approximate information on CSO revenues and their sources at the national level.

Inspections of CSOs by the tax authorities are conducted on a general basis. The frequency of inspections is determined by the degree of risk (high, medium, or low) involved in their activities. Taxpayers with a low degree of risk are inspected not more than once in three calendar years; those deemed to be medium risk, not more than once every two calendar years; and those deemed high risk, not more than once in a calendar year. In most cases, the activities of CSOs do not entail the risk of frequent audits. Tax reports can be submitted online or in paper form.

### Recommendations:

- The State Tax Service of Ukraine should notify CSOs in writing in advance that the status of non-profit organisation will be lost;
- The Government should prepare, in consultation with CSOs, a methodology for determining the UBOs for CSOs;
- To adopt the draft Law “On Regulation of Activities and State Registration of Public Associations”; and
- Restore access to public registries with official information, which will make it possible for CSOs to receive official papers online (particularly those related to data on the registration of an organisation).

## 3.2 Equal Treatment

Overall score per area: **5.3 / 7**

Legislation: **5.4 / 7**

Practice: **5.2 / 7**

In this reporting period, there were no remarkable changes in legislation in the area of equal treatment of CSOs with business organisations compared to 2021. At the same time, the implementation of favourable legislative and practice conditions for relocated businesses, but not for CSOs, has led to a decrease from the previous year's scores in this area.

Nevertheless, even taking into account the war, in 2022 Ukrainian legislation remained consistently favourable for all legal entities. One of the mechanisms of checks and balances in this area remains the provision of more favourable tax conditions for CSOs. This situation means that the scores in this area are higher than the average than for other countries of the Eastern Partnership (EaP) region.

### **Standard I. The state treats all CSOs equitably with business entities.**

Primary state registration of CSOs in Ukraine is free of charge, as for registration of businesses. The registration fee for amendments to information relating to CSOs remains three times lower than for other legal entities, however.

The procedures for registration and voluntary termination of CSOs are not more expensive than for businesses, but they are more time-consuming and burdensome. Consideration of documents submitted for the state registration of a legal entity, regardless of organisational and legal form (including charitable organisations) takes one day, while for a public association it takes three days. Public organisations with the status of a legal entity and legal entities can be registered online. The terms and cost of online registration remain unchanged. At the same time, legal entities (individual entrepreneurs and limited liability companies)<sup>27</sup> can be registered through the *Diia* web portal,<sup>28</sup> while the service for CSO registration at this platform is still unavailable. Primary state registration of CSOs in Ukraine is free, as for registration of businesses. The registration fee for amendments to information relating to CSOs is three times lower than for other legal entities. However, the reporting requirements for CSOs are comparable to those for business entities. State inspections of CSOs are not more frequent than for business entities. Business entities, as profit-making businesses, are subject of greater overall scrutiny from the authorities. In terms of public procurement, the relevant legislation establishes a non-discriminatory approach according to which any organisation of whatever legal form or ownership can participate in public procurement procedures on an equal basis.

Ukrainian CSOs can use a simplified procurement procedure compared to businesses when receiving funds from state or local budgets and when purchasing services, goods and works from third parties for more than UAH 50,000 (around 1,600 EUR). According to Article 11 of the Law of Ukraine 'On Public Procurement', an entity (including non-profit CSOs) must authorise a person for the organisation and conduct of the simplified procurement procedure. According to the Law on Public Procurement,<sup>29</sup> from 1 January 2022, participants of procurements are required to confirm their level of knowledge in the field of public

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<sup>27</sup> *Diia* Platform. Registration for business entities, <https://diia.gov.ua/services/categories/biznesu/stvorennya-biznesu>.

<sup>28</sup> *Diia* is an online service with mobile app that aims to speed up and simplify the process of obtaining public services, as well as combines electronic versions of documents, including ID, taxpayer number, Covid-19 vaccination certificate, etc. and equates electronic documents to their paper originals.

<sup>29</sup> Law 'On Public Procurement'. Law from 25.12.2025 # 922-VIII (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/922-19#Text>.

procurement (testing is carried out online according to the programme developed by the Ministry of Economics and the service is free). CSOs who wish to receive funding from state or local budgets will generally not be able to pay for such a confirmation and/or training in tender procedures within the cost estimate of their projects. Therefore, the opportunity for CSOs to receive funds from state or local budgets is partially limited. The *DoZorro* Monitoring Portal<sup>30</sup> is designed to control the transparency and quality of public procurement, including a mechanism that avoids discriminatory rules when creating bidding documents. *DoZorro* provides an opportunity for public activists and potential bidders to give feedback to the contracting authority, to discuss and evaluate the conditions of specific procurements, and to prepare and submit a formal request to the controlling authorities. In practice, businesses have better access to participation in public procurement, but also a greater risk of additional tax audits.

Authorities and local governments do not sufficiently procure social services from CSOs. Among the reasons for this are lack of knowledge of the relevant procedures, the small amount of funds invested in state and local budgets, and the limited experience of the authorities. There are cases when local governments choose mainly public institutions that provide social services, rather than CSOs. The Law of Ukraine 'On Social Services', which entered into force in January 2020, does not operate properly, as no by-laws have yet been adopted to implement it. By the end of 2022, the legislative framework that could ensure the implementation of the provisions of the law remains insufficiently developed.

At the beginning of the full-scale invasion, the Ukrainian Parliament cancelled customs duties and VAT on imports, introduced a moratorium on tax audits, cancelled excise taxes and reduced VAT on fuel, allowed private entrepreneurs of the first and second groups not to pay any tax, and no longer required private entrepreneurs to pay the single social contribution. At the same time, Parliament determined the specifics of reporting during the period of martial law, in particular, it stopped the passage of the terms specified by tax legislation (that is, postponed the payment of taxes and the submission of reports) and exempted from responsibility those who could not pay taxes on time. Despite the fact that benefits regarding the deferral of reporting are formally extended to CSOs as well, the state tax service still recommends making reports on time.

It should be noted that for CSOs there is a risk of removal from the relevant state register, compared to businesses. This can happen if the organisation makes inappropriate use of funds. Despite the fact that conditions are quite strict and the legal environment for CSOs is

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<sup>30</sup> <https://dozorro.org/>.

not easy, such a mechanism is necessary for organisational and functional transparency of CSOs. Businesses do not have such issues because of taxation specifics. At the same time, businesses have specific issues with export of some categories of goods and transferring money abroad because of the rules in place during martial law.

CSOs that have been forcibly displaced due to the war are in unequal conditions compared to businesses. For example, state and local self-government bodies (LSGBs) have introduced special programmes for business relocation, which provide preferential conditions for renting premises and their arrangement and introduce grants for the development of business activities. At the same time, neither the legislation nor by-laws provide for additional benefits for relocated CSOs. This has become a significant problem in the provision of CSOs' work: activities of their offices, the organisation of international cooperation, storage of documents, humanitarian aid for distribution to needy categories and assistance to the military, etc.

## **Standard II. The state treats all CSOs equally with regard to their establishment, registration, and activities.**

The authorities demonstrate equal treatment to all CSOs in all areas, regardless of organisational form. Reporting procedures, performance audits and legal conditions to access various modes of funding, including for individuals, legal entities, national and international institutions and organisations, including funding from foreign sources, are quite comparable to each other.

Most CSOs operate on equal terms, but CSOs relating to children, youth, veterans, persons with disabilities, or 'national and patriotic' education are eligible to receive public funding. Dedicated state public funding programmes have been formed for these types of CSOs and the corresponding budgets have been set.

Nevertheless, two large CSOs - the Ukrainian Association of the Deaf (UTOG) and the Ukrainian Association of the Blind (UTOS) – are in an advantageous position as they still receive direct state funding without contest according to Ukraine's CMU Decree No. 183<sup>31</sup> dated 14 March 2018 and No. 166 dated 3 March 2020.<sup>32</sup> This direct public funding amounted to over UAH 47 million (around 1.5 million EUR) in 2021. Discussions on repealing CMU Decree No. 183, which would allow CSOs to have equal access to public funding on a competitive basis, began in 2021. The war has impeded discussion on the state's approach to

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<sup>31</sup> CMU Decree 'On approval of the Procedure for the use of funds provided in the state budget for financing the support of the Ukrainian Society of the Blind and the Ukrainian Society of the Deaf'. CMU Decree from 14.03.2018 #183 (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/183-2018-%D0%BF#Text> [last visited 11.11.2022].

<sup>32</sup> CMU Decree 'On some issues of providing financial support to public associations of persons with disabilities'. CMU Decree from 03.03.2020, No. 166 (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/166-2020-%D0%BF#Text> [last visited 11.11.2022].



funding such organisations and UTOG and UTOS are at an advantage compared to other organisations of the same type.

A 2022 court decision illustrates the legal approach to the issue of distinguishing between institutional financing and project financing.<sup>33</sup> On 2 February 2022, the Sixth Administrative Court of Appeal rejected the appeal of the All-Ukrainian Public Organisation of Handicapped 'Advocacy Association of Disabled' against the decision of the District Administrative Court of the city of Kyiv dated 18 August 2021 in case no. 640/19323/20, in which the court refused to recognise as illegal and to cancel the CMU Decree dated 14 March 2018, No. 183 "On approval of the procedure for the use of funds provided in the state budget for financing the support of the Ukrainian Association of the Blind and the Ukrainian Association of the Deaf".

In its decision, the District Administrative Court of Kyiv noted that project and institutional financing have different criteria. The court considers that project financing is characterised by the competitive selection of projects based on uniform project budget and matter requirements, whereas financial support for public organisations' institutional development is characterised by the number of facilities involved in ensuring the rights of persons with disabilities, the number of persons with a disability who get these facilities, the number of employees of these facilities, and the number of services provided by these facilities to persons with a disability. The difference in criteria, the court states, approaches and directions requires the adoption of different procedures to determine the mechanisms for project or institutional financing.

The court did not agree that financing the two organisations without contest could be treated as a discriminatory act. The court's decision states that Ukraine's legislation and international norms associate the concept of 'discrimination' only with the oppression of an individual or a group of individuals who are disabled by a particular feature.

CSOs established by foreign legal entities or individuals are not subject to discrimination. However, the relevant legislation specifies some additional requirements relating to the documents that must be submitted for registration by foreign persons or legal entities (e.g., documents issued in accordance with the legislation of a foreign state should be legalised through consular legalisation or placement of apostille). However, in general, the procedure for registering CSOs for foreigners is no different from the same procedure for citizens of Ukraine.

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<sup>33</sup> District Administrative Courts of Kyiv, Decision from 18.09.2021 #640/19323/20. Administrative Court of Appeals decision from 02.02.2022 (in Ukrainian), <https://reyestr.court.gov.ua/Review/99683936> [last visited 02.07.2022]. Apropos, Kyiv District administrative court, was liquidated in December 2022. See: Zhernakov M., Barchuk N., 'Liquidation of the DACK'. *Kyiv Post*, 17.12.2022, <https://www.kyivpost.com/post/5838> [last visited 25.12.2022].



## Recommendations:

- To ensure that CSOs can register online via the government e-service portal Diia;
- To promote equal conditions for access to public funding for CSOs; and
- The authorities should adopt public procurement procedures that take into consideration the specific situation of CSOs and organise explanatory training on the process of procurement.

## 3.3 Access to Funding

Overall score per area: **4.7 / 7**

Legislation: **5.0 / 7**

Practice: **4.4 / 7**

In 2022, this area remained one of lower scores comparatively with the previous year. Besides that, recommendations from the previous year report stayed relevant in combination with new points that became necessary in the context of war. At the same time, in 2022, the scores have decreased for both legislation and practice in this area, taking into account the expansion of directions and amounts of expenditure from the state and local budgets to overcome the consequences of the war.

Sources of funding for CSOs are still diverse. However, funding from foreign donors remains the main source. In 2022, CSOs relating to veterans, persons with disabilities and youth could receive state financing from the general fund of the State Budget of Ukraine.

### **Standard I. CSOs are free to seek, receive, and use financial and material resources for the pursuit of their objectives.**

Ukrainian legislation does not impose restrictions on seeking, receiving, and using financial and material resources for CSOs.

International technical assistance programmes are currently one of the most common sources of funding for CSOs. Ukrainian law does not prohibit CSOs from receiving foreign financial support, however draft Laws (No. 3572, No. 3326 and No. 3564) to restrict the activities of organisations that receive foreign funding have been proposed in Parliament (in particular, a prohibition on the formation of a fund payment of civil servants for funds belonging to the aid programme of the EU, governments of foreign countries, international organisations, donor institutions, etc.). In 2022, these draft laws were not approved. This can be noted as a positive achievement, but draft Laws Nos. 3564 and 3326 were both put forward for consideration (under Nos. 2557-IX and 2557-IX, respectively) on 6 September 2022.

In addition, financial support from central and local government that allocates funds to CSOs plays an important role. In 2022, the amount of state funding available to CSOs increased compared to 2021. A total of UAH 293.4 million (around 7.3 million EUR) was envisaged in the state budget for 2022 from various state institutions. We have no data regarding the issue of how these funds were distributed because there are no available official statistics on budget implementation.

In 2021, the presentation of the online platform *VzaemoDiia* for CSO funding competitions took place and all competition procedures were transferred to the online platform, which makes it possible for CSOs to conduct a simple and understandable procedure. During 2022, the organisers of the contests stopped the procedures for organising and conducting the contest for the determination of programmes (projects, events) developed by public associations, for the implementation of which financial support would be provided in 2022, without determining the winners of the contest. Unfortunately, official statistical reports on the implementation of the budget of Ukraine (like many other data under martial law restrictions) have not yet been published by the Government, and therefore there is no available information. Referring to data on the website, it is reasonable to state that some of the ministries, e.g. the Ministry of Youth and Sports, conducted funding contests and announced it in December 2022,<sup>34</sup> some state institutions did not publish contests, depending on the availability of funds.

Similar to previous years, CSOs can raise funds through entrepreneurship and through selling their services. Such activities should be carried out within the framework of national legislation. Some types of services cannot be provided by CSOs (for instance, if they do not meet the statutory objectives of the organisation), so some CSOs establish separate legal entities (e.g., limited liability companies) to comply with the law, through which they then carry out such activities. Additionally, according to the Tax Code of Ukraine, organisations must register as Value Added Tax (VAT) payers if the amount of services provided by them during the year exceeds UAH 1 million (around 25,000 EUR). However, the concept of social entrepreneurship is not well understood enough and there is no specific legislation that would determine the rules for the implementation of social entrepreneurship. Existing social enterprises sometimes lack the capacity to develop a clear and achievable business model and, in the conditions of war, numerous social enterprises have relocated or stopped their activities altogether.

The National Bank of Ukraine has strong controls on Ukrainian banks and some of the digital fundraising sources remain restricted for CSO use in Ukraine (i.e. PayPal and

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<sup>34</sup> VzaemoDiia. 'Competition to identify projects for national and patriotic education, developed by civil society institutions, by state financial support provided in 2023' (in Ukrainian), <https://grants.vzaemo.diia.gov.ua/contests/1c06d5c0-8519-11ed-a9f3-dbe93dfb2289>.

cryptocurrencies). However, systematic legislative changes<sup>35</sup> are being introduced to establish a legal environment for the use of 'virtual assets' (including cryptocurrencies) and introduce an Open Banking concept in Ukraine in 2023 that will enable the full-scale use of PayPal and other digital payment systems.

The practice of charity donations via SMS did not actively develop during 2022. A popular method of collecting public donations was the collection of funds on private bank cards of volunteer individuals. The provisions of the Tax Code of Ukraine allow for the non-taxation of funds that are collected in the private accounts of individuals for the purpose of transferring them to defence needs. Public fundraising announcements are usually made using social networks or messengers (e.g., Facebook, Instagram, Telegram). After the purpose of the meeting is realised on the aforementioned social networks, information on the gathered and spent funds is made available via the same methods to maintain levels of trust.

The issue of access to and use of banking services for CSOs is still not resolved. Banks require additional documents to open accounts or perform settlements for non-profit CSOs. For example, the transfer of funds in foreign currencies is considered a 'foreign economic activity' that requires additional documents to prove the origin of the funds. The banks do not take the specific nature of the activities of non-profit CSOs (lack of connection of the founders who lost their powers to the work of the organisation, the presence of a complex system of governing bodies with differing powers, etc.) into consideration. The procedure for validating bank accounts has not been adapted for CSOs. Also, the procedure for transferring membership fees from non-profit CSOs in international organisations and associations, as well as the procedure for paying fees to foreign speakers or experts for services rendered, is complicated. In 2022, there was a ban<sup>36</sup> on the import of CSO services (for example, paying for the services of foreign experts). During martial law, the National Bank of Ukraine continued to implement measures aimed at maintaining the financial stability of the state and regulating the financial sector. Particularly, Resolution No. 153 of the CMU of 24 February 2022 "On certain issues regarding ensuring the implementation of imports" is in force in Ukraine, according to which there is an exhaustive list of services for which payment is allowed for CSOs. It is a list of services, works, intellectual property rights and other non-property rights intended for sale (payment transfer), for the import operations of which the National Bank is recommended to ensure transfers. According to this, banks do not transfer funds to pay for imported services that are not included in the list. This has led to the presence of import difficulties for both CSOs and businesses.

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<sup>35</sup> From 1 August 2022, the Law of Ukraine "On Payment Services" dated 30 June 2021, No. 1591-IX came into force (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/1591-20#Text>.

<sup>36</sup> CMU Decree 'About certain issues regarding ensuring the implementation of imports', No. 153 dated 24 February 2022 (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/153-2022-%D0%BF#Text>.

## **Standard II. There is no distinction in the treatment of financial and material resources from foreign and international sources compared to domestic ones.**

Receiving income from foreign sources is not limited by law and is not subject to additional reporting. However, people's deputies (members of parliament) continue to introduce bills to limit the actions of foreign-funded CSOs. Since 2020, Parliament has been considering several draft laws that are threatening CSOs' access to foreign funding. These draft laws are:

- No. 3564 'on transparency of the activities of public associations with foreign support'.<sup>37</sup> The draft Law requires that CSOs that receive more than 50 per cent of their budget from foreign sources should be given a special status that would be required to be indicated in the name of the CSO. It is also proposed to oblige CSOs to publish their financial reports on both their own websites and the Ministry of Justice's website and to prohibit persons who are associated with CSOs that receive foreign funding from holding public offices for a period of five years. It is also proposed that the heads of CSOs receiving foreign funding must be tested annually on a polygraph for treason;
- No. 3326 'on the prevention of external influence on state interests'.<sup>38</sup> The draft Law prohibits persons connected with foreign-funded CSOs from holding public office for a period of ten years and provides for the dismissal of civil servants in office within one month from the date of entry into force of the law; and
- No. 3572 'on the prohibition of foreign funding to authorities and public offices and the prohibition of the highest state officials on having a nationality other than Ukrainian'.

These draft laws have caused concern for and active resistance from civil society. None of these draft laws has been passed in 2022, however. Draft Law No. 3326 remains without active consideration in Parliament, draft Law No. 3572 was withdrawn on 3 November 2022, but draft Law No. 3564 was put forward for consideration under a different number (2557-IX) on 6 September 2022.

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<sup>37</sup> Draft Law 'On changes for some of some legislative acts of Ukraine (regarding the transparency of activities of public associations with foreign support'. Draft Law of Ukraine dd. 29.05.2020, #3564 (in Ukrainian), [https://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=68977](https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68977) [last visited 12.12.2022].

<sup>38</sup> Draft Law 'On changes for some of some legislative acts of Ukraine "On the purification of power" (regarding the prevention of external influence on the state interests)' (in Ukrainian), [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=68576](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68576). Draft Law of Ukraine dd. 13.04.2020, No. 3326 [last visited 12.12.2022].

## Recommendations:

- Develop of a state policy to support social entrepreneurship;
- Scrape draft laws intended to worsen the legal environment for CSOs that receive foreign funding;
- Clarify the list of documents required by the National Bank of Ukraine from non-profit CSOs to open a bank account and provide information for the annual validation of non-profit CSOs' bank accounts, ensuring free movement of funds for CSOs' needs; and
- Facilitate access to funding (office rent, funds for the development of socially-useful programmes, etc.) for CSOs relocated from the active hostilities zones, temporarily-occupied territories, and areas destroyed by war.

## 3.4 Freedom of Peaceful Assembly

Overall score per area: **4.7** /7

Legislation: **4.9** /7

Practice: **4.5** /7

In 2022, the situation in this area in Ukraine has worsened due to the military aggression of the Russian Federation. The martial law regime imposes restrictions on the holding of peaceful assemblies, but despite the fact that the possibility of holding peaceful assemblies still exists, they are hardly held in practice due to security reasons. Taking into account security risks and the restrictions imposed by martial law, comparatively with 2021, scores in this area have decreased slightly in 2022. Citizens are still able to assemble peacefully; however, certain legislative procedures must be followed. Thus, the Ukrainian Government and public authorities have been able to retain this freedom despite the war. At the same time, additional requirements have been put in place to take care of the safety of citizens, taking into account the regularity of air alarms and missiles attacks.

### **Standard I. Everyone can freely enjoy the right to freedom of peaceful assembly by organising and participating in assemblies.**

Freedom of peaceful assembly in Ukraine is guaranteed by Article 39 of the Constitution of Ukraine.<sup>39</sup> Even though the right to participate in peaceful assemblies is formulated in the Constitution as one that belongs to the citizens of Ukraine, every person, regardless of nationality, can enjoy this right. This is due to Ukraine's ratification of the European Convention on Human Rights (ECHR)<sup>40</sup> in which the right of peaceful assembly is formulated as a right that belongs to everyone regardless of nationality or citizenship. The right to

<sup>39</sup> Constitution of Ukraine (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

<sup>40</sup> ECHR (in Ukrainian), [https://zakon.rada.gov.ua/laws/show/995\\_004#Text](https://zakon.rada.gov.ua/laws/show/995_004#Text).

peaceful assembly is also provided for in Article 315 of the Civil Code of Ukraine.<sup>41</sup> Thus, individuals have the right to freely assemble at peaceful assemblies, conferences, meetings, festivals, etc. Restrictions on the exercise of the right to peaceful assembly may be imposed by a court in accordance with the law.

However, since 24 February 2022, the Decree of the President of Ukraine 'On the imposition of martial law' No. 64/2022<sup>42</sup> allowed restrictions on constitutional rights, in particular on Article 39: 'In connection with the introduction of martial law in Ukraine, temporarily, for the duration of the legal regime of martial law, may be limited constitutional rights and freedoms of a person and a citizen, provided for by Articles 30-34, 38, 39, 41-44 and 53 of the Constitution of Ukraine.'

In Ukraine, the right to freedom of peaceful assembly is practiced despite the difficult situation in the country. Despite the legal restrictions in effect during the martial law regime, there are other factors that complicate the realisation of the right to hold peaceful assemblies. Among these are Russian missile attacks on the territory of Ukraine, which pose a direct threat to the life and health of rally participants, air alarm signals that warn the population about the approach of danger and during the duration of which it is necessary to take shelter, and the introduction of a curfew (usually from 11:00 p.m. to 5:00 a.m.).

Taking into account the possibility of peaceful assemblies, from time to time citizens take advantage of this opportunity. Ukrainian citizens, and relatives of Ukrainian prisoners of war, participate in peaceful meetings with demands to exchange and return home Ukrainian servicemen from Russian captivity.<sup>43,44</sup>

During the period of martial law, freedom of peaceful assembly has not been completely prohibited. It is important to note that, according to the second part of Article 39 of the Constitution of Ukraine, '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 to prevent disturbances or crimes, protect the health of the population, or protect the rights and freedoms of other persons.' That is, according to the Constitution, peaceful assemblies can be prohibited only by a court, and therefore are not completely prohibited during martial law.

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<sup>41</sup> Civil Code of Ukraine (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/435-15>.

<sup>42</sup> Decree of the President of Ukraine, No. 64/2022 'About the introduction of martial law in Ukraine' (in Ukrainian), <https://www.president.gov.ua/documents/642022-41397>.

<sup>43</sup> *Suspil'ne Novyny*. 'In Zaporizhzhia, relatives of prisoners of war held a rally demanding the exchange of "all for all"', 25 September 2022 (in Ukrainian), <https://suspline.media/285374-u-zaporizzi-ridni-vijskovopoloneni-vlastovali-miting-z-vimogou-obminu-vsih-na-vsih/>.

<sup>44</sup> UKRINFORM. 'Relatives of soldiers who are in Russian captivity came out to the action in Odesa' (in Ukrainian), <https://www.ukrinform.ua/rubric-society/3622479-spocatku-svoboda-a-potim-amiak-rodici-vijskovopoloneni-vijsli-na-miting-u-odesi.html>.

In addition, Article 8 of the Law of Ukraine ‘On the Legal Regime of Martial Law’<sup>45</sup> allows military administrations and military command to set additional restrictions. This, in most cases, may refer to the place or time of the peaceful assembly. Article 8 states:

In Ukraine, or in some of its localities, where martial law has been imposed, the military command together with military administrations (in the case of their formation) may independently or with the involvement of executive authorities, the Council of Ministers of the Autonomous Republic of Crimea, or local self-government bodies, introduce and carry out within temporary limits restrictions on the constitutional rights and freedoms of a person and a citizen, as well as the rights and legitimate interests of legal entities, provided for by the decree of the President of Ukraine on the introduction of martial law, the following measures of the legal regime of martial law: 8) prohibit the holding of peaceful meetings, rallies, marches and demonstrations, other mass events.

Peaceful assemblies can be prohibited during martial law in one of three ways: (i) according to the Constitution of Ukraine, peaceful assemblies may be prohibited by a court decision; (ii) according to the Law ‘On the National Police’, peaceful assemblies can be stopped if they violate public order;<sup>46</sup> and (iii) according to the Law ‘On the Legal Regime of Martial Law’, peaceful assemblies may be prohibited by military command or military administrations.

During the Russian invasion of Ukraine in 2022 and as a result of the Russian occupation of Ukrainian cities, there were a number of cases of non-violent resistance of the Ukrainian civilian population against the occupation.<sup>47,48</sup> Across Ukraine, local residents organised protests against the Russian invasion<sup>49</sup> and blocked the movement of Russian military equipment, in response to which the Russian military dispersed peaceful gatherings, resorting to disproportionate use of force, such as the use of tear gas, stun grenades and

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<sup>45</sup> Law of Ukraine ‘About the legal regime of martial law’, 2015, No. 28, Article 250 (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

<sup>46</sup> Law of Ukraine ‘About the National Police’, 2015, No. 40-41, Article 379 (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

<sup>47</sup> *Hromadske*. ‘In Kherson, people went to a rally against the pseudo-referendum - the occupiers used stun grenades’ (in Ukrainian), <https://hromadske.ua/posts/u-hersoni-lyudi-vijshli-na-miting-proti-psevdoreferendumu-okupanti-zastosovali-svitloshumovi-granati>.

<sup>48</sup> *Ukrainska Pravda*. ‘Russian occupiers invaded Slavutych, shot at a rally and kidnapped the mayor, but later released’ (in Ukrainian) <https://www.pravda.com.ua/news/2022/03/26/7334695/>.

<sup>49</sup> Radio Svoboda. ‘A rally is held in Melitopol in support of the mayor abducted by the Russian military’ (in Ukrainian), <https://www.radiosvoboda.org/a/news-melitopol-mitynh-na-pidtrymku-mera/31750627.html>.



firearms (which they fired at lead participants).<sup>50</sup> There are cases of the deaths<sup>51</sup> and wounding of protesters,<sup>52</sup> which is considered a war crime.

## Standard II. The state facilitates and protects peaceful assemblies.

In 2022, despite the war in Ukraine, as mentioned above, the right to hold a peaceful assembly is clear, simple, and free of charge and requires minimal reasonable advance notice.

Legislation still protects the right to use any electronic means of communications to organise peaceful assemblies. Besides that, in practice, access to the internet and/or social media is not limited as a means to restrict peaceful assemblies online or offline.

In Ukraine, permission to conduct a peaceful assembly is not required. The Constitution of Ukraine envisages only the need for a timely notification on the holding of peaceful gatherings. The general timeframes for early notification are not defined by law; they may be defined at the local level by local authorities. However, this sometimes leads to the abuse and violation of this right via the prohibition of peaceful assemblies.

Specific terms for advance notice apply only to one category of peaceful assembly: industrial action. In accordance with the Law 'On the Procedure for Resolving Collective Labour Disputes (Conflicts)', the person who leads a strike must notify the planned meeting outside the territory of the institution, enterprise, organisation of the relevant executive body of state or local government no later than three days before the peaceful assembly. According to the data of a judge of the Supreme Court of Ukraine, Andriy Zagorodniuk, in the period from 2017 to 2021, 39 cases were pending before local administrative courts to restrict the exercise of the right to freedom of peaceful assembly, as well as to remove obstacles and prohibit interference with the exercise of freedom of peaceful assembly.

In Ukraine, there are no cases of restrictions on access to online social networks as a means of limiting peaceful assemblies and the relevant legislation does not contain any restrictions on the use of electronic communications for the organisation of peaceful assemblies. At the same time, the legislation does not specifically protect the right to use electronic communications when organising protests.

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<sup>50</sup> Radio Svoboda. 'Russian soldiers fired during a pro-Ukrainian rally in Nova Kakhovka - an activist' (in Ukrainian), <https://www.radiosvoboda.org/a/news-nova-kakhovka-mitynh-strilyanyna-rosiyan/31738993.html>.

<sup>51</sup> Radio Svoboda. 'At a rally against Russian troops in Nova Kakhovka, a person was killed - the prosecutor's office' (in Ukrainian), <https://www.radiosvoboda.org/a/news-nova-kakhovka-mitynh-smert-prokuratura/31740201.html>.

<sup>52</sup> Syla Viry. 'The situation in Energodar: Russian troops fired at rally participants, injuring four people' (in Ukrainian), <https://www.slovoidilo.ua/2022/04/02/novyna/suspilstvo/sytuacziya-enerhodari-vijska-uf-obstrilyaly-uchasnykiv-mitynhu-poranyvshy-chetvero-lyudej>.



### **Standard III. The state does not impose unnecessary burdens on organisers or participants in peaceful assemblies.**

The relevant legislation does not contain provisions on the responsibility of organisers for the maintenance of public order or the actions of other persons during a peaceful assembly. The legislation does not completely specify the duties of law enforcement bodies, other bodies of the state and LSGBs relating to the holding of peaceful gatherings. There are no detailed instructions on the actions of law enforcement agencies in instances where violence occurs during an assembly. At the same time, Article 12 of the Law of Ukraine ‘On the National Guard of Ukraine’<sup>53</sup> refers to the functions of the National Guard to participate in ensuring public safety and the protection of public order during peaceful assemblies. According to Article 34 of the Constitution, everybody has a right freely to collect, keep, use, and diffuse information orally, in writing or in another way of their own choosing. This general rule also applies to the distribution of information about peaceful assemblies.

In 2022, regardless of martial law, the state bodies did not impose unjustified fees for services which they are obliged to provide. Besides that, there were not impediments on distribution of information about peaceful assemblies and, finally, the state did not impose disproportionate restrictions on the use of technical equipment during peaceful assemblies.

### **Standard IV. Law enforcement supports peaceful assemblies and is accountable for the actions of its representatives.**

In 2022, despite the martial law, there were no negative changes on law enforcement and regulations on use of force during peaceful assemblies. Overall, the regulations on the use of surveillance devices to police or monitor assemblies are clear. Analysis of court practice confirms the absence of violations of citizens' rights in this area. In addition, a proportional approach extends to all aspects of policing of assemblies during martial law. For example, the local military administration should be informed about the planned meeting several days in advance (depending on the area and local regulations, the period may vary from 3 to 10 days). Thus, the law enforcement representatives and/or intelligence agencies are transparent about whether they use surveillance devices to police or monitor assemblies.

### **Recommendations:**

- The Ministry of Justice should develop and adopt the Law of Ukraine ‘On Freedom of Peaceful Assembly’; and

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<sup>53</sup> Law of Ukraine ‘About the National Guard of Ukraine’, 2014, No. 17, Article 594 (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/876-18>.

- Abolish regulations of local authorities that restrict the freedom of peaceful assemblies and violate the Constitution of Ukraine.

## 3.5 Right to Participation in Decision-Making

Overall score per area: **4.7** /7

Legislation: **5.1**/7

Practice: **4.3** /7

The Russian Federation's full-scale war against Ukraine has worsened the processes of interaction of CSOs with state authorities in the sphere of decision-making, both at the state and local levels.

Despite this, however, in 2022, state authorities and local governments were open to cooperation with civil society and CSOs. At the same time, due to security, infrastructure and electricity issues (in the autumn-winter season) and martial law restrictions, scores for practice in this area are lower than in 2021. The score for Legislation is also lower than in 2021 due to deterioration in the implementation of the Law of Ukraine 'On Access to Public Power'.

### Standard I. Everyone has the right to participate in decision-making.

According to the Constitution of Ukraine, 'the bearer of sovereignty and the only source of power in Ukraine is the people. The people exercise power directly and through state authorities and local self-government bodies' (Part 2 of Article 5). Citizens of Ukraine have the right to participate in the government process, in decision-making and suggestions deliberated through national and local referendums, to freely elect and be elected to state authorities and to LSGBs.

Only citizens of Ukraine aged eighteen or older on the day of the election or referendum have the right to vote and candidates for election to Parliament as an people's deputy must be aged twenty-one or older.

Other specific legislation concerning the right to participate in decision-making is the Law of Ukraine 'On public regulatory policy' and the CMU Resolution No. 996 'On ensuring public participation in the developing and implementation of state policies.'

In addition, special acts of international law have been adopted in Ukraine that are relevant to public participation, such as the International Covenant on Civil and Political Rights (ICCPR), the European Charter of Local Self-Government, and the Convention on Access to

## Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters.

During the quarantine regime in place during the Covid-19 pandemic, neither Parliament nor LSGBs allowed journalists and CSO representatives to participate in its committee meetings. Ministries less frequently establish and use working group meetings. Citizens and CSOs can use the available online tools to participate in working groups, meetings, and round tables organised by the national, regional or local authorities. This contributes to the establishment of communication between CSOs and the authorities and the implementation of advocacy campaigns. Using the online e-petitions module, citizens and CSOs can offer a solution to any problem identified in the city, region or the country as a whole. If the petition gets a certain number of votes, the authority to which the petition is addressed is obliged to consider the petition within three months beginning on the day the e-petition is released. The state or local authority body decides on the course of action in accordance with their procedure of decision-making. For either the President, Parliament or the Government (the CMU) to consider the issues raised by the petition, the petition must receive 25,000 votes. At the local level, the number of required votes and the time period in which votes must be received is set out in each community's charter. It should be noted that many communities have neither reasonable procedures nor the technical capacities for e-petitions to be carried out. After the petition has been considered, the relevant authority body declares its final decision on the issue via its website. There is a need to evaluate the effectiveness of petitions, including e-petitions, in terms of their role in participation in decision-making at all levels.

A significant decrease in the sphere of civil participation in decision-making and public scrutiny over authorities' activities was observed in 2022, which is related to the full-scale war that Russia is waging against Ukraine. Since 24 February 2022, access to official data has been restricted. Information regarding draft legal acts or decisions, draft agendas or information about scheduled meetings of collective bodies, adopted decisions, various databases, contact or address information (along with contacts), information about management bodies or officials, etc. has been blocked.

The second factor in changes in civil participation levels is the fact that some representatives of public organisations, as residents of territories that became occupied or where hostilities are taking place, relocated both within Ukraine and beyond its borders. Some of them have changed the profile of their activity to volunteer assistance to ensure the humanitarian needs of IDPs and the Armed Forces, or have stopped their operations completely. In particular, among representatives of LSGBs and communal institutions, relocation also took place in the February-March period, which caused a decrease in their interaction with civil society.

The impact of martial law was reflected in the fact that representatives of the public environment had to partly change the profile of their activity in favour of solving war issues.

A partial limitation of the use of public participation tools is also evidenced, among which the problems of the impossibility of holding public meetings, limitations on public participation projects, the availability of public information, and the closing of meetings of collegial bodies prevail.

The state of war mainly affected key themes of war-related issues. So, IDPs are one of the challenges for both the public sector and for LSGBs. The public sector interact with IDPs by providing support and direct assistance; on the part of the local government it is a rather wide list of activities: cultural and humanitarian, psychological and social support, adaptation enabling, registration, legal consultations, and material, settlement and employment issues.

During martial law, authorities and citizens interacted on the main issues related to urgent response to a large-scale attack: the need to ensure the provision of first aid, evacuation, housing and humanitarian aid.

In their interactions with LSGBs, CSO representatives have mentioned a list of problems that are significantly related to information and communications with the LSGB. Therefore, according to research, the hypothesis that the public does not properly receive information from local government, as a result of which the activities of public organisations cannot be carried out, has been confirmed. Representatives of the public sector have quite clearly defined the main problems that they face in this regard, among which the non-receipt of information, the lack of communication interaction and the practices of interaction with the local authority and its individual representatives were cited as paramount. Government authorities are not using the various mechanisms available to them to ensure meaningful public participation. In particular, this depends on the circumstances of martial law.

CSOs have really reoriented their activities to the current demands of the state of war. However, in principle, CSOs continue to have a significant demand for their usual functioning and control, through the analysis of the decisions being made by the authorities.

## **Standard II. There is regular, open and effective participation of CSOs in developing, implementing and monitoring public policies.**

The main act regulating civil participation at the national level is the CMU Decree 'On ensuring citizen participation in state policy shaping and policy implementing'<sup>54</sup> and the CMU Decree 'On approval of the procedure for facilitating the implementation of the public examination of executive authorities' activity'.<sup>55</sup> At the local level, the procedures for citizen

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<sup>54</sup> CMU Decree 'On ensuring citizen participation in state policy shaping and policy implementing'. CMU Decree from 03.11.2010, No. 996 (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/996-2010-%D0%BF#Text>.

<sup>55</sup> CMU Decree 'On Approval of the Procedure for Facilitating the Implementation of the public examination of executive authorities' activity'. CMU Decree from 05.11.2008, No. 976 (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/976-2019-%D0%BF#Text>.

participation in decision-making processes has been regulated by the Law of Ukraine 'On Local Self-Government in Ukraine'.<sup>56</sup>

One year following the adoption in its first reading of the draft Law 'On public consultations', in April 2022 the draft Law 'On people's power at the level of local self-government' was registered in the Parliament of Ukraine to strengthen and approve public participation at two levels of interaction with the authorities: via participation in public hearings or public consultations and via participation in advisory bodies of LSGBs.<sup>57</sup>

The final version of the draft Law 'On Public Consultations' was prepared by a working group. The adoption of the draft Law will contribute to the implementation of the principles of good governance by involving interested parties in decision-making to balance public and private interests, and the introduction of modern decision-making standards. The advantages of holding public consultations are the possibility of studying and clarifying the needs and interests of various interested parties, as well as receiving ideas, proposals, and innovative approaches to solving problematic issues in various spheres of state policy and solving issues of local importance, which contributes to increasing the quality of decisions, their legitimacy and support. The draft Law discloses the content of the principles of conducting public consultations (participation, openness and transparency, accessibility, accountability, efficiency, proportionality), regulates the rights and obligations of subjects of authority and interested parties in legal relations related to the conduct of public consultations, and foresees the operation of a single web portal for public consultations. In addition, the draft Law sets out the specifics of conducting electronic consultations, defines consultations in the form of public discussion and targeted consultations, establishes the terms of conducting public consultations and the procedure for submitting proposals during electronic and public consultations, envisages the preparation of a report on the results of their conduct, and establishes monitoring and coordination of the process of conducting public consultations.

The draft Law 'On People's Power at the Level of Local Self-Government' has been prepared to ensure the rights of Ukrainians to direct participation in local self-government. Adoption of the draft Law will contribute to the development of civil society and the participation of citizens in decision-making processes at the local level, will increase the openness and transparency of the activities of LSGBs, and will ensure the effective inclusion of IDPs in the lives of the communities in which they live. The draft Law was reviewed by the main committee of Parliament in November 2022 and its adoption as a basis was recommended to Parliament. In particular, the draft Law introduces participation in public hearings and public

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<sup>56</sup> Law of Ukraine 'On Local Self-Government in Ukraine' from 21.05.1997 #280/97-BP (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text>.

<sup>57</sup> Draft Law on Amendments to the Law of Ukraine "On Local Self-Government in Ukraine" and other legislative acts of Ukraine on people's power at the level of local self-government (in Ukrainian), <https://itd.rada.gov.ua/billInfo/Bills/Card/39362>.

consultations and participation in LSGBs' advisory bodies. In addition, the draft Law clarifies regulations on youth participation in local self-government and the content of the charter of the territorial community.

While the usual activities of CSOs have largely been erased by the war in Ukraine, they have reformatted their activities from monitoring or analysis to supporting IDPs, the military, and the survival of their employees and the citizens of Ukraine in general.

### **Standard III. CSOs have access to information necessary for their effective participation.**

The Law of Ukraine 'On Access to Public Information' and the Law of Ukraine 'On Information' clearly define the conditions and scope of information that authorities must make public. The deadline for publishing public information is five working days. State authorities provide free and timely responses to requests for information, but exceptions apply. If the request is related to the provision of a large amount of information or involves the analysis of a large amount of data, such responses may be provided later, and sometimes the person sending the request does not receive a response at all.

Since the commencement of the full-scale invasion of Ukraine on 24 February 2022, the sphere of access to public information has been severely reduced. During the war, all usual democratic mechanisms have suffered and face unprecedented challenges.

During the eleven years in which the Law of Ukraine 'On Access to Public Information' has been in force, it has been possible to achieve significant progress in the openness of information. Official websites of information managers were modernised, became more complete in terms of the information they hold, new data sets were created and made public, and receiving replies to information requests became more common.

The full-scale Russian invasion has caused a colossal 'rollback' of what was achieved. Hundreds of state-owned websites stopped working, datasets were closed, requests for information went unanswered or access to information was denied. There is no information on the Parliament of Ukraine's website about the holding of sessions and information about the agenda of the session (namely the list of draft laws submitted to it) is no longer made public. There is no information about the time, date or agendas of the meetings of the committees and subcommittees of Parliament. There is no information about the composition of the council or contact information for each of the people's deputies (phone number, email address) or a list of their assistants. Since May 2022, the situation has slowly began to improve in the *oblasts* and communities that have experienced some lull in hostilities, but it has not returned to the pre-war state. However, the need for CSOs (and others) to obtain information

has not disappeared. As a result, hundreds of public information requesters have applied to the court for the protection of their rights.<sup>58,59</sup>

#### **Standard IV. Participation in decision-making is distinct from political activities and lobbying.**

CSOs can freely conduct advocacy activities, which are not prohibited by law. In Ukraine, there is no legislation on the political activity of CSOs. Only the activity of political parties, in particular their reporting, is regulated. In 2022, no bills aimed at regulating the lobbying procedure and equating the activities of public organisations to it were registered in the Ukrainian Parliament.

#### **Recommendations:**

- That Parliament adopt the Law of Ukraine ‘On Public Consultations’;
- Adopt Draft Law No. 7283 on amendments to the Law of Ukraine ‘On Local Self-Government in Ukraine’ and other legislative acts of Ukraine regarding people’s power at the level of local self-government;
- To resume the practice of holding meetings of collegial power bodies in an open-door format, combining this, if necessary, with closed elements;
- Implement legal regulation of various forms of public participation that have already been developed in Ukraine (for example, public expertise, supervisory boards, etc.);
- Introduce a single online platform for publishing information about public consultations;
- Increase the importance of public consultations among civil servants (officials) and CSOs by the implementation of the Draft Law ‘On Public Consultations’;
- In addition to publishing draft documents for consultation, authorities should simultaneously use other types of participatory mechanisms, including joint working groups, personal discussions of projects, etc;
- To comply with the Law of Ukraine ‘On Access to Public Information’, to provide answers to requests and appeals and to limit access to information only after using the three-fold test provided for in Part 2 of Article 6 of the Law; and
- Strengthen information and cooperation with institutions of civil society, including volunteer communities, through the creation and operation of communication

<sup>58</sup> Donetsk District Administrative Court, 26 August 2021, Case No. 200/9108/21 (in Ukrainian), <https://youcontrol.com.ua/catalog/court-document/99214128/>.

<sup>59</sup> Centre for Democracy and Rule of Law. Oksana Vashchuk-Ogdanska, ‘Access to public information during wartime: what does the case law say?’ (in Ukrainian), <https://cedem.org.ua/analytics/dostup-pid-chas-viyny/>.



hubs, city information portals, as well as jointly conducting educational or explanatory events and joint information campaigns.

## 3.6 Freedom of Expression

Overall score per area: **4.9/7**

Legislation: **5.5/7**

Practice: **4.2/7**

The right to freedom of expression is protected by legislation that needs comprehensive changes. The war caused significant damage to the media sphere and, as a result, to the freedom of expression, especially at the local level. The recommendations are based on the new challenges posed by the full-scale invasion of Ukraine by the Russian Federation.

In comparison with 2021, the scores in this area are not critically worse both in legislation and practice due to the war. At the same time, this result was determined by martial law restrictions and the information security context.

### Standard I. Everyone has the right to freedom of opinion and expression.

Freedom of expression in Ukraine is guaranteed by the Constitution (Article 34)<sup>60</sup>, the ECHR (Article 10)<sup>61</sup> as well as by national legislation, which is equal for all natural persons regardless of citizenship, race, religion, sex or other characteristics.

Article 34 of the Constitution guarantees everyone the right to freedom of thought and speech and free expression of his/her views and beliefs. Everyone has the right to freely collect, store, use, and disseminate information by oral, written, or other means at his/her 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.

Legislation in the field of freedom of speech consists of the framework Law of Ukraine 'On Information',<sup>62</sup> which defines the types of information, the concept of mass information,

<sup>60</sup> Constitution of Ukraine, Article 34, <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80?lang=en#n4269>.

<sup>61</sup> European Convention on Human Rights, [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).

<sup>62</sup> Law 'On Information', <https://zakon.rada.gov.ua/laws/show/2657-12>.



accreditation, public interest, and special (industry) laws. Among them are the outdated Laws<sup>63</sup> 'On Television and Radio Broadcasting',<sup>64</sup> 'On the Press',<sup>65</sup> 'On the National Council of Ukraine on Television and Radio Broadcasting',<sup>66</sup> 'On State Support of Mass Media and Professional Protection of Journalists',<sup>67</sup> 'On the Procedure for Covering the Activities of State Authorities and Bodies of local self-government in Ukraine by media'.<sup>68</sup>

A separate branch of the legislation is the freedom of information laws: the Law 'On access to public information'<sup>69</sup> and other laws which supplement it. Since 2012, a comprehensive draft Law 'On Media',<sup>70</sup> which should replace outdated media legislation, as well as regulate online media, has been developed. The new Law should, on the one hand, regulate the issue of the status of online media journalists, who are currently forced to look for indirect mechanisms of legalisation due to absence of the concept of e-media, and, on the other hand, establish a fair system of responsibility for violations applicable to both traditional press, television and radio and the so-called 'new media'.

One of the main concerns regarding the adoption of the Law 'On Media' is that all types of media will be concentrated under a single regulator, and the online sphere will be subject to regulation in principle.<sup>71</sup> However, such trends are also observed at the EU level, where the proposed European Media Freedom Act intends that the definition of a 'media service' will cover television or radio broadcasts, on-demand audio-visual media services, audio podcasts or press publications.<sup>72</sup> The Law 'On Media' is one of the EU's seven requirements for Ukraine to become a candidate country for EU membership.<sup>73</sup> On 30 August 2022, the draft Law was approved in its first reading, and more than 2,000 amendments were proposed by people's deputies in the second reading. The Law was passed on 13 December 2022 and published on 31 December 2022. On 31 March 2023, the Law will enter into force. The Law authorises the

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<sup>63</sup> These laws will be revoked on 31 March 2023.

<sup>64</sup> Law 'On TV and Radio Broadcasting', <https://zakon.rada.gov.ua/laws/show/3759-12>.

<sup>65</sup> Law 'On Press', <https://zakon.rada.gov.ua/laws/show/2782-12>.

<sup>66</sup> Law 'On National Council of Ukraine on TV and Radio Broadcasting', <https://zakon.rada.gov.ua/laws/show/538/97-%D0%B2%D1%80>.

<sup>67</sup> Law 'On state support of mass media and professional protection of journalists', <https://zakon.rada.gov.ua/laws/show/540/97-%D0%B2%D1%80>.

<sup>68</sup> Law 'On the Procedure for Covering the Activities of State Authorities and Bodies of local self-government in Ukraine by media', <https://zakon.rada.gov.ua/laws/show/539/97-%D0%B2%D1%80>.

<sup>69</sup> Law 'On access to public information' as for 2016, <https://cedem.org.ua/en/library/law-on-access-to-public-information/>.

<sup>70</sup> Draft Law 'On Media', #2693-d., [https://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=69353](https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69353).

<sup>71</sup> Detector Media. 'Internet association proposed amendments to the media law to prevent totalitarianism in the media sphere' (in Ukrainian), <https://detector.media/infospace/article/202649/2022-09-08-inau-proponuie-pravky-do-zakonu-pro-media-cherez-zagrozv-vprovadzhennya-totalitaryzmu-v-mediyniy-sferi/>.

<sup>72</sup> European Commission. Proposal for a Regulation of The European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0457>.

<sup>73</sup> European Commission. EU Commission's Recommendations for Ukraine's EU candidate status, [https://www.eeas.europa.eu/delegations/ukraine/eu-commissions-recommendations-ukraines-eu-candidate-status\\_en?s=232](https://www.eeas.europa.eu/delegations/ukraine/eu-commissions-recommendations-ukraines-eu-candidate-status_en?s=232).

National Council of Ukraine on Television and Radio Broadcasting to regulate the media environment, impose sanctions on media and bring them to court for systematic violations of the new rules of the Law.

A separate threat to the media sphere is disinformation and genocidal rhetoric, which, in particular, is spreading in uncontrolled territories, as well as on social media applications and platforms, especially on Telegram,<sup>74,75</sup> which does not come under Ukrainian or EU jurisdiction.

A significant negative effect is the war-neutral<sup>76</sup> position of major social media platforms. The most controversial is the position of the social media platform TikTok,<sup>77</sup> which, based on the principle of geolocation, filters military content and does not show to citizens of the Russian Federation the consequences of the actions of their army. Large social networks continue to block messages about fighters of the Azov Assault Brigade (a formation of the National Guard of Ukraine), which, until January 2023,<sup>78</sup> was on the list of undesirable organisations of Meta (the company that owns Facebook, Instagram and WhatsApp).<sup>79</sup> Epithets addressed to the Russian aggressor, its army and propagandists are also filtered out.

## Standard II. The state facilitates and protects freedom of opinion and expression.

Since the start of the full-scale Russian invasion on 24 February 2022, the Ukrainian media sphere has found itself in unprecedented circumstances which have not been seen since the country became independent from the former Soviet Union in 1991. In the first days of the war, cities and the telecommunications infrastructure<sup>80,81</sup> were attacked and Russian forces continued to attack infrastructure into the autumn of 2022.<sup>82</sup> In March 2022, the Kherson

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<sup>74</sup> D&B Business Directory. Telegram FZ LLC, [https://www.dnb.com/business-directory/company-profiles.telegram\\_fz\\_llc.adcbb6d4f706fd666c04a7b5c9178b02.html](https://www.dnb.com/business-directory/company-profiles.telegram_fz_llc.adcbb6d4f706fd666c04a7b5c9178b02.html).

<sup>75</sup> *Ukrainska Pravda*. 'Ukrainians were told Telegram channels that cannot be trusted' (in Ukrainian), <https://www.pravda.com.ua/news/2022/07/15/7358291/>.

<sup>76</sup> Chas.News. 'How Russian aggression has changes social networks', <https://chas.news/current/viina-v-ukraini-pokazala-scho-neitralitetu-zaraz-ne-mozhe-isnuvati-tehnogigantam-takozh-dovelosya-vibrati-odnu-zi-storin-konfliktu>.

<sup>77</sup> NRK. 'Worlds apart: TikTok doesn't show the war in Ukraine to Russian users', <https://www.nrk.no/osloogviken/xl/tiktok-doesn-t-show-the-war-in-ukraine-to-russian-users-1.15921522>.

<sup>78</sup> The Kyiv Independent. 'Meta: Azov Regiment no longer meets criteria for dangerous organization on Facebook, Instagram', <https://kyivindependent.com/meta-azov-regiment-no-longer-meets-criteria-for-dangerous-organization-on-facebook-instagram/>.

<sup>79</sup> *The Intercept*. 'Revealed: Facebook's Secret Blacklist of "Dangerous Individuals and Organizations"', <https://theintercept.com/2021/10/12/facebook-secret-blacklist-dangerous/>.

<sup>80</sup> *Ukrainska Pravda*. 'Russians attacked TV tower in Vynnytsya', <https://www.pravda.com.ua/news/2022/03/16/7331823/>.

<sup>81</sup> IMI. 'Russians attacked TV tower by rockets in Kyiv region', <https://imi.org.ua/news/rosiany-obstrilyaly-raketamy-televezhu-na-kyivshhyni-i44341>.

<sup>82</sup> Detector Media. 'Russians attacked Zaporizhzhya and shot a TV tower', <https://detector.media/infospace/article/203051/2022-09-22-rosiany-obstrilyaly-zaporizhzhya-ta-yluchly-v-televezhu/>.

branch of the Public Broadcasting Company of Ukraine (*Suspilne*) was captured and later mined.<sup>83</sup>

According to data from the Institute of Mass Information (IMI), the Russian Federation has committed more than 450 crimes<sup>84</sup> against journalists and the media, including the deaths of eight journalists<sup>85</sup> as a result of targeted attacks or as a result of rocket attacks on civilians and infrastructure. A further 34 journalists died as military personnel.

Another challenge is the cessation of media activity as a result of direct military actions or the fall of the advertising market. According to the estimates of market players, recovery may take five or more years. Some media, in particular local media, will never recover.

In terms of limitations on free use of the internet or other communication means for the free expression of opinions, the Ukrainian state has blocked Russia's propaganda resources and social networks due to piracy and threats to national security. Some resources, such as the website of the Russian Ministry of Defence, are blocked by Russia itself.

In spite of the war, the state did not introduce total censorship and pluralism has been preserved even during martial law. Nationwide broadcasters broadcast as part of the Single News marathon<sup>86</sup> and the Public Broadcasting Company conducts a separate regional marathon prepared by several branches.

The most notable was the exclusion<sup>87</sup> of the channels *Espresso TV*, *Priamyi* and *5 Kanal*, which continued to broadcast on other platforms, from digital broadcasting. The exclusion is assessed as political, in particular due to the statements of the adviser to the President's office, Mykhailo Podoliak,<sup>88</sup> that these TV channels were blocked due to the self-promotion of the ex-president of Ukraine, Petro Poroshenko.

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<sup>83</sup> *Suspilne*. 'Criminal proceedings have been initiated in connection with the seizure of the building of the branch of the Public Broadcaster in Kherson', <https://suspilne.media/214125-za-faktom-zahoplenna-budivli-filii-suspilnogo-movnika-u-hersoni-rozpocali-kriminalne-provadzenna/>.

<sup>84</sup> IMI. 'For the 8 months of war Russia committed 437 crimes against media and journalists', <https://imi.org.ua/monitorings/za-visim-misyatsiv-vijnny-rosiya-skoyila-457-zlochyniv-proty-zhurnalistiv-ta-media-v-ukrayini-imi-i48551>.

<sup>85</sup> IMI. List of killed journalists, <https://imi.org.ua/infographics/spysok-zagybylyh-zhurnalistiv-i45958>.

<sup>86</sup> Detector Media. 'UA:PBC joined a marathon "United news"', <https://stv.detector.media/suspilna-korporatsiya/read/7200/2022-03-02-suspilne-doluchylos-do-telemarafonu-iedyni-novyny/>; 'How parliamentary committee investigated a case about switch-offed channels', <https://detector.media/infospace/article/199186/2022-05-13-sho-ogo-yak-na-parlamentskomu-komiteti-shukaly-vynnykh-u-vidklyuchenni-5-kanalu-pryamogo-i-espreso-stenograma/>.

<sup>87</sup> Detector Media. 'Three channels were switched off on T2', <https://detector.media/infospace/article/198111/2022-04-04-espreso-pryamyy-ta-5-kanal-vymknuly-u-tsyfri/>.

<sup>88</sup> Espresso TV. 'Podolyak explained why 3 channels were excluded from T2', <https://espresso.tv/podolyak-poyasniv-vidklyuchennya-espreso-pryamogo-i-5-kanalu-nartsisizmom-poroshenka-yakogo-zvinuvat-u-zavdanni-zbitkiv>.

In the context of access to public information, as one of the important tools in journalism, fortunately no significant changes have taken place. Experts do note ‘local deviations’, however.<sup>89</sup> The most controversial of these remains the closure of all public registers,<sup>90</sup> such as, among others, the register of legal entities and the cadastral map (plots of land). At the same time, access to commercial platforms operating under the Application Programming Interface has been maintained.

In the context of investigations of crimes against journalists, the Office of the Prosecutor General has opened<sup>91</sup> relevant proceedings and carried out relevant investigations. However, given that the persons who gave the orders or carried out executions are servicemen of the Russian Federation, bringing them to justice will be a complex process that will depend on international tribunals prosecuting the leadership of the Russian Federation, cooperation with Interpol, and the immediate future of the Russian Federation itself.

As for national violations, IMI has recorded instances of obstruction of journalists outside the combat zone. For example, in October 2022, a journalist from *Ukrainska Pravda*, Mykhailo Tkach, reported that he had received SMS-bombing and mass phone calls after he published a story entitled: ‘Fast and furious during the war. How residents of the capital are terrorized with street races’.<sup>92</sup> In Cherkasy, a city in central Ukraine, a journalist was illegally removed from an open court session relating to a request from the Cherkasy region police to remove the head of the regional branch of the Red Cross.<sup>93</sup> According to the monthly monitoring data from IMI, access to public information has suffered during the war, and there are also isolated attempts at censorship. For example, the local publication *Grechka* in the city of Kropyvnytskyi was forced to remove from its website material about the work of local higher education institutions in wartime because of a ‘persistent request’ from the regional administration of the National Police.

There are still clear protections and guarantees in place against censorship, in spite of the conditions of martial law. There are clear and proportionate sanctions for defamation and libel<sup>94</sup> and the latter are not criminalised. The law still protects the confidentiality of whistle-blowers

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<sup>89</sup> *Ukrainska Pravda*. ‘How the authorities limited access during the war’,

<https://dostup.pravda.com.ua/news/publications/yak-vlada-obmezhylo-dostup-na-period-viiny>.

<sup>90</sup> *Ukrainska Pravda*. ‘How “Closed” open data: what is the situation with data in wartime?’,

<https://dostup.pravda.com.ua/news/publications/zakryti-vidkryti-dani-i-aka-sytuatsiia-z-danymy-pid-chas-viiny>.

<sup>91</sup> IMI. ‘Prosecutor’s office opened a case on the fact of murder of the Maxym Levin’,

<https://imi.org.ua/news/fotozhurnalista-maksa-levina-vbyly-rosijski-vijskovi-prokuratura-i44794>.

<sup>92</sup> IMI. ‘Journalist Mykhailo Tkach reports SMS-bombing after a material about Kyiv street racers’, <https://imi.org.ua/en/news/journalist-mykhailo-tkach-reports-sms-bombing-after-a-material-about-kyiv-street-racers-i48220>.

<sup>93</sup> IMI. ‘A journalist was removed from the courtroom’, <https://imi.org.ua/news/u-cherkasah-sud-vydalyv-zhurnalista-iz-zasidannya-i48475>.

<sup>94</sup> The Civil Code of Ukraine, <https://zakon.rada.gov.ua/laws/show/435-15>.

and journalists' sources of information.<sup>92,95</sup> In addition, in 2022, the Law 'On the introduction of amendments to some laws of Ukraine regarding the provision of an additional guarantee of protection to media workers who work in the areas of military (combat) operations and/or in the temporarily occupied territories of Ukraine' was adopted.<sup>96</sup>

### Recommendations:

- Ensure proper and effective investigation of attacks on journalists and public activists, both in the context of crimes in the Russian Federation and at the national level;
- Ensure the right of access to public information in accordance with the standards of national legislation and the Tromsø Convention in the context of completeness and availability; and
- Coordinate efforts with international partners to counter disinformation and the bias in online social networks.

## 3.7 Right to Privacy

Overall score per area: **4.1/7**

Legislation: **4.9/7**

Practice: **3.2/7**

In martial law conditions, legislation provides for the state's retreat from the obligation to guarantee the right to privacy. The law allows the inspection of persons' documents and the inspection of items, including vehicles, luggage and cargo, office premises and citizens' homes, the contents of telephone archives and other correspondence.

Nevertheless, there is a special procedure that must be followed during martial law for the abovementioned interventions. The situation has led to decrease in both the legislation and practice scores in this area in 2022 comparatively with 2021.

### Standard I. Everyone enjoys the right to privacy and data protection.

The right to privacy is guaranteed by the Constitution of Ukraine. In particular, Article 30 protects territorial privacy (the inviolability of housing), Article 31 protects communication privacy (the secrecy of correspondence, telephone conversations, telegraph and other correspondence), Article 32 protects informational privacy ('no one can interfere in his

<sup>95</sup> Law 'On the state media support, guarantees of professional activity and social protection of journalists', Law of Ukraine, <https://zakon.rada.gov.ua/laws/show/540/97-%D0%B2%D1%80#Text>.

<sup>96</sup> Law of Ukraine 'On the introduction of amendments to some laws of Ukraine regarding the provision of an additional guarantee of protection to media workers who work in the areas of military (combat) operations and/or in the temporarily occupied territories of Ukraine', <https://zakon.rada.gov.ua/laws/show/2382-20#Text>.

personal and family life, except in cases stipulated by the Constitution of Ukraine' and 'it is not allowed to collect, store, use and disseminate confidential information about a person without his or her consent') and Article 28 protects some aspects of physical privacy ('no person can be subjected to medical, scientific or other experiments without his/her free consent'). The Law 'On Personal Data Protection' remains the main law regulating legal relations related to the protection and processing of personal data.<sup>97</sup>

The right to privacy is also regulated in some international laws ratified by Ukraine such as the Universal Declaration of Human Rights of 1948 (Article 16)<sup>98</sup> the ICCPR (Article 17)<sup>99</sup> and the ECHR (Article 8).<sup>100</sup>

However, since 24 February 2022, the Decree of the President of Ukraine 'On the introduction of martial law' No. 64/2022<sup>101</sup> allowed restrictions on constitutional rights, in particular the right to privacy: 'In connection with the introduction of martial law in Ukraine, temporarily, for the duration of the legal regime of martial law, may be limited constitutional rights and freedoms of a person and a citizen, provided for by Articles 30-34, 38, 39, 41-44, 53 of the Constitution of Ukraine.' In particular, the right under Article 31 of the Constitution of Ukraine to the secrecy of correspondence, telephone conversations, telegraph, and other correspondence is restricted. The restriction of this right necessitates a waiver of obligations under Articles 19 and 20 of the ICCPR and Article 10 of the ECHR.<sup>102</sup>

## **Standard II. The state protects the right to privacy of CSOs and associated individuals.**

At the legislative level, reporting requirements for CSOs protect the privacy of their members, donors, board members and employees and the confidentiality of their personal assets.

CSOs have an adequate level of immunity from criminal prosecution. In particular, any access to a CSO's office space may be exercised solely based on a court order and within the framework of criminal proceedings, while providing adequate safeguards against abuse. The

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<sup>97</sup> Law of Ukraine 'About the protection of personal data', 2010, No. 34, Article 481, <https://zakon.rada.gov.ua/laws/show/2297-17#Text>.

<sup>98</sup> Universal Declaration of Human Rights, [https://zakon.rada.gov.ua/laws/show/995\\_015#Text](https://zakon.rada.gov.ua/laws/show/995_015#Text).

<sup>99</sup> ECHR. [https://zakon.rada.gov.ua/laws/show/995\\_043#Text](https://zakon.rada.gov.ua/laws/show/995_043#Text).

<sup>100</sup> ECHR. [https://zakon.rada.gov.ua/laws/show/995\\_004#Text](https://zakon.rada.gov.ua/laws/show/995_004#Text).

<sup>101</sup> Decree of the President of Ukraine No. 64/2022 'About the introduction of martial law in Ukraine', <https://www.president.gov.ua/documents/642022-41397>.

<sup>102</sup> United Nations, Ukraine notification under Article 4(3) on 01.03.2022, <https://treaties.un.org/doc/Publication/CN/2022/CN.65.2022-Eng.pdf>.

legal framework and definition of the procedures for conducting the search are enshrined in the Code of Criminal Procedure<sup>103</sup> and in the Law 'On search operations'.<sup>104</sup>

### Recommendations:

- Avoid the adoption of legislative acts that significantly expand the right of law enforcement and security agencies to invade people's private lives; and
- Avoid the adoption of legislative acts that aim to introduce additional reporting for foreign-funded CSOs and their members.

## 3.8 State Duty to Protect

Overall score per area: **3.8/7**

Legislation: **4.0/7**

Practice: **3.5/7**

In connection with the full-scale invasion of Ukraine by the Russian Federation, the situation in the field of protection of the rights of CSO activists and public figures has changed significantly compared to the previous reporting period. In 2022, the greatest danger came not from the government of Ukraine, but from the Russian Federation through its purposeful policy in the occupied territories aimed at identifying and exterminating Ukrainian patriots, journalists, representatives of the Ukrainian authorities, public figures, volunteers, and all people who are considered a threat to the power of the occupiers. Most of the problems that were highlighted in the previous reporting period either disappeared or their solution was postponed until the end of martial law. However, new challenges have also arisen for public activists in the field of charity and the provision of humanitarian aid. Taking into account the above mentioned circumstances, in 2022, the scores for both legislation and practice in this area are lower than in 2021.

### Standard I. The state protects CSOs and individuals associated with CSOs from interference and attacks.

As of October 2022, the ZMINA Human Rights Center recorded about 100 injured public activists as a result of the armed aggression of the Russian Federation against Ukraine. Among

<sup>103</sup> Criminal Procedure Code of Ukraine, 2013, No. 9-10, No. 11-12, No. 13, Article 88, <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

<sup>104</sup> Law of Ukraine 'About operational and investigative activities', 1992, No. 22, Article 303, <https://zakon.rada.gov.ua/laws/show/2135-12#Text>.



them are the following episodes: at least 66 murders, 12 injuries, three beatings, nine death threats and other forms of intimidation and six property crimes. IMI separately keeps statistics on journalists who have died as a result of Russian aggression.<sup>105</sup>

The Ukrainian Government has announced an investigation into war crimes committed by the Russian Federation. A small number of cases are already at the stage of trial or a guilty verdict has been issued. However, employees of the Prosecutor General's Office note that the investigation of war crimes is complicated by the difficulty of identifying suspects. However, in many cases, suspects can be identified thanks to the help of journalists and the use of information technology.

At the same time, the actions of the Ukrainian Government in relation to public activists, volunteers, and individual benefactors who, with the beginning of the full-scale invasion, began to collect funds among Ukrainians and purchase goods needed for the military and civilians abroad, are of particular concern. On 24 March 2022, the Parliament introduced Article 201-2 to the Criminal Code of Ukraine which introduced responsibility for the sale of humanitarian aid for the purpose of personal enrichment. Since June 2022, numerous reports began to appear in the mass media about the initiation of criminal proceedings and searches carried out by law enforcement agencies in relation to such public activists. In many cases, prosecutions were due to the incorrect application of Article 201-2 of the Criminal Code of Ukraine by the investigative bodies, as well as the imperfect nature of the legislation in the field of duty-free importation of cars for charitable purposes.

In several cases, activists report that investigative bodies have used provocation to commit a crime against them, which is a prohibited practice in light of Ukrainian legislation and the practice of the ECHR. Also, in such cases, lawyers report numerous violations of activists' rights during criminal proceedings by investigative bodies. According to the information provided by the Office of the Prosecutor General of Ukraine, as of October 2022, 403 proceedings under Article 201-2 were registered in the Unified Register of Pretrial Investigations, of which 35 were closed. In 368 criminal proceedings under this article, 53 people were notified of suspicion, 80 people are suspects and 17 criminal proceedings were sent to court with an indictment. Information about the prosecutions also reached the people's deputies of Ukraine, who have created a working group on changes to the legislation in the field of humanitarian aid, as well as a working group on the prosecution of volunteers under Article 201-2 of the Criminal Code of Ukraine. At the time of writing this report, the activities of the working groups have only just begun, so it is too early to comment on their

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<sup>105</sup> IMI. 'Journalists who died as a result of Russia's large-scale invasion in Ukraine' (in Ukrainian), <https://imi.org.ua/infographics/spysok-zagyblyh-zhurnalistiv-i45958>.

effectiveness. Also, on 26 March 2022, the martial law Government cancelled numerous quarantine restrictions related to the Covid-19 pandemic.<sup>106</sup>

**Standard II. Measures used to fight extremism, terrorism, money laundering or corruption are targeted and proportionate, in line with the risk-based approach, and respect human rights standards on association, assembly, and expression.**

In the previous reporting period, the legislation postponed the obligation for CSOs to provide information on their UBO until 11 July 2022. However, due to the full-scale invasion by the Russian Federation, in 2022 Parliament passed a law<sup>107</sup> that allowed legal entities, including CSOs, not to submit such information during the period of martial law, as well as for three months after its end, while temporarily exempting them from responsibility for such failure to submit. Currently, the Ministry of Finance is forming a working group on the issues of a risk assessment in the CSO sector to prepare relevant recommendations for CSOs, banks and state services in 2023.

CSOs are faced with the problem of bank accounts being blocked as a result of the implementation of financial monitoring measures by banks. If it is impossible to update the information about the founders of the CSO, banks stop financial operations, paralysing the activities of the CSO. The situation is quite widespread and significantly complicates the work of civil society, which is especially dangerous in wartime conditions. In practice, updating data on the founders of CSOs, banks apply the logic of tracking the chain of control/ownership of a legal entity in order to prevent its use in money laundering and terrorist financing by analogy with legal entities of commercial law. However, this approach is not effective for CSOs because of the absence of property interests for their members (participants).

The current financial monitoring procedure does not take into account the cases of termination of membership in the organisation by the founder, which results in ineffective monitoring from the point of view of achieving the ultimate goal. A similar situation occurs with regard to COs. Thus, the Law of Ukraine 'On Charitable Activities and Charitable Organisations' does not contain provisions that enable the founders of charitable institutions to influence their activities after state registration. Also, the founders of CSOs and COs cannot

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<sup>106</sup> Ministry of Health of Ukraine. 'The specifics of quarantine in martial law conditions have been approved' (in Ukrainian) <https://moz.gov.ua/article/news/zatverdzheno-osoblivosti-dii-karantinu-v-umovah-voennogo-stanu>.

<sup>107</sup> Law of Ukraine 'On the protection of the interests of subjects submitting reports and other documents during the period of martial law or a state of war', with changes introduced in accordance with the Laws No. 2436-IX dated 07/19/2022 (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/2115-20#Text>.

automatically be considered persons who exert decisive influence on the activity of a legal entity. This once again indicates the need to take into account the specifics of the relevant laws regulating the activities of such organisations as a priority.

#### Recommendations:

- Abolish the requirement for CSOs to provide information on their UBOs/controllers, as CSOs do not generally have percentage-based controlling interests;
- Ensure a proper investigation of war crimes by the Russian Federation, including those against journalists and public activists;
- Stop the practice of prosecuting volunteers and benefactors under Article 201-2 of the Criminal Law of Ukraine. Make changes to the legislation that will allow them to quickly import cars from abroad for the needs of military personnel without paying customs fees;
- Stop the practice of provocation of a crime by investigative bodies, as well as other violations of the rights of volunteers during pre-trial investigations; and
- Update the risk assessment process on CSOs' activities.

## 3.9 State Support

Overall score per area: **4.3/7**

Legislation: **4.6/7**

Practice: **3.9/7**

In 2021, the introduction of online contests for CSOs on the VzaemoDiia platform and the gradual expansion of the practice of purchase of social services by CSOs was a positive development. However, in 2022, in the period following the introduction of martial law in Ukraine (or in some of its localities) and for nine months after its termination or cancellation, the procedure for conducting the competition has been changed. The change in the rules of the competition did not refer to the recommendations on the introduction of a competitive and transparent mechanism for CSOs to obtain funds from the state and local budgets, monitoring and reporting of CSOs (VzaemoDiia platform) or ensuring the involvement of CSOs as social service providers by the authorities.

In general, because of the impact of war in 2022, the scores in this area for both legislation and practice are lower than in the previous reporting period.

## Standard I. There are a number of different and effective mechanisms for financial and in-kind state support to CSOs.

Diverse state funding mechanisms by various state bodies at both the national and local level are available.

In 2022, the amount of state funding was envisaged to increase,. However, not all funding was increased: UAH 91.4 million (about 2.9 million EUR) was allocated to help CSOs of people with disabilities (the same amount allocated in 2021). However, for CSOs in the field of physical culture and sports in 2022, UAH 68.5 million (about 1.7 million EUR) was allocated, which is UAH 3.5 million (about 87,000 EUR) more than last year. In 2022, UAH 124.8 million (about 3.1 million EUR) was allocated for the implementation of state policy measures on youth issues and state support for youth and children's public organisations. Provision of institutional support to youth and children's public associations in the form of budget grants in the field of youth policy has been envisaged.

In the public sector, the issue of introducing the definitions of 'social enterprise' and 'social entrepreneurship' into the legislation of Ukraine acquired a new context in the conditions of the war. The definitions are expected to enable the current pressing social issues, for example, the employment of people with disabilities, people who are in a difficult situation and who have suffered directly from war. In October 2022, the educational and scientific programme 'Acceleration programme of community development through social entrepreneurship'<sup>108</sup> began its work, aimed at accelerating the development of social entrepreneurship of territorial communities to overcome the consequences of war and economic recovery and conducted through the higher education institution Podillya State University in collaboration with the Ukrainian Social Academy with the assistance of Renovabis (a German charitable organisation of the Roman Catholic Church). The programme includes further competitive selection of social projects developed by the participants to receive micro-grants ranging from UAH 100,000 to UAH 250,000 (around 2,600-6,500 EUR). For CSOs, it means expanding opportunities to engage in social entrepreneurship.

In October 2021, the Ministry of Youth and Sports of Ukraine presented for public discussion a draft Decree of the CMU on establishing a Ukrainian Youth Fund that would be under state control and provide financial support to a wide range of youth initiatives. Nevertheless, despite the cycle of discussions on the draft of the Decree since 29 August 2022, the Ukrainian Youth Fund had not been launched or implemented to the end of 2022.<sup>109</sup>

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<sup>108</sup> Podillya State University. 'Accelerator of social entrepreneurship' (in Ukrainian), <https://www.pdatu.edu.ua/novyny/akselerator-sotsialnoho-pidpriemnytstva.html>.

<sup>109</sup> Gov.ua. 'On some issues of the Ukrainian Youth Fund', <https://mms.gov.ua/news/povidomlennia-pro-opryliudnennia-proektu-postanovy-kabinetu-ministriv-ukrainy-deiaki-pytannia-ukrainskoho-molodizhnoho-fondu>.

In June 2022, the percentage mechanism initiative was included in two draft Laws (No. 7500<sup>110</sup> and No. 7501)<sup>111</sup> on amendments to the Tax Code and on amendments to the Budget Code of Ukraine. The creation of relevant by-laws was also provided for. Among them will be the Resolution of the CMU on the procedure for interest deduction, as well as the procedure for maintaining the register of percentage mechanism recipients. This will translate to greater opportunities to involve citizens in supporting CSOs they trust at the expense of their taxes. Thus, civil society capacity can be expected to increase as a result of this legislation.

## **Standard II. State support for CSOs is governed by clear and objective criteria and allocated through a transparent and competitive procedure.**

In Ukraine, there are different procedures for funding through competition, or without competition.

When it comes to funding without a competitive procedure, the system is opaque and closed. It is difficult or impossible to find information on the amounts received by certain organisations through open sources. There are three main issues in this respect: (i) the information is not publicly available (for instance, via an official website); (ii) the information is available but a lot of time is required to locate it, for instance on an official website (usually the case for LSGBs); and (iii) the reports do not contain enough information to understand the amount of money received by the CSO and how that CSO used the money. The following types of CSO mainly obtain funding without competitive procedures: CSOs for disabled people (e.g., UTOG/UTOS), veterans' associations (including combatants from the conflict in Afghanistan and children of war) and sports CSOs.

The above-mentioned organisations generally receive funding from one source: state or local budgets, to cover rental costs, utilities, salaries, and stationery. The activities of such organisations do not affect the decision on the allocation of funds, although it should be formally considered when deciding on the allocation of funds. Normally, such CSOs do not submit full reports. Their reports do not provide information on how the funds were spent, including the matching amounts. It is difficult to access their reports in publicly-accessible information. Although formal monitoring is stipulated, the provisions on monitoring of the implemented measures are not fulfilled in practice.

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<sup>110</sup> Draft Law 'On Amendments to the Tax Code of Ukraine (regarding the introduction of the interest deduction mechanism to support non-profit organisations)' from 06/28/2022 (in Ukrainian), [https://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=74439](https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=74439).

<sup>111</sup> Draft Law 'On Amendments to the Budget Code of Ukraine (regarding the introduction of the interest deduction mechanism to support non-profit organisations)', 7501 dated 06/28/2022 (in Ukrainian), [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=74440](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=74440).

The contracting procedure is regulated by the Law of Ukraine 'On public procurement'. For example, a local authority can engage CSOs to sign a social contract through the procedure of public procurement. Pursuant to paragraph 35 of Part One of Article 1 of the Law, a tenderer can be an individual, an entrepreneur, or a legal entity (this includes CSOs). Also, CSOs can take part in other tenders. All results and all documents are published.

### **Standard III. CSOs enjoy a favourable tax environment.**

CSO activities in Ukraine are partially exempt from taxes in Ukraine. Tax privileges for CSOs can be divided into three groups. The first benefit applies to all non-profit organisations which is that they are not subject to paying income tax. The second possibility is the application of a tax rebate mechanism. That is, an individual donor, a person, can help CSOs by recouping some of the tax paid. There are also several exemptions from various taxes available to CSOs, for example, a VAT exemption for charitable organisations. The import of humanitarian aid, the free supply of goods and services to charities and the provision of charitable assistance are not subject to VAT.

Taxation of non-profit organisations in Ukraine is regulated by paragraph 133.4 of Article 133 of the Tax Code of Ukraine. To obtain the status of a non-profit organisation, registered institutions and organisations (including newly-established ones) must submit a registration application to the controlling body at the main place of registration, which is free of charge.

On 17 March 2022, the Law of Ukraine No. 2120-IX 'On Amendments to the Tax Code of Ukraine and other legislative acts of Ukraine regarding the effect of norms during the period of martial law' entered into force. Section XX of the Law establishes that during the legal regime of martial law, or a state of emergency, the transfer of property, provision of services by a non-profit organisation, and use of income (profits) of a non-profit organisation to finance expenses is not considered a violation of the requirements of clause 133.4 of Article 134 of the Tax Code. The criteria is that such a services, property voluntarily transferred (provided, transferred) to the Armed Forces of Ukraine, the National Guard of Ukraine, the Security Service of Ukraine, the Foreign Intelligence Service of Ukraine, budgetary organisations for the needs of state defence, health care institutions, or funds transferred to special accounts opened by the National Bank of Ukraine for fundraising. If a non-profit organisation does not have the relevant areas of activity in its statutes and provides assistance/uses its income for the above-mentioned beneficiaries, then during the period of martial law this will not be a violation of the statutory activity and the non-profit organisation will not lose its non-profit code.

There have also been changes regarding the taxation of charitable assistance.<sup>112</sup> From now on, such assistance is not taxable for individuals, and therefore CSO providers do not act as tax agents for personal income tax.

The practice of tax exemption for medical products purchased with grants (or sub-grants) for the implementation of the project of The Global Fund to Fight AIDS, Tuberculosis and Malaria in Ukraine has been continued.

#### **Standard IV. Businesses and individuals enjoy tax benefits for their donations to CSOs.**

In general, the tax legislation in 2022 was significantly reformed, became more favourable for CSOs and does not provide for burdensome reporting. However, current tax incentives for charitable assistance to individuals and legal entities in wartime are insufficient.

Law No. 2115 dated 3 March 2022 dispensed with the requirement to submit reports, and not to pay taxes/fees which cannot be paid as a result of military operations. During martial law and within six months after its termination, taxpayers are released from liability for non-fulfilment of such duties. At the same time, taxpayers are not required to prove the impossibility of submitting reports, paying taxes, or registering tax invoices, so in fact, all taxpayers are not required to fulfil their obligations regardless of the possibility of doing so. The Law provided for cases where the taxpayer did not fulfil his/her tax obligations from 24 February 2022, and later switched to the special third group of the single tax with a rate of 2 per cent.

Individual citizens who aid CSOs are entitled to a tax rebate on personal income tax (in the amount of 16 per cent.). In practice, not many people enjoy the right to apply for the tax rebate, as the procedure for applying for the tax rebate mechanism is quite complicated both for individual citizens and legal entities, the declaration form being difficult to fill out. In addition, the information and explanatory work of the tax authorities on the application of the tax rebate mechanism is insufficient, and performance appraisals are not conducted.

Compared with 2021, in the period of martial law, incentives for businesses have improved through the implementation of state programmes on the *Diia.Business* portal.<sup>113</sup> In 2022, the Government of Ukraine implemented a service to compensate employers for labour costs for each employed person from among IDPs as a result of hostilities during martial law in Ukraine at the expense of the reserve fund of the state budget. The service is free and available

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<sup>112</sup> Law of Ukraine 'On amendments to the Tax Code of Ukraine and other legislative acts of Ukraine regarding the effect of norms during the period of martial law', <https://zakon.rada.gov.ua/laws/show/2120-20#Text>.

<sup>113</sup> Diia. 'Business support in wartime' (in Ukrainian), <https://business.diia.gov.ua/wartime>.



to businesses. The result is the receipt of funds for the payment of labour for the employment of an IDP to a current account. However, such a service is not available to non-profit organisations such as CSOs.<sup>114</sup> Additionally, the Government is implementing a programme of affordable financing for exporters during the war. ‘Loans for the execution of foreign economic contracts under a simplified procedure’ will help Ukrainian manufacturers to enter new markets and become competitive. The legislation amended in 2022,<sup>115</sup> in addition to incentives, provides for the presence of mandatory requirements for a foreign economic agreement. Despite the fact that such an incentive is not directly aimed at supporting CSOs, it strengthens the capacity of businesses and makes them able to further contribute to the needs of CSOs and volunteers.

### **Standard V. Legislation and policies stimulate volunteering.**

After the beginning of the full-scale war of the Russian Federation against Ukraine, the volunteer movement became a driving force in countering Russian armed aggression and overcoming its consequences. Volunteers assume responsibility for the performance of a wide range of tasks related to: procurement of military ammunition; means of protection, communication and intelligence; material, medical, legal and psychological assistance to military personnel; organising the evacuation of people from the occupied territories; the transportation of medicines and other necessary goods to the settlements temporarily occupied by Russian forces; and assistance to IDPs.

In May 2022, Parliament adopted draft Laws No. 7363<sup>116</sup> and No. 7364,<sup>117</sup> which exempted from taxation compensatory payments to volunteers received from their organisations and for participation in events, as well as positively regulated some other aspects of volunteering.

The Law ‘On Volunteering activities’ remains the main act that regulates volunteering activities in Ukraine.

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<sup>114</sup> CMU Decree dated March 20, 2022 No. 331 ‘On the approval of the Procedure for providing the employer with compensation for labor costs for the employment of internally displaced persons as a result of hostilities during martial law in Ukraine’ (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/331-2022-%D0%BF#Text>.

<sup>115</sup> Law of Ukraine ‘About financial mechanisms for stimulating export activity’, <https://zakon.rada.gov.ua/laws/show/1792-19#Text>.

<sup>116</sup> Parliament of Ukraine. ‘Comparative Table to the draft Law of Ukraine "On Amendments to the Law of Ukraine "On Volunteering" regarding support of volunteer activities" (in Ukrainian), <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1290218>.

<sup>117</sup> Draft Law on Amendments to the Tax Code of Ukraine on Promoting the Development of Volunteer Activities and the Activities of Non-Profit Institutions and Organizations in the Conditions of Russia's Armed Aggression Against Ukraine (in Ukrainian), <https://itd.rada.gov.ua/billInfo/Bills/Card/39573>.

On 15 August 2022, the Parliament of Ukraine adopted the Law of Ukraine ‘On Amendments to the Law of Ukraine "On Volunteering" Regarding Support of Volunteering’.<sup>118</sup> The Law was successfully advocated for and developed with the participation of CSOs, volunteers and experts. The new legislation contributes to the development of the volunteer movement in Ukraine, in particular through the expansion of the areas of volunteer activity in conditions of war, the extension of the effect of certain norms of the Law of Ukraine ‘On Volunteer Activity’, taking into account the large-scale military aggression of the Russian Federation against Ukraine.

In particular, the current legislation provides for the following additional areas of volunteering in wartime conditions: assistance to central and local bodies of executive power, LSGBs, enterprises, institutions and organisations, associations of citizens; and providing volunteer assistance related to the protection and rescue of animals. Also, the new Law provides an opportunity for the development and implementation of national targeted programmes to support the development of volunteering and other measures aimed at supporting volunteering in Ukraine. The Law also stipulates that volunteer assistance can be provided online using the internet and other telecommunication networks.

In addition, thanks to the norms of the relevant legislation in Ukraine, an information and analytical platform will be created to inform people about volunteering opportunities in Ukraine and beyond, to support civil society institutions in attracting volunteers and to post other information with the aim of promoting the development of the volunteer movement in Ukraine.

### Recommendations:

- Expand the range of CSOs receiving state support for project funding and also expand the areas in which CSOs have access to funding (in addition to people with disabilities, veterans and youth);
- Administrative costs for the implementation of projects must be provided in all public tenders;
- Develop a clear common understanding of the terms ‘social entrepreneurship’ and ‘social enterprise’ and ensure a supportive environment for CSOs engaging in these areas; and
- Improve the legal environment for engaging volunteers by Ukrainian CSOs, particularly in the areas of taxation and guarantees.

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<sup>118</sup> Law of Ukraine ‘On amendments to the Law of Ukraine "On Volunteering" regarding support for volunteering’ (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/2519-IX#Text>.

## 3.10 State-CSO Cooperation

Overall score per area: **5.2/7**

Legislation: **5.6/7**

Practice: **4.7/7**

Cooperation between CSOs and the authorities continued despite the start of full-scale hostilities. Although some processes and mechanisms of cooperation have stopped (the system of electronic contests named 'Interaction' and public consultations in the regions), on the key points that ensure the stability and viability of Ukraine, namely volunteering and charity, significant progress has been made in the legislation. Due to these positive developments, CSOs continue advocacy activities in the processes of reform and recovery. Therefore, despite the impact of war, scores in this area remain high in 2022 in comparison with the previous year.

### Standard I. State policies facilitate cooperation with CSOs and promote their development.

Despite the start of the full-scale war by Russia in February 2022, cooperation between CSOs and the state in Ukraine did not stop. Work continued on implementing the National Strategy for Promoting the Development of Civil Society in Ukraine for 2021-2026. In July, the CMU initiated a public discussion of the draft order 'On the approval of the Action Plan for 2022-2024 regarding the implementation of the National Strategy for Promoting the Development of Civil Society in Ukraine for 2021-2026'.<sup>119</sup> Before this, from October 2021 to February 2022, about 20 coordination meetings and discussions on the Action Plan were held with representatives of civil society institutions, executive authorities, international organisations, scientists and experts.<sup>120</sup> The Action Plan was expected to provide for:

- 16 measures to ensure effective procedures of public participation in policy-shaping at the national and regional levels;
- 16 measures for institutional development of CSOs;

<sup>119</sup> On the approval of the Action Plan for 2022-2024 regarding the implementation of the National Strategy for Promoting the Development of Civil Society in Ukraine for 2021-2026. CMU information dd. 07.07.2022, [https://www.kmu.gov.ua/news/zaprosuhiemo-do-obhovorennia-proektu-rozporiadzhennia-kabinetu-ministriv-ukrainy-pro-zatverdzhennia-planu-zakhodiv-na-2022-2024-roky-shchodo-realizatsii-natsionalnoi-stratehii-spryannia-rozvytku-hromadianskoho-suspilstva-v-ukraini-na-2021-2026-roky?fbclid=IwAR3JPVT\\_TqAwqY11yX00J44kYH\\_65ZXyPL-n1K2KheVudawLJohxctROrK4&utm\\_source=sendinblue&utm\\_campaign=%20%2018072022&utm\\_medium=email](https://www.kmu.gov.ua/news/zaprosuhiemo-do-obhovorennia-proektu-rozporiadzhennia-kabinetu-ministriv-ukrainy-pro-zatverdzhennia-planu-zakhodiv-na-2022-2024-roky-shchodo-realizatsii-natsionalnoi-stratehii-spryannia-rozvytku-hromadianskoho-suspilstva-v-ukraini-na-2021-2026-roky?fbclid=IwAR3JPVT_TqAwqY11yX00J44kYH_65ZXyPL-n1K2KheVudawLJohxctROrK4&utm_source=sendinblue&utm_campaign=%20%2018072022&utm_medium=email) [last visited 25.12.2022].

<sup>120</sup> Zmina. 'The Cabinet of Ministers has developed a plan for the implementation of the National Strategy for Promoting the Development of Civil Society' (in Ukrainian), <https://zmina.info/news/kabmin-rozrobiv-plan-realizaciyi-naczstrategiyi-spryannya-rozvytku-gromadskogo-suspilstva/>.

- 8 measures to stimulate the participation of civil society institutions in the socio-economic development of Ukraine; and
- 11 measures to develop favourable conditions for intersectoral cooperation.

Unfortunately, however, the Action Plan remained in its early stages at the end of 2022.

Notably, representatives of CSOs took part in the Ukraine Recovery Conference (previously known as the Ukraine Reform Conference)<sup>121</sup> that took place in Lugano, Switzerland on 4-5 July 2022. A periphery event was arranged in which CSOs confirmed their commitment to being involved in such processes.

In addition, in August 2022, representatives of civil society, led by the consortium of organisations from the project Ukraine Civil Society Sectoral Support Activity (funded by USAID, the Reanimation Package of Reforms Coalition, and the Legal Reforms Platform for CSOs) presented the Action Plan for the post-war recovery and development of Ukraine as seen by CSOs. The Plan is based on the provisions of the Map of Legal Reforms for CSOs and the National Strategy for Promoting the Development of the Civil Society of Ukraine. The findings were presented to the National Council for Recovery of Ukraine from the Consequences of War,<sup>122</sup> an advisory body under the President of Ukraine shaped in April 2022 and steered by the Prime Minister of Ukraine, the Speaker of the Parliament and the Head of the Office of the President. The proposals of CSOs concerned the following topics: the return of temporarily displaced citizens, in particular those abroad, and their reintegration into the socio-economic life of the state; the functioning of the financial system, its reform and development; public administration; digitisation; youth and sports; social protection; and human rights.

In the second half of 2022, the idea of establishing an additional agency for recovery was discussed,<sup>123</sup> but as yet there are no outcomes.

In addition, corresponding with the recommendations of the National Strategy, during the current reporting period, the state, in cooperation with civil society, created a number of

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<sup>121</sup> The Ukraine Recovery Conference is dedicated to Ukraine's transformation and was symbolically launched in London in 2017 as the Ukraine Reform Conference. Ukraine Recovery Conference in Lugano-2022, <https://www.urc2022.com/urc-2022> [last visited 25.12.2023].

<sup>122</sup> The National Council for the Ukraine's Recovery from the war outcomes, <https://www.kmu.gov.ua/diyalnist/nacionalna-rada-z-vidnovlennya-ukrayini-vid-naslidkiv-vijni> [last visited 25.12.2022].

<sup>123</sup> Radio Svoboda. 'An Agency for recovery: advantages and risks with the new state body', 04.08.2022 (in Ukrainian), <https://www.radiosvoboda.org/a/ahentsiya-z-vidnovlennya-ukrayiny-perevahy-ryzyky/31973608.html> [last visited 25.12.2022].

legislative initiatives that improved the legal field of activities of volunteers<sup>124</sup> and reduced taxes for CSOs.<sup>125</sup>

## Standard II. The state has special mechanisms in place for supporting cooperation with CSOs.

According to the Decree of the CMU No. 996 'On ensuring public participation in policy-shaping and policy-implementing',<sup>126</sup> CSOs can participate in public councils that are considered as providing a citizens' consultation mechanism. They are established under state administrations, ministries and other bodies. Today, public councils are formed and work with executive authorities in Ukraine. Members of public councils can be elected by online voting.

In addition to public councils, civil society uses mechanisms such as, among others, public consultations, working groups for special needs in policy-shaping, public expertise and public monitoring, public hearings, and requests for information to state authorities to interact with the Government. These mechanisms are regulated by the Law of Ukraine 'On Bodies of Local Self-Government in Ukraine', the Law of Ukraine 'On Bodies of Self-Organisation of the Population', the Law of Ukraine 'On Appeals of Citizens' and the abovementioned CMU Decree 'On ensuring public participation in policy-shaping and policy-implementing.'

On 16 August 2022, the Government made amendments to the Decree of the CMU of 3 November 2010 No. 996 'On ensuring public participation in policy-shaping and policy-implementing', which, in particular, regulates the formation and operation of public councils for authority bodies at the national and local levels during martial law, which are restrictive. According to the amendments, the community councils should continue their activities, but with the following restrictions under wartime:

1. For the period of wartime and the following 6 months after its end, public councils are not reorganized;
2. According to the decision of the authority, members of public councils may have limited access to the premises of the authority; and

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<sup>124</sup> Law of Ukraine 'On the introduction of changes to the Tax Code of Ukraine regarding the promotion of the development of volunteer activities and the activities of non-profit institutions and organizations in the conditions of armed aggression of the Russian Federation against Ukraine', 15.08.2022 № 2520-IX (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/2520-20#Text> [last visited 25.11.2022]; Law of Ukraine 'On Amendments to the Law of Ukraine "On Volunteering" Regarding Support of Volunteering', 15.08.2022 № 2519-IX (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/2519-20#Text> [last visited 25.11.2022].

<sup>125</sup> Law of Ukraine 'On amendments to the Tax Code of Ukraine and other legislative acts of Ukraine regarding the peculiarities of taxation and reporting during the period of martial law', 03.03.2022 № 2118-IX (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/2118-20#Text> [last visited 25.11.2022].

<sup>126</sup> CMU Decree No. 996 'On ensuring public participation in policy-shaping and policy-implementing'.

3. Information about the activities of public councils may not be posted on the official website by decision of the authority.

It is worth noting that public consultations with authorities have become somewhat more difficult during martial law. In particular, in many Ukrainian cities, military administrations have been created (temporary state bodies which are formed by decree of the President and operate on the territory of Ukraine determined by the head of state, as a temporary forced measure with elements of a military organisation of management to ensure the safety and normalisation of the life of the population in the area and to repulse armed aggression from Russia), instead of state administrations, that do not hold consultations with the public and operate in a closed manner.

### Recommendations:

- The Government should involve CSOs in the process of post-war recovery and in the activities of the National Council for Recovery (or other relevant bodies should they be established);
- Implementation of the Action Plan for the National Strategy for the Promotion of Civil Society Development for 2021-2026 shall be developed at the national and local levels, taking into account the matter of war and the features of martial law; and
- Ministries, and especially LSGBs, should, within the available limits, conduct public consultations with CSOs and citizens.

## 3.11 Digital Rights

Overall score per area: **4.8/7**

Legislation: **5.1/7**

Practice: **4.4/7**

The full-scale invasion of Ukraine by Russia has significantly undermined internet freedom in Ukraine and impacted the Government's ability to further develop and fulfil the guarantees for digital rights. Most of the challenges to the enjoyment of digital rights in 2022 are caused by Russian aggression.

At the same time, during 2022, the state implemented a significant amount of digital services for CSOs, citizens and businesses. Accordingly, despite the war, the decrease in the scores in this area for legislation and practice compared to 2021 is not significant.

## Standard I. Digital rights are protected, and digital technologies are compliant with human rights standards.

Following the full-scale Russian aggression, the Ukrainian Government has officially derogated from its obligations under the ECHR and the ICCPR.<sup>127</sup> In particular, the derogation provides the state with the power to impose restrictions on the right to privacy and freedom of expression that temporarily do not constitute a violation of international treaties. In response to the military invasion, the Ukrainian Government enforced martial law<sup>128</sup> which sets restrictions on the exercise of certain digital rights, including freedom of expression and privacy. However, no significant cases of actual limitation of digital rights that were not based on the principles of legality, legitimacy, proportionality, and necessity, were reported.

In response to the aggression, a number of laws<sup>129</sup> were passed in Ukraine that introduce restrictions on the dissemination of Russian symbols,<sup>130</sup> criminalise information support for and endorsement of armed aggression<sup>131</sup> and restrict the dissemination of information on the movements of the Ukrainian military and its equipment.<sup>132</sup>

The Parliament of Ukraine also adopted amendments to the Criminal Code of Ukraine<sup>133</sup> to meet the requirements of the Convention on Cybercrime, improving responsiveness of law enforcement agencies for criminal offences and detention of persons who have committed crimes, including during martial law, expanding the rights for law enforcement officers to access devices, as well as a large amount of personal data of citizens.

Ukrainian legislation currently contains three mechanisms for blocking internet resources:

1. the obligation of telecommunications providers to restrict the access of their subscribers to the resources based on a court decision;<sup>134</sup>
2. a person who organises, conducts, or provides access to gambling through a website without a relevant license must within three days restrict access to it at the request of the Commission for the Regulation of Gambling and Lotteries; and<sup>135</sup>

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<sup>127</sup> ICCPR derogation, <https://treaties.un.org/doc/Publication/CN/2022/CN.65.2022-Eng.pdf> [last visited 25.11.2022].

<sup>128</sup> Presidential Decree 'On martial law', 24.02.2022 #64/2022 (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/64/2022#Text> [last visited 25.12.2022].

<sup>129</sup> Digital Security Lab. 'Freedom of speech on the Internet: how does Ukraine respond to Russian aggression-2022?' (in Ukrainian), <https://dslua.org/publications/svoboda-slova-v-interneti-ukraina-vidpovidaie-na-rosiysku-ahresiiu-2022/>.

<sup>130</sup> Law of Ukraine No. 2265-IX, <https://zakon.rada.gov.ua/laws/show/2265-20#Text>.

<sup>131</sup> Law of Ukraine No. 2110-IX, <https://zakon.rada.gov.ua/laws/show/2110-20#Text>.

<sup>132</sup> Law of Ukraine No. 2160-IX, <https://zakon.rada.gov.ua/laws/show/2160-20#Text>.

<sup>133</sup> Law of Ukraine No. 2137-IX, <https://zakon.rada.gov.ua/laws/show/2137-%D0%86%D0%A5#Text>.

<sup>134</sup> Law of Ukraine 'On electronic communications', <https://zakon.rada.gov.ua/laws/show/1089-20#Text>.

<sup>135</sup> Law of Ukraine 'On state regulation of activities related to the organisation and conduct of gambling', <https://zakon.rada.gov.ua/laws/show/768-IX#Text>.



3. The hosting provider must restrict access to a website that contains copyright infringements.<sup>136</sup>

The mechanism of blocking Russian websites and content due to the related threats to Ukraine's national security, which has been applied in Ukraine since 2017, should be noted. As of November 2021, 697 web resources remain blocked, mainly in the form of a ban on internet service providers (ISPs) to provide internet access to resources or services on the basis of Decrees of the President of Ukraine.<sup>137</sup> However, no criteria for the inclusion of certain web-resources on the 'sanction list' have been provided by the National Security and Defence Council. Since 24 February 2022, over 300 Russian and pro-Russian websites that could threaten national security or promote aggression against Ukraine have been added to the list of blocked resources.<sup>138</sup>

The Draft Law 'On Media' No. 2693-D, registered in Parliament on 2 July 2020, that introduces restrictions for online media disseminating illegal content, has been significantly improved. Certain provisions were clarified and additional guarantees against abuse were incorporated.<sup>139</sup> For instance, the blocking of online media can be applied under court supervision and only to online media that systematically share hate speech, propaganda of war, terrorist and other illegal content. The co-regulatory body can be engaged and provide its conclusion as to whether the media in question violated the law.

The Ukrainian Parliament has failed to adopt the revised version of the Law 'On Data Protection' aimed at bringing national legislation on personal data protection in line with EU standards introduced by the General Data Protection Regulation (GDPR). However, another Draft Law on Personal Data Protection No. 8153<sup>140</sup> was again registered in Parliament in October 2022. The Draft Laws differed in their approaches to solving the same issues. However, it is difficult to single out a clear reason for the failure to adopt the previous legislation.

## Standard II. The state creates conditions for the enjoyment of digital rights.

The Russian military have significantly damaged telecommunications infrastructure in areas across Ukraine. In October-November 2022, Russia started to deliberately target Ukrainian

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<sup>136</sup> Law of Ukraine 'On copyright and related rights', <https://zakon.rada.gov.ua/laws/show/3792-12#Text>.

<sup>137</sup> Human Rights Platform. 'Monitoring of Digital rights violations in Ukraine, analytical report, monitoring period - November 2021' (in Ukrainian), page 3, <https://www.ppl.org.ua/wp-content/uploads/2021/12/%D0%86%D0%BD%D0%B4%D0%B5%D0%BA%D1%81-%D0%B7%D0%B0-%D0%BB%D0%B8%D1%81%D1%82%D0%BE%D0%BF%D0%B0%D0%B4-2021-%D1%80%D0%BE%D0%BA%D1%83.pdf>.

<sup>138</sup> Digital Security Lab. 'Wartime blocking: ISPs must restrict access to 191 sites' (in Ukrainian), <https://dslua.org/publications/blokuvannia-voiennoho-chasu-provaydery-maiut-obmezhyty-dostup-do-191-saytu/>.

<sup>139</sup> Draft Law 'On Media', [https://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=69353](https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69353).

<sup>140</sup> Draft Law 'On personal data protection', <https://itd.rada.gov.ua/billInfo/Bills/Card/40707>.

power plants that caused systematic power outages across Ukraine and disruption of internet connections. In the Kherson region that was occupied by Russia until November 2022, users experienced internet blackouts, as local ISPs were forced by the Russian military to reroute internet traffic through Russian networks, subjecting users to content restrictions that were in place in Russia, including blocking of access to the key Ukrainian media.<sup>141</sup>

The Ukrainian Government provided alternative connections to regions where infrastructure was damaged, in particular by installing over 11,000 emergency satellite Starlink receivers. The Government also worked with mobile operators to help them launch a national roaming service, allowing subscribers to switch between networks in cases where a signal is jammed.<sup>142</sup>

Since the beginning of 2022, Ukraine has seen an unprecedented escalation of cyberattacks against civil society by Russian actors, including targeted phishing with malware<sup>143</sup> and attacks directed against the websites of independent media organisations.<sup>144</sup> There is no evidence that state institutions in Ukraine have used technologies to silence, surveil or harass CSOs, human rights defenders, or activists for their online activity. At the same time, IMI has registered at least 67 cases of online persecution, threats, and intimidation of media organisations and bloggers since February 2022<sup>145</sup> by Russian actors.

The war has also intensified the widespread use of artificial intelligence (AI) technology, which requires detailed analysis and evaluation of the impact on the privacy of individuals. Many government initiatives involving frequent processing of personal data have also emerged – in particular, this is related to the expansion of the functionality of government applications (e.g., applying for compensation for destroyed property through *Diia* which requires sharing of personal data and photos of the damage).<sup>146</sup> At the same time, the use of AI is still not regulated by law. The only official document that contains ideas for its regulation is the Concept for the Development of Artificial Intelligence in Ukraine,<sup>147</sup> developed by the Ministry of Digital Transformation. However, the concept lacks provisions related to the protection of human rights.

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<sup>141</sup> Reuters. 'Russia reroutes internet traffic in occupied Ukraine to its infrastructure', <https://www.reuters.com/world/europe/russia-reroutes-internet-traffic-occupied-ukraine-its-infrastructure-2022-05-02/>.

<sup>142</sup> Freedom House. 'Freedom on the Net Report 2022', <https://freedomhouse.org/country/ukraine/freedom-net/2022>.

<sup>143</sup> Digital Security Lab. 'Report: Digital Security in the Ukrainian Civil Society Sector during the War', <https://dslua.org/publications/report-digital-security-ukr/>.

<sup>144</sup> IMI. '457 crimes against journalists and media in Ukraine committed by Russia in eight months of the war – IMI', <https://imi.org.ua/en/monitorings/457-crimes-against-journalists-and-media-in-ukraine-committed-by-russia-in-eight-months-of-the-war-i48559>.

<sup>145</sup> Ibid.

<sup>146</sup> Centre for Democracy and Rule of Law. 'Recommendations from NGOs regarding restrictions on human rights during wartime', <https://cedem.org.ua/en/library/restrictions-human-rights-wartime/>.

<sup>147</sup> CMU Decree 'On approval of the Concept of development of artificial intelligence in Ukraine' (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/1556-2020-%D1%80#Text>.

## Recommendations:

- Revise the legislation on sanctions and introduce clear, transparent, and predictable criteria for applying sanctions to the information resources of the Russian aggressor state;
- Implement European standards into national legislation with regard to personal data protection and media regulation to provide safety in the digital space; and
- Introduce special legislation on the use of AI and upgrade current legislation on digital rights in accordance with international standards and with due regard for human rights.

# IV. KEY PRIORITIES

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1. Improve legislation on the registration and operation of CSOs;
2. The digitalisation of services and digital environments for interaction between the authorities and CSOs and the digitalisation of services for volunteers and their organisations;
3. Provide favourable tax conditions for CSOs' activities;
4. Prevent the adoption of new legislative restrictions for CSOs;
5. Ensure the state duty to protect, due investigation of attacks on journalists and civil society activists, particularly against LGBTQ+ activists, environmental activists, and the representatives of national minorities;
6. Advance the practice implementation of the National Strategy for Civil Society Development for 2021-2026 to ensure cooperation between authority bodies and CSOs;
7. Develop various fundraising mechanisms for CSOs, including CSO's business activities, the tax designation mechanism, social contracting, etc;
8. Ensure equal access of CSOs to public funding and that the competitive process for obtaining such funding is transparent;
9. Ensure transparency in the process of cost operating and monitoring the vulnerability of CSOs to money laundering; and
10. Ensure cooperation between CSOs and authority bodies at the national and local levels to strengthen democratic accountability and good governance in Ukraine's integration process with the EU.

# V. METHODOLOGY

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The CSO Meter supports regular and consistent monitoring of the environment in which CSOs operate in the Eastern Partnership (EaP) countries. It consists of a set of standards and indicators in 11 different areas to measure both law and practice. It is based on international standards and best practices. The CSO Meter was developed by a core group of experts from ECNL and local partners from the six EaP countries.

ECNL has worked with the methodology experts RESIS since 2020 on adapting the CSO Meter methodology package to enable for both qualitative and quantitative comparison of the different areas of the enabling environment across the EaP countries and years. The proposal for the research model was consulted on and tested with the extended regional CSO Meter Hub via email and online events. With the updated comparison model, we aim to (i) assess the environment for civil society in each of the 11 areas; (ii) enable tracking of developments/progress throughout the years per country; and (iii) compare the environments regionally.

The country partners, together with other CSOs, part of the CSO Meter Hub, conducted the monitoring process and drafted the narrative country report. They also established Advisory Boards in each country, composed of expert representatives of key local stakeholders. The members of the boards have two main tasks: to review the narrative reports and to assign scores for every standard based on the narrative reports.

The current report covers the period from January – December 2022.

## Monitoring process

The process has included data collection and analysis of the collected information. The main type of research used in this report was desk research. Data collection was complicated by the closure of some state registers and the necessity to make requests to state authorities regarding data which were freely available prior to 24 February 2022.

Important developments for civil society that occurred between the period of data collection and finalisation of the report were included in the executive summary of the report. These were, however, not considered when assigning scores.

## Scoring process

The country researchers and the Advisory Board members in Ukraine reassessed each standard of the 11 areas of the CSO Meter tool in legislation and practice where change has occurred. Accordingly, scores have increased in cases where progress is shown, and decreases are motivated by certain cases of deterioration. The final score of each standard was then calculated according to a formula in which the researchers' score participates with 50 per cent, and the Advisory Board members' average score with 50 per cent. The score of each area is then calculated as the average value of the final scores of each standard and calculated and rounded with one decimal for presentation purposes. Generally, for the scoring procedure, a 7-point scale is used. The extreme values of the scale are conceived as the most extreme or ideal situation or environment. For example, (1) is an extremely unfavourable (authoritarian) environment, while (7) is an extremely favourable (ideal democratic) environment for CSOs. For more information on the CSO Meter tool, the scoring process and the calculation, please visit <https://csometer.info/>.

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