

# CSO METER

Assessing the civil  
society environment in the  
Eastern Partnership countries

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Ukraine

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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 government policy, thus promoting the idea of irreversibility of democratic changes among the public. UCIPR studies socio-political processes in Ukraine and EU Member States, generates ideas and advocates proposals for good governance, carries out civic and political educational activities, and creates social communication platforms. UCIPR was founded at the dawn of Ukraine's independence by students who took part in the Revolution on Granite of 1991. Today, it is one of the leading Ukrainian institutions that systematically works on the strengthening of democracy, good governance, and the exercise of civil and political rights.

European Center for Not-for-Profit Law (ECNL) is a leading European resource and research center in the field of policies and laws affecting civil society. ECNL supports the creation of environments where people can organize freely, jointly shape and contribute to the development of societies. ECNL's activities help build conditions that enable civil society organisations to operate independently, be financially sustainable, have strong governance, engage in policy and mobilize public support. Beyond shaping policies, advocating for enabling environment for civil society, ECNL empowers local stakeholders, monitors implementation of tools and mechanisms, and creates knowledge base, through research and analysis.

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# ABBREVIATIONS

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CSO(s)	Civil society organizations
ECHR	The European Convention on Human Rights
ECtHR	the European Court of Human Rights
EU	the European Union
HIV/AIDS	the human immunodeficiency virus/Acquired immunodeficiency syndrome
LGBT (IQ)	lesbian, gay, bisexual and transgender (Intersex and Questioning)
OHCHR	The Office of the High Commissioner for Human Rights
PFU	Pension Fund of Ukraine
NACP	National Agency on Corruption Prevention
NBU	National Bank of Ukraine
SBU	The Security Service of Ukraine
UCIPR	The Ukrainian Center for Independent Political Research
UN	The United Nations

# I. EXECUTIVE SUMMARY

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The research covers the years of 2017 and 2018 (but also provides an update on some important developments in 2019) and was prepared by experts from UCIPR. The report reviews 30 standards that are part of the CSO Meter and provides recommendations for improvement in each of the 10 covered areas. It also outlines the most important findings and recommendations in the end. The recommendations could serve as a basis for future reforms that the government and the parliament can undertake to improve the environment for civil society in Ukraine.

The process has included data collection through an online survey, focus groups, interviews, desktop research and an analysis of the collected information.

Civil society in Ukraine is in a state of formation and development. The number of CSOs in the form of public associations and charitable organizations with non-profit status is about 38,000 (but if we add organizations without such status there are around 100,000), the number of which is constantly increasing.

But despite its relatively active development since 2014, it continues to remain low at the level of involvement of citizens in the activities of civil society organizations: at 5%, according to the data of the Ilko Kucheriv Democratic Initiatives Foundation.

Notwithstanding the above, the impact of civil society is effective, and trust in CSOs and volunteers remains high. Almost 60% of the population trusts volunteer groups, and 45% trusts CSOs. These values have increased if compared with 53% and 40% respectively in September, 2017<sup>1</sup>

Also, according to the Ilko Kucheriv Democratic Initiatives Foundation, «Among the effective ways of influencing the state authorities, the respondents emphasize first of all active interaction with mass media (71%), the formation of strong associations (unions, movements) of public organizations (63%), appeals to the world community, international organizations (60%), public discussion (round tables, hearings) of urgent social problems and elaboration of their own solutions (58%).

Taking into account the research in ten areas characterizing the civil society environment, we formulated the following conclusions:

The CSO registration procedure is simple enough, quick and free; freedom of association can be considered to be up to the European standards, but there is still a need for public control of legislative initiatives and activities of public authorities to avoid deterioration in conditions. CSO reporting is not overburdened, but from time to time there are threats of introducing new reporting that may involve disclosing sensitive information. Most CSOs operate under the same conditions, but children's, youth, nationally patriotic organizations, as well as veterans' organizations and persons with disabilities can receive financial state support. At the same time, anti-corruption CSOs were pressured by the introduction of electronic declarations of income and property for their activists.

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<sup>1</sup> Opinion polls to assess changes of public awareness of NGOs and their activities <https://dif.org.ua/uploads/pdf/48299455c49a41d40e335.25290509.pdf>

In general, the CSOs' possibilities of taking advantage of any source of income are not restricted. At the same time, due to insufficient legal regulation, using some options is almost impossible or complicated (for example, non-cash lottery, endowments, etc.). Also, the existing tax deductions for individuals and legal entities are not sufficient and the procedure to access them hinders their use significantly. Meanwhile, Ukrainian legislation does not interfere with the engagement of volunteers, but it does not encourage such activity. Moreover, there is a problem of inadequate qualifications of civil society representatives who are responsible for the financial stability of CSOs.

There are no additional requirements or restrictions for CSOs to access foreign and international sources of financing. Regarding state support, there are many problems as there is no appropriate mechanism for selecting CSOs to receive a grant, and there is no good mechanism of monitoring and reporting. So, there is a need to introduce a single competitive mechanism for obtaining funds from the state and local budgets and the development of a mechanism for monitoring held events and expenditures. There is also a need to develop a transparent and understandable mechanism for obtaining premises by CSOs (as in-kind support from the local authorities).

Generally, there are no burdens on organizers or participants of peaceful assemblies. However, peaceful assemblies are not regulated by law; therefore, local acts that limit the right to peaceful rallies envisaged by the Constitution of Ukraine may be adopted. Also, there are cases of interference in peaceful assemblies. In addition, in practice, it is often possible to hear about the poor functioning of the law enforcement system. So, there is a need to ensure legal security and cover the rights and liabilities of organizers and participants of peaceful assemblies define a clear list of legitimate limitations towards peaceful assemblies, outline positive obligations of the state to guarantee peaceful assemblies, as well as guarantee the right for ad hoc counter-assemblies, the use of different kinds of equipment during the demonstrations (for instance, tents, loudspeakers, etc.), and regulate other issues.

CSOs' involvement in the decision-making process has a sufficient legal basis. Problems arise in practice as not all state and local authorities follow the procedures for conducting public consultations or use only one type of consultation. Thus, it is important to strengthen participation by also using other types of consultation mechanisms including joint working groups and in-person discussions of drafts. There are no obstacles to the implementation of advocacy campaigns, even though this field is not regulated by law.

Freedom of opinion and expression is protected even though there are some restrictions because of the war with the Russian Federation. As for the right to privacy, it is periodically being threatened by the state. There were attacks on the right to privacy of CSOs and associated individuals, both at the legislative level and in daily activities. At the same time, CSOs have an adequate level of immunity from criminal prosecution. In the non-controlled areas of Donbas and Crimea, the media environment is characterized by serious violations of the freedom of the press, including censorship by the de facto "authorities".

The legislation contains enough rules to protect CSOs and individuals associated with CSOs from interference and attacks. But in the case of encroachment of these rights, there are no sufficient safeguards and such methods have drawbacks (unclear proceedings of appealing

of legal acts, preventive and collective actions, legal costs, etc.). Besides, despite the fact that there is no clear pressure on CSOs, based on legislation on money laundering and terrorist financing CSOs have some problems in the daily activities connected with mandatory financial monitoring.

State policies facilitate cooperation with CSOs at both state and local levels. All the same, public councils have been working badly, although there are examples of productive work. CSOs should be active and professional to be involved in this collaboration and encourage ministries and other government agencies to duly implement action plans based on the National Strategy on facilitating civil society development.

The survey also showed that CSO representatives do not possess sufficient knowledge of legislation related to their work. For example, they do not appropriately know the differences between an individual entrepreneur, an employee and a volunteer.

Overall, public councils functioned in a bad way, despite the examples of fruitful work.

# II. INTRODUCTION

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## What is the CSO Meter?

The CSO Meter is a tool developed to support the regular and consistent monitoring and assessment of the environment in which civil society organizations (CSOs) operate in the Eastern Partnership countries. It consists of a set of standards and indicators in 10 different areas to measure both law and practice. It is based on a review of international standards and best regulatory practices.

The CSO Meter was developed through a highly consultative and collaborative process, supported by the European Center for Not-for-Profit Law (ECNL). It was co-drafted by a core group of local experts and more than 807 CSOs across the region were consulted in three rounds. A local partner in each of the six Eastern Partnership countries supported the process - Transparency International Anti-Corruption Center (Armenia); MG Consulting LLC (Azerbaijan); Civil Society Institute (Georgia); Promo-Lex Association (Moldova); Ukrainian Center for Independent Political Research (Ukraine).

## What are the key elements of an enabling environment for CSOs?

For the purposes of the tool, the term “CSO” is used to define voluntary self-governing bodies or organizations established to pursue the non-profit-making objectives of their founders or members. CSOs encompass bodies or organizations established both by individual persons (natural or legal) and by groups of such persons. They can be either membership or non-membership based. CSOs can be either informal bodies or organizations, which have legal personality. They may include, for example, associations, foundations, nonprofit companies and other forms that meet the above criteria. The CSO Meter does not consider the environment for political parties, religious organizations or trade unions.

The CSO Meter is split into two main parts:

- **Fundamental rights and freedoms** are essential for the existence of civil society and include: (1) freedom of association, (2) equal treatment, (3) access to funding, (4) freedom of peaceful assembly, (5) right to participation in decision-making, (6) freedom of expression, (7) right to privacy and (8) state duty to protect.
- **Necessary conditions** ensure additional support for the development of civil society (though their existence without fundamental rights and freedoms is not sufficient to ensure an enabling environment) and include: (1) state support and (2) state-CSO cooperation.

## How was the report developed?

The report is prepared by the local partner of the project in Ukraine – UCIPR, following a joint methodology for all six Eastern Partnership countries. The process has included data collection (through an online survey (around 110 CSOs), 3 focus groups, interviews, desktop

research) and analysis of the collected information.

The development of the report has been monitored by an Advisory Board that consists of representatives of key local stakeholders to ensure that the findings and recommendations reflect the overall situation in the country. The participants of the Advisory Board are: Andriichuk Stanislav (Head of the regional Plast's office, the National Scout Organization "Plast"), Gutsal Iryna (Director, ICO "Ukrainian Philanthropic Marketplace"), Kuzmenko Vitalii (Executive Director of the Center for Open Research), Orlovsky Oleksiy (Democratic Practice Program Director, The International Renaissance Foundation), Pechonchyk Tetyana (Chairman of the Board of the Center of Human Rights Information Center Zmina), Prun Alla (Executive Director of Civic Space, NGO Information Analytical Center "Civic Space"), Yatsun Bohdan (Head of Advocacy of Reanimation Package of Reforms Coalition), Liubov Halan (an expert on the rights to peaceful assembly and a fair trial).

The report reviews 30 standards that are part of the CSO Meter and provides recommendations for improvement in each of 10 covered areas. It also outlines the most important findings and recommendations at the end. The recommendations could serve as a basis for future reforms that the government can undertake to improve the environment for civil society in Ukraine.

# III. CONTEXT & BACKGROUND

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## Basic data about the country

Capital: Kyiv

**Population:** 44,622,516 (2018)<sup>2</sup>

**GDP per capita (PPP):** \$3,095.174 (2018)<sup>3</sup>

**Freedom in the World:** 62/100 (Partly Free)<sup>4</sup>

**World Press Freedom Index:** 32.46<sup>5</sup>

**Number of CSOs:** around 100,000<sup>6</sup>

## Overall situation and state of civil society

Although the current political climate is in flux, Ukraine has made some advances toward democratic reform in its recent history. Enacted progressive legislation, along with new mechanisms for civil society engagement in governance, have helped Ukraine move closer to an Association Agreement (AA) with the European Union (EU). The Law on Public Associations and The Law on Charity and Charitable Associations provide an overarching framework for CSOs in Ukraine. The Law on Access to Public Information, the Law on Volunteerism and the Strategy of Government Policy on Civil Society Development are supporting legislation and policy that have helped establish a positive framework for Ukrainian civil society.

Nevertheless, even with these significant and progressive legislative reforms, much more is needed to ensure a regulatory framework that is conducive to civil society, protects political and civil rights in Ukraine and prevents possible rollbacks<sup>7</sup>.

Trust in civil society grew in 2018. Some 60% of citizens trust volunteer groups and 45% trust civic organizations, an increase from 53% and 40% respectively in September 2017<sup>8</sup>. However, there is not enough trust in CSOs and only 7-8% of Ukrainians are actively engaged in their local community life and only 5% of people are engaged with CSOs<sup>9</sup>; 17-21% of people surveyed stated that they rarely participate in meetings and activities<sup>10</sup>.

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2 The World Bank, <https://data.worldbank.org/country/ukraine>

3 The World Bank, <https://data.worldbank.org/country/ukraine>

4 Freedomhouse, <https://freedomhouse.org/report/freedom-world/freedom-world-2018>

5 World Press Freedom Index, <https://rsf.org/en/ranking>

6 Analytical report of National Institute for Strategic Studies Civil Society of Ukraine: Current Practices and Challenges of Development <https://niss.gov.ua/doslidzhennya/naukovi-vidannya/analitichni-dopovidi/gromadyanske-suspilstvo-ukraini-suchasni>

7 [https://www.wilsoncenter.org/sites/default/files/kennan\\_cable\\_30\\_-\\_rojansky\\_minakov.pdf](https://www.wilsoncenter.org/sites/default/files/kennan_cable_30_-_rojansky_minakov.pdf)

8 Opinion polls to assess changes of public awareness of NGOs and their activities <https://dif.org.ua/uploads/pdf/48299455c49a41d40e335.25290509.pdf>

9 The survey of Ilko Kucheriv Democratic Initiatives Foundation <https://dif.org.ua/uploads/pdf/20771406545b589e0b474c31.88986456.pdf>

10 <https://dif.org.ua/uploads/pdf/20771406545b589e0b474c31.88986456.pdf>

The war in Donbas and Crimea, the economy, and corruption remain the three most important issues that the country faces and form the most significant challenges for civil society in Ukraine. An additional challenge is that politicians have repeatedly tried to control international funding for CSOs, restrict CSO operations and create a negative public image of the sector. Recent examples include: legislation labeling civil society organizations as “foreign agents” if they receive funds from international donors; the introduction of asset-declaration for anti-corruption activists and professionals; and a proposal for additional reporting for civil society organizations. At the same time, Ukrainian citizens are not sufficiently engaged in the government decision-making process, both at the national and local levels. Ukrainian authorities remain closed and unaccountable enough to their citizens.

Starting with 2014, Ukraine has faced the economic crisis that has drastically decreased welfare and income of the population. It has further decreased the level of charity contributions and engagement in volunteer activities.

Attacks against activists continue without appropriate investigation by state authorities and are sometimes instigated by authorities themselves. Also, ultra-right groups are increasingly engaging in unlawful actions against CSO representatives. During the period of October-December 2018 there were 52 cases of confrontations or violence.<sup>11</sup>

Finally, homophobia is commonplace in Ukraine and violence and discrimination against LGBT activists routinely goes unpunished. Discrimination based on gender, ethnicity, sexual orientation, and gender identity is broadly accepted by society. Further legislative and policy protection of victims of discrimination is urgently needed.

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11 <https://inrespublica.org.ua/en/aktyvna-hromada/konfrontatsiya-ta-nasylstvo-ultrapravyh-rezultaty-monitoryngu-2.html>

# IV. KEY FINDINGS

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## ON ENABLING ENVIRONMENT

### 4.1 Freedom of association

#### **STANDARD 1: EVERYONE CAN FREELY ESTABLISH, JOIN, OR PARTICIPATE IN A CSO.**

Freedom of association is observed for the majority of the population, including children, adolescents, and foreigners and, with some practical obstacles, for public servants.

The Constitution of Ukraine<sup>12</sup>, as the principal law of Ukraine, guarantees the right of citizens to freedom of association and equality of all associations of citizens before the law. Currently, the most commonly used forms of CSOs in Ukraine are public organizations and charitable foundations. “Public organizations” are regulated under the Law of Ukraine “On Public Associations”<sup>13</sup>, together with civic unions that are, however, not frequently used in practice. “Charitable foundations” are regulated under the Law of Ukraine “On Charity and Charitable Organizations”<sup>14</sup>, which also provides for the possibility of creating charitable organizations in the form of a charitable society, a charitable institution, or a charitable foundation.

A public organization can be founded by a minimum of 2 natural persons. Foreigners and stateless persons who are legally in Ukraine<sup>15</sup> can form the public organization. The founders of a public organization may be individuals who are at least 18 years old and members can be individuals who are at least 14 years old. Founders of youth and children’s public organizations can be natural persons who are at least 14 years old. A member of the youth organization may be a person between the ages of 14 and 35, while members of the children’s public organization can be individuals from the age of 6 to 18.

The minimum number of founders of a civic union is 2 legal entities. Founders of a civic union may be legal entities of private law, including public organizations with legal status. Members of the civic union may be legal entities of private law, including public associations with the status of a legal entity, as well as individuals who are 18 years of age and with full legal capacity.

A charitable society is a charitable organization that is established by at least two founders and operates on the basis of a charter.

A charitable institution is a charitable organization whose founding act defines the assets that one or more founders donate to achieve the goals of charitable activity through such assets and/or income from such assets.

A charitable foundation is a charitable organization that operates on the basis of a charter,

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12 Constitution of Ukraine <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

13 The Law of Ukraine “On Public Associations” dated 22.03.2012 № 4572-V <https://zakon.rada.gov.ua/laws/show/4572-17>

14 The Law of Ukraine “On Charity and Charitable Organizations” dated 05.07.2012 5073-VI <https://zakon.rada.gov.ua/laws/show/5073-17>

15 Article 4 of The Law of Ukraine “On the Legal Status of Aliens and Stateless Persons” dated 22.09.2011 <https://zakon.rada.gov.ua/laws/show/3773-17>

has participants, and is managed by participants who are not obliged to donate to the organization any assets to achieve the goals of the charity. A charity fund can be created by one or more founders.

The founders of charitable organizations may be capable natural persons, who are least 14 years old and legal entities of private law.

Civil servants are not restricted by law from participating in CSOs as ordinary members or as members of governing bodies. However, civil servants and officials of local self-government are obligated to carry out their duties honestly and impartially and to show no adherence to certain individuals or legal entities, public and religious organizations<sup>16</sup>. In practice, often situations arise when a candidate for a civil servant, as one of the informal criteria for occupying a position, terminates membership in a governing body of a public association, in order to avoid the possibility of a conflict of interest.

Public associations may carry out activities with the status of a legal entity or without such status. Charitable organizations can be registered and act only as legal entities. The status of a legal entity gives CSOs the right to open bank accounts, be the executor of a state order and the opportunity to get a non-profit status.

The non-profit status provides the status holders with exemption from the obligation to pay corporate income tax. In order to obtain a non-profit status, CSOs should incorporate in the statute: 1) provisions on the prohibition of distribution of income of the organization among the founders and participants of a CSO; 2) the obligation, in case of liquidation of a CSO, to transfer all assets to another CSO of a similar organizational and legal form, or to the state budget revenue<sup>17</sup>.

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. However, public associations have the right to confirm their all-Ukrainian status in the presence of separated subdivisions in at least 13 oblasts of Ukraine. This status, for now, entitles all-Ukrainian public associations of persons with disabilities and veterans for state financing their projects<sup>18</sup>.

Charitable organizations are also free to choose the territory of activity. Charitable organizations cannot obtain All-Ukrainian or other statuses that would provide special state funding opportunities.

In Ukraine the state does not impose practical obstacles to establishing or joining a CSO or taking part in its activities. Individuals are free to decide whether to join a CSO or take part in its activities.

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16 General Rules of Ethical Conduct for Civil Servants and Local Self-Government Officials: <https://zakon.rada.gov.ua/laws/show/z1203-16>

17 Item 133.4, Article 133 of The Tax Code of Ukraine : <https://zakon.rada.gov.ua/laws/show/2755-17>

18 Resolution of the Cabinet of Ministers of Ukraine No. 1049: <https://zakon2.rada.gov.ua/laws/show/1049-2011-%D0%BF> and Resolution of the Cabinet of Ministers of Ukraine No. 156 <https://zakon.rada.gov.ua/laws/show/156-2018-%D0%BF>

## **STANDARD 2: THE PROCEDURE TO REGISTER A CSO AS A LEGAL ENTITY IS CLEAR, SIMPLE, QUICK, AND INEXPENSIVE.**

State registration of CSOs is free of charge and is quite quick. Registration procedures are clearly defined, however, online registration of charitable organizations and public associations without legal entity status are not available.

Public registration of a public association takes place within 3 business days and is free of charge. The term of consideration of documents of public associations can be extended in case of necessity, but not more than 15 working days. In practice, registrars rarely use this right and review documents for 3 business days. The registration is carried out directly by the Territorial Department of Justice in the oblasts of Ukraine and the city of Kyiv (25 departments). However, documents can also be submitted through the Administrative Services Centers (about 780 centers<sup>19</sup>) and the Secondary Legal Aid Centers (551 centers<sup>20</sup>).

State registration of charitable organizations takes place within 24 hours from the receipt of documents, except for weekends and holidays and is free of charge. For charitable organizations there is no provided extension of terms of consideration of the submitted documents. It is carried out by local self-government bodies<sup>21</sup> (the local Administrative Services Centers (about 780 centers<sup>22</sup>), notaries<sup>23</sup>, accredited subjects of registration<sup>24</sup>), and therefore the range of entities authorized to register charitable organizations is as wide as possible.

The legislation<sup>25</sup> provides for the possibility to submit documents online, however, this service is currently available only for the creation of public organizations<sup>26</sup>.

The list of documents required for the 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 formation of the association, the charter, information on the members of the governing bodies and information about the person submitting the documents for state registration.

The list of documents required for the registration of a charitable organization consists of an application form for founding a legal entity, a decision of the founders on the formation of the charitable organization and the charter.

The list of grounds for refusal of the state registration is clearly defined in the Law on state registration<sup>27</sup>, the refusal on grounds other than specified by law is prohibited. There is also a list of grounds under which the CSOs is granted a 15-day period to correct deficiencies and

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19 Data from the website "The Unified State Administrative Services Portal": <https://my.gov.ua/info/news/207/details>

20 Data of the official website of the Ministry of Justice of Ukraine: [https://minjust.gov.ua/legal\\_aid](https://minjust.gov.ua/legal_aid)

21 The Law of Ukraine "On the State Registration of Legal Entities, Individual Entrepreneurs and Civic Associations" dated 15.05.2005 № 755-IV <https://zakon.rada.gov.ua/laws/show/755-15>

22 Data from the website "The Unified State Administrative Services Portal": <https://my.gov.ua/info/news/207/details>

23 The only registry of notaries: <https://ern.minjust.gov.ua/pages/default.aspx>

24 The list of accredited subjects of state registration: [http://ddr.minjust.gov.ua/uk/2833a6e3b4674f10df3835a095734f85/spysok\\_akredytovanyh\\_subektiv\\_derzhavnoyi\\_reestracyi/](http://ddr.minjust.gov.ua/uk/2833a6e3b4674f10df3835a095734f85/spysok_akredytovanyh_subektiv_derzhavnoyi_reestracyi/)

25 The Law of Ukraine "On the State Registration of Legal Entities, Individual Entrepreneurs and Civic Associations" dated 15.05.2005 № 755-IV <https://zakon.rada.gov.ua/laws/show/755-15>

26 On-line house of justice: <https://online.minjust.gov.ua/>

27 The Law of Ukraine "On the State Registration of Legal Entities, Individual Entrepreneurs and Civic Associations" dated 15.05.2005 № 755-IV <https://zakon.rada.gov.ua/laws/show/755-15>

complete the registration. However, the practice of registrars sometimes does not comply with the provisions of law and cases of groundless refusals to register the association have been recorded. At the same time, in recent years, there has been a significant improvement in the qualifications of registrars, and therefore the situation is changing for the better<sup>28</sup>.

In addition, the decision of the state registrar may be challenged by appealing to the Ministry of Justice of Ukraine, its territorial bodies and in court.

### **STANDARD 3: CSOS ARE FREE TO DETERMINE THEIR OBJECTIVES AND ACTIVITIES AND OPERATE BOTH WITHIN AND OUTSIDE THE COUNTRY IN WHICH THEY WERE ESTABLISHED.**

CSOs are free to determine their objectives and activities, but they are prohibited from conducting anti-constitutional activities. Cases of practical obstruction in the determination of directions of activity are encountered but are not frequent.

Public associations carry out their activities in accordance with the self-government principle, which, among other things, provides for their right to independently determine the activity areas, as well as on the principle of non-interference of state authorities, other state bodies, and authorities in the activities of a public association<sup>29</sup>.

Public associations are free to choose the goals and directions of activity. However, there are restrictions on forming and operating public associations whose purpose (goals) or actions are aimed at jeopardizing Ukraine's independence, overthrowing the constitutional order, violating sovereignty and the territorial integrity of the state, undermining its security, the unlawful takeover of state power, the propaganda of war, violence, incitement to interethnic, racial, religious hatred, attack on human rights and freedoms, threats to public health, propaganda of the Communist and/or National-Socialist (Nazi) totalitarian regimes and their symbols<sup>30</sup>.

In practice, there are cases where registrars recommend to the public associations that they exclude or modify the activities specified in the charter. For example, registrars recommend to the public associations to exclude "charitable activity" from charters as atypical for the public associations.

As for charitable organizations, they must carry out activities according to the purposes and in the areas defined by law<sup>31</sup>. There are 15 areas legally defined for charitable activities: 1) education; 2) health care; 3) ecology, environment and animal protection, 4) 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; 5) 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 and citizen rights and fundamental freedoms; 11) development of territorial communities; 12) development of international cooperation of Ukraine; 13) stimulating the economic growth and development of

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28 Data from the results of the focus-group results among representatives of CSOs.

29 The Law of Ukraine "On Public Associations" dated 22.03.2012 № 4572-VI <https://zakon.rada.gov.ua/laws/show/4572-17>

30 The Law of Ukraine "On Public Associations" dated 22.03.2012 № 4572-VI <https://zakon.rada.gov.ua/laws/show/4572-17>

31 The Law of Ukraine "On Charity and Charitable Organizations" dated 05.07.2012 5073-VI <https://zakon.rada.gov.ua/laws/show/5073-17>

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; 15) promotion of the country's defense and mobilization readiness, protection of the population in emergencies of peaceful and martial law.<sup>32</sup> Therefore, they are more limited in defining the goals and directions of activities in comparison with public associations. By contrast, public associations do not have a closed list of areas in which they can operate.

A separate subdivision of a foreign non-profit organization in Ukraine may be accredited in accordance with a legally established procedure, without the status of a legal entity. There are no restrictions on the purpose and directions of the activity of such a unit, as compared with other public associations.

In the vast majority of cases, registrars are limited to verbal recommendations on the formulation of goals or activity areas, however, they do not use it as a reason for refusal of registration.

However, until recently, in case the public associations enshrined in the charter the right to engage in business activity, registrars recommended to eliminate that provision to avoid problems with receiving non-profit status from the tax authorities. At present, the situation is changing, the public has managed to obtain clarification from the Ministry of Finance of Ukraine<sup>33</sup> that public associations are allowed to carry out business activities.

**STANDARD 4: ANY SANCTIONS IMPOSED ARE CLEAR AND CONSISTENT WITH THE PRINCIPLE OF PROPORTIONALITY AND ARE THE LEAST INTRUSIVE MEANS TO ACHIEVE THE DESIRED OBJECTIVE.**

The responsibility for the violation of the law for CSOs is comparable with business entities. CSOs may be terminated in court, but this is rarely the case. The sanctions for non-profit CSOs are clearly defined but can be applied without warning.

In general, violations of the provisions on reporting forms and procedures established for all legal entities do not provide for special sanctions for CSOs; therefore, responsibility for the violation of the law, including to the extent of requirement of different types of reporting, is standardized.

A public association may be terminated in court, but only in case of breach of the provisions of the Constitution of Ukraine and the Law on Public Associations regarding the organizations whose purpose (goals) or actions are aimed at jeopardizing Ukraine's independence, overthrowing the constitutional order, violating sovereignty and the territorial integrity of the state, undermining its security, the unlawful takeover of state power, the propaganda of war, violence, incitement to interethnic, racial, religious hatred, attack on human rights and freedoms, threats to public health, propaganda of the Communist and/or National-Socialist (Nazi) totalitarian regimes and their symbols. Termination of an organization by court is an exceptional sanction and it is rarely implemented in practice.

<sup>32</sup> Article 3 of The Law of Ukraine "On Charity and Charitable Organizations" dated 05.07.2012 5073-VI <https://zakon.rada.gov.ua/laws/show/5073-17>

<sup>33</sup> Letter the Ministry of Finance of Ukraine dated 06.02.2019 № 11210-09-5 / 3214 <http://www.visnuk.com.ua/ru/publication/100010919-gromadski-obyednannya-pidpriyemnitska-diyalnist-dopuskayetsya-ale>

CSOs that have non-profit status must comply with the requirements on non-distribution of CSO's income among the founders or members and use the income only to achieve the goals and activities defined in the charter. If the CSO violates these conditions, it is deprived of non-profit status and in the future, such CSO becomes a regular taxpayer of corporate income tax. The CSO does not receive any warning prior to its status being withdrawn but can re-apply for it in the future.

#### **STANDARD 5: THE STATE DOES NOT INTERFERE IN INTERNAL AFFAIRS AND OPERATION OF CSOS.**

In general, the state does not create artificial obstacles to the activities of CSOs. The reporting procedures and forms are clearly defined, understandable and can be submitted online. In contrast, the requirement for electronic declarations for anti-corruption activists was absolutely discriminatory

Majority of the active CSOs in Ukraine have a non-profit status, which determines the procedure and form of their reporting. CSOs with non-profit status annually, according to the results of the year, submit to the tax authorities a report on the use of its income.

In addition to the above report, the financial statements of the organization shall be attached to the report. CSOs with non-profit status have a right to prepare simplified financial statements which consist of the Balance Sheet and the Income Statement<sup>34</sup>. At the request of the organization (founders, donors, etc.) when appropriate (depending on its turnover and variety of activities, etc.) - it is also entitled to prepare full, not simplified financial statements.

For public associations a special annual form of statistical reporting is required with general information about the activity of the organization, the number of the members of the organization, etc.

CSOs with non-profit status also generally submit other forms of state statistical surveys that are not specific to them (in the area of "Salaries and social and labor relations", etc.). Additional reporting requirements are established only in cases where the CSO obtains additional benefits from cooperation with the state. For example, CSOs that receive funding from international technical assistance projects to provide ongoing monitoring submit an annual report on the status of the project to the relevant executive authority acting as the beneficiary of such a project<sup>35</sup>.

CSO inspections, in particular by tax authorities, are conducted on a general basis. The frequency of inspections of taxpayers is determined by the degree of risk (high, medium and low) involved in their activities<sup>36</sup>. Taxpayers with a low degree of risk are inspected not more than once in three calendar years; the medium, not more than once every two calendar years; and the high, not more than once in a calendar year. So, in most cases, the activities of CSOs do not entail risks for them to carry out more frequent audits. Tax reports can be submitted online or in paper form. The reports to the statistical authorities may also be sent electronically or by post.

34 The order of the Ministry of finance of Ukraine dated 25.02.2000 № 39 <https://zakon2.rada.gov.ua/laws/show/z0161-00>

35 Resolution of the Cabinet of Ministers of Ukraine "On Creation of a Unified System for the Involvement, Use and Monitoring of International Technical Assistance" dated February 15, 2002 № 153 <https://zakon.rada.gov.ua/laws/show/153-2002-%D0%BF>

36 Taxpayer risk criteria <http://sfs.gov.ua/baneryi/zupinennya-reestratsii-pn/357077.html>

In 2017 amendments to the anti-corruption legislation were adopted<sup>37</sup> that obligated members of anticorruption public associations to submit electronic declarations about the property and income of such activists. Thanks to the efforts of the Ukrainian civil society, the Constitutional Court of Ukraine rendered the asset declaration for activists unconstitutional<sup>38</sup>.

#### SPECIFIC RECOMMENDATIONS UNDER AREA 1:

- Ensure online registration of charitable organizations, public associations without the status of a legal entity and registration of changes to information about CSOs (changes to the charter, change of the leader, etc.)
- Strengthen the capacity of tax authorities and CSOs to ensure that the CSO right to entrepreneurship is implemented in practice. .
- Reduction of the terms of registration of public associations to one day and stop abusing the possibility of extending the term of documents review (currently 15 calendar days).

## 4.2 Equal treatment

### STANDARD 1: THE STATE TREATS ALL CSOS EQUITABLY WITH BUSINESS ENTITIES.

For CSOs, the reporting requirements, the procedures for inspecting their activities and legal basis for access to funding are quite comparable to the business entities. Registration fees are much lower for CSOs. Business entities have better access to public procurement but have a higher risk of additional tax inspections.

Consideration of documents submitted for the state registration of a legal entity, regardless of organizational and legal form (including charitable organizations) lasts one day, while for a public association it lasts three days.

Primary state registration of CSOs in Ukraine is free, similarly to business entities registration. At the same time, the registration fee for amendments to information about CSOs is three times lower than for other legal entities.

The requirements for CSOs reporting are comparable to the ones for business entities. The state inspections of CSOs are not more frequent than business entities. In fact, business entities as profit-making businesses are the subject of greater government attention.

In case of public procurement, the legislation<sup>39</sup> establishes a non-discriminatory approach according to which organizations with all forms of ownership and legal forms may participate in public procurement procedures on an equal basis. However, in practice, instances of biased attitude towards CSOs as potential suppliers of goods and services arise quite frequently. Often, the tender documentation contains requirements for an implementing entity, which

<sup>37</sup> The Law of Ukraine "On Prevention of Corruption" dated 14. 10. 2014 No. 1700-VII <https://zakon.rada.gov.ua/laws/show/1700-18>

<sup>38</sup> Ukrainian Constitutional Court Cancels Asset Declarations for Activists: <http://ecnl.org/ukrainian-constitutional-court-cancels-asset-declarations-for-activists/>

<sup>39</sup> The Law of Ukraine "On Public Procurements" <https://zakon.rada.gov.ua/laws/show/922-19#n129>

can only be a state-owned enterprise, municipally-owned company or business entities (experience of executing government orders, requirements for the period in which the tender participant must have had a similar contract, etc.).<sup>40</sup> However, the DoZorro Monitoring Portal<sup>41</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, potential bidders, to give feedback to the contracting authority, to discuss and evaluate the conditions of specific procurement, to prepare and submit a formal request to the controlling authorities. However, completely eliminating discriminatory norms from the bidding documents through the use of Dozorro is difficult, as in 2018 alone, 1.252 million tender procurements were announced.

The legal basis for access to funding for CSOs is no less favorable than for commercial companies.

#### **STANDARD 2: THE STATE TREATS ALL CSOS EQUALLY WITH REGARD TO THEIR ESTABLISHMENT, REGISTRATION, AND ACTIVITIES.**

Most CSOs operate under the same conditions, but children's, youth, nationally patriotic organizations, as well as veterans' organizations and persons with disabilities can receive financial state support. At the same time, anti-corruption CSOs were pressured by the introduction of electronic declarations for their activists.

In general, CSOs are treated equally by the law, however there are several exceptions to this, including preferential treatment of youth and children's public associations, national-patriotic organizations, public organizations of veterans and civic organizations of persons with disabilities. Legislation<sup>42</sup> provides opportunities for state financing of these organizations, due to the priority areas of their activities and, to some extent, Soviet heritage.

However, the 2017 revisions of the anti-corruption legislation<sup>43</sup>, which obliged members of anticorruption public associations to submit electronic declarations, have caused anxiety. These obliged anti-corruption activists to declare their assets and income. The form of the declaration does not request the activists to provide information about their anti-corruption activity, only information on the property of the activist and sources of his income. Such legislative changes and initiatives are a direct pressure on anti-corruption organizations. Therefore, the decision of the Constitutional Court of Ukraine<sup>44</sup> on the unconstitutionality of the relevant amendments to the legislation is absolutely logical. Moreover, cases of harassment by law enforcement bodies of organizations and foundations which partially carry out ac-

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40 Data from the results of the focus-group results among representatives of CSOs.

41 DoZorro Monitoring Portal <https://dozorro.org/tools>

42 Article 87, Budget Code of Ukraine: <https://zakon.rada.gov.ua/laws/show/2456-17>.

43 The Law of Ukraine "On Prevention of Corruption" dated 14. 10. 2014 № 1700-VII <https://zakon.rada.gov.ua/laws/show/1700-18>.

44 Ukrainian Constitutional Court Cancels Asset Declarations for Activists <http://ecnl.org/ukrainian-constitutional-court-cancels-asset-declarations-for-activists/>.

tivities and provide assistance on the uncontrolled territories in Donetsk and Luhansk oblasts are recorded<sup>45</sup>.

CSOs established by foreign legal entities or individuals are not subject to discrimination. However, the legislation specifies some special requirements for documents submitted for registration by foreign natural persons or legal entities (e.g., documents issued in accordance with the legislation of a foreign state should be legalized through consular legalization or placement of apostille). Therefore, in general, the procedure for registering CSOs by foreigners is no different from the procedure provided for residents of Ukraine.

#### SPECIFIC RECOMMENDATIONS UNDER AREA 2:

- Government authorities should not limit CSO engagement in procurement processes during the development of tender documentation.
- Develop the mechanisms of competitive approach to the provision of state funding for CSOs' activities.
- Encourage the sector to voluntarily disclose information about its activities.

## 4.3 Access to funding

### STANDARD 1: CSOS ARE FREE TO SEEK, RECEIVE, AND USE FINANCIAL AND MATERIAL RESOURCES FOR THE PURSUIT OF THEIR OBJECTIVES.

The legislation of Ukraine does not restrict the seeking, receiving, and using financial and material resources from any source. At the same time, there is insufficient regulation or even lack of regulation at the level of the special law of some funding mechanisms. This effectively makes it impossible to use a number of sources such as endowments, non-cash lotteries, etc.

The Ukrainian legislation does not impose restrictions on seeking, receiving, and using financial and material resources for CSOs. The following are several examples of available resources: free transfer to the CSO's ownership of funds and other property, rights of use and other property rights, income from property and property rights, as well as a free-of-charge cessation of property rights to the CSOs; free provision of services and works in favor of the beneficiaries; charitable co-operation and implementation of other charitable activities contracts; public collection of charitable donations; management of charitable endowments; execution of wills, testamentary renunciations and inheritance agreements for charitable activities; charity auctions, non-cash lotteries, contests and other charitable events not prohibited by law.

At the same time, there are several regulatory deficiencies which do not allow CSOs to use some types of financial and material resources. For example, there is no definition of a charitable lottery, which in fact greatly complicates or even prevents the use

<sup>45</sup> Law enforcers accuse public organizations of allocating funds and funding DPR and LPR <https://gurt.org.ua/news/recent/41208/>.

of this opportunity<sup>46</sup>. In practice numerous CSOs<sup>47</sup> have lost bank deposits or endowments and could not receive any compensation, because the banks went bankrupt.

Receiving money through SMS (charity telecommunication message) is also almost impossible<sup>48</sup>, as telecom operators want to have guarantees of the CSOs' (with non-profit status<sup>49</sup>) integrity, but there are no mechanisms for such verification. Moreover, the law stipulates that the entire amount of money donated by people should go to charity - charitable organizations have no right to retain up to 20 % of funds to cover administrative costs<sup>50</sup>.

In addition to the abovementioned, public associations and charitable organizations have the right to carry out economic activities. Special legislation<sup>51</sup> provides this right, and the tax code does not prohibit it. Moreover, the Ministry of Finance confirmed the right of non-profit organizations to carry out economic activities in 2019.<sup>52</sup> This solved the past problem wherein some tax authorities<sup>53</sup> denied the right of public associations to engage in entrepreneurial activities. Problems arose for CSOs in practice for several reasons: (1) the Civil Code of Ukraine and the Commercial Code of Ukraine contain the concept of "entrepreneurial activity" that contradict each other; (2) civil servants and a number of members of civic associations do not believe that civil society organizations can engage in economic activity and have a non-profit status.

Generally, CSOs have similar reporting obligations as other legal entities. There are two special reporting obligations for CSOs. One of them is the report on using income (profits) by a non-profit organization<sup>54</sup>. This report for CSOs is unified regardless of types of CSOs, types of income, place of operation and annual turnover<sup>55</sup>. The other one is the report<sup>56</sup> to the statistical authorities, yet only public organizations are obliged to submit it.

Also, CSOs are required to submit other reports if they receive some special type of funding such as international technical assistance<sup>57</sup>, humanitarian aid<sup>58</sup> or if they have economic rela-

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46 For example, para.9 of part 1 of Art.5 of the Law of Ukraine "On Charities and Charitable Activities" Charitable organizations have the right to conduct non-cash lotteries, but the definition of what a cash lottery is is absent. In this regard, there is a mixed interpretation, when a lottery is expected to involve a prize. In this case, it can be considered as a classic lottery. In Ukraine there is a ban on lotteries without obtaining a license and granting it the status of a state lottery. The specifics of the state monopoly on lottery activity are established by Article 365-1 of the Commercial Code of Ukraine, Article 4 of the Law of Ukraine «On State Lotteries in Ukraine».

47 Bohdan Hawrylyshyn Charitable Foundation, INTERNATIONAL CHARITABLE FUND COMMUNITY WELLBEING, All-Ukrainian Jewish Charitable Foundation "Hesed-Arieh" and so on.

48 Only about five charities can receive funds this way.

49 Non-profit status means that CSOs have registration in the Register of non-profit agencies and organizations. These CSO do not pay profit tax.

50 Part 4 Article 7-1of the Law of Ukraine on charity and charitable organizations.

51 The Law of Ukraine On None-governmental Organizations and The Law of Ukraine on Benefit and Organizational Organizations.

52 The letter of the Ministry of Finance dated 6.02.2019 No. 11210-09-5/3214.

53 As of the late 2018 – Kharkiv, Vinnytsya and Odesa tax authorities.

54 They submit this report when they have a non-profit status. Non-profit status means that CSOs have registration in the Register of non-profit agencies and organizations. These CSO do not pay profit tax.

55 Should be taken into account that annual turnover affect the type of annex to the report.

56 Report on the activities of the NGO <https://zakon.rada.gov.ua/rada/show/v0221832-16>.

57 Project (Program) Status Report CMU Resolution No. 153 of February 15, 2002 On the establishment of a unified system for attracting, using and monitoring international technical assistance <http://zakon0.rada.gov.ua/laws/show/153-2002-%D0%BF/print1509543885193778>.

58 Report on the presence and distribution of humanitarian aid in foreign currency (Free Form); Report on the presence and distribution of humanitarian aid (goods) Recommended form <http://www.msp.gov.ua/news/8463.html>.

tions with individuals/individual entrepreneurs or have regular employees<sup>59</sup> etc.

But if CSOs do not have incomes and property they do not have to report to the tax authorities.

There are no separate requirements for CSOs and their employees when opening bank accounts and receiving bank transfers. . There are some cases when banks require additional documents to transfer money<sup>60</sup>. Most of these situations are connected with transferring money abroad<sup>61</sup>.

## **STANDARD 2: THERE IS NO DISTINCTION IN THE TREATMENT OF FINANCIAL AND MATERIAL RESOURCES FROM FOREIGN AND INTERNATIONAL SOURCES COMPARED TO DOMESTIC ONES.**

Foreign and international sources of financing are not subject to additional requirements or restrictions for CSOs. At the same time, there were attempts to introduce additional reporting for CSOs that was not adopted during 2017-2018.

Receiving income from foreign sources is not limited by law and is not subject to additional reporting. However, it should be noted that during 2017 and 2018, there were two attempts to introduce additional reporting for CSOs receiving funding from abroad. This is a bill number 6675 dated 07/10/2017 (by the President) and No. 8501 dated June 20, 2018<sup>62</sup> (by the MP Serhiy Taruta).

Although there is no legal limitation to foreign funding, Ukraine has strict procedures for registration, obtaining and providing humanitarian aid. For example, CSOs have to be registered in the register of humanitarian aid recipients<sup>63</sup>: there is a complicated procedure of recognition of goods, money, including in foreign currency, services and work as humanitarian aid<sup>64</sup>.

The procedure of recognition as humanitarian aid means that the working group on humanitarian aid under the Ministry of Social Policy decide based on documents whether goods, money, including in foreign currency, services and work is humanitarian aid or not. Humanitarian aid is the targeted free cash or in-kind assistance provided by foreign and domestic donors to recipients of humanitarian aid in Ukraine or abroad who need it due to social insecurity, financial insecurity, difficult financial situation, emergence of a state of emergency, in particular as a result of natural disasters, accidents, epidemics and epizootics, environmental, manmade and other disasters that pose a threat to the life and health of the population or serious illness of specific individuals, as well as to prepare for the armed defense of the state and its protection in the event of armed aggression or armed conflict.

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59 Order of the Ministry of Finance No. 4 of 13.01.2015 On Approving the Form of Tax Calculation of the Amounts of Income Accrued (Paid) in favor of Natural Persons and the Amounts of Tax Withheld (Form No. 1DF) paid to individuals and amounts withheld from them tax; Order of the Ministry of Finance No. 4 of 13.01.2015 On Approving the Form of Tax Calculation of the Amounts of Income Accrued (Paid) in favor of Natural Persons and the Amounts of Tax Withheld (Form No. 1DF) paid) to individuals and amounts withheld from them tax; Project (Program) Status Report  
CMU Resolution No. 153 of February 15, 2002 On the establishment of a unified system for attracting, using and monitoring international technical assistance  
<http://zakon0.rada.gov.ua/laws/show/153-2002-%D0%BF/print1509543885193778>.

60 Banks require additional documents because they have to comply with anti-money laundering legislation.

61 This information was obtained during the focus group.

62 The bill No. 8501 [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=64255](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64255).

63 Decree CMU No. 39 of January 30, 2013 On approval of the Procedure for registration of humanitarian aid recipients.

64 Order of the Ministry of social Policy No.573 of April 06, 2017 on approval of the List of documents submitted for the recognition of cargoes (goods), funds, including in foreign currency, works performed, services provided by humanitarian aid.

Also, unfortunately, there is a negative attitude towards CSOs receiving funding from foreign sources, and they are even called “grant-eaters”.

It is also possible to obtain resources for achieving the goals and objectives of civil society organizations through crowdfunding platforms or online fundraising platforms, though difficulties arise with the transfer of funds from abroad. The main cause may be the FATF recommendations since banks restrict operations like charitable activities (transfers to Ukraine) as high risk (fraud) activities.

#### SPECIFIC RECOMMENDATIONS UNDER AREA 3:

- Ensure the protection of CSO funds, in particular endowments, in case of bank bankruptcy.
- There is a need to:
  - define what is charitable lottery;
  - provide the possibility to receive SMS-donations to all CSOs; and
  - improve the legislation to allow CSOs to use up to 20% from the money received through SMS (charity telecommunication message) for administrative costs.
- Ensure compliance of the Ukrainian legislation with the directive No. 918/83, dated March 28, 1983, and simplify the procedure of recognition of humanitarian assistance in particular
- There is a need to raise awareness among CSOs about the various mechanisms for obtaining resources.

## 4.4 Freedom of peaceful assembly

### STANDARD 1: EVERYONE CAN FREELY ENJOY THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY BY ORGANIZING AND PARTICIPATING IN ASSEMBLIES.

The right to peaceful assembly is sufficiently free and not restricted. At the same time, there are frequent problems with the organization or holding of assemblies.

Freedom of peaceful assembly in Ukraine is guaranteed by the Constitution<sup>65</sup>. However, there is no specific law that regulates the issues of organizing and holding peaceful assemblies.

Despite the fact that the right to participate in peaceful assemblies is formulated in the Constitution of Ukraine<sup>66</sup> as one that belongs to the citizens of Ukraine, every person, regardless of nationality, can enjoy this right because Ukraine has ratified the European Convention of Human Rights where the right of peaceful assembly is formulated as the right that belongs to everyone regardless of nationality or citizenship. There are also no examples of restrictions

65 According to Article 39 of the Constitution of Ukraine, citizens have the right to gather peacefully, without weapons and to hold meetings, rallies, campaigns and demonstrations, about which executive or local self-government agencies are notified in advance.

66 The Constitution of Ukraine <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.

of this right based on nationality or citizenship in the case law. The right of children to participate in peaceful assembly is not explicitly provided for in national legislation, but is recognized in the light of the ratification by Ukraine of the Convention on the Rights of the Child.

At the legislative level, there are no disproportionate restrictions on the time, place and method of holding a peaceful assembly. Separate restrictions on the location of the assembly are due to the specifics of the territory. For example, according to the Law “On the Use of Nuclear Energy and Radiation Safety”<sup>67</sup>, the holding of a peaceful assembly is prohibited in the sanitary protection zone.

At the same time, certain restrictions on the place of holding a peaceful assembly exist at the local level. In particular, the “Interim Provision on the Procedure for Considering Issues Regarding the Organization and Holding of Meetings, Rallies, Trips and Demonstrations in Kharkiv”<sup>68</sup> specifies certain places for holding peaceful gatherings that may not coincide with the preferences of the demonstrators. Similar provisions also exist in some other cities. Despite the fact that human rights defenders often successfully challenge such acts as not complying with the law, the practice of their use at the local level remains controversial.

Ukraine’s legislation does not apply the terms “spontaneous assembly”, “simultaneous meetings”, or “counter-meetings”. At the same time, according to the Law of Ukraine “On the Implementation of Decisions and Application of the Case Law of the European Court of Human Rights”<sup>69</sup>, the decision of the ECHR is the source of law in Ukraine. Thus, we can assume that spontaneous assemblies, simultaneous assemblies and counterparts are allowed, taking into account the case law of the European Court on such actions.

The situation in practice is as follows. After the entry into force of the new edition of the Code of Administrative Justice of Ukraine (in December 2017), there are no examples of arbitrary restrictions on the right to hold peaceful assembly in court. At the same time, there are some cases of dispersal of peaceful gatherings with the participation of law enforcement agencies in practice<sup>70</sup>. The law enforcement agencies do this without any appropriate court authorization. As an example, in March 2018 a tent camp under the Verkhovna Rada of Ukraine was forcibly dispersed, presumably for political reasons<sup>71</sup>.

In Ukraine, there are no cases of systematic coercion or prohibition of persons, groups of persons, or CSOs from participating in meetings. At the same time, the phenomenon of so-called “paid” peaceful gatherings is relatively common, where participants take part in meetings not for ideological reasons, but for a certain reward.

Human rights activists have also reported that there are examples where the authorities do not recommend the holding of peaceful gatherings with a certain topic (for example, the action of representatives of the feminist movement in Lviv), arguing that peaceful gatherings can be attacked by radically-minded residents. This is not a direct intimidation, but it is a

67 The Law of Ukraine On Nuclear Energy Use and Radiation Safety <https://zakon.rada.gov.ua/laws/show/39/95-%D0%B2%D1%80>.

68 Provisional Provisions on the Procedure for Consideration of Issues in Organizing and Holding Meetings, Rallies, Campaigns and Demonstrations in Kharkiv <http://kharkiv.rocks/reestr/633378>.

69 The Law of Ukraine “On the Implementation of Decisions and Application of the Case Law of the European Court of Human Rights” <https://zakon.rada.gov.ua/laws/show/3477-15>.

70 This information was obtained during the focus group.

71 The article <https://www.radiosvoboda.org/a/29080095.html>.

form of a psychological pressure on members of peaceful assemblies.

There are also examples of the detention of potential participants prior the planned date of the peaceful assembly, without explaining the reasons and indictments (on January 19, 2018, in Kyiv at the meeting to commemorate S. Merkelov, A. Baburova<sup>72</sup>).

Notwithstanding the judgment of the European Court of Human Rights in the case of *Vyerentsov v. Ukraine*<sup>73</sup>, administrative liability for “violating the procedure of organizing and holding peaceful assembly” has not been abolished in Ukraine, despite the fact that no law determines such a procedure. Periodically, this article is enforced by law enforcement agencies, police minutes against activists are drawn up, in particular in cases where the organizers of the assembly did not notify about the planned peaceful assemblies.

## STANDARD 2: THE STATE FACILITATES AND PROTECTS PEACEFUL ASSEMBLIES.

Examples of restrictions on the freedom of peaceful gatherings are rare. These restrictions are often contained in regulations of local governments.

In Ukraine, permission to conduct 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, however, they may be defined at the local level<sup>74</sup>.

Specific terms for advance notice apply only to one category of peaceful assembly. In accordance with the law “On the Procedure for Resolving Collective Labor Disputes (Conflicts)”<sup>75</sup>, the person who heads the strike must notify the planned meeting outside the territory of the institution, enterprise, organization of the relevant executive body of state or local government no later than three days before the peaceful assembly.

At the same time, during the focus group, human rights activists reported that local authorities are deliberately misleading activists about the need to obtain permission to hold peaceful gatherings or the need to submit a notice 10 days before the scheduled start of the meeting (such a case is recorded in Mariupol).

Since the end of 2017, examples of restrictions on the freedom of peaceful gatherings are rare. According to judicial statistics in 2018, only 3 cases of restrictions on the freedom of peaceful assembly were recorded. The analysis of these decisions gives no grounds to assert that the imposed restrictions are clearly disproportionate. In particular, according to the decision<sup>76</sup> of the Dnipropetrovsk Regional Administrative Court, the way to restrict the peaceful assembly was to ban the use of the symbols of totalitarian regimes during a peaceful assembly based on the provisions of national legislation. In accordance with the decision<sup>77</sup> of the Zaporizhzhya

72 The article <https://commons.com.ua/uk/19-sichnya-akciya-kontrakciya-i-ohorona-poryadku/>.

73 The case [https://zakon.rada.gov.ua/laws/show/974\\_945](https://zakon.rada.gov.ua/laws/show/974_945).

74 According to the interpretation of the Constitutional Court of Ukraine in case No. 1-30/2001 on the early notification of the holding of peaceful assembly, such notification must be made within a reasonable time period preceding the event. At the same time, the specific terms of early notification, in the opinion of the Constitutional Court, should be subject to legislative regulation.

75 The law «On the Procedure for Resolving Collective Labor Disputes (Conflicts)». <https://zakon.rada.gov.ua/laws/show/137/98-%D0%B2%D1%80>.

76 Court Decision [www.reyestr.court.gov.ua/review/73809224](http://www.reyestr.court.gov.ua/review/73809224).

77 Court Decision [www.reyestr.court.gov.ua/review/71933376](http://www.reyestr.court.gov.ua/review/71933376).

Regional Administrative Court, the holding of a counter-demonstration was limited by establishing different times of the planned events for the protesters. This way of limiting is not clearly disproportionate, given the circumstances set out in the court decision. These decisions were issued prior the planned date of holding the assembly.

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

### **STANDARD 3: THE STATE DOES NOT IMPOSE UNNECESSARY BURDENS ON ORGANIZERS OR PARTICIPANTS IN PEACEFUL ASSEMBLIES.**

Generally, there are no burdens on organizers or participants in peaceful assemblies. But cases of interference in peaceful assemblies appear.

Legislation does not contain provisions on the responsibility of organizers for the maintenance of public order or the actions of other persons during the peaceful assembly. Moreover, the legislation practically does not specify the duties of law enforcement bodies, other bodies of state power and local self-government with regard to holding peaceful gatherings. There are no detailed instructions on the actions of law enforcement agencies if instances of violence occur. At the same time, Article 12 of the Law of Ukraine “On the National Guard of Ukraine”<sup>78</sup> refers to the functions of the National Guard to participate in ensuring of public safety and the protection of public order during peaceful assemblies.

According to article 34 of the Constitution of Ukraine, everybody has a right freely to collect, keep, use and diffuse information orally, in writing or in another way - on their own choice. This general rule also applies to the distribution of information about peaceful assemblies.

In Ukraine, there are cases <sup>79</sup>where public authorities or local authorities deliberately spread disinformation about holding peaceful assemblies. For example, according to human rights activists, the Irpin City Council placed a fake application about a LGBT march that sparked a hatred campaign against members of this group. Moreover, there are cases of imposing disproportionate restrictions on the use of technical equipment during peaceful gatherings. For example, law enforcement agencies draft administrative protocols for breach of the urban development rules when there are tents set up during peaceful assemblies.

The state authorities do not collect fees for holding peaceful assemblies.

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<sup>78</sup> The Law of Ukraine “On the National Guard of Ukraine” <https://zakon.rada.gov.ua/laws/show/876-18>.

<sup>79</sup> This information was obtained during the focus group.

#### **STANDARD 4: LAW ENFORCEMENT SUPPORTS PEACEFUL ASSEMBLIES AND IS ACCOUNTABLE FOR THE ACTIONS OF ITS REPRESENTATIVES.**

Legislative regulation of law enforcement participation in peaceful gatherings is insufficient. In addition, in practice, it is often possible to hear about the poor functioning of the law enforcement system.

In Ukraine, there are general provisions<sup>80</sup> on the use of force by law enforcement agencies, which extend, inter alia, to members of peaceful assemblies. There is currently no specific document that would define the sequence of law enforcement officers' actions on the use of force during a peaceful assembly.

Excessive use of force in relation to the members of the assembly constitutes the elements of crime envisaged by Article 365 of the Criminal Code of Ukraine (excess of authority or official duty by a law enforcement officer). The criminal law also provides for liability for the obstruction of the organization or holding of peaceful assembly in accordance with Article 340 of the Criminal Code.

Law enforcement officials do not always provide prior notice before applying force. For instance, enforcement agencies elbow out the meeting participants from the venue without notice<sup>81</sup>.

There are also cases of violence against peaceful assemblies by nationalist paramilitaries. Human rights activists<sup>82</sup> believe that the police does not always respond appropriately and timely to such cases, and does not prevent counter-demonstrators from disrupting the key peaceful assembly. The representatives of the LGBT community and the feminist movement are particularly vulnerable groups in this context.

The prosecution of perpetrators is complicated due to the lack of clear identification (individual numbers on police uniforms) of law enforcement officers who commit criminal acts against participants in peaceful assemblies. In addition, the most massive violation is the inactivity of law enforcement officers in case of violence or provocation against members of peaceful assemblies<sup>83</sup>. We are not aware of cases where individuals guilty of inactivity of law enforcement bodies in these events were held to any kind of liability.

At the same time, individual cases of punishment of law enforcement officers for violence against participants in peaceful assembly do exist in practice. For example, according to the verdict<sup>84</sup> of the Court of Appeal of Chernihiv Oblast, a law enforcement officer was convicted of illegal actions to prevent peaceful assembly during the Revolution of Dignity.

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80 For instance article 44 of the law "On national police" <https://zakon.rada.gov.ua/laws/show/580-19/print>.

81 Civil space and fundamental freedoms ahead of the 2019-2020 presidential, parliamentary and local elections in Ukraine [https://reliefweb.int/sites/reliefweb.int/files/resources/CivicSpaceFundamentalFreedoms2019-2020\\_UK.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/CivicSpaceFundamentalFreedoms2019-2020_UK.pdf).

82 This information was obtained during the focus group.

83 Civil space and fundamental freedoms ahead of the 2019-2020 presidential, parliamentary and local elections in Ukraine [https://reliefweb.int/sites/reliefweb.int/files/resources/CivicSpaceFundamentalFreedoms2019-2020\\_UK.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/CivicSpaceFundamentalFreedoms2019-2020_UK.pdf).

84 Court Decision [www.reyestr.court.gov.ua/review/66842939](http://www.reyestr.court.gov.ua/review/66842939) .

#### SPECIFIC RECOMMENDATIONS UNDER AREA 4

- Annul administrative liability for the violation of the rules on organization and holding of peaceful assemblies (Article 185-1 of the Code of Ukraine for administrative offenses).
- Annul the regulations of the local self-government authorities that limit the freedom of peaceful assemblies and violate the Constitution of Ukraine.
- Ensure legal security of rights and obligations of organizers and participants of peaceful assemblies, define a clear list of legitimate limitations towards peaceful assemblies, outline positive obligations of the state to guarantee peaceful assemblies, as well as guarantee the right for ad hoc counter-assemblies and other rights ],.
- Adopt legislation which explicitly allows participants of peaceful assemblies to use different kinds of equipment during the demonstration (for instance tents, loudspeakers etc.)
- Adopt legislation which regulates recourse to force by law enforcement agencies and obliges the representatives of law enforcement agencies who are involved in the peaceful assemblies to have visible means of individual identification.

## 4.5 Right to participation in decision-making

### STANDARD 1: EVERYONE HAS THE RIGHT TO PARTICIPATION IN DECISION-MAKING

CSOs involvement in the decision-making process has a sufficient legal basis. Problems arise in practice as not all structures and bodies of state and local authorities follow the procedures for conducting public consultations.

Articles 38, 69, 140 of the Constitution of Ukraine guarantee the right of citizens to participate in the decision-making process. Specifically, citizens have the right to participate in the management of state affairs, in all-Ukrainian and local referendums, and to freely elect and be elected to national bodies and bodies of local self-government (Article 38). People's will is also expressed through elections, referendums and other direct democracy forms (Article 69).

Special legislation that regulates the right to participate in the decision-making is the Law of Ukraine "On public regulatory policy"<sup>85</sup>, the Resolution of the Cabinet of Ministers of Ukraine N996 «On Ensuring Public Participation in the Formation and Implementation of State Policies», CMU Resolution N976 «On Approval of the Procedure for Supporting the Public Examination of the Activities of Executive Agencies" and the Resolution of the Cabinet of Ministers of Ukraine dated 13.12.2017 No. 989 «On Approval of the Procedure for Holding Public Hearings in the Process of Environmental Impact Assessment». At the same time, this

85 The Law of Ukraine "On public regulatory policy in economic activities"<https://zakon.rada.gov.ua/laws/show/1160-15>

right is enshrined in several other legal acts<sup>86</sup>.

The lawmakers are obliged to involve not only CSOs, but also individual initiative groups, activists, experts or scholars when drafting a new law or policy. This ensures broad participation in the development and decision-making process at the local and national level.

There are no legal restrictions on public participation in the decision-making process; all groups of society have equal chances to participate in decision-making. But in practice not all structures and bodies of state and local authorities follow procedures for conducting public consultations and other participatory measures to the fullest extent. For example, authorities typically use only one form of consultation - publishing a draft act on an official website. At the same time, they do not widely inform the public about consultations and do not engage in a bilateral dialogue and developing a decision through a cooperative process.

Alternatively, they may involve only certain CSOs during consultations. Regarding cooperation with the Verkhovna Rada Committees, only some CSOs are involved in deliberations. Often these are organizations associated with long working relationships with state authorities<sup>87</sup>.

Some authorities invite loyal CSOs without the announcement of the start of consultations on their own web site. Such CSOs are admitted to the consultations since they say only what the authorities wish to hear. In this case, proactive CSOs have obstacles to being engaged. The practice of working with the “convenient” CSOs is used also at the local level. It is sometimes possible to hear from representatives of local self-government that in the city there are two categories of CSOs: the reasonable and the unreasonable. Sometimes “unreasonable” CSOs include organizations that are more critical towards the local government. Such an approach causes discrimination among CSOs in terms of access to consultations and adoption of decisions<sup>88</sup>.

State and local decisions which are adopted in violation of certain norms can be appealed only in court. No other mechanisms of appeal have been established.

## **STANDARD 2: THERE ARE CLEAR, SIMPLE AND TRANSPARENT MECHANISMS AND PROCEDURES IN PLACE THAT FACILITATE REGULAR, OPEN AND EFFECTIVE PARTICIPATION OF CSOS IN DEVELOPING, IMPLEMENTING AND MONITORING PUBLIC POLICIES**

Consultations are held with state authority and local governments, but CSOs face numerous shortcomings in the process which hinders productive work.

**The main normative act regulating public participation is the Resolution of the Cabinet of Ministers of Ukraine No. 996 “On Ensuring Public Participation in the Formation and Implementation of State Policy”. The Resolution defines the basic requirements for the organization and conduct of public consultations. Likewise, the functioning of public councils is included.**

<sup>86</sup> The Law of Ukraine “On Access to Public Information”, the Law of Ukraine “On Citizens’ Appeals”, the Law of Ukraine “On the Principles of Preventing and Combating Corruption”, the Law of Ukraine “On Local Self-Government in Ukraine”, the Law of Ukraine “On the Status of Deputies of Local Councils” Ukraine “On Information”, the Resolution of the Cabinet of Ministers of Ukraine “On Approval of the Procedure for Holding Public Hearings on the Issues of the Use of Nuclear Energy and Radiation Safety” dated July 18, 1998, No. 1122, Resolution of the Cabinet of Ministers of Ukraine dated 13.12.2017 No. 989 “On Approval of the Procedure for Holding Public Hearings in the Process of Environmental Impact Assessment”, CMU Resolution N555 “On Approval of the Procedure for Holding Public Hearings to Consider Public Interests when Drafting Local Planning Documents at the Local Level”.

<sup>87</sup> This information was obtained during the focus group.

<sup>88</sup> This information was obtained during the interview.

However, the resolution is only of an advisory nature for local self-government bodies.

The regulation defines consultations but does not specify the obligation of consulting in the initial stages of drafting a legal act. It is up to the authority in charge of the drafting to determine at what stage the public will be involved (the stage of forming laws or publicizing a finished project and collecting proposals, comments on it).

More often, authorities are satisfied with the notification procedure when a draft document is made public on its own web site. There is no website that would provide unified information on all ongoing national consultations. According to the experts, this kind of consultation is a negative practice (the practice of passive consultation). A transition to the formation of the group of stakeholders (CSOs, citizens, scientists, experts) and the dissemination of a draft document between them that would lead to active cooperation between authorities and CSOs is preferable.

At present, most government bodies lack a proactive approach to proper consultations<sup>89</sup>. Therefore, consultations are held at a stage when the document is ready and it is possible to make only minor editorial changes to it.

However, at the local level, public consultations at the initial stage of drafting have become more popular over the past six months. An e-commerce portal has been launched (<https://consult.e-dem.tools/90>). The portal allows consultations in three forms (surveys, consultations, discussions of the legal acts), which in turn can be modified in accordance with the needs of the organizers of consultations.

Before 2017, the existence of advisory bodies limited the participation of CSOs in the decision-making process. The authorities, arguing that consultations were held with advisory bodies, did not carry out extensive consultations. After 2017, the situation has improved and now the authorities, although having an advisory body, are also promulgating a draft document for consultation with the general public.

The practice of publicizing the proposals made by public organizations does exist, but it is not widespread. The Ministry of Justice shows a good example in announcing proposals and substantiated refusals to take them into account. At the local level, good practice is shown by city councils using such forms of public participation as electronic petitions and participatory budgets. Moreover, some city councils publish reports with consultations, which contain all comments received and replies to them<sup>91</sup>. But this requirement is not met to a greater extent both at the state and at the local level. At the moment, the low level of knowledge of civil servants in terms of analyzing received proposals and writing well-founded responses creates an obstacle in the use of this tool by the authorities.

At the same time, there are lots of example of joint work between CSOs and the authorities.

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89 This information was obtained during the focus group.

90 This portal is only used by local authorities.

91 This information was obtained during the focus group.

For instance, amendments to Decree CMU 1049<sup>92</sup> and a new edition of Decree CMU 156<sup>93</sup> which allowed to provide competitive procedure among veteran NGOs to get money from the state budget. It is the result of work conducted by CSOs, the Ministry of Social Policy and the Ministry of Economic Development and Trade.

### **STANDARD 3: CSOS HAVE ACCESS TO THE INFORMATION NECESSARY FOR THEIR EFFECTIVE PARTICIPATION**

CSOs have access to information mainly through official sites and requests for access to public information. At the same time, the procedure for accessing information has shortcomings, which often interfere with work.

The Law of Ukraine “On Access to Public Information”<sup>94</sup> and the Law of Ukraine “On information”<sup>95</sup> clearly recognize the terms and scope of information that should be made public by the authorities. The timeline for publishing public information comprises five working days..

Practice shows that CSOs largely can find and review the necessary information including texts of draft laws and policies. The same applies to the search for information on holding public hearings. It is published on the official site, but often it is difficult to navigate the site for someone without experience, or information appears on the website the day before the hearings. The timing and place is also an issue in case of hearings. They are organized in such a way that it is difficult for the concerned audience to take part in them.

Public authorities provide free and timely answers to requests for information, but there are exceptions<sup>96</sup>. If the request relates to the provision of a large amount of information or requires a review of a large volume of data, such responses may be delayed, sometimes the requestor does not receive it at all. More often, a re-submitted inquiry solves this problem in 60%<sup>97</sup> of cases and relevant information is provided. A person can also call the authority, find out the immediate responsible official and ask about the reasons for delays with answers. However, sometimes the responses are incomplete or do not provide answers to the requested information.

### **STANDARD 4: PARTICIPATION IN DECISION-MAKING IS DISTINCT FROM POLITICAL ACTIVITIES AND LOBBYING**

There are no obstacles to the implementation of advocacy campaigns, even though this field is not regulated by law. At the same time, there are cases when CSOs are persecuted for their activities.

**In Ukraine, there is no legislation regulating lobbying, political activities of CSOs and advocacy. Thus, only the activity of political parties, in particular reporting, is regulated.**

<sup>92</sup> The Decree of CMU On approval of the Procedure for conducting competition to identify programs (projects, events) developed by CSOs <https://zakon2.rada.gov.ua/laws/show/1049-2011-%D0%BF>.

<sup>93</sup> The Decree of CMU Some questions are on providing financial support to veterans NGOs <https://zakon.rada.gov.ua/laws/show/156-2018-%D0%BF>.

<sup>94</sup> The Law of Ukraine “On Access to Public Information” <https://zakon.rada.gov.ua/laws/show/2939-17>.

<sup>95</sup> The Law of Ukraine “On information” <https://zakon.rada.gov.ua/laws/show/2657-12>

<sup>96</sup> The general timeline for providing the answers is 5 working day. In some case, it can be 48 hours or 20 working days.

<sup>97</sup> Recommendations on Provision Of Conditions and Direct Access to Public Information in the Management Office [https://cedem.org.ua/wp-content/uploads/2017/10/21h21\\_final\\_1809.pdf](https://cedem.org.ua/wp-content/uploads/2017/10/21h21_final_1809.pdf).

CSOs are free to carry out advocacy activities that are not prohibited by law. At the same time, the practice of advocacy is not very widespread due to the complexity of its implementation, as the process requires a lot of time and personal contacts with state authorities and deputies.

Some CSOs are persecuted for their activities. In the anti-corruption sphere, since 2017, pressure, persecution and physical influence on activists have been growing and becoming more pervasive. The recent death of a Kherson activist, Kateryna Handzyuk, and a bullet wound of activist Oleh Mykhailyk confirm this trend, as well as approximately one hundred attacks on activists throughout Ukraine over the past 2.5 years.

#### SPECIFIC RECOMMENDATIONS UNDER AREA 5:

- In addition to publishing draft documents for consultation, authorities should simultaneously use other types of consultation mechanisms including joint working groups, in-person discussions of drafts, etc.;
- Introduce the use of registers of stakeholders, when the authorities also consult with interested groups, persons affected by the decision, experts on the relevant issue;
- Develop unified mandatory rules for consultations for all public authorities and local self-government agencies;
- Promote the importance of public consultations among state officials and CSOs.

## 4.6 Freedom of expression

### STANDARD 1: EVERYONE HAS THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION

There is a supportive legislative framework for freedom of opinion and expression and its implementation in practice. Some restrictions, however, were established because of the war with the Russian Federation.

Freedom of expression in Ukraine is guaranteed by the Constitution (Article 34), the European Convention on Human Rights and national legislation that equally concerns the professional journalistic community, individuals, citizens' associations and CSOs.

Article 34 of the Constitution guarantees the right to freedom of thought and speech, and the free expression of one's own views and beliefs.

Everyone has the right to freely collect, store, use and disseminate information orally, in writing or in any other way, of his or her choice. The exercise of these rights may be restricted by law in the interests of national security, territorial integrity or public order in order to prevent disturbances or crimes, to protect public health, to protect the reputation or rights of others, to prevent the disclosure of information obtained in confidence or to maintain authority and impartiality of justice.

In practice, the overwhelming majority of threats to freedom of expression in Ukraine are related to the continuing armed conflict. In 2017-2018, opportunities for CSOs to receive and

distribute information were subject to certain barriers, which were related to the armed aggression of the Russian Federation in Ukraine. For example, restrictions on receiving and distributing information that may pose a threat to national security were introduced. Also, there are facts of prosecution for speaking out, in particular with reference to Article 110 Criminal Code (Attacking the territorial integrity and inviolability of Ukraine).

In January 2019, the international non-governmental organization Human Rights Watch issued a new World Report<sup>98</sup>, in which it noted that the Ukrainian government continued to impose restrictions on freedom of expression, freedom of information, and media freedom. The government seeks to justify them by citing the need to counter Russia's military aggression in eastern Ukraine and anti-Ukraine propaganda.

Hate speech is not subject to legal regulation. However, there are legal restrictions on the abuse of the right to information that involves the use of information for the purposes of hate speech. As defined in Article 28 of the Law on Information: "The information cannot be used to call for the overthrow of the constitutional order, violation of the territorial integrity of Ukraine, propaganda of war, violence, cruelty, incitement of interethnic, racial, religious enmity, acts of terrorism, violation of human rights and freedoms".

Also, stirring up interethnic, racial, religious enmity is punishable under criminal laws (Article 161 Criminal Code)<sup>99</sup>.

## **STANDARD 2: THE STATE FACILITATES AND PROTECTS FREEDOM OF OPINION AND EXPRESSION.**

There is a trend of incidents targeting freedom of the media as well as freedom of opinion and expression, which includes violent attacks and acts of intimidation during 2017 and 2018.

On February 25, 2017, the President of Ukraine signed a decree, which implemented the decision of the National Security and Defense Council of Ukraine "On the Doctrine of Information Security of Ukraine". The purpose of the Presidential Decree is to counteract the devastating informational influence of the Russian Federation in the conditions of its hybrid war. It is prohibited to use the information space for destructive purposes or for actions aimed at discrediting Ukraine at the international level. Similar wording is rather broad, which allows the state to qualify any dissent as one that poses a threat to national security. The Presidential Decree provides a mechanism for blocking and removing Internet content that threatens state sovereignty propagates communist and/or national-socialist totalitarian regimes and their symbols. Each user of the Internet that posts similar content may be suspected of being used by a state aggressor to conduct an information war against Ukraine<sup>100</sup>.

As a result of the adoption of this Presidential Decree there were some cases related to journalists. For example, in May 2018, the Ukraine editor of the Russian state owned wire service, RIA Novosti, in Ukraine, Kirill Vyshinsky, was arrested on treason charges for his participation in "propaganda campaigns" to legitimize Russia's actions in Crimea. Security services raided

98 World Report 2019: <https://www.hrw.org/world-report/2019>.

99 The single register of pre-trial investigations was recorded 99 in 2018. The OSCE report [http://hatecrime.osce.org/ukraine?fbclid=IwAR3U9WNekVjGEFhYCIlt0DoAb-EyfsSegbFO8YlpP2P1TW\\_igoed4PwBOYO](http://hatecrime.osce.org/ukraine?fbclid=IwAR3U9WNekVjGEFhYCIlt0DoAb-EyfsSegbFO8YlpP2P1TW_igoed4PwBOYO).

100 Presidential Decree No. 47/2017 <https://www.president.gov.ua/documents/472017-21374>.

the outlet's office in Kyiv<sup>101</sup>.

In May 2019, an appellate court upheld a regional court's decision to suspend the retrial of Ruslan Kotsaba<sup>102</sup>, a journalist who had been prosecuted on treason charges for calling for boycotting conscription. The court concluded that the prosecution failed to properly formulate the indictment.

Also, media professionals and some CSO representatives continued to complain about State and editorial censorship of content related to the conflict with the Russian Federation. On 5 January 2017, in Chornomorsk, approximately 10 unidentified individuals in camouflage clothing broke into the office of a television operator and demanded that the latter stop airing the Russian television channel "Dozhd" and switch to Ukrainian channels<sup>103</sup>.

In 2018, OHCHR observed a continuing trend of incidents targeting freedom of the media as well as freedom of opinion and expression, which includes violent attacks and acts of intimidation. OHCHR documented 24 cases, marking an increase in the number of attacks against media professionals, civil society activists and representatives of political parties. Failure to hold to account perpetrators responsible for attacks emboldens perpetrators, leading to more violence.

Authorities in 2018 renewed existing measures that bar a number of Russian news outlets from Ukrainian distribution networks and prohibit their journalists from entering the country. The year also featured growing pressure to limit publications in languages other than Ukrainian. The *Kyiv Post*, an English-language newspaper, warned that it and other outlets could be forced to close under a proposed bill that would require media outlets to produce Ukrainian versions of all reports and other materials<sup>104 105</sup>. On 18 September 2018, the regional council in Lviv approved a ban on the public use of Russian-language "culture products," including books and films<sup>106</sup>.

In addition, in November 2018, martial law was imposed in 10 Ukrainian regions for 30 days after Russian forces captured 24 Ukrainian sailors near Crimea. Provisions of the martial law decree allowed restrictions on free speech and assembly, but these were not invoked in practice<sup>107</sup>.

The media environment in separatist-occupied parts of Donbas is marked by severe violations of press freedom, including censorship by the de facto authorities<sup>108</sup>.

**Libel is not a criminal offense.**

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101 The article <https://hromadske.ua/posts/zatrimannya-vishinskoho>.

102 The article <https://imi.org.ua/news/sud-povernuv-prokuroru-obvynuvalnyj-akt-schodo-kotsaby-i19947>.

103 Report on the Human Rights Situation in Ukraine: 16 November 2016 to 15 February 2017, Office of the United Nations High Commissioner for Human Rights [http://www.ohchr.org/Documents/Countries/UA/UAReport17th\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/UAReport17th_EN.pdf).

104 According to paragraph 5 article 25 of the Law of Ukraine On ensuring the functioning of the Ukrainian language as a state language obligatory requirements do not apply to print media published exclusively in Crimean Tatar, in other languages of indigenous peoples of Ukraine, in English, in another official language of the European Union.

105 In 2019 the *Kyiv Post* continues to publish its materials only in English language.

106 The decision of Lviv local authority [https://webcache.googleusercontent.com/search?q=cache:Ue3g-FK1dB8J:https://archive.lvivoblrada.gov.ua/document.php%3Ffile\\_id/1799+&cd=2&hl=uk&ct=clnk&gl=ua](https://webcache.googleusercontent.com/search?q=cache:Ue3g-FK1dB8J:https://archive.lvivoblrada.gov.ua/document.php%3Ffile_id/1799+&cd=2&hl=uk&ct=clnk&gl=ua).

107 The Decree of President on the introduction of martial law in Ukraine <https://zakon.rada.gov.ua/laws/show/393/2018>.

108 Report Ukraine of Freedom in the World 2019 <https://freedomhouse.org/report/freedom-world/2019/ukraine>.

#### SPECIFIC RECOMMENDATIONS UNDER AREA 6:

- Ensure legal guarantees to protect journalists and their activities at judicial level (protection of journalistic sources, protection against physical attacks, violence).
- Avoid discriminatory practices, in particular based on hate speech and against particular media.
- Ensure due investigation of attacks against journalists and civil society activists, particularly against LGBTs, eco-activists, national minorities and others.

## 4.7 Right to privacy

### STANDARD 1: EVERYONE ENJOYS THE RIGHT TO PRIVACY AND DATA PROTECTION.

The right to privacy and data protection is broadly enshrined in international and national law. At the same time, some aspects such as web browsing and seizure of information are not regulated, which may lead to disturbance.

The right to family life is enshrined in the Universal Declaration of Human Rights of 1948 (Article 16), the right to privacy is guaranteed by the International Covenant on Civil and Political Rights of 1966 (Article 17) and the European Convention on Human Rights (article 8) – all instruments are ratified by Ukraine. The particular aspect of the right to privacy – data protection – is enshrined by the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data<sup>109</sup>.

The right to privacy is guaranteed by the Constitution of Ukraine. In particular, Article 30 protects the territorial privacy (the inviolability of housing), Article 31 communication privacy (the secret of correspondence, telephone conversations, telegraph and other correspondence), Article 32 - informational privacy (“no one can interfere in his personal and family life, except in cases stipulated by the Constitution of Ukraine”, “it is not allowed to collect, store, use and disseminate confidential information about a person without his or her consent”), and Article 28 some aspects of physical privacy (“no person can be subjected to medical, scientific or other experiments without his/her free consent”).

On July 1, 2010, the Law on Personal Data Protection<sup>110</sup> was adopted with the aim to harmonize national legislation with the Council of Europe Convention on Data Protection<sup>111</sup>. This Law came into force on January 1, 2011, and provided for the control of the processing of personal data by registering all the databases by the controlling state body. In 2013, this procedure was changed and the obligatory registration of all databases was canceled. The functions of control over compliance with the law were assigned to national courts and an Ombudsman (as an institution of the independent control).

The Law on Personal Data Protection guarantees protection against interference in accor-

<sup>109</sup> Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data <https://rm.coe.int/16808ade9d>.

<sup>110</sup> The Law on Personal Data Protection <https://zakon.rada.gov.ua/laws/show/2297-17>.

<sup>111</sup> The Council of Europe Convention on Data Protection <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/108>.

dance with the standards specified in the Council of Europe Convention on Data Protection and clearly regulates all issues of personal data processing carried out by both public authorities and private individuals<sup>112</sup>.

The responsibility for violation of the right to privacy is regulated under criminal and civil law.

The biggest violations concern communication privacy. The legislation does not set formal grounds for seizure of information from communication channels (or interception of telecommunications or tracking electronic communications and online activities). At the same time, the law does not stipulate a clear deadline for the seizure (or interception or tracking) of such information, and the circumstances in which such information should be destroyed and how it may be used<sup>113</sup>. Guarantees of legality when performing the seizure (or interception of telecommunications or tracking) of information from communication channels are clearly insufficient. Consequently, society has no information on the number of legal seizures (or interception or tracking) of information from the channels and the total number of such seizures (incl. illegal). As a result, the persons concerned by such measures are not able to challenge such actions in court or otherwise protect their right to privacy.

The Security Service of Ukraine tried to expand its powers in the Internet due to the threats that have arisen from the military aggression of the Russian Federation started in 2014. With the aim to fight against terrorism and particularly so-called “computer terrorism”, measures have been taken to control the users of the Internet, regulating the Ukrainian segment of the Internet. On February 20, 2018, the National Commission for Communications and Informatization approved a draft resolution of the Cabinet of Ministers, which should regulate the technical verification of blocking sites that are on the sanction list. The draft provides “to ensure the acquisition of technical means ... to monitor the cessation of the provision of services on access to information resources ...” and the State Service for Special Communication together with the SBU “to install technical means on telecommunication networks”.

In 2017, the State Service for the Communications and Information Protection of Ukraine proposed to make compulsory registration of all mobile subscribers in Ukraine. The relevant bill was prepared and posted on the Service’s website; however, it has not been adopted yet<sup>114</sup>.

Also, draft Law No. 6688 “On Amendments to Certain Legislative Acts of Ukraine on Provision of Information Security of Ukraine<sup>115</sup>” provided for the re-blocking of Internet sites and demonstrates the continuous intention of the security services to regulate and control electronic communications<sup>116</sup>. The draft was eventually not adopted.

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112 The Law of Ukraine “On protection of personal data” <https://zakon.rada.gov.ua/laws/show/2297-17>.

113 The law on personal data protection, and the Law on search operations (para 9 Art 8).

114 The article <https://biz.liga.net/all/telekom/article/svyaz-po-pasportam-mobilnykh-abonentov-zhdet-registratsiya>.

115 The article <https://press.unian.ua/press/10164989-uhvalennya-zakonu-pro-pozasudove-blokuvannya-saytiv-prizvede-do-obmezheniya-svobod-v-interneti-ta-monopolizaciji-rinku-dostupu-do-merezhi-eksperti-video.html>.

116 The link between this draft law and the resolution on blocking the websites is that this danger from the user point of view draft law 6688 was not adopted, but it is a demonstration of the intention of the security services to regulate and control (imposing the additional control) the e-communication area.

## STANDARD 2: THE STATE PROTECTS THE RIGHT TO PRIVACY OF CSOS AND ASSOCIATED INDIVIDUALS

During 2017-2018, there were attacks on the right to privacy of CSOs and associated individuals, both at the legislative level and in daily activities. At the same time, CSOs have an adequate level of immunity from criminal prosecution.

The years 2017-2018 were marked by the unsuccessful attempts by the state authorities to make the reporting requirements for CSOs more detailed and to disclose information about all ultimate beneficial owners through proposed bills 6674<sup>117</sup> and 6675<sup>118</sup>. It endangered those organizations that provide advisory or other assistance to the persons and organizations working in the occupied Crimea or in temporarily uncontrolled territory of Donetsk and Lugansk regions. At the same time, the authorities proposed to adopt such rules in exchange for the already introduced (in March 2017) e-declaration of anti-corruption activists. As a result, no legislative changes were made and the proposed bills were not adopted.

In October 2018, the ECHR extended indefinitely its September 18 ruling requesting that Ukrainian authorities refrain from reviewing 17 months' worth of cellphone data of RFE/RL reporter Natalia Sedletska<sup>119</sup>. Authorities requested the data as evidence in a criminal investigation against National Anti-Corruption Bureau Director Artem Sytnyk, who is accused of disclosing state secrets to journalists.

A number of human rights activists urged the President to veto the bill # 3629 passed by the Parliament "On Amendments to the Budget Code of Ukraine (regarding the harmonization of the rules of the Budget Code with changes to sectoral and tax laws)". Human rights activists<sup>120</sup> drew attention to the fact that the norms of the law on disclosure of bank secrecy and personal data on the request of the Ministry of Finance contradict the Constitution and the international obligations of Ukraine, namely the Convention for the Protection of Human Rights and Fundamental Freedoms and the Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data.

CSOs have an adequate level of immunity from criminal prosecution. In particular, any access to 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 legal framework and definition of the procedures for conducting the search are enshrined in the Code of Criminal Procedure<sup>121</sup> and in the Law on search operations<sup>122</sup>.

There are several cases of breach of the CSOs' representatives right to privacy, including the seizure of an excessive number of information carriers during the searches and the inadmissibility of attorneys at the place of search. Such situations put pressure on the representatives of these organizations. Also, there have been some cases<sup>123</sup> when unknown people intruded

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117 The Draft Law Amending Certain Legislative Acts to Ensure Public Information on Financing of NGOs and Using International Technical Assistance [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=62214](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62214).

118 The draft Law on Amendments to the Tax Code of Ukraine on Ensuring Public Information on Financing of NGOs and Using International Technical Assistance.

119 The article <https://www.radiosvoboda.org/a/news-espl-schemes/29550805.html>.

120 This information was obtained during the focus group.

121 The Code of Criminal Procedure <https://zakon.rada.gov.ua/laws/show/4651-17>.

122 The Law on search operations <https://zakon.rada.gov.ua/laws/show/2135-12>.

123 This information was obtained during the focus group.

to private premises of activists and CSOs offices. In one situation some office equipment was stolen and the organization did not know whether it was a robbery or planned act of intimidation<sup>124</sup>. In another case, unknown people intruded to a private house to intimidate an activist, although nothing was stolen.

#### **SPECIFIC RECOMMENDATION UNDER AREA 7:**

- Avoid legislative initiatives that aim to complicate the reporting process of CSOs and endanger the beneficiaries of these organizations at risk in uncontrolled areas of Donetsk and Luhansk oblasts and the occupied Crimea.
- Stop legislative initiatives that aim to provide for the blocking of Internet sites.
- Establish clear grounds and deadlines for seizure of information from communication channels and for interception of telecommunications or tracking electronic communications and online activities.

## 4.8 State duty to protect

### **STANDARD 1 THE STATE PROTECTS CSOS AND INDIVIDUALS ASSOCIATED WITH CSOS FROM INTERFERENCE AND ATTACKS**

The legislation contains certain rules to protect CSOs and individuals associated with CSOs from interference and attacks. However, in case of encroachment of these rights, their protection has significant drawbacks (complex proceedings of appealing of legal acts, absence of preventive and collective actions on CSO behalf, excessive legal costs, etc.).

The legislation of Ukraine contains guarantees of non-interference of state bodies and local self-government bodies in the activities of CSOs, as well as the principle of their equality before the law, regardless of type, status and legal form<sup>125</sup>. Any discrimination of employees related to membership in CSOs, beliefs, participation in the protection of the rights and freedoms of other employees is also prohibited<sup>126</sup>. The state agencies are not allowed to supervise internal organizational activity of CSOs since 2013 or appeal it in administrative courts<sup>127</sup>. Members may appeal decisions of CSOs' general meetings in civil courts within one year from their adoption<sup>128</sup>. Complaints against human rights violations are subject to review by the parliament's ombudsman office or sectoral ombudsmen (on children rights, on rights of people with disabilities, business ombudsman etc.).

Starting from January 2019, CSOs and other persons shall be represented in all courts by attorneys. This has limited the right to freely select the protector of one's rights as guaranteed

<sup>124</sup> This information was obtained during the interview.

<sup>125</sup> Art. 3 of the Law of Ukraine "On Associations of Citizens" № 4572 dated 22.03.2012.

<sup>126</sup> Art. 2-1 of the Labor Code of Ukraine.

<sup>127</sup> Art. 19 i 277 of the Administrative Justice Code of Ukraine.

<sup>128</sup> Art. 258 of the Civil Code of Ukraine.

by Article 59 of the Constitution of Ukraine<sup>129</sup>. At that the law on free legal aid does not apply to CSOs and other legal entities, and no pro bono quota is required from attorneys. Collective actions and claims for a potential violation of the rights of CSOs (even regarding their membership) in Ukraine are not recognized, except for environmental protection, nuclear safety or zoning. CSOs have to be paying court fees since 2016<sup>130 131</sup>, and it soared up their legal costs, too, and complicated court protection of CSOs' rights.

Meanwhile, in 2017-2018 the number of cases of interference with internal relations increased when volunteers and elected officials were considered as hired workers, and CSOs were subject to sanctions<sup>132</sup>.

The deadline for filing lawsuits in administrative courts for the protection of individuals' rights and freedoms is six months from the date on which the CSO or another person found out or should have been aware of a violation of rights and freedoms<sup>133</sup>. The length of the trial in administrative courts is 60 days, but preparatory proceedings may take an additional 2-3 months. In practice, the relevant terms have been repeatedly delayed due to the extensive workload<sup>134</sup>.

#### **STANDARD 2 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**

There is no clear pressure on CSOs based on legislation on money laundering and terrorist financing. At the same time, there are some problems in the daily activities of CSOs connected with the mandatory financial monitoring and application of bylaws by commercial banks.

**There are no legal regulations or practices on declaring CSOs extremist or terrorist, as well as CSOs extrajudicial suspension in Ukraine.**

**CSOs have no special responsibilities or policies in AML/CTF and are not obliged to submit any special reports. Transfers or receipts of funds by CSOs are subject to mandatory financial monitoring by banks<sup>135</sup>; while there are no limits on cash donations.<sup>136</sup> In 2018, none of 49 cases of funding terrorism or 420 criminal investigations of money laundering related CSOs<sup>137</sup>. National Bank acts allow banks to set up extra risk monitoring<sup>138</sup> that complicated the receipts**

129 Art. 131-2 of the Constitution excludes only disputes on labor and social rights, elections and referenda, as well as minor cases (up to 100 minimal salaries, or up to 500 ones at the discretion of judge).

130 CSOs and prosecutor's office were exempted from payment of the court fee by 2016.

131 Art. 4 of the Law of Ukraine "On the Court Duty" envisaged advance payment of the court duty by the CSOs of 100-150-200% of the monthly living minimum (€50-75-100 in 2018) for administrative claims.

132 This information was obtained during the focus group.

133 Art. 122 of the Administrative Justice Code of Ukraine.

134 The article [https://zib.com.ua/ua/138165-dsau\\_mayzhe\\_vdvichi\\_zanizila\\_neobhidnu\\_kilkist\\_suddiv\\_u\\_novo.html](https://zib.com.ua/ua/138165-dsau_mayzhe_vdvichi_zanizila_neobhidnu_kilkist_suddiv_u_novo.html), <https://www.pravda.com.ua/columns/2017/08/17/7152469/>.

135 Para. 11 of part 1 of Art 15 of the Law of Ukraine "On Prevention and Counteraction to Legalization (Laundering) of the Proceeds from Crime, Terrorist Financing and Financing of the Proliferation of Weapons of Mass Destruction" № 1702 dated 14.10.2014.

136 Art. 8 of the National Bank of Ukraine Resolution N 148 of Dec 29, 2017.

137 Report of the Civil Service Financial Monitoring of Ukraine [www.sdfm.gov.ua/content/file/Site\\_docs/2019/20190411/zvit\\_2018\\_ukr.pdf](http://www.sdfm.gov.ua/content/file/Site_docs/2019/20190411/zvit_2018_ukr.pdf).

138 The Letter of the National Bank of Ukraine 29.01.2004 N 42-311 / 382 Guidelines on the organization and functioning of risk management systems in banks of Ukraine [https://zakon.rada.gov.ua/laws/show/v\\_382500-04](https://zakon.rada.gov.ua/laws/show/v_382500-04).

or transfers of CSOs' funds abroad, including to/from some EU countries (Estonia, Latvia, Hungary). This applied even for transactions equal to or lower than 15,000 UAH (€420). A few CSOs faced blocking of their bank accounts for up to seven working days by banks and/or financial monitoring service without written explanations on the identified violations.

The NACP official website does not provide information on the number of declarations filed by CSOs employees and officials on their income, property and expenses, as well as their shares in companies. There were 100 opinions and 20 administrative protocols transmitted to the specially authorized bodies and courts in 2017-2018.

It should be noted that the Public Council of International Experts played an important controlling role in the formation of the High Anticorruption Court in 2018.

#### SPECIFIC RECOMMENDATIONS UNDER AREA 8:

- Identify types of socially significant areas where CSOs should have the possibility to obtain free legal aid;
- Clarify the grounds and procedure for appeal of legal acts, preventive and collective actions by CSOs;
- Raise awareness among CSOs about their obligations and the legal relations between CSOs and their employees, volunteers, individuals, and others;
- Raise awareness among CSOs on the regulation on money laundering and terrorist financing and how it may affect them;
- Provide an instruction by the National Bank of Ukraine on the possibility of transferring funds abroad by CSOs, including medical treatment, membership fees, and a list of documents required for such transfer.

## 4.9 State support

### STANDARD 1. THERE ARE A NUMBER OF DIFFERENT AND EFFECTIVE MECHANISMS FOR FINANCIAL AND IN-KIND STATE SUPPORT TO CSOS

Financial and in-kind CSO support through local and state budgets is poorly developed. It is also limited to providing support to a narrow range of CSOs.

In Ukraine, the mechanisms for state financial support to CSOs on national and local level are poorly developed. In-kind support mechanism is even less developed<sup>139</sup>.

State support can be obtained from central executive authorities (the Ministry of Youth and Sports, the Ministry of Social Policy and the Ministry of Veterans Affairs), Ukrainian Cultural Foundation, state administrations (oblast and district), and other bodies of local self-government.

#### Grants

In Ukraine the main form of support to CSOs is through grants and not subsidies. Financial

<sup>139</sup> This information was obtained during the focus group.

support from the executive authorities is limited to certain types of organizations. Thus, the Ministry of Youth and Sports and the Ministry of Social Policy provide grants from the state budget for all-Ukrainian public organizations of veterans and persons with disabilities, youth and children's organizations, and public organizations of national-patriotic orientation. The competition procedure applies to all grants provided by the Ministry of Youth and Sports<sup>140</sup>. The Ministry of Social Policy provides grants only to all-Ukrainian organizations of persons with disabilities. Every year less than 22 CSOs receive this support. The procedure for providing grants is not transparent and competitive. Also, the Ministry of Social Policy provides grants to all-Ukrainian organizations of veterans and from 2018 this financial support is provided through a competitive procedure<sup>141</sup>.

In 2018, the Ukrainian Cultural Foundation first held competition for projects at three levels: local, national and international, in particular for CSOs. The themes of projects had to be related to cultural issues.

#### Local level

Other executive agencies (oblast, city state administrations) adopt their own financing procedures and can provide funds both under competitive procedures and without them. On a competitive basis, funding is mainly reserved for youth and children's organizations and public organizations for the development of civil society. On the other hand, CSOs of national minorities, public organizations of veterans and persons with disabilities receive local funding without competition.

Organizations of sports, Chernobyl veterans, children of war and other groups typically receive financial support without competition. At the same time, another vast range of organizations, including human rights, environmental and charitable organizations, does not receive financial support from the state (on either local or national level).

It should be noted that local authorities and oblast (district, city) administrations adopt their funding arrangements and can establish any list of organizations that may be provided with funds. The competition procedure in such contests is not always transparent.

At the same time, there are negative practices where, for example, the oblast program envisages specific charitable organizations eligible for funding<sup>142</sup>.

#### Procurement of services and social services

The state does not perform social services contracting to CSOs. Local authorities have the possibility to contract the CSOs to provide social and other services using different tools (through social contracting, public-private partnerships,<sup>143</sup> etc.).

In accordance with clause 35.1.1 of the Law of Ukraine "On Public Procurement", all legal entities, including CSOs, have the right to participate in procurements and provide services. At

140 The Plast national scout organization receives funding without competition.

141 According to the changes dated 2018, some of the funding is provided without competition.

142 Decision of the Regional Council of December 21, 2018 № 649-VII "On the Regional Budget of the Odessa Region for 2018", with changes and additions to the regional budget within the framework of the implementation of the regional program of social support for the population for 2018-2020, provided for:  
- financial support of the Odessa Regional Charitable Foundation for the Rehabilitation of Children with Disabilities "Future" -13650,0 thousand UAH.

143 This mechanism hardly works.

the same time, there are occasions where CSOs are restricted in this right, because, for example, they have a non-profit status<sup>144</sup>.

Social services may also be carried out through procurements or in accordance with the procedure specified in the Resolution of the Cabinet of Ministers of Ukraine<sup>145</sup>. At the same time, the notion of social services is not developed and is used only in some cities and regions at the expense of the local budget<sup>146</sup>. In addition, neither representatives of CSOs nor representatives of local self-government bodies and state authorities fully understand what social services are and what quality requirements apply.

### Implementers of state programs

According to Article 11 of the Law of Ukraine “On State Target Programs”, CSOs may be the implementers of state target programs. However, the mechanism for selecting civil society actors is unclear<sup>147</sup>. At the same time, such a practice does exist. For example, the International HIV/AIDS Alliance in Ukraine, the All-Ukrainian Charitable Organization “All-Ukrainian Network of People Living with HIV/AIDS” and other public associations are indicated as implementers in the National Targeted Social Program on HIV/AIDS Response for 2014-2018<sup>148</sup>.

CSOs can be implementers not only of state target programs, but also of local ones. For example, the implementer of the City Target Program for Countering the HIV Epidemic in 2017-2021 is a CSO in Kyiv.

### In-kind support

The Law stipulates support only for CSOs of individuals with disabilities, veterans, youth and children, in particular while obtaining premises for use<sup>149</sup>. There is no such a provision regarding other CSOs.

In practice, such form of support is only provided by local authorities, and its quality and order differ in every city. The main form of such support is renting municipal enterprises out and providing discounts for certain utility services in certain cases. Some local authorities establish procedures for the provision of privileged rent of premises for CSOs, like Lviv, Kyiv and Odesa city councils. In the overwhelming majority of cities, procedures are not transparent and actually prevent CSOs from using premises. In addition, this tool is often used as a pressure on CSOs: if the CSO does not support local authorities, it may lose the premises.

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144 This information was obtained during the focus group.

145 Resolution of the Cabinet of Ministers of Ukraine dated April 29, 2013 No. 324.

146 It should be taken into account that CSOs and public/municipal institutions (social service providers) are not equal because according to the Budget Code, public/municipal institutions have direct financing from the state and local budgets. So they cannot take part in social contracting as long as their participation social contracting put CSOs in disadvantage and potentially it might lead to double funding of activities public/municipal institutions..

147 According to the CMU Decree No.106 of 31.01.2007 (<https://zakon.rada.gov.ua/laws/show/106-2007-%D0%BF>), selection of implementers is carried out in accordance with the Law of Ukraine “On the Procurement of Goods, Works and Services for Public Funds”. This law became null and void on 02.04.2008 and on March 28, 208, these relations began to be regulated by the Resolution of the Cabinet of Ministers of Ukraine No. 274 (<https://zakon.rada.gov.ua/laws/show/274-2008-%D0%BF>), and from October 17, 2008 by the Resolution of the Cabinet of Ministers of Ukraine No. 921 (<https://zakon.rada.gov.ua/laws/show/921-2008-%D0%BF>), which expired on July 28, 2010.

148 The Law of Ukraine On approval of the National Targeted Social Program for Combating HIV / AIDS for 2014-2018 <https://zakon.rada.gov.ua/laws/show/1708-18>.

149 The article.10 of the Law of Ukraine “On youth and children’s CSOs”, the Article 20 of the Law of Ukraine “On the status of veterans and their social protection warranties”, and the Article 13 of the Law of Ukraine “On social protection of individuals with disabilities in Ukraine”

## STANDARD 2. STATE SUPPORT FOR CSOS IS GOVERNED BY CLEAR AND OBJECTIVE CRITERIA AND ALLOCATED THROUGH A TRANSPARENT AND COMPETITIVE PROCEDURE

In most cases, support for CSOs from state and local budgets is not transparent, simple, and open. At the same time, open competitions already exist, but they still need to be improved.

### Funding without competitive procedures

Such a system is opaque and closed. It is difficult or impossible to find information on the amounts received by certain organizations through open sources. There are three problems (1) this information is not public in an official site (2) the information is disclosed but one needs a lot of time to find it in the official site (local authority's) and (3) the reports do not have enough information to understand the amount of money received by the CSO and how it used the money. The following CSOs mainly get funding without competitive procedures: CSOs for disabled, veterans (including Afghan combatants, children of war and others), and sports CSOs.

The abovementioned organizations generally receive funding from one source (state or local budgets) to cover rental costs, utilities, salaries, and stationery. The activities of such organizations do not affect the decision on the allocation of funds, although it should be formally taken into account when deciding on the allocation of funds.

Normally, such CSOs do not submit full reports: their reports do not provide information on how the money was spent, including the matching amounts. It is hard to find their reports in publicly accessible information. Although formal monitoring is stipulated, the provisions on monitoring of the implemented measures are not fulfilled in practice.

### Funding through competitive procedures

Only around 40% of CSO funding from the state budget in Ukraine is also distributed through competitive procedures that are primarily regulated by the CMU Resolution No. 1049<sup>150</sup>. Competitive procedures for public funding have been transparent and good chances to receive state funding. For example, the introduction of competitive procedures in 2018 for veteran NGOs facilitated funding for new veteran CSOs with good projects, as well as saving money from the state budget.

Rules on competitive procedures require the authorities to form competition committees (which include CSO representatives), disclose the competition results, indicate which projects have won and when the measures will be taken. These rules also proved to be implemented in practice.

If CSOs obtain public funds, their report should be publicly disclosed, although in some cases it is difficult to find them. It especially applies to local authorities. In addition, it is often difficult to find information about the competition, as well as required documents on the websites of local authorities. Authorities do not use resources other than their own website for the publication of a competition notice.

The issue of monitoring is complex, while the legal measures related to monitoring are not

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150 Decree of Cabinet of Ministers On approval of the Procedure for conducting competition to identify programs (projects, events) developed by civil society institutions for the implementation (implementation) of which financial support is provided <https://zakon.rada.gov.ua/laws/show/1049-2011-%D0%BF>.

fully implemented. There are attempts to introduce competitive monitoring procedures. For example, the authorities that provided the funding check documents and almost everyone has the possibility to attend events (which CSOs organized), check numbers of participants, etc. However, verification mechanisms have to be improved.

Competitive procedures are used both by central executive authorities and local authorities. Due to the fact that local authorities adopt their own rules for competitive procedures, they often do not meet the criteria of transparency, although they follow competitive principles. For instance, regardless of the allegedly introduced competition procedure in Kyiv, there is a problem of subjective identification of the funding objectives without consideration of CSO proposals.

Also, traditional approaches tend to remain in place at the local and state levels. Often CSOs with all-Ukrainian status receive money from the state budget and local authorities only provide funding to local organizations. On the other hand, authorities should prioritize interaction with CSOs regardless of their location, to address local challenges. This approach is taken by Zhytomyr Oblast Administration.

#### In-kind support

The issue of in-kind assistance, both as stipulated in the legislation and in practice, is even worse. For instance, the provision of premises for rent shall be regulated by the local legislation. However, such legislation is non-existent in the vast majority of cities. There are no procedures, committee, criteria, monitoring, etc. And the premises can only be obtained by some civil society organizations, which will be indicated in the decision of the local self-government authority<sup>151</sup>. Often, these organizations are micromanaged organizations, or such procedures are utilized to put pressure on organizations<sup>152</sup>.

In some cases good practice can be encountered. For instance, the best procedure for leasing premises is found in Lviv: a transparent contest authorizing the use of municipally-owned premises for one year and a subsequent competition for the compensation of the value of such use is announced. Moreover, if the CSO has been winning in the competition for several years, it has the right to use such premises for more than one year without competition<sup>153</sup>.

In other cases, first steps towards the implementation of the procedure for the allocation of municipally-owned premises have been taken. For example, in the city of Cherkasy a register of municipal property and a register of free premises are created<sup>154</sup>.

#### Contracting procedure

The contracting procedure is regulated by the law of Ukraine “On the public procurement”<sup>155</sup>. For example, a local authority can engage CSOs to sign a social contracting throw procedure of public procurement. Pursuant to paragraph 35 of Part One of Article 1 of the abovementioned Law, a tenderer can be individual, an entrepreneur, a legal entity (including CSOs as legal entities). Also, CSOs can take part in other tenders. All results and all documents are

151 The decision of local authority <http://www.bucha-rada.gov.ua/content/pro-nadannya-v-orendu-nezhytlovogo-prymishchennya-1>.

152 This information was obtained during the focus group.

153 The local decision <https://www8.city-adm.lviv.ua/inteam/uhvaly.nsf/91c21bb29b2b4f47c22571340037f910/00ba58695a0a4008c22572e30050b4d1?OpenDocument>.

154 Register of communal property <http://chmr.gov.ua/ua/textex.php?s=8&s1=48&s2=306>.

155 The Law of Ukraine About public procurement <https://zakon.rada.gov.ua/laws/show/922-19>.

published. There is possible monitoring in some cases<sup>156</sup>. There are some cases when CSOs because of their non-profit status were excluded from tenders.<sup>157</sup>

Finally, it should be noted that CSOs are lacking capacities in writing good-quality project applications. They are also not aware of the permitted expenditures from state or local budgets which causes the rejection of their applications. As a result, their time and efforts spent are not compensated by the amounts received for the implementation of projects.

### **STANDARD 3. CSOS ENJOY FAVORABLE TAX ENVIRONMENT**

The tax legislation is favorable for CSOs and does not contain any aggravating reporting. However, there is a need to improve the procedure for removing non-profit status.

CSOs are entitled to be registered as non-profit organizations, and be exempt from the income tax (18%) on any source of income<sup>158</sup>. The procedure for such registration is prompt, free of charge, and has clear criteria for rejection.

The non-profit status is not limited in time. Tax authorities may exclude an organization from the Register only in the event of a voluntary refusal or violation of the norms of the tax code on the prohibition of the distribution of profits (income) among members, founders, or third parties. The exclusion from the Register is performed without official warnings.

CSOs with non-profit status annually, according to the results of the year, submit to the tax authorities a report on the use of their income but no periodic confirmation of tax exempt status is required.

Also, CSOs are not automatically deemed as income tax payers. However, CSOs may register as value added tax payers at any moment or they are obliged to do that in some case (for example, when CSOs engage in economic activities).

Local governments may exempt CSOs from local taxes on real property (particularly, land and buildings).

CSOs do not fall under high-risk legal entities, therefore, scheduled inspections by tax authorities are not carried out frequently.

### **STANDARD 4. BUSINESSES AND INDIVIDUALS ENJOY TAX BENEFITS FOR THEIR DONATIONS TO CSOS**

The existing tax incentives for individuals and legal entities are not sufficient and the procedure to access them significantly hinders their use.

In Ukraine, there are income tax (personal income taxes) reliefs for legal entities and individuals that provide charitable assistance in the form of funds, property or services to non-profit organizations.

At the same time, individuals are not very interested in this, since (1) tax reliefs can only be

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156 Article 7-1 of the Law of Ukraine "About public procurement".

157 This information was obtained during the focus group.

158 Paragraph 133.4 Article 133 of Tax Code.

counted from salaries; (2) in order to use tax reliefs, one shall file a declaration<sup>159</sup>; and (3) individuals can use only 4% as tax deductions to reduce taxable income. They have to submit a declaration and write there the sum which they want to receive as tax discount (only from salary). Normally, such individuals are not obliged to submit a tax declaration on their income (salary). The tax authority checks all sums, all documents and should return these tax benefits to the account of individual donors.

Legal entities benefit more from such tax reliefs, since they are entitled to claim the amount of provided charitable assistance as expenses. However, if a legal entity earns over UAH 20 million (approx. 700,000 EUR) a year, such a legal entity is entitled to claim only 4%<sup>160</sup> of the income for the past period as enterprise expenses. When providing charitable assistance to legal entities, it is necessary to have a documentary evidence to whom, on what basis and for what purpose charitable assistance was provided for.

There are also value added tax reliefs for the provision of charitable assistance, in particular, the free provision of goods/services to charitable organizations established and registered in accordance with the law, as well as the provision of such assistance to charitable organizations that are deemed as receivers of charitable assistance in accordance with the legislation on charity activities and charitable organizations<sup>161</sup>.

There are the following two interpretations of the relief: exemption from taxation of charitable assistance to all CSO (position of lawyers and accountants) and only to charitable organizations (tax agency position). In practice, this complicates the application of this article.

Individual entrepreneurs do not have privileges when providing charitable assistance. Similarly, there are no privileges when providing a large amount of charitable assistance or, for example, establishing an endowment.

#### **STANDARD 5. LEGISLATION AND POLICIES STIMULATE VOLUNTEERING**

Ukrainian legislation does not interfere with the engagement of volunteers, but at the same time, it does not encourage such activity. In some cases, there are also complications in the involvement and follow-up of volunteers.

Volunteering activities in Ukraine are regulated by the Law “On Volunteering activities”<sup>162</sup>, which clearly specifies what volunteering activities are, and who a volunteer is.

At the same time, in practice, CSO members often mix volunteer and labor relations, which may potentially lead to penalties for improper registration of employees. Volunteers may be citizens of Ukraine, foreigners or stateless individuals. It is not mandatory to sign a contract

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159 Also, an individual has to have documents on the provision of charitable assistance to non-profit organizations which are submitted on request by tax civil servants.

160 Also, 8% of legal entities taxable income is deductible for donations for sports facilities including some sports CSOs.

161 I.197.1.15 par.197.1 Art.197 of the Tax Code of Ukraine..

162 The Law “On Volunteering activities” <https://zakon.rada.gov.ua/laws/show/3236-17>.

on volunteering activities, unless the volunteer is engaged in hazardous activities<sup>163</sup>.

In order to engage foreign volunteers, CSOs shall be registered with the Ministry of Social Policy, and inform the Ministry about the engagement/dismissal of a foreign volunteer within 5 days. There are no limitations related to the sending of volunteers abroad.

One of the disadvantages is that when volunteers get reimbursement for housing, food and travel, CSOs shall pay personal income taxes (18 percent) and military fees (1.5 percent)<sup>164</sup>.

Moreover, there are no state programs that promote volunteering. Educational institutions do not add education credits for students that are engaged as volunteers.

#### SPECIFIC RECOMMENDATIONS UNDER AREA 9:

It is necessary to:

- Implement a competitive, transparent and understandable approach to allocation of all funds from the state and local budgets and develop monitoring mechanisms;
- Provide financial support from state and local budgets without discrimination to CSOs engaged in all fields, including environmental issues, human rights, and others;
- Use social contracting for financing the delivery of services by CSO in all cities;
- Introduce competitive transparent mechanisms for allocating premises to CSOs;
- Introduce tax incentives for corporate and individual philanthropy that will not be burdensome;
- Exclude compensation/reimbursements for volunteering activities from the tax base.

## 4.10 Government- CSO Cooperation

### STANDARD 1. STATE POLICIES FACILITATE COOPERATION WITH CSOS AND PROMOTE THEIR DEVELOPMENT.

State policies for civil society development facilitate cooperation with CSOs. At the same time, CSOs should be active and professional to be involved in this collaboration.

**The National Strategy on facilitating civil society development in Ukraine throughout 2016-2020 as approved by the Decree of the President<sup>165</sup> is effective in Ukraine. The Strategy defines strategic directions and objectives of public policy on facilitating the development of civil society, as well as indicates responsible parties and the monitoring system. The Strategy was**

<sup>163</sup> Volunteer assistance for the elimination of the consequences of man-made or natural emergencies; volunteer assistance to the Armed Forces of Ukraine, other military formations, law enforcement agencies, state authorities during the period of emergency, legal state of emergency or martial law, carrying out an antiterrorist operation, carrying out measures to ensure national security and defense, countering and deterrence of the armed aggression of the Russian Federation in the Donetsk and Luhansk oblasts.

<sup>164</sup> Article 16-1 chapter 10, Section XX of the Tax Code.

<sup>165</sup> The Decree of the President No. 68, dated February 26, 2016 "On facilitating the development of civil society in Ukraine".

developed in close interaction with CSOs.

Every year, the government approves an annual action plan on Strategy implementation. The action plan stipulates clear tasks, responsible government agencies, and timelines. Action plans are developed by the Ministry of Regional Policy in consultation with CSOs. However, the government is responsible for the implementation of these action plans: they collect information and monitor the implementation of the action plan's indicators. All ministries have to send the government information about the tasks completed or not completed.

Also, the Secretariat of the Cabinet of Ministers of Ukraine (the government) conducts major monitoring of fulfilment of government action plans on Strategy implementation. The report is published on the governmental website. Some NGOs draft alternative public reports.

The most relevant positive changes in the legal sphere for CSOs have been made possible due to implementation of government action plans<sup>166</sup>. Unfortunately, ministries and other government agencies do not always fulfil action plans on Strategy implementation duly. Oftentimes, government agencies infringe terms for task performance or fulfil them only partially. Government agencies often fail to create working groups and do not consult with CSOs on implementation of certain measures or improvement of legislation<sup>167</sup>.

There is no additional funding allocated for the fulfilment of government action plans on Strategy implementation. Therefore, the measures are mainly related to the improvement of legislation for CSOs or studying the situation, or conducting consultations.

In order to ensure coordination of activities aimed at Strategy implementation, the Decree of the President stipulates the establishment of the Coordination Council for the facilitation of the development of civil society under the President of Ukraine<sup>168</sup>. The Council is set up of 50% CSO leaders and 50% representatives of ministries. The Coordination Council is headed by the Deputy Prime Minister and the Deputy Head of Presidential Administration. The Coordination Council shall coordinate and monitor the status of Strategy implementation.

Unfortunately, the Coordination Council has not conducted meetings recently and has stopped operating as the key agency for the development of policy on civil society and control over its implementation<sup>169</sup>.

The majority of oblast councils has approved regional programs on facilitating the development of civil society. These programs outline measures on facilitating the development of civil society in regions, as well as appropriations from the local budget to fulfil such measures. The main executors of the regional civil society development program are the structural units of the oblast administration and rayon administrations. Typically, about 1 million UAH<sup>170</sup> is allocated annually. The most effective are the competition of projects for CSOs and the con-

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166 For instance, introduction of competition for projects among veteran CSOs; simplification of the procedure of granting a non-profit status.

167 These conclusions are based on the result of UCIPR own research. The UCIPR's experts personally communicated with the relevant ministry staff and ascertained the existence of a working group.

168 The Decree of the President No. 487, dated November 4, 2016 "On the Coordination Council for the facilitation of the development of civil society under the President of Ukraine".

169 No other body replaced the Council.

170 Around 35,000 EUR.

duct of seminars and trainings for CSOs on mechanisms of interaction with the authorities.

Coordination Councils for the facilitation of the development of civil society were established under the majority of oblast administrative authority. These regional councils include CSO representatives, as well as representatives of local authorities that map the administrative field for CSO operations<sup>171</sup>.

## **STANDARD 2. THE STATE HAS SPECIAL MECHANISMS IN PLACE FOR SUPPORTING COOPERATION WITH CSOS**

The legislation does not contain restrictions on CSO participation in public councils. Still, this institute has been working badly, although there are examples of productive work.

The CMU N996 “On Ensuring Public Participation in the Formation and Implementation of Government Policy”<sup>172</sup> guarantees that public councils are created in a transparent manner and upon the initiative of both state authorities and CSOs. There is a practice of establishing thematic advisory boards under executive and local authorities, such as the council for youth policy, the council of entrepreneurs under the Government, the council for freedom of speech and protection of journalists under the President and others.

The above-mentioned decree determines the main tasks: (1) rights and duties of the public councils, (2) the procedure for their formation by rating (electronic) voting<sup>173</sup> at constituent assembly, (3) the procedure of work of both the councils themselves and their governing bodies, (4) the procedure for cooperation and consideration of proposals by the executive body at which they are established.

Proposals of public councils are positively or partially taken into account when preparing a state policy or decision. The consideration of the proposals depends to larger extent on two factors: the quality of the proposals and the very issue to which the proposal is provided. If the issue does not concern the allocation of funds and does not affect the interests of third parties, but is more strategic, the probability of taking such proposals into account is high. But there is a second issue, a low level of competence and expertise of the majority of existing public councils. Public councils have ceased to use the advisory function, and are more focused on the control<sup>174</sup>.

Otherwise, we have examples of good work of Public councils. They are the Public council in Sumy and at the Ministry of Health.

At the level of the Decree of the Cabinet of Ministers of Ukraine No.996 “On Ensuring Public Participation in the Formation and Implementation of State Policy”, there are no restrictions on the possibility for the public to be part of the advisory body with state authorities. All CSOs

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171 Coordination Councils for the facilitation of the development of civil society were established under the majority of oblast administrative authority. These regional councils include CSO representatives, as well as representatives of local authorities that map the administrative field for CSO operations.

172 The Decree of Cabinet of Ministers On ensuring public participation in the formation and implementation of public policy <https://zakon.rada.gov.ua/laws/show/996-2010-%D0%BF>.

173 Rating voting is that all candidates to a council can vote for other candidates. For example, there are 35 places in a Council but 50 CSOs propose their participants. So as there are only 35 places every candidate has 35 votes and can give other 35-CSOs. If the CSOs receive more votes they get the place in the council. Only CSOs who have candidates can vote, other CSOs or citizens may not.

174 This information was obtained during the focus group.

have equal chances to participate in the work of advisory bodies. There are no restrictions based on race, color, gender, religion, birth, political or other opinion, national origin, property or other status. Also, there is no prohibition to participate based on the territorial distribution of CSOs (local, national or international), the source of financing, sphere of activity or relations with the authorities and the position regarding laws and other decisions in the decision-making process.

#### **SPECIFIC RECOMMENDATIONS UNDER AREA 10:**

- Encourage ministries and other government agencies to implement duly the action plans on the National Strategy on facilitating civil society development implementation;
- Raise awareness and encourage state authorities to consult with CSOs on implementing certain measures or improving legislation;
- Reform operations of civil society councils and engage all citizens in their staffing through electronic voting;
- Engage CSOs in consultations more actively during the fulfilment of government measures on the development of civil society;
- Local authorities should be more actively engaged in the development of favorable conditions for CSOs.

# V. CONCLUSIONS & RECOMMENDATIONS

Civil society in Ukraine is in a state of formation and development. The number of NGOs in the form of public associations and charitable organizations with non-profit status is about 38,000 (if we add organizations without such status there are around 100,000) and this number is constantly increasing.

But, despite its relatively active development since 2014, it continues to remain low at the level of involvement of citizens in the activities of civil society organizations: only 5% of people are engaged with CSOs<sup>175</sup>, according to the data of the Ilko Kucheriv Democratic Initiatives Foundation.

At the level of CSO activities, representatives of civil society in the overwhelming majority operate without basic knowledge of legislation in various areas: reporting, taxation, employment, relationships with volunteers, cooperation with public authorities, knowledge of AML/CFT regulation, good behavior of disclosing information about its activities, etc. Besides, there is some issue with financial and in-kind support, access to funding. Thus, according to the survey, 68% of respondents mentioned financial dependence of civil institutions on donors<sup>176</sup>. In addition, it is unfortunate that there is negative attitude towards some CSOs and executive authorities coming from international donors.

The Ukrainian legislation creates basic conditions for the establishment and operation of CSOs, however, it should be refined and brought in compliance with best European practices,

## BASED ON THE FINDINGS IN THE PRESENT ANALYSIS, WE HAVE IDENTIFIED THE FOLLOWING KEY RECOMMENDATIONS:

- Provide the possibility for online registration of charitable organizations, public associations without the status of a legal entity and registration of changes to the information about CSOs (changes to the charter, change of the leader, etc.);
- Ensure protection of CSO funds, in particular, endowments in case of bankruptcy of banks. Ensure legislative regulation for certain types of charitable activities, in particular, non-cash lottery, charitable auctions
- Ensure legal protection of rights and liabilities of organizers and participants of peaceful assemblies, define a clear list of limitations towards peaceful assemblies, outline positive obligations of the state to guarantee peaceful assemblies, as well as guarantee the right for ad hoc counter-assemblies,.
- Annul administrative liability for the violation of the rules for organization and holding of peaceful assemblies (Article 185-1 of the Code of Ukraine for administrative offenses).

<sup>175</sup> The survey of Ilko Kucheriv Democratic Initiatives Foundation <https://dif.org.ua/uploads/pdf/20771406545b589e0b474c31.88986456.pdf>.

<sup>176</sup> The survey <https://dif.org.ua/uploads/pdf/13963398165a9eef1b022177.77359526.pdf>.

- Annul the regulations of the local self-government authorities that limit the freedom of peaceful assemblies and violate the Constitution of Ukraine;
- Use different types of consultation mechanisms by authorities including joint working groups, in-person discussions of drafts, etc., in addition to publishing draft documents for consultation;
- Ensure legal guarantees to protect journalists and their activities at judicial level (protection of journalistic sources, protection against physical attacks and violence);
- Ensure proper investigation of attacks on journalists and civic activists, in particular, LGBT representatives, eco-activists, national minorities and others;
- Avoid legislative initiatives that aim to complicate the reporting process of CSOs and can harm the beneficiaries of these organizations (for example, in uncontrolled areas of Donetsk and Luhansk oblasts and the occupied Crimea).
- Encourage the sector to disclose information about its activities through self-regulation;
- Clarify the grounds and procedure for appeal of legal acts, preventive and collective actions by CSOs or on behalf of CSOs, and their access to legal aid in such actions;
- Raise awareness among CSOs on the regulation on money laundering and terrorist financing and how it may affect them;
- Provide an instruction by the National Bank of Ukraine on the possibility of transferring funds abroad by CSOs, including for medical treatment or membership fees, and a list of documents required for such transfer;
- Introduce tax incentives for corporate and individual philanthropy that will not be burdensome ;
- Introduce a single competitive mechanism for obtaining funds from the state and local budgets with the development of a mechanism for monitoring of events, reporting, as well as a transparent and understandable mechanism for obtaining premises for CSOs;
- Encourage ministries and other government agencies to duly implement action plans on the implementation of activities under the National Strategy on facilitating civil society development;
- Local authorities should be more actively engaged in the development of favorable conditions for CSOs;
- Increase the capability of CSOs in organizational development, financial stability, reporting, accounting of property, etc.

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