

CSO METER

A compass to conducive
environment and
CSO empowerment

UKRAINE 2021 COUNTRY REPORT

KYIV





European Center for
Not-for-Profit Law



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

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

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ABBREVIATIONS & ACRONYMS

AI	Artificial intelligence
AML/CTF	Anti-money laundering and counter-terrorism financing
CMU	Cabinet of Ministers of Ukraine
CSO	Civil society organisation ^{1, 2}
Diia	An online service with mobile app that aims to speed up and simplify the process of obtaining public services, as well as combines electronic versions of documents, including ID, taxpayer number, COVID-19 vaccination certificate, etc., and equates electronic documents to their paper originals.
EaP	Eastern Partnership
ECHR	European Convention on Human Rights
ECNL	European Center for Not-for-Profit Law
ECtHR	European Court of Human Rights
EUR	Euro
FSPPD	Fund for the Social Protection of Persons with Disabilities
GDP	Gross Domestic Product
ICCPR	International Covenant on Civil and Political Rights
LGBT	Lesbian, Gay, Bisexual and Transgender
LSGA	Local self-government authorities
MP	Member of Parliament
OSCE	Organization for Security and Co-operation in Europe
Parliament	Supreme Council of Ukraine (<i>Verkhovna Rada Ukrainy</i>)
RSA	Regional State Administration

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

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

SBU	Security Service of Ukraine (<i>Sluzhba bezpeky Ukrayiny</i>)
SCMU	Secretariat of the Cabinet of Ministers of Ukraine
UAH	Ukrainian Hryvnia
UBO	Ultimate beneficial owner
UCIPR	Ukrainian Center for Independent Political Research
USD	United States Dollar
UTOG	Ukrainian Association of the Deaf (<i>Ukrayins'ke tovarystvo hlukhy</i>)
UTOS	Ukrainian Association of the Blind (<i>Ukrayins'ke tovarystvo slipykh</i>)
VAT	Value Added Tax

I. EXECUTIVE SUMMARY

During the reporting period of October 2020 to November 2021, Ukrainian civil society was actively adapting to the new realities of the Covid-19 pandemic. The resulting conditions became the driving force for the process of active digitalisation of the civil society organisation (CSO) sector.

The year 2021 was the mile of Volodymyr Zelenskyy's current five-year presidential term. The first half of his term was almost entirely spent on the processes of consolidating power and his influence over the authorities. The current composition of the Cabinet of Ministers of Ukraine (CMU), headed (since 4 March 2020) by Prime Minister Denys Shmyhal, has undergone several rotations, notably in May and November 2021 when ten ministers were replaced in total.³ The activities of both the Prime Minister and the government headed by him were not characterised by independence in decision-making, special initiatives, or publicity.

Dialogue between CSOs and the new government has slightly improved, which resulted in the adoption of a number of legislative acts favourable to the development of CSOs, namely the National Strategy for Civil Society Development for 2021-2026, amendments to CMU Resolution No. 1049 aimed at setting up the procedures for online contest-based public funding of CSOs, and the development of the draft Law of Ukraine 'On Public Consultations'. At the same time, however, CSO development remains an unpopular focus for government activities overall.

The Covid-19 pandemic has exacerbated the issue of organisational sustainability for CSOs, in particular for local and small organisations. The capabilities of such organisations often depend on the human and material resources they can obtain from people in their local communities. During the period of the pandemic, the attention of those supporters was focused on other issues, therefore CSOs were left without the necessary support to carry out their work.⁴

The CSO sector has maintained its public trust. CSOs became the leading actor in overcoming the consequences of the coronavirus pandemic through their support for the affected segments of the population. Added to this, the CSO sector has managed to

³ Razumkov Centre 'Current State of and Main Trends in the Socio-Political Development of Ukraine', https://razumkov.org.ua/uploads/article/2021_polit_perspektiv_ua.pdf.

⁴ According to research by ISAR Ednannia, 'The Lockdown Year: Challenges and Needs of Civil Society under the Covid-19 Crisis and Quarantine', https://ednannia.ua/images/Covid_survey_results_final_public_copy_1.pdf

develop charitable assistance in the field of health protection, involving volunteers and businesses in combatting Covid-19.

One of the most important developments was the adoption by President Zelenskyy of the National Strategy for Civil Society Development for 2021-2026. The government actively involved CSOs in the process of drafting the Strategy. It contains ambitious plans to create new financial incentives for the development of charity and volunteering, social entrepreneurship, and the institutional development of CSOs. The indicators and recommendations of the CSO Meter served as a reference when writing the Strategy, in particular in the fields of legal support for public consultations, protection of freedom of peaceful assembly, and security of civil activists.

A notable improvement for CSOs and a positive result of the government's cooperation with them in 2021 was the introduction of online contest-based public funding for projects via the e-governance platform *VzaemoDiia*. This platform greatly facilitates CSOs' access to public funding for their projects, as well as makes the procedure for obtaining funds more transparent.

Activists being attacked and, in some cases, killed, is an issue that remains unresolved. Anti-corruption, environmental and LGBT activists are most at risk. In 2021, one activist was killed and around ninety attacks on activists were reported. Civic activists still do not receive adequate attention and protection from the government and law enforcement agencies.

In addition, despite the implementation of a number of fundamental legal documents in support of CSOs in 2021, anti-civil society bills have periodically appeared in the *Verkhovna Rada of Ukraine* (Parliament), such as attempts by some lawmakers to equate public activities with commercial lobbying, or government attempts to complicate procedures for foreign volunteers in Ukraine. The issue of the obligation for CSOs to provide information on their ultimate beneficial owner (UBO) has also remained unresolved.

Key priorities

1. Improve legislation on the registration and operation of CSOs, including the abolition of the requirement to for CSOs to provide information on their UBO;
2. The development of electronic services and digital environments for interaction between the authorities and CSOs;
3. Provide favourable tax conditions for CSOs' activities;

4. Prevent the adoption of new legislative restrictions for CSOs;
5. Ensure due investigation of attacks on journalists and civil society activists, particularly against LGBT activists, eco-activists, and the representatives of national minorities;
6. Foster the implementation of the National Strategy for Civil Society Development for 2021-2026;
7. Develop various fundraising mechanisms for CSOs, including CSO business activities, the tax designation mechanism, social contracting, etc;
8. Ensure equal access of CSOs to public funding and that the competitive process for obtaining such funding is transparent; and
9. Ensure public participation by improving legislation such as the Law of Ukraine 'On local self-governance' and adopting the Draft Law 'On Public Consultations'.

Priority recommendations

1. Implement the provisions of the National Strategy for Civil Society Development for 2021-2026;
2. Abolish the requirement for CSOs to provide information on their UBO;
3. Expand the range of CSOs receiving state support for project funding and also expand the areas in which CSOs have access to funding (in addition, to people with disabilities, veterans and youth);
4. Adopt the Law of Ukraine 'On Public Consultations';
5. Avoid initiating draft laws intended to worsen the legal environment for CSOs in relation to foreign funding;
6. Ensure the appropriate and efficient investigation of attacks on journalists and civil activists, including those who protect the rights of women, LGBT communities, anti-corruption activists and others; and
7. Introduce dedicated legislation on the use of artificial intelligence (AI) and upgrade current legislation on digital rights in accordance with international standards and with due regard for human rights.

II. UKRAINE - IN NUMBERS

Basic data

Population: 44.13 million (2020)⁵ | GDP per capita: 3,726 USD (2020)⁶ | Number of CSOs: 160,000 (2021) | CSOs per 10,000 inhabitants: 16 | Registration fee for CSOs: None | Freedom in the World: Partly Free (60/100) (2021)⁷ | World Press Freedom Index: 97th out of 180 countries, score 67.04 (2021)⁸



Country score: 5.3
Legislation: 5.5
Practice: 5.0

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

Areas	Overall	Legislation	Practice
Freedom of association	5.9	5.9	5.9
Equal treatment	5.9	5.9	5.8
Access to funding	5.1	5.3	4.8
Freedom of peaceful assembly	5.2	5.3	5.1
Right to participation in decision making	5.4	5.7	5.0
Freedom of expression	5.3	6.0	4.5
Right to privacy	4.7	5.0	4.4
State duty to protect	5.1	5.3	4.9
State support	4.8	5.0	4.6
State-CSO cooperation	5.5	5.9	5.0
Digital rights	5.2	5.5	4.8

⁵ The World Bank, 'Population – total, Ukraine',

<https://data.worldbank.org/indicator/SP.POP.TOTL?end=2020&locations=UA&start=1960&view=chart&year=2014>.

⁶ The World Bank, 'GDP per capita (current US\$) – Ukraine', 2020,

<https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=2020&locations=UA&start=1990&view=chart>.

⁷ Freedom House, Freedom in the World 2021, <https://freedomhouse.org/country/ukraine/freedom-world/2021>.

⁸ Reporters Without Borders, 2021 World Press Freedom Index, <https://rsf.org/en/ukraine>.

III. FINDINGS

3.1 Freedom of Association

Overall score per area: **5.9** / 7

Legislation: **5.9** / 7

Practice: **5.9** / 7

Legislation in the area of Freedom of Association is conducive to and stable for CSOs. CSOs in Ukraine are free to determine their objectives and activities. State registration of CSOs is free of charge and the procedure is clearly defined and fast. Also, some forms of CSOs, such as public associations, can be registered online. The state does not create unnecessary obstacles to the activities of CSOs. The recommendations from the previous CSO Meter country reports have been partially addressed in terms of CSOs being able to register online.

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

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

A public association can register as a legal entity or may act as an informal association. It can be established by a minimum of two persons. Foreigners and stateless persons who are legally resident in Ukraine are allowed to register a public organisation, in addition to Ukrainian citizens. The founders of a public organisation may be individuals who are at least 18 years old and members of those CSOs may be individuals who are at least 14 years old. Founders of youth and children’s public organisations can be persons who are at least 14 years old. A member of a youth organisation may be a person between the ages of 14 and 35, while members of a children’s public organisation can be individuals between the ages of 6 to 18.

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

A charitable organisation may be established as a charitable society, charitable institution, or charitable foundation as defined by the Law of Ukraine ‘On Charitable Activities and Charitable Organisations’ and other relevant laws of Ukraine. A charitable society is a charitable organisation that is established by at least two founders and operates based on a charter.

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

A charitable foundation is a charitable organisation that operates on the basis of a charter, has participants, and is managed by participants who are not obliged to donate any assets to the organisation to achieve the goals of the charity. A charity foundation can be created by one or more founders.

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

Civil servants are not restricted by law from participating in CSOs as ordinary members or as members of their governing bodies. However, civil servants and officials of local self-government authorities (LSGAs) are obligated to carry out their duties honestly and impartially and to show no adherence to certain individuals or legal entities, or public and religious organisations. In practice, a candidate for a civil service position, as one of the informal criteria for holding the position, will terminate their membership of the governing body of a public association to avoid the possibility of a conflict of interest. At the same time, the participation of civil servants in the activities and management of CSOs is free of charge. Pro-Russian Members of Parliament (MPs) have proposed several legislative initiatives that intend to limit the access of members of the governing bodies of foreign-funded CSOs to senior civil service positions.⁹

Public associations may carry out activities with the status of a legal entity or without such status. Charitable organisations can be registered and may 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 obtain non-profit status.

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

⁹ Official web portal of the Parliament of Ukraine. Draft Law No. 3572 from 02.06.2020, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68997

obligation, in case of the liquidation of the CSO, to transfer all assets to another CSO of a similar organisational and legal form, or to the state budget revenue.

One of the legally-established principles of the activities of public associations is the free choice of the territory of its engagement. Consequently, the public association, regardless of location, may carry out activities throughout the territory of Ukraine or beyond, unless otherwise specified by its constituent document. However, public associations have the right to receive an 'All-Ukrainian' status if they have subdivisions in at least 13 regions of Ukraine (out of a total of 24). This status, for now, entitles All-Ukrainian public associations of persons with disabilities and veterans to state financing for their projects.

Charitable organisations are also free to choose the territory of their activities. Charitable organisations cannot obtain All-Ukrainian status (or other statuses) that would provide special state funding opportunities.

Despite attempts to restrict the possibility for some civic activists to be members of the supervisory boards of state enterprises by law,¹⁰ the draft legislation was not put before Parliament in 2021. This initiative was proposed in 2020 with the aim of removing the possibility for civic activists to be independent members of the supervisory board of a state unitary enterprise or business company (the authorised capital of which more than 50 per cent of shares belong to the state). The limitation was suggested for persons who during the last five years: had been a member of the governing body of a public association or was an authorised representative of a public association; had been a member of a public association that receives or has received funding from foreign states and/or foreign CSOs; or had been a member of a public association that cooperates or had cooperated with foreign CSOs.

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.

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

The procedure for registration of a public association and registration of new legal entities are regulated by the Law of Ukraine 'On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations', the Law of Ukraine 'On Public Associations', and various other regulations and procedures.¹¹

¹⁰ Official web portal of the Parliament of Ukraine. Draft Law No. 3193-1 from 17.03.2020, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68407.

¹¹ Namely, the 'Procedure for keeping the Register of non-profit institutions and organisations, inclusion of non-profit enterprises, institutions and organisations in the Register and exclusion from the Register' approved by CMU Resolution from 13.07.2016 No. 440, <https://zakon.rada.gov.ua/laws/show/440-2016-%D0%BF#Text> and the

Registration of a public association takes place within three business days and is free of charge. The time period for registration (e.g., for additional consideration of registration documents) for public associations can be extended, but not to more than fifteen business days. In practice, registrars rarely use this time extension and review applications within three business days. Registration is carried out directly by the Territorial Department of Justice in the *oblasts* (regions) of Ukraine and the city of Kyiv (25 departments in total). However, applications can also be submitted to Administrative Services Centres (there are around 936 centres with 104 territorial departments)¹² and the Secondary Legal Aid Centres (535 centres).¹³

While the legislation provides for the opportunity to make a registration application online, in practice this service is currently only available if establishing a public organisation. Documents for online registration should be submitted in digitally through the personal account of the 'Online House of Justice', the online platform for receiving services without personal contact with civil servants.¹⁴ This method of registration is also completed within three business days and is free of charge.

State registration of charitable organisations takes place within twenty-four hours from the receipt of the application (except at weekends and on public holidays) and is free of charge. For charitable organisations, there is no time period extension available to the registering authority for consideration of the submitted documents. Registration of charitable organisations is carried out by LSGAs (the Administrative Services Centres, notaries, and other accredited subjects of registration) and therefore the range of entities authorised to register them is as wide as possible.

The list of documents required for registration of a public association is clearly defined and consists of an application form for founding a legal entity or application form for founding a public association without legal entity status, a decision of the founders on the 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 organisation consists of an application form for founding a legal entity, a decision of the founders on the formation of the charitable organisation, and the charter.

¹² 'Procedure for State Registration of Legal Entities, Individual Entrepreneurs and Public Associations that do not have the status of a legal entity', approved by Order of the Ministry of Justice of Ukraine from 09.02.2016 No. 359/5, <https://zakon.rada.gov.ua/laws/show/z0200-16#Text>

¹³ Ministry of Digital Transformation, 'General figures: the number of Administrative Services Centres in communities has tripled', piece of information from 18.08.2021, <https://thedigital.gov.ua/news/mintsifra-spriyae-transformatsii-tsnap-kilkist-tsentriv-u-gromadakh-zroslo-vtrichi>

¹⁴ Ministry of Justice, 'Addresses of free Legal Aid Centres' piece of information from 10.02.2020, <https://minjust.gov.ua/news/info/adresi-tsentriv-z-nadannya-bezoplatnoi-pravovoi-dopomogi>.

¹⁵ Government Portal, 'A CSO with the status of legal entity registration', <https://www.kmu.gov.ua/service/reyestraciya-go-zi-statusom-yuo>

The list of grounds for refusal to register a CSO is clearly defined in the Law on State Registration and refusal on grounds other than those specified by law is prohibited. There is also a list of grounds under which applicants are granted a fifteen-day period in which to correct deficiencies where these have been identified and complete registration.

In 2018-2019, for example, a refusal to register occurred in more than 17 per cent of all applications for registration.¹⁵ The most common grounds for denial of state registration are: (i) the grounds for the registering authority suspending its consideration of the application documents have not been remedied by the applicant within the established time period; (ii) the charter of the would-be legal entity does not meet the requirements of the law; (iii) the application documents contradict the statute; and (iv) the information specified in the application for registration differs from the information in the documents submitted for registration.

The decision of the state registrar may be challenged by appealing to the Ministry of Justice of Ukraine, its territorial bodies and the courts.

In June 2021, the Ukrainian Center for Independent Political Research (UCIPR) together with the Ministry of Justice of Ukraine, initiated a discussion on the draft Law of Ukraine 'On Amendments to Certain Laws of Ukraine on Liberalization of Public Organisations'. The event brought together almost 100 participants, mostly CSO representatives. The following proposals received backing from the authorities:

- Increasing the number of CSO registration bodies;
- Reducing the number of documents required for CSO registration;
- Reducing of registration deadlines;
- Establishing a single organisational and legal form for public associations;
- Introduction of a 'model option' for registration and a reduction in the mandatory requirements for the applicant's charter;
- Introduction of automatic membership acquisition by the founders of CSOs;
- Granting CSOs freedom of choice to independently establish the procedure and rules of their decision-making; and
- Establishing a regulatory framework for the implementation of e-government for CSOs.¹⁶

These proposals to the previously mentioned Law were developed in 2021 by UCIPR in collaboration with CSO experts and representatives of the Ministry of Justice of

¹⁵ UCIPR 'Practice and Legislative Problems in the Field of Registration of Public Associations in 2018-2019', <http://www.ucipr.org.ua/publicdocs/AnalizCSO.pdf>.

¹⁶ UCIPR 'Presentation of the draft Law of Ukraine "On Amendments to Certain Laws of Ukraine on Liberalization of Public Organizations', <https://www.facebook.com/UCIPR/photos/a.246921442022647/4022229137825173/>.

Ukraine. By the end of the year, the initiatives were on government bodies' agendas to be refined before being registered.

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

CSOs in Ukraine are free to determine their objectives and activities, but they, like other associations, are prohibited from conducting anti-constitutional activities.

Public associations carry out their activities in accordance with the self-government principle, which, among other things, provides for their right to independently determine their areas of activity. In addition, there is a principle of non-interference of state authorities, other state bodies and other authorities in the activities of a public association. Public associations are free to choose the focus and goals and of their activities. 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 the 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.¹⁷

Charitable organisations are limited in defining their goals and activities in comparison to public associations. Namely, they must carry out activities falling within the fifteen areas defined by law for charitable activities.^{18,19}

A separate subdivision of a foreign non-profit organisation may operate in Ukraine in accordance with a legally-established procedure, but without the status of a legal entity being granted. There are no restrictions on the purpose and direction of the activities of such a unit, as there are for other public associations. In most cases, registrars are limited to verbal recommendations on the formulation of the unit's

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

¹⁸ The Law of Ukraine 'On Charity and Charitable Organisations', from 05.07.2012 No. 5073-VI with the latest amendments on 02.06.2021, <https://zakon.rada.gov.ua/laws/show/5073-17#Text>.

¹⁹ These are: 1) education; 2) health care; 3) ecology, environment and animal protection, prevention and elimination of natural and man-made disasters, assistance to victims of disasters, armed conflicts and accidents, as well as refugees and persons in difficult life circumstances; guardianship and custody, legal representation and legal assistance; 6) social protection, social security, social services and poverty eradication; 7) culture and art, protection of cultural heritage; 8) science and research; 9) sports and physical culture; 10) human rights and fundamental freedoms; 11) development of territorial communities; 12) development of international cooperation of Ukraine; 13) stimulating the economic growth and development of the economy of Ukraine and its individual regions and enhancing Ukraine's competitiveness; 14) promoting the implementation of national, regional, local and international programs aimed at improving the socio-economic situation in Ukraine; and 15) promotion of the country's defence and mobilization readiness, protection of the population in emergencies of peaceful and martial law.

goals or areas of activity. However, they do not use this as a reason for refusal of registration.

After receiving the Clarification from the Ministry of Finance of Ukraine that public associations are allowed to carry out business activities,²⁰ CSOs began to exercise their right to engage in business activities more often without fear of losing their non-profit status. At the same time, such business activities must meet the public association's goals or objectives and contribute to its achievement. CSOs are prohibited from income distribution among their founders, leaders and/or employees.

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

CSOs may be dissolved by a court, but this rarely happens in practice. The sanctions for non-profit CSOs are clearly defined but can be applied without warning. CSOs that have non-profit status can lose it if their founders or members use the income of the organisation for their own benefit. Such CSOs then become regular taxpayers 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.

In general, violations of the provisions on reporting and other procedures established for all legal entities do not provide for specific sanctions for CSOs. Therefore, responsibility for violations of the law, including in relation to the different types of reporting requirements, is standardised. A public association may be dissolved by the court, but only in case of breach of the provisions of the Constitution of Ukraine or the Law on Public Associations.²¹

Legal entities, including CSOs, are required to disclose their UBO for anti-money laundering and counter-terrorism financing (AML/CTF) purposes. The requirements create problems for CSOs as a CSO is usually a non-profit organisation and the beneficiaries of public associations and charity organisations are not specific persons. The definition of a CSO's owners is also unclear. However, the amount of the fine for failure to provide this information ranges from UAH 17,000 (around 546 EUR) to UAH 51,000 (around 1,640 EUR). The current amendments, adopted on 8 October 2021, as a result of a CSO-led advocacy campaign, have extended the previous three-month deadline for providing this information to one year (until 11 July 2022).

²⁰ Letter from the Ministry of Finance of Ukraine dated 06.02.2019 No. 11210-09-5/3214, <https://zakon.rada.gov.ua/rada/show/v3214201-19#Text>

²¹ See footnote 17 above for details of prohibited purposes, goals or actions for public associations.

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

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

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

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

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

Recommendations:

- The State Tax Service of Ukraine should notify CSOs in writing in advance in instances where the status of non-profit organisation will be lost;
- The government should revise (together with CSOs) and adopt the draft Law of Ukraine 'On Amendments to Certain Laws of Ukraine on Liberalization of Public Organisations' to simplify the registration and operational environments for CSOs; and
- The registration body should allow for registration of public associations within 24 hours and make the application review process more efficient (i.e., without unnecessary extensions of fifteen days being applied).

3.2 Equal Treatment

Overall score per area: **5.9** / 7

Legislation: **5.9** / 7 | Practice: **5.8** / 7

The state does not treat CSOs equally to business entities. Furthermore, there are differences in treatment when it comes to different types of CSO, especially during the registration process. No significant changes have taken place in the area of equal treatment in this reporting period. In some respects, namely in relation to the duration and means of registration, CSOs that work as service-providers are treated slightly worse than businesses. Legislation relating to public procurement, as well as the practice of public procurement, is unfavourable for CSOs and this needs to be addressed by lawmakers. The recommendation to make CSO reporting optional was partially implemented.

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

The procedures for registration and voluntary termination of CSOs are not more expensive than for businesses, but they are more time-consuming and burdensome. Consideration of documents submitted for the state registration of a legal entity, regardless of organisational and legal form (including charitable organisations) takes one day, while for a public association it takes three days.

Public organisations with the status of a legal entity and legal entities can be registered online. The terms and cost of online registration remain unchanged. At the same time, legal entities (individual entrepreneurs and limited liability companies)²² can be registered through the *Diia* web portal, while the service for CSO registration at this platform is still unavailable.

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

The reporting requirements for CSOs are comparable to those for business entities. State inspections of CSOs are not more frequent than for business entities. Business entities, as profit-making businesses, are subject of greater overall scrutiny from the authorities.

In terms of public procurement, the relevant legislation establishes a non-discriminatory approach according to which any organisation of whatever legal form or ownership can participate in public procurement procedures on an equal basis.

²² Diia Platform, Creating a business, <https://diia.gov.ua/services/categories/biznesu/stvorennya-biznesu>

CSOs can use a simplified procurement procedure when receiving funds from state or local budgets and purchasing services, goods and works from third parties for more than UAH 50,000 (around 1,600 EUR). According to Article 11 of the Law of Ukraine 'On Public Procurement', CSOs must designate a responsible (authorised) person for the organisation and conduct of the simplified procurement procedure.

According to the Law on Public Procurement,²³ by 1 January 2022 procuring entities (CSOs) were required to establish a tender committee to organise and conduct procurement procedures. In addition, authorised CSOs are required to confirm their level of knowledge in the field of public procurement, which is costly for them. CSOs who wish to receive funding from state or local budgets will generally not be able to pay for such a confirmation and/or training in tender procedures within the cost estimate of their projects. Therefore, the opportunity for CSOs to receive funds from state or local budgets is partially limited.

The DoZorro Monitoring Portal²⁴ is designed to control the transparency and quality of public procurement, including a mechanism that avoids discriminatory rules when creating bidding documents. DoZorro provides an opportunity for public activists and potential bidders to give feedback to the contracting authority, to discuss and evaluate the conditions of specific procurements, and to prepare and submit a formal request to the controlling authorities. In practice, businesses have better access to participation in public procurement, but also a greater risk of additional tax audits.

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

Responsibility for violations of the law for CSOs is comparable with business entities.

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

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

²³ The Law of Ukraine 'On public procurement' from 25.12.2015, No. 922-VIII with the latest changes from 18.11.2021. Part X. Ending and transition ensuring notes. Article 1, <https://zakon.rada.gov.ua/laws/show/922-19#Text>

²⁴ DoZorro Monitoring Portal, <https://dozorro.org/>.

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

Nevertheless, two large CSOs - the Ukrainian Association of the Deaf (UTOG) and the Ukrainian Association of the Blind (UTOS) – are in an advantageous position as they still receive direct state funding without having to compete for it according to CMU Resolution No. 183²⁵ dated 14 March 2018 and No. 166 dated 3 March 2020.²⁶ This direct public funding amounted to over UAH 47 million²⁷ (around 1.5 million EUR) in 2021. Discussions on repealing CMU Resolution No. 183, which would allow CSOs to have equal access to public funding on a competitive basis, began in 2021.

CSOs established by foreign legal entities or individuals are not subject to discrimination. However, the relevant legislation specifies some specific additional requirements relating to the documents that must be 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 legalised through consular legalisation or placement of apostille). However, in general, the procedure for registering CSOs for foreigners is no different from the procedure for citizens of Ukraine.

Recommendations:

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

²⁵ Procedure for using funds provided in the state budget for financial support of the Ukrainian Association of the Blind and the Ukrainian Association of the Deaf, approved by CMU Resolution from 14.03.2018 No. 183, <https://zakon.rada.gov.ua/laws/show/183-2018-%D0%BF#Text>.

²⁶ Some issues of providing financial support to public associations of persons with disabilities, approved by CMU Resolution from 03.03.2020 No. 166, <https://zakon.rada.gov.ua/laws/show/166-2020-%D0%BF#Text>.

²⁷ Law of Ukraine 'On State budget of Ukraine for 2021', from 15.12.2020 No. 1082-IX, <https://zakon.rada.gov.ua/laws/show/1082-20#Text>.

3.3 Access to Funding

Overall score per area: **5.1 / 7**

Legislation: **5.3 / 7**

Practice: **4.8 / 7**

The sources of funding for CSOs are diverse. However, funding from foreign donors remains the main source. In 2021, CSOs relating to veterans, persons with disabilities and youth could participate in competitions for public funding through the online platform VzaemoDiia. Since April 2020, several draft laws (No. 3572 on the prohibition of foreign funding to authorities, No. 3326 on the prevention of external influence on state interests, No. 3564 on transparency in the activities of public associations with foreign support) were initiated with the aim of making the receipt of financial and material resources from foreign and international sources more difficult.

A recommendation to raise awareness among CSOs about various mechanisms for attracting funding was addressed.

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

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

International technical assistance programmes are currently one of the most common sources of funding for CSOs. Ukrainian law does not prohibit CSOs from receiving foreign financial support, however draft laws (No. 3572, No. 3326 and No. 3564) to restrict the activities of organisations that receive foreign funding have been proposed in Parliament.

In addition, financial support from central and local government that allocates funds to CSOs plays an important role. In 2021, the amount of public funding available for CSOs increased compared to 2020. Namely, a total of UAH 183.5 million (around 5.9 million EUR) was available for CSOs from various state institutions. In addition, from 13 September 2021, the presentation of the online platform VzaemoDiia to contests for CSOs took place, and all contest procedures were established online which allows for an easy and clear procedure.

CSOs can raise funds through entrepreneurship and through selling their services. Such activities should be carried out within the framework of national legislation. Some types of services cannot be provided by CSOs (for instance, if they do not meet the statutory objectives of the organisation), so some CSOs create separate legal entities (e.g., limited liability companies) to comply with the law, through which they then carry out such activities. Additionally, according to the Tax Code of Ukraine,

organisations must register as Value Added Tax (VAT) payers if the amount of services provided by them during the year exceeds UAH 1,000,000 (around 32,000 EUR). However, the concept of social entrepreneurship is not sufficiently popular and local social enterprises sometimes lack the capacity to develop a clear and achievable business model.

Crowdfunding is an effective and widespread method of attracting local resources for project implementation and institutional development for CSOs, but its use has certain specific features. That is why charitable foundations²⁸ receive more financial support from crowdfunding than other types of organisations, due to the social context of their activities which makes them appealing to donors in Ukraine.

The National Bank of Ukraine has strong controls on Ukrainian banks and some of the digital fundraising sources remain restricted for CSO use in Ukraine (i. e. PayPal and cryptocurrencies). However, systematic legislative changes are being introduced to establish a legal environment for the use of 'virtual assets' (including cryptocurrencies) and introduce an Open Banking concept in Ukraine in 2023 that will enable the full-scale use of PayPal and other digital payment systems.²⁹

The practice of charity donations via SMS is not well developed. Ukrainian legislation gives responsibility for the implementation of appropriate mechanisms for enabling this (e.g., the creation of short telephone numbers for fundraising) to mobile operators and this diminishes its use. Only around fifteen CSOs state that they use SMS in charity fundraising. The reason for this attitude is that the verification of partner CSOs for mobile operating companies is an expensive and time-consuming procedure, and the level of trust towards CSOs who want to use SMS for fundraising is quite low due to the large number of fraudulent schemes related to charity. The effectiveness of SMS fundraising is also dependent on the charity's media presence and its advertising capabilities.

Issues remain with access to and use of banking services for CSOs. Banks require additional documents to open accounts or perform settlements for non-profit CSOs. For example, the transfer of funds in foreign currencies is considered a 'foreign economic activity' that requires additional documents to prove the origin of the funds. The banks do not take the specific nature of the activities of non-profit CSOs (lack of connection of the founders who lost their powers to the work of the organisation, the presence of a complex system of governing bodies with differing powers, etc.) into consideration. The procedure for validating bank accounts has not been adapted for

²⁸ Report on the results of the study 'Features of CSO financial models in Ukraine as a factor of their financial sustainability,' Ilko Kucheriv Democratic Initiatives Foundation, <https://ednannia.ua/189-doslidzhennia/12280-osoblivosti-finansovikh-modelej-organizatsij-gromadyanskogo-suspilstva-v-ukrajini-yak-chinnik-jikh-finansovoi-stalosti>

²⁹ ENCL, Research paper 'Regulation of digital fundraising methods in Ukraine', <https://ecnl.org/sites/default/files/2021-12/UKR%20digital%20fundraising%20final.pdf>.

CSOs. Also, the procedure for transferring membership fees from non-profit CSOs in international organisations and associations, as well as the procedure for paying fees to foreign speakers, or experts for services rendered is complicated.³⁰

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

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

- No. 3564³¹ 'on transparency of the activities of public associations with foreign support'. The Draft Law requires that CSOs that receive more than 50 per cent of their budget from foreign sources should be given a special status that would be required to be indicated in the name of the CSO. It is also proposed to oblige CSOs to publish their financial reports on both their own websites and the Ministry of Justice's website and to prohibit persons who are associated with CSOs that receive foreign funding from holding public offices for a period of five years. It is also proposed that the heads of CSOs receiving foreign funding must be tested annually on a polygraph for treason.
- No. 3326³² 'on the prevention of external influence on state interests'. The Draft Law prohibits persons connected with foreign-funded CSOs from holding public office for a period of ten years and provides for the dismissal of civil servants in office within one month from the date of entry into force of the law.
- No. 3572³³ 'on the prohibition of foreign funding to authorities and public offices and the prohibition of the highest state officials on having a nationality other than Ukrainian.'³⁴

³⁰ 'Legal reforms roadmap for civil society', https://cedem.org.ua/wp-content/uploads/2020/09/Final_UKR_Karta-pravovyh-reform-dlya-gromadyanskogo-suspilstva-v-Ukrayini-2020.pdf.

³¹ Official web portal of the Parliament of Ukraine. Draft Law No. 3564 from 29.05.2020, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68977.

³² Official web portal of the Parliament of Ukraine. Draft Law No. 3326 from 13.04.2020, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68576.

³³ Official web portal of the Parliament of Ukraine. Draft Law No. 3572 from 02.06.2020, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68997.

³⁴ This means receiving funds from abroad from: foreign donors, international donors, foreign legal entities, foreign individuals.

These draft laws have caused concern and active opposition from civil society. None of these draft laws have yet been passed, but they remain for consideration in Parliament without active processing.

Recommendations:

- Develop social entrepreneurship and the capacity of CSOs to engage in entrepreneurial activities;
- Avoid initiating draft laws intended to worsen the legal environment for CSOs that receive foreign funding; and
- The National Bank of Ukraine should clarify the list of documents to be provided by non-profit CSOs in order to open a bank account and should provide information for the annual validation of non-profit CSOs' accounts.

3.4 Freedom of Peaceful Assembly

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

Legislation: **5.3 / 7**

Practice: **5.1 / 7**

Freedom of peaceful assembly was, in the main, not violated in the period from October 2020-November 2021. The spread of the coronavirus has led to some restrictions on the number of people who can be in one place at a time and has set a physical distancing norm of 1.5 metres between people. At the same time, these rules did not lead to a ban on peaceful assemblies which regularly took place during the reporting period. In general, the recommendations remain unchanged from the previous reporting period.

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

Freedom of peaceful assembly in Ukraine is guaranteed by the Constitution of Ukraine.³⁵ However, there is no specific law that regulates the issues of organising and holding peaceful assemblies.

Even though the right to participate in peaceful assemblies is formulated in the Constitution³⁶ as one that belongs to the citizens of Ukraine, every person, regardless of nationality, can enjoy this right. This is due to Ukraine's ratification of the

³⁵ 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.

³⁶ The Constitution of Ukraine from 28.06.1996 with latest changes from 03.09.2019, <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.

European Convention on Human Rights (ECHR) in which the right of peaceful assembly is formulated as a right that belongs to everyone regardless of nationality or citizenship. The right to peaceful assembly is also provided for in Article 315 of the Civil Code of Ukraine.³⁷ Thus, individuals have the right to freely assemble at peaceful assemblies, conferences, meetings, festivals, etc. Restrictions on the exercise of the right to peaceful assembly may be imposed by a court in accordance with the law.

In practice, freedom of peaceful assembly was mainly guaranteed across the reporting period. CMU Resolutions relating to quarantine restrictions did not prohibit the holding of peaceful assemblies (including protests, rallies, and so on) as long as physical distancing of 1.5 metres was maintained between people. For instance, quarantine restriction did not interfere with protests, rallies and so on. Moreover, on 3 November 2021, peaceful assemblies by those who oppose vaccination and oppose the prohibition on unvaccinated people being able to use public transport took place in Kyiv³⁸ and some regional centres. Some participants of these peaceful assemblies were not vaccinated against coronavirus or did not have the appropriate negative tests.

In August 2021, in Odesa, persons aligned with the far-right tried to prevent the Parade for Equality from taking place and threatened to block it by violence. The organisers of the Odesa Pride turned to the police, but criminal proceedings were not opened. Subsequently, photos of LGBT activists with the inscription '*Know the enemy's face*' were posted in Odesa, including a photo of the head of the Odesa Pride organising committee, Anna Leonova. Persons aligned with the far-right then attacked Oleksandr Tatyanko, an Odesa Pride volunteer, because of his rainbow bandana. They tried to take off the bandana and cut it with a knife and threatened to break Tatyanko's finger. Tatyanko wrote a statement to the police, but the statement was not registered.

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' (ECtHR),³⁹ the decisions of the ECtHR are a source of law in Ukraine. Thus, taking into account the case law of the ECtHR on such actions, it can be assumed that spontaneous assemblies, simultaneous meetings, and counter-meetings are permitted in Ukraine.

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

³⁷ The Civil Code of Ukraine, <http://zakon3.rada.gov.ua/laws/show/435-15>.

³⁸ Piece of information by UNIAN from 03.11.2021 'In Kyiv, opponents of vaccination are holding a meeting near the Verkhovna Rada', <https://www.unian.ua/society/u-kiyevi-protivniki-vakcinaciji-provodyat-vice-bilya-verhovnoji-radi-foto-novini-kiyeva-11597698.html>.

³⁹ 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>.

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.

Standard II. The state facilitates and protects peaceful assemblies.

In Ukraine, permission to conduct a peaceful assembly is not required. The Constitution of Ukraine envisages only the need for a timely notification on the holding of peaceful gatherings. The general timeframes for early notification are not defined by law; they may be defined at the local level⁴⁰ by local authorities, however, which sometimes leads to the abuse and violation of this right via the prohibition of peaceful assemblies.

Specific terms for advance notice apply only to one category of peaceful assembly: industrial action. In accordance with the Law 'On the Procedure for Resolving Collective Labour Disputes (Conflicts)', the person who leads a strike must notify the planned meeting outside the territory of the institution, enterprise, organisation of the relevant executive body of state or local government no later than three days before the peaceful assembly.

According to the data of a Judge of the Supreme Court of Ukraine, Andriy Zagorodniuk, in the period from 2017 to 2021, 39 cases were pending before local administrative courts to restrict the exercise of the right to freedom of peaceful assembly, as well as to remove obstacles and prohibit interference with the exercise of freedom of peaceful assembly.⁴¹

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

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

The relevant legislation does not contain provisions on the responsibility of organisers for the maintenance of public order or the actions of other persons during the peaceful assembly. The legislation not completely specify the duties of law

⁴⁰ 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, <https://zakon.rada.gov.ua/laws/show/v004p710-01#Text>. At the same time, the specific terms of early notification, in the opinion of the Constitutional Court, should be subject to legislative regulation.

⁴¹ Supreme Court of Ukraine, 'Judge of the Administrative Cassation Court of Ukraine as a part of the Supreme Court of Ukraine Andriy Zagorodniuk spoke about the practice of considering cases related to the right to peaceful assembly', Piece of information from 30.03.2021, <https://supreme.court.gov.ua/supreme/pres-centr/news/1096763/>.

enforcement bodies, other bodies of the state and LSGAs relating to the holding of peaceful gatherings. There are no detailed instructions on the actions of law enforcement agencies in instances where violence occurs during an assembly. At the same time, Article 12 of the Law of Ukraine 'On the National Guard of Ukraine'⁴² refers to the functions of the National Guard to participate in ensuring public safety and the protection of public order during peaceful assemblies. According to Article 34 of the Constitution of Ukraine, everybody has a right freely to collect, keep, use, and diffuse information orally, in writing or in another way of their own choosing. This general rule also applies to the distribution of information about peaceful assemblies.

A Draft Law on Amendments to Article 6 of the Law of Ukraine 'On the Judiciary and the Status of Judges' on the Prohibition of Rallies Near Court Buildings⁴³ was registered in Parliament on 3 March 2020. It provides for a prohibition on meetings and peaceful assemblies within a fifty-metre radius of court buildings. The authors of the Draft Law have justify such a measure referring to what it will not affect the independence of the judiciary, the principle of non-interference of the legislature in the justice system, and not lead to undue influence on the court or judges. The Draft Law is currently with the Parliament Committees and no decision was made on it in 2021.

While organisers of assemblies are allowed to use technical equipment during any peaceful actions, at the same time they must adhere to administrative rules that apply to all persons.

There are no specified terms for the notification to LSGAs about a peaceful assembly (meetings, rallies, marches, and demonstrations). Despite a Constitutional Court decision stating the reasonable terms for the notification, a lot of variance regarding terms can be seen at the local level.

There are no obligations imposed on the relevant authorities to ensure that medical care is provided for participants in peaceful assemblies. Nevertheless, urgent medical care is provided free of charge regardless of the circumstances in which it is needed.

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

In Ukraine, the right to freedom of peaceful assembly is upheld, despite Covid-19 measures that contain restrictions. According to Article 39 of the Constitution of Ukraine, only the court can impose restrictions on the holding of peaceful assemblies.

⁴² The Law of Ukraine 'On the National Guard of Ukraine' from 13.03.2014 No. 876-VII with the latest changes from 16.07.2021, <https://zakon.rada.gov.ua/laws/show/876-18>.

⁴³ Official web portal of the Parliament of Ukraine. Draft Law No. 3291 from 30.03.2020, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68500.

Restrictions may also be imposed by the Decree of the President of Ukraine approved by the Parliament as part of a state emergency or martial law.

Despite deep criticism and opposition from some citizens, the March for Equality in support of LGBT rights took place across summer and autumn 2021 in some cities. The participants in the marches were, in theory, protected by the police. However, criminal cases were not initiated by the police in instances where participants in the marches were attacked or threats were made against them. Due to this, some peaceful meetings took place in support of participants who had been attacked during the march⁴⁴ and to urge active investigation and prosecution by the police of the perpetrators (as well as to support certain political prisoners).⁴⁵

During the current reporting period, peaceful assemblies of the SaveFOP (*СейсФОП*)⁴⁶ movement were held in the centre of Kyiv. SaveFOP advocates for the rights of entrepreneurs, freedom of entrepreneurial activities and a simplified system of taxation and accounting, as well as being against strict quarantine restrictions.⁴⁷ SaveFOP is, for instance, opposed to the requirement for all self-employed persons to use cash registers for all finance operations and believes that these measures will destroy small businesses due to the additional steps involved in financial transactions and the obligation to purchase expensive cash register equipment. This is a requirement that has important implications for CSOs, since a lot of CSOs' members or representatives are self-employed persons.

It has been observed that the police may incriminate participants in peaceful assemblies with a charge of having committed offences under the Article 185 of the Code of Ukraine on Administrative Offences.⁴⁸ However, certain actions of assembly participants may lead to criminal liability according to the following articles of the Criminal Code of Ukraine: Article 279 ('Blocking of transport communications, as well as seizure of a transport enterprise'); Article 293 ('Group violation of public order'); Article 294 ('Mass riots'); and Article 295 ('Calls for actions that threaten public order').⁴⁹

There are still cases of the illegal detention of participants in peaceful assemblies by law enforcement agencies. For example, on 19 January 2021 in Kyiv, officers of the

⁴⁴ Gay Alliance Ukraine 'Rave Pride took place in Kyiv with clashes': <https://upogau.org/inform/u-ki%d1%94vi-iz-sutichkami-vidbuvsya-rejvah-prajd.html>.

⁴⁵ ZMINA Human Rights Center 'Action "Release the Kremlin hostages" on Independence Square' (video from 30.10.2021): https://www.facebook.com/watch/live/?ref=watch_permalink&v=185340330426879.

⁴⁶ Slovo i Dilo 'Clashes with police took place during protests of private entrepreneurs in Kyiv', <https://www.slovoidilo.ua/2021/06/29/novyna/suspilstvo/kyievi-akcziyi-protestu-fopiv-vidbulysya-sutychny-policziyeyu>.

⁴⁷ Slovo i Dilo 'Private entrepreneurs protest in Kyiv: about 300 people remain on the Maidan', <https://www.slovoidilo.ua/2020/12/18/novyna/suspilstvo/protest-fopiv-kyievi-majdani-zalyshayutsya-300-osib>

⁴⁸ Code of Ukraine on Administrative Offences, <https://zakon.rada.gov.ua/laws/show/80731-10#top>

⁴⁹ Criminal Code of Ukraine, <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

National Police of Ukraine used force to illegally obstruct the holding of two peaceful assemblies.⁵⁰

Recommendations:

- Adopt legislation which regulates the use of force by law enforcement agencies and obliges the representatives of law enforcement agencies who are involved in peaceful assemblies to have visible means of individual identification;
- Annul administrative liability for violation of the rules on the organisation and holding of peaceful assemblies (Article 185-1 of the Code of Ukraine on Administrative Offences);
- Annul regulations of LSGAs that limit the freedom of peaceful assemblies and violate the Constitution of Ukraine; and
- Ensure the legal protection of rights and liabilities of organisers and participants in peaceful assemblies, define a clear list of limitations on peaceful assemblies, outline positive obligations of the state to guarantee peaceful assemblies, as well as guarantee the right for ad hoc counter-assemblies to take place.

3.5 Right to Participation in Decision-Making

Overall score per area: **5.4 / 7**

Legislation: **5.7 / 7** | Practice: **5.0 / 7**

Quarantine restrictions and the prohibition on conducting offline events remained in place during the reporting period. Civil society was poorly involved in decision-making. At the same time, the authorities and CSOs became more communicative and active in online tools that let CSOs from any region of Ukraine join discussions, meetings, working groups and committees organised by the authorities at the national, regional, and local levels. However, such online meetings have proven to be less effective than in-person, offline communication. The practice of the adoption of territorial communities' charters and regulation on various public participation instruments by LSGAs has continued. Recommendations on establishing rules for consultations for all public authorities and LSGAs (amendments to the Law of Ukraine 'On Public Consultations'), as well as on promoting the importance of public consultations among government officials and CSOs were addressed.

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

⁵⁰ ZMINA Human Rights Center 'Human rights activists demanding that authorities respond to disruption of peaceful assemblies by police on 19 January 2021', <https://zmina.ua/statements/pravozahysnyky-vymagayut-vid-vlady-vidreaguvat-na-zryv-policzijeyu-myrnyh-zahodiv-19-sichnya/>.

According to the Constitution of Ukraine, 'the bearer of sovereignty and the only source of power in Ukraine is the people. The people exercise power directly and through state authorities and local self-government bodies' (Part 2 of Article 5). Citizens of Ukraine have the right to participate in government process, in decision-making and suggestions deliberated through national and local referendums, to freely elect and be elected to state authorities and LSGAs.⁵¹ Only citizens of Ukraine aged eighteen or older on the day of the election or referendum have the right to vote and candidates for election to Parliament as an MP must be aged twenty-one or older.

There are a variety of forms that citizen participation in local decision-making can take. These include: a general meeting of citizens at a place of residence;⁵² part 3 of Article 52 of the Law of Ukraine 'On local Self-government in Ukraine' provides for an additional limited possibility of direct citizens' participation in local self-government through the powers of the executive committee of the local council; local initiatives;⁵³ public hearings;⁵⁴ petitions (including e-petitions);⁵⁵ public expertise;⁵⁶ bodies of self-organisation of the population;⁵⁷ public information requests;⁵⁸ participatory budgeting (while this has no legal framework, it has been introduced by a dozen Ukrainian cities through regulations adopted by LSGAs (councils); local referendums (the draft law 'On local referendum' remains under the consideration of the relevant Parliament Committee consideration⁵⁹ in 2021).

Other specific legislation concerning the right to participate in decision-making is the Law of Ukraine 'On public regulatory policy', and the CMU Resolution No. 996 'On ensuring public participation in the developing and implementation of state policies.'⁶⁰

⁵¹ The Constitution of Ukraine from 28.06.1996, Chapter II,

<https://www.president.gov.ua/ua/documents/constitution/konstituciya-ukrayini-rozdil-ii>.

⁵² The Law of Ukraine 'On local Self-government in Ukraine' from 21.05.1997 No. 280/97-BP with last changes from 30.11.2021, <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text>.

⁵³ Ibid. Paragraph 2 of Article 9.

⁵⁴ Ibid. Paragraph 4 of Article 13. Also, Procedure for holding public hearings in the process of environmental impact assessment, approved by CMU Resolution from 13.12.2017 No. 989, <https://zakon.rada.gov.ua/laws/show/989-2017-%D0%BF#Text>.

⁵⁵ The Law of Ukraine 'On applications of citizens' from 02.10.1996 No. 393/96-BP with last changes from 16.12.2020, <https://zakon.rada.gov.ua/laws/show/393/96-%D0%B2%D1%80#Text>.

⁵⁶ Order of assistance for conducting a public expertise of executive bodies activity, approved by CMU Resolution from 05.11.2008 No. 976 with last changes from 06.03.2019, <https://zakon.rada.gov.ua/laws/show/976-2008-%D0%BF#Text>.

⁵⁷ The Law of Ukraine 'On local Self-government in Ukraine'. Ibid. Also, the Law of Ukraine 'On bodies of self-organization of the population' No. 2625-III from 11.07.2021 with last changes from 19.01.2019, <https://zakon.rada.gov.ua/laws/show/2625-14#Text>.

⁵⁸ The Law of Ukraine 'On access to public information' No 2939-VI from 13.01.2011 with last changes from 30.11.2021, <https://zakon.rada.gov.ua/laws/show/2939-17#Text>. Also, the Law of Ukraine 'On information' No 2657-XII from 02.10.1992 with the latest changes from 16.12.2020, <https://zakon.rada.gov.ua/laws/show/2657-12#Text>

⁵⁹ Official web portal of the Parliament of Ukraine. Draft Law No. 5512 from 19.05.2021, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71942.

⁶⁰ Ensuring public participation in the developing and implementation of state policies, approved by CMU Resolution from 03.11.2010 No. 996, <https://zakon.rada.gov.ua/laws/show/996-2010-%D0%BF#Text>.

In addition, special acts of international law have been adopted in Ukraine that are relevant to public participation, such as: the International Covenant on Civil and Political Rights (ICCPR); the European Charter of Local Self-Government, and the Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters.

During the quarantine regime, neither Parliament nor LSGAs allowed journalists and CSO representatives to participate in its committees' meetings. Ministries less frequently establish and use working group meetings.

Citizens and CSOs can use the available online tools to participate in working groups, meetings, and round tables organised by the national, regional or local authorities. This contributes to the establishment of communication between CSOs and the authorities and the implementation of advocacy campaigns.

Using the online e-petitions module,⁶¹ citizens and CSOs can offer a solution to any problem identified in the city, region or the country as a whole. If the petition gets a certain number of votes, the authority to which the petition is addressed is obliged to consider the petition within three months beginning on the day the e-petition is released.⁶² The state or local authority body decides on the course of action in accordance with their procedure of decision-making.

For either the President, Parliament or the government (the CMU) to consider the issues raised by the petition, the petition must receive 25,000 votes. At the local level, the number of required votes and the time period in which votes must be received is set out in each community's charter. It should be noted that many communities have neither reasonable procedures nor the technical capacities for e-petitions to be carried out.

After the petition has been considered, the relevant authority body declares its final decision on the issue via its website.

There is a need to evaluate the effectiveness of petitions, including e-petitions in terms of their role in participation in decision-making at all levels.

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

The main normative act regulating public participation is the CMU Resolution No. 996 'On ensuring public participation in the developing and implementation of state policies.' The Resolution defines the basic requirements for the organisation and

⁶¹ Unified system of local petitions, <https://petition.e-dem.ua/>; For instance, there is the Official site of the President of Ukraine for getting petitions, <https://petition.president.gov.ua/>.

⁶² Article 23.1 of the Law of Ukraine 'On applications of citizens' No 393/96-BP from 02.10.1996 with last changes from 16.12.2020: <https://zakon.rada.gov.ua/laws/show/393/96-%D0%B2%D1%80#Text>.

conduct of public consultations. Likewise, the functioning of public councils is also included.

A Draft Law No. 4254 'On public consultations'⁶³ was registered in Parliament on 23 October 2020. The Draft Law was adopted in the first reading in March 2021 and is currently being finalised by the working group. The second reading and final adoption is scheduled for early 2022. The draft law provides the following opportunities for citizens and their associations: determines that public consultations should be carried out by all executive bodies, LSGAs and others; defines a clear procedure of consultations; requires that the government must ensure the participation of a wide range of stakeholders; requires that various forms of consultations are provided (electronic, public discussions and targeted consultations); proposes the creation of a single online platform for consultations; each submitted proposal must be analysed by the authority, and the violation of the order of consultations may be grounds for revision of the adopted act.

In accordance with the Draft Law, proper public participation in public consultation processes involves:

- the scheduling of public consultations;
- the drafting and publishing of a consultation document;
- informing stakeholders about consultations;
- conducting consultations in the form of electronic consultations, public events, targeted consultations by sending a consultation document to interested parties;
- the publishing of received proposals, and their study and analysis; and
- the publishing of a report on the consultations.

There are reasons to state that the procedures of public consultation provided by the Draft Law are simple and clearly set by law; thus, the Draft Law does not provide for the establishment of consultative bodies with clear mechanisms for selecting their members and decision-making within these bodies for conducting public consultations, but implicitly the head of the body is in charge of it. The Draft Law provides for CSO involvement in policy implementation, monitoring and evaluation and an opportunity for them to initiate public consultations.

There is no existing set practice in the area of public consultation, but the Draft Law provides for the prospect of the opportunity for citizens and various CSOs to obtain information on drafts and timelines of consultations. It is envisaged that the information will be available free of charge, and preferably in a single online platform that is simple to use.

⁶³ Official web portal of the Parliament of Ukraine. Draft Law No. 4254 from 23.10.2020, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70235

The consultation format guarantees effective participation and CSOs are invited to provide input to the decision-making process at the earliest stages and are given sufficient time in which to do so.

The general situation in relation to public participation at both the national and local levels remained the same during the reporting period. Due to regulations in place relating to coronavirus, all official meetings were transferred online and conducted via Zoom, Skype, Google Meet or other platforms. In practice, the effectiveness of online events is lower than live meetings.

There are no unified rules regarding the terms for publishing decisions made by the authorities. According to Article 15 of the Law of Ukraine 'On access to public information', information managers are obliged to publish rules, acts of individual action (except for internal rules) adopted by the administrator, draft decisions to be discussed, and information on normative and legal principles of activity. Draft normative legal acts, decisions of LSGAs, developed by the relevant administrators, shall be published by them not later than ten working days before the date of their consideration for adoption. Draft decisions of local councils to be discussed are determined by the norms of certain laws of Ukraine, in particular 'On regulation of urban planning', 'On the principles of state regulatory policy in the field of economic activity', and the CMU Resolution No. 996, dated 3 November 2010, 'On ensuring public participation in the developing and implementation of state policies.' Therefore, currently, each authority or body may apply different terms of consideration of decisions. There is no centralised online portal where draft laws or policies are published for consultation and feedback.

CSOs are free to conduct monitoring, implementation assessments, or advocacy of public policies and other related activities.

Local authorities are gradually implementing public participation provisions, but it is rather isolated cases rather than a general trend. This is due to quarantine restrictions and a lack of local budgets to cover civil initiatives, which are mainly aimed at supporting healthcare and education. The situation before coronavirus did not differ significantly, and Covid-19 restrictions have in some instances been used as a 'cover' for unwillingness to develop public participation.

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

The Law of Ukraine 'On access to public information'⁶⁴ and the Law of Ukraine 'On information'⁶⁵ clearly recognise the terms and scope of information that should be

⁶⁴ The Law of Ukraine 'On Access to Public Information', <https://zakon.rada.gov.ua/laws/show/2939-17>.

⁶⁵ The Law of Ukraine 'On information', <https://zakon.rada.gov.ua/laws/show/2657-12>.

made public by the authorities. The timeline for publishing public information is within five working days.

Public authorities provide free and timely answers to requests for information, but there are exceptions. 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, or sometimes the requestor does not receive it at all.

Practice shows that CSOs largely can find and review the necessary information themselves, including texts of draft laws and policies. CSOs have access to information mostly through official websites and requests for public information access. The same applies to searching for information on the holding of public hearings. However, although this information is published on the official website, it is difficult to navigate the site for someone without experience, or the information will appear on the website only the day before the hearing. Obtaining information on the time and place of a public hearing can also be difficult.

Some ministries, such as the Ministry of Health of Ukraine and the Ministry of Foreign Affairs of Ukraine, do not place advertisements about public consultations.⁶⁶

The situation worsened during the coronavirus pandemic when all events involving the personal presence of representatives of CSOs in government premises were cancelled or postponed. Putting public consultations, working groups and roundtables online has been a solution, but the effectiveness of such events has diminished somewhat due to the lack of personal contact, as well as the reduced involvement that online negotiations offer when making important decisions.

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

CSOs are free to carry out advocacy activities that are not prohibited by law. In Ukraine, there is no legislation concerning the political activities of CSOs. Thus, only the activities of political parties, in particular their reporting, are regulated.

At the same time, however, in early 2020 draft laws Nos. 3059, 3059-1, 3059-2, and 3059-3⁶⁷ were registered in Parliament, aiming to introduce legislative regulations on lobbying and their provisions equate advocacy and public consultation with lobbying. The Parliament Committee on Legal Policy has concluded that the draft laws contradict the Constitution of Ukraine.⁶⁸ In these draft laws, the definition of lobbying

⁶⁶ CHESNO Movement 'Public consultations: opportunities for citizens and authorities', <http://komsamovr.rada.gov.ua/uploads/documents/42471.pdf>.

⁶⁷ Official web portal of the Parliament of Ukraine, http://w1.c1.rada.gov.ua/pls/zweb2/webproc2_5_1_J?ses=10010&num_s=2&num=3059&date1=&date2=&name_zp=&out_type=&id=

⁶⁸ UCIPR 'Lobbying bills violate the Constitution of Ukraine', <http://www.ucipr.org.ua/ua/novyny/zakonoproekti-pro-lobizm-porushuyut-konstitutsiyu-ukrajini>.

is often confused with the definition of the related activities of public participation in the management of public and local affairs, and there are reasonable concerns that these draft laws restrict these rights of citizens that are guaranteed by the Constitution. These draft laws also contradict Ukraine's international obligations, in particular Article 25 of the ICCPR ratified by Ukraine, which guarantees every citizen the right and opportunity to participate in public affairs both directly and through freely-elected representatives.

On 19 July 2021, the Parliamentary Committee on Anti-Corruption Policy held⁶⁹ a meeting to develop proposals for the Draft Law on Lobbying in Ukraine. The proposed Draft Law considers all CSO activities (advocacy, analysis of draft laws and regulations, consultations etc.) as lobbying and envisages CSOs' registration as lobbyists (with exceptions only for technical assistance projects with public authorities' beneficiaries). Members of the authorities, CSOs and businesses were present at the meeting.

The proposed version of the Draft Law significantly differs from the one discussed during the meeting. This Draft Law poses a direct threat to the basic functions of CSOs as it does not provide for any exemptions for non-profit organisations, or organisations working in the sphere of culture, science, or education, etc. The draft law imposes high penalties for non-compliance if the authorised body decides that a CSO is subject to the law but has not complied with its rules. This could be used as a means of putting pressure on civil society.

CSOs are actively pursuing advocacy campaigns against this draft law which is currently at the drafting stage in Parliament.

Recommendations:

- Adopt the Law of Ukraine 'On Public Consultations';
- Introduce legal regulations in relation to various forms of public participation that have already been developed in Ukraine (e.g., public expertise, supervisory boards, etc);
- Exclude CSOs from the requirements of the draft law 'On lobbying';
- Introduce a unified online platform where information on all public consultations is available;
- Promote the importance of public consultations among state officials and CSOs; and

⁶⁹ Parliament Committee on Anti-Corruption Policy 'A regular meeting of the Working Group on Legislative Regulation of Lobbying in Ukraine was held', http://crimecor.rada.gov.ua/news/main_news/74491.html.

- 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.

3.6 Freedom of Expression

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

Legislation: 6.0 / 7	Practice: 4.5 / 7
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The right to freedom of expression is protected by legislation. However, the number of cases of physical or psychological harassment and threats, especially in social media, on activists and journalists has increased.

The recommendations in this area remain unchanged from the previous reporting period.

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

Freedom of expression in Ukraine is guaranteed by the Constitution (Article 34), the ECHR and national legislation that equally concerns individuals, the professional journalistic community, 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 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 the authority and impartiality of justice.

According to the human rights organisation ZMINA, most cases of violations of the freedom of expression of activists and CSOs are in relation to those that are working on issues such as the protection of LGBT rights, anticorruption, the fight against illegal construction. Other issues include the environmental protection, the rights of women, patients, journalists, veterans, or housing cooperatives, and trade union activities.⁷⁰

⁷⁰ ZMINA Human Rights Center 'Activism 2021: Monitoring Report on the Persecution of Activists and Human Rights Defenders in Government-Controlled Territories of Ukraine (April-June 2021)', https://zmina.ua/wp-content/uploads/sites/2/2021/07/activizm2021-iiua_v03-1.pdf

Two cases of horrifying violations against activists occurred during the reporting period. In July 2021⁷¹ in the city of Dnipro, activist Natalia Eshonkulova was attacked on the steps of her own home. Eshonkulova was knocked unconscious by a blow to the head. In her opinion, the attack happened because of her civil activities. Eshonkulova is a member of an initiative group that opposes the raider seizure of business and property in Dnipro. Police described the attack on her as attempted murder, and later detained two suspects. The pre-trial investigation is ongoing.

Kyiv-based activist Oleksandr Vizersky was also attacked. In August 2021, Vizersky and other activists held an indefinite rally against the demolition of the Barban House, which is a cultural heritage site. At the same time, a group of unknown individuals attacked the activists. Vizersky and other activists filed a statement with the police, but criminal proceedings have not been opened.

The problem of hate speech has remained relevant. Ethnic and territorial origin were the main targets of hate speech in the regional media in July-August 2021.⁷² Hate speech was also evident relating to gender issues news items that discriminated in terms of political views, social status and age.

Some Russian websites and media outlets are still subject to sanctions. At the same time, it is necessary to bring the current sanctions mechanism relating to the blocking of access to information resources (websites and social networks) into accordance with international human rights standards and the Constitution of Ukraine.

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

The level of involvement of law enforcement agencies in the investigation of violations of the right to self-expression and freedom of opinion is quite low. Investigations were mostly undertaken on high-profile cases in which activists suffered significant physical harm.⁷³

There are no specific restrictions relating to freedom of expression on the internet. At the same time, the content of some Russian websites and media is banned due to a possible threat to Ukraine's national security by the spreading of disinformation among the population.

Censorship as an obstruction on freedom of thought and speech, expression of opinions and beliefs is prohibited by law in Ukraine, namely the Constitution of

⁷¹ Ukrayinska Pravda 'A human rights activist was severely beaten in Dnipro city', <https://www.pravda.com.ua/news/2021/07/16/7300764/>

⁷² Institute of Mass Media 'Roma, Hasidic and minority ashamed: hate speech in regional media', <https://imi.org.ua/monitorings/romy-hasydy-i-menshynstva-yakym-soromno-mova-vorozhnechi-v-regionalnyh-media-i41040>.

⁷³ ZMINA Human Rights Center 'Situation of human rights defenders and public activists in Ukraine in 2021: monitoring and analytical report', https://zmina.ua/wp-content/uploads/sites/2/2022/02/stateofhumanrightsdefenders2021_reportua_web5.pdf

Ukraine (Article 15)⁷⁴ and a number of other laws (including the Law ‘On information’, the Law ‘On printed media’ and the Law ‘On television and broadcasting’). It is also prohibited by law to create any body or institution whose activities would be related to censorship of the media.

At the same time, both the government and financial institutions have repeatedly directed information flows in their favour using covert censorship of the opposition media (for instance through administrative measures to limit airtime, or by putting pressure on print and online publications).

In 2021, the persecution of LGBT activists by representatives of far-right organisations became more frequent. For many years, LGBT activists have been under pressure and have faced constant aggression from anti-LGBT activists partly due to impunity and lack of police action.

There is systematic persecution of Ukrainian activists⁷⁵ and violations to the rights of the Crimean Tatar population⁷⁶ in Crimea. This is happening because Crimea is an uncontrolled and occupied Ukrainian territory. Ukrainians often express their support to Crimean Tatars and Ukrainians incarcerated in Russian prisons. The peaceful assemblies to support them take place regularly in Kyiv⁷⁷ and other cities.

Crimes against journalists took place during the reporting period. From January to August 2021, law enforcement officers registered 158 criminal proceedings under so-called journalistic articles including ‘obstruction of a journalist's lawful activities’, ‘threat or violence against a journalist’ and ‘deliberate destruction or damage to a journalist's property’. A total of 172 such criminal proceedings are under investigation in 2020-2021. At the same time, over nine months of 2021, the police sent only 17 criminal proceedings for crimes against journalists to court.⁷⁸ Instead, the police closed 69 relevant criminal proceedings at the pre-trial stage.

In the regions, namely in Zaporizhska, Chernihivska, Mykolaievska and Poltavska regions,⁷⁹ there are cases of journalists not being allowed to attend meetings and

⁷⁴ The Constitution of Ukraine, <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

⁷⁵ Rubryka ‘Rally in support of detained Crimean Tatars took place near the Russian Embassy in Kyiv’, <https://rubryka.com/2021/09/05/pid-posolstvom-rf-u-kyjevi-vidbuvsya-mityng-na-pidtrymku-zatrymanyh-krymskyh-tatar/>.

⁷⁶ National Institute for Strategic Studies (NISS) Analytical note ‘On the observance of the rights of the Crimean Tatar people in the annexed Crimea’, <http://old2.niss.gov.ua/articles/1798/>.

⁷⁷ Novynarnia ‘Rally in Kyiv downtown for ‘Freedom to Kremlin political prisoners’, <https://novynarnia.com/2021/10/30/u-czentr-kyjeva-mitynguvaly-za-svobodu-polityvaznyam-kremlya-foto/>.

⁷⁸ Portal of the Ministry of Internal Affairs ‘For 9 months of 2021, the police sent to court 17 criminal proceedings for crimes against journalists’, <https://mvs.gov.ua/uk/press-center/news/za-9-misyaciv-2021-roku-policiya-napravila-do-sudu-17-kriminalnix-provadzen-u-zlocinax-proti-zurnalistiv-golovne-slidce-upravlinnya-nacpoliciyi-ukrayini>.

⁷⁹ Institute of Mass Media ‘Media Summary-2021: What Was This Year For Ukrainian Journalism Outside Kyiv’, <https://imi.org.ua/monitorings/mediapidsumky-2021-yakym-buv-tsej-rik-dlya-ukrayinskoyi-zhurnalistyky-za-mezhamy-kyjeva-i43096>.

events in city councils,⁸⁰ court hearings,⁸¹ events organised by higher authorities, and so on. Such violations are recorded monthly in the Freedom of Speech Index,⁸² prepared by the Institute of Mass Media.

Recommendations:

- Ensure the appropriate and efficient investigation of attacks on journalists and civil activists, including those who protect the rights of women, LGBT communities, anti-corruption activists and others; and
- Avoid discriminatory practices based on hate speech on ethnic and gender issues.

⁸⁰ Institute of Mass Media 'In Poltava Securities didn't let journalists to the City Council during the SBU search', <https://imi.org.ua/news/u-poltavi-ohorontsi-ne-puskaly-zhurnalistiv-do-miskrady-de-prohodyat-obshuky-sbu-i41044>.

⁸¹ Institute of Mass Media 'Kyiv Court Illegally Restricted Journalists 'access, Requiring Judge's Approval', <https://imi.org.ua/news/sud-u-kyievi-nepravomirno-obmezhyv-dostup-zhurnalistiv-vymagayuchy-pogodzhennya-sui-i40062>

⁸² Institute of Mass Media 'Freedom of Speech Meter', <https://imi.org.ua/monitorings/barometr-svobody-slova>.

3.7 Right to Privacy

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

Legislation: **5.0** / 7 | Practice: **4.4** / 7

The right to privacy is guaranteed by the Constitution of Ukraine and other legislation (the Law of Ukraine 'On Personal Data Protection', ratified international laws, etc.). The regulation of the process of personal data protection is not always in line with international standards (due to the low level of legal knowledge among citizens regarding their personal data and inefficient systems for its protection). In practice, the right to privacy is poorly protected, as there are regular leaks of personal information on the internet including the personal data of civil activists.

The recommendations of the previous report were partially implemented (additional reporting for CSOs has not been introduced).

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

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

The right to privacy is also regulated in some international laws ratified in Ukraine such as the Universal Declaration of Human Rights of 1948 (Article 16), the ICCPR (Article 17) and the ECHR (Article 8).

The Law on Personal Data Protection remains the main law regulating legal relations related to the protection and processing of personal data.⁸³

Draft Law No. 6177 on the National Commission for the Protection of Personal Data and Access to Public Information, which provides for the establishment of that Commission, was registered in Parliament on 18 October 2021. The establishment of

⁸³ The Law of Ukraine on Personal Data Protection No 2297-VI from 01.06.2010 with latest changes from 30.11.2021, <https://zakon.rada.gov.ua/laws/show/2297-17#Text>.

an independent executive body in the area of personal data protection is stipulated in the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data of 1981. The Draft Law provides for the procedure for the establishment, functioning, structure and powers of the National Commission for the Protection of Personal Data and Access to Public Information.

The Draft Law No. 3196,⁸⁴ registered in Parliament on 10 March 2020, proposes to expand the powers of the Security Service of Ukraine (SBU). The Draft Law poses a serious threat to the right of privacy in that it proposes to oblige telecommunications operators to install special equipment that will provide full permanent access to the SBU to user data in real time, as well as the ability for the SBU to block certain resources on the internet. The SBU will be able to demand access to any information without a court decision or the permission of the operators. This directly contradicts the Constitution of Ukraine, which guarantees the privacy of, among other things, correspondence, telephone conversations and telegraph messages, the only exceptions being based on court decisions.⁸⁵

Citizens usually provide their personal data to commercial organisations by themselves while ordering or registering. Banks, financial companies, retail chains and other commercial organisations create the databases with this information for advertising their products. But instead of temporarily storing personal data, they often store it permanently or sell it to third parties. In 2020, a special operation 'Date' was carried out in which almost 40 searches were conducted throughout Ukraine and materials were sent to the court regarding 11 of the 25 defendants who were involved in the distribution of databases containing personal data of citizens. Nearly seven channels on the messaging application Telegram selling such information were blocked.

Attackers create 'phishing' duplicates of open Wi-Fi networks and, once a person connects to them, they can gain access to all data stored on that person's device, including their banking data.⁸⁶

The collection, storage, and use of personal data of individuals should be regulated more clearly. There is still no effective state mechanism for monitoring the implementation of the special legislation. This can be seen in the field of service provision, when, for example, a website collects users' personal data. However, the

⁸⁴ Official web portal of the Parliament of Ukraine. Draft Law No. 3196 from 10.03.2020, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68347.

⁸⁵ ZMINA Human Rights Center 'The end of privacy, or the threats to the SBU law, which its authors deny', <https://zmina.info/columns/kinecz-prywatnosti-abo-zagrozy-zakonu-pro-sbu-yaki-zaperechuyut-jogo-avtory/>.

⁸⁶ ZN.UA 'Cyberpolice Chief Oleksandr Hrynychak on how to protect money on the card from fraudsters and business from hackers', <https://zn.ua/ukr/internal/hlava-kiberpolitsiji-oleksandr-hrnychak-pro-te-jak-zakhystiti-hroshi-na-karttsi-vid-shakhrajiv-a-biznes-vid-khakeriv.html>.

user is usually not informed where and how he can file a complaint on such a website and the complaint mechanism itself is quite unclear.

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

At the legislative level, reporting requirements for CSOs protect the privacy of members, donors, board members and employees and the confidentiality of their personal assets. However, there have been attempts, which might violate this protection, to introduce additional reporting for CSOs receiving funding from abroad, mainly through the Draft Law No. 3564 'On amendments to some legislative acts of Ukraine (on the transparency of public associations with foreign support)'.⁸⁷

There have been occurrences of the disclosure of the personal data of public activists. According to a report from ZMINA, there were four cases of violation of privacy in 2020 concerning the publication of personal data of human rights defenders in Telegram channels. LGBT activists, anti-corruption activists and researchers of violence perpetrated by far-right groups were the main targets. There were cases of physical surveillance and threats, which included home visits to activists or their relatives.⁸⁸

In addition, during the third quarter of 2021, the Digital Security Laboratory recorded 17 incidents against activists: 13 separate phishing attempts on the accounts of public activists and journalists, one phishing campaign involving letters made to appear as if they were from the police, one instance of hacking of a Facebook account due to the resetting of a password via backup mail, as well as two account hacks in the messaging application WhatsApp as a result of SMS interception.⁸⁹ Most of these cases have not received due attention from the police.

CSOs have an adequate level of immunity from criminal prosecution. In particular, any access to a CSO's office space may be exercised solely based on a court order and within the framework of criminal proceedings, while providing adequate safeguards against abuse. The legal framework and definition of the procedures for conducting the search are enshrined in the Code of Criminal Procedure⁹⁰ and in the Law on search operations.⁹¹

There were cases of police pressure on the activities of public activists, including illegal detentions. For example, on 19 August 2021 in Kyiv, police detained two

⁸⁷ Official web portal of the Parliament of Ukraine. Draft Law No. 3564 from 29.05.2020, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf35111=68977.

⁸⁸ ZMINA Human Rights Center 'The situation of human rights defenders and public activists in Ukraine in 2020', <https://zmina.ua/en/publication-en/activism-2020-a-monitoring-report-on-persecution-of-activists-and-human-rights-defenders/>.

⁸⁹ ZMINA Human Rights Center 'The situation of human rights defenders and public activists in Ukraine in 2021', https://zmina.ua/content/uploads/sites/2/2021/10/activizm2021-iiiua_web.pdf.

⁹⁰ The Code of Criminal Procedure, <https://zakon.rada.gov.ua/laws/show/4651-17>.

⁹¹ The Law of Ukraine 'On search operations', <https://zakon.rada.gov.ua/laws/show/2135-12>.

activists of the CSO ‘Let's Protect Protasiv Yar’ during a rally against the demolition of a nineteenth-century building.⁹²

Recommendations:

- Avoid the adoption of legislative acts that significantly expand the right of law enforcement and security agencies to invade people's private lives;
- Avoid the adoption of legislative acts that aim to introduce additional reporting for foreign-funded organisations and their members; and
- Establish clear grounds and deadlines for the seizure of information from communication channels and for the interception of telecommunications or tracking electronic communications and online activities.

3.8 State Duty to Protect

Overall score per area: **5.1 / 7**

Legislation: **5.3 / 7** | Practice: **4.9 / 7**

The situation with the protection of activists in the performance of their professional duties remains difficult, and attacks on activists were still at a high level during the reporting period. Threats, harassment, and damage to property continued and bringing the perpetrators to justice remains a difficult task. Representatives of LGBT organisations, anti-corruption activists and journalists suffered the most from such attacks. CSOs are still obliged to provide the state registrar with information on their UBO, which remains an unresolved issue.

The recommendations of the previous report were partially implemented (in the field of raising awareness of CSOs).

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

The procedure to protect the rights of CSOs and persons associated with CSOs is inefficient and complicated. The procedure for appealing regulations is complex, there are no precautions for CSOs and there is a high obligation of the state to open a lawsuit. Enforcement of judgments of the ECtHR is slow.⁹³

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 by Article 59 of the Constitution of Ukraine. The law of Ukraine ‘On free

⁹² ZMINA Human Rights Center ‘The situation of human rights defenders and public activists in Ukraine in 2021’, https://zmina.ua/content/uploads/sites/2/2021/10/activizm2021-iiiua_web.pdf.

⁹³ Ukraine and the Council of Europe, <https://www.coe.int/en/web/execution/ukraine>. Cases where Ukraine has to provide financial compensation are enforced (albeit with delay), and decisions where action needs to be taken are generally not enforced.

legal aid' does not apply to CSOs and other legal entities, and no *pro bono* quota is required from lawyers. CSOs are therefore now required to pay court fees, their (potential) legal costs have soared and, overall, court protection of CSOs' rights has been complicated.

During the reporting period, the situation regarding the protection of civil activists and CSOs from interference and attacks did not change. There were 88 reported cases of persecution of civil and human rights activists over nine months of 2021 in Ukraine (compared to 77 cases over the same period in 2020).⁹⁴ Most of these cases occurred in the cities of Kyiv (37) and Odesa (10). Kharkiv and Luhansk regions were the regions with the highest levels of persecution as there were seven reported cases in each region.

Activists are most often pressured by means of destruction or damage to property (22 instances), threats (20 instances) or physical attacks (16 instances). Ten cases appear to be a planned discrediting of the activist, there were six illegal prosecutions, and four attempts at blocking CSOs' activities. There were three cases of obstruction of peaceful assemblies, three instances of illegal detention or search, and two violations of privacy.

According to the monitoring of the National Union of Journalists, from January to October 2021, there were 59 incidents of the use of force against media representatives while carrying out their professional activities.⁹⁵ Compared to 2020, the number of crimes against journalists decreased by 20 per cent. Conversely, the number of reports of suspicion of those involved in these crimes increased by 50 per cent.

Draft Law No. 5040⁹⁶ aimed at ensuring the right to information and protection of journalistic activities was registered in Parliament on 8 February 2021. For non-disclosure, untimely disclosure, or the publication of inaccurate or incomplete information, officials are fined from fifty to three hundred non-taxable minimum incomes, i.e., from UAH 850 (27 EUR) to UAH 5100 (EUR 164 EUR). The current maximum fine is UAH 850 (27 EUR).

Draft Laws Nos 5047,⁹⁷ 5702,⁹⁸ and 6136⁹⁹ were developed by MPs to establish ethics that they must adhere to with representatives of the media and journalists accredited

⁹⁴ ZMINA Human Rights Center 'The situation of human rights defenders and public activists in Ukraine in 2021', https://zmina.ua/content/uploads/sites/2/2021/10/activizm2021-iiiua_web.pdf.

⁹⁵ National Union of Journalists of Ukraine 'Public hearings on the safety of journalists in Ukraine', https://www.facebook.com/watch/live/?ref=watch_permalink&v=577240156834616.

⁹⁶ Official web portal of the Parliament of Ukraine. Draft Law No. 5040 from 08.02.2021, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71044

⁹⁷ Official web portal of the Parliament of Ukraine. Draft Law No. 5047 from 08.02.2021, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71054.

⁹⁸ Official web portal of the Parliament of Ukraine. Draft Law No. 5702 from 24.06.2021, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72347.

⁹⁹ Official web portal of the Parliament of Ukraine. Draft Law No. 6136 from 06.10.2021, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72938.

to the Parliament. If these ethics are violated the MPs will be fined from 60 to 80 non-taxable minimum incomes (from UAH 1020, or around 33 EUR to UAH 1360, or around 44 EUR) or have to undertake community service for a period of 20 to 30 hours.

The pejorative term *sorosyata* was used less actively than during the previous reporting period for members and leaders of CSOs receiving foreign funding (the term is a reference to George Soros, the philanthropist and founder of Open Society Foundations). However, the Telegram channel called 'Sorosyata' remains quite active.

The coronavirus measures have hindered the ability of CSOs to meet in physical spaces. According to CMU Resolution No. 1066,¹⁰⁰ transportation of passengers by road, air and rail were required to have either a negative Covid-19 test or rapid anti-test coronavirus SARS-CoV-2, which was carried out no more than 72 hours before the day of travel or a document confirming receipt of a full course of vaccination. In October and November 2021, inspections by the police took place in interregional and international bus stations, railway stations, subways, and other city transport hubs checking passenger's documents showing either a negative Covid-19 test or rapid anti-test coronavirus SARS-CoV-2.

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

There are no legal regulations or practices on declaring CSOs extremist or terrorist, or on extrajudicial suspension of CSOs in Ukraine. CSOs have no special responsibilities or policies regarding 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 banks¹⁰¹ but there are no limits on cash donations.

There were some cases of CSOs' bank accounts being frozen and of CSOs being required to provide additional information to banks because they are considered high risk.

A problematic issue for all CSOs in 2021 was the requirement for them to submit information on their UBO. Parliament adopted some amendments to the Law of Ukraine 'On prevention and counteraction to legalization (laundering) of proceeds from crime, financing of terrorism and financing of proliferation of weapons of mass destruction',¹⁰² adopted 6 December 2019, No. 361-IX. According to these amendments,

¹⁰⁰ CMU Resolution from 11.10.2021 No. 1066 'On Amendments to the CMU Resolution of December 9, 2020, Cabinet Resolution No. 1236', <https://zakon.rada.gov.ua/laws/show/1066-2021-%D0%BF#n2>.

¹⁰¹ Paragraph 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,' No. 1702, dated 14.10.2014.

¹⁰² The Law of Ukraine 'On prevention and counteraction to legalization (laundering) of proceeds from crime, terrorist financing and financing of proliferation of weapons of mass destruction,' <https://zakon.rada.gov.ua/laws/show/361-20#Text>.

all CSOs were required to submit information on their UBOs in period between 12 July 2021 and 11 October 2021. But according to Ukrainian legislation, unlike commercial companies, CSOs do not have UBOs.

UCIPR, in cooperation with ISAR Ednannia, conducted online training¹⁰³ for CSOs on the preparation of information on UBOs and relevant clarifications.¹⁰⁴ On 8 October 2021, due to advocacy efforts of CSOs, Parliament extended the deadline on submission of the information on UBOs to 11 July 2022.

Some organisations are created and operate under the patronage of pro-Russian activists. Their activities contradict Ukrainian law, and they are subject to state sanctions. For example, in August 2021, the SBU blocked¹⁰⁵ the work of the civil organisation 'Patriots for Life', controlled by the (former) MP Illia Kyva. The reasons for this was the discovery of the weapons possessed by the organisation's members by the police and preventative measures because of the situation in the eastern regions of Ukraine. The National Security and Defence Council has imposed sanctions against Viktor Medvedchuk, the leader and sponsor of the organisation.

Following the abolition of additional reporting requirements for anti-corruption activists, similar initiatives have not been implemented.

Recommendations:

- Abolish the requirement for CSOs to provide information on their UBOs;
- Ensure due investigation of attacks against journalists and civil society activists, particularly against LGBT activists, eco-activists, national minorities, and others; and
- The National Bank of Ukraine should issue instructions on the possibility for CSOs to transfer funds abroad, including for medical treatment or membership fees, and a list of documents required for such transfers.

¹⁰³ ISAR Ednannia 'Online training on reporting on UBO', <https://www.facebook.com/isar.ednannia/videos/272333231410933>.

¹⁰⁴ UCIPR 'Recommendation on reporting on UBO', <http://www.ucipr.org.ua/ua/novyny/yak-bezbolisno-podati-kbv-zvitnist-dlya-go-i-bo>.

¹⁰⁵ SBU neutralizes 'power cell' of pro-Russian public association controlled by MP of Ukraine, <https://ssu.gov.ua/novyny/sbu-neitralizovala-sylovyi-oseredok-prorosiiskoho-hromadskoho-obiednannia-yake-kontroliuvav-narodnyi-deputat-ukrainy>.

3.9 State Support

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

Legislation: **5.0** / 7 | Practice: **4.6** / 7

In general, the situation has improved due to the introduction of online contests for CSOs on the platform *VzaemoDiia* as well as the gradual expansion of the practice of purchasing social services from CSOs. At the same time, the circle of participants in competitions for state funding is still focused on the social and youth spheres. The restriction on legal entities and individuals on using a maximum of 4 per cent of their income to provide for charitable assistance has been temporarily lifted (for the period of the coronavirus quarantine).¹⁰⁶ Recommendations were implemented in the field of introducing a competitive and transparent mechanism for financing, monitoring, and reporting of CSOs from state and local budgets (including via the *VzaemoDiia* platform) and ensuring that the authorities involve CSOs as providers of social services.

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

Diverse state funding mechanisms by various state bodies at both the national and local level are available. The law is changing towards the introduction of competitive procedures for the distribution of public funds.

Through training on the platform *VzaemoDiia*, jointly conducted by the Ministry of Youth and Sports, the Ministry of Digital Transformation, the OSCE Project Coordinator in Ukraine, the Eastern Europe Foundation and the UCIPR, CSOs have gained access to public funding for projects.

On 17 September 2020, Parliament adopted the Law 10910-IX,¹⁰⁷ which provides additional support to CSOs that focus on sports and physical education. The law allows such CSOs to lease state and municipal property without holding an auction. Health care products purchased through grants (sub-grants) to implement the Global Fund to Fight AIDS, Tuberculosis and Malaria in Ukraine are not taxed.

There is an ongoing discussion in the public sector about the need to introduce definitions of 'social enterprise' and 'social entrepreneurship' into Ukrainian legislation. It is thought that such a development will help to improve the resolution of social issues, for example employment for people with disabilities or people in difficult life circumstances. In 2020, Vinnytsia City Council was the first council in

¹⁰⁶ In case of tax differences, the income taxpayer has the right to reduce the financial result only within 4 per cent of the profit for the previous year in the case of charitable assistance.

¹⁰⁷ The Law of Ukraine 'On amendments to some laws of Ukraine to promote the development of physical culture and sports,' <https://zakon.rada.gov.ua/laws/show/910-IX#Text>.

Ukraine to approve a dedicated social entrepreneurship programme (the 2020-2022 Programme for the Development of Social Entrepreneurship in the city of Vinnytsia). The programme provides advisory and training support to social enterprises and entrepreneurs in Vinnytsia.

LSGA can independently determine support for CSOs. This support may take the form of, for instance, the provision of premises for preferential rent, the purchase of social services in CSOs, the referral of temporarily-unemployed persons to CSOs in the framework of public works, the involvement of CSOs in joint activities, or consultations with CSOs.

On 1 June 2020, CMU Resolution No. 450 'Some issues of providing social services through social contracting' was issued.¹⁰⁸

In October 2021, the Ministry of Youth and Sports of Ukraine proposed for public discussion a draft resolution of the CMU on establishing a Ukrainian Youth Fund.¹⁰⁹ It is envisaged to provide institutional support to youth and children's public associations in the form of budget grants in the field of youth policy.

In 2021, public funding for CSOs increased. UAH 91.4 million (around 2.9 million EUR)¹¹⁰ was allocated to support CSOs relating to persons with disabilities compared with UAH 66 million (around 2.1 million EUR) in 2020. For CSOs relating to physical activities and sports, UAH 65 million (around 2.1 million EUR) was allocated. On implementation of state policy measures on youth issues and state support of youth and children's public organizations, initially UAH 19.5 million (around 628,500 EUR) but, after recalculating the budget in favour of counteracting the coronavirus, UAH 13.5 million (around 435,400 EUR)¹¹¹ was allocated for financial support of youth and children's CSOs and for the implementation of national programmes and activities. UAH 9 million (around 290,282 EUR)¹¹² was allocated for financial support for the implementation of national-patriotic education projects developed by CSOs. The amount of competitive funding for CSOs relating to veterans in 2021 was UAH 4.6 million¹¹³ (around 140,000 EUR).

¹⁰⁸ Procedure for providing social services through social order and compensation to providers of the cost of social services, approved by CMU Resolution from 01.06.2020 № 450, <https://zakon.rada.gov.ua/laws/show/450-2020-%D0%BF#Text>

¹⁰⁹ Ministry of Youth and Sports 'Draft CMU Resolution 'Some issues of establishing the state institution Ukrainian Youth Fund', <https://mms.gov.ua/npas/projekt-postanovi-kabinetu-ministriv-ukrayini-devaki-pitannya-utvorennya-derzhavnoi-ustanovi-ukrayinskij-molodizhnij-fond>.

¹¹⁰ Passport of the budget programme for 2021, <https://www.msp.gov.ua/files/budjet/2021/2507020.doc>.

¹¹¹ Passport of the budget programme for 2021, <https://mms.gov.ua/storage/app/uploads/public/61c/c3d/7e5/61cc3d7e5eb66000550577.pdf>.

¹¹² Passport of the budget programme for 2021, <https://mms.gov.ua/storage/app/uploads/public/61c/c3d/7e5/61cc3d7e5eb66000550577.pdf>.

¹¹³ Order of the Ministry of Veterans Affairs of Ukraine "On approval of the list of civil society institutions recognized as winners of the competition to determine national programs (projects, activities) developed by public associations of veterans, for which financial support is provided in 2021 with which implementation agreements will be concluded programs (project, event)", <https://mva.gov.ua/storage/app/sites/1/uploaded-files/nakazperemozhti2021.pdf>.

While the practice is quite common in Europe, in Ukraine, there is no mechanism for citizen participation in the redistribution of tax revenues through the transfer of part of personal income tax to a non-profit public or charitable organisation. Public opinion polls show that a significant percentage of citizens (41 per cent) would take advantage of this opportunity if they were able to direct some of their taxes to support CSOs.

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

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

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

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

When it comes to funding through competitive procedures, there have been significant improvements. The 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 are also implemented in practice.

On 3 March 2020, the CMU adopted Resolution No. 16690 introducing contest-based funding to CSOs relating to people with disabilities from the state budget. All

organisations relating to people with disabilities, including local organisations, have access to the national funding contest. However, UTOG and UTOS still receive significant funding from the state without competition.

In late 2020, the Ministry of Digital Transformation of Ukraine announced the introduction of the online platform *VzaemoDiia*. One of the opportunities provided by this platform is the ability for CSOs to participate in online competitions for project funding.¹¹⁴ Online competitions are available to CSOs relating to veterans, people with disabilities, national-patriotic education, and youth.

In December 2021, the Ternopil Regional State Administration became the first regional administration to announce, through the *VzaemoDiia* platform, an online funding contest for projects developed by local youth and children's CSOs and an online funding contest¹¹⁵ for projects of national and patriotic education developed by the civil society institutions for 2022.

On 13 September 2021, the presentation of the online platform *VzaemoDiia* regarding the introduction of contests for CSOs took place. All contest procedures are established online. Uniform regulations for participants and uniform documents for participation in contests from various authorities have been developed, reporting procedures and the distribution of funds between chosen recipients will be more transparent, citizens can participate in the selection to the tender commission and vote for determining the recipients of the contests. Information of all contests, including meeting minutes and other records is stored in a database.

To raise awareness on using online platform *VzaemoDiia* in August and September 2021 there were six trainings held for CSOs and the authorities, as well as a seminar for employees of the Fund for the Social Protection of Persons with Disabilities (FSPPD, a state agency under the control of the Ministry of Social Policy) and a webinar for representatives of public associations of persons with disabilities. During meetings, the requirements for the contest, budget, reporting, method of submission, and tools available on the platform were discussed.

Following the seminar, the FSPPD announced¹¹⁶ a contest for CSOs relating to persons with disabilities on the online platform *VzaemoDiia*.

¹¹⁴ Grants.vzaemo.dii.gov.ua, <https://grants.vzaemo.dii.gov.ua/>.

¹¹⁵ Competition to identify projects of national and patriotic education, developed by civil society institutions, for the implementation of which financial support is provided in 2022, <https://grants.vzaemo.dii.gov.ua/contests/dfc269a0-582e-11ec-aeac-afeb55cb0312>.

¹¹⁶ Competition to identify programs (projects, activities) developed by public associations of persons with disabilities, for the implementation of which financial support is provided in 2022, <https://grants.vzaemo.dii.gov.ua/contests/7695e710-3b0a-11ec-bbec-53f29d317c0d?fbclid=IwAR1t3YNf-WGZLEQnqvTQMulPIYugK2Bsdakq6yY82JGgoJjoeRrBJDFpErQ>.

In 2020 157 projects from 70 CSOs were submitted¹¹⁷ to the FSPPD.¹¹⁸ As a result of the contest, twenty CSOs relating to persons with disabilities received financial support for 28 projects. The first public defence of projects implemented by CSO on public funding took place.

On 1 April 2021, the Ministry of Veterans announced a funding contest for projects of CSOs relating to veterans. The Ministry of Veterans decided to leave a paper form for the contest and use the online platform *VzaemoDiia*.

At the same time, public funds are not always provided for administrative costs, which negatively affects the institutional development of CSOs.

The contracting procedure is regulated by the Law of Ukraine 'On public procurement'.¹¹⁹ For example, a local authority can engage CSOs to sign a social contract through the procedure of public procurement. Pursuant to paragraph 35 of Part One of Article 1 of the Law, a tenderer can be an individual, an entrepreneur, or a legal entity (this includes CSOs). Also, CSOs can take part in other tenders. All results and all documents are published.

Standard III. CSOs enjoy a favourable tax environment.

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

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

¹¹⁷ Public associations of persons with disabilities who have submitted bids for the competition to determine programs (projects, activities) for the implementation of which financial support is provided from the state budget in 2020, <https://www.ispf.gov.ua/diyalnist/monitoring-zahodiv-vgoi-perelik-profesij-utos-utog/konkurs-2020/normativni-dokumenti>.

¹¹⁸ Competition to identify programs (projects, activities) developed by public associations of persons with disabilities, for the implementation of which financial support is provided in 2021, https://www.kmu.gov.ua/storage/app/sites/1/17-civik-2018/rubrik_spryiannia/anos-fond-inval-2021-2.pdf.

¹¹⁹ The Law of Ukraine 'On public procurement', <https://zakon.rada.gov.ua/laws/show/922-19>.

The State Tax Service assigns a non-profit mark to a non-profit organisation. Exclusion of a non-profit organisation from the Register is carried out at an organisation's request or based on the decision of the State Tax Service in the case of:

- use of income of a non-profit organisation for purposes other than the maintenance of such organisation, or the realisation of the purpose (goals, tasks) and directions of the activity or activities determined by its constituent documents;
- distribution of income of a non-profit organisation or its part among the founders, members of such organisation, employees (except for remuneration of their work, accrual of the single social contribution), members of governing bodies and other related persons;
- non-compliance of the constituent documents of the non-profit organisation with the requirements established by paragraph 133.4 of Article 133 of the Tax Code;
- reorganisation (merger, acquisition, division or transformation) or liquidation of the organisation; or
- at the initiative of a non-profit organisation.

In case of exclusion of CSOs from the Register of non-profit institutions and organisations, it is possible to re-apply for inclusion.

As of 1 March 2021, there were 1,928 charitable organisations registered in Ukraine, 93,043 public organisations, 1,911 public unions and 217,863 legal entities in the Register of Non-Profit Institutions and Organisations.

At the same time, the Tax Code of Ukraine does not provide for exemption from VAT on transactions for the provision of social services defined in the Classifier of Social Services and the Law of Ukraine 'On Social Services', provided in accordance with state standards. P. 197.1.7 of Article 197 of the Tax Code provides for exemption from VAT only for certain types of social¹²⁰ services, without taking into account state standards, which violates the conditions of equality for providers of other types of social services.¹²¹ On this point, there were some improvements in legislation due to the quarantine restrictions in place due to Covid-19. These concerned the exemption

¹²⁰ Nutrition, provision of property, utilities and other social services at the expense of state funds provided to persons detained in rehabilitation institutions, territorial centres of social services (social services), institutions, enterprises, organizations of all-Ukrainian public associations of persons with disabilities and their unions engaged in rehabilitation, rehabilitation and physical culture and sports activities, accounting centres and social protection institutions for the homeless, centres for social adaptation of persons released from prisons, sanatoriums for veterans and people with disabilities, nursing homes for the elderly age, persons with disabilities and children with disabilities, psychoneurological and specialized orphanages, boarding houses for war and labour veterans, geriatric boarding houses.

¹²¹ Map of legal reforms for civil society, https://cedem.org.ua/wp-content/uploads/2020/09/Final_UKR_Karta-pravovyh-reform-dlya-gromadyanskogo-suspilstva-v-Ukrayini-2020.pdf.

of CSOs from VAT and customs duties in the case of the import or supply of goods to counter Covid-19. Therefore, CSOs can import medicines and provide assistance to their beneficiaries without including the cost of such goods in the VAT calculation.¹²² This rule has been in place since 2020 and will continue until the end of the quarantine regulations (it still continues at the time of writing).

The current legislation also causes personal income tax, taxation of funds received by volunteers from CSOs as compensation for the costs of volunteering (travel, food, etc.

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

In general, tax legislation is favourable for CSOs and does not provide for onerous reporting. However, the current tax incentives in the case of charitable assistance to individuals and legal entities are insufficient, and the procedure for accessing them significantly hinders their use and, therefore, the development of charity.

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

For individual and corporate philanthropists there are completely different features of taxation. For example, a legal entity may provide charitable assistance to CSOs. If its income is more than UAH 40 million (around 1.2. million EUR), such enterprises can give to CSOs without an additional tax burden only up to 4 per cent of the previous year's income (or up to 8 per cent in the case of assistance to sports CSOs). If the percentage is higher, more income tax will be due.

Individual citizens who aid CSOs are entitled to a tax rebate on personal income tax (also in the amount of 4 per cent). In practice, not so many people enjoy the right to apply for the tax rebate, as the procedure for applying the tax rebate mechanism is quite complicated both for individual citizens and legal entities. The declaration form is difficult to fill out. In addition, the information and explanatory work of the tax authorities on the application of the tax rebate mechanism is insufficient, and performance appraisals are not conducted.¹²³

In addition, the Tax Code¹²⁴ establishes the right for individuals and legal entities who delivered goods, performed works, or provided services to entities in the field of physical activities and sports free of charge to apply a tax rebate of up to 8 per cent of income for the previous year. If the free supply of goods, works, services in other areas

¹²² The Law of Ukraine 'On Amendments to Certain Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of Coronavirus Disease (Covid-19)', <https://zakon.rada.gov.ua/laws/show/530-20#Text>

¹²³ Map of legal reforms for civil society, https://cedem.org.ua/wp-content/uploads/2020/09/Final_UKR_Karta-pravovyh-reform-dlya-gromadyanskogo-suspilstva-v-Ukrayini-2020.pdf.

¹²⁴ The Tax Code of Ukraine <https://zakon.rada.gov.ua/laws/show/2755-17#Text>.

is made during the year, the amount of the tax rebate will be up to 4 per cent of income for the previous year.

A positive development during the quarantine regime was that the 4 per cent limitation was cancelled for payers of income tax when providing charitable aid.¹²⁵ Individual entrepreneurs who are not on the simplified system of taxation, and pay personal income tax, cannot use this mechanism, however.

Standard V. Legislation and policies stimulate volunteering

The Law 'On Volunteering activities'¹²⁶ remains the main act that regulates volunteering activities in Ukraine.

In general, volunteering has become a real trend during the quarantine. Volunteers supported vulnerable populations, including the elderly and people at risk. They delivered food, raised funds for medical equipment and personal protective equipment. As a result, volunteer organisations became one of the public institutions with the highest level of trust among the population of Ukraine (at 64 per cent).¹²⁷

At the same time, there were some negative changes in terms of the regulation of the issue of volunteers from abroad. Draft Law No. 4521 registered in Parliament on 18 December 2020 would restrict CSOs from engaging volunteers from abroad and could make this procedure more difficult, more expensive, and longer. Draft Law No. 4521 provides to SBU with the right to carry out checks on anybody deemed to be potentially threatening state security. The Draft Law would require that CSOs provide insurance to volunteers, inform the Ministry of Social Policy about the place of a volunteer's residence and work, as well as details of their contacts. These amendments will significantly complicate the involvement of volunteers from abroad and CSOs would also have additional financial burdens.

CSOs have protested against Draft Law No. 4521 and have identified it as restricting. They prepared a statement¹²⁸ from civil society and presented counter-arguments to the Draft Law at the expert discussion.¹²⁹

¹²⁵ The Law of Ukraine 'On amending some legislative acts of Ukraine aimed at preventing the emergence and spread of coronavirus disease (Covid-19)', <https://bit.ly/3gBN9Ah>.

¹²⁶ The Law of Ukraine 'On Volunteering activities', <https://zakon.rada.gov.ua/laws/show/3236-17>.

¹²⁷ Razumkov Center 'Trust in the institutions of society and politicians, electoral orientations of the citizens of Ukraine (July-August 2021)', <https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/dovira-do-instytutiv-suspilstva-ta-politykiv-elektoralni-orientatsii-gromadian-ukrainy>.

¹²⁸ Position of civil society organizations on the draft Law of Ukraine No. 4521, <https://docs.google.com/document/d/1oz-yQBTwn2xLzOiR65zCmYMMJtIRzyt638GRbV2MDgl/edit>.

¹²⁹ UCIPR 'Common position of CSOs on the draft Law of Ukraine No. 4521', online briefing, <https://www.facebook.com/UCIPR/videos/1247192992373178>.

Recommendations:

- Expand the range of CSOs receiving state support for project funding and also expand the areas in which CSOs have access to funding (in addition to people with disabilities, veterans and youth);
- Administrative costs for the implementation of projects must be provided in all public tenders;
- Amend the Tax Code of Ukraine to expand the opportunities for businesses to buy goods and services from CSOs by increasing the limitations;
- Establish at the legislative level the possibility to provide assistance to CSOs to those enterprises that suffered losses in the previous year;
- Abolish taxation of compensations provided to volunteers of organisations and participants of events for travel, food, accommodation etc;
- Use social contracting for financing the delivery of services by CSOs in all cities;
- Develop a clear common understanding of the terms ‘social entrepreneurship’ and ‘social enterprise’ and ensure a supportive environment for CSOs engaging in this area;
- Introduce tax incentives for corporate and individual philanthropy that will not be burdensome;
- Introduce a system of interest-based philanthropy (percentage mechanism); and
- Improve the legal environment for engaging volunteers by Ukrainian CSOs.

3.10 State-CSO Cooperation

Overall score per area: **5.5 / 7**

Legislation: **5.9 / 7**

Practice: **5.0 / 7**

Civil society dialogue with the authorities began to improve in 2021. In 2021, the National Strategy for Civil Society Development 2021–2026 was adopted. Many CSOs have been involved in preparing the strategy which identifies several key areas for improving the capacity of the public sector, such as public participation procedures, institutional development of CSOs, issues of cooperation with state institutions and businesses to act for the public good, and so on. The online platform of CSO-government cooperation – VzaemoDiia – was introduced.

The recommendations of the previous report were partially implemented. CSOs were actively involved in the implementation of the new National Strategy for Civil Society Development 2021-2026.

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

State-CSO cooperation in Ukraine is established by dedicated five-year long national strategy documents on civil society development. The current Strategy is the 2021-2026 National Strategy for Civil Society Development developed by the CMU, Ministries and CSOs, and replaced the 2016-2020 National Strategy for Civil Society Development. The current Strategy defines four strategic objectives for the authorities to create favourable conditions for developing CSOs, charitable foundations, and self-organisation bodies. In particular, the Strategy describes effective procedures for public participation, the creation of favourable conditions for the formation and institutional development of civil society institutions, the stimulation of participation of these institutions in the socio-economic development of Ukraine, and the creation of favourable conditions for intersectoral cooperation. It also contains a section on Implementation, Monitoring and Evaluation Mechanisms of the Strategy to enable the evaluation of its implementation and achieved results.¹³⁰ But as the renewed Coordination Council has not yet been established, accordingly, no meetings have taken place.

According to a Decree of the President of Ukraine, the creation of effective mechanisms for financial support for the implementation of the Strategy should be initiated.¹³¹

The Strategy has been developed during 2020 and early 2021. Several hundred CSOs joined this online process organised by the Secretariat of the CMU. In total, 36 events were held including meetings of the working groups and its subgroups, regional online discussions, coordination meetings and thematic meetings and conferences.

The Draft Plan for the Implementation of the 2021-2026 National Strategy for Civil Society Development is developing in cooperation between authorities and CSOs.¹³² From October to November 2021, a range of public consultations of some Ministries with publicity took place.¹³³

¹³⁰ CSO Meter. Ukraine: The President of Ukraine signed the National Strategy for Promoting Civil Society Development 2021-2026, <https://csometer.info/updates/ukraine-president-ukraine-signed-national-strategy-promoting-civil-society-development-2021>.

¹³¹ National Strategy for the Promotion of Civil Society Development in Ukraine for 2021-2026, approved by the Decree of the President of Ukraine of September 27, 2021 № 487/2021, <https://www.president.gov.ua/documents/4872021-40193>.

¹³² Department of Justice. Conducting an online meeting to discuss proposals for the Action Plan for the implementation of the National Strategy for Civil Society Development in Ukraine for 2021-2026, <https://minjust.gov.ua/news/ministry/provedennya-onlayn-zustrichi-dlya-obgovorennya-propozitsiy-do-planu-zahodiv-schodo-realizatsii-natsionalnoi-strategii-spriyannya-rozvitku-gromadyanskogo-suspilstva-v-ukraini-na-2021-2026-roki-zatverdjenoi-ukazom-prezidenta-ukraini-vid-27-veresnya-2021-roku>.

¹³³ Center for Democracy and the Rule of Law (CEDEM) 'Power Plan for Civil Society: First Consultations', <https://cedem.org.ua/news/pershi-konsultatsiyi/>.

The CSO Meter reports¹³⁴ were included as indicators of the CSO environment in the National Strategy, both in the development process and to be used as a source of information for the monitoring and evaluating mechanism of the strategy.

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

According to the CMU Resolution No. 996 'On ensuring public participation in the developing and implementation of state policies,' CSOs can take part in public councils. They are established at regional state administrations, ministries, and other bodies. Today, public councils are formed and work with executive bodies in Ukraine. The members of public councils can be selected by online voting.¹³⁵

In addition to public councils, mechanisms such as public consultation, working groups, public expertise and monitoring, public hearings, information requests to public authorities, etc. are used by civil society to interact with the government. These mechanisms are regulated by the Law of Ukraine 'On Local Self-Government in Ukraine', the Law of Ukraine 'On Bodies of Self-Organisation of the Population', the Law of Ukraine 'On Citizens' Appeals', CMU Resolution 'On Ensuring Public Participation in the Formation and Implementation of State Policy,' and others.

According to the State Secretary of the CMU Oleksandr Yarema, cooperation with civil society and the development of conducive conditions for its development is a priority for the government. Yarema emphasised this during a speech at the First Virtual Charity Summit on 20 May 2021.¹³⁶ In practice, however, civil society remains a non-priority activity of the government, and the best cooperation developed with the Secretariat of the CMU.

In 2021, compared to in 2020, the number of contacts between the government and CSOs increased. The reasons for this are the development of permanent contacts with the new government and, in particular, representatives of the Ministries, as well as the easing of quarantine restrictions and improved skills in using online communication tools. The effectiveness of such contacts is also enhanced when the public sector is represented by coalitions from many CSOs, including regional organisations. This increases the legitimacy of civil society claims. At the same time, however, online consultations are not as effective as live meetings that took place in the pre-Covid period.

¹³⁴ CSO Meter, Update Report on Ukraine 2020, https://csometer.info/sites/default/files/2020-12/%D0%91%D0%B0%D1%80%D0%BE%D0%BC%D0%B5%D1%82%D1%80%20%D0%9E%D0%93%D0%A1_%D1%83%D0%BA%D1%80-%D0%A0%D0%95%D0%94_4_10.10.2020.pdf

¹³⁵ NAPC Integrity Office 'Public councils: what they are for and how they work in Ukraine', <https://prosvita.nazk.gov.ua/blog/gromadski-rady-dlya-chogo-potribni-ta-yak-pratsyuyut-v-ukrayini>.

¹³⁶ Government Portal 'Oleksandr Yarema: A collaboration with civil society is a priority for the Government' Piece of information by CMU of Ukraine from 20.05.2021, <https://www.kmu.gov.ua/news/oleksandr-yarema-vzayemodiya-z-gromadyanskim-suspilstvom-ye-prioritetom-dlya-uryadu?v=60a7591dc3b7b>.

The international initiative Open Government Partnership is being actively implemented. In May 2021, Open Government Week took place,¹³⁷ at which the CMU and CSOs jointly addressed issues of increasing the level of openness of public administration and establishing cooperation between members of the public and authorities at all levels.

Another mechanism of CSO-government interconnection is the online *VzaemoDiia* platform. CSOs can use the platform to submit requests for public examination of executive bodies' activities and to obtain access to their materials; to take part in competitions for institutes of civil society to which financial support could be provided; and comment on Draft Laws and participate in other forms of public discussion.¹³⁸ In September 2021, the Ministry of Digital Transformation of Ukraine presented (jointly with its partners)¹³⁹ the online 'E-contest' section of the *VzaemoDiia* platform. The new system allows interested parties to view announcements of all relevant project funding contests for CSOs from the Ministries. Funding contests from regional state administrations will also be added during the course of 2022.

The first meeting of the Barrier-Free Council took place in June 2021.¹⁴⁰ During this meeting, the Ministries presented concrete steps to promote barrier-free policy, which the government plans to focus on over the next six months. The Barrier-Free Council was created to monitor and control the state of implementation of the National Strategy for Creating a Barrier-Free Space in Ukraine until 2030 (the National Strategy). Fifteen ministries and 47 CSOs and think tanks were involved in the creation of the Action Plan for the implementation of the National Barrier-Free Strategy, and more than 250 proposals were received from them. Based on the cooperation between the government and CSOs, the National Strategy for Creating a Barrier-Free Space in Ukraine until 2030 was developed. A total of 15 ministries, 47 public organizations and think tanks were involved in the development of the Action Plan for the implementation of this strategy, and more than 250 proposals were received. The National Strategy allows an increase in the level of inclusion in the country and allows CSOs to participate in this process. This is especially true for CSOs that focus on disabilities, veterans, youth and children's issues. Their members will receive additional opportunities and resources for physical mobility. They will be able to use special hardware or software for people with disabilities.

¹³⁷ Government Portal 'Public measure of the Open Government Week', <https://www.kmu.gov.ua/news/publicchni-zahodi-tizhnya-vidkritogo-uryadu-2021?v=60a278cf6a251>.

¹³⁸ About the VsaemoDiia. Information about the project. Last visit 15.12.2021, <https://vzaemo.dia.gov.ua/about>

¹³⁹ Ministry of digital transformation briefing on digital contests launching, <https://youtu.be/gob3DCIuZsE?t=1618>.

¹⁴⁰ Official website of the President of Ukraine 'The first meeting of the Barrier-Free Council took place under the initiative of Olena Zelenska' Piece of information from 29.06.2021, <https://www.president.gov.ua/news/u-mezhah-iniciativi-oleni-zelenskoyi-vidbulosya-pershe-zasid-69249>.

In practice, the cooperation is intensive at the level of planning and communication, but less so when it comes to implementation.

In addition, there are certain restrictions on advisory mechanisms, including on public councils' activities and other advisory democracy instruments over areas near the contact line in eastern Ukraine. Thus, as of 2021, there are twelve military-civil administrations in Donetsk region and nine in Luhansk region, which manage certain communities. There are therefore limitations in advisory mechanisms in these regions given the security issues.

Recommendations:

- The Ministries and local governments should implement the provisions of the National Strategy for Civil Society Development for 2021-2026;
- Amend the Resolution of the CMU 'On ensuring public participation in the formation and implementation of state policy' to increase the efficiency of public councils, establishing systematic and daily work of public councils by strengthening their institutional capacity; and
- Actively involve central and local authorities in the use of the online platform *Vzaemo.Dia* for the provision of online funding competitions for CSOs.

3.11 Digital rights

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

Legislation: **5.5 / 7** | Practice: **4.8 / 7**

The relevant legislation provides protection of digital rights to a certain extent, i.e. freedom of internet use, free expression of views and beliefs in the digital area, and there have been further improvements in the past few years including the creation of unified legislation in accordance with international law. However, there have also been attempts to restrict digital rights by the emergence of restrictive draft laws and an attempt to expand the powers of state institutions to control the digital environment.

Standard 1. Digital rights are protected, and digital technologies are compliant with human rights standards

Special legislation governing digital rights in Ukraine is still evolving and there is not a single, comprehensive law or regulation that fully regulates this issue.

One of the documents that partially regulates the observance of digital rights is the National Strategy for Human Rights,¹⁴¹ adopted in early 2021. This document outlines several strategic goals related to digital rights, including freedom of thought and speech, expression of views and beliefs, and access to information. Also, the Law of Ukraine 'On Electronic Trust Services'¹⁴² regulates the creation and verification of electronic digital signatures, the formation and verification of electronic signature certificates of confirmation, and so on

In the main, Ukrainian law does not restrict citizens' access to the internet. There is no special law that provides for criminal sanctions or civil liability for activities on the internet. However, the Criminal Code provides for punishment for extremism, separatism, or terrorism, including on the internet.

At the same time, the censorship of some websites remains a negative trend in the online environment.

Ukrainian legislation currently contains three mechanisms for blocking internet resources:

1. the obligation of telecommunications providers to restrict the access of their subscribers to the resources through which child pornography¹⁴³ is distributed based on a court decision;
2. a person who organises, conducts, or provides access to gambling through a website without a relevant license, must within three days restrict access to it at the request of the Commission for the Regulation of Gambling and Lotteries,¹⁴⁴ and
3. The hosting provider must restrict access to the website that contains infringing copyrights.¹⁴⁵

The mechanism of blocking Russian websites and content due to the related threats to Ukraine's national security also should be noted.

On 15 May 2020, sanctions against the Russian services Mail.ru, Vkontakte and Odnoklassniki were extended for three years, and against the Russian technology company Yandex¹⁴⁶ for one year. Other sites, which were blocked by similar Presidential Decrees in 2018¹⁴⁷ and 2019,¹⁴⁸ also remain blocked. In 2021, at least ten

¹⁴¹ National Strategy in the Sphere of Human Rights, approved by the Decree of the President of Ukraine of March 24, 2021 № 119/2021, <https://www.president.gov.ua/documents/1192021-37537>

¹⁴² Law of Ukraine 'On electronic trust services' <https://zakon.rada.gov.ua/laws/show/2155-19#Text>.

¹⁴³ The Law of Ukraine 'On Telecommunications,' <https://zakon.rada.gov.ua/laws/show/1280-15#Text>.

¹⁴⁴ The Law of Ukraine 'On state regulation of activities related to the organization and conduct of gambling,' <https://zakon.rada.gov.ua/laws/show/768-IX#Text>.

¹⁴⁵ The Law of Ukraine 'On copyright and related rights,' <https://zakon.rada.gov.ua/laws/show/3792-12#Text>.

¹⁴⁶ Decree of the President of Ukraine No. 184/2020, <https://www.president.gov.ua/documents/1842020-33629>.

¹⁴⁷ Decree of the President of Ukraine No. 126/2018, <https://www.president.gov.ua/documents/1262018-24150>.

¹⁴⁸ Decree of the President of Ukraine No. 82/2019, <https://www.president.gov.ua/documents/822019-26290>.

Presidential Decrees provided restrictions on access to websites. In total, 697 web resources remain blocked, mainly in the form of a ban on internet service providers to provide internet access to resources or services, on the basis of Decrees of the President of Ukraine, as of November 2021.¹⁴⁹ However, no criteria for the inclusion of certain web-resources into the ‘sanction list’ have been provided by the National Security and Defence Council.

There have been attempts to enshrine more mechanisms for blocking internet resources in Ukrainian law. The Draft Law ‘On Media’¹⁵⁰ No. 2693-D, registered in Parliament on 2 July 2020, proposes to ban the activity of online media throughout Ukraine, if that media provider has committed three ‘significant’ or two ‘gross’ violations during the year. The decision to terminate media is made by a court. The categories of prohibited content have not been defined with the necessary clarity. The draft law also does not provide for alternative, less restrictive measures in cases of repetitive violations, for example, restricting access to the specific content rather than to the whole resource. The bill is currently under consideration.

The Draft Law No. 3196-D registered in Parliament on 26 October 2020, provides for a significant expansion of the powers of the SBU. It is proposed to empower the SBU to restrict access to identified information resources to prevent a terrorist act or any information that could undermine the constitutional order, violate the sovereignty and territorial integrity of Ukraine, or aggravate the socio-political and socio-economic situation, etc.

On 1 September 2020, Draft Laws No. 4003¹⁵¹ and 4004¹⁵² were submitted to Parliament, which propose to implement international cybersecurity standards. The Draft Laws propose to introduce the concepts of ‘urgent storage of information’ and ‘electronic evidence’ that will clarify the current related provisions of criminal procedure legislation. On the other hand, the Draft Laws also pose a threat to human rights. For instance, the Draft Laws contain proposals that require internet service providers to store information from telecommunications systems, including traffic, to a sufficient extent to identify the subscriber and determine the source of traffic and the route of its transmission for twelve months.

¹⁴⁹ Monitoring of Digital rights violations in Ukraine, analytical report, monitoring period - November 2021, page 3, <https://www.ppl.org.ua/wp-content/uploads/2021/12/%D0%86%D0%BD%D0%B4%D0%B5%D0%BA%D1%81-%D0%B7%D0%B0-%D0%BB%D0%B8%D1%81%D1%82%D0%BE%D0%BF%D0%B0%D0%B4-2021-%D1%80%D0%BE%D0%BA%D1%83.pdf>.

Digital Security Laboratory ‘Sanctions and blocking of websites in Ukraine: how to open a Pandora's box invisibly!’, https://dslua.org/wp-content/uploads/2021/06/Sanctions_and_Internet_UPD_2.pdf.

¹⁵⁰ Official web portal of the Parliament of Ukraine. Draft Law No. 2693-Д from 02.07.2020, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69353.

¹⁵¹ Official web portal of the Parliament of Ukraine. Draft Law No. 4003 from 01.09.2020, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69770.

¹⁵² Official web portal of the Parliament of Ukraine. Draft Law No. No. 4004 from 01.09.2020, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69771

Apart from the specific legislative provisions that regulate the blocking of online resources, there are also some practices of restricting freedom of expression online that have been developed in Ukrainian case law that are not in line with international standards. For instance, 796 web resources were blocked in Ukraine as of August 2021 by the investigative judges' orders on grounds of 'arrest of economic rights in intellectual property of internet users' within criminal proceedings. The imposed measure is legally absurd since website users do not have any economic rights in intellectual property in respect of such websites. The content of the website was not examined by the court and the owners of the website are not involved in the proceedings. Some of the cases regarding such restrictions, initiated by news websites, have been already submitted to the ECtHR.

Standard 2. The state creates conditions for the enjoyment of digital rights

Internet access in Ukraine is ensured and fourth generation (4G) mobile technologies are actively used. According to the International Telecommunication Union, as of 2020, the penetration rate of fixed broadband internet access was 18.62 per cent, while the penetration rate of broadband mobile communications was 85.3 per cent.¹⁵³ At the same time, according to the data published by the analytical initiative DataReportal, in January 2021, the share of internet users in the total population of Ukraine (43.6 million people) is 29.47 million individual users; the overall level of internet penetration is 67.6 per cent (the average level of internet penetration in Eastern Europe is 82 per cent).¹⁵⁴

Ukraine is quite advanced when it comes to digitalization of personal data, as it became the first country in the world to equate electronic passports with paper and plastic ones. In August 2021, the law 'On e-passports' came into force.¹⁵⁵ As a result, at the legislative level, the definition of e-passport and e-passport for travelling abroad are equated to the same definition as for their physical counterparts. The validity of a passport can be checked using the e-government portal *Diia*¹⁵⁶ with a smartphone via a QR-code which is valid for only three minutes. This makes it impossible to forge or steal a passport. However, such a system requires a reliable system of personal data protection due to the high value of the documents involved. During 2021 the police

¹⁵³ 'Country ICT Data (Latest available data),' International Telecommunication Union, <https://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>

¹⁵⁴ Digital 2021: Global overview report, <https://datareportal.com/reports/digital-2021-global-overview-report>.

¹⁵⁵ Ukrinform 'The law on e-passports has entered into force - what are the advantages it provides', <https://www.ukrinform.ua/rubric-society/3302831-zakon-pro-epasporti-nabuv-cinnosti-aki-perevagi-vin-dae.html>.

¹⁵⁶ 'Diia' is a state mobile app that allows you to use digital personal documents (passports, driver's and student licenses) and a number of public services.

investigated some fraudulent apps¹⁵⁷ which could allow citizens to purchase fake Covid-19 vaccination certificates, drivers licences, or passports.

Over several years Ukraine has been making significant strides in expanding digital rights, educating citizens, including the elderly, to use the internet, putting many government services online, abandoning paper documents, preventing cyberattacks, and so on.

Ukraine occupies a high position in the ratings of internet access and is considered one of the countries with the cheapest internet in the world.¹⁵⁸ On 16 December 2020, Parliament adopted the Law of Ukraine 'On electronic communications',¹⁵⁹ which entered into force on 1 January 2022. The law sets out several steps that improve the state of digital rights in Ukraine. In particular, the right to affordable broadband access to the internet in a fixed location is added to the list of universal communication services. Vulnerable populations will be able to receive targeted financial assistance to access quality internet if the cost of such a connection is prohibitive for them.

According to the Law 'On electronic communication', temporary restrictions on access to the internet may be applied only in cases of anti-terrorist operations (there may be a temporary restriction on the provision of electronic communications services in the manner prescribed by the CMU) in a state of emergency, or a state of martial law. There are no mechanisms for judicial control or appeal against decisions restricting internet access during martial law and or a state of emergency. The Law also does not provide any additional conditions for the application of such restrictions, leaving a wide margin for arbitrary decisions.

President Zelenskyy reorganised the State Agency for e-Government into the Ministry of Digital Transformation. This body is responsible for formulating and implementing public policy in areas such as e-government and is responsible for developing the digital skills of citizens.¹⁶⁰ Zelenskyy's administration has also introduced the new position of Digital Transformation Manager in each Ministry, regional administration, state-owned company, and state agency.

The development of digital education is identified as a priority area. The Ministry of Digital Transformation aims to attract 6 million Ukrainians to digital skills development programmes by 2024. To this end, in 2020 the Ministry of Finance created 1,500 offline digital education hubs in various cities in Ukraine, as well as launching the portal *Diia.Digital education*.¹⁶¹

¹⁵⁷ Suspilne Media 'Fake 'Diia'. How to distinguish original digital documents from fake ones',

<https://suspilne.media/175601-fejkova-dia-ak-vidrizniti-originalni-cifrovi-dokumenti-vid-falsivih/>.

¹⁵⁸ Worldwide mobile data pricing 2021, <https://www.cable.co.uk/mobiles/worldwide-data-pricing/>.

¹⁵⁹ The Law of Ukraine 'On electronic communications,' <https://zakon.rada.gov.ua/laws/show/1089-IX#Text>.

¹⁶⁰ Government Portal 'Government endorses the Regulation on the Ministry of Digital Transformation',

<https://www.kmu.gov.ua/en/news/uryad-zatverdiv-polozhennya-pro-ministerstvo-cifrovoyi-transformaciyi>.

¹⁶¹ Osvita Diia, <https://osvita.diia.gov.ua/>.

On 30 July 2021, the Ministry of Digital Transformation presented the *Diia.Digital Community* platform,¹⁶² a database for digitization of local government. The platform allows specialized deputies for digitization in the field to find all useful information in one place including instructions, algorithms, current news, and document templates. The platform has guidelines for connecting various digital tools in communities. These include a digital suitcase for administrative service centres, electronic diaries and magazines for schools, public consultations, and a budget for participation.

At the same time, social networks and messengers identify a lot of fake information, abusive remarks, comments, etc. Most fakes concern information about the state of affairs in the occupied territories and come from pro-Russian sources. Every year there are cyberattacks on the websites of the government, Ministries, banks, leading media, CSOs, social media pages, etc.

Tracking and preventing these threats is not easy. The Ministry of Culture had developed the Draft Regulatory Act to counter misinformation and has begun to discuss it.¹⁶³ Civil society and journalists reacted negatively to the Draft Act, however, due to the threat of excessive state control of the media sphere and restrictions on freedom of speech,¹⁶⁴ including the proposal to criminalize defamation. After the change of government in March 2020, the draft act was abandoned.

However, work in this area continued and, on 15 September 2021, the CMU approved the Information Security Strategy,¹⁶⁵ and on 15 October 2021, it was approved by the National Security and Defence Council.¹⁶⁶ The Strategy was discussed in a working group, which included representatives of public authorities and research institutions. Information on public consultations on this Strategy appeared on the Ministry's website after the date of the consultations.¹⁶⁷ CSO representatives were not present which caused concern.

The Strategy has been approved by the Presidential Order of 28 December 2021. The purpose of the Strategy is to counteract internal and external threats to information security, protect the state sovereignty and territorial integrity of Ukraine, support

¹⁶² Diia Digital Hromada, <https://hromada.gov.ua>.

¹⁶³ Ministry of Culture and Information Policy, Comparative table to the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Ensuring National Information Security and the Right to Access Reliable Information", https://mkip.gov.ua/files/pdf/Disinformation_Draft_2020.pdf.

¹⁶⁴ Hromadske 'Disinformation Law: What Journalists and Lawyers Say', <https://hromadske.ua/posts/najkrashe-sho-mozhe-zrobiti-derzhava-ne-vtruchatisya-zakon-pro-dezinformaciyu-sho-kazhut-zhurnalisti-ta-yuristi>.

¹⁶⁵ Government Portal 'The government has approved the Information Security Strategy until 2025', <https://www.kmu.gov.ua/news/uryad-shvaliv-strategiyu-informacijnoi-bezpeki-do-2025-roku>.

¹⁶⁶ Detector Media 'The National Security and Defence Council approved the Information Security Strategy of Ukraine', <https://detector.media/infospace/article/192890/2021-10-15-rnbo-zatverdyla-strategiyu-informatsiynoi-bezpeky-ukrainy/>.

¹⁶⁷ Detector Media 'The Ministry of Culture and Information Policy is preparing a draft of a new 'Information Security Strategy', which will replace the one approved by Poroshenko', <https://detector.media/infospace/article/186781/2021-04-08-mkip-gotuie-proiekt-novoi-strategii-informatsiynoi-bezpeky-yaka-zaminyt-zatverdzhenu-poroshenkom/>.

information and measures of social and political stability, state defence, ensure the rights and freedoms of every citizen, and counteract misinformation.¹⁶⁸ The Information Security Strategy is part of the National Defence Strategy of Ukraine.¹⁶⁹

In 2020, according to the 'Freedom of Speech Meter' research, nine cybercrimes took place on Ukrainian public websites. The most common (seven cases) were distributed denial-of-service (DDoS) attacks (overloading the central server with simultaneous data requests).¹⁷⁰ Cyberattacks were experienced by both regional and national media, including RIA Melitopol, Politerno (Ternopil), Fourth Power (Rivne) and Liga.net 118, as well as the Voice of the Carpathians (Transcarpathia) and others.

The use of AI is not regulated by law. The only official document that contains ideas for its regulation is the Concept for the Development of Artificial Intelligence in Ukraine,¹⁷¹ developed by the Ministry of Digital Transformation. In the summer of 2020, a public discussion of the content of this document took place. However, the concept almost did not include provisions related to the protection of human rights.

One of the AI technologies already used in Ukraine is video cameras equipped with face recognition technology. They are established by local governments and can already be found in Kyiv, Lviv, Zaporizhia, Uzhhorod and Vinnytsia. Their use, as well as the use of data recorded on them, is not properly regulated by law.¹⁷²

Recommendations:

- Bring government restrictions on access to internet resources in line with the international standards on freedom of expression, ensuring their legality and proportionality;
- Engage civil society institutions in the development of legislation that may have an impact on the exercise of digital rights, policies on AI, countering disinformation etc;
- Extend support to digital literacy initiatives; and
- Introduce special legislation on the use of AI and upgrade current legislation on digital rights in accordance with international standards and with due regard for human rights.

¹⁶⁸ Digital Security Laboratory 'Information Security Strategy - 2025: what will change in the field of digital rights', <https://dslua.org/publications/strategiia-informatsiynoi-bezpeky-2025-shcho-zminytsia-u-sferi-tsyfrovykh-prav/>.

¹⁶⁹ Decree of the President of Ukraine No.392 / 2020, <https://www.president.gov.ua/documents/3922020-35037>.

¹⁷⁰ Institute of Mass Media 'How Journalists are persecuted on the Internet', <https://imi.org.ua/monitorings/kiberzhest-yak-zhurnalistiv-peresliduyut-v-interneti-i37803>.

¹⁷¹ The CMU Decree 'On approval of the Concept of development of artificial intelligence in Ukraine,' <https://zakon.rada.gov.ua/laws/show/1556-2020-%D1%80#Text>.

¹⁷² Center for Democracy and the Rule of Law (CEDEM) 'Is it legal to install cameras with face recognition on city streets?', <https://cedem.org.ua/analytics/kamery-rozpiznavannya-oblych/>.

IV. KEY PRIORITIES

In 2021, civil society took a second breath after the shock of the coronavirus pandemic. Some CSOs processes have been digitalized, such as providing online competitions to receive public funds for CSOs to the platform *VzaemoDiiia*. The civil sector, together with the state institutions, developed an updated National Strategy for Civil Society Development for 2021-2026 that sets out the state's priorities for the development of civil society for this period. Despite quarantine restrictions, the right to peaceful assembly was maintained.

CSOs actively supported the population during severe quarantine restrictions, especially regarding the involvement of volunteers. This fact has become crucial in maintaining high support for CSO activities among the population. However, there is still the problem of attacks on activists. The state is not responding to this problem, and police are turning a blind eye to most cases.

Compared to the previous report, the overall situation for the CSO environment in Ukraine has improved slightly. Two main recommendations from the previous 2020 report were implemented: (i) to implement a contest-based and transparent mechanism for funding CSOs from state and local budgets, monitoring CSOs and reporting by CSOs; and (ii) to adopt the National Strategy for Civil Society Development 2021–2026.

However, many key recommendations have not been implemented, and some of them are repeated in the priority recommendations listed below.

Priority recommendations

1. Implement the provisions of the National Strategy for Civil Society Development for 2021-2026;
2. Abolish the requirement for CSOs to provide information on their UBO;
3. Expand the range of CSOs receiving state support for project funding and also expand the areas in which CSOs have access to funding (in addition to people with disabilities, veterans and youth);
4. Adopt the Law of Ukraine 'On Public Consultations';
5. Avoid initiating draft laws intended to worsen the legal environment for CSOs that receive foreign funding;

6. Ensure the appropriate and efficient investigation of attacks on journalists and civil activists, including those who protect the rights of women, LGBT communities, anti-corruption activists and others; and
7. Introduce special legislation on the use of AI and upgrade current legislation on digital rights in accordance with international standards and with due regard for human rights.

V. METHODOLOGY

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

ECNL has worked with the methodology experts RESIS since 2020 on adapting the CSO Meter methodology package to enable for both qualitative and quantitative comparison of the different areas of the enabling environment across the EaP countries and years. The proposal for the research model was consulted on and tested with the extended regional CSO Meter Hub via email and online events. With the updated comparison model, we aim to (1) assess the environment for civil society in each of the 11 areas; (2) enable tracking of developments/progress throughout the years per country, and (3) compare the environments regionally.

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

The current report covers the period of September 2020 – November 2021.

Monitoring process

The process has included data collection and analysis of the collected information. The main type of the research used in this report was desk research.

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

Scoring process

The authors of the report on Ukraine assessed each **Standard of the 11 areas of the CSO Meter tool in Legislation and Practice**. For the scoring procedure a 7-point scale is used. The extreme values of the scale are conceived as the extreme/ideal situation or environment. For example, (1) is an extremely unfavourable (authoritarian) environment, while (7) is the extremely favourable (ideal democratic) environment for CSOs.

For more information on the CSO Meter tool, the scoring process and calculation please visit <https://csometer.info/>. The scores presented in this 2021 report will serve as baseline scores and, in the coming years, progress will be measured against them.

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