STRATEGY FOR A LEGACY ADVOCACY MECHANISM IN UKRAINE:

SUSTAINABLE SUPPORT FOR CIVIL SOCIETY

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Executive Summary

- Civil society and its role in advocacy and monitoring continues to address a critical need in Ukraine's ongoing reform process. This paper sets a strategy for a legacy mechanism that will support civil society organizations (CSOs) in Ukraine in their advocacy and monitoring work.

- The mechanism should encourage and make available broad thematic technical assistance for any reform area; emphasize the need for advocacy and analytical products to have a consultation process/system; emphasize advocacy processes where analytic products have a quality management system; and emphasize regional-level policy processes.

- A number of examples of legacy mechanisms have been reviewed for this paper, including the Polish-American Freedom Foundation, the Baltic Trust for Democracy, and the Central and East European Trust. Governance and operational details for PAFF may serve as a model for the mechanism, with some adjustments, such as inclusion of a voting or non-voting U.S. Government (USG) representative on the mechanism's Board of Directors.

- The strategy presents two models as options for the legacy advocacy mechanism: a traditional endowment, which is a structure not currently widely used in Ukraine, has the advantage of long-term stability, particularly if sufficient resources would be made available such that the endowment could operate in perpetuity. However, a hybrid structure incorporating a philanthropic mechanism (which may be an endowment) alongside a for-profit investment mechanism, such as a limited liability company, is recommended as the preferred model as this would attract and deliver both philanthropic and profit-motivated resources, particularly as private sector engagement in the mechanism is considered critical, alongside civil society, donors, and international financial institutions.

- Private sector engagement may best be established through identification and engagement of "lighthouses," companies that (a) have to date not operated in Ukraine and have an interest in entering the market and (b) are committed to, and are considered to be, adhering to the highest standards of transparency, good governance, and uncorrupted business practices globally. Amazon and IKEA are suggested as such companies.

- Targeted areas of support for the mechanism include anti-corruption, decentralization, independent media, judicial reform, and capacity-building of Ukrainian CSOs.

Context: Current Status of Civil Society in Ukraine

Civil society and its role in advocacy and monitoring continues to address a critical need in Ukraine's ongoing reform process. Current sources of support for civil society include bilateral donors, international organizations, foundations, local CSOs that are dedicated to capacity building of other CSOs, the Government of Ukraine (GoU), the Ukrainian private sector, and individuals. Support for CSOs spiked immediately following the Revolution of Dignity and has levelled or declined since. ISAR-Ednannia, a Ukrainian CSO building the capacity of other CSOs through a School for Community Foundations, reports that the share of support for the School from international sources rose from 24 to 52 percent in the period 2011-15 and has since leveled off at around 40 percent. Steps are being taken by Ukrainian CSOs to reduce their reliance on donor support and build self-sustainability via self-generating income. This is centered around efforts to re-position themselves in terms of their business models, offering their services and products for fees.[1]

The legacy advocacy mechanism should operate independently of government in order to avoid state capture or any undue influence or politicization of the mechanism. Other stakeholders should play a role in supporting the mechanism and governance of the mechanism should be designed to reflect the range of supporters.[2]

Pact's UNITER feasibility study (2015) sought "competency and passion" in trying to identify one or more entities in Ukraine that could carry the mandate of serving as a legacy advocacy mechanism. Consideration of the most promising actors found none that was both interested and suitable to be considered a serious candidate for the purpose. The study further found that design of such a mechanism was not appropriate at the time, given the existing status of civil society development, as well as the political context, in Ukraine. As was the case at the time the study was prepared, relevant processes continue to be fragile and in need of time to further evolve, and further international presence is required to support this evolution.

The study presented four options for developing some form of a legacy mechanism:

1. Working with one or several local organizations to stoke their passion and develop their competency as convener, advisor, and donor to local CSOs and civic coalitions;
2. Establishing a new organization or organizations (traditional CSO, e.g. spinoff) to fill this role;
3. Leaving behind a legacy of independent CSOs to attract donor funding without the need of an intermediary Ukrainian donor organization; or
4. A new and innovative model of sustainability.

The first option is not being pursued because the lack of "competency and passion" referred to above still characterize the Ukrainian CSO community. Despite the presence of these values, to varying degrees, and clear commitment and, in many cases, notable effectiveness and visible achievement of Ukrainian CSOs in a highly challenging environment, none are in a position to take on the leadership, mentoring, and guiding role that is required to serve as "convener, advisor, and donor" to other local CSOs and civic coalitions.

[1] Examples of such CSO initiatives are presented in Annex 1.
[2] Current activities and initiatives being undertaken by GoU and donors are described in Annex 2.

The second option, to establish a new organization or organizations to fill the role would not be effective because such an organization would necessarily rely on external sources of support for its work and continued existence. As the objective here is to establish a sustainable legacy mechanism, this task requires a structure that either "owns" a long-term pool of funds to support its work on a sustainable basis (ideally in perpetuity), or a mechanism that will generate resources on an ongoing, regular, and reliable basis. Traditional organizations typically do not possess these features.

The third option is not workable because CSOs needing to attract donor funding carry two risks: first, there is no guarantee that the CSO(s) will be successful, going forward, in attracting donor funding if mechanisms are not in place to ensure their proper governance, operation, and impact, which would be difficult to establish in a way that is lasting and secured; and second, while donor funding may play a role in the mechanism, for example, at launch, continued reliance on donor funding is not an attractive option because donor priorities and strategies change over time, tend to be time-bound, and are often short-term in horizon. These are not features that are appropriate for a mechanism that will work in Ukraine on an independent, and sustained, basis.

This leaves the fourth option -- design and establishment of "an innovative model of sustainability" -- as the one to pursue.

Legacy Advocacy Mechanism Defined

The legacy mechanism will provide sustained support to advocacy and monitoring activities of Ukrainian CSOs. Specifically, the mechanism should:

- Encourage and make available broad thematic technical assistance for any reform area: This would assist to address public concerns about concrete effects of the reform process and provide a wide set of organizations access to funding and technical assistance for policy engagement in various issue areas, priorities being anti-corruption, rule of law, public administration reform, and decentralization;

- Emphasize the need for advocacy and analytical products to have a consultation process/system: Consultative processes are in place, to varying degrees, between government and expert groups and expert groups/CSOs and a broader set of stakeholders. Emphasis on making this two-tier consultation process a normal part of addressing policy issues should be part of ongoing efforts;

- Emphasize advocacy processes where analytic products have a quality management system: Several actors are putting in place ways to improve the quality control of analytical products. The mechanism should focus on working with them to achieve functioning systems as well as making peer review and related quality management processes part of the culture of policy research infused advocacy; and

- Emphasize regional-level policy processes. This emphasis should seek to ensure that (i) regional and local stakeholders are part of national-level consultation processes and that (ii) reform processes at the local level further encourage and develop consultation processes for local-local stakeholder engagement (making available capacity building enhancements for multiple levels of organizations/initiatives).

Legacy Mechanism Examples

Polish-American Freedom Foundation[3]

The Polish American Freedom Foundation (PAFF) was established with funding from the Polish American Enterprise Fund which, since its inception 1990, had invested in over 50 ventures, developing companies and other institutions which continue to play a productive role in the Polish economy. Loan programs initiated by the Fund for small and medium-sized enterprises supported almost one hundred thousand entrepreneurs, and five banks, including the first financial institution in Poland to offer mortgage loans, were established with the Fund's support.

The Foundation cooperates closely with Polish CSOs in implementing its program objectives. PAFF's programs are managed by selected organizations, and decisions on awarding grants and scholarships are made by commissions composed of independent experts. PAFF, in consultation with its Third Sector partners, develops program conception, provides funding for implementation from its own or external sources, and monitors and evaluates program results.

PAFF is a corporation organized and existing under the General Corporation Law of the State of Delaware, and is structured as a membership corporation, not organized for profit and not having authority to issue capital stock. PAFF's objectives are (a) to make investments in, and grants (including matching grants) and/or loans, to non-governmental institutions, non-profit community organizations, and individuals throughout Poland; and (b) to sponsor scholarships, fellowships, awards, student loans, and exchange programs throughout Poland, by allocating its resources to support private sector development in the areas of economic reform, leadership development, civil society, local government and business climates, and legal reform.

PAFF's By-Laws set out specific information regarding the Foundation's purpose (as noted above and in support of the Support for East European Democracy Act of 1989); the Board of Directors (e.g. practices regarding annual meetings and compensation); Officers (election and term, qualifications, compensation, and removal of the President and Chief Executive Officer, Secretary, Treasurer and other Officers); Operations Policies (including fundraising and holding of funds in interest-bearing accounts without requirement to return such interest to the U.S. Treasury); reporting and auditing on an annual basis; and conflict of interest provisions.

The business, property, and affairs of PAFF are managed by or under the direction of the PAFF Board of Directors. The Board of Directors consists of private citizens of the United States and Poland, all having demonstrated experience in one or more areas in which PAFF is involved. The number of Directors constituting the Board are not less than three, and not more than fifteen, to be determined by majority vote of the Board. The Board is staggered: Directors are divided into three classes, the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one year thereafter; of the third class two years thereafter. At each annual election held after such classification

[3] *Sources:* PAFF website and Articles of Incorporation, By-Laws, and Governance Guidelines.

and election, Directors are re-elected, or new Directors elected, to serve a full three-year term, to succeed those whose terms expire.[4]

PAFF's Board Guidelines specify (a) the role of the Board, setting out the Board's responsibilities (protecting PAFF's financial stability and assets, reviewing, revising and ensuring compliance with PAFF's mission and establishing policies and strategic direction to further that mission, etc.); (b) Director selection and independence, the former handled by a Nominating Committee, the latter seeking to ensure objective judgment with respect to, for example, materiality of relationships with the organization, management, beneficiaries, donors, clients, suppliers, and other constituents. This refers in particular Directors that are appointed to the Audit Committee, Compensation Committee, Investment Committee, and Nominating Committee); (c) expectations including regular self-evaluation, review of the organization's missions and goals, documents filing to the U.S. Internal Revenue Service, and suggestions to the Nominating Committee of potential Board candidates; (d) attendance; (e) establishment of Board Committees; and (f) tenor of Boardroom deliberations (to ensure Director participation and expression of disagreement as relevant).

In addition, PAFF's Statement of Duties specifies Directors and Officers' Duty of Care (attention to fiscal affairs and ensuring that the organization acts within its established scope of purposes and authority) and Duty of Loyalty. The latter is reinforced by a detailed Conflict of Interest Policy, including provisions for disclosure of actual, potential, or apparent conflicts of interest. PAFF's Statement of Corporate Policies and Procedures sets out PAFF's mission statement, Code of Conduct and Ethics, Compliance Procedures and Whistleblower Protection policies, restrictions regarding political activities, and accounting and recordkeeping procedures.

In 2001, half of PAFF's original grant, $120 million, was returned to USG. With the agreement of the U.S. Congress and in accord with the Government of the Republic of Poland, there began a gradual transfer of the remaining funds to PAFF, which had been established by the Fund.

Financial support from the Foundation can be obtained under its programs. Those interested may apply for grants by submitting their applications directly to the relevant Program Manager. The decision on awarding grants is made by the expert commission established for each program area: Initiatives in Education, Development of Local Communities, and Sharing the Polish Experience in Transformation.

Within the Development of Local Communities practice area, two programs are noteworthy: **Support for NGOs** provides institutional support for non-governmental organizations and community leaders in Poland, especially in small towns and rural areas. The support, which includes access to information, advice and training, seeks to improve conditions in which third sector organizations operate, thereby enhancing the efficacy of civic project implementation. The **Act Locally** program, launched in 2000, assists and encourages local communities in villages and small towns by lending support to civil initiatives that

[4]Proponents of classified, or staggered, boards cite two main advantages that staggered boards have over traditionally elected boards: board continuity and ante-takeover provisions – hostile acquirers have a difficult time gaining control of companies with staggered boards. Opponents of staggered boards, however, argue that they are less accountable to shareholders than annually elected boards and that staggering board terms tends to breed a fraternal atmosphere inside the boardroom that serves to protect the interests of management above those of shareholders. (*Source*: Investopedia)

foster developmental aspirations, improve the quality of life, and contribute to building social capital. Support is offered to encourage local community activities, with community members defining their own needs and undertaking joint initiatives.

Balkan Trust for Democracy[5]

The Balkan Trust for Democracy (BTD) was launched in 2003 by the German Marshall Fund of the United States, the United States Agency for International Development (USAID), and the Charles Stewart Mott Foundation as a 10-year, $30-million grantmaking initiative to support democracy, civil society, the rule of law, and Euroatlantic integration in Southeastern Europe. BTD's original ten-year mandate came to an end in May 2013, whereupon it entered into its second mandate (2013-20) with structural changes to geographic coverage and grantmaking scope.

BTD continues its activities in partnership with the Mott Foundation and the support of the Norwegian Ministry of Foreign Affairs. Additional contributions from the following donors have reinforced BTD's profile as a transatlantic partnership:

- Compagnia di San Paolo
- Czech Ministry of Foreign Affairs
- British Foreign and Commonwealth Office
- Danish Ministry of Foreign Affairs
- Embassy of the Kingdom of the Netherlands, Belgrade, Serbia
- Greek Ministry of Foreign Affairs
- Norwegian Ministry of Foreign Affairs
- Robert Bosch Stiftung
- Rockefeller Brothers Fund
- Swedish International Development Cooperation Agency
- Tipping Point Foundation

BTD operates with a small staff with extensive experience in the region, and engages experts on its grant review committee, which is composed of GMF staff members engaged in civil society work worldwide, as well as BTD donors and partners. An extensive network of local and regional experts and practitioners helps to guide and inform BTD's work.

BTD awards grants to support projects addressing themes of democracy and good governance, policy dialogue and networking, and regional cooperation and European integration. BTD also supports relevant regional initiatives that promote benefits of pan-Balkan network, including civil society stakeholders from Western and Eastern Europe. Priority areas include Civic Engagement, Youth Leadership and Empowerment, Government Accountability and Transparency, Culture of Giving, Euro-Atlantic Integration, and Dialogue and Reconciliation.

Supported projects typically achieve their goals through public debate; leadership development; policy work; civic education; new mechanisms; advocacy; monitoring; implementation and enforcement; shared objectives; best practices; networks; re-granting; and reconciliation. Preference is given to those

[5] *Source:* BTS website. Additional documentation and information (e.g. By-Laws) has been requested from the German Marshall Fund.

proposals designed to increase citizen engagement with government; measurably impact public policy; strengthen leadership skills of individuals and organizations; facilitate cross-border and/or cross-sector cooperation; and encourage the transfer of experiences and innovative ideas through clear communication and dissemination plans.

Applicants for BTD support must be civic groups, CSOs, media organizations, think tanks, governments, and education institutions indigenous to BTD program countries. Individuals and political parties are not eligible for BTD support. While international organizations may not apply for direct funding, cooperative projects between indigenous and non-indigenous organizations are considered.

BTD supports policy dialogue to accelerate the region's integration into Euroatlantic structures and to raise the profile of the Balkans. Together with GMF's Washington headquarters and its seven other European offices, BTD connects local actors with European Union, U.S., and international individuals and institutions in order to build networks and consensus on Balkan issues from a broader, multi-stakeholder perspective. BTD further supports leadership development, working with the next generation of Balkan leaders by providing a range of opportunities to train, network, and travel with their peers across Europe and the United States.

Trust for Civil Society in Central and Eastern Europe[6]

The Trust for Civil Society in Central and Eastern Europe (CEE Trust) wound down its operations in 2012 ten years after its establishment by a consortium of funders comprising Atlantic Philanthropies, the Charles Stewart Mott Foundation, the Ford Foundation, Rockefeller Brothers Fund, the Open Society Institute, and the German Marshall Fund. Its stated goal was "to promote the development of civil societies in Bulgaria, the Czech Republic, Hungary, Poland, Romania, Slovakia, and Slovenia by supporting civil society organizations to gain greater effectiveness and stability."

Based on interviews conducted in December 2012 with representatives of founding and partner organizations, while CEE Trust helped to nurture a significant group of CSOs in these countries that will continue to be influential, there is less consensus on the extent to which the Trust's work has produced a stronger civil society in the region.

Two key differences compared to other similar mechanisms in the region were, first, the collaborative nature of the group of donors in supporting the initiative (which had its limitations) and, second, the lengthy duration, at ten years, of the Trust's existence and activity -- although some of those interviewed argued that an endowment of longer duration would have been more appropriate to fulfilling the Trust's ambitious mandate.

On the plus side, the collaborative nature of the group of founding donors, which were already operating independently in the region, enabled leveraging of resources, significantly strengthening support levels. This also forged a sort of "permanent dialogue" and continuous exchange of information among the funders. On the downside, decision-making was often challenging given varying organizational priorities.

[6] This section draws on an analysis prepared for Alliance Magazine, December 2012, authored by Andrew Milner, Associate Editor. Additional documentation and information (e.g. By-Laws) has been requested from the German Marshall Fund.

Moreover, there is the view that in some cases participating donors, continuing to fund their own programmes, were at times supporting work that was competing with those of the CEE Trust.

In terms of achievement, some observe that institutions that benefitted from CEE Trust support "may become service providers or government contractors; others have a broad funding base."[7] It is further suggested that the Trust motivated "the growth of indigenous philanthropy" and supported coordination of donor activities and communication via creation of a network of donors' forums in the region. The Trust's relative longevity also enabled it to establish and develop relationships and play a convening role across the region, while providing "the space and trust for indigenous grantmakers to design long-term (2-3 year) programmes strengthening civil society in their country."

The Trust is seen as having consistently supported themes that were considered difficult or unpopular with the donor community, such as watchdogging, minority rights, and new forms of civic abuse, while also supporting, among others, civil society infrastructure organizations and community foundations.

According to some stakeholders, CEE Trust "lost its way" around midway through its period of operation partly due to a decline in the spirit of trust that had characterized the organization and its grantees from the outset. This was reflected in an increasing tendency toward prescriptiveness and, in the view of some, onerous reporting requirements. Responsiveness is also cited as a factor in the Trust's decline, according to some, for example the quality and regularity of communication with prospective grantees in the proposal preparation and review process was apparently uneven. (It should be noted that some of those interviewed hold opposing views on this.)

In efforts to engage other funders, CEE Trust was unable to do so with USAID, and likewise with European funders, the latter apparently due to differences in culture between US and European donors and the fact that European funders had by this time already established their own programming and contacts in the region (some European foundations did support individual CEE Trust programmes, i.e. the Central and Eastern European NGO Fellowship programme, which focused on strengthening leadership in the region's not-for-profit sector).

CEE Trust's design as a sinking (time-bound) fund had, in the view of some, its drawbacks: "focus, strategy, and commitment" can decline towards the end of a trust's life which may have impacted negatively on the Trust's disbursement of funds. And again, long-term support that would outlive the Trust's ten-year mandate may have contributed more effectively to strategic development of civil society, in particular given most donors' shorter-term horizons. The Trust also is seen as missing opportunities to contribute to establishment of endowments or other sustainable financial mechanisms in the region to ensure the legacy element.

Further to legacy, given recent trends in some parts of the region with respect to democracy, human rights, and the rise of nationalism, the Trust's support, for example for watchdogging, is drawn into question. Strategically, some see the lack of "infrastructure for credible, sustainable, strong organizations" as a major gap.

[7] Service provision and government contracting are both examples of potential sources of self-sustainability for CSOs, as discussed below.

Proposed Models

This section presents two alternative models for the legacy advocacy mechanism, the first an endowment, the second a hybrid structure.[8] In considering the potential models, one consideration is that of certainty or predictability of funding: as noted in an evaluation of USAID support to the Eurasia Foundations, there is a marked difference in performance and results when core funding is certain and uncertain.[9]

Model 1: Endowment

An endowment is a donation of money or property to a non-profit organization, which uses the resulting investment income for a specific purpose.[10] "Endowment" can also refer to the total of a non-profit institution's investable assets, also known as “principle” or "corpus," which is meant to be used for operations or programs that are consistent with the benefactor’s wishes. Most endowments are designed to keep the principal amount intact while using the investment income for charitable or philanthropic purposes.

Endowments are often organized as trusts, private foundations, or public charities. Many endowments are administered by educational institutions, such as colleges and universities, or cultural institutions, such as art museums or libraries, religious organizations, and service-oriented organizations, such as retirement homes or hospitals. Often, a set percentage of an endowment's assets are allowed to be used each year, so that the amount of the endowment used may be a combination of interest income and principal.

There are four main types of endowments: unrestricted, term, quasi, and restricted.

- Unrestricted endowment assets can be spent, saved, invested, and distributed at the discretion of the institution receiving the gift;
- Term endowments usually stipulate that only after a period of time or a certain event can the principal be expended;
- A quasi-endowment is a donation by an individual or institution intended to serve a specific purpose. The endowment principal is typically retained while its earnings are expended or distributed per the donor’s specification;
- Restricted endowments have their principal held in perpetuity, while earnings from the invested assets are expended per the donor’s specification.

Terms of endowments normally cannot be violated. If an institution is near bankruptcy or has declared it, but still has assets in endowments, a court can issue a “Cy Pres Doctrine” (enabling the court to interpret the wishes of the donor) so that the institution can use those assets to restore financial health while using the endowment in a way that reflects the wishes of the donor as closely as possible. Drawing down the corpus of the endowment to pay debts or operating expenses is known as "invading" or "endowment invasion" and sometimes requires state approval.

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[8] A third model, that of a cooperative, has been raised by stakeholders as a possible option, however reputational issues associated with the term and model, stemming from earlier times, would need to be addressed.

[9] Evaluation of USAID Support to the Eurasia Foundation under Core Grant III (2001-2013), prepared by Social Impact, Inc.

[10] *Source:* Investopedia.

In Ukraine, endowments are at an early stage of use, with experience mostly drawn on their deployment to support universities.[11] In practice, an endowment is understood as the capital whose investment income is used for charitable purposes. Ukraine's Tax Code defines endowment as "a sum of money or securities which benefactor makes a bank or other financial institution for a period of not less than 12 months and uses the interest and dividends accrued on this amount for charity care; aid recipients are not entitled to dispose of the principal amount of endowment without the consent of the benefactor."

The Law "On Higher Education" defines a "sustainable fund" (endowment) of a higher educational institution as the amount of funds or the value of other property intended for investment or capitalization for a period of not less than 36 months, passive income from which is used by the higher educational institution in order to exercise its statutory activity in the manner determined by the benefactor or his authorized person. Operation of endowments is also regulated by Ukraine's Law "On Charitable Activities and Charitable Organizations".

Examples of endowments in Ukraine include: The First Endowment Fund, created by the Institute of International Relations of the Kyiv National University; The Fund for the Development of Banking Education and Science, established at the University of Banking of the National Bank of Ukraine; an endowment supporting scientific research, established at the National University of Kyiv-Mohyla Academy (NaUKMA); and The International Charitable Foundation for the Renaissance of NaUKMA, set up to support research on Ukrainian history. In addition, there are several registered funds supporting high-performing students and faculty members, in the form of scholarships, awards, and tuition fees, at NaUKMA, patrons of which are mainly graduates of the university. Catholic University, Feldman Foundation, and Gas Company (GasTransit) all have established endowments.

A standard approach to endowments, placing funds on deposit at a commercial bank, has lost much of its appeal given the high number of bank failures that has resulted in the disappearance of charitable donations. That said, most endowments in Ukraine continue to be held as bank deposits, although universities often invest in Ukrainian Eurobonds. The donor can set spending terms with the investment manager, or the endowment can be transferred directly to a beneficiary via a spending agreement.

Advantages: An endowment provides stability, reliability, independence, confidence, reinforcement of long-term strategies and planning, and leveraging opportunities. Endowments have been considered part of USAID's "toolbox" for advancing development goals for years.[12] Among other objectives, USAID has supported establishment of endowments to broaden or enhance the funding base of a CSO engaged in activities with long-term horizons; insulate the endowed organization from unpredictable government and donor agency budget fluctuations; allow the recipient organization to attract other funds by increasing donor confidence; or allow an activity to be institutionalized and continue beyond USAID's funding when it otherwise may not have been. In the context of the legacy advocacy mechanism, the latter point is most relevant. Moreover, not having a reliable stream of revenue can undermine the other tenets of the mechanism (e.g. longer-term thinking, deep knowledge base, etc.).[13]

[11] *Source:* "University Endowments in Ukraine" by Associate Professor Nataliia Drobot, PhD, National University of Life and Environmental Sciences of Ukraine.
[12] Ibid.
[13] For example, while no Eurasia Foundation organization has established an endowment, to varying degrees they all have diversified their funding sources beyond USAID to include other bilateral and multilateral donors, international foundations, foundations based in-country, and private sector organizations. (East Europe Foundation, established by the Eurasia Foundation in 2007, focuses on civil society in Ukraine).

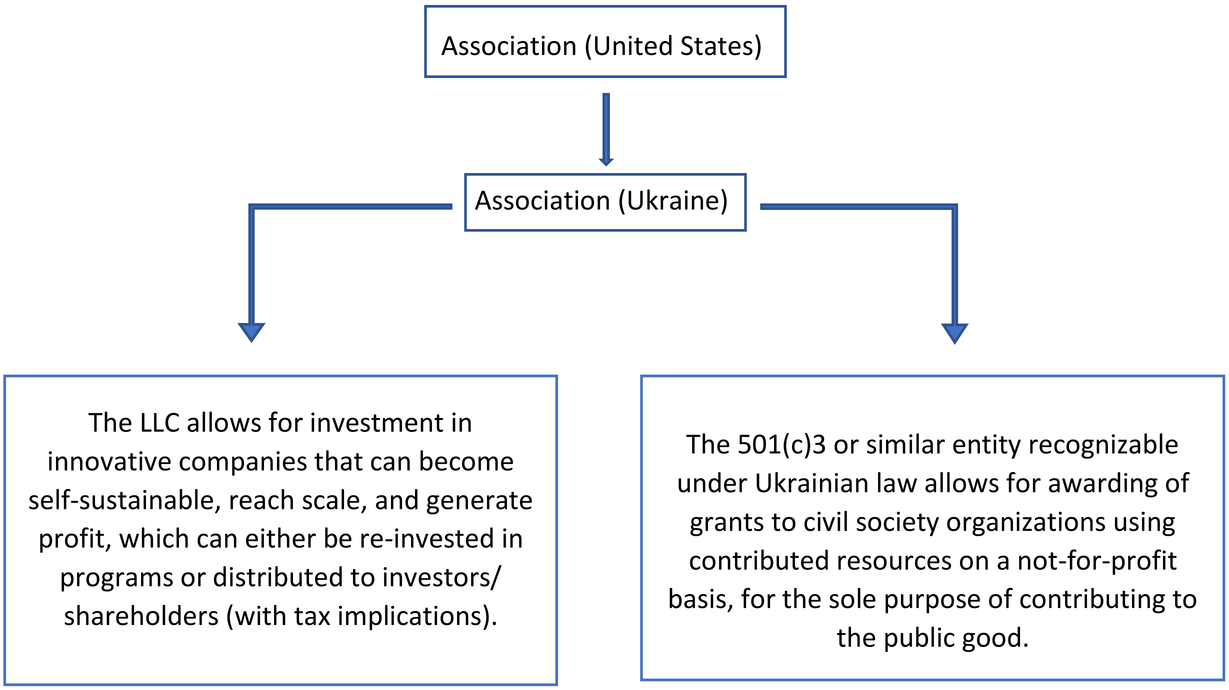
Drawbacks: While USAID has used the endowment approach as described above, there are indications that the Agency's appetite for endowments is limited or declining as limited.[14] Bearing in mind that, as illustration, the USAID-administered enterprise funds that were established in Central and Eastern Europe in the 1990s were capitalized in the range of $50-250 million, a fairly modest annual budget of $500,000, drawn on an annual return on corpus of 4 percent would require a capital outlay of $12-15 million. Aside from the question of interest on the part of USAID/USG in establishing an endowment (now or at some point in the future), there is a separate, strategic argument: The mechanism would likely best serve Ukrainian interests if it included a strong Ukrainian commitment, both in terms of optics and, more importantly, genuine local buy-in and traction over the long term. While this could be achieved, to an extent, by securing contributions from, for example, Ukrainian companies, the flexibility and dynamic profile of the mechanism would be greatly enhanced by allowing for ongoing support -- possibly in the form of investment for return -- from Ukrainian and international private sector sources. This is the basis for the argument to include the Ukrainian private sector in the mechanism's design, with opportunity for return on investment, which suggests a hybrid structure combining donor and business support and engagement on an ongoing basis.

Model 2: Hybrid Structure

The recommended option for the legacy mechanism model is a hybrid model which combines, under an association, a philanthropic component to engage donors in establishing an endowment for this purpose, with a for-profit mechanism, i.e. an LLC, to engage private sector investors on an ongoing basis.[15] The association could, as a founding member, have members and could create LLCs operating as subsidiary investment funds (profit centers). Profits could be reinvested in grants and programs, and a two-tiered association structure could be set up to allow for collection of funds outside Ukraine, with a second-tier association registered in Ukraine, and LLCs structured under the Ukrainian association, as illustrated below:

[14]As described by USAID staff interviewed for this study. The list of project interviewees is presented in Annex 3.

[15]This model is inspired by the Omidyar Foundation, which operates a similar model under a trust. In this case, the philanthropic entity would take the form of a foundation or other entity recognizable under Ukrainian law corresponding to a U.S. 501(c)3. The for-profit entity could also be a joint-stock company or an "additional liability" entity, where shareowners are liable for a multiple of their contribution, motivating additional caution and diligence.



A key advantage of the hybrid model is its incorporation of an impact investing mechanism to ensure private sector participation. As noted by the Omidyar Foundation, "Effecting change at the pace and scale the world needs today requires looking beyond traditional approaches to discover new solutions that can improve the lives of many. Impact investing is one such solution. Leaving the markets out of our efforts to tackle society's most intractable problems ignores a powerful force for identifying viable solutions that can scale to help millions."

Impact investing seeks to generate social change while providing return on capital, bridging the traditional dichotomy where business was a means solely to make profit, while social progress was a function of philanthropy or public policy. The mechanism should define philanthropy more broadly on the basis that all individuals and institutions can contribute to the well-being of society, whether as for-profit businesses or nonprofit organizations.

The hybrid model employs a "flexible capital model" that includes impact investments alongside traditional grants. Impact investments are most valuable at the earliest stages of innovation, when outcomes are least certain and entrepreneurs need the most help. By infusing a start-up with financial and human capital, the hybrid model will provide social entrepreneurs with the time and resources needed to test market viability and social impact of their own models. The model may choose to place emphasis on supporting entrepreneurs who have the potential to impact entire industry sectors, with demonstration effect for others to follow.

Conditions for ventures to gain traction are required for impact investing to reach its true potential. The mechanism's investees, under the hybrid modal and including industry associations and information exchanges, will build the necessary infrastructure for sectors to grow and thrive, reflecting the advantages of sector-specific initiatives discussed below. Key decision makers will be engaged to advocate for policy changes that encourage transparency and open market competition, design appropriate regulations, and create an environment supporting investment, entrepreneurship and best practices in Ukraine.

The hybrid model allows the mechanism, and by extension, Ukrainian civil society, to attract, develop, and retain talent from both the public and private sectors activists and employees who have dual backgrounds in both business and social impact. A flexible compensation structure allows recruitment of the "best and brightest". The model allows for greater flexibility in creating compensation schemes because all staff are paid out of the LLC. Moreover, the breadth of the work (making a variety of for-profit investments and engaging in policy discussions, on top of grantmaking) makes the philanthropic side more attractive to professionals with a broader skillset: investors, business, and corporate development professionals, and political or policy experts. The mechanism, under this model, may further choose to provide professional development resources both internally, to staff, and externally, to investees, to help ensure professional fulfillment and success. Resources can be held at the association level and distributed to both the LLC and 501(c)3 (or corresponding entity) on an annual basis. Both components of the hybrid model, possibly through the overarching governance structure, may engage directly in policy discussions, from issuing general recommendations to advising on specific legislative proposals.

Advantages: The hybrid model engages a wide range of stakeholders, contributors and investors; limits reliance on any single stakeholder; requires private sector participation and provides for a for-profit mechanism to attract private sector investment; and, assuming it includes a long-term pool of support (which may be an endowment), combines long-term stability for philanthropic purposes with a financing mechanism generating support on an ongoing basis.

Drawbacks: In considering which of the models to pursue, replacing USG with another pooled funding mechanism might not address the sustainability question unless it would (a) include an endowment component, and (b) include the private sector as a supporter, either though contributions or investment (e.g. in an LLC component). Otherwise, a traditional endowment may be the more attractive option from the sustainability perspective. Tax issues need to be explored, and the governance structure of the hybrid model may be more complicated than that of a traditional endowment.

Mechanism Profile

According to USAID staff interviewed, the success rate of legacy mechanisms is relatively low and USG appetite for endowments is limited. There is some antipathy toward "big chunks of U.S. money sitting around with slow spend rates" (this is a sentiment that has also been expressed, including by U.S. Ambassadors, in the course of evaluation of the USAID-administered enterprise funds and their legacy foundations in Central and Eastern Europe). Moreover, a model based on annual funding of or investment in the mechanism may be preferable to the endowment approach in that the former allows for greater control: in case of mission creep, the funding can be pulled.

The hypothesis that initiating a mechanism will itself attract other partners is not necessarily true. Often the response is along the lines of, "If USAID is funding it, we don't need to." In the case of the Black Sea Trust, for example, expectations were high for fundraising, however it became more of a typical CSO recipient of USAID funding. The mechanism should therefore be structured so that it cannot exist without, for example, the private sector. The IFC model of contributing not more than 20-25 % of the total amount targeted for a given initiative to attract other investors, with no single donor or investor holding a share exceeding 25 percent, should be considered. It should be kept in mind that CSOs in Ukraine are fairly "comfortable" at this time in terms of funding and are in a position to turn funding down when, for example, terms and conditions are not favorable, or in case of reputational issues associated with the prospective donor or investor.

Additional considerations include:

Setting strategy: A critical feature for the legacy mechanism is articulation of a clear strategy from which objectives, activities, and impact measurement cascade. Strategy also informs further development or creation of necessary capacities to ensure that obligations are carried out, "from developmental grant making to fundraising," and sets the trajectory for phaseout or sustainability, including the role of the mechanism in relation to other civil society actors.

The mechanism will need to strike a balance between having a well-defined agenda while remaining flexible. The agenda should be clear as to where contributors' and investors' funds will be spent, with enough specificity to satisfy stakeholders' requirements. This should also include how much to engage, how widely to spend resources, to what extent the USAID mission should be involved (including level of control), and accountability inputs. The mission and other contributors' local representative offices should provide support with "spadework", for example, in identifying companies that have an interest in participating.

Resource allocation: In deciding how to allocate the mechanism's resources, CSOs in Ukraine have different levels of needs and experience: some manage to survive at a more basic level without donor support, and if they move beyond basic operations (e.g. into advocacy or monitoring) they tend to encounter funding and political challenges. The Reanimation Package of Reforms (RPR) went through this dynamic, is now donor-supported and (thereby) widely viewed as more donor-facing.

The mechanism will therefore need to assess the effectiveness and applicability of support at different levels: smaller CSOs may not have the capacity to absorb and work properly with larger donors. In such cases, however, the mechanism could provide support via intermediaries. Selection of such intermediaries in turn requires care, as some organizations that provide capacity-building to CSOs are viewed as being empowered beyond their own capacity.

Perpetuity vs. spend-down: Regarding the question of whether the legacy mechanism should operate in perpetuity or follow a "spend-down" model, the obvious consideration is the amount of resources that will be made available for the mechanism: If the initial capital is of sufficient size to generate annual interest income that will support an appropriate level of activity, without need to "dip into" the corpus, operation in perpetuity would be preferable in terms of sustainability and continued support to Ukrainian civil society. The spend-down model is normally used when the corpus is of more limited size. It is also typically considered in the case of family foundations, where limitations on the life of the endowment may avoid a situation of declining interest on the part of subsequent generations, or where the spending needs are considered urgent and time-bound.

Grant-making vs. operational: The mechanism should refrain from acting as an operational, or implementation foundation, and stay within the scope of grant-provider. Two key reasons for this are to avoid creating an external competitor to existing Ukrainian CSOs, and to avoid incurrence of the substantially higher administrative costs that the implementation model would entail. As stated in the UNITER feasibility study, "*Design the mechanism to have a phase out or sustainability strategy for its own cycle of engagement:* A key component of this would be to articulate the role of the mechanism in relation to other CSO actors and to ensure that the mechanism should remain a grant-giving foundation/fund and refrain from spinning off into an 'implementing foundation.'"

International engagement: Continued international presence to support CSOs in their development and reform work seems to be required in (at least) the medium-term to provide diversified financial support to advocacy opportunities, extend targeted capacity building, and facilitate multi-level and multi-sector dialogue and initiatives. Moreover, the advocacy mechanism should feature an international dimension in its governance, specifically in the composition of its Board of Directors and / or staff. This would ensure greater stability of the mechanism, provide access to diversified funding sources, and reinforce the mechanism's ability to cultivate respect and cooperation of local partners and stakeholders.

Taxation issues: Depending on selection of the model for the legacy mechanism, relevant taxation issues and frameworks will need to be explored. A helpful source is the European Foundations Centre's "Legal and Fiscal Country Profile for Ukraine," which provides information on tax treatment of foundations and donors and relevant trends and developments (see Annex 5).

Private Sector Engagement

The mechanism and its beneficiaries would best be served by a range of stakeholders comprising the private sector (via contributions, investment, or membership dues), CSOs (contributing an agreed percentage of revenues), individuals (crowdfunding, such as Spilnokoksht or Indigo), bilateral and multilateral donors, foundations, and international financial institutions.

The private sector will be interested in supporting the mechanism to the extent that the mechanism works in its interest, for example in the field of anti-corruption work. The argument for engaging the private sector in the mechanism is compelling, given the fact that civil society has played such a crucial and highly visible role in motivating and monitoring reforms in the country, many of which affect the climate for investment and business in the country. The mechanism would provide anonymity for companies which would address the risk that vested interests may take steps against companies perceived to be supporting reforms that would undermine those interests. Forming business clubs that would contribute donations would reinforce this anonymity.

At the same time, businesses could be asked to contribute to building integrity in the Ukrainian market: improved internal compliance, reporting, stakeholder engagement, and relations with GoU would reinforce the civil society agenda. Reform in the corruption sphere can be linked to advocacy at sectoral levels, for example, companies in the environmental sector that adhere to best practices reinforces anti-corruption work at the broader level. In Latvia, for example, state-owned enterprises operating under the Ministry of Agriculture contribute a portion of their profits to CSOs working in the sector. Similarly, professional associations can play a helpful role in fighting corruption.

Engaging the private sector in the mechanism has its challenges: USAID has tried on occasion to mobilize private sector support in programs using "transitional mechanisms" whereby the private sector is built into scope in areas like corporate social responsibility (CSR) and tax reform to facilitate contributions and investment; the record on this is mixed. Moreover, companies need to be shown what they will get in return for supporting the mechanism. The United Nations Global Compact, for example, an initiative of the UN to commit companies worldwide to adhere to and support practices in the interest of the public good, offers its member companies the UN brand, which reinforces public perceptions and reputation. A mechanism model in which companies gain such credibility and in which they have a voice in allocation of resources should be a compelling narrative. Alternatively, as these companies may already have their "favorite" CSOs doing work on their behalf, the mechanism could serve as an umbrella or pool of funds that could be leveraged while providing anonymity to companies, as noted above: Some businesses are reluctant to support anti-corruption initiatives, fearing targeting by politicized law enforcement.

Engaging the private sector would require a substantial education campaign. In addition, given reputational issues, contributions from the private sector would also require a rigorous screening process in the form of checks and balances built into the governance structure. Local and community businesses, for example social entrepreneurs, tend to have a "cleaner" reputation and may be a more reliable source for support for the mechanism, while larger companies would require more rigorous due diligence on an ongoing basis as ownership changes occur without reporting required, obscuring ownership.

Strategy for Attracting Private Sector: Lighthouses

While the mechanism should be of interest to companies outside Ukraine given the size and attractiveness of the market, there is a general reluctance on the part of international businesses to enter Ukraine born of fear of getting ensnared in corruption. This is coupled with companies' own compliance requirements, including the need to convince their Boards that they have taken all necessary mitigating steps (the latter may include engaging with civil society).

The perception on the part of foreign companies is that the fight against corruption in Ukraine is largely lip service: lack of convictions, the view that only NABU is making genuine efforts in this area, the facts that the special prosecutor has been suspended and the judicial system remains unreformed, expectations that any anti-corruption court is likely to be hijacked by "powers that be" (vested interests), and the general sense that doing business in Ukraine does not happen without entanglement in corruption all add up to serve as serious disincentives to entering the market.

Clearly there is a need to identify companies that would be new players, those not tainted through past involvement in Ukraine and interested in entering the market. An effective approach may be to identify one or two "lighthouse" or "icebreaker" companies to play a "lead" role in the mechanism, preferably big-name companies that have a stated and publicized interest in best practices, would be noticeable, including by GoU, and whose disappointment and exit from the country would be seriously bad news for the country. Amazon and IKEA would be examples. Both would be solid, reputable, high profile partners: Amazon is not present in Ukraine (apparently due to customs issues) while their Chinese competitor, Ali Baba, is.[16] IKEA is in the process of entering the country which is attractive given existing production there (e.g. abundance of inexpensive wood for furniture). Companies of this size and reputation might be able to turn the tide on corruption in business in Ukraine, and others may follow. (Sweden's globally recognized position on corruption could be reinforced with the inclusion, in the mechanism's agenda, of

[16] Tactically, Ali Baba could be approached, then Amazon.

another public good issue like gender.) This would be preferable to, and likely much more effective than, signing on companies that contribute to the mechanism as a formality. Such a core of powerful, reputable businesses supporting the mechanism could be assembled as a “Business Alliance against Corruption” with real, positive influence over GoU.

Another aspect of engaging the private sector involves focus on the Big Four auditing / accounting firms, which would normally be viewed as examples of probity and transparency. This, however needs to be handled carefully, given the experience in Ukraine of several of these companies: The high-profile experience of PrivatBank, whose failure, due to related party transactions, has cost Ukrainian taxpayers some $6 billion, has had an impact on the reputation of the auditing firm. Situations like this would likely influence not only the reputation of the mechanism, but also the willingness of CSOs to accept and work with support provided by such companies. Balanced against this is the likelihood that reputational issues may be a force of encouragement for companies to provide support to civil society and, therefore, the mechanism as way of restoring or burnishing credentials and reputation.

Big Four companies have provided pro bono support to civil society, however this peaked immediately following the Revolution of Dignity and has dwindled since, because such support is deemed by the companies as often being inefficient or cost-ineffective.[17]

Deloitte has worked with various ministries, providing staff and support on due diligence, consultations including commentary on programs, and supporting attempts to privatize loss-making coal mines. The view expressed by Deloitte staff interviewed is that all such efforts were inefficient. That said, they are involved currently in anti-corruption work, including supporting development of regulations adopted by GoU to fight corruption in ministries, with 72 actions adopted as a result (see Annex 6 for description of the measures).

Deloitte’s CSR program includes a youth development program that empowers young graduates to teach in villages, supports skills-based volunteering and activities like blood donations, green clean-up, and youth skills development for the information technology revolution (the latter hosted by Deloitte Garage, an innovation lab). Deloitte has worked with the Western NIS Enterprise Fund (WNISEF) and its affiliate investment fund manager, Horizon Capital, on, for example, audits and due diligence and has cooperated with WNISEF on developing a City Progress Index. The Index, similar to the European Union’s anti-corruption program supporting “integrity cities,” measures progress in cities in areas like quality of life and institutional capacity of local self-governments (see Annex 7 for presentations of the Index). Deloitte also provides a sustainability service line, supporting, among others, preparation of non-financial reporting.

Deloitte indicates that they are not likely to offer financial support for the mechanism, however this will depend on specifics: one-off support, such as paying for a conference may be considered. They express readiness to providing intellectual, strategic, and networking support.

KPMG is seeking to reinforce its work in the civil society sphere and have hired new staff dedicated to the effort. They are involved in local community work through their existing CSR program, which potentially provides linkages to the legacy mechanism’s prospective focus on decentralization and local-local issues.

[17] The evaluator has not, as of writing, interviewed PWC for this paper.

KPMG Global is also a member of UN Global Compact, indicating their interest in supporting public good initiatives.

Ernst and Young focuses on education, social entrepreneurship, youth (notably AIESC, an international organization providing leadership development for youth), scholarships for orphans, environment, charity, support for the Sustainable Development Goals via awareness-raising and networking, and CSR development (they convene an annual CSR contest).[18]

Investment funds, venture capital funds, and impact investors are all to be explored for potential support of the mechanism, as well as further contact with AmCham, the European Business Association and investment associations like the Ukrainian Venture Capital Association and EMPEA (Emerging Markets Private Equity Association).

Corporate Governance

The legacy mechanism will require establishment of an appropriate governance structure reflecting its supporters and stakeholders, with appropriate modalities for decision making regarding strategy, business planning, resource allocation, monitoring and evaluation, and reporting. Particular care will be required to prevent the mechanism from coming under inappropriate or unacceptable influence, a particular risk in the current environment in Ukraine. For example, it would be advisable to maintain a USG representative as either voting or non-voting liaison; structure a staggered Board with succession planning, term limits, and evaluation and training requirements; and require published annual reporting.

An adaptation of the International Finance Corporation's corporate governance assessment methodology is recommended as a reliable framework for the mechanism's governance, with specifications to be determined during pre-implementation, to establish and ensure the mechanism's board commitment, structure, and dynamics; control environment; disclosure and reporting practices; and stakeholder engagement.[19]

Board Commitment and Structures: Assesses the structure and composition of the Board of Directors, including existence and responsibilities of committees; qualifications, experience, and expertise of individual Board members, and indication of the contribution to Board decision-making based thereon; and policies and practices relating to selection of Board members, including existence of and adherence to term limits, succession policies, and Director and/or Board evaluation and follow-up. A staggered Board is recommended to ensure continuity.

Control Environment: Existence of and adherence to internal controls with respect, in particular, to ensuring reliable and effective stewardship of the legacy mechanism's assets and compliance with relevant regulations (speaking to the Board's fiduciary role); risk management, i.e. identification of risks and mitigating actions, and ongoing review thereof; and procedures related to ensuring sound internal management of investment and financial information, including an independent audit function.

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[18] AIESEC was originally the acronym for Association Internationale des Etudiants en Sciences Economiques et Sociales. The organization now goes only by "AIESEC".

[19] See Annex 4 for specifics related to each of these governance areas.

Disclosure and reporting practices: Relating to provision of regular and timely reporting to the relevant oversight body, e.g. USAID/USG, as set out in the establishing (grant) agreement; extent to which reporting provides relevant, accurate, and timely representation of economic transactions and allocation of resources; and description and assessment of the legacy mechanism's relationship with USAID/USG and other donors, contributors, and stakeholders.

Stakeholder Engagement: Refers to the mechanism's practices in outreach to stakeholders, including grantees and investees, partners, government (where appropriate), and civil society; perceptions and profile of the mechanism in-country among stakeholders; and relations with stakeholders.

Support for Civil Society Organizations

Capacity building enhancements are needed to ensure, among others, that the mechanism will introduce new ideas to the sector and facilitate inclusion of various actors and coalitions, ensuring integrated stakeholder reform efforts that include multiple government, civil society, donor, and regional levels.

There is a recognized need to do more monitoring and clearer analytical reporting on monitoring. Quality control of analytic products needs to be improved via peer review and related quality management processes, which should become part of the culture of CSO advocacy in Ukraine. Lack of knowledge in the area of resource management needs to be addressed via training and capacity development.

A key question is how to keep civil society in Ukraine genuinely independent, given various vested interests. Ukraine has a vibrant civil society, especially in the field of anti-corruption, however there is the general view that CSOs are tending to forget their role, their original mission, with lines getting blurred due largely to international support. Donors, having an outsized voice in Ukraine, are seen by some as pushing CSOs beyond their limits, and civil society feels empowered beyond where they should be, at times overstepping their roles.

At times CSOs lose their objectivity and are doing less checking in with their local traditional stakeholders. CSOs are seen as increasingly donor-driven. There is work to be done on professionalism, and CSOs should return to serving the needs of their public stakeholders. The mechanism therefore will need to motivate CSOs to go back to their roots – to rely again on inclusive engagement with local stakeholders in setting agendas – and donors and other supporters should play a role in this motivation through the mechanism.

Moreover, CSOs are seen as acting increasingly like alternative political parties. Political parties are bound by rules and regulations, e.g. financing rules, while CSOs are not, and lines between the two are at times blurred. Politicization is an issue both in terms of linking with political parties and CSOs themselves behaving like political parties, playing "national-level political games." CSOs that are "pocket CSOs" of political parties may be a fact of life, but when larger, more credible CSOs begin to behave in this manner, the issue requires attention. In addition, there is a gap between national-level and regional CSOs: there is a perception that national CSOs often behave like "stars" and are not connecting with the regions, keeping their focus on national government and international donors.

Thematic Support Targets

Anti-Corruption and Rule of Law

Arguably the primary area of interest in civil society work in Ukraine is that of anti-corruption and rule of law. State institutions, for example the tax police, are routinely used by politicians to fight their battles. Courts are likewise corrupt and politicized and administrative structures and processes, entailing myriad procedures, all of which require company payments amounting to rent-seeking, need to be reformed. Court cases drag on for years: according to members of the United Nations Global Compact, it is easier to fire an employee suspected of corrupt practices than to go through proper court processes, which will only complicate the issue and add layers of process. The general practice is to therefore to fire people on some other pretext -- so that corruption cases regularly go un-flagged and un-prosecuted. Priorities include improving current anti-corruption institutions and creating a new High Court, while digital anti-corruption mechanisms, like Prozorro, are making a valuable contribution in the fight against corruption. Small-scale corruption gets addressed while high-level, large-scale corruption goes untouched. Companies seek support on internal corruption issues, like fraud and ethical standards, as well as business-GoU issues.

CSOs have supported drafting of anti-corruption legislation and creating parallel institutions. The Anticorruption Action Centre (AntaC) is pursuing recycling of frozen assets under anti-money laundering investigation, to support civil society, possibly through an endowment. Transparency International seeks to strengthen its involvement in corruption prevention and establishment of services for business supporting transparency (TI's support from private sector sources currently comprises 6 percent of the organization's total expenditures).

According to SUP, the National Entrepreneurs' Association, Ukrainian entrepreneurs have rallied and united in supporting legislation that prohibits masked police searches and other abusive activities and tactics. A cyberattack last year destroyed company data, impeding business reporting to fiscal authorities. The latter, in turn, lost no time in imposing fines on the companies for non-compliance with reporting requirements. SUP drafted legislation, subsequently enacted, supporting companies that could prove that non-reporting was due to this "force majeure", thereby avoiding the fines. SUP is now working on legislation to levy a tax on capital taken out of the country ("exit capital tax") to replace taxation of profits.

Decentralization

In the context of decentralization, a key need is to make the two-tier consultation process (that between government and expert groups, and between expert groups/civil society and the broader set of stakeholders) a normal part of the process of addressing policy issues. There is a need to emphasize regional level processes so that regional and local stakeholders are part of the national level consultation process, and to encourage and develop consultation processes for local-local government-stakeholder engagement.

Capacity-building for local groups, e.g. community foundations and also local governments, is needed in, for example, budget preparation and analysis and inclusivity in spending decisions. Devolution of budgets and related authority from national or rayon levels to local levels is challenged by:

- Resentment of the transfer -- rayons seek to retain local budgetary control;
- Low competencies of local CSOs and heads of newly created amalgamated communities -- generally low understanding of budget processes;
- Budget processes are not inclusive of the community;
- Staff reserves are limited at the local level; generational change is impeded as activists move to business or government without transferring skills to the next generation of leaders.

The transfer of budget and authority to local levels further raises a set of “local-local” issues, including:

- A lack of trust on the part of local populations toward local self-regulating organizations (SROs); community foundations are working to build local-local trust and engagement between communities and local authorities;
- Shortage of anti-corruption institutions at the local level, which needs to be addressed by linkages between civil society and local authorities;
- Gaps in understanding of goals and roles of different stakeholders (government, business, civil society) making it difficult to assign roles properly;
- Advocacy skills are lacking; local initiatives cannot scale up and therefore cannot reach goals.

ISAR Ednannia, in one specific example, received 4 million hryvna from Sumy to support soldiers’ housing. The Sumy Community Foundation was more trusted than other local self-governing entities, which are run by local government and (therefore) associated with corruption. Through local public hearings, local authorities were forced to redirect funds to the community foundation, illustrating how the community foundation is more trusted by the local population to handle the budget than are the SROs.

In the area of local business development, the Center for International Private Enterprise (CIPE) is supporting local budget analysis through training for coalitions from regions. Business associations analyze budgets, particularly those relating to small business, to encourage business participation in budget preparation.

Judicial reform

Ukraine’s court system suffers from vested interests. The General Prosecutor’s Office has seen no reform, is largely a vestige of its Soviet version as primary administrative power and enforcer of compliance with any and all laws and is apparently behind company raids. Civil society has, to date, focused on selection of judges, and a Public Integrity Council has been set up to review and assess candidates’ integrity. While the Council has contributed to some improvement in the quality of judges, project implementers are frustrated and disappointed and have suspended the project.

Media

Civil society is working to strengthen Ukraine’s independent media through professionalism, independence, and reduced reliance on sensationalism, in particular with regard to investigative journalism covering corruption stories. Oligarchs are subsidizing television advertising to the tune of $50 million for each of the four main media groups (compared to USAID’s $35 million for 5 years of media support). Donor and civil society investment in media motivates the oligarchs’ media to be less strident.

Risks

Key risks that may be encountered by the mechanism include:

- Anti-corruption reforms stall due to GoU backsliding and lack of political will;
- Political change upends existing reform initiatives and requires assistance efforts in focus sectors to be paused or re-start;
- Public frustration at and/or lack of information about reform (particularly anticorruption) progress results in further decrease in support for GoU and a greater turn towards more nationalist/populist, less democratic political parties/movements;
- "Reform fatigue" among civil society, activists, and reform-oriented GoU officials slows civil society's engagement in reform;
- With visa-free travel to the EU, the risk of out-migration and brain drain increases as Ukraine's brightest, most motivated, and most entrepreneurial citizens flee an unreformed Ukraine at war for better economic opportunities, political freedoms, peace, and stability in the EU;
- Elections could usher in a new political class of populist or anti-democratic representatives less open to U.S. development assistance, which could roll back political/economic reforms.

Follow-up

The following areas require follow-up in order to prepare for potential implementation of the strategy:

1. An introductory meeting or set of meetings for prospective mechanism stakeholders should be convened to discuss the mechanism models and related questions, including strategic planning, targeted areas of support, effective approaches for motivating private sector engagement, and governance. Such discussion could be held according to type of stakeholder, e.g. donors, international financial institutions, etc.;
2. Regarding the investment community, establishing contact with the Ukrainian Venture Capital Association, Emerging Markets Private Equity Association, investment funds and impact investors active in Ukraine, AmCham, and the European Business Association are priorities;
3. Regarding the "lighthouse" strategy described above, companies that are potential and new players in Ukraine, who have not been involved in (or tainted by) corruption but are interested in the market, must be explored;
4. Mechanisms for CSO and individual contributions to the legacy mechanism should be explored: CSOs could contribute a portion of their income earned from membership fees and services and products sold; the Garage Gang, a Ukrainian CSO, has offered to provide this project with expertise in the area of crowdfunding;[20]

[20] International Practices on Funding Civil Society Organizations, by Balazs Sator (OSCE, 2010) provides a helpful overview of CSO funding opportunities in Ukraine.

5. Regarding endowments, there are several university endowments in Ukraine, of which two exceed $500,000. Further conversations should include representatives of relevant universities in Ukraine that have established endowments, such as the Chancellor of the Catholic University of Ukraine, regarding relevant processes and asset management policies;
6. Further work is required to clarify how the Ukrainian tax code relates to donations and the treatment of profits generated by a for-profit mechanism if the hybrid model is chosen, as is recommended. Reforms in this area, as needed, could also be an area of advocacy for the mechanism.

Conclusion

Civil society in Ukraine has major achievements to its credit and continues to lead initiatives in a challenging environment. The sector will require continued support and capacity-building, not least from the international community, for the foreseeable future given various capacity shortfalls.

Determination of a strategy to establish a legacy mechanism to support civil society's ongoing advocacy and monitoring activities in Ukraine is crucial to the country's progress toward democratic rule of law and a transparent investment environment which will motivate entrepreneurship and attract international investment. The goodwill of bilateral and multilateral donors and strategic interest of international financial institutions should play a role in establishing this mechanism, but the sustainability for the mechanism will be found in local support. While GoU is establishing a strategy and support mechanisms for civil society, it is the private sector that will most effectively, and reliably, provide the basis for the mechanism's operation, because this where substantial financial resources are most likely to be generated on an ongoing basis. In order to attract the private sector, the mechanism needs to offer, first, an agenda for action that addresses private sector needs, such as improving the climate for business and investment in a real and sustained manner, and second, the possibility for investors to realize a profit on their investment.

That said, the hybrid model for the mechanism that is recommended would include a philanthropic side, which may be supported by an endowment, the size of which would determine its duration and depth and breadth of support for civil society. Private sector, civil society, bilateral and multilateral donors, international financial institutions, and individuals should all be engaged as stakeholders and supporters of the mechanism, whose governance structure should reflect the shareholder composition and ensure avoidance of inappropriate influence that would affect the independence, objectivity, or reputation of the mechanism and the CSOs that it will support.

While timing of implementation of the strategy will be determined by a number of factors, preparatory work should begin immediately, including the steps outlined above, as the strategy relies on full commitment from the range of stakeholders which will need to be prefaced by a robust awareness-raising and education campaign.