

Strengthening institutional
frameworks for local governance

UKRAINE

Handbook on Transparency and Citizen Participation

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UKRAINE
Handbook on Transparency
and Citizen Participation

Strengthening institutional frameworks for local governance

Council of Europe

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Four handbooks were produced with country-specific information for Armenia, Georgia, the Republic of Moldova and Ukraine. They aim to preserve and share the lessons learnt and best practices identified during the implementation of the abovementioned project, which is supported by the national associations of local authorities.

The research work and writing of this Handbook was carried out by Mr Tim Hughes, Director of The Involve Foundation, and Ms Oksana Huss, national consultant for Ukraine. The overall co-ordination was ensured by the Department of Co-operation and External Relations of the Secretariat of the Congress of Local and Regional Authorities of the Council of Europe.

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FOREWORD

Governments can only function effectively if they enjoy the trust of their citizens. Local governments, municipalities and their civil servants have a crucial role in trust building and participatory decision making, since they have a certain degree of autonomy over the distribution of resources, play an intermediary role with regard to national governments, and represent the first interface between citizens and elected representatives. The professionalism and integrity of these governments and local administrations and their ability to function in a transparent, responsive and accountable manner will doubtlessly lead to enhanced, fair and equitable services to citizens. Local and regional elected representatives therefore must act as role models in the areas of public ethics, transparency and participatory decision making.

However, we cannot ignore the fact that local authorities, as any public authority, are susceptible to corruption, which poses a major threat to the legitimacy of democratic institutions, as well as to the degree of trust that citizens place in their representatives. Threats such as the lack of transparency and poor public ethics are problems faced by all levels of government, including the local and regional levels. They affect citizens, governments and businesses alike and pose a threat to the universal access to basic services and local development. The fight against corruption needs to remain a long-term priority for local and regional governments and their associations. Concerted preventive action is paramount in order to foster economic growth, improve living conditions and develop citizens' trust.

As the decentralisation of power advances, the quality of local governance becomes even more decisive. Therefore, along with the introduction of criminal law provisions against corruption, it is essential to promote public ethics, transparency and participatory decision making in order to reduce the risk of corruption and boost the citizen confidence in local and regional authorities. The Congress of Local and Regional Authorities of the Council of Europe took a firm step in the promotion of ethical governance by adopting, in 1999, the European Code of conduct for the political integrity of local and regional elected representatives. An advisory group was recently established to revise this Code and update it to address the new challenges, including new forms of communication, the impact of digital technology, the respect for the privacy of data, and to enlarge the scope of its application to all actors involved in local and regional governance, and not just elected officials.

The Congress is committed to promote ethics and transparency at local and regional levels as an essential component of enhancing the quality of local and regional democracy, one of the key priorities for the period 2017-2020. With that aim it set "Ethics and Transparency at local and regional level" as the theme for its two plenary sessions in 2016, and in October 2016 adopted a "Roadmap of activities for preventing corruption and promoting public ethics at local and regional levels". One of the objectives of this roadmap is to deepen our understanding of the various risks and forms of corruption

that exist at the local and regional levels. In that perspective the Congress recently adopted reports on the abuse of administrative resources in election campaigns as well as on preventing corruption in public procurement, and is currently preparing reports on conflicts of interests, the protection of whistle-blowers, nepotism in the recruitment of staff, and transparency and open government.

As a sign of its political determination to tackle this issue, the Congress has appointed a spokesperson on promoting public ethics and preventing corruption at the local and regional levels, Mr Herwig Van Staa, along with a substitute spokesperson, Mr Andreas Galster. In 2017, during the 33rd session of the Congress, it also brought to the fore the important perspective of young people and open government in the fight against corruption. This is a comprehensive and long-term approach to corruption prevention, including through the co-operation activities of the Congress of which this Handbook is just an example, which sends a clear signal of our intention to make this a priority activity for the years to come.

The attitudes and expectations of our citizens with regard to public governance are changing. We are witnessing a growing mistrust toward public institutions and their representatives. In this regard, effective mechanisms for the implementation and compliance with standards of conduct are essential to renew the confidence in public administration. Preventing corruption, reducing its risks, and developing effective, accountable and transparent institutions at all levels are key components of just and inclusive societies.

With this in mind, this Handbook on transparency and citizen participation in Ukraine is aimed at local authorities, mayors, local councillors and civil servants, to support them in their efforts to improve the quality of local governance in their villages, towns and cities. The Handbook will provide local authorities with practical guidelines on transparency and citizen participation, identifying the relevant international standards and national legislation, and providing case-law examples and best practices which it recommends be applied and promoted by all Ukrainian local authorities.



Andreas Kiefer

Secretary General

Congress of Local and Regional Authorities

PURPOSE AND STRUCTURE OF THE HANDBOOK

Transparency and citizen participation are key tools in the development of good governance. Both help to create the conditions for citizens to understand and evaluate the decisions which the government is taking on their behalf, as well as to ensure that their own needs and views are taken into account in the decision-making process.

Effective transparency and participation can help to drive out corruption and government malpractice. They are also more positive tools as they help produce the conditions for increased trust. Finally, they also help governments to draw on the skills and experience of citizens to enable better decision making and the delivery of more effective public services.

This *Handbook on Transparency and Citizen Participation in Ukraine* aims to support local authorities in their efforts to improve the quality of local governance. It provides them with practical guidance on transparency and citizen participation, based on the Council of Europe principles and with reference to the general international standards and particular national legislation.

To fulfil its purpose as a practical reference guide to support local authorities in their daily work, the *Handbook on Transparency and Citizen Participation in Ukraine* includes country-specific information about anti-corruption legislation, transparency policies and citizen participation mechanisms. In particular, the user of this *Handbook* is provided with a straightforward look at relevant national legislation, a concise assessment of the most prevalent corruption risks, and a set of best practices to introduce and implement transparency and citizen participation mechanisms.

The *Handbook* is structured in four main chapters:

■ CHAPTER 2 – Ethics and Public Accountability

This chapter highlights the importance and challenges of ethics and public accountability in Ukraine. Moreover, it is emphasised how essential they are for an effective, transparent and participatory governance.

■ CHAPTER 3 – Corruption Risks

This chapter introduces the most common corruption risks identified in Ukraine and outlines relevant international anti-corruption standards, along with the national legal framework for each form of corruption. In addition, this chapter is supported with examples of case law related to each corruption risk.

■ CHAPTER 4 – Transparency

This chapter introduces five transparency mechanisms, which have been selected to represent the diversity of approaches to transparency. Each mechanism includes an introductory description and an outline of international standards. This is followed

by four sections summarising key national laws and presenting practical guidelines and best practices which may serve as examples for local authorities in their efforts to enhance transparency.

■ **CHAPTER 5 – Citizen Participation**

This chapter introduces five citizen participation mechanisms, which have been selected to represent the diversity of approaches to citizen participation. Following the same structure as in the previous chapter, it includes an introductory description for each mechanism and outlines relevant international standards. This is followed by four sections summarising key national laws and presenting practical guidelines and best practices which may serve as examples for local authorities in their efforts to foster and improve citizen participation.

ETHICS AND PUBLIC ACCOUNTABILITY

2.1. INTERNATIONAL CONTEXT

Ethics and public accountability are essential features of an effective local or regional authority. They refer to the culture, processes, structures and rules that ensure those in public office act in the wider public interest, rather than their own self-interest. They are an essential feature of good governance, and apply equally to organisations in the private and civil society sectors, as well as public authorities.

Ethics are the rules that define the conduct of public officials¹ in order to ensure that the public is treated fairly and with equality. Ethics can help officials make better decisions in the public interest, as well as help people evaluate the decisions taken on their behalf by public officials.

Public accountability ensures that officials are openly answerable for the decisions they are taking on behalf of the public.

In the absence of ethics and public accountability, corruption and malpractice is able to thrive. As outlined in the following section, corruption is damaging to individuals, society, the economy and government in a number of respects. Ethics and public accountability can help curb the worst excesses of power, and encourage more responsible and fairer decision making by local authorities.

Even where corruption is not endemic, the absence of ethics and public accountability can be corrosive to public trust in government, public institutions and officials. While the relationship between both ethics and public accountability is complex, when done well, they can help to build and strengthen trust between the public and government.

On the other hand, ethics and public accountability can also play a much more positive role. They recognise that citizens and other stakeholders have much value to offer in decision making. They can help to ensure that their personal experiences, expertise, knowledge and scrutiny add value to, and strengthen, decisions taken by government and public officials.

Finally, effective ethics and public accountability are also key elements of improving public services. This is based on the idea that public services that are more responsive and accountable to people - and benefit from their insights, ideas, energy and scrutiny - will work better for people.

Taken together, ethics and public accountability help to ensure that decision making and resource allocation are fair, efficient and effective, which in turn helps to enable a flourishing democracy, economy and society.

Transparency and citizen participation are important mechanisms for promoting ethics and public accountability in national and local government. A recent report for the European Committee of the Regions on "Preventing Corruption and Promoting Public

Ethics at the Local and Regional Level in Eastern Partnership Countries” found that lack of transparency was the main vulnerability in all of the cases assessed.² This handbook outlines a range of transparency and citizen participation mechanisms that can be adopted by local and regional authorities.

2.2. NATIONAL CONTEXT

One of the widespread claims of the Maidan protesters in 2013 was the punishment of corrupt politicians.³ However, in 2016, 49% of citizens still believed that wealthy individuals often use their influence on government for their own interests and there need to be stricter rules to prevent this.⁴ In 2017, 44% of Ukrainians perceived corruption as the most important problem and 36% as a quite important problem in the country, while 90% considered that corruption is widespread.⁵ 44% of Ukrainians stated that the level of corruption has further increased since 2014.

After the Revolution in 2014, the Parliament of Ukraine, in close consultation with civil society and international organisations, brought anti-corruption legislation to a new level. On 14 October 2014, a package of anti-corruption laws, including the Anti-Corruption Strategy 2014-2017⁶ and the Law No. 1700-VII “On Prevention of Corruption”, has been adopted. Major changes included the creation of special institutions, such as the National Agency on Corruption Prevention (NACP), the National Anti-Corruption Bureau of Ukraine (NABU) for investigation of corruption, the Special Anti-Corruption Prosecutor’s Office (SAP) and the National Agency for finding, tracing and management of assets derived from corruption and other crimes (ARMA). The legislation increased the penalties for corruption, which includes administrative or criminal liability for corruption related offences.

Transparency and citizen participation have been formally recognised and accepted as main pillars in the prevention of corruption. Since 2011 Ukraine is a member of the Open Government Partnership (OGP) - a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. Currently, Ukraine is implementing the third Action Plan for 2016-2018⁷ based on 17 commitments mostly in the field of e-government and public participation. Implementation of the former OGP commitments provided a solid guidance for the realisation of transparency and support for citizen participation.

The legislation from 2015 brought e-democracy and e-governance to a new level. The main milestones were the introduction of the e-petitions and regulations on open data as well as on open use of public funds. Success stories like the implementation of the e-platform ProZorro boosted transparency and competition in public procurement and significantly improved Ukraine’s position in the international E-Government Development Index scale.⁸ Despite considerable improvements in the legislation, the implementation of the laws and governmental commitments remains a big challenge.⁹

In the course of the decentralisation reform, the influence and responsibility of the local public authorities is increasing. Improving local governance, with special emphasis on transparency and citizen participation, is a vital tool to overcome multiple challenges in the country.

CORRUPTION RISKS

In the absence of ethics and public accountability, corruption and malpractice is allowed to thrive, which undermines the foundations of a peaceful, prosperous and just society.

Corruption is a major challenge to democracy and the rule of law. It results in decisions and resource allocation that do not reflect the interests of the public and concentrates political power in the hands of the few. It in turn causes political leaders and institutions to lose legitimacy and public trust, which reduces their ability to govern.

Corruption also causes local and regional authorities to be inefficient and ineffective in exercising their duties. It results in decisions being made not on the basis of what is in the interests of society at large, but what is in the self-interests of the decision maker and their associates. It leads to public money being misspent, with contracts being awarded to inferior providers and budgets being misallocated. At its worst, it enables public officials to misappropriate money and resources, using their position to get rich to the cost of those they have a duty to serve.

Corruption can also result in public officials being appointed on the basis of favouritism rather than merit, meaning that local and regional authorities do not have access to the brightest and best talent. This in turn creates a fertile environment for further corruption and reduces even more the efficiency and effectiveness of the administration.

Inefficient and ineffective organisations, staffed by individuals who gained their position on the basis of something other than merit, result in poor quality public services and infrastructure, thereby eroding public trust and the legitimacy of public institutions. More importantly, however, it results in significant human costs, including poverty, deaths, illness, and restricted life chances.

Finally, corruption harms economic development. It leads to public money being directed to uncompetitive businesses, rather than those that offer more innovative or cheaper products and services. Uncompetitive markets, coupled with the negative impact of corruption on the quality of local public services and infrastructure, means that businesses do not have a solid foundation (of staff, security, investment, etc.) on which to build. In the end, this may cause private and international investors to avoid investing in an area.

3.1. BRIBERY

Bribery is the promise, offer, acceptance or solicitation of a personal advantage (e.g. gift, loan, reward, favour, etc.) in exchange for an unethical or illegal action. Bribery results in decisions not being taken in the public interest, which reduces public trust in institutions and leads to poor public services.

International standards

The following international conventions and standards relate to bribery:

- The **OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**¹⁰ establishes legally-binding standards to criminalise bribery of foreign public officials in international business transactions. It is the first and only international anti-corruption instrument focused on the 'supply side' of the bribery transaction.
- The **International Anti-Bribery Standard 37001**¹¹ specifies a series of measures to help organisations prevent, detect and address bribery.
- The **OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance**¹² which supports the convention on combating bribery.

National context

International and national surveys of perception and experience of corruption in Ukraine indicate that bribery is widespread in the country. In 2017, 25.5% of Ukrainians claimed to have paid a bribe over the past year.¹³ Those who paid a bribe mainly did it to access public health services (46.3%), higher education institutions (22.5%) and local public authorities (13.6%). At the same time, 29% of Ukrainians replied that they refuse to pay bribes.

Another survey on bribery in the private sector shows that 82% of business representatives perceive bribery as the most widespread type of corruption in Ukraine.¹⁴

National legislation

Although the perception of bribery is very high, the term "bribery" was eliminated from the Ukrainian law and replaced with the notion of "unjustified benefits" (*nepravomirna vyhoda*). The Law No. 1700-VII "On Prevention of Corruption" of 14 October 2014 provides the following definition: «Unjustified benefit means money or other property, preferences, advantages, services, non-monetary assets, and any other benefits that are being illicitly promised, offered, delivered, or received by the person, who is authorized to perform public or local self-government functions». ¹⁵ This definition expands bribery to the non-monetary forms of received benefit.

In line with the Article 368 of the Criminal Code of Ukraine, receiving or providing unjustified benefits can be punished by a fine, community work, deprivation of the right to hold certain offices or engage in certain activities, or imprisonment, depending on the degree of the crime.

Examples of case law

Investigations of the National Anti-Corruption Bureau of Ukraine address several cases of bribery. For instance, in October 2016, the head of a village council faced

allegations of illegally demanding and partially receiving an unjustified benefit of approximately €100 000 for the decision to grant the exploitation of 600 ha of land to an entrepreneur. The NABU finished the investigation, and the Special Anti-Corruption Prosecutor prepared an indictment and brought the case to the Zarichnyi regional court of Sumy, which is yet to reach a final verdict.¹⁶

On 17 August 2016, the Malynsk raion court of Zhytomyr region passed a judgement on a case involving the head of a regional council and the head of a state administration.¹⁷ They were accused of extorting and receiving an unjustified benefit in the amount of 40000 Ukrainian hryvnia (€1300) from a farmer who wanted to rent a land for agricultural purposes. Both defendants were sentenced to two and half years of imprisonment. However, on 13 November 2017, the Zhytomyr regional court of appeal overturned the initial verdict and initiated a new criminal procedure under original jurisdiction.¹⁸

3.2. EXTORTION

Extortion is the use of coercion to obtain money, goods, services or some other advantage from an individual or institution. Beyond the damage it does to the victim, extortion reduces public trust in government and can discourage business growth and investment in the area.

International standards

As one type of corruption, extortion is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**¹⁹ is the only legally-binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.²⁰
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**²¹ aims to co-ordinate criminalisation of corrupt practices and improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**²² defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**²³ aims to fight corruption involving officials from the EU or its Member States.

National context

In 2017, 26% of those who reported giving a bribe in the last year, did so due to direct extortion. Another 27% were indirectly asked for a bribe. 25.7% reported to give a bribe in order to persuade public officials to fulfil their duty.²⁴

National legislation

The Criminal Code (Article 354, note 5) defines extortion as a «demand to provide unjustified benefit with a threat to take actions or omit to act using one's position, authority granted, power, or service position in relation to the person who provides unjustified benefit, or deliberate creation of conditions under which a person is compelled to provide unjustified benefit in order to prevent harmful consequences for his/her rights and legitimate interests». In line with Article 368, paragraph 3 of the Criminal Code of Ukraine, extortion of unjustified benefits can be punished by imprisonment between five and ten years and deprivation of the right to hold certain offices or engage in certain activities for three years, and confiscation of private property.

Example of case law

In 2014, the Cherakys regional court of appeal passed a judgement on the head of a city council, who had acted in collusion with his deputy.²⁵ They were accused of extortion of unjustified benefits in the form of a 30% share in a firm of a private entrepreneur. The share was transferred to the deputy head's wife. In return, the defendants gave to an entrepreneur a permit to open a trailer shop in the city. Both defendants were banned for three years' from occupying any public offices in state authorities. They were exempted from 5 years' imprisonment and received three years' probation instead.

3.3. EMBEZZLEMENT

Embezzlement is the illegal appropriation of money, goods or other resources by an official to whom they have been entrusted. This results in the loss of public money, which reduces the capacity of authorities to act in the interests of the public, resulting in worse services and outcomes for people. It also undermines public trust in government.

International standards

As one type of corruption, embezzlement is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**²⁶ is the only legally-binding universal anti-corruption instrument.

- It is supported by this **Technical Guide to the Convention**.²⁷
- The **Council of Europe’s Criminal Law Convention on Corruption (ETS No. 173)**²⁸ aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe’s Civil Law Convention on Corruption (ETS No. 174)**²⁹ defines common international rules for effective remedies for persons affected by corruption.
- The **European Union’s Convention against Corruption Involving Officials**³⁰ aims to fight corruption involving officials from the EU or its Member States.

National context

Embezzlement is widespread in Ukraine, especially in the field of public procurement, which is one of the most corruption-prone areas in the country. For instance, the OECD Monitoring of the Istanbul Anti-Corruption Action Plan from 2015 estimated that about 75% of funds allocated for procurement had been embezzled through various schemes during 2010 and 2014, amounting roughly to UAH 150 billion (€4.8 billion).³¹

National legislation

Embezzlement falls under the category of economic crimes or crimes against property in the Criminal Code. According to the Article 191, paragraph 2, the penalty for embezzlement in public office can reach 5 years’ imprisonment or 3 years’ deprivation of the right to occupy certain offices or engage in certain activities. Depending on the embezzled amount, the penalty increases up to 12 years’ imprisonment, and 3 years’ deprivation of the right to occupy certain offices or engage in certain activities, and confiscation of property.

Example of case law

In April 2017, a mayor was sentenced for embezzlement. In 2013, he commissioned a private firm to repair a road in the village. The mayor issued a payment transfer to the firm, although the road was not repaired. By the court verdict,³² the mayor was banned for two years’ from occupying any public offices or engaging in the work of local public authorities. He was exempted from 3 years’ imprisonment and received two years’ probation instead. On 06 October 2017, the Vinnytsia regional court of appeal overturned the initial verdict and initiated a new criminal procedure under original jurisdiction.³³

3.4. CONFLICT OF INTEREST

A conflict of interest is where an individual is in a position to derive personal benefits from the actions or decisions they take in an official capacity. Conflicts of interest – either if they are actual, perceived or potential³⁴ result in decisions that are, or are considered to be, unfair and self-interested. This reduces public trust in institutions and results in worse outcomes for the public.

International standards

- The **Council of Europe’s Recommendation on Codes of Conduct for Public Officials**³⁵ covers the general issues normally thought to be necessary for avoiding such conflicts.
- The **OECD’s Guidelines for Managing Conflict of Interest in the Public Service**³⁶ identify principles and standards for developing policies. It’s **Checklist for Enhancing Integrity in Public Procurement**³⁷ provides a guide for promoting integrity in procurement.

Conflict of interest is also covered by the following international standards and guidelines.

- The **United Nations Convention against Corruption**³⁸ is the only legally-binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.³⁹
- The **Council of Europe’s Criminal Law Convention on Corruption (ETS No. 173)**⁴⁰ aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe’s Civil Law Convention on Corruption (ETS No. 174)**⁴¹ defines common international rules for effective remedies for persons affected by corruption.
- The **European Union’s Convention against Corruption Involving Officials**⁴² aims to fight corruption involving officials from the EU or its Member States.
- The **Council of Europe’s Conflicts of Interest at Local and Regional Level report**⁴³ looks at the effectiveness of Conflict of Interest rules, policies and standards at the subnational level.

National context

Exposure of the local public authorities in Ukraine to conflict of interest is considered to be very high and widespread because, unlike the members of the national Parliament, deputies of the local and regional councils can combine their representative functions with other employment or entrepreneurship. At the same time, a survey of local authorities in Cherkasy region showed that only 15% of staff and deputies in the local council fully understand the meaning and regulation of conflict of interest.⁴⁴

National legislation

The Law “On Prevention of Corruption”⁴⁵ differentiates between the potential (Article 1.8) and the real conflict of interest (Article 1.12). While the former indicates the potential for the private interest of the officials to affect impartiality in decision making, the latter indicates that a contradiction between the private and the public interest has already occurred. The violation of the law only occurs in decision making when a conflict of interest has not been properly reported and resolved.

Since the definition of private interest is not limited to financial or material interests, such corruption risks as nepotism and patronage (provided below) are considered as subtypes of conflict of interest and they are regulated by the same legislation.

Prevention and regulation mechanisms on conflicts of interest are provided in the Chapter V (Articles 28-36) of the Law “On Prevention of Corruption”, in Article 59-1 of the Law “On Local Self-Governance in Ukraine”,⁴⁶ and in the practical manual of the National Agency on Corruption Prevention (NACP).⁴⁷ The two main steps for prevention are: first, a decision-maker must report a conflict of interest, and second, abstain from taking decisions on issues under the conflict of interest.

At the local level, the special permanent commissions of the local councils (Article 59-1 of the Law “On Local Self-Governance in Ukraine”) are responsible for consulting, monitoring and controlling the prevention and regulation of conflict of interests.

When a real conflict of interest is revealed, the NACP exhorts action from the authority involved. If the conflict of interest is not resolved within 10 days, the NACP reports an administrative violation.

According to the Article 172.7 of the Administrative Code of Ukraine, in the case of a real conflict of interest, a fine can range from 100 to 800 non-taxable minimum income, equivalent to UAH 1 700 (€55) and UAH 13 600 (€445), and the deprivation of the right to hold certain offices or engage in certain activities for one year. Information on corruption-related offences is collected in a single open database of individuals involved in corruption (corrupt.informjust.ua),⁴⁸ which damages the image of the perpetrator.

Example of case law

Conflict of interest is mostly prevalent in decisions concerning the use and ownership of land or ownership of business by public officials. For instance, a member of a village council participated in voting on a decision that allowed his son to use the land. The Berdiansk city court imposed a fine amounting to UAH 1 700 (€55) as a penalty.⁴⁹

3.5. NEPOTISM

Nepotism is the exploitation of an official position to unfairly benefit a family member or friend (e.g. through giving a job or favour). Nepotism, and other forms of favouritism, results in local and regional authorities not having access to the brightest and best talent. This in turn creates a fertile environment for further corruption and reduces the efficiency and effectiveness of the administration.

International standards

As one type of corruption, nepotism is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**⁵⁰ is the only legally-binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.⁵¹
- The **Council of Europe’s Criminal Law Convention on Corruption (ETS No. 173)**⁵² aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe’s Civil Law Convention on Corruption (ETS No. 174)**⁵³ defines common international rules for effective remedies for persons affected by corruption.
- The **European Union’s Convention against Corruption Involving Officials**⁵⁴ aims to fight corruption involving officials from the EU or its Member States.
- The **Council of Europe’s Governance Committee report, Nepotism (Recruitment of Staff)**⁵⁵ sets out standards for good practice and presents strategies for preventing corruption in the recruitment procedures of local and regional governments.

National context

In the Ukrainian Municipal Survey 2016,⁵⁶ 56% and 29% of respondents respectively indicated that nepotism is a “significant problem” and “somewhat a problem”. Nepotism in Ukraine is close to the phenomenon of *kumivstvo* (the “godparent relationship”) or to cronyism. In the case of cronyism, the exchange of favours and privileges is based on close friendship ties.

National legislation

In Ukraine, there is no specific law on nepotism. However, the Law “On Prevention of Corruption” and the Law “On Public Service” provide several indirect regulations and limitations of nepotism.

Section 27 of the Law “On Prevention of Corruption”⁵⁷ prohibits public officials to be in direct subordination or have in direct subordination any close persons. In case such subordination occurs, an official is obliged to report and undertake measures to resolve the situation, as in the case of conflict of interest. Accordingly, the subordinated person is required to either change the position to avoid direct subordination to the close person, or to resign.

Example of case law

An administrative case in the Vasylivka raion court demonstrated an example of nepotism.⁵⁸ The head of the department of culture and tourism of a raion state administration did not report a direct subordination of her husband, who was the director of the town’s Centre for Culture and Leisure. Also, she employed her son. Additionally, she assigned her husband a payment for his work from the raion budget.⁵⁹ At the same time, the husband assigned a payment to his wife, since she has a position of responsibility in the abovementioned centre. On top of that, their daughter co-ordinated an administrative department of the centre.⁶⁰ In total, the court imposed a fine in the amount of 300 non-taxable minimum incomes, equivalent to UAH 10 200 (€330). The charges were based on Article 172-7, paragraph 1 and 2 of the Administrative Code about decision making under conditions of real conflict of interests.

3.6. PATRONAGE

Patronage is the use of an official position to give advantage to a person or group based on favouritism. It can be closely linked to the concepts of clientelism, cronyism and nepotism. Patronage results in decisions being made not on the basis of what is in the interests of society at large, but what is in the self-interests of the decision maker and their associates. It leads to public money being misspent, with contracts being awarded to inferior providers and budgets being misallocated.

International standards

As one type of corruption, patronage is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**⁶¹ is the only legally-binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.⁶²
- The **Council of Europe’s Criminal Law Convention on Corruption (ETS No. 173)**⁶³ aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.

- The **Council of Europe’s Civil Law Convention on Corruption (ETS No. 174)**⁶⁴ defines common international rules for effective remedies for persons affected by corruption.
- The **European Union’s Convention against Corruption Involving Officials**⁶⁵ aims to fight corruption involving officials from the EU or its Member States.
- The **Council of Europe’s Governance Committee report, Nepotism (Recruitment of Staff)**⁶⁶ sets out standards for good practice and presents strategies for preventing corruption in the recruitment procedures of local and regional governments.

National context

Patronage is considered to be widespread in politics in Ukraine, but poorly regulated. The situation, when a politician provides an executive position to a person based on a personal relationship rather than merit, creates a vicious circle of favouritism. The favour of giving the job creates pressure to return the favour and blurs the boundary between political office and executive positions. In other words, due to patronage, the bureaucracy loses its impartiality. At the same time, patronage is difficult to prove.

National legislation

The Law No. 889 “On Civil Service” of 10 December 2015⁶⁷ obliges civil servants to be politically impartial. Article 10 of the Law⁶⁸ states that civil servants must implement legal directives independently of their own political views or the political affiliation of the authority. Besides, civil servants of the highest category are not allowed to be members of a political party or to be members of the local council. It is prohibited for all civil servants to be involved in political campaigns or in events organised by political parties, or to use public office for any political purposes. Article 10.3 of the abovementioned law explicitly prohibits the use of administrative resources and reduces corruption risks related to patronage.

Example of case law

Cases of illicit political influence on appointments and the work of executive public officials rarely reach the court, since they are difficult to prove. The following case gives an example in which a former minister perceived that illegal political influence was undermining his impartiality.

In 2016, a former Minister for Economic Development and Trade reported the illegal influence of Members of Parliament on the work of his ministry. The National Anti-Corruption Bureau of Ukraine investigated the case⁶⁹ and submitted an indictment against the executive director of a national company for illegal influence exerted by him on the former Minister. According to the allegation, the aim of the influence was to become the Deputy Minister of Economic Development and Trade. The case is still ongoing in the Solomianskyi court of Kyiv and the court arraignment has been postponed several times.

TRANSPARENCY

4.1. ACCESS TO INFORMATION

Access to information is the legal right for citizens to request and receive information from public authorities. It is often enacted by Freedom of Information legislation.

Access to information supports accountability along with informed public participation in decisions, and is therefore fundamental for the effective functioning of democracies.

International standards

Access to information is a fundamental component of a number of the conventions and standards against corruption listed elsewhere in this handbook. It also underpins a number of key UN human rights documents. The following specifically relate to Access to Information:

- The **Council of Europe's Convention on Access to Official Documents**⁷⁰ affirms an enforceable right to information.
- The **Aarhus Convention**⁷¹ grants rights, including access to information, in decisions concerning the environment.

National context

Access to information in Ukraine is considered to be high.⁷² Well advanced legislation on access to information allowed journalists and activists to reveal multiple corruption cases. Nevertheless, there are still challenges in the enforcement of the right to access information, most of them relating to public servants' lack of knowledge of the legal requirements and how to put them into practice. It has been reported in analysis of the implementation of access to information that often responses are of poor quality, incomplete or provided with delay. In addition, the fees of administrative proceedings are unreasonably high, thereby discouraging citizens to initiate administrative proceedings.⁷³

To overcome the challenges, leading NGOs in Ukraine initiated the Fund of the Right for Information Protection and over 150 lawyers joined the Network of Defenders of the Right to Access Information.⁷⁴ The Network provides free expert legal assistance and relevant judicial support with the aim to guarantee legal protection of the right of access to information.

National legislation

The Constitution of Ukraine protects citizens' right to access information (Article 34, paragraphs 2 and 3).⁷⁵ The Laws No. 2939 "On Access to the Public Information",⁷⁶ No. 2657 "On Information",⁷⁷ and No. 183 "About state secret"⁷⁸ regulate access to information. In line with the Law "On Access to the Public Information", no information held by public authorities can be restricted, unless an assessment reveals that the information is confidential, or secret, or for internal use only. Restriction of access to information must be based on the so-called "three-part test" (*tryskladovi* test) of public information, as stipulated in Article 6, paragraph 2. The Law provides for the obligation to create structural units or appoint freedom of information officers by public authorities. The Law assigns some monitoring functions to the Secretariat of the Ukrainian Parliament Commissioner for Human Rights (Ombudsman's Office).⁷⁹ International organisations recommend however to set up or designate an independent authority to supervise and enforce the regulations on the access to public information.⁸⁰

The violation of the right to request and obtain information from public authorities can be punished by a fine up to 80 non-taxable minimum income (approximately €45), as stated in Article 212.3 of the Administrative Code.⁸¹ The unlawful refusal to provide access to public information for the journalists in their work can be punished by a fine, or 3 years' imprisonment (Article 171 of the Criminal Code).⁸² On the other hand, the punishment for revealing a state secret can reach up to 5 years' imprisonment.

National guidelines

To ensure the right to access public information, the local public authorities, as "information administrators" (Article 13 of Law No. 2939), must designate special units or freedom of information officers, who will provide information upon request. They must simplify the procedures for submitting requests and obtaining information, and provide public access to the meetings of local authorities.

The Ombudsman's Office, in collaboration with leading NGOs in the field of access to information, published in 2017 two guideline documents for local authorities.⁸³ The first manual explains how to efficiently organise the work of the information administrators and how to deal with practical challenges while providing access to the public information.⁸⁴ The second manual provides more specific guidelines on how to create a space in public buildings with the necessary conditions to provide access to public information.⁸⁵

Examples of best practice

The Platform of access to public information 'Ombudsman Plus'⁸⁶ monitored the implementation of legislation on access to information in different regions of Ukraine, and identified Vinnytsia and Odessa regional state administrations, Ternopil Oblast Council and Kherson City Council as best practice cases.⁸⁷ These local public authorities have achieved the implementation of the right to access to public information by following these steps:

1. Implement the necessary regulations on access to public information in the local and regional legislation;
2. Provide timely and complete information upon request;
3. Provide access to information online, including information on financial resources;
4. Have the proper conditions and create a space in their buildings to provide access to public information *in situ* (e.g. facilitating the access to meetings of local authorities).

4.2. OPEN DATA

Open data is the publication of data and information in a format that may be freely used, modified and shared. The OECD states that open data is «a set of policies that promote transparency, accountability and value creation by making government data available to all». By making data generated through the activities of public bodies available, government becomes more transparent and accountable to citizens. It also supports business growth and the development of services centred on citizens.

International standards

Open data is a relatively new phenomenon without officially endorsed standards. However, a number of useful guidelines exist:

- The **Congress of Local and Regional Authorities of the Council of Europe's recommendation on Open Data for Better Public Services**⁸⁸ explains its importance for improving local democracy.
- The **United Nations Guidelines on Open Government Data for Citizen Engagement**⁸⁹ introduce policy guidelines and good practice recommendations.
- This **World Bank Toolkit**⁹⁰ starts from the basics, through to planning and implement, as well as avoiding common pitfalls.
- The **Five Star Open Data Deployment Scheme**⁹¹ provides five steps to fully opening data, explaining the costs and benefits of each.
- The **International Open Data Charter**⁹² sets out six principles for open, timely and interoperable government data.

National context

On 9 April 2015, a major step was made towards open data in Ukraine with the adoption of the Law No. 319 "About changes to some law on access to public information in form of open data"⁹³ which introduced significant changes in other relevant legal acts. These

changes obliged public authorities and local governments to publish and regularly update public information in the form of open data. Open data must be provided free of charge on the webpages of the authorities and on the single state open data website (data.gov.ua).⁹⁴ The State Agency for E-Governance⁹⁵ implements open data provisions and provides support to local public authorities.

Open data provisions in Ukraine have enabled significant progress in the public control of the state and local budgets,⁹⁶ public procurement⁹⁷ and beneficial ownership disclosure.⁹⁸

National legislation

Open data corresponds to the legislation about freedom of information, entrenched in Articles 15 (prohibition of censorship) and 34 (right to access to information) of the Constitution of Ukraine, along with laws on information and on access to public information.

According to Law No. 2939 “On Access to the Public Information”,⁹⁹ national and local authorities are obliged to publish accurate, exact and complete information, as stated in Article 14, and are required to disclose different categories of information as listed in Article 15, including: accessible information about the structure, mission, functions, budget of the organisation, laws that regulate their work, decision-making process, list of the mechanisms through which citizens can advocate their interests, reports about the sessions and the institutional work, action plans, etc.

In line with the principle of transparency and publicity of the budget process (Article 7 of the Budget Code),¹⁰⁰ on 11 February 2015 the Parliament adopted the Law No. 183-VIII “On Open Use of Public Funds”.¹⁰¹ According to the Law, local authorities must use the e-data website to publish information about the use of public funds.

Both the Ombudsman’s Office and civil society control the implementation of these regulations. If public authorities do not disclose the information required by law, they will initiate an appeal to the higher authority or court. Those persons whose rights and legal interests to access public information were violated receive a compensation for material and moral damages (Article 24.2 of the Law No. 2939 “On Access to the Public Information”).

National guidelines

Since March 2017, the Open Data Roadmap for Ukraine¹⁰² provides an extensive list of practical recommendations that public authorities can follow in order to comply with international standards on open data. All these recommendations are based on six major principles: data should be open by default; timely and comprehensive; accessible and usable; comparable and interoperable; for improved governance and citizen engagement; and for inclusive development and innovation.¹⁰³

Within the project 'Transparent cities', the NGO Transparency International Ukraine provides guidelines for the 100 largest cities in Ukraine, based on individual assessments for each city.¹⁰⁴ The guidelines for open data suggest publishing on the official website announcements, schedules, agenda and protocols of the official meetings of the city council and the mayor; maintaining an archive of said information for the past two years; publishing the contact details of public authorities' deputies and their assistants; and publishing legislation and decision-making projects on the website 20 days ahead of the meeting.

Examples of best practice

The project 'Local initiatives on ethical governance and transparency',¹⁰⁵ implemented in Netchyntsi village, provides an example of how small communities can implement the open data provisions of the legislation and develop a website for their village council.¹⁰⁶ In addition to the website, two open-access laptops free for use were provided in the public library, thereby giving people the opportunity to control and influence the work of executive committee by monitoring the project decisions and other access to information.

Among large cities, Kropyvnytskyi has received the highest score in the assessment of the project 'Transparent cities'.¹⁰⁷ The City Council publishes draft decisions within 20 days prior to the considerations of the executive committee sessions, and minutes of plenary and executive committee sessions are published and stored for at least 2 years. Information about people's deputies is properly presented.

4.3. DISCLOSURE: DECLARATION OF ASSETS AND CONFLICT OF INTEREST

Disclosure is the act of routinely publishing certain information, sometimes required by law. It can support anti-corruption measures by requiring the routine publication of assets and declarations of conflict of interest, for example. It can also be for more positive reasons, such as to support policy making, or by ensuring that the public are better informed and therefore able to contribute more effectively.

International standards

Disclosure is an important element in the conventions and standards against corruption listed elsewhere in this handbook. Of particular relevance are:

- The **Council of Europe's Recommendation on Codes of Conduct for Public Officials**¹⁰⁸ requires private interests to be declared.
- The **OECD's Managing Conflict of Interest in Public Service: Guidelines and Country Experiences**¹⁰⁹ provides practical instruments for modernising conflict-of-interest policies.

■ The **OECD's Asset Declarations for Public Officials: A Tool to Prevent Corruption**¹¹⁰ identifies the key elements of asset declaration systems.

National context

The launch of the electronic asset declarations system (the single state database of asset declarations (public.nazk.gov.ua)¹¹¹ and granting online access to these declarations are considered crucial accomplishments in the area of prevention of corruption in Ukraine.¹¹² The system became not only a tool of public scrutiny and transparency, but also an instrument for law enforcement to hold those liable for corruption offences accountable. Despite several attempts to sabotage the system and obstruct its implementation, an unprecedented number of public officials have disclosed their assets and declarations of conflicts of interest.

National legislation

The legal regulation for the disclosure of assets declarations is provided in the Chapter VII "Financial Control" (Articles 45-52) of the Law No. 1700 "On prevention of corruption".¹¹³ Since 15 July 2016, two Regulations¹¹⁴ of the Ministry of Justice announced the process of disclosure and initiated the launching of the electronic asset declarations system for those persons authorised to perform public functions, either at national or local level.

National, regional and local authorities, as well as members of their families, are obliged to disclose their assets (real estate, monetary funds, cash, loans, etc.) and to declare possible conflicts of interest (job position, contracting services, participation in the civil council, etc.).¹¹⁵ This data remains open and available on a single state database of asset declarations.

The NACP controls the deadlines, examines lawful submission of the declarations, the accuracy of the information, and monitors whether the declared assets correspond with the lifestyle of the public official. In case of misconduct, the NACP informs the special anti-corruption agencies. The misconduct leads to disciplinary, administrative (Article 172-6 of the Administrative Code) or criminal (Article 366-1 of the Criminal Code) liability.¹¹⁶

National guidelines

The National Agency on Corruption Prevention (NACP) has created a dedicated website providing practical guidelines for public officials on how to use the single state database of asset declarations.¹¹⁷ Besides, the NACP provides interactive voice support for the preparation of e-declarations.

Examples of best practice

Since 2016, a number of regional state administrations have provided special training courses for local public authorities on how to properly prepare and submit

e-declarations.¹¹⁸ The Sumy Oblast Council provides a general overview of relevant information on e-declarations for local public authorities on the council's website.¹¹⁹ The Cherkasy regional administration, in addition to the general information on e-declarations, has systematised the information for different groups of public officials.¹²⁰ These actions can help public officials to stay informed about their duties and avoid unintended mistakes in the process of disclosure.

4.4. EXTERNAL AUDIT

External audit is the regular, independent scrutiny of accounts and financial information to ensure that public money is used appropriately and effectively. External audits are undertaken in accordance with the relevant laws and rules of the country to support those external to government to hold it to account. External audit can also look beyond finances to assessing the performance of government against its own objectives, or in providing programmes and services.

International standards

- The **International Public Sector Accounting Standards**¹²¹ focus on the accounting, auditing, and financial reporting needs of national, regional, and local governments, related governmental agencies, and the constituencies they serve.
- The **International Standards of Supreme Audit Institutions**¹²² website contains a complete collection of professional standards and best practice guidelines for public sector auditors.
- A number of the conventions and standards for combatting corruption include provisions and clauses relating to external audit.

National context

In the course of sweeping decentralisation reforms, local budgets are significantly growing, but the external audit of local public authorities remains underregulated. As a result, there is an increasing number of educational initiatives that empower citizens and teach local authorities to properly develop, implement and control public budgets.¹²³

National legislation

The Chapter V of the Budget Code of Ukraine sets rules on the control and audit of public finances. In line with the Article 110 of the Code and Article 15 of the Law No. 576 "On Accounting Chamber",¹²⁴ the Accounting Chamber of Ukraine (ACU) provides financial audit of the money transferred between the state and local budgets. The ACU defines the equity, lawfulness and effectiveness of such transfers between administrators and recipients of public funds.

While the ACU acts on behalf of the Parliament, the State Audit Service of Ukraine,¹²⁵ the State Treasury of Ukraine¹²⁶ and local finance authorities perform financial control on behalf of the executive bodies (Articles 111-113 of the Budget Code). They control the compliance of local public authorities with budget legislation. The co-ordination of these institutions is poorly regulated.

The violation of the budget legislation (all forms of violation are listed in Article 116 of the Budget Code) leads to administrative (Article 164-12 of the Administrative Code)¹²⁷ or criminal (Articles 210-211 of the Criminal Code)¹²⁸ liability.

National guidelines

As part of an assessment of fiscal risks associated with local governments, the International Monetary Fund (IMF) recommends local authorities roll out the internal audit function to all budget entities: «international experience suggests that seeking to strengthen the internal control framework within budgetary institutions — where managers are given greater flexibility but in an environment of robust transparency and accountability — is the best solution to promoting good public financial management outcomes».¹²⁹

According to the IMF, the key elements of a strong and modern internal control regime are:

- Enhanced flexibility for managers in executing their budgets;
- A shift away from control over inputs toward attainment of outcomes;
- A clear legal requirement for the senior managers in budgetary institutions to establish a sound internal control regime;
- Strengthened reporting regime, requiring agencies to produce a publicly-released annual report with Annual Financial Statements;
- External audit of the annual reports of all agencies.

Examples of best practice

Open local budgets and the engagement of civil society in the audit process are useful practices to overcome some limitations of external audit.

An innovative example of such approach is the initiative for a comprehensive external public audit of the Okhtyrka City Council.¹³⁰ The local public authorities and the Civic Council of Okhtyrka (Sumy region) agreed upon the following principles of the external audit:

- The Civic Council can initiate external audit of all public finance spheres and local authorities are obliged to consider the results;
- The auditors are appointed by the Civic Council, considering their professional qualifications;

- The results of the public audit must be published in the media.

Such initiative of local public authorities helps to draw on the skills and experience of citizens for the delivery of more effective public services.

Another example of the combination of public and state audit is given in the project 'Effective and fair local budgets' in Mykolaiv.¹³¹ The City Council closely collaborates with civil society on improving the effectiveness of the local budget, based on the results of a public audit.

4.5. CODE OF CONDUCT

A code of conduct sets out specific standards of professional behaviour expected in a host of situations and provides public officials with guidance for handling them. In addition, codes of conduct bring in transparency and public accountability in governmental operations.

Codes of conduct are often confused with codes of ethics, which establish basic principles to which public servants must abide, such as integrity, selflessness and openness, among others. A code of conduct applies and implements the code of ethics to the particular circumstances of an institution.

Well-designed codes of conduct and ethics will help meet the growing expectations from the public, business leaders and civil society, and places an onus on governments to ensure high ethical standards amongst public officials and elected representatives. As such, they can support the development of trust between the public and government institutions and officials.

International standards

- The **Council of Europe's Recommendation on Codes of Conduct for Public Officials** and the **European Code of Conduct for the political integrity of local and regional elected representatives**¹³² are the reference texts for local and regional authorities in Europe for ensuring political integrity.
- This **OECD paper on Implementing Effective Ethics Standards in Government and the Civil Service**¹³³ provides practical mechanisms for institutionalising high standards of ethical integrity for elected officials and civil servants.
- The **Council of Europe's Abridged Handbook on Public Ethics at Local Level**¹³⁴ provides a high-level overview of good practice in public ethics.

National context

The importance of codes of ethics and conduct for public officials and elected representatives is widely highlighted in the national legislative framework and strongly supported in the work of civil society. For instance, creating a trustworthy public service

is one of the objectives of the National Anti-Corruption Strategy 2014-2017.¹³⁵ Article 37 of the Law No. 1700-VII “On Prevention of Corruption” stipulates that local public authorities should elaborate and implement codes of ethical conduct in different fields of the public administration.¹³⁶ Thus, the introduction of the code of ethical conduct for public officials is becoming an increasingly common practice.

National legislation

The Law No. 1700-VII “On Prevention of Corruption” (Section VI, Articles 37-44) provides rules for the ethical conduct of public servants and state officials.¹³⁷ These rules include the respect of the rule of law and ethical norms, priority of the public interests, political neutrality for public servants, impartiality, competence and effectiveness, and abstaining from implementing unlawful decisions. The National Agency on Corruption Prevention (NACP) monitors and controls its implementation, and provides clarification and guidance on the rules of ethical conduct and prevention of conflict of interests (Article 11).

National guidelines


The National Agency of Ukraine on Civil Service provides “General Rules of Ethical Conduct for Civil Servants and Local Government Officials”.¹³⁸ The guidelines cover four blocs: general duties of civil servants and local authorities; use of official position; use of state resources; exchange of information and obligation to provide access to public information. Every new public official must be informed about the rules of ethical conduct. Moreover, their compliance with these rules is assessed in an annual evaluation.

Within the project ‘Transparent cities’, the NGO Transparency International Ukraine provides guidelines for the 100 largest cities in Ukraine, based on the assessment of each city in the fields of transparency and accountability.¹³⁹ The assessment methodology used to evaluate the degree of professional ethics in each of the local governments examines:¹⁴⁰

- Availability of three different codes of ethical conduct: for elected members of the city council, for public servants, and for employees of the entities that are fully or partially funded by public budget;
- Provision of mechanisms to report unethical conduct of public officials.

Examples of best practice

Creating and introducing a code of ethics was one of the priorities of the project ‘Local initiatives on ethical governance and transparency’, implemented by Netechyntsi and Slavutysh communities.¹⁴¹ In the course of the project, the small community of Netechyntsi (Khmelnitsky region) elaborated a code of ethics based on public discussion with the local community. The experience of Netechyntsi was applied as a best practice in the neighbouring communities.



A unique example of good practice comes from the city of Slavutych (Kyiv region). Although this city had adopted in 2007 the “Code of ethics, honour, good faith, fair and effective governance of the Slavutych territorial community”, it was amended in 2017 to take into account citizens’ demands. The text of the former code of ethics was updated in the course of several public consultations facilitated by the Community Initiatives Support Office. This Support Office was created as part of the project as a permanent mechanism for monitoring the implementation of ethical standards, and as an open platform for discussion between local authorities and the community.

CITIZEN PARTICIPATION

5.1. COMPLAINTS MECHANISMS

Complaints mechanisms allow citizens to provide feedback to public authorities on the standards of services they receive. They provide an important accountability mechanism which allow civil servants and elected officials to identify where public services are being delivered ineffectively or inefficiently. When such mechanisms deal with complaints quickly, they can help to create the conditions for increased trust. If used proactively, complaints mechanisms can also help governments to identify new ideas and increase citizen participation.

International standards

There are no specific international standards for complaints mechanisms relating to public services. However, there are a number of civil society guidelines and handbooks which are helpful. See for example:

- The **Danish Refugee Council's**¹⁴² handbook describes how to setup and manage a complaints mechanism.
- The **World Vision** overview of the tools and mechanisms used by development agencies to receive complaints.¹⁴³
- The **Transparency International** note on good practice in establishing community complaints mechanisms.¹⁴⁴

National context

Complaints mechanisms fall under the right of citizens to address public authorities, which is entrenched in Article 40 of the Constitution of Ukraine.¹⁴⁵ Since July 2015, when the amendments to the Law "On Citizens' Appeal"¹⁴⁶ allowed citizens to submit petitions electronically, several local authorities have created e-platforms for citizens' appeals, which boosted citizen participation.

National legislation

Law No. 393 "On Citizens' Appeal"¹⁴⁷ defines (Article 3, paragraph 4) and regulates (Articles 16-19) the application of complaints mechanisms. Both national and local authorities are obliged to objectively consider citizens' complaints, to compensate citizens for any breach of their rights and to provide justification for any decision taken

in the examination of complaints. The violation of the abovementioned Law leads to the disciplinary, administrative or criminal liability of the public officials (Articles 24-25).

National guidelines

The authors of the manual *Tools of e-democracy in Ukrainian cities*¹⁴⁸ encourage local authorities to combine online and offline citizen complaint mechanisms. While the online form simplifies the complaints procedure and is mostly addressed to young people, the possibility to submit a complaint offline engages older citizens, or those who are sceptical towards new technologies. The creation of special citizen complaint centres, and the good accessibility and ease of the complaint process are highlighted as good practices.

Example of best practice

The Odessa City Council created the citizen complaint centre '1535' (1535.odessa.ua). The website of the centre provides a well-structured overview of the citizen complaints and the response of the public authority. The interactive map visualisation allows seeing where the subject of the complaint is located. All complaints are categorised in three colours (*new* – red, *in progress* – yellow, and *processed* – green) and 12 themes, such as roads, parks, heating, water supply, etc. A special section of the website called "before and after" shows photos that compare the subject of the citizens' complaint (in most cases related to infrastructure) before and after being repaired or resolved.¹⁴⁹ Such visualisation makes citizens aware of the efficiency and effectiveness of their local government, increases trust and encourages citizen participation.

5.2. OPEN POLICY MAKING

Open policy making is a broad term describing policy development which is transparent and participatory. It describes a way of making policy and decisions which draw on the latest analytical tools and are interactive in nature. There is no one-way to do open policy making: different policy decisions will need different approaches.

International standards

Although there are no specific open policy making standards, the following provide a useful starting point:

- The **Council of Europe's Guidelines for civil participation in political decision making**¹⁵⁰ sets out standards for engaging with citizens and civil society.
- The **OECD's Guiding Principles**¹⁵¹ support the development of a culture of openness.

- The **OECD's Focus on Citizens: Public Engagement for Better Policy and Services**¹⁵² explores how to put open policy making into practice.
- The **OECD's Observatory of Public Sector Innovation**¹⁵³ lists useful toolkits and resources.
- The **Open Government Partnerships Guide**¹⁵⁴ **and Toolbox**¹⁵⁵ provide an extensive range of support.
- Both **Australia**¹⁵⁶ **and the UK**¹⁵⁷ have both produced useful **toolkits**.

National context

Open policy making became a regular practice in Ukraine after the Revolution of 2014. Every governmental institution is legally obliged to consult legislative initiatives with civil society. Up until 1 July 2017, 21 regional administrations have created civil councils¹⁵⁸ and most city councils have civic advisory boards. Additionally, executive authorities place their legislative initiatives under development on the Government's website 'Civil society and government', (civic.kmu.gov.ua/) where any citizen can discuss them.

E-governance and e-democracy massively boost open policy making in Ukraine. While in 2015 79% of Ukrainians had never heard the term "electronic democracy" and 14% understood its meaning, the situation changed significantly within two years.¹⁵⁹ Multiple electronic platforms, such as Open City (www.opencity.in.ua) and *Rozumne misto* (rozumnemisto.org), brought open policy making to a new level by providing diverse tools for interaction between citizens and public authorities.

National legislation

Several laws in Ukraine contain provisions on open policy making, such as the Law No. 2862-VI "On Social Dialogue",¹⁶⁰ the Law No. 1160 "On Principles of Public Regulatory Policy of Economic Activity",¹⁶¹ and the Cabinet of Ministers Resolution No. 996 "On Ensuring Public Participation in the Formulation and Implementation of Public Policy".¹⁶² Furthermore, a most relevant draft law "On public consultations" is currently under development.¹⁶³

The above Resolution No. 996 regulates general procedures for public consultations, policy expertise and the involvement of stakeholders in advisory bodies. The resolution is not compulsory for local governments, and therefore they can choose whether or not to transpose such regulations into their by-laws.

During the law-drafting process, local public authorities must consider relevant expertise especially in three fields: regulatory impact assessment, urban development and environment expertise. For discussions open to the public, local executive bodies are obliged to publish draft acts on their websites. Besides, local public authorities approve annual plans for public consultations, considering proposals from civil society organisations. In case of misconduct by public authorities, citizens can submit

complaints to the Ombudsman's office or the Cabinet of Ministers. Those authorities that fail to comply with the legal provisions and hinder open policy making are subject to administrative liability.

National guidelines

Within the project 'Transparent cities', the NGO Transparency International Ukraine provides guidelines for the 100 largest cities in Ukraine, based on an individual assessment for each city.¹⁶⁴ The guidelines for open policy making encourage city councils to allow citizens to participate in their consultation and commission meetings; and to publish draft bills 20 working days before being discussed and the full agendas of the sessions 10 days ahead of the plenary session.

The manual *Tools of e-democracy in Ukrainian cities*¹⁶⁵ provides an overview of the available electronic tools, which local public authorities can use to enhance their open policy making process. The platform Open City¹⁶⁶ provides cities with tools that enable citizens to report local problems. In addition, the advantage of the e-platform *Rozumne misto*¹⁶⁷ is its variety of different instruments to foster e-participation, which can be flexibly adapted to the demands and requirements of each city. Diverse e-services include tools for open budgeting, public procurement, surveys, petitions, etc. The implementation of such e-participation tools improves the communication between public authorities and citizens and provides mechanisms for e-democracy.

Examples of best practice

One of the initiatives carried out in Netchyntsi (Khmelnitsky region) as part of the project 'Local initiatives on ethical governance and transparency'¹⁶⁸ provides a clear example of good practice in initiating an open policy-making process at the village council level. The first outcome of the project was the Code of Ethics, adopted after public discussion. The process of active public consultations provided the community with an experience that can be shared with neighbouring villages. The second outcome of the project was the creation of the Village Council's website, which improves residents' access to information about the Council's work.¹⁶⁹ The website serves as a source of information about the Council's decisions and provides an electronic form for public appeals and information requests.

Large cities are increasingly implementing tools of e-democracy for successful open policy making. For instance, Lutsk (Volyn region) was the first city that introduced in 2013 the platform 'Open City' to solve local problems jointly with citizens.

5.3. PUBLIC CONSULTATION

Public consultation is a formal, often legally required, process for citizens and other stakeholders to give their views at key stages of the policy process. It can be both online and offline, or a mixture of both. Its main goals are to improve efficiency, transparency and public involvement in important decisions. Done in a timely and effective way, public consultation will increase the quality of decision making, improve compliance, reduce enforcement costs and support greater public trust in decision making.

International standards

Although there are no specific standards for implementing public consultations, the following provide a useful starting point:

- The **OECD Background Document on Public Consultation**¹⁷⁰ defines consultation and provides a summary of consultation tools.
- The **Council of Europe's Guidelines for civil participation in political decision making**¹⁷¹ set out the different types of civil participation in decision making.
- The **Council of Europe's Recommendation Rec(2001)19 on the participation of citizens in local public life**.¹⁷²

National context

The practice of public consultations evolved significantly as part of the Ukraine's Open Government Partnership action plans.¹⁷³ In line with the recommendations of the European Parliament Monitoring Mission to Ukraine, the online platforms for public consultation of the Parliament (itd.rada.gov.ua)¹⁷⁴ and Government (civic.kmu.gov.ua)¹⁷⁵ of Ukraine were created and duly incorporated into the national legislation. At the local level, the Kyiv City Council regularly uses public consultations to involve citizens in the decision-making process.¹⁷⁶

National legislation

The legal basis for public consultations is evolving. In fact, the draft Law "On public consultations",¹⁷⁷ which aims to provide a legally-binding procedure for public consultations, is currently being developed.¹⁷⁸

General procedures for public consultation are set out in two Regulations of the Cabinet of Ministers of Ukraine: No. 996 "On the Procedure for Consulting the General Public on Establishing and Implementing the Public Policy"¹⁷⁹ and No. 976 "On the Procedure of Civic Expertise of the Activities of the Executive Bodies",¹⁸⁰ with essential amendments made on both regulations by the Regulation No. 234 of 8 April 2015.¹⁸¹

Public consultations are announced and conducted by the units responsible for drafting acts. They can take place in form of public discussions, e-consultations and surveys, as indicated in the paragraph 11 of the Regulation No. 996. The main bodies that are involved in the public consultation with regional executive authorities are bodies of local self-government and civil councils. Paragraph 12 of the same regulation stipulates that regional administrations are obliged to conduct public consultations on a number of issues and to take the propositions into consideration.

National guidelines

Based on the Council of Europe analysis of civil participation in decision making, it is recommended that local public authorities conduct public consultations in the form of online consultations, expert working groups and public hearings on a regular basis, in order to give citizens, civil society organisations, and other stakeholders a sense of ownership in decision making.¹⁸² Public authorities have to ensure that the participants of the public consultations have at least 30 days to provide their comments at each stage of the review process. As a result, public consultations also enhance impact assessment exercises, and improve the quality and sustainability of the resulting decisions and laws.

Example of best practice

The project 'Establishment of the Community Initiative Support Office in Slavutyč'¹⁸³ presents an example of good practice for the development of public consultation mechanisms between local authorities and citizens with the aim of implementing ethical norms and encourage citizen participation. The Community Initiative Support Office is an open platform for scheduled and unscheduled meetings of local authorities (government employees, town councillors, etc.) and the civil society (non-governmental organisations, local activists, etc.). The Office contributes to shaping innovative ideas for improving the life of the community and making constructive decisions with regard to the implementation of ethical standards. Moreover, it opens up additional possibilities for enhancing citizen participation and increasing public accountability.

5.4. PARTICIPATORY BUDGETING

Participatory budgeting began in Porto Alegre, Brazil in the late 1980s and has spread worldwide. It provides a way for community members to have a direct say in how public money should be spent. It creates opportunities for engaging, educating, and empowering citizens. It can also promote transparency, which in turn can help reduce inefficiency and corruption.

International standards

Although there are no specific standards for implementing participatory budgeting, the following provide a useful starting point:

- The **OECD Policy Brief No. 22**¹⁸⁴ provides a series of policy recommendations for how key stakeholders can contribute to successful participatory budgeting.
- The **World Bank's book *Participatory Budgeting***¹⁸⁵ provides an overview of the underlying principles, analyses current practice and includes seven in-depth case studies.
- The **UN Habitat's 72 Frequently Asked Questions about Participatory Budgeting**¹⁸⁶ explores how to implement participatory budgeting.
- The **UK's Participatory Budgeting Unit has a useful list of resources and toolkits.**¹⁸⁷
- The **Subnational Open Budget Survey Questionnaire**¹⁸⁸ of the International Budget Partnership sets out a range of metrics for measuring the openness of local government budgets.
- The **Principles of Public Participation in Fiscal Policy**¹⁸⁹ of the Global Initiative for Fiscal Transparency.

National context

Chernihiv, Cherkasy and Poltava introduced participatory budgeting in 2015 for the first time in Ukraine. Shortly after, several other cities introduced the same practice. The newest form of participatory budgeting suggests that city councils allocate a certain amount of the local budget to citizens. Other ways of citizen participation in budgeting include open plenary sessions on budgeting, citizen written suggestions and requests on development and use of the local budget, public monitoring and effectiveness assessment of the budget spending.

National legislation

There is no specific legal regulation for participatory budgeting. The Law No. 280/97-VR "On Local Self-government"¹⁹⁰ allows citizens to arrange public hearings where they can discuss urgent issues and submit their propositions to the public authorities (Article 13). Article 9 of the said Law allows citizens to submit their own initiatives to the city council. Article 26, paragraph 20, states that, at plenary sessions of a city, town or village council, the council can provide self-organised citizens with specific powers of self-governance and transfer funds for the realisation of their initiatives. In practice, each city, town or village that introduces participatory budgeting provides the necessary legal regulations for the subsequent implementation of projects.

National guidelines

The analytical report *Participatory budgeting*¹⁹¹ provides recommendations for the nine stages of participatory budgeting:

1. Discussion of the idea to introduce participatory budgeting, with the participation of local civil society;
2. Elaboration of the main regulations and principles of participatory budgeting in a special working group;
3. Organisation of an awareness-raising and educational campaign;
4. Preparation and submission of projects;
5. Facilitate public discussions about the projects, in order to create a space for open discussion of the general problems in the city or village;
6. Review of the applications;
7. Selection of projects by means of an open and public voting procedure;
8. Monitoring the implementation of the projects;
9. Evaluation of the whole process.

The guidelines for the implementation of participatory budgeting in the city of Sambir¹⁹² can be useful for other pilot initiatives in Ukrainian cities. The recommendations follow a problem-solving strategy:

- Transparency during the entire process of participatory budgeting increases citizens' trust;
- Website, face-to-face meetings with citizens, press-conferences and creative communication channels increase the active participation of citizens;
- Creating a special unit, setting deadlines and a reporting system for all stages of the process can ensure qualitative work of public servants;
- Introducing rules for discussions and decision making in advance, along with a realistic time schedule, help to overcome the challenge of lengthy discussions between participants.

Examples of best practice

With the support of the 'Local Initiatives on Ethical Governance and Transparency' scheme,¹⁹³ the town of Nemishaieve (Kyiv region) implemented participatory budgeting. The Town Council allocated UAH 200 000 (€6 470) to the call for proposals "Participatory Budget". The preparation of the applications was accompanied by training courses on intergenerational communication and on writing project proposals. These served as a basis for the development of citizens' own initiatives to solve urgent town problems with funding from the town's budget. The competition committee, which included representatives of the Youth Parliament, the Council of Elders, activists and experts, reviewed all proposals, and the community selected seven projects, which will be fully implemented by the end of 2017.

Such examples of participatory budgeting allow local authorities to better identify and address those problems that are most important to citizens. Moreover, the citizens are becoming increasingly engaged in the administration of public funds, developing a sense of ownership and responsibility. In the end, the dialogue between citizens and local authorities in course of the implementation of participatory budgeting promotes trust and citizen participation.

5.5. PUBLIC PETITIONS

Public petitions enable citizens to raise issues with public authorities. The number of signatures collected can indicate the level of support for the issues being raised. They aim either to raise the profile of the issue, or also to demand that specific actions are taken. Petitions are often inspired by civil society activity, but they are increasingly submitted through official, often online, platforms whereby petitions with a defined number of signatures will receive an official response.

International standards

- The **OECD's Promise and Problems of e-Democracy**¹⁹⁴ provides a section on the value and challenges of establishing an online petitioning platform.

National context

Public petitions fall under the right of the citizens to address public authorities, which is entrenched in Article 40 of the Constitution of Ukraine.¹⁹⁵ Since July 2015, it is possible to submit electronic petitions, which significantly boosted the use of the public petitions mechanism among citizens.¹⁹⁶

National legislation

The Law No. 393 "On Citizens' Appeal"¹⁹⁷ defines and regulates the procedures for public petitions. Electronic petition is regarded as a special form of collective citizens' appeal (Article 23-1). Local authorities are legally obliged to provide the means for citizens to participate in public petitions. Access to the e-petition systems must be free of charge and protected against the automatic completion of forms.

The number of required signatures in any petition to the local authorities depends on the size of the community. The numbers vary between 50 signatures for less than 1 000 residents up to 1 000 signatures for over 1 million residents, and they are established by the statute of the community. If a petition reached the necessary number of signatures, the city, town or village council needs to convene a plenary session to review the petition as stipulated by the Law No. 280/97-VR "On Local Self-Government" in its Article 46, paragraph 8.¹⁹⁸

National guidelines

The Association for Community Self-organisation Assistance of Ukraine provides the following recommendations to local public authorities:¹⁹⁹

- Introduce the necessary amendments in the statutes in order to provide citizens with the possibility to submit e-petitions and to define the necessary number of signatures;
- Launch your own only system for public petitions or use the state platform for the e-petitions (<http://e-dem.in.ua/>);
- Review the petition formulas and ensure a reasonable number of necessary signatures, especially if the current threshold is too high, in order to encourage citizen participation;
- Ensure that all deadlines and requirements for the review of the petition are met;
- Publish not only the answers, but also the review of the whole process of the petition;
- Conduct training courses that will allow special units and public servants who are responsible for the review of the petitions to identify and prevent the publication of prohibited content (e.g. issues violating constitutional rights, war propaganda, incitement to violence, etc.);
- Provide practical recommendations for the citizens on e-petition mechanisms and procedures.

Example of best practice

Kyiv City Council developed effective mechanisms for the successful introduction and implementation of e-petitions.²⁰⁰ Within two years, the city carried out five petitions.²⁰¹ When a public petition is successful, the mayor appoints a person, who is responsible for its implementation. Together with the petition's author, they prepare a roadmap for the implementation of the petition and provide monthly reports about the process. On the website for e-petitions of the Kyiv City Council, the entire chronology of the process of implementation of a petition is published (including information on who is responsible for certain assignments, what decisions have been take, etc.). Such transparent communication dissuades citizens from maliciously discrediting public petitions processes, builds trust and fosters citizen participation in local affairs.

CONCLUSION

Local government plays a critical role for the well-being of citizens, delivering services, and providing the first point of contact between people and public administration. The proximity with citizens can help ensure that public authorities and services are truly responsive and accountable, improving people's lives and their trust and confidence in local institutions. However, the very qualities that make local and regional governments so important to citizens can also make it more prone to corruption.

Local governments in Eastern Europe are taking important strides towards more open and inclusive decision-making. As well as being important qualities of local democracy, transparency and civic participation can be tools to help deliver effective public services, combat and prevent corruption, and build citizens' trust in government.

The mechanisms outlined in this handbook present a variety of ways in which local and regional authorities can prevent corruption, reduce its risks, and develop effective and accountable institutions at all levels. Other reforms, such as protection of whistleblowers and support for independent media and civil society, are also critical to building open government, public ethics and accountability. The most effective approach to rooting out corruption is often through reporting by public officials, the media and civil society, who need to feel confident that they will be listened to and protected.

The Congress of Local and Regional Authorities of the Council of Europe is committed to supporting local governments in their efforts to improve the quality of local democracy, prevent corruption, increase ethics and public accountability, and promote transparency and citizen participation.

ENDNOTES

¹ For the purpose of this publication, the term “public officials” refers to elected representatives, public authorities and civil servants (either at local, regional or national level) who hold a legislative, administrative or judicial office, and to any person exercising a public function, including for a public agency or a state-owned enterprise.

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⁹³ <http://zakon2.rada.gov.ua/laws/show/319-19>

⁹⁴ Based on the Law on access to public information, on 21 October 2015 the Government of Ukraine issued the Act No. 835 “About Information that must be published as open data” (available at: <http://www.kmu.gov.ua/control/uk/cardnpd?docid=248573101>). This Act entrusted the State Agency for E-Governance to ensure the functioning of the single state website for open data: <http://data.gov.ua>

⁹⁵ <http://www.dknii.gov.ua/polojennya>

⁹⁶ The Law No. 183 “On Open use of Public Funds” (available at: <http://zakon3.rada.gov.ua/laws/show/183-19>) imposed the online publishing of the information about state and local budgets transactions.

⁹⁷ The electronic system ProZorro became known worldwide as an example of public e-procurement system.

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¹⁰⁴ The project is implemented by TI Ukraine, TI Slovakia and the Institute of Political Education of Ukraine, with the support of the United Nations Democracy Fund. For further information, see: <https://transparentcities.in.ua/about/>

¹⁰⁵ The project was supported by the Congress of Local and Regional Authorities of the Council of Europe, as part of the thematic programme ‘Strengthening institutional frameworks for local governance’, within the framework of the Council of Europe / European Union Partnership for Good Governance (2015-2017) in the Eastern Partnership countries.

¹⁰⁶ <http://www.netechyntsi.org/>

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Transparency and citizen participation are key tools in the development of good local governance. Both help create the conditions for citizens to understand and evaluate the decisions which the government is taking on their behalf, as well as make their own needs and views known to government as it takes those decisions.

Effective transparency and participation can help to drive out corruption and government malpractice. They are also more positive tools as they help produce the conditions for increased trust. Finally, they also help governments to draw on the skills and experience of citizens to enable better decision making and the delivery of more effective public services.

To that effect, this handbook aims to support local and regional authorities in their efforts to make communities more open, ethical and citizen-oriented. It provides practical guidance on transparency policies and citizen participation mechanisms, includes a concise assessment of the most prevalent corruption risks in the country and incorporates actual examples of best practices.

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