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**“Fight against Corruption and Fostering Good Governance/Fight against Money-Laundering”  
(EaP-2)**

Activity: PGG-Ukraine (September 2017)

**Expert Analysis on:**

- Draft Law “On amendments to certain legislative acts concerning public information openness for the society the financing of the activities of civil society organisations and the use of international technical assistance” (No. 6674);
- Draft Law “On amendments to the Tax Code of Ukraine for providing public information on financing of the activities of civil society organisations and the use of international technical assistance” (No. 6675)

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## 1 EXECUTIVE SUMMARY

This analysis is prepared following a request for an opinion submitted (18 August 2017) to the Council of Europe from the Chair of Ukraine's "Parliamentary Committee on Corruption Prevention and Counteraction". The request concerns the following two Draft Laws:

- Draft Law "On amendments to certain legislative acts concerning public information openness for the society the financing of the activities of civil society organisations and the use of international technical assistance" (No. 6674);
- Draft Law "On amendments to the Tax Code of Ukraine for providing public information on financing of the activities of civil society organisations and the use of international technical assistance" (No. 6675).

This paper provides an overview of Draft Laws No. 6674 and No. 6675, and takes into consideration analyses and statements that were issued by several organisations with regard to the above-mentioned draft laws.

Following is the list of opinions and statements considered:

- 1) Statement of the Human Rights Agenda issued on September 7, 2017 demanding the President of Ukraine to stop the crack-down on non-governmental organizations;
- 2) Statement by Human Rights Watch "Ukraine: Drop Bills That Hamper Independent Groups" issued on September 6, 2017;
- 3) NGO Forum Letter to the President of Ukraine concerning the Draft Laws, issued on September 1, 2017;
- 4) Analysis of the International Center for Not-for-Profit Law on the Draft Laws issued on July 17, 2017;
- 5) Analysis of the Ukrainian Center of Independent Political Research on the Draft Laws, issued on July 13, 2017;
- 6) Joint Statement of the Commissioner for Human Rights, the Ukrainian Helsinki Human Rights Union and the Kharkiv Human Rights Protection Group on Draft Laws issued on July 13, 2017;
- 7) Statement by Article 19 "Ukraine: Drop Government Proposals that restrict NGO activity" issued on July 13, 2017;
- 8) Statement by ANTAC "Bills on Tax Reporting of the NGOs: Our Proposals Taken Into Account" issued on July 12, 2017;
- 9) Statement by Freedom House "Ukraine: Government Proposals on NGOs Would Curtail Their Work", issued on July 11, 2017.

The primary focus of this expert analysis is to benchmark provisions of the Draft Laws No. 6674 and No. 6675 against the Council of Europe (CoE) and international standards, including GRECO recommendations and human rights aspects. Particular attention is paid to the CoE Recommendation CM/Rec(2007)14 on the legal status of non-governmental organizations in Europe<sup>1</sup>; CoE Recommendation CM/Rec(2017)2 on the legal regulation of lobbying activities in the context of public decision making<sup>2</sup>; Fundamental principles on the status of non-

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<sup>1</sup> Council of Europe Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe

<sup>2</sup> Council of Europe Recommendation CM/Rec(2017)2 of the Committee of Ministers to member states on the legal regulation of lobbying activities in the context of public decision making

governmental organizations in Europe (2002)<sup>3</sup>; and OSCE/ODIHR and Venice Commission guidelines on freedom of association (2015)<sup>4</sup>.

The paper discusses three main concerns already raised in previous analysis, namely the question of the presence or absence of public interest to adopt these draft laws; the burdensome nature of the reporting requirements that are established by these laws; and concerns regarding data privacy of managers of NGOs, donors and beneficiaries of NGO activities, and NGO contractors. The last section highlights the need for public consultations and NGO involvement when drafting legislation concerning their status or financing.

Based on the findings of this overall analysis and advisory of specific technical issues as enclosed, the following general recommendations regarding the Draft Laws No. 6674 and No. 6675 are made:

**Recommendation 1:** The Ukrainian authorities should not introduce more restrictive reporting requirements to non-governmental organisations compared to businesses or other legal entities and must guarantee the NGOs the same rights as those enjoyed as such by other legal persons. When, based on public interest, new reporting requirements are being introduced, initiators must bring evidence that these requirements pass the tests of “necessary in democratic society” or “proportionate to their legitimate aim,” as failing these tests will restrict the right of freedom of association.<sup>5</sup> When introducing rules of disclosure for specific types of activities, such as lobbying, this should go in line with the CoE Recommendation CM/Rec(2017)2, be proportionate to the importance of the subject matter of the public decision-making process and reflect constitutional guarantees.<sup>6</sup>

**Recommendation 2:** The Ukrainian authorities are invited to involve (further) NGOs, in any legislative processes, especially those that would concern their activity and status. That is, in order to be in line with CoE Recommendation CM/Rec(2007)14<sup>7</sup>, when drafting legislation concerning non-governmental organisations, it is essential that the NGOs are involved in this process; and Fundamental Principles on the Status of NGOs in Europe, where self-regulation should be promoted when it comes to ensuring ethical, responsible conduct, rather than imposing new legislation unilaterally<sup>8</sup>.

**Recommendation 3:** The Ukrainian authorities will be expected to implement and look at possibilities of addressing relevant GRECO recommendation[s]<sup>9</sup>, whereby the authorities need

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<sup>3</sup> Fundamental Principles on the Status of Non-governmental Organizations in Europe

<sup>4</sup> OSCE/ODIHR and Venice Commission 2015. Guidelines on Freedom of Association

<sup>5</sup> OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association, Principle 10: “Any restriction on the right to freedom of association and on the rights of associations, including sanctions, must be necessary in a democratic society and, thus, proportional to their legitimate aim.”

<sup>6</sup> CoE Recommendation CM/Rec(2017)2, paragraph 6: “The rules on disclosure should be proportionate to the importance of the subject matter of the public decision-making process and should reflect constitutional guarantees.”

<sup>7</sup> CoE Recommendation CM/Rec(2007)14, paragraph 77: “NGOs should be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation.”

<sup>8</sup> Explanatory Memorandum to the Fundamental Principles on the Status of NGOs in Europe, paragraph 70: “The best means of ensuring ethical, responsible conduct by NGOs is to promote self-regulation in this sector at the national and international levels.”

<sup>9</sup> GRECO Fourth Evaluation round report on Ukraine, GrecoEval4Rep(2016)9, Transparency of the legislative process, paragraphs 56-64.

to ensure that legislative proposals are processed with adequate levels of transparency and consultation, which safeguard inclusiveness in the work of parliamentary committees.

## 2 INTRODUCTION

On 23 March 2017, Verkhovna Rada (the Parliament) of Ukraine adopted the Draft Law “On Making Amendments to Article 3 of the Law of Ukraine “On Prevention of Corruption” (No. 6172). Under this Law, anti-corruption activists have become subject to financial control requirements, including the obligation to file e-declarations that were designed for public officials. Law No. 6172 caused public uproar and concern among representatives of international community<sup>10</sup>.

On 10 July 2017, the following two Draft Laws and accompanying Explanatory Notes were published on Verkhovna Rada’s website:

- Draft Law “On amendments to certain legislative acts concerning public information openness for the society the financing of the activities of civil society organisations and the use of international technical assistance”, registered under **No. 6674**;
- Draft Law “On amendments to the Tax Code of Ukraine for providing public information on financing of the activities of civil society organisations and the use of international technical assistance”, registered under **No. 6675**.

According to the Explanatory Notes to the Draft Laws, adoption of the Laws will help bring provisions of the current legislation in line with the international standards and good practices of other countries. Explanatory Notes in particular refer to the Fundamental Principles on the Status of Non-governmental Organizations in Europe (“Fundamental Principles”)<sup>11</sup>.

The Draft Laws propose replacing an obligation to declare assets by anti-corruptions activists with an obligation of the respective NGOs to publicise annual accounting reports. In line with the March 2017 provisions, those failing to file asset declarations could face a fine or up to two years of imprisonment. On the other hand, the new Draft Laws aim at introducing a complex new form of financial reporting for non-governmental organisations and freelancers who work with them, and imposing heavy sanctions for those failing to comply.

Although put for inclusion none of the two Draft Laws was part of the agenda of the 11-14 July 2017 plenary week of the Parliament. Both drafts failed to obtain the necessary 226 votes, for inclusion in the agenda, the Draft Law No. 6674 was supported by 209 and Draft Law No. 6675 by 183 votes.

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<sup>10</sup> Letter by CoE Human Rights Commissioner to the Deputy Head of the Administration of the President of Ukraine (Ref: CommHR/NM/sf 022-2017; 2 May 2017).

<sup>11</sup> Fundamental Principles on the Status of Non-governmental Organizations in Europe.

### 3 OVERVIEW OF DRAFT LAWS NO. 6674 AND NO. 6675

The Draft Laws No. 6674 and No. 6675 propose that non-governmental organisations with a total annual income that exceeds 300 subsistence minimums (approximately €15,250) in a reporting year be subject to stricter reporting requirements, which include disclosing following information:

- 1) the personal composition of their governing bodies;
- 2) the number of members, the amount of membership fees established for the reporting year, and their total funds received in the organisation's bank account;
- 3) the total income obtained from natural persons, enterprises, institutions and organisations, including through the implementation of international technical assistance;
- 4) the list of sources of funding which contributed with more than 50 subsistence minimums (approximately €2,500) to the organisation;
- 5) the number of full-time and part-time employees and the total expenditures on their labour remuneration;
- 6) the list of ten employees who were paid the largest amounts of wages in the reporting year;
- 7) the total amount of funds used to pay third parties, including individuals and legal entities, as well as a detailed list of the entities that received payments exceeding 50 subsistence minimums (approximately €2,500); and
- 8) the participation of the public association's executives in the governing bodies of other public associations, as well as in other legal entities under private law.

The Draft Law No. 6675 also proposes that individuals "who have received income from donors of international technical assistance provided in accordance with Ukraine's international treaties shall indicate, in a separate annex to the tax declaration, the amount of such income, showing relevant donors and the amounts of payments made from such income to third parties, with a list of such third parties paid one-off payments in excess of three subsistence minimums (approximately €170)". This means that consultants, experts and contractors receiving income from technical assistance, would need to indicate, among others, the level of revenue and donor from whom it was received; and the amount of payments made to third parties at the expense of this revenue, indicating the list of third parties who received payments exceeding 4,800 Ukrainian hryvnia (UAH) (approximately €150).

This regulation would apply to all individual entrepreneurs who receive funds directly from the donor, i.e. foreign states, governments and authorised foreign agencies, foreign municipalities or international organizations which provide international technical assistance to Ukraine in accordance with international treaties.

Finally, this draft legislation also envisages the exclusion of NGOs from the Ukrainian non-for-profit-registry in the event of failure to comply with the new reporting requirements, which would make NGOs subject to profit taxes.

Several organisations have already conducted legal analyses of the Draft Laws No. 6674 and No. 6675. All the reports analysed for this study are critical of the fact that the proposals impose restrictions, are discriminatory and violate standards and legislation relating to NGO sector. The main remarks in these analyses can be clustered into three major concerns (see Appendix 1. Overview of Concerns regarding Draft Laws No. 6674 and No. 6675 by Organisation and Topic. Overview of concerns regarding Draft Laws No. 6674 and No. 6675 by organisation and topic):

1. **Public interest** – Questioning whether there are legitimate, justified reasons to impose new restrictions on civil society and the divergence between the requirements introduced by these draft laws and the international standards of freedom of association;
2. **Reporting requirements** – Emphasising that the new requirements are burdensome and not equivalent vis-à-vis other economic entities; and
3. **Data privacy** – There is a risk of violation of data protection and privacy laws especially for managers of NGOs, donors, and beneficiaries of NGO activities.

In the next three sections the above-mentioned topics are outlined accordingly. In the last section, the need for public consultations and NGO involvement when drafting new legislation concerning their status or financing is also highlighted.

#### 4 PUBLIC INTEREST

Explanatory Notes to the Draft Laws justify their adoption by referring to “the need to improve the mechanism of ensuring publicity of receiving and using financial and other resources by CSOs.” They refer to paragraph 32 of the Fundamental Principles on the Status of Non-governmental Organizations in Europe (2002):

*“any evaluation of the acceptability of the objectives of an NGO when it seeks legal personality should be well informed and respectful of the notion of political pluralism and must not be driven by prejudices.”*

However, this provision concerns acceptability of the objectives of organisations that seek legal personality status and not NGOs that already have one.

The Explanatory Notes also make reference to paragraph 66 of the Explanatory Memorandum to the Fundamental Principles:

*As regards its activities and financial position, an NGO is accountable to a number of parties, first and foremost its members. It is good practice that it should submit an annual report on its accounts and activities to them. Secondly, an NGO, which has benefited from public support or preferential tax treatment can be expected to account to the community concerning the use made of public funds. Lastly, donors may stipulate by contract that an NGO is required to report on the use made of individual donations.*

This provision, however, does not justify the requirements in the Draft Laws. Explanatory Memorandum to the Fundamental Principles highlights that NGOs are accountable first of all to their own members and only as good practice should submit annual reports. It also notes an expectation (but not an obligation) to account to the community when it comes to the use of public funds. Moreover, it shall be read in conjunction with the paragraph 70 of the Explanatory Memorandum to the Fundamental Principles:

*[t]he best means of ensuring ethical, responsible conduct by NGOs is to promote self-regulation in this sector at the national and international levels. Responsible NGOs are increasingly conscious of the fact that the sector’s success depends to a large extent on public opinion concerning their efficiency and ethics” [emphasis added].*

As ICNL analysis concludes “there is an obvious difference between a legal requirement and a measure voluntarily self-imposed by a CSO, with the latter, possibly be identified as a proportionate measure to address issues, causing the governmental drafters to propose adoption of the Draft Laws.” According to the State Statistics Service of Ukraine there are 78,331 public organisations operating in Ukraine as of July 1, 2017<sup>12</sup> and many receive annual revenue greater than approximately €15,250, making them subject to reporting requirements under the Draft Laws.

According to the Principle 10: Proportionality of restrictions of the OSCE/ ODIHR and Venice Commission Guidelines on Freedom of Association (2015), any restriction on the right to freedom of association and on the rights of associations, including sanctions, must be necessary in a democratic society and, thus, proportional to their legitimate aim. This

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<sup>12</sup> See [http://www.ukrstat.gov.ua/edrpoj/ukr/EDRPU\\_2017/ks\\_opfg/ks\\_opfg\\_0717.htm](http://www.ukrstat.gov.ua/edrpoj/ukr/EDRPU_2017/ks_opfg/ks_opfg_0717.htm)

principle requires a fair balance between the interests of persons exercising the right to freedom of association, associations and the interests of society as a whole. Moreover, the need for restrictions needs to be carefully weighed and backed up by compelling evidence to ensure that the least intrusive option is always chosen and that restrictions are narrowly construed.

According to the Council of Europe's Recommendation CM/Rec(2017)2 on the legal regulation of lobbying activities in the context of public decision making the rules on disclosure should be proportionate to the importance of the subject matter of the public decision-making process and should reflect constitutional guarantees.

As ICNL analysis rightly states neither the Draft Laws nor the Explanatory Notes provide any evidence of present problems causing damage to the public interest by NGOs (public organisations in particular) not reporting information required by the Draft Laws. Since there is no evidence of existing problems, it is impossible to justify proposed requirements as "necessary in democratic society" or "proportionate to their legitimate aim," failing two tests assessing the permissibility of proposed measures restricting freedom of association.

## 5 REPORTING REQUIREMENTS

According to ICNL analysis the Draft Laws do not provide any justification why public organisations (including those not in the registry of non-profit organizations and therefore not benefiting from special preferences), and not, for example, charitable organisations, foundations shall be subject to the new requirements. The OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association are also clear on this. According to paragraph 225 of the Guidelines, the reporting requirements, where these exist, should not be burdensome and need to be proportionate to the size of the association and the scope of its operations. For this reason, associations should not be required to submit more reports and information than other legal entities, such as businesses. This is also to ensure equality between different sectors. Special reporting, however, is permissible if it is required in exchange for benefits, provided it is within the discretion of the association to decide whether to comply with such reporting requirements or forgo them and forsake any related special benefits, where applicable.

It is revealing that the number of tax reports required from the non-governmental organisations, which these draft laws provide for, significantly exceeds the number of reports required from the business sector. Moreover, even the recipients of budget funds are not required to file such a number of tax reports. Ukrainian NGOs are concerned that the reporting requirements under the Draft Laws are discriminatory to NGOs, compared to other public legal and business entities. Moreover, as identified by the Ukrainian Centre for Independent Political Research (UCIPR), the reporting requirements proposed by Draft Law No. 6675 partially duplicate what is already submitted to the competent authorities in accordance with paragraph 133.4.7 of the Tax Code of Ukraine. In particular, it concerns the report on the use of income (profit) of a non-profit organisation as a part of the annual tax (reporting) period, approved by the Order of the Ministry of Finance of Ukraine dated June 17, 2016 (No. 553).

According to paragraph 7 of the Council of Europe's Recommendation CM/Rec(2007)14 on the Legal status of nongovernmental organizations in Europe "NGOs with legal personality should have the same capacities as are generally enjoyed by other legal persons and should be subject to the administrative, civil and criminal law obligations and sanctions generally applicable to those legal persons." The 2015 Report of the UN Special Rapporteur on the fundamental rights to the freedom of assembly and of association calls upon States to ensure that equal treatment between NGOs and businesses in laws and practices regulating, *inter alia*, reporting, access to resources, including foreign resources. The report emphasises that "there is no basis in international human rights law for imposing more burdensome reporting requirements upon NGOs than upon businesses or other entities and that justifications such as protecting State sovereignty are not legitimate bases under the international human rights instruments".<sup>13</sup>

According to the Draft Law No. 6675 in the event of failure to comply with its requirements, the public association shall be excluded by the responsible supervisory authority from the registry of non-profit institutions and organisations, and shall be deemed, for tax purposes, payer of profit tax from the first day of the month following the one in which the violation took place. Deregistration and loss of non-profit status seem to be punitive and

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<sup>13</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, August 2015

disproportionate in nature and contradict paragraph 72 of the Council of Europe's Recommendation CM/Rec(2007)14 on the Legal status of non-governmental organisations in Europe that states:

[i]n most instances, the appropriate sanction against NGOs for breach of the legal requirements applicable to them (including those concerning the acquisition of legal personality) should merely be the requirement to rectify their affairs and/or the imposition of an administrative, civil or criminal penalty on them and/or any individuals directly responsible. Penalties should be based on the law in force and observe the principle of proportionality.

The Council of Europe's Recommendation CM/Rec(2017)2 on the legal regulation of lobbying activities in the context of public decision making is also clear on this. While it allows for sanctions for non-compliance, it clearly states that these sanctions should be effective, proportionate and dissuasive.

## 6 DATA PRIVACY

Draft Laws require NGOs that receive funds in the excess of 300 monthly minimum living allowances in Ukraine (approximately €15,250) in a reporting year to disclose information on their own website and send it for online publication to relevant government tax authorities. The following are some of the provisions:

- composition of governing bodies of the NGO;
- number of members of the NGO, amounts of fee in the tax year, and their actual collection;
- list of donors and amounts of money received from them per each project if exceeds approximately UAH 80,000 (approximately €2,500);
- number of full- and part-time employees, total salaries expense, list of 10 employees with the highest salaries;
- total spending of the NGO made to physical persons (including individual entrepreneurs) and legal entities, the list of these persons and entities and amount of spending made to each if exceeds UAH 80,000 (approximately €2,500) per year;
- participation of NGO leaders in the governing bodies of other NGOs and private legal entities.

According to the paragraph 67 of the Explanatory Memorandum to the Fundamental Principles:

“[...] reporting requirements must be tempered by other obligations relating to the respect for privacy and confidentiality. In particular, a donor's desire to remain anonymous must be observed. The respect for privacy and confidentiality is, however, not unlimited. In exceptional cases, the general interest may justify that authorities have access to private or confidential information, for instance in order to combat black market money transfers. Any exception to business confidentiality or to the privacy and confidentiality of donors, beneficiaries and staff shall observe the principle of necessity and proportionality” [emphasis added].

As ICNL analyses states for every single requirement to disclose information, there should be a solid rationale, why disclosure of such information is necessary (a legitimate aim). The rationale will only be legitimate, if a particular, real-life problem is identified, and it is clear that a new requirement seeks to remedy and prevent this particular problem in the future. Moreover, paragraph 228 of the OSCE Guidelines on Freedom of Association states that all regulations and practices on oversight and supervision of associations should take the principle of minimum state interference in the operations of an association as a starting point and that the right to privacy applies to an association and its members. As a result, oversight and supervision must have a clear legal basis and be proportionate to the legitimate aims they pursue.

## 7 PUBLIC CONSULTATIONS AND TRANSPARENCY

Just two weeks before the Draft Laws were submitted to the Parliament (23 June 2017), in its Fourth Evaluation Round report on Ukraine<sup>14</sup>, GRECO recommended “ensuring that all legislative proposals are processed with an adequate level of transparency and consultation, notably by (i) safeguarding inclusiveness of parliamentary committee work both on paper and in practice, including through public consultations and expert hearings, as well as adequate timeframes; (ii) introducing precise rules regarding the fast-track legislative procedure in Parliament and ensuring that it is applied only in exceptional and duly justified circumstances.”

The GRECO report highlighted that the use of the so-called fast-track procedures in the adoption of laws has been no rare occurrence in the current legislature and that such fast-track procedures not only entail risks for the quality of legislation and affect the overall transparency of the legislative process; they also reduce the time available for consultation and discussion and thereby disregard proper public debate. In the report it also noted that, although the Rules of Procedure of the Verkhovna Rada make reference to the possibility of resorting to a simplified legislative procedure (Article 31), there is no further concrete articulation of such a principle. The OECD Anti-Corruption Network for Eastern Europe and Central Asia has also highlighted these deficiencies in its peer-review of Ukraine<sup>15</sup>.

It is also important to stress the need for involving NGO’s when drafting legislation that affects their status or financing. According to the OSCE Guidelines on the Freedom of Association “legal provisions concerning associations need to be well crafted. They need to be clear, precise and certain. They should also be adopted through a broad, inclusive and participatory process, to ensure that all parties concerned are committed to their content” [emphasis added].

The right to participation is guaranteed in Article 25 of the International Covenant on Civil and Political Rights (ICCPR) and is stressed by the Council of Europe Recommendation CM/Rec(2007)14, which states that:

*NGOs should be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of that the governmental drafters and members of the parliament conduct meaningful consultations regarding the content of the Draft Laws and take CSOs’ recommendations into account before adopting them.*

It is worth reiterating GRECO recommendation that calls Government to ensure legislative proposals are processed with an adequate level of transparency and consultation and to safeguard inclusiveness of parliamentary committee work. It is recommended to clarify Article 31 of the Rules of Procedure of the Verkhovna Rada that makes reference to the possibility of resorting to a simplified legislative procedure, but does not provide details on this principle. It is also worth underlining the importance of involving NGOs when drafting legislation concerning their status or financing.

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<sup>14</sup> GRECO 2017 - Fourth Evaluation round report on Ukraine, [GrecoEval4Rep\(2016\)9](#), Strasbourg, June 23, 2017.

<sup>15</sup> Anti-Corruption Network for Eastern Europe and Central Asia, of the Organisation for Economic Cooperation and Development (OECD). 2015. [Round 3 Monitoring Report on Anti-Corruption Reforms in Ukraine](#).

8 APPENDIX 1. OVERVIEW OF CONCERNS REGARDING DRAFT LAWS NO. 6674 AND NO. 6675 BY ORGANISATION AND TOPIC

	Anti-Corruption Action Centre	International Center for Not-for-Profit Law	Ukrainian Centre for Independent Political Research	NGO Forum Ukraine	Article 19	Human Rights Agenda	Ukrainian Helsinki Human Rights Union
<b>Public interest</b>		New reporting requirements are imposed without a properly justified, legitimate reason	Proportionality was not observed when drafting the law	Draft laws are not aligned with international standards		The draft amendments go against international best practices	Proposed laws do not comply with international agreements
<b>Reporting requirements</b>	NGOs already submit 5 different types of reports to various state institutions  New requirements discriminate against entrepreneurs that receive money from international technical assistance	New reporting requirements are discriminatory against CSOs	New requirements are burdensome for CSOs and partly duplicative as most of the information is already being submitted to competent authorities		New reporting requirements are not proportionate to ensure accountability of CSOs and are redundant as CSOs already comply with tax regulations and submit annual reports	Reporting requirements go beyond what is expected from other actors, e.g. businesses	New requirements are burdensome and discriminatory
<b>Data privacy</b>	Impossibility of distinguishing which specific costs were covered by which revenue, which would oblige individual entrepreneurs to declare personal expenditures	Reporting requirements violate the privacy of managers of CSOs, donors, and beneficiaries of CSOs' activities	New reporting requirements violate personal data protection laws				New requirements would violate laws on personal data protection

## 9 APPENDIX 2. DRAFT LAWS AND EXPLANATORY NOTES CONSIDERED FOR THE ANALYSIS

### 9.1 Draft Law No. 6674 and Explanatory Note

Unofficial Translation by ICNL

*This draft law  
is introduced by the President of Ukraine*

#### **Law of Ukraine<sup>1</sup>**

On Introducing Changes to Some Legislative Acts to Ensure Public Transparency of Information on Finance Activity of Public Associations and on the Use of International Technical Assistance

The Verkhovna Rada of Ukraine hereby resolves:

I. To amend the following legislative acts of Ukraine:

1. In the Criminal Code of Ukraine (Bulletin of the Verkhovna Rada of Ukraine, No. 25-26 for 2001, p. 131):

(1) to add the numbers “366<sup>2</sup>” after the numbers “365<sup>2</sup>” in Clause 3 of the Note to Article 364;

(2) to supplement Article 366<sup>2</sup> as follows:

“Article 366<sup>2</sup>. Disclosure of Restricted Information by the Head or Member of the National Agency for the Prevention of Corruption, an Officer or Employee of His Staff

Disclosure, in any form, by the head or member of the National Agency for the Prevention of Corruption or an officer or employee of his staff of restricted information received in connection with the performance of their duties (except as provided by law), if such acts caused substantial harm to the law-protected rights, freedoms or interests of individual citizens, state or public interests, or the interests of individual legal entities,

shall be punishable by a fine of three thousand to five thousand nontaxable minimum incomes of citizens, with the deprivation of the right to hold certain posts or engage in certain activities for up to three years.”

2. In the Law of Ukraine On Public Associations (Bulletin of the Verkhovna Rada of Ukraine, No. 1 for 2013, p. 1, with later modifications):

1) Part 7 of Article 3 shall read as follows:

“7. Transparency and openness include the right of all members (participants) of a public association to have free access to information about its activities, including the decision and measures taken by the public association, and the duty of the public association to provide such access.” Openness also entails the duty of the public association, in the cases provided for in this Law, to ensure that information on the financing of its activities is publicly available. Publicity means that public associations shall inform the public about their purpose (aims) and activities;

(2) Article 23 should be supplemented by Part 8 as follows:

“8. A public association whose total annual income exceeds 300 subsistence minimums for able-bodied persons, such amount being determined as of January 1 of the reporting year, shall make it

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<sup>1</sup> This translation was made possible by the support of the American people through the United States Agency for International Development (USAID). The contents are the sole responsibility of ICNL and do not necessarily reflect the views of USAID or the United States Government.

public before April 1 of the year following the reporting one, on its own web site (if available), and submit for publication on the official web portal of the central executive authority responsible for the implementation of state tax and customs policy, in the form and manner approved by the Cabinet of Ministers of Ukraine, an annual financial report on its activities that contains information on:

the personal composition of the governing bodies of the public association;

the number of members of the public association, the amount of membership fees established for the reporting year, and their actual entry into the public association's account;

the total amount of the public association's income from natural persons, enterprises, institutions and organizations, including through the implementation in Ukraine of programs (projects) of international technical or other assistance, and a list of entities from which, in the course of the year, income was obtained in excess of 50 subsistence minimums for able-bodied persons, such amount being determined as of January 1 of the reporting year;

the number of the public association's employees employed on a full-time and part-time basis, total expenditures on their labor remuneration, and the list of ten employees who were paid the largest amounts of wages in the reporting year;

the public association's total expenses for the benefit of other natural persons (including natural persons-entrepreneurs) and legal entities, a detailed list of such persons and entities and the total amounts of expenses made for their benefit if the annual expenses for the benefit of one such natural person or legal entity exceeds 50 subsistence minimums for able-bodied persons, such amount being determined as of January 1 of the reporting year; and

the participation of the public association's executives in the governing bodies of other public associations, as well as in other legal entities under private law."

3. In the Law of Ukraine On the Prevention of Corruption (Bulletin of the Verkhovna Rada of Ukraine, No. 49 for 2014, Article 2056, with later modifications):

(1) In Paragraph 15 of Part 1, Article 1, the words and numbers "paragraphs 4 and 5" shall be replaced with the word and number "Paragraph 4";

(2) in Part 1 of Article 3:

Subclause (a) of Clause 2 shall read as follows:

"a) the directors and deputy directors of legal entities under public law who are not specified in Clause 1 of Part 1 of this Article; persons who are directors and deputy directors or members of the supervisory board of a State-owned bank, a State or municipal unitary enterprise, or business society in the statutory capital of which more than 50 per cent of the stock (shares) is owned by the State, a territorial community, or business societies in which the State or the territorial community has a 100 per cent share, and are not the persons referred to in Clause 1, Part 1 of this Article; persons who are directors, deputy directors or members of the supervisory board of a State or municipal for-profit organization and are not the persons referred to in Clause 1, Part 1 of this Article";

Clause 5 shall be deleted;

3) Paragraph 2 of Part 2 of Article 23 shall be supplemented by Clause 3 reading as follows:

"3) shall be obtained outside Ukraine by persons who are members of the supervisory board of a State-owned bank, a State or municipal unitary enterprise, or business society in the statutory capital of which more than 50 per cent of the stock (shares) is owned by the State, a territorial community, or business societies in which the State or the territorial community has a 100 per cent share, or members

of the supervisory board of a State or municipal for-profit organization provided that such persons are non-residents and do not hold other offices referred to in Clause 1 and 2, Part 1 of Article 3 of this Law;

4) Article 36 shall be supplemented by Part 6 as follows:

“6. The requirements of parts one to five of this Article shall not extend to enterprises and corporate rights which are outside Ukraine and are owned by persons who are members of the supervisory board of a State-owned bank, a State or municipal unitary enterprise, or business society in the statutory capital of which more than 50 per cent of the stock (shares) is owned by the State, a territorial community, or business societies in which the State or the territorial community has a 100 per cent share, or members of the supervisory board of a State or municipal for-profit organization, provided that such persons are non-residents and do not hold other offices referred to in Clause 1 and 2, Part 1 of Article 3 of this Law”;

5) In Article 45:

In parts 1 and 2, the words and numbers “of Clause 2, in Clause 5, Part 1 of Article 3” shall be replaced with the words and numbers “of Clause 2 of Part 1 of Article 3”;

Paragraph 3 of Part 3 shall be deleted;

6) In Article 46:

In Paragraph 3 of Part 1, the words and numbers “and persons referred to in Clause 5, Part 1, Article 3 of this Law – also information about the name of the technical or other assistance program (project) aimed at preventing and countering corruption, the name of the public association or other – a non-entrepreneurial company and its governing body” shall be deleted;

In Part 4, the words and numbers “presented in accordance with paragraphs 2 and 3 of Part 3 of Article 45 of this Law” shall be replaced with the words and numbers “presented in accordance with Paragraph 2 of Part 3 of Article 45 of this Law”;

7) Paragraph 4 of Part 1 of Article 47 shall be supplemented, after the words “(except for the oblast, district and populated area where the facility is located)”, by the words “and in the declaration of a person who is a foreigner and a non-resident, also information on their property, assets, obligations and titles outside Ukraine”;

8) In Article 49:

Paragraph 2 of Part 2 shall be deleted;

In Paragraph 2, Part 3 the words “public law, the higher governing body of the relevant public association, other non-entrepreneurial company” shall be deleted;

9) Article 52 shall be supplemented by Part 4 as follows:

“4. The requirements set forth in parts 1, 2 of this Article shall not extend to the subjects of declaration and their dependents who are non-residents”;

10) Article 52<sup>1</sup> shall be supplemented with Part 2 as follows:

“2. The National Agency shall ensure that aliens or stateless persons are able to provide information in the English language to the Unified State Register of Declarations of Persons Authorized to Perform Functions of the State or Local Self-government”;

(11) In Article 60:

In Paragraph 1 of Part 1, the words and numbers "clauses 1, 2, 4 and 5" shall be replaced with the words and numbers "clauses 1, 2 and 4";

In Part two, the words and numbers "clauses 4 and 5 shall be replaced by the word and number "Clause 4".

#### II. Final Provisions

1. This Law shall enter into force on the day following its publication.

2. Public associations which in 2017, beginning from the entry of this Law into force, have received financial and other resources and services provided on a grant or non-reimbursable basis with tax exemptions or tax exemptions, within the framework of international technical assistance under Ukraine's international treaties, and/or have earned a total income exceeding 300 subsistence minimums for able-bodied persons, as determined on January 1, 2017, shall make public its annual financial report for the period from the entry of this Law into force to December 31, 2017 not later than April 1, 2018.

3. Persons who are excluded hereunder from the list of persons covered by the Law of Ukraine On the Prevention of Corruption, may not submit the declaration of a person authorized to perform the functions of the State or local government provided for in the said Law, for the year 2017 or any other period preceding the entry of this Law into force.

Persons who are subject hereunder to the provisions of the Law of Ukraine On the Prevention of Corruption and are subjects of declaration shall, in accordance with the procedure prescribed by the said law, submit their first declaration as a person authorized to perform the functions of the State or local self-government in 2018, for the period from the entry of this Law into force to December 31, 2017.

4. Within three months from the entry of this Law into force, the Cabinet of Ministers of Ukraine shall:

approve the form of the annual financial report on the activities of a public association whose total annual income exceeds 300 subsistence minimums for able-bodied persons, as determined on January 1 of the reporting year; and

ensure that the ministries and other central executive bodies harmonize their acts with this Law.

5. The National Agency for the Prevention of Corruption should, within two weeks, harmonize its decisions with this Law and implement other appropriate measures ensuing from its entry into force.

Chairman of the Verkhovna Rada of Ukraine

## Explanatory Note<sup>16</sup>

### to the draft Law of Ukraine "On amendments to certain legislative acts concerning public information openness for the society the financing of the activities of civil society organisations and the use of international technical assistance"

#### 1. Arguments to support the act

Fundamental European standards of functioning of public associations are organized in the "Fundamental principles on the status of non-governmental organizations in Europe", approved by the Council of Europe in 2002.

This document, in particular, makes a special emphasis on the fact that "any evaluation of the acceptability of the objectives of NGOs seeking legal personality should be well-informed and respectful of the notion of political pluralism. It should not be driven by prejudices".

A separate section of the mentioned "Fundamental principles on the status of non-governmental organizations in Europe" is dedicated to transparency and accountability in their activities. It says that non-governmental organizations must submit an annual report to its members or directors about their accounts and activities; these reports must be sent to a designated supervising body in case when certain NGOs are granted tax privileges or other public support.

It is also provided that the relevant books, reports and actions of NGOs can, when it is established by law or under the provisions of the contract, be subject to inspection by the controlling authority.

In this connection there is a need to improve legal regulation of issues associated with ensuring openness to society providing of information on financing of the activities of public associations and the use of international technical assistance, and to prepare the corresponding draft law.

In Ukraine it is established that NGOs tend to get the status of non-profit organizations, and their activity is not taxed. The right of the state and civil society to know the information about the sources and the use of funds by NGOs that are exempt from taxation is obvious. If NGOs do not wish to disclose the requested information, they can be transferred to the general system of taxation and obtain the status of a profit-making company.

#### 2. Objectives and tasks of the draft law

The draft law has been developed with the aim to introduce a transparent reporting system for organizations regarding their income and expenditures, increase the transparency in their activities.

In addition, the draft law is intended to eliminate a number of shortcomings in the Law of Ukraine "On Prevention of Corruption."

#### 3. General characteristics and main provisions of the draft law

The draft law proposes a number of amendments to the Criminal Code of Ukraine, laws of Ukraine "On Public Associations" and "On Prevention of Corruption", which, in particular:

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<sup>16</sup> Unofficial translation by CoE

establish criminal liability for disclosure of the restricted information by the Chairman or a member of the National Agency for Preventing Corruption, an official or a civil servant of its administrative structure in any way, received in connection with their official duties, except to the extent required by law, if such actions have caused a substantial damage to legal rights, freedoms or interests of individuals, the state or public interests, or to the interests of individual legal entities (criminal liability is established by analogy with Article 209-1 of the Criminal Code of Ukraine, which establishes the liability of individuals for the disclosure of information which under the legal requirements is provided to a specially authorized central body of the executive power with a special status on the issues of financial monitoring);

provide that a public association in cases established by law must ensure disclosure of the information about financing of its activities;

exclude the obligation to submit a declaration for community activists, individuals who receive funds, property in the framework of programmes (projects) of technical or other assistance implemented in Ukraine, including non-repayable assistance in the field of prevention, combating corruption (both directly and through third parties or in any other way provided by the relevant programme (project));

do not apply the requirements on prevention of the conflict of interests in connection with a person's ownership of enterprises or corporate rights to the enterprises and corporate rights outside of Ukraine and those owned by people who are members of the Supervisory Board of the State Bank, a state, municipal unitary enterprise, a commercial company, in which the state, a local community or business entities own more than 50 % of the shares in the authorized capital, where the share of the state or a local community makes 100 %, as well as the members of the Supervisory Board of the state, municipal profit-making organization, subject to the condition that such persons are non-residents;

exempt from the obligation to report on any significant changes in their assets the subjects of declaration and members of their families who are non-residents;

do not apply restrictions on the value of gifts to gifts received outside of Ukraine by persons, who are members of the Supervisory Board of the State Bank, a state, municipal unitary enterprise, a commercial company, in which the state, a local community or business entities own more than 50 % of the shares in the authorized capital, where the share of the state or a local community makes 100 %, as well as the members of the Supervisory Board of the state, municipal profit-making organization, subject to the condition that such persons are non-residents;

do not oblige a person who is a foreigner and a non-resident to disclose in the declaration the information about his/her property, assets, liabilities and transactions outside of Ukraine;

do not require the subject of declaration or a member of his/her family to notify the National Agency on Corruption Prevention about the fact of their opening of the bank account in foreign currency in a non-resident;

entrust the National Agency on Corruption Prevention with the obligation to provide the possibility for foreigners or persons without citizenship to enter information to the Unified State Register of declarations of persons authorized to perform the functions of the state or local governments in English.

#### **4. Regulatory and legal framework in this field of legal regulation**

Regulation of legal matters in this sphere is made by the Constitution of Ukraine, the Criminal Code of Ukraine, laws of Ukraine "On Prevention of Corruption" and "On Public Associations", as well as by other legislative acts.

Passage of the Law of Ukraine "On Amendments to Some Legislative Acts on ensuring openness to society providing of information on financing of the activities of public associations and the use of international technical assistance" will not require any amendments to other legislative acts of Ukraine.

#### **5. Financial feasibility study**

Implementation of provisions of the above Law will not require additional costs from the state budget of Ukraine.

#### **6. Forecast of socio-economic, legal and other consequences of the Law adoption**

Passage of the Law of Ukraine "On Amendments to Some Legislative Acts on ensuring openness to society providing of information on financing of the activities of public associations and the use of international technical assistance" will promote the process of bringing the provisions of current legislation of Ukraine in compliance with the international standards on the issues concerning NGOs activity.

Deputy Head  
of the Presidential Administration of Ukraine

**D. Shymkiv**

## 9.2 Draft Law No. 6675 and Explanatory Note

Unofficial Translation by ICNL

*This draft law*

*is introduced by the President of Ukraine*

### Law of Ukraine

#### On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and the Use of International Technical Assistance<sup>1</sup>

The Verkhovna Rada of Ukraine hereby resolves:

I. To amend the Tax Code of Ukraine (Bulletin of the Verkhovna Rada of Ukraine, No. 13-17 for 2011, p. 112, with later amendments) as follows:

1.1. In Clause 133.4 of Article 133:

1. 1) Subclause 133.4.4 should read as follows:

“133.4.4. The establishment by the supervisory authority, in accordance with the rules of this code, of the use by a non-profit organization of income (profit) for purposes other than those provided for in Subclause 133.4.2 of this Clause, and of the fact that public associations have not met the requirements set out in Subclause 133.4.8 of this Clause, shall be grounds for excluding such an organization from the register of non-profit institutions and organizations and for imposing the liability to pay the business profit tax, penalties and fine provided for by this Code. Tax liabilities, penalties and fine shall accrue from the first day of the month in which the violation concerning the use by the non-profit organization of income (profit) for purposes other than those provided for in Subclause (133.4.2 of this Clause) took place and throughout the entire reporting period for which the reports under Subclause 133.4.8 of this Clause were not submitted and/or made public;

2) This Clause should be supplemented by Subclause 133.4.8 as follows:

“133.4.8. Public associations whose total annual income exceeds 300 subsistence minimums for able-bodied persons, such amount being determined as of January 1 of the reporting year, shall make it public before April 1 of the year following the reporting one, on its own web site (if available), and submit for publication on the official web portal of the central executive authority responsible for the implementation of state tax and customs policy, in the form and manner approved by the Cabinet of Ministers of Ukraine, an annual financial report on their activities that contains information on:

the personal composition of the governing bodies of the public association;

the number of members of the public association, the amount of membership fees established for the reporting year, and their actual entry into the public association’s account;

the total amount of the public association’s income from natural persons, enterprises, institutions and organizations, including through the implementation in Ukraine of programs (projects) of international technical or other assistance, and a list of entities from which, in the course of the year, income was obtained in excess of 50 subsistence minimums for able-bodied persons, such amount being determined as of January 1 of the reporting year;

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<sup>1 1</sup> This translation was made possible by the support of the American people through the United States Agency for International Development (USAID). The contents are the sole responsibility of ICNL and do not necessarily reflect the views of USAID or the United States Government.

the number of the public association's employees employed on a full-time and part-time basis, total expenditures on their labor remuneration, and the list of ten employees who were paid the largest amounts of wages in the reporting year;

the public association's total expenses for the benefit of other natural persons (including natural persons-entrepreneurs) and legal entities, a detailed list of such persons and entities and the total amounts of expenses made for their benefit if the annual expenses for the benefit of one such natural person or legal entity exceeds 50 subsistence minimums for able-bodied persons, such amount being determined as of January 1 of the reporting year; and

the participation of the public association's executives in the governing bodies of other public associations, as well as in other legal entities under private law.

In the event of failure to comply with the requirements of this Clause, the public association shall be excluded by the supervisory authority responsible for the register of non-profit institutions and organizations and shall be deemed, for tax purposes, payer of profit tax from the first day of the month following the one in which the violation took place."

2. After the first paragraph in Clause 177.11 of Article 177, a new paragraph shall be added reading as follows:

"Natural persons-entrepreneurs who have received income from donors of international technical assistance provided in accordance with Ukraine's international treaties shall indicate, in a separate annex to the tax declaration, the amount of such income, showing relevant donors and the amounts of payments made from such income to third parties, with a list of such third parties paid one-off payments in excess of three subsistence minimums for able-bodied persons, as determined by law as of January 1 of the reporting year, and the total amounts of payments made to them.

"Such an annex shall be published on the official web portal of the central executive authority responsible for the state tax and customs policy, in the form and manner established by the central executive authority which provides for the formulation and implementation of public financial policy."

In this connection, the second and third paragraphs shall read as the third and fourth.

3. Clause 291.5 of Article 291 shall be supplemented by Subclause 291.5.9 reading as follows:

"291.5.9. Taxpayers whom the relevant supervisory authority identified as failing to submit a separate annex to the tax declaration under Clause 296.7, Article 296 of this Code or submitting unreliable information in such a separate annex, less than one year ago on the date they applied for registration as a single tax payer."

4. After Clause 296.6, Article 296 shall be supplemented by a new paragraph as follows:

"296.7. Single tax payers of Categories 1-3 who have received income from donors of international technical assistance provided in accordance with Ukraine's international treaties shall reflect, in a separate annex to the tax declaration, the amount of such income, showing the relevant donors and the amount of payments made from such income to third parties, with a list of such third parties paid one-off payments in excess of three subsistence minimums for able-bodied persons, as determined by law as of January 1 of the reporting year, and the total amounts of payments made to such persons.

"Such an annex shall be published on the official web portal of the central executive authority responsible for the state tax and customs policy, in the form and manner established by the central executive authority which provides for the formulation and implementation of public financial policy."

In this connection, Clauses 296.7-296.10 shall read as Clauses 296.8-296.11.

5. Subclause 298.2.3 of Clause 298.2, Article 298 shall be supplemented by a new paragraph reading:

"10) in the event of the failure of single tax payers of Categories 1-3 that have received income from donors of international technical assistance provided in accordance with the international treaties of Ukraine to submit the separate annex to the tax declaration under Clause 296.7, Article 296, of this

Code, or their submission in such a separate annex of unreliable information – from the first day of the month following the one in which the supervisory authority has identified such violation.”

6. In Section XX, “Transitional Provisions”:

1) Subsection 1 shall be supplemented by a new clause reading:

“10. For (tax) reporting period in which the Law of Ukraine On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and the Use of International Technical Assistance entered into force, natural persons-entrepreneurs shall submit data in the annex to the tax declaration provided for by the second paragraph of Clause 177.11, Article 177 of this Code, for the period from the date of the entry into force of the Law of Ukraine Act On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and the Use of International Technical Assistance up to the last day (inclusive) of the (tax) reporting period”;

2) Subsection 4 shall be supplemented by a new clause reading:

“49. Until April 1, 2018, public associations shall submit and/or make public the reports provided for by Subclause 133.4.8 of Clause 133.4, Article 133 of this Code, for the period from the date of the entry into force of the Law of Ukraine On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and the Use of International Technical Assistance and ending on December 31, 2017”;

(3) Subsection 8 shall be supplemented by a new clause reading:

“6. For the reporting (tax) period in which the Law of Ukraine On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and the Use of International Technical Assistance entered into force, single tax payers of Categories 1-3 shall submit data in the annex to the tax declaration provided for by Clause 296.7, Article 296, of this Code, for the period from the day of entry of the Law of Ukraine On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and the Use of International Technical Assistance into force and until the last day (inclusive) of the reporting (tax) period.”

II. Final Provisions

1. The law shall enter into force on the day following its publication.

2. Within one month from the publication date of this Law, the Cabinet of Ministers of Ukraine shall  
bring its legislation into line with this Law;  
bring the acts of ministries and other central executive authorities into line with this Law; and  
ensure the drafting and introduction to the Verkhovna Rada of Ukraine of a bill on the mobilization, registration and monitoring of international technical assistance, as well as the introduction of reporting on its use.

Chairman of the Verkhovna Rada of Ukraine

## Explanatory Note<sup>17</sup>

### to the draft Law of Ukraine "On amendments to the Tax Code of Ukraine for providing public information on financing of the activities of civil society organisations and the use of international technical assistance"

#### 1. Arguments to support the act

Development of the draft Law of Ukraine is connected with the need to improve the mechanism for compliance with the publicity for the processes of receiving and use of financial and other resources by NGOs which receive funds from the state or local budgets, as well as financial and other resources at the expense of international technical assistance provided in accordance with the international agreements of Ukraine, financial and other resources and services provided at no cost and on non-repayable terms using tax reliefs or exemption from taxation.

It should be noted, that fundamental European standards of functioning of public associations were first organized in the "Fundamental principles on the status of non-governmental organizations in Europe" (approved by the Council of Europe in 2002). This document, in particular, makes a special emphasis on the fact that "any evaluation of the acceptability of the objectives of NGOs seeking legal personality should be well-informed and respectful of the notion of political pluralism. It should not be driven by prejudices".

The draft law provides that public associations, which total annual income exceeds 300 subsistence minimums for able-bodied persons, where the size of such minimum is set by law as at January 1 of the reporting year, shall publish before April 1 of the year following the reporting year, on their own website (if applicable) and submit for publication on the official web portal of the central body of the executive power, which implements the state tax and customs policy, by the form and according to the procedure approved by the Cabinet of Ministers of Ukraine, the annual financial report on their activities, containing the information about:

- membership of governing authorities of a public association;
- the number of members of such public association, the amount of contributions set for the reporting year and their actual receipt at the account of a public association;
- the total income of a public association received from individuals, enterprises, institutions and organizations, including in the framework of programmes (projects) of international technical or other assistance implemented in Ukraine, as well as a list of subjects, from which such association received the income on the amount exceeding 50 subsistence minimums for able-bodied persons;
- the number of employees of a public association employed on a permanent basis and concurrently, total amount of their salaries expense and a list of ten workers of a public association, which were paid the largest amount of wages;
- the total amount of expenses of a public association incurred for the benefit of other individuals (including sole proprietors), legal entities, as well as a detailed list of such individuals and entities and the amounts paid to them, if annual volume of expenses in favor of one such individual, legal entity exceeds 50 subsistence minimums.

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<sup>17</sup> Unofficial translation by CoE

The annual financial report of such public associations shall be published on the official web portal of the central body of the executive power, which implements the state tax and customs policy, according to the procedure established by the Cabinet of Ministers of Ukraine.

In case such NGOs fail to comply with the requirements for submission and publication of their reporting, the draft law provides to establish the responsibility in the form of their exclusion by the controlling authority from the Register of non-profit institutions and organizations and their assigning to the category of tax payers on general grounds.

The draft law provides for the introduction of transparency and openness for sole proprietors who received income or donors of international technical assistance provided in accordance with the international agreements of Ukraine.

Such sole proprietors shall show the amount of such income in a separate attachment to the tax statement indicating the donors from which it was received, and the amounts of payments made at the expense of such income to third parties listing third parties and the amounts paid in their favor. This attachment to the declaration shall be published on the official web portal of the central body of the executive power, which implements the state tax and customs policy. The changes apply only to those sole proprietors who received the income directly from donors of international technical assistance.

The official web portal of the central body of the executive power, which implements the state tax and customs policy, will publish only the appropriate attachment to the declaration of a sole proprietor, the declaration itself is not subject for publication on the web portal.

The draft law provides for impossibility of assigning of sole proprietors who fail to comply with their obligation to disclose such income and expenses to the first–third groups of single tax payers within one year from the date of discovery of the fact of such improper performance of their obligation.

## **2. Objective and ways to achieve it**

The indicated draft law aims to introduce the transparent reporting process for NGOs which receive funds from the state or local budgets, as well as financial and other resources at the expense of international technical assistance provided in accordance with the international agreements of Ukraine, financial and other resources and services provided at no cost and on non-repayable terms using tax reliefs or exemption from taxation, and sole proprietors regarding their income and expenses.

Draft Law of Ukraine is linked to the draft law "On Amendments to Some Legislative Acts on ensuring openness to society providing of information on financing of the activities of public associations and the use of international technical assistance" and has been developed with the purpose of proper implementation of its provisions.

### **3. General characteristics and main provisions of the draft law**

The draft law intends to consolidate the implementation of the principle of transparency and openness regarding the activity of NGOs that receive funds from the state or local budgets, as well as financial and other resources at the expense of international technical assistance.

### **4. Regulatory and legal framework in this field of legal regulation**

Main regulatory legal acts governing the issues addressed in the draft law include the Constitution of Ukraine, the Tax Code of Ukraine, the Law of Ukraine "On Public Associations".

### **5. Financial feasibility study for the draft law**

Implementation of the draft law does not require the additional material and other costs from the state and/or local budgets.

### **6. Forecast of socio-economic and other consequences**

Passage of the draft will improve the mechanism for compliance of public associations in their activities with the principles of transparency and publicity, will assist harmonization of the provisions of the current legislation with international standards and positive practices of foreign countries.

Deputy Head  
of the Presidential Administration of Ukraine

**D. Shymkiv**