

UKRAINE

Handbook on Transparency and Citizen Participation

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Handbook on Transparency and Citizen Participation in Ukraine (English version)

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As of 2021, six handbooks have been produced with country-specific information for Albania, Armenia, Georgia, the Republic of Moldova, Ukraine and Kosovo*. They aim to preserve and share the lessons learnt and best practices identified during the co-operation projects implemented by the Congress of Local and Regional Authorities of the Council of Europe.

** All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.*

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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 revised this Code, which has been adopted as the European Code of Conduct for All Persons Involved in Local and Regional Governance in November 2018. The updated text addresses the new challenges, including new forms of communication, the impact of digital technology, the respect for the privacy of data, and enlarges 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 public ethics and transparency at local and regional levels as an essential component for enhancing the quality of local and regional democracy, one of the key priorities for the period 2017-2020. With that aim, **"Ethics and Transparency at local and regional level"** was set as the theme for its two plenary sessions of 2016. In October 2016, the Congress **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 local and regional levels.**

In that perspective, the Congress recently adopted reports on the abuse of administrative resources in election campaigns, preventing corruption in public procurement, 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 these issues, the Congress has appointed two spokespersons on promoting public ethics and preventing corruption at the local and regional levels, Mr Andrew Dawson and 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.

Our citizens' attitudes and expectations 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, cities and regions. 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.



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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, coupled with stronger accountability and public ethics, 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 in line with the principles of the European Charter of Local Self-Government (ETS No. 122) and its Additional Protocol on the right to participate in the affairs of a local authority (CETS No. 207). 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, and mechanisms for addressing public ethics and accountability, transparency and citizen participation. 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 good practices to introduce and implement public ethics and open government mechanisms.

Furthermore, the implementation of the mechanisms included in this *Handbook* will help local authorities contribute to the United Nations' Sustainable Development Goals (SDGs)¹ of the 2030 Agenda for Sustainable Development,² namely the goals 5 (gender equality), 11 (sustainable cities and communities), 16 (peace, justice and strong institutions) and 17 (partnerships for the goals). In this regard, the implementation of open local government will be presented as a powerful mechanism for deepening the commitment to good governance in the context of sustainable development.

The *Handbook* is structured in four main chapters:

- Chapter 1 – Public Ethics and Accountability:
This chapter highlights the importance and challenges of public ethics and accountability in Ukraine. Moreover, it is emphasised how essential they are for an effective, transparent and participatory governance.
- Chapter 2 – 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 type of corruption.
- Chapter 3 – 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 4 – 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 inclusive citizen participation.

Chapter 1

PUBLIC ETHICS AND ACCOUNTABILITY

1.1. INTERNATIONAL CONTEXT

Public ethics and 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 officials³ in order to ensure that the public is treated fairly and equally. 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 public ethics and accountability, corruption and malpractice are able to thrive. As outlined in the following section, corruption is damaging to individuals, society, the economy and government in a number of respects. Public ethics and 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 public ethics and 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, public ethics and 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 public ethics and accountability are also key elements in 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, public ethics and 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 public ethics and accountability in national and local government. A recent report from 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.**⁴ This handbook outlines a range of transparency and citizen participation mechanisms that can be adopted by local and regional authorities.

1.2. NATIONAL CONTEXT

One of the more widespread revendications of the Maidan protesters in 2013 was the punishment of corrupt politicians.⁵ This sentiment has continued to grow over the years.⁶ For instance, in 2018, 91% of citizens considered corruption as a severe problem in Ukraine, out of which 61% were sure that it was the severest problem, hindering the economic development of the country.⁷ In the same year, 58% of the population considered the anti-corruption reform as a priority and 83% of citizens believed that the fight against corruption in Ukraine was not successful.⁸

In comparison with 2017, the level of awareness of Ukrainian people on the damaging effects of corruption grew substantially. For example, 44% of Ukrainian citizens identified corruption as the main problem in 2017; this figure increased to 61% in 2018. In addition, 12% of people identified corruption as a not too serious problem in 2017, while only 4% thought so in 2018.⁹

After the 2014 Euromaidan Revolution, 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 2014-2017¹⁰ and the Law No. 1700-VII **“On Prevention of Corruption”**, was adopted. The Law also stipulates some significant provisions on ethical conduct (Section VI. Rules of Ethical Conduct).

Other 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). Besides, the High Anti-Corruption Court of Ukraine was established as per the Law 2447-VIII of 8 June 2018 and came into operation in September 2019. Amendments to the legislation have increased the penalties for corruption, including administrative or criminal liability for corruption-related offences. Since its establishment, the High Anti-Corruption Court (HACC) have examined cases of embezzlement, misuse or misappropriation **of another person's property by means of abuse of office by a public official (Article 191 of the Criminal Code of Ukraine)**, abuse of power or office (Article 364 of the Criminal Code), and acceptance of an offer, promise or receipt of undue benefit by a public official (Article 368 of the Criminal Code). During its first year of operation, the HACC issued 16 convictions and one acquittal. Investigative judges considered 185 motions on interim measures.¹¹

The Draft Anti-Corruption Strategy for 2020-2024¹² and the Draft Law **“On the Principles of State Anti-Corruption Policy for 2020–2024”**¹³ have been discussed in the format of public consultations using the NACP online platform. The Anti-Corruption Strategy is a document that helps ensure the participation of all authorities in combatting corruption. The development and co-ordination of the implementation of the Anti-Corruption Strategy is the responsibility of the NACP, assigned to it at legislative level. To ensure the **document's** relevance and high quality, the NACP was called upon during the drafting of the Anti-Corruption Strategy undertaken by experts, civil society activists, international partners and all interested citizens through online discussions held in early July 2020.¹⁴

The development of the Strategy has been based on 5 main principles:

1. Optimisation of the functions of the state and local self-government in order to deprive authorities from using excessive powers and eliminate the duplication of their functions.
2. Reducing the "human factor" and increasing transparency and efficiency in the state's relations with citizens and organisations through the introduction of rules of general administrative procedure and digitisation of most procedures and services;
3. Creation of convenient and legal alternatives to corrupt practices;

4. Ensuring effective state control over the observance by public servants of the rules of ethical conduct and the requirements of anti-corruption legislation;
5. Ensuring the inevitability of liability for corruption and corruption-related offenses.

In October 2020, the Committee on Anti-Corruption Policy recommended that the Verkhovna Rada adopts as a basis the Draft Law "On the Principles of State Anti-Corruption Policy for 2020-2024"¹⁵ Ukraine has also established a legislative basis for the implementation of ethical values and norms of the civil service. The Law of Ukraine No. 889-VII "On Civil Service"¹⁶ indicates that the main duties of the civil servants include a duty *"to adhere to the principles of civil service and rules of ethical conduct"* (Article 8). Requirements to representatives of local authorities are stipulated in the Law of Ukraine No. 280/97-BP "On Local Self-Government"¹⁷, in particular when defining the main principles of local self-government: *"..., transparency, collegiality, ..., accountability and responsibility of their bodies and officials to territorial communities,..."* (Article 4).

The issue of ethics in public bodies at national and local level is stipulated by the General rules of ethical conduct of civil servants and local self-government officials¹⁸ approved by the State Agency of Public Service in 2016. The General rules aim to strengthen the quality and reputation of civil servants and local self-government officials, as well as to ensure that citizens are well informed about the norms of conduct in public bodies. In the General rules it is indicated that the main objective of civil servants and local self-government officials is to serve the people of Ukraine and territorial *hromadas*, and to protect and facilitate the implementation of rights, freedoms and legal interests of any citizen. In so doing, the conduct of civil servants and local self-government officials will **increase citizens' trust** in the civil service and local self-government bodies.

Transparency and citizen participation have been formally recognised and accepted as main pillars in the prevention of corruption, and crucial to achieve public trust. Since 2011, Ukraine has been 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 will start the implementation of its fifth Action Plan for 2021-2022. The implementation of previous OGP commitments provided solid guidance for the realisation of transparency and support for citizen participation.

Legislative reforms in 2015 brought e-democracy and e-governance to the fore. The main milestones achieved were the introduction of e-petitions and the regulation of open data and on the open use of public funds. Success stories, such as the implementation of the e-platform ProZorro, boosted public interest through the promotion of transparency and fair competition in the process of public procurement, thus significantly improving **Ukraine's position** on the international E-Government Development Index scale.¹⁹ Despite considerable improvements in the legislation, the implementation of laws and governmental commitments remains a challenge.²⁰

Through the decentralisation reform, **local authorities'** influence and responsibility are steadily increasing. Improving local governance, with special emphasis on transparency and citizen participation, is a key element in overcoming the multiple challenges Ukraine faces nowadays.

1.3 CODES OF ETHICS AND PROFESSIONAL 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 **Committee of Ministers of the Council of Europe's Recommendation on Codes** of Conduct for Public Officials²¹ and the European Code of Conduct for all Persons Involved in Local and Regional Governance²² are the reference texts for local and regional authorities in Europe for ensuring political integrity.
- The Committee of Ministers **of the Council of Europe's Guidelines on Public Ethics**²³ consolidate in one single document Council of Europe core principles, standards and recommendations in this field, covering all categories of public officials, be they elected, appointed or employed. They are complemented by the guide Practical steps to implementing public ethics in public organisations,²⁴ a living document which provides case studies and examples from Council of Europe member states.
- The OECD Recommendation on Public Integrity²⁵ shifts the focus from ad hoc integrity policies to a context dependent, behavioural, risk-based approach with an emphasis on cultivating a culture of integrity across the whole of society.
- This Transparency International paper on Implementing Effective Ethics Standards in Government and the Civil Service²⁶ provides practical mechanisms for institutionalising high standards of ethical integrity for elected officials and civil servants.

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 2014-2017.²⁷ 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 public administration.²⁸ 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.²⁹ 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).

Ethical principles are defined in the Laws "On Local Self-Government",³⁰ "On the Status of Local Councillors",³¹ and "On Service in Local Government Bodies".³² On August 5, 2016, the National Agency of Ukraine for Civil Service issued an order "On approval of the General rules of ethical conduct of civil servants and local government officials."³³

Civil servants in their activities are guided by **civil service's** principles of ethics, based on the provisions of the Constitution of Ukraine, legislation on civil service and prevention of corruption, namely:

1. service to the state and society;
2. decent behaviour;
3. integrity;
4. loyalty;
5. political neutrality;
6. transparency and accountability;
7. conscience.

National guidelines

The National Agency of Ukraine for **Civil Service** provides "**General Rules of Ethical Conduct for Civil Servants and Local Government Officials**".³⁴ 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.³⁵ The methodology for assessing the transparency of cities evaluates the existence of local acts that would approve codes or similar documents of deputy ethics, as well as the ethics of officials of local executive bodies and utilities.³⁶

Among the main criteria that determine the level of professional ethics are the following:

1. Is the Code of Ethics for Members of the Council or a similar document adopted at the municipal level and published? Does this document contain the principles of non-discrimination and gender equality?
2. Is there a Code of Ethics or a different local act adopted and published which regulates the rules of ethical conduct of local self-government officials, staff of municipal enterprises, institutions and organisations, community-founded associations or organisations where a 50% or higher equity stake belongs to the territorial community, as well as organisations which are partially funded by the community?

Other criteria can be found in the new 2020 City Transparency Ranking Methodology.³⁷

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 Netchyntsi and Slavutych communities.³⁸ In the course of the project, the small community of Netchyntsi (Khmelnitsky region) elaborated a code of ethics based on public discussion with its local community. The experience of Netchyntsi was applied as a best practice to follow and implement in the neighbouring communities.

A unique example of good practice comes from the city of Slavutych (Kyiv region). Although this city had adopted the **“Code of ethics, honour, good faith, fair and effective governance of the Slavutych territorial community”** in 2007, it amended it in 2017 to take into account citizens’ demands. **The text of the former** code of ethics was updated during 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.

Chapter 2

CORRUPTION RISKS

In the absence of ethics and public accountability, corruption and malpractice are 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. In turn, it 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.

2.1. 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 Transactions³⁹ 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 37001⁴⁰ specifies a series of measures to help organisations prevent, detect and address bribery.
- The OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance⁴¹ which supports the convention on combating bribery.

National context

International and national surveys on the 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.⁴² 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 corruption perception in the private sector shows that 67% of business representatives perceive bribery as the most widespread form of corruption in Ukraine.⁴³

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».⁴⁴ 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 office positions 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 charges of illegally demanding and partially receiving an unjustified benefit of approximately US\$ 100,000 for granting 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.⁴⁵

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.⁴⁶ They were accused of extorting and receiving an unjustified benefit in the amount of 40 000 Ukrainian hryvnia (UAH) 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.⁴⁷

2.2. 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 Corruption⁴⁸ is the only legally binding universal anti-corruption instrument.
- It is supported by this Technical Guide to the Convention.⁴⁹
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**⁵⁰ aims to coordinate 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)**⁵¹ defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**⁵² 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 did so due to direct extortion. Another 27% were indirectly asked for a bribe. 25.7% reported giving a bribe in order to persuade public officials to fulfil their duty.⁵³

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 to 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 Cherkasy regional court of appeal rendered its judgement on the head of a city council, who had colluded with his deputy.⁵⁴ They were accused of extortion of unjustified benefits in the form of a 30% share in a **private entrepreneur's** firm. The share was transferred **to the deputy head's wife**. In return, 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 five years imprisonment and received three years' probation instead.

2.3. 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 Corruption⁵⁵ is the only legally binding universal anti-corruption instrument.
- It is supported by this Technical Guide to the Convention.⁵⁶
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**⁵⁷ aims to coordinate 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)**⁵⁸ defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**⁵⁹ 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 between 2010 and 2014, amounting roughly to UAH 150 billion.⁶⁰

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 hold certain public 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 hold certain public offices or engage in certain activities**, and confiscation of property.

Example of case law

In April 2017, a mayor was sentenced for embezzlement. Back in 2013, he had commissioned a private firm to repair a road in the village. The mayor issued a payment transfer to the firm, even though the road was yet to be repaired. By the court's verdict,⁶¹ **the mayor was banned for two years' from occupying any public offices or engaging in the work of local authorities. He was exempted from 3 years' imprisonment and received two years' probation instead.** On 6 October 2017, the Vinnytsia regional court of appeal overturned the initial verdict and initiated a new criminal procedure under original jurisdiction.⁶²

2.4. 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 potential–⁶³ 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 Committee of Ministers of the **Council of Europe's** Recommendation on Codes of Conduct for Public Officials⁶⁴ and the European Code of Conduct for all Persons Involved in Local and Regional Governance⁶⁵ cover the general issues normally thought to be necessary for avoiding such conflicts.
- The **Congress of the Council of Europe's Resolution and Recommendation on Conflicts of interest** at local and regional level⁶⁶ propose a set of measures to mitigate the risks of conflict of interest and ensure that it is identified at an early stage.
- The **OECD's Guidelines for Managing Conflict of Interest in the Public Service**⁶⁷ identify principles and standards for developing policies.
- The Congress of the **Council of Europe's Resolution and Recommendation on Making public procurement transparent** at local and regional levels⁶⁸ and the OECD Checklist for Enhancing Integrity in Public Procurement⁶⁹ provide guidance for enhancing transparency and promoting integrity in procurement.

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

- The United Nations Convention against Corruption⁷⁰ is the only legally binding universal anti-corruption instrument.
- It is supported by this Technical Guide to the Convention.⁷¹
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**⁷² aims to coordinate 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)**⁷³ defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**⁷⁴ aims to fight corruption involving officials from the EU or its Member States.
- The OECD Recommendation on Public Integrity⁷⁵ shifts the focus from ad hoc integrity policies to a context dependent, behavioural, risk-based approach with an emphasis on cultivating a culture of integrity across the whole of society.

National context

Local authorities' exposure to conflict of interest in Ukraine is considered to be very high and widespread because, unlike for Members of the Parliament, local councillors can combine their representative functions with other employment or entrepreneurship. At the same time, a survey of local authorities conducted in Cherkasy region in 2015 showed that only 15% of staff and local councillors fully understood the meaning of conflict of interest and its regulation.⁷⁶

National legislation

The Law "On Prevention of Corruption"⁷⁷ 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 interest of the person and public functions as a civil servant or representative 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”,⁷⁸ and in the practical manual of the National Agency on Corruption Prevention (NACP).⁷⁹ 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 conflict of interest.

At local level, the special permanent commissions of 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 and UAH 13 600, and the deprivation of the right to hold certain offices or engage in certain activities for one year.⁸⁰ Information on corruption-related offences is collected in a single open database of individuals involved in corruption (corruptinfo.nazk.gov.ua),⁸¹ 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 business ownership by public officials. For instance, a member of a village council participated in voting session on a decision that allowed his son to use the land. The Berdiansk city court imposed a fine amounting to UAH 1 700 as a penalty.⁸²

2.5. 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 Corruption⁸³ is the only legally binding universal anti-corruption instrument.
- It is supported by this Technical Guide to the Convention.⁸⁴

- The **Council of Europe’s Criminal Law Convention on Corruption (ETS No. 173)**⁸⁵ aims to coordinate 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)**⁸⁶ defines common international rules for effective remedies for persons affected by corruption.
- The **Congress of the Council of Europe’s Resolution and Recommendation on Fighting nepotism** within local and regional authorities⁸⁷ sets out standards for good practice and presents strategies for preventing corruption in the recruitment procedures of European local and regional governments.
- The **European Union’s Convention against Corruption Involving Officials**⁸⁸ aims to fight corruption involving officials from the EU or its Member States.

National context

In the 2016 Ukrainian Municipal Survey,⁸⁹ 56% of respondents respectively indicated that nepotism is a “significant problem” and 29% identified it as “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 to nepotism.

Section 27 of the Law “On Prevention of Corruption”⁹⁰ 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 became an example of nepotism.⁹¹ The head of the department of culture and tourism of a raion state administration did not report **her husband’s direct subordination, who was the director of the town’s Centre for Culture and Leisure**. She also employed her son. Additionally, she assigned her husband a payment for his work from the raion budget.⁹² 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.⁹³ In total, the court imposed a fine in the amount of 300 non-taxable minimum incomes, equivalent to UAH 10 200. 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.

2.6. PATRONAGE

Patronage is the use of an official position to appoint a person in a public office based on favouritism, often in exchange of political support. 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 violates the boundaries of legitimate political influence and the principles of merit, and leads to public money being misspent.

International standards

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

- The United Nations Convention against Corruption⁹⁴ is the only legally binding universal anti-corruption instrument.
- It is supported by this Technical Guide to the Convention.⁹⁵
- The **Council of Europe’s Criminal Law Convention on Corruption** (ETS No. 173)⁹⁶ aims to coordinate 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)**⁹⁷ defines common international rules for effective remedies for persons affected by corruption.
- The **Congress of the Council of Europe’s Resolution and Recommendation on Fighting nepotism** within local and regional authorities⁹⁸ sets out standards for good practice and presents strategies for preventing corruption in the recruitment procedures of European local and regional governments.
- The **European Union’s Convention against Corruption Involving Officials**⁹⁹ aims to fight corruption involving officials from the EU or its Member States.

Since the misuse of administrative resources during electoral processes is the most widespread manner to use patronage as a form of corruption, the following international standards are of relevance:

- The Congress of the **Council of Europe’s Resolution on the Misuse of Administrative Resources during Electoral Processes: The Role of Local and Regional Elected Representatives and Public Officials**¹⁰⁰ provides international standards and best practices to tackle the misuse of administrative resources.
- Joint Guidelines of the Venice Commission and OSCE/ODHIR for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes¹⁰¹ aim to assist decision makers in adopting laws and initiating concrete measures to prevent misuse of administrative resources.

National context

Patronage is considered to be widespread and poorly regulated in Ukrainian politics. 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, bureaucracy loses its impartiality but remains difficult to prove at the same time.

National legislation

The Law No. 889 “On Civil Service” of 10 December 2015¹⁰² obliges civil servants to be politically impartial. Article 10 of the Law¹⁰³ 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 case¹⁰⁴ 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 “**said**” influence was to become the Deputy Minister of Economic Development and Trade. The case is still ongoing in Kyiv’s Solomianskyi court and the court arraignment has been postponed several times.

Chapter 3

TRANSPARENCY

3.1. 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** (CETS No. 205)¹⁰⁵ affirms an enforceable right to information.
- The **Congress of the Council of Europe’s Resolution and Recommendation on Transparency and open government**¹⁰⁶ call upon local and regional authorities to increase the use of open data and records management by their administrations, and to publish these in comprehensive, accessible and reusable ways.
- The Aarhus Convention¹⁰⁷ grants rights, including access to information, in decisions concerning the environment.
- The OECD Recommendation of the Council on Open Government¹⁰⁸ identifies on-demand provision of information and proactive measures by the government to disseminate information as an initial level of citizen participation.

National context

Access to information in Ukraine is considered to be highly developed.¹⁰⁹ 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 legal requirements and how to put them into practice. It has been reported in analysis of the implementation of access to information that responses are often 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.¹¹⁰

To overcome these 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.¹¹¹ 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).¹¹² The Laws No. 2939 “On Access to Public Information”,¹¹³ No. 2657 “On Information”,¹¹⁴ and No. 183

“About state secret”¹¹⁵ regulate access to information. In line with the Law “On Access to 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).¹¹⁶ International organisations recommend however to set up or designate an independent authority to supervise and enforce regulations on the access to public information.¹¹⁷

The violation of the right to request and obtain information from public authorities can be punished by a fine of up to 80 non-taxable minimum income (UAH 1,360), as stated in Article 212.3 of the Administrative Code.¹¹⁸ The unlawful refusal to provide access to public information for journalists in their work can be punished by a fine, or **3 years’ imprisonment (Article 171 of the Criminal Code).**¹¹⁹ On the other hand, the **punishment for revealing a state secret can reach up to 5 years’ imprisonment.**

National guidelines

To ensure the right of access to public information, local public authorities, as **“information administrators” (Article 3 of Law No. 2939), must designate special units or freedom of information officers, who will provide information upon request. They must simplify procedures for submitting requests and obtaining information, as well as providing 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 two guideline documents for local authorities in 2017.¹²⁰ The first manual explains how to efficiently organise the work of information administrators and how to deal with practical challenges while providing access to public information.¹²¹ The second manual provides more specific guidelines as to how to create a space in public buildings with the necessary conditions to provide access to public information.¹²²

Examples of best practice

The website “Access to the truth” (dostup.pravda.com.ua) is a platform for the submission of electronic requests to holders of information, in accordance with the Law “On Access to Public Information”. To obtain information, the applicant must:

1. **Go to the website “Access to the truth”;**
2. **Choose from a list the holder of information from whom you need the information;**
3. **Submit a request within a given form on the website; and**
4. **Check your electronic or postal mailbox.**

A request for information constitutes a **person’s** request to the information manager asking to provide public information or documents that contain the information and are in his/her possession (for example, information on the use of budget funds or a copy of the decision of the city council session). In Ukraine, individuals (be it citizens of Ukraine, foreigners or stateless persons), public associations and legal entities have the right to access public information.

The Platform of access to public information ‘Ombudsman Plus’¹²³ monitored the implementation of the 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.¹²⁴ These local public authorities have achieved the implementation of the right to access to public information by following these steps:

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

3.2. 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 the Council of Europe’s Resolution and Recommendation on Open data for better public services**¹²⁵ explain its importance for improving local democracy.
- The **Congress of the Council of Europe’s Resolution and Recommendation on Transparency and open government**¹²⁶ call upon local and regional authorities to increase the use of open data and records management by their administrations.
- The United Nations Guidelines on Open Government Data for Citizen Engagement¹²⁷ introduce policy guidelines and good practice recommendations.
- This World Bank Toolkit¹²⁸ starts from the basics, through to planning and implement, as well as avoiding common pitfalls.
- The Five Star Open Data Deployment Scheme¹²⁹ provides five steps to fully opening data, explaining the costs and benefits of each.
- The International Open Data Charter¹³⁰ sets out six principles for open, timely and interoperable government data.
- The OECD Recommendation of the Council on Open Government¹³¹ identifies on-demand provision of information and proactive measures by the government to disseminate information as an initial level of citizen participation.

National context

On 9 April 2015, a major step was made towards open data in Ukraine with the adoption of the Law No. 319 “**On** amendments to some laws of Ukraine on access to public information in the form of open data”,¹³² which introduced significant changes in other relevant legal acts. These changes obliged public authorities and local governments to publish and update public information in the form of open data on a regular basis. 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).¹³³ The State Agency for E-Governance¹³⁴ 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,¹³⁵ public procurement¹³⁶ and beneficial ownership disclosure.¹³⁷

National legislation

Open data is covered within 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 Public Information”,¹³⁸ 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),¹³⁹ on 11 February 2015, the Parliament adopted the Law No. 183-VIII “On Open Use of Public Funds”.¹⁴⁰ 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 Public Information”).

Furthermore, the Decree No. 835 of the Cabinet of Ministers of Ukraine of 21 October 2015 introduced regulations on data sets to be published in the form of open data.¹⁴¹ Through periodic monitoring of the publication and update of data sets on the official websites of state bodies and on the Unified State Web Portal of Open Data (data.gov.ua) and with the involvement of civil society organisations. Regulations have substantially reduced the workload relating to requests for public information and made the work of specialists more efficient.

National guidelines

Since March 2017, the Open Data Roadmap for Ukraine¹⁴² 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.¹⁴³

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.¹⁴⁴ 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 corresponding to **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’,¹⁴⁵ implemented in Netchyntsi village, provides an example of how small communities can implement open data provisions of the

legislation and develop a website for their village council.¹⁴⁶ In addition to the website, two open-access laptops free of use are available 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.

In February 2020, Transparency International Ukraine released the results of the study on municipal transparency involving the 100 largest cities of Ukraine in 2019. For the first time, two municipalities shared the first spot: Drohobych and Pokrov. The top five also included Ternopil (76.0), Mariupol (74.6) and Vinnytsia (74.2).¹⁴⁷

The publication *Examples of good practices of municipal transparency*¹⁴⁸ developed by Transparency International Ukraine contains ideas and instruments to increase the degree of openness in Ukrainian cities. The purpose of featuring such examples is to help local authorities adapt successful experiences of other municipalities to their own structures. The collection contains 86 transparency indicators, each of which contains examples of best practices and a link to the site of the relevant city council.

3.3. 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 policymaking, 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 **Committee of Ministers of the Council of Europe's Recommendation on Codes of Conduct for Public Officials**¹⁴⁹ and the **European Code of Conduct for all Persons Involved in Local and Regional Governance**¹⁵⁰ require private interests to be declared, made public and monitored.
- The **Congress of the Council of Europe's Resolution and Recommendation on Conflicts of interest at local and regional level**¹⁵¹ call on local and regional authorities to promote the proactive disclosure of declarations of interest prior to public request and to ensure that disclosure policies are accompanied by appropriate measures for resolving conflicts of interest.
- The **OECD's Managing Conflict of Interest in Public Service: Guidelines and Country Experiences**¹⁵² provides practical instruments for modernising conflict-of-interest policies.
- The **OECD's Asset Declarations for Public Officials: A Tool to Prevent Corruption**¹⁵³ identifies the key elements of asset declaration systems.

National context

The launch of the electronic asset declarations system (public.nazk.gov.ua), which represents the single state database of asset declarations, and making these declarations accessible online are considered crucial accomplishments in the area of prevention of corruption in Ukraine.¹⁵⁴ The system became not only a tool of public scrutiny and transparency, but also an instrument for law enforcement bodies to hold accountable those liable of corruption offences. 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 Chapter VII “Financial Control” (Articles 45-52) of the Law No. 1700 “On prevention of corruption”.¹⁵⁵ Since 15 July 2016, two Regulations¹⁵⁶ 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.).¹⁵⁷ This data remains open and available on a single state database of asset declarations.

The NACP controls the deadlines, examines lawful submission of declarations, the accuracy of the information, and monitors whether the declared assets correspond with the **public official’s** lifestyle. 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.¹⁵⁸

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.¹⁵⁹ 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.¹⁶⁰ The Sumy Oblast Council provides a general overview of relevant information on e-declarations for local public authorities on the **council’s website**.¹⁶¹ The Cherkasy regional administration, in addition to general information on e-declarations, has systematised the information for different categories of public officials.¹⁶² These actions can help public officials stay informed about their duties and avoid unintended mistakes in the process of disclosure.

3.4. 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 Standards¹⁶³ 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 Institutions¹⁶⁴ 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 grow significantly, 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.¹⁶⁵

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 **Code's Article 110 and Article 15 of the Law No. 576 "On Accounting Chamber"**,¹⁶⁶ 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,¹⁶⁷ the State Treasury of Ukraine¹⁶⁸ and local finance authorities perform financial control on behalf of executive bodies (Articles 111-113 of the Budget Code). They control the compliance of local authorities with budget legislation even though the co-ordination of these institutions remains 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)¹⁶⁹ or criminal (Articles 210-211 of the Criminal Code)¹⁷⁰ liability.

National guidelines

As part of an assessment of fiscal risks associated with local governments, the International Monetary Fund (IMF) recommends local authorities to 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"*.¹⁷¹

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 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.
- The OECD recommends Ukrainian authorities to extend the remit of the Accounting Chamber of Ukraine to subnational governments in order to improve external audit and the governance of public investments across levels of government for regional development in Ukraine.¹⁷²

Examples of best practice

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

An innovative example of such approach is the initiative for a comprehensive external public audit of the Okhtyrka City Council.¹⁷³ 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, taking into account their professional qualifications;
- The results of the public audit must be published in the media.

Such initiative by 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.¹⁷⁴ The City Council closely collaborates with civil society on improving the effectiveness of the local budget, based on the results of a public audit.

3.5. PUBLIC PROCUREMENT

Public procurement refers to the process by which public authorities, including local authorities, purchase work, goods or services.

As public procurement is an essential part of public service provision for local and regional authorities, efficient procurement is key to good governance. However, as procurement involves a large proportion of public expenditure and the transfer of public resources to the private sector or non-profit organisations, it is particularly vulnerable to corruption.¹⁷⁵

Therefore, public authorities have to increase transparency over public procurement, with the help of new technologies, and allow greater scrutiny. Open contracting systems will also create a preventive effect, because officials will refrain from manipulating the contracting process if they know that the details will be revealed.

International standards

- The **Congress of the Council of Europe's Resolution** and Recommendation on Making public procurement transparent at local and regional levels¹⁷⁶ and the OECD Checklist for Enhancing Integrity in Public Procurement¹⁷⁷ provide guidance for enhancing transparency and promoting integrity in procurement.
- The OECD Recommendation of the Council on Public Procurement¹⁷⁸ promotes a strategic and holistic use of public procurement systems across all levels of government and state-owned enterprises. The online Public Procurement Toolbox¹⁷⁹ provides policy tools, specific country examples as well as indicators to measure any public procurement system.
- The WTO Agreement on Government Procurement¹⁸⁰ establishes rules requiring that open, fair and transparent conditions of competition be ensured in government procurement.
- The EU Directive on Public Procurement¹⁸¹ ensures the best value for money for public purchases

and guarantees the respect of the EU's principles of transparency and competition.

- The UNCITRAL Model Law on Public Procurement¹⁸² is a legal template available to national governments seeking to introduce or reform public procurement legislation for their internal market.

National context

Created in 2016, the ProZorro (prozorro.gov.ua) e-procurement system has significantly enhanced transparency in public procurement and contributes to fighting corruption at all levels of governance. Owing to the high level of transparency of the ProZorro platform, all users are able to detect procurement procedures that may entail a violation of law, as provided for in Article 9 of the Law No. 922-VIII "On Public Procurement"¹⁸³ which concerns civic oversight. However, improvements to the public procurement system are still needed. In particular, mechanisms for citizens requests for investigation and information on actual payments per procurement agreement, in order to further increase transparency indecision-making.

National legislation

In 2015, the Ukrainian Parliament adopted the Law "On Public Procurement". Since then, this law has facilitated the creation of an e-procurement system, bringing e-democracy and e-governance to a new level. Open procedures and competitive selection now take place exclusively on the electronic platform ProZorro, which has boosted **transparency and has significantly improved Ukraine's position in the international E-Government Development Index scale.**¹⁸⁴ Similarly, the DoZorro portal (dozorro.org) creates a database of real assessments of purchasers, suppliers and individual tenders that allows to monitor public procurement effectively.

Ukraine continued on its path to reform by becoming a fully-fledged member of the World Trade Organization's Agreement on Government Procurement in 2016 and by adopting the Resolution No. 175 of the Cabinet of Ministers "On the Public Procurement Reform Strategy and Action Plan (Roadmap)",¹⁸⁵ which addresses the development of the public procurement system from 2016 to 2022 in compliance with the provisions of the "EU – Ukraine Association Agreement".¹⁸⁶

In September 2019, the Parliament of Ukraine **adopted a number of amendments to the Law "On Public Procurement"** with the aim of complying the national legislation with the Directives 2014/24/EU¹⁸⁷ and 2014/25/EU¹⁸⁸ of the European Parliament and of the Council on public procurement. On 19 April 2020, those amendments came into force. The amendments which have been introduced are generally deemed positive, as they aim to increase the level of control and transparency of the procurement procedure and eliminate a number of existing critical issues that were widely abused and taken advantage of. The law introduces a number of significant changes to public procurement procedures:¹⁸⁹

- Below-threshold procurements are now regulated by the introduction of simplified procurements, which contracting authorities are to make using the electronic procurement system ("Prozorro");
- As a general rule, if the value of a procurement item equals to or exceeds UAH 50,000 but is less than UAH 200,000 for goods/services or less than UAH 1,500,000 for works;
- For natural monopolies, if the value of a procurement item equals to or exceeds UAH 50,000 but is less than UAH 1,000,000 for goods/services or less than UAH 5,000,000 for works.

The new law also introduced measures for identifying price dumping more easily, adopting non-price criteria for assessing proposals, enabling to organise more professional procurement due to the transition from **"tender committees" to "authorised procurement officials"**.

Moreover, according to Article 62 of the Law "On Prevention of Corruption", legal entities participating in public procurement procedures in which the expected value equals or exceeds UAH 20 million must have

established and authorised anti-corruption programmes (that is: a set of rules, standards and procedures for detecting, combating and preventing corruption within a **legal entity's list of activities**).

Public procurement efficiency is also enhanced by the **Law "On Electronic Documents and Electronic Document Management"**,¹⁹⁰ **"On Electronic Trust Services"**,¹⁹¹ **"On Access to Public Information"**,¹⁹² **"On the Antimonopoly Committee of Ukraine"**¹⁹³ and a number of by-laws enforcing transparency and efficiency in the public procurement system in Ukraine.

To respond to the challenges caused by COVID-19 and the need to ensure the procurement of goods and services, the Ukrainian Parliament adopted the **Law "On Amendments to Some Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of Coronavirus Disease (COVID-19)"**¹⁹⁴ which amends the **Law "On Public Procurement" to ease** the procurement process for goods, works or services necessary to prevent the spread of the COVID-19.

National guidelines

The Ministry of Economic Development and Trade of Ukraine (MEDT), **in line with the Law "On Public Procurement"**, created a special Information Resource of the Authorised Body in the field of public procurement.¹⁹⁵ Its aim is to disseminate information on the application of public procurement legislation, as well as on the effective implementation of the state procurement policy by the Authorised Body.

The ProZorro Infobox (infobox.prozorro.org), a knowledge centre on public procurement, provides information for customers and suppliers about all the innovations in the ProZorro system and get answers to all their questions. It also shares methodological materials, explanatory notes, online training courses and a forum for discussing public procurement issues among customers, suppliers, and representatives of the ProZorro team and the MEDT.

In 2019, the MEDT developed **the "Guidelines on ethical conduct in public procurement"**¹⁹⁶ for public authorities, local self-governments and other organisations engaged in public procurement. These Guidelines are not a legally binding document, yet it provides important recommendations for public authorities and local self-government to ensure accountability and transparency. Specific sections of the Guidelines relate to openness and transparency during all stages of public procurement, non-discrimination and prevention of corruption.

Example of best practice

During the period March – June 2020, there has been almost 40 thousand purchases in Ukraine through the ProZorro e-procurement system, a majority of which related to medical equipment, pharmaceutical products, and emergency and security equipment to combat the COVID-19 pandemic. The number of purchases is growing rapidly. The degree of transparency in public procurement was substantially enhanced with the introduction of a business intelligence tool (covid.dozorro.org) which enables the search and monitoring of information concerning COVID-19 procurement conducted by national and local authorities.

Chapter 4

CITIZEN PARTICIPATION

4.1. 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 Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)¹⁹⁷ provides an international legal guarantee to this right, including the establishment of mechanisms and procedures for dealing with and responding to citizen complaints and suggestions.
- The Transparency **International's Reference Guide on Complaints Mechanisms**¹⁹⁸ sets out guiding principles and good practices for establishing and implementing complaint mechanisms which provide safe channels for citizens to alert a public or private institution about any corruption risks or incidences.
- The **Danish Refugee Council's** handbook¹⁹⁹ 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.²⁰⁰

National context

Complaints mechanisms fall under the **citizens'** right to address public authorities, as enshrined in Article 40 of the Constitution of Ukraine.²⁰¹ **Since July 2015, when the amendments to the Law "On Citizens' Appeal"**²⁰² 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"²⁰³ 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 public officials (Articles 24-25).

National guidelines

The manual *Tools of e-democracy in Ukrainian cities*²⁰⁴ encourages 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

Odesa City Council created the citizen complaint centre '1535' (1535.odessa.ua). Its dedicated website provides a well-structured overview of citizen complaints and the ensuing response from the public authority. The interactive map enables to see where 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 and water supply, among others, are also featured. A special section of the website called **"before and after"** shows photos comparing the subject of the citizens' complaint (in most cases related to infrastructure) before and after being repaired or resolved.²⁰⁵ Such visualisation makes citizens aware of the efficiency and effectiveness of their local government, increases trust and encourages citizen participation.

The Ivano-Frankivsk City Council has enabled the submission of complaints regarding the development of the city, road and footpath maintenance, public spaces, etc. through the Facebook group "Kommunalka" (facebook.com/groups/komynalka) and the Rapid Response Service 1580 (1580.if.ua).

The Open City project is a crowdsourcing Internet platform (opencity.e-dem.ua) for residents to interact with local authorities and utility providers, as well as for self-organisation of citizens. To do this, there are 2 sections on the site:

- "Problems" - allows you to create a message about the problem, which will be sent to the appropriate organisation for resolution
- "Useful objects" - a map of the city on which users of the portal can apply various useful objects, such as: hospitals, schools, parking lots, tourist sites, free Wi-Fi zones, battery reception points, etc.

To report a problem to residents, you need to take the following steps:

1. Choose your city
2. Click the "Report" button
3. Select a problem category
4. Put a point on the map where the problem is
5. Briefly describe the problem
6. Add photos and / or videos
7. Click "Report".

4.2. OPEN POLICYMAKING

Open policymaking 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 policymaking: different policy decisions will need different approaches.

International standards

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

- The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)²⁰⁶ provides an international legal guarantee to this right, including the establishment of measures to ensure citizen participation.
- The **Council of Europe’s Guidelines for civil participation in political decision making**²⁰⁷ sets out standards for engaging with citizens and civil society.
- The **Congress of the Council of Europe’s Resolution and Recommendation on Transparency and open government**²⁰⁸ provide standards and mechanisms to enhance transparency and promote the involvement and participation of citizens in the local public life.
- The OECD Recommendation on Open Government²⁰⁹ helps to design and implement successful open government strategies and initiatives.
- The **OECD’s Guiding Principles**²¹⁰ support the development of a culture of openness.
- The **OECD’s Focus on Citizens: Public Engagement for Better Policy and Services**²¹¹ explores how to put open policymaking into practice.
- The **OECD’s Observatory of Public Sector Innovation**²¹² lists useful toolkits and resources.
- The Open Government Partnership’s Guide²¹³ and Toolbox²¹⁴ provide an extensive range of support. Both Australia²¹⁵ and the UK²¹⁶ have both produced useful toolkits.

National context

Open policymaking became a regular practice in Ukraine after the 2014 Revolution. Every governmental institution is legally obliged to consult legislative initiatives with civil society. Up until 1 July 2017, 21 regional administrations had created civil councils²¹⁷ 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 policymaking in Ukraine. While in 2015 79% of **Ukrainians had never heard the term “electronic democracy”** and only 14% understood its meaning, the situation significantly changed within two years.²¹⁸ Multiple electronic platforms, such as Open City (opencity.e-dem.ua) and *Rozumne misto* (rozumnemisto.org), brought open policy-making to the fore by providing diverse tools for interaction between citizens and public authorities.

National legislation

Several laws in Ukraine contain provisions on open policymaking, such as the Law No. 2862-VI “**On Social Dialogue**”,²¹⁹ the Law No. 1160 “**On Principles of Public Regulatory Policy of Economic Activity**”,²²⁰ and the Cabinet of Ministers Resolution No. 996 “**On Ensuring Public Participation in the Formulation and Implementation of Public Policy**”.²²¹ Furthermore, a more relevant draft law “**On public consultations**” is currently under development.²²²

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 which means 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. Moreover, local public authorities approve annual plans for public consultations, considering proposals from civil society organisations. In a 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 legal provisions and hinder open policymaking 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 off individual assessments provided for each city.²²³ The guidelines for open policymaking 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*²²⁴ provides an overview of the available electronic tools which local public authorities can use to enhance their open policymaking process. The platform Open City²²⁵ provides cities with tools that enable citizens to report local problems. In addition, the advantage of the e-platform *Rozumne misto*²²⁶ is its wide array of instruments aimed at fostering e-participation, which can be flexibly adapted to **each city's** demands and requirements. 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.

The "Civic Activist's Handbook"²²⁷ developed by experts of the USAID project "Citizens in action" in collaboration with the Ukrainian Centre for Independent Political Research provides recommendations and an overview of mechanisms to involve citizens in open policymaking. For instance, it provides model regulations for local self-governance that allow the implementation of best practices of local democracy in line with European standards of good governance.²²⁸

Examples of best practice

One of the initiatives carried out in Netchynsi (Khmelnitsky region) **as part of the project 'Local initiatives on ethical governance and transparency'**²²⁹ provides a clear example of good practice in initiating an open policy-making process at 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 on the Council's work.**²³⁰ The website serves as a source of information for **the Council's decisions and provides an** electronic form for public appeals and information requests.

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

4.3 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 Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)²³¹ provides an international legal guarantee to this right, including the implementation of measures that would facilitate its exercise.
- The **Congress of the Council of Europe's Resolution on Gender budgeting**²³² recommends introducing gender budgeting methods in the annual budgets at local and regional levels.
- The OECD Policy Brief No. 22²³³ provides a series of policy recommendations for how key stakeholders can contribute to successful participatory budgeting.
- The **World Bank's book *Participatory Budgeting***²³⁴ 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**²³⁵ explores how to implement participatory budgeting.
- The World Atlas of Participatory Budgeting²³⁶ represents the widest compilation of data on the situation of these processes worldwide.
- The **UK's Participatory Budgeting Unit has a useful list of resources and toolkits**.²³⁷
- The Subnational Open Budget Survey Questionnaire²³⁸ 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 Policy²³⁹ of the Global Initiative for Fiscal Transparency.

National context

In 2015 and for the first time in Ukraine, Chernihiv, Cherkasy and Poltava introduced participatory budgeting. More than 230 cities and amalgamated communities are now implementing this process of democratic deliberation and decision-making. 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 budget planning processes 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 budget spending.

National legislation

There is no specific legal regulation for participatory budgeting. The Law No. 280/97-VR **"On Local Self-government"**²⁴⁰ allows citizens to arrange public hearings where they can discuss urgent issues and submit their propositions to 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 Handbook **"11 honest ways to influence local budget"**²⁴¹ provides tools for citizen participation in a local authority's budgeting process. Each tool includes practical guidance for its implementation and the relevant legal provisions.

The analytical report *Participatory budgeting*²⁴² 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. Facilitation of public discussions about the projects in order to create a space for open discussion of general problems encountered in the city or village;
6. Reviewing the applications;
7. Selection of projects through an open and public voting procedure;
8. Monitoring of the implementation of the projects;
9. Process evaluation.

The guidelines for the implementation of participatory budgeting in the city of Sambir²⁴³ 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 the 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

Energodar City Council has been implementing participatory budgeting since 2018. City Council approved UAH 10 million for citizen initiatives and projects in 2020, which makes it the most remarkable example in the Ukrainian context in terms of money spent per citizen (Energodar has 54 000 inhabitants)²⁴⁴.

Another example is the amalgamated community of Vinnytsia, which is the first Ukrainian community to adopt a School Participatory Budgeting in 2019. UAH 1 million was allocated for the implementation of 11 winning school projects aiming to strengthen the active engagement of children and teenagers (10 to 18 years old) in the community.²⁴⁵ In the same vein, the Poltava Regional Council implemented a school safety programme at regional level to introduce a Participatory Budget at school level. More than 100 schools took part in the preparation and submission of projects, and 34 projects were chosen for implementation in 2021²⁴⁶.

With the support of the 'Local Initiatives on Ethical Governance and Transparency' scheme,²⁴⁷ the town of Nemishaieve (Kyiv region) implemented participatory budgeting. The Town Council allocated UAH 200,000 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 were implemented by the end of 2017.

Such examples of participatory budgeting allow for local authorities to better identify and address needs and problems that are most important to citizens by allowing them to voice their concerns and suggest feasible solutions in the format of project proposals. Moreover, the citizens are becoming increasingly engaged in the administration of public funds, thus developing a sense of ownership and responsibility.

In the end, the dialogue between citizens and local authorities during the implementation of participatory budgeting promotes trust and citizen participation.

4.4. 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 Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)²⁴⁸ provides an international legal guarantee to this right, including the establishment of measures to ensure citizen participation, such as consultative processes and local referendums.
- The OECD Background Document on Public Consultation²⁴⁹ defines consultation and provides a summary of consultation tools.
- The **Council of Europe's** Guidelines for civil participation in political decision making²⁵⁰ set out the different types of civil participation in decision making.
- The Committee of Ministers of the **Council of Europe's Recommendation on the participation of citizens in local public life.**²⁵¹
- The OECD Recommendation of the Council on Open Government²⁵² supports initiatives for designing and delivering public policies and services, in an open and inclusive manner.

National context

The practice of public consultations evolved significantly as part of the Ukraine's Open Government Partnership action plans.²⁵³ In line with recommendations from the European Parliament Monitoring Mission to Ukraine, an online platform for public consultation of the Parliament (itd.rada.gov.ua) of Ukraine was created and duly incorporated into national legislation. The Government of Ukraine also launched a thematic web platform for communication with civil society and public consultations (kmu.gov.ua/gromadskosti). At local level, the Kyiv City Council regularly uses public consultations to involve citizens in the decision-making process.²⁵⁴

National legislation

The legal basis for public consultations is evolving. In fact, the draft Law "On public consultations",²⁵⁵ which aims to provide a legally binding procedure for public consultations, is currently being developed.²⁵⁶

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"²⁵⁷ and No. 976 "On the Procedure of Civic Expertise of the Activities of the Executive Bodies",²⁵⁸ with essential amendments made on both regulations by the Regulation No. 234 of 8 April 2015.²⁵⁹

Public consultations are announced and conducted by units responsible for drafting acts. They can take place in the form of public discussions, e-consultations and surveys, as indicated in paragraph 11 of the Regulation No. 996. The main bodies involved in 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.

Public consultations, which result in the detailed territorial zoning and general plans or amendments thereto, are held in accordance with the Law "On Regulation of Urban Development".²⁶⁰ According to the Law, drafts urban-planning documentation at local level are subject to public consultation: general plans of settlements, zoning plans of territories, detailed plans of territories.

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 on a regular basis in the form of online consultations, expert working groups and public hearings, in order to give citizens, civil society organisations, and other stakeholders a sense of ownership in decision making.²⁶¹ Public authorities have to ensure that public consultations participants 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.

Experts of the USAID project "Citizens in action", in collaboration with the Ukrainian Centre for Independent Political Research, developed model regulations for local self-governance that allow the implementation of best practices of local democracy in line with European standards of good governance, including the model regulation on public consultation.²⁶²

Examples of best practice

In Lviv municipality, different local issues that fall within the authority of local self-government bodies can be subject to public hearings. The organisation of such public hearings is defined by the Regulations on the Procedure for Holding Public Hearings in the City of Lviv, which is an annex to the Charter of the Territorial Community of the City of Lviv.²⁶³ The secretariat of the Lviv City Council determines jointly with the initiator the date of the public hearing and the relevant announcement is published on the Lviv City Council official website within 5 working days from the date of the reception of the request.

The project 'Establishment of the Community Initiative Support Office in Slavutych'²⁶⁴ presents another 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 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.

The Mariupol City Council adopted a procedure for holding public hearings.²⁶⁵ The procedure regulates the initiation, preparation and organisation of public hearings – including the recording of the results – as follows:

- Public hearings can be held on issues concerning either all citizens or particular groups residing in certain city districts;
- Depending on the issue, a total of 50 or 75 signatures are required for initiating public hearings, or alternatively a collective request from at least three civil society organisations, associations of co-owners of multi-apartment houses, or people's self-organisation bodies;
- Public hearings are prepared in co-operation with their initiators;
- Two of the representatives of the initiator(s) shall act as Secretary and President of the hearing;
- The decision adopted following a public hearing is to be approved by simple voting majority and discussed at the plenary meeting of the City Council or its executive committee with the mandatory participation of the initiators of the public hearing.

4.5. 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 Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)²⁶⁶ provides an international legal guarantee to this right, including the establishment of measures to ensure citizen participation, such as public petitions.
- The **OECD's Promise and Problems of e-Democracy**²⁶⁷ provides a section on the value and challenges of establishing an online petitioning platform.

National context

Public petitions fall under the right of citizens to address public authorities, enshrined in Article 40 of the Constitution of Ukraine.²⁶⁸ Since July 2015, it is possible to submit electronic petitions, which has significantly boosted the use of the public petitions mechanism among citizens.²⁶⁹ As of 2018, electronic petitions became the most widespread instrument of e-democracy in Ukrainian cities.²⁷⁰

The e-democracy portal E-DEM (petition.e-dem.ua) constitutes a single system for local petitions. The purpose of the system is to help local governments by providing them with an already-made and unified online tool and a package of draft local regulations to ensure compliance with the Law No. 577-VIII "On Amendments to the Law of Ukraine 'On Citizens' Appeals' Concerning Electronic Appeals and Electronic Petitions".²⁷¹ More than 200 local governments are already using this platform.

In addition, public petitions requiring the attention of the President of Ukraine can also be submitted online through the specific Electronic Petitions portal of the President of Ukraine (petition.president.gov.ua). This resource also allows to monitor the status of all petitions sent to the President of Ukraine.

National legislation

The Law No. 393 “On Citizens’ Appeal”²⁷² 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 addressed to 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 reaches 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 8.²⁷³

The procedure of consideration of electronic petitions addressed to the President of Ukraine is regulated by the Decree of the President of Ukraine No. 523 / 2015.²⁷⁴

National guidelines

The Association for Community Self-organisation Assistance of Ukraine provides the following recommendations to local public authorities:²⁷⁵

- 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 a new, custom-made system for public petitions or use the state platform for the e-petitions (petition.e-dem.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 whole petition process review;
- Conduct training courses that will allow special units and public servants who are responsible for the review of 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.²⁷⁶ From October 2015 to September 2020, the City Council supported 44 petitions.²⁷⁷ When a public petition is successful, the mayor appoints a person 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 taken, 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, thus **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. However, on a practical level, local government units should translate laws and policies into practice and increase their efforts to ensure transparency, accountability and meaningful participation of citizens in policy- and decision-making. As well as being important qualities of local democracy, transparency and civic participation can 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 whistle-blowers and support for independent media and civil society, are also critical to building open government, public ethics and accountability. An effective approach to rooting out corruption could be 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.

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