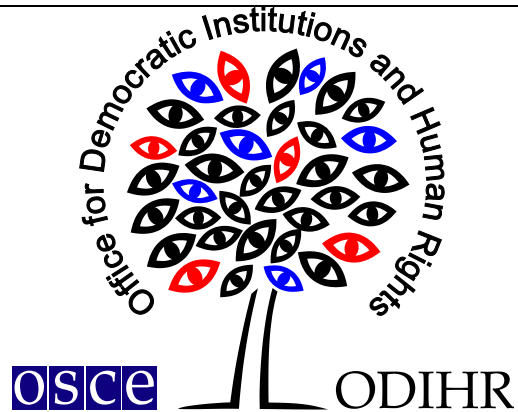


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## OPINION

### ON THE DRAFT LAW OF UKRAINE

#### “ON PUBLIC CONSULTATIONS”

**based on an unofficial English translation of the draft law commissioned by the OSCE  
Office for Democratic Institutions and Human Rights**

*This Opinion has benefited from contributions made by Prof. Melanie Sully, Director of the Institute for Go-Governance (Vienna, Austria) and by Ms. Sandra Pernar, independent expert on public participation issues and Senior Advisor at the Croatian Government Office for Cooperation with NGOs (Zagreb, Croatia).*

OSCE Office for Democratic Institutions and Human Rights

Ulica Miodowa 10 PL-00-251 Warsaw ph. +48 22 520 06 00 fax. +48 22 520 0605

*The OSCE/ODIHR supports OSCE participating States by reviewing, upon request, draft and existing legislation to assess their compliance with international human rights standards and OSCE commitments and provide recommendations.*

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**Annex: Draft Law of Ukraine “On Public Consultations”**

## **I. INTRODUCTION**

1. *On 12 July 2016, the First Deputy Minister of Justice of Ukraine sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) a request for a legal review of the Draft Law of Ukraine “On Public Consultations” (hereinafter “the Draft Law”).*
2. *On 22 July 2016, the OSCE/ODIHR responded to this request, confirming the Office’s readiness to prepare a legal opinion on the compliance of the Draft Law with OSCE commitments and international human rights standards.*
3. *This Opinion was prepared in response to the above-mentioned request as part of OSCE/ODIHR’s general mandate of supporting OSCE participating States in legal reform efforts related to the OSCE human dimension.*

## **II. SCOPE OF REVIEW**

4. The scope of this Opinion covers only the Draft Law, submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing public consultations in Ukraine.
5. The Opinion raises key issues and provides indications of areas of concern. In the interests of conciseness, the Opinion focuses more on those provisions that require improvement than on the positive aspects of the Draft Law. The ensuing recommendations are based on international standards and practices related to public consultations. The Opinion will also seek to highlight, as appropriate, good practices from other OSCE participating States in this field. Moreover, in accordance with the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities, the Opinion analyses the potentially different impact of the Draft Law on women and men.<sup>1</sup>
6. This Opinion is based on an unofficial English translation of the Draft Law commissioned by the OSCE/ODIHR, which is attached to this document as an Annex. Errors from translation may result.
7. In view of the above, the OSCE/ODIHR would like to make mention that the Opinion is without prejudice to any written or oral recommendations and comments related to this and other relevant legislation of Ukraine that the OSCE/ODIHR may make in the future.

## **III. EXECUTIVE SUMMARY**

8. At the outset, it is noted that this Draft Law contains many positive aspects which correspond to international standards and good practices. These include in particular the wide scope of documents which shall undergo public consultations and their detailed explanation (Article 1); setting up a list of principles to render the consultation process

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<sup>1</sup> See par 32 of the OSCE Action Plan for the Promotion of Gender Equality adopted by Decision No. 14/04, MC.DEC/14/04 (2004), available at <http://www.osce.org/mc/23295?download=true>.

transparent, accessible and inclusive, as well as accountable and efficient (Article 4) and requiring public authorities to prepare a summary of proposals received in the course of public consultations (Article 15).

9. At the same time, despite the Draft Law’s introduction of liability for breaching the procedure for holding public consultations, the sanctioning system would be more effective if accompanied by clear procedures and designated responsibilities. Moreover, the system of monitoring and evaluation of public consultations would be enhanced if it were expanded to also foresee monitoring conducted by an independent body, and would also focus on implementation of regulations and procedures.
10. More specifically, and in addition to what was stated above, the OSCE/ODIHR makes the following recommendations to further enhance the Draft Law:
  - A. to ensure that the lists contained in Article 1 par 2 and Article 5 of the Draft Law are open-ended, not exhaustive; [pars 21-22]
  - B. to introduce definitions of the terms “public consultations” and “restricted data” in the Draft Law or, should they already exist in other legal acts, to include specific cross-references to relevant provisions or parts of the acts referred to; [pars 24-25]
  - C. to add reference to the principle of impartiality and non-discrimination to the list of principles under Article 4 par 1 of the Draft Law; [pars 28-29]
  - D. to ensure that adequate financial and human resources are allocated in order to allow for the effective organization and conduct of consultation processes; [pars 30 - 31 and par 70]
  - E. to designate a public authority responsible for coordinating standardization and improvement of public consultation procedures; [par 31]
  - F. to introduce an obligation for the executive, in cooperation with the Verkhovna Rada, to prepare and publish a semi-annual or annual plan for the enactment of laws; [par 34]
  - G. to ensure that the public is provided with sufficient time to comment on a draft act by specifying that the proposed minimum period for the submission of proposals is 15 *working* days (excluding weekends and holidays); [pars 40-41]
  - H. to prolong the period for storing consultation documents to, at least, five years; [par 49]
  - I. to introduce a review procedure by an independent body in cases where legal acts are adopted via an expedited procedure; [pars 58-59] and
  - J. to ensure that any sanctions towards public authority officials in charge of holding public consultations are clear and tied to specific actions [par 65].

***Additional Recommendations, highlighted in bold, are also included in the text of the opinion.***

## IV. ANALYSIS AND RECOMMENDATIONS

### 1. International Standards on Public Consultations

11. Public consultations are one way to ensure the effectiveness and inclusiveness of law-making processes. By conducting public consultations, public officials and institutions engaged in legislative processes are able to gather views and experiences from different stakeholders, representing various groups and backgrounds, on matters that are to be regulated. Public consultations constitute a means of open and democratic governance; they lead to higher transparency and accountability of public institutions, and help ensure that potential controversies are identified before a policy, law, or other public decisions are adopted. The process of consultation “should be understood as an interaction between the bodies responsible for regulation and parties that are likely to be affected by or interested in the regulation in question”.<sup>2</sup> Developing policies and legislation in a participatory and inclusive manner increases all stakeholders’ understanding of the various factors involved, enhances confidence in the adopted policy and legislative measures, and ultimately tends to improve implementation of the new legislation.<sup>3</sup> Such a participatory approach to the adoption of laws not only leads to greater democratic legitimacy of a regulation, but also nourishes confidence in institutions.
12. One of the main international instruments recognizing the value of public participation in general is the International Covenant on Civil and Political Rights<sup>4</sup> (hereinafter “the ICCPR”) which, in its Article 25 par 25 a) emphasizes the right of every citizen to “take part in the conduct of public affairs, directly or through freely chosen representatives”. The conduct of public affairs is a broad concept covering all aspects of public administration, as well as the formulation and implementation of policy at all levels, including local, regional, national and international ones.<sup>5</sup> As set out in General Comment No. 25, the modalities of citizens’ participation, which include public debate and dialogue, should be established by the constitution and other laws of a state concerned.<sup>6</sup>
13. More detailed provisions concerning public participation in decision-making in environmental matters are included in the United Nations Economic Commission for Europe’s Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter the “Aarhus Convention”).<sup>7</sup> While the Convention specifically covers the environmental field, its

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<sup>2</sup> Mandelkern Group on Better Regulation (set-up on 7 November 2000 by EU Ministers in charge of Civil Service and Public Administration), *Final Report*, November 2001, page 26, available at [http://ec.europa.eu/smart-regulation/better\\_regulation/documents/mandelkern\\_report.pdf](http://ec.europa.eu/smart-regulation/better_regulation/documents/mandelkern_report.pdf).

<sup>3</sup> See e.g., OSCE/ODIHR, *Opinion on the Draft Law of Ukraine on Police and Police Activities*, 1 December 2014, par 133, available at <http://www.legislationline.org/documents/id/19511>.

<sup>4</sup> UN International Covenant on Civil and Political Rights (ICCPR), adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966, which entered into force on 23 March 1976, available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. This Covenant was ratified by Ukraine on 12 November 1973.

<sup>5</sup> UN Human Right Committee, *General Comment No. 25: Article 25*, CCPR/C/21/Rev.1/Add.7, adopted on 12 July 1996, pars 5 and 8, available at

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.7&Lang=en).

<sup>6</sup> *Ibidem*.

<sup>7</sup> UN Economic Commission for Europe (UNECE), *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (“Aarhus Convention”), adopted on 25 June 1998, which entered into force on 30 October 2001, available at: <http://ec.europa.eu/environment/aarhus/>. Ukraine ratified the Aarhus Convention on 18 November 1999.

- key provisions (including Article 6 on public participation in decision-making) may, as examples of good practice, also extend to other subject matters.<sup>8</sup>
14. The Council of Europe (hereinafter: “CoE”) has likewise adopted a number of legal instruments to facilitate public participation at the local and regional levels, in particular the Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority<sup>9</sup> which obliges State Parties to secure to everyone within their jurisdiction the right to determine or to influence the exercise of a local authority's powers and responsibilities.<sup>10</sup> Also, in its other documents, some of which contain non-binding recommendations, the Council of Europe recognized that “participation through various forms of voting and consultation gives life to democracy”<sup>11</sup> and has called on governmental mechanisms at all levels to “ensure the effective participation of NGOs without discrimination in dialogue and consultation on public policy objectives and decisions”.<sup>12</sup> CoE Recommendation CM/Rec(2001)19 on the Participation of Citizens in Local Public Life also contains a list of concrete steps and measures to encourage and reinforce citizens’ participation in local public life.<sup>13</sup>
15. Numerous OSCE commitments stress the role of transparency in public affairs, and consider it an essential condition to ensure that states are accountable for their actions; in this context, the concept of “legislative transparency” is considered to be particularly important. OSCE participating States have specifically committed to ensure that “[I]nvestigation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (OSCE Moscow Document 1991)<sup>14</sup> and to “secure environments and institutions for peaceful debate and expression of interests by all individuals and groups of society” (OSCE Maastricht Document 2003).<sup>15</sup> The OSCE has also recognized the vital role that civil society has to play in this regard. It also strives to promote equally effective participation of men and women in political, economic, social and cultural life.<sup>16</sup>
16. Although Ukraine is not a Member State of the European Union (hereinafter the “EU”), it is worth mentioning that a well-developed legal framework on public consultations

<sup>8</sup> See *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes* (from the participants to the Civil Society Forum organized by the OSCE/ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015, pages 5-6, footnote 14, available at <http://www.osce.org/odihr/183991>.

<sup>9</sup> Council of Europe, *European Charter of Local Self-Government*, CETS No. 122, adopted on 15 October 1985, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007a088>. Ukraine ratified this Charter on 11 September 1997 and its Additional Protocol on the Right to Participate in the Affairs of a Local Authority (CETS No. 207, available at <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482a>) on 16 December 2014 (entry into force in Ukraine on 1 April 2015).

<sup>10</sup> Article 1 of the CoE Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority.

<sup>11</sup> See CoE, *Recommendation CM/Rec(2009)2 of the Committee of Ministers to Member States on the Evaluation, Auditing and Monitoring of Participation and Participation Policies at Local and Regional Level*, 2009a available at [http://www.coe.int/t/dgap/localdemocracy/Documentation/recommendations\\_en.asp](http://www.coe.int/t/dgap/localdemocracy/Documentation/recommendations_en.asp).

<sup>12</sup> See e.g., CoE, *Recommendation CM/Rec(2007)14 of the Council of Europe Committee of Ministers to Member States on the Legal Status of Non-governmental organisations in Europe* (adopted by the Committee of Ministers on 10 October 2007 at the 1006th meeting of the Ministers’ Deputies), par 76, available at [https://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec\(2007\)14E\\_Legal%20status%20of%20NGOs.pdf](https://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec(2007)14E_Legal%20status%20of%20NGOs.pdf).

<sup>13</sup> CoE, *Recommendation CM/Rec(2001)19 of the Council of Europe Committee of Ministers to Member States on the Participation of Citizens in Local Public Life* (adopted by the Committee of Ministers on 6 December 2001 at the 776th meeting of the Ministers’ Deputies), Appendix II, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804f513c>.

<sup>14</sup> Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (1991), par 18.1, available at <http://www.osce.org/fr/odihr/elections/14310>. See also the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen, 5 June - 29 July 1990), par 5.8, available at <http://www.osce.org/fr/odihr/elections/14304>.

<sup>15</sup> *OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century*, adopted at the 11th Meeting of the Ministerial Council, Maastricht, 1 and 2 December 2003, par 36, available at <http://www.osce.org/mc/17504>.

<sup>16</sup> See OSCE Concluding Document of the Third Follow-up Meeting, Vienna, 4 November 1986 to 19 January 1989, par 15, available at <http://www.osce.org/mc/40881>.

exists within the EU. The Treaty on European Union requires its institutions to “give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action”; this should be done via an open, transparent and regular dialogue with representative associations and civil society.<sup>17</sup> Such a regular dialogue aims to ensure that the EU’s actions are coherent and transparent.<sup>18</sup> Before any new legislative acts are proposed, the Commission is required to consult widely, taking into account the regional and local dimension of these actions; if, because of urgency of a matter at stake, the Commission decides not to organize consultations, it should provide reasons for such decision.<sup>19</sup>

17. Against the background of the above-mentioned international and regional standards, a number of guidance documents or recommendations have been elaborated in various international or regional fora. These contain a higher level of detail and prescribe, on a more practical level, the steps that need to be taken to enhance citizens’ participation in public affairs and ensure that consultation processes are as open and inclusive as possible. These documents include, among others:

- the CoE Code of Good Practices for Civil Participation in the Decision-Making Process (2009)<sup>20</sup> (hereinafter “CoE Code of Good Practices”), providing for a number of principles for public participation, which include participation, trust, accountability, transparency and independence;
- the Organisation for Economic Co-operation and Development’s (hereinafter the “OECD”) Handbook on Information, Consultation and Public Participation in Policy-Making;<sup>21</sup>
- the OECD Guidelines for Online Public Consultations;<sup>22</sup>
- the EU Guidelines on Stakeholder Consultation;<sup>23</sup> and
- “Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes” (2015) prepared by civil society experts with the support of OSCE/ODIHR.<sup>24</sup>

## **2. General Comments**

### **2.1. Purpose and Scope of the Draft Law**

18. The Draft Law defines the procedure for holding public consultations in the process of drafting and debating legal acts and regulations. Overall, it is positive that the Draft Law attempts to unify the overall approach to the conduct of consultations. Nevertheless, there are a certain areas where this piece of legislation would benefit from some improvement.

<sup>17</sup> See Article 11 pars 1 and 2 of the Treaty on European Union, Official Journal C 326, 26/10/2012 P. 0001 - 0390, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT>.

<sup>18</sup> Article 11 par 3 of the Treaty on European Union.

<sup>19</sup> See Article 2 of Protocol (No 2) to the Treaty on the Functioning of the European Union on the Application of the Principles of Subsidiarity and Proportionality, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT>.

<sup>20</sup> Council of Europe, *Code of Good Practice for Civil Participation in the Decision-Making Processes*, 1 October 2009, available at <http://www.coe.int/en/web/ingo/civil-participation>. See also: Article 5 of the Treaty on European Union, footnote 17..

<sup>21</sup> OECD, *Citizens as Partners – OECD Handbook on Information, Consultation and Public Participation in Policy-Making*, 2001, available at <http://www.internationalbudget.org/wp-content/uploads/Citizens-as-Partners-OECD-Handbook.pdf>.

<sup>22</sup> OECD, *Guidelines for online Public Consultations*, available at: <http://www.oecd.org/about/civil-society/guidelinesforonlinepublicconsultation.htm>.

<sup>23</sup> Available at [http://ec.europa.eu/smart-regulation/guidelines/ug\\_chap7\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/ug_chap7_en.htm).

<sup>24</sup> *Op. cit.* footnote 8 ( 2015 *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes*).

19. Generally, the effective conduct of public consultations also depends on how the principles governing this process are defined. One of the key principles governing the area of public participation is the accountability of public authorities towards the public. Governments and other state institutions should be accountable to the public with regard to consultation processes and should also report on the results of the participatory processes.
20. According to Article 1 par 1 of the Draft Law, the procedure for holding public consultations shall “take account of the public opinion and strike a balance between public and private interests”. As underlined in the CoE Code of Good Practices, one of the key responsibilities of public authorities in this area is responsiveness, which encompasses listening, taking into consideration and responding to civil society input.<sup>25</sup> While some aspects of a feedback mechanism are included in other parts of the Draft Law,<sup>26</sup> it would be advisable to mention this key principle expressly at the outset. It is thus recommended **to supplement Article 1 par 1 by stating that public authorities should not only take into account, but also respond to public opinion in a transparent and timely manner.**
21. Paragraphs 2 to 8 of Article 1 define which entities and types of acts fall within the scope of the Draft Law and the stakeholders who shall be involved in public consultation processes. While a list of public authorities is provided in Article 1 par 2, it is not clear whether this list is exhaustive or open-ended. Ideally, such a list should be open-ended, to ensure that also other actors vested with legislative initiative are covered by the scope of the Draft Law. Unless this is merely an issue arising from translation, it is thus recommended to amend the above provisions accordingly.
22. Public consultations are an inclusive process and should therefore be open and accessible, and based on agreed, clear and objective parameters for participation.<sup>27</sup> It is welcome that among the main principles that shall guide public consultations, Article 4 par 1 (3) of the Draft Law refers to “participation (inclusivity)”.<sup>28</sup> At the same time, Article 5 provides for a list of participants of public consultations – also here, it is not clear whether this list merely contains some examples of potential participants, or is also meant to be an exhaustive list. If public consultations are to be inclusive, then the authorities should not limit participation by introducing an exhaustive list of eligible stakeholders. Following the principles of good governance as outlined in Article 4 of the Draft Law, anyone should be given the right to participate in public consultations, including those persons or institutions likely to be affected by a law or policy, both on a practical and on a more general level.<sup>29</sup> This approach is supported by international standards, including the ICCPR<sup>30</sup> and the UN Human Rights Council in its Resolution on Equal Political Participation.<sup>31</sup> It is therefore recommended to amend the wording of Article 5 to explicitly state that the list set out therein is only illustrative and that any

<sup>25</sup> *Op. cit.* footnote 20, page 12 (*CoE Code of Good Practice for Civil Participation in the Decision-Making Processes* (2009)). See also: Article 6 pars 8 and 9 of the Aarhus Convention.

<sup>26</sup> See e.g., Article 4 (1) point 3 and Article 8 (1) point 4 of the Draft Law.

<sup>27</sup> *Op. cit.* footnote 20, page 5 (*CoE Code of Good Practice for Civil Participation in the Decision-Making Processes* (2009)). See also *Op. cit.* footnote 8, pars 13 and 19 (*2015 Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes*).

<sup>28</sup> See Article 4 (1) point 3 of the Draft Law.

<sup>29</sup> *Op. cit.* footnote 2, page 28 (Mandelkern Group on Better Regulation, Final Report, November 2001).

<sup>30</sup> See Article 25 of the ICCPR which states that “[e]very citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives”.

<sup>31</sup> See UN Human Rights Council, *Equal political participation*: resolution / adopted by the Human Rights Council, 8 October 2013, A/HRC/RES/24/8, available at: [http://dag.un.org/bitstream/handle/11176/305484/A\\_HRC\\_RES\\_24\\_8-EN.pdf?sequence=3&isAllowed=y](http://dag.un.org/bitstream/handle/11176/305484/A_HRC_RES_24_8-EN.pdf?sequence=3&isAllowed=y).



other person or entity that may be affected or is otherwise interested in the public consultation should also be able to participate.

23. At the same time, it is positive that the Draft Law clearly defines the wide scope of documents which shall undergo public consultations by encompassing legal acts and regulations, as well as national, regional and local policy documents. This approach is very much in line with international and regional standards on participation and transparency in public decision-making processes.

## **2.2. Terminology and Legislative Drafting**

24. While containing other definitions, it is noted that the Draft Law does not provide for a legal definition of the term “public consultations”. In this context, it is noted that the need for legal definitions is particularly vital when there is no generally agreed definition of the term which is used; terms used by law-makers do not require legal definitions only when they are deemed sufficiently clear and understandable. There does not appear to be a uniform and general understanding of the meaning of the term ‘public consultations’, which may lead to problems when applying the law.<sup>32</sup> **Unless already defined elsewhere (in which case cross-references should be included in the Draft Law), it would thus be helpful to introduce a definition of the term “public consultations” into the Draft Law.** At a minimum, this should include a reference to four main aspects of consultations, that is, informing, consultation, involvement and partnership (this includes co-operation and mutual responsibility of the government and interested public, as well as relevant feedback mechanisms).<sup>33</sup>
25. Another term used throughout the Draft Law which may lead to ambiguous and diverging interpretations is the term “restricted data”.<sup>34</sup> Under Article 1 par 6, the provisions of the Draft Law shall not apply to “acts containing restricted data”. Ideally, such a restrictive provision should be narrowly tailored and clear, and should only cover cases where a compelling state interest is at stake. **Unless the term “restricted data” is defined by another law (in which case a cross-reference should be added to the Draft Law), it is recommended to clarify its meaning and introduce a legal definition of the term.**
26. Moreover, some provisions of the Draft Law make general references to “specifics of holding public consultations as defined in the acts of the President of Ukraine”<sup>35</sup> or to “specifics of holding such consultations as defined by the Verkhovna Rada Rules of Procedure”<sup>36</sup> but do not include cross-references to relevant provisions or parts of the acts referred to. **To avoid legal uncertainty and discretionary interpretation of such**

<sup>32</sup> Some of the OSCE participating States introduced their own definitions of public consultations. For example, in the United Kingdom such definition is provided in UK HM Government Code of Practice on Consultation (“Consultation makes preliminary analysis available for public scrutiny and allow additional evidence to be sought from a range of interested parties so as to inform the development of the policy or its implementation”), in Switzerland it is included in the Federal Act on the Consultation Procedure Switzerland (“The consultation procedure has the aim of allowing the cantons, political parties and interested groups to participate in the shaping of opinion and the decision-making process of the Confederation.”), in Finland it was introduced in the Guidelines on Consultation in Legislative Drafting (“Consultation means gathering of views, information and experiences of the stakeholders about the matter that is being prepared. For example authorities, experts, organisations, businesses and citizens are stakeholders”). Finally, in Croatia, the process of public consultation is defined as extending on four levels: informing, consultation, involvement and partnership (for more, see: Government of the Republic of Croatia, *Background Document to the Code Of Practice On Consultation With The Interested Public In Procedures Of Adopting Laws, Other Regulations And Acts*, 21 November 2009, available at: <http://int.uzuvrh.hr/userfiles/file/code%20of%20practice%20on%20consultation-croatia.pdf>).

<sup>33</sup> *Ibidem.*, Government of the Republic of Croatia, *Background Document to the Code of Practice on Consultation with the Interested Public in Procedures of Adopting Laws, Other Regulations and Acts*, pages 2-3.

<sup>34</sup> See Article 1 (6) and Article 7 (1) point 3 of the Draft Law.

<sup>35</sup> See Article 1 (3) of the Draft Law.

<sup>36</sup> See Article 1 (4) of the Draft Law.

**provisions, it is recommended to, as much as possible, explicitly refer to the exact provision or legislation in question.**

27. Finally, there are also some general considerations with regard to legislative technique used in the Draft Law. This concerns in particular erroneous numbering of paragraphs<sup>37</sup> or the introduction of paragraph numbers where there was no need to do so.<sup>38</sup>

### **2.3. Principles of Public Consultations**

28. Public consultations should be conducted on the basis of clearly defined principles which render the consultation process transparent, impartial, open and accessible, as well as accountable and efficient, non-discriminatory and inclusive.<sup>39</sup> It is noted positively that almost all of these principles are mentioned in Article 4 par 1 of the Draft Law, although references to the principle of impartiality and to non-discrimination are missing. The principle of impartiality is important, as it would help ensure that public authorities provide all interested stakeholders, including also smaller groups who are not regularly involved in public discussions, with equal opportunities to participate in public affairs,<sup>40</sup> regardless of their own opinion as to these stakeholders/groups. In this, impartiality complements the principle of participation/inclusivity, since it ensures that when involving stakeholders in public consultations, public authorities do so in a neutral and unbiased manner. It is, therefore, recommended to add a reference to the principle of impartiality to the list of principles under Article 4 par 1 of the Draft Law.
29. In addition to mentioning the principle of “participation/inclusivity”, it would also be important to expressly include reference to the principle of non-discrimination under Article 4. This would ensure that public authorities do not exclude certain important and relevant persons, groups or associations from participation in public consultations, based on any ground, including gender, age, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. In particular, it is important to reflect in the Draft Law that all associations and individuals who are interested in an issue under discussion – irrespective of whether the associations are considered “representative” or actually represent a large number of people, or of their relations with the government or governing parties – have equal access to public participation processes.<sup>41</sup> In this context, the relevant authorities should also be proactive in considering how to tailor consultation to the needs and preferences of particular groups, such as older people or people with disabilities that may not respond to conventional consultation methods.

### **2.4. Institutional Framework for Public Consultations**

30. While Article 5 of the Draft Law sets out the participants in public consultations, Article 6 par 1 of the Draft Law requires that “[t]he public authority that has drafted an act shall

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<sup>37</sup> See Article 11 of the Draft Law where two paragraphs are numbered “2” and Article 13 where paragraph 3 is followed by paragraph 5, thus omitting paragraph 4.

<sup>38</sup> See Article 3 which consists just of one paragraph. In accordance with general legislative drafting technique, there is no need to introduce paragraph numbers in such cases.

<sup>39</sup> *Op. cit.* footnote 8, par 3 (2015 *Recommendations on Enhancing the Participation of Associations in public Decision-Making Processes*); See also *Op. cit.* footnote 2, pages 27-29 (Mandelkern Group on Better Regulation (set-up on 7 November 2000 by EU Ministers in charge of Civil Service and Public Administration), *Final Report*).

<sup>40</sup> See: *Ibidem*, par. 3 (2015 *Recommendations on Enhancing...*). See also *Op. Cit.* footnote 20, page 5 (Council of Europe, *Code of Good Practice for Civil Participation in the Decision-Making Processes*) and *Op. cit.* footnote 21, page 86 (OECD, *Citizens as Partners – OECD Handbook on Information, Consultation and Public Participation in Policy-Making*, 2001).

<sup>41</sup> *Op. cit.* footnote 8, pars 6-8 (2015 *Recommendations on Enhancing the Participation of Associations in public Decision-Making Processes*).

organise and hold public consultations”. Further, according to Article 18 par 1 of the Draft Law, “[s]tructural units of the public authority that prepare draft acts shall be placed in charge of holding respective public consultations”. As stipulated by the Draft Law “[t]he public authority shall designate a structural unit or a responsible official to coordinate the holding of public consultations [...]” (see: Article 18 par 2 of the Draft Law). These provisions suggest a decentralized approach, meaning that there will be no central entity or unit in charge of organizing public consultations but that instead, this falls within the responsibility of the public authority which has drafted the respective proposal/act, or one of its structural units.

31. In general, while many countries have adopted such a decentralized approach, it has nevertheless been considered a good practice to designate a public authority responsible for the overall coordination on the standardization and improvements of public consultation procedures to ensure that public consultations are carried out in a consistent manner by all state bodies and to facilitate the exchange of experience and knowledge between officials responsible for the implementation of consultations within each public authority.<sup>42</sup> This could be done either by appointing a coordinator for each department or a coordinator for a given state body, and to ensure that they liaise with coordinators of other departments and/or state bodies, to ensure consistency. The drafters should thus consider introducing new provisions to that effect. One good practice example in this respect comes from the United Kingdom, where every government department, in charge of conducting public consultations, appoints a Consultation Coordinator. Early in the planning stages, he or she provides advice to policy officials who are to run consultation processes. Once the consultation exercise is over, any lessons learnt should be shared with the Consultation Coordinator who facilitates their dissemination within the department and between departments and agencies.<sup>43</sup> Also, in Croatia, in order to ensure the harmonized application of the consultation standards and measures by state bodies, coordinators for conducting consultations are appointed as contact persons in all central bodies of state administration, or in the Government offices responsible for drafting laws.<sup>44</sup> Differently than in the United Kingdom, in Croatia one body (Croatian Government Office for Cooperation with NGOs) is in charge of coordinating public consultations for the entire executive, which helps streamline consultation processes throughout.

### **2.5. Rights and Responsibilities of Authorities and Stakeholders Involved in Public Consultations**

32. Article 6 par 2 of the Draft Law lists a number of responsibilities of public authorities throughout the public consultation process. In this respect, it is welcome that the provision lists, among others, public authorities’ obligations to ensure stakeholders’ access to information, including the obligation to facilitate access to public consultation materials and to ensure that the content of public consultation material is clear and understandable. The right to information is fundamental to ensuring that all relevant

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<sup>42</sup> *Op. cit.* footnote 8, par 19 (2015 *Recommendations on Enhancing the Participation of Associations in public Decision-Making Processes*). See also *Op. cit.* footnote 21, page 87 (*Citizens as Partners – OECD Handbook on Information, Consultation and Public Participation in Policy-Making*, 2001 and European Commission, *Code of Good Practice for Consultation of Stakeholders*, page 8 (the principle of coherency), [http://ec.europa.eu/dgs/health\\_food-safety/dgs\\_consultations/docs/code\\_good\\_practices\\_consultation\\_en.pdf](http://ec.europa.eu/dgs/health_food-safety/dgs_consultations/docs/code_good_practices_consultation_en.pdf) .

<sup>43</sup> United Kingdom, *Code of Practice on Consultation*, 2008, page 13, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/100807/file47158.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/100807/file47158.pdf).

<sup>44</sup> *Op. cit.* footnote 32, page 5 (*Code of Practice on Consultation with the Interested Public in Procedures of Adopting Laws, Other Regulations and Acts*).

and/or interested stakeholders can fully participate in public consultations. There are, nevertheless, a few aspects of Article 6 and other provisions of the Draft Law that would benefit from further improvements.

33. Article 6 par 2 item 5 requires public authorities to “promote the stakeholders’ participation in drafting the acts and ensure the use of effective forms of consulting”. Such promotion of stakeholders’ participation in public consultation processes could be exercised either through different outreach activities (for example, by publishing information on consultations in the media, including new media and online platforms)<sup>45</sup> or educational activities (such as training sessions for citizens allowing them to learn how to exercise their right to public participation). It would thus be advisable to render the Draft Law more specific with respect to how authorities can promote stakeholders’ participation in drafting the acts by including reference to outreach and/or educational activities.
34. The list of public authorities’ responsibilities should further include the obligation of the executive, in cooperation with the Verkhovna Rada, to prepare and publish a semi-annual or annual plan<sup>46</sup> setting out which laws will be enacted and which other regulations and acts will be adopted within this time period.<sup>47</sup> This plan should be widely circulated among different stakeholders and allow them to plan effectively how to best use their financial and human resources to contribute effectively to discussion on the various topics. Such an approach involving planning early in the policy cycle is widely supported by international standards.<sup>48</sup> It is therefore recommended to introduce in the Draft Law, for instance under Article 6 on public authorities’ rights and responsibilities with regard to public consultations, a provision requiring the authorities to share with all the interested stakeholders an annual or semi-annual plan for the enactment of laws and adoption of other regulations and acts.
35. To guarantee the inclusiveness of public consultation processes, States should ensure the equal participation of women and men in these processes. In particular, they should bear in mind also women’s needs, and aim to overcome specific challenges confronting certain persons or groups such as members of national minorities, persons with disabilities, and disadvantaged, vulnerable or marginalized persons or groups.<sup>49</sup> Article 6 of the Draft Law could be supplemented accordingly.
36. It should also be noted that, while Article 6 is entitled “Public Authorities’ Rights and Responsibilities in Legal Relations Associated with Holding Public Consultations”, it seems to exclusively list responsibilities. It may be more appropriate to change the wording of this provision accordingly.

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<sup>45</sup> See European Parliament, *Report and Roadmap on Internal Reform and Capacity-Building for the Verkhovna Rada of Ukraine. European Parliament’s Needs Assessment Mission to the Verkhovna Rada of Ukraine led by Pat Cox, President of the European Parliament 2002-2004*, page 19.

<sup>46</sup> *Ibidem*, page 17; “An annual work plan for oversight activities should be established by each Committee, providing a clear pathway for carrying out oversight activities rather than working on an ad hoc basis”.

<sup>47</sup> In some countries, for example in Croatia, such plan is provided at the beginning of each calendar year. . The Background Document to the Code of Practice on Consultation with the Interested Public in Procedures of Adopting Laws, Other Regulations and Acts reads that: “The interested public should be informed in good time about the plan to enact laws and adopt other regulations and acts through the publication of a single list of laws and other regulations which are being drafted and proposed for enactment and adoption in the calendar year, with a statement of the authorities competent for the drafting and the tentative time limit for the drafting and enactment of the law or adoption of other regulation or act.”. Depending on the calendar of parliamentary works and on timing of the parliamentary session, such annual calendar does not need to overlap with the beginning of the calendar year and could begin in the period when the parliament starts its work after a summer or winter break.

<sup>48</sup> See *Op. cit.* footnote 21, page 85 (*Citizens as Partners – OECD Handbook on Information, Consultation and Public Participation in Policy-Making*, 2001) and footnote 22, point 1 (OECD, *Guidelines for online Public Consultations*).

<sup>49</sup> *Op. cit.* footnote 8, pars 9-10 (2015 *Recommendations on Enhancing the Participation of Associations in public Decision-Making Processes*). See also *Op. cit.* footnote 43, page 8 (European Commission, *Code of Good Practice for Consultation of Stakeholders*).

37. Article 7 of the Draft Law lists rights and responsibilities of stakeholders involved in public consultations. According to this provision, stakeholders are entitled to “suggest that the public authority initiate the drafting of acts” (Article 7 par 1 item 1). It is not clear how the interested public could make such suggestions, in particular whether this would involve any official procedure. It is recommended to clarify this wording by specifying the procedure whereby stakeholders shall submit proposals to initiate the drafting of acts to the public authority, including whether this would need to take place in writing.
38. Article 7 par 1 item 3 requires public authorities and officials to provide interested stakeholders with “data and information necessary for their participation in public consultations”. It is assumed that this provision refers to the data and information included in the consultation document whose content is described in Article 8 par 2 of the Draft Law. To clarify this, it would be advisable to include a cross-reference to the above-mentioned provision of Article 8 par 2 to clarify the wording of Article 7.
39. Finally, Article 7 par 2 of the Draft Law requires stakeholders to “provide accurate and reliable information to the concerned public authority”. The need for such a provision is not clear – in particular, it is not apparent why such an obligation is introduced only with respect to stakeholders, and not also with respect to public authorities, which would be equally obliged to provide accurate and reliable information in the course of public consultations and the legislative process in general. To ensure that stakeholders are not placed in a less favourable position than public authorities, it is recommended not to include this provision in the Draft Law.

### **3. Holding of Public Consultations**

#### **3.1. Timing and Duration of Public Consultations**

40. In order for public consultations to be effective, reasonable and proportionate time frames must be in place that reflect the nature and impact of a draft law or policy. Setting a sufficient timeline not only permits authors of laws and policies to collect a greater range of submissions, but also renders the consultation process more meaningful for the public. According to recommendations issued by international or regional bodies and good practices within the OSCE area, public consultations generally last from a minimum of 15 days to two or three months. At the same time, legislation should enable the minimum period to be extended as might be necessary, taking into account, *inter alia*, the nature, complexity and size of the proposed draft act and supporting data/information.
41. Article 12 par 2 of the Draft Law states that a consultation period shall, in total, extend over, at least, 15 calendar days from the day of publication of the consultation document and the draft act. This deadline can be prolonged in view of the draft act’s complexity and the need for holding a public discussion on it. In order to provide the public with adequate time to comment on a draft act, it is recommended to specify that the proposed minimum period for submission of proposals is 15 working days, not including weekends and holidays. The introduction of such a minimum timeline will help ensure that stakeholders will have enough time to get familiar with the proposal, to prepare, discuss and submit recommendations and, thereafter to contribute effectively to the decision-making process.

### **3.2. Procedure**

42. Article 8 of the Draft Law describes the procedure for holding public consultations. Article 8 par 1 clearly states the obligation of public authorities to prepare and publish a consultation document, receive and publish proposed amendments, analyze the submissions, as well as publish a report on public consultation results together with the revised draft act. Such an approach is in line with international standards and good practices.<sup>50</sup> At the same time, certain elements of this provision would benefit from improvement.
43. The provision of Article 8 par item 1 requires the respective public authority to publish a consultation document on its website. This procedure for circulating information has one important drawback, which is that many stakeholders active on the local or regional levels may not necessarily regularly visit websites of central authorities, and would thus not always be aware of ongoing consultation processes. In order to enhance dissemination at all levels and among all stakeholders who could be interested in participating in the consultation, it is recommended to add a requirement to publish the consultation document also on websites of relevant local and regional authorities. The drafters could also consider setting up one website for consultations, instead of having each public authority publish consultations on its own website. Such a central website would help all stakeholders know about ongoing information, consultation and participation activities in government at any given time and is being increasingly used in numerous OSCE countries.<sup>51</sup>
44. Moreover, it would be useful to require the respective authorities to include in the consultation document the consolidated text of the draft law for which amendments are being considered, as well as reference to the history of its drafting (including committee meetings or hearings). This will help ensure a better understanding of the proposed changes by all the stakeholders involved. Such requirements could be added to Article 8 par 2 item 3 of the Draft Law.
45. The consultation document should also clearly determine the scope of the public consultations by informing whether the entire act is subject to consultations, or only part of it, and what the purpose of such consultations would be. This would be in line with good practices of OSCE participating States, such as Slovakia<sup>52</sup>, France<sup>53</sup>, the United Kingdom<sup>54</sup> and Croatia,<sup>55</sup> whose rules of procedure stress the need for clarity in determining the scope and the impact of the consultation process.<sup>56</sup> Likewise, the

<sup>50</sup> See OECD, Citizens as Partners – OECD Handbook on Information, Consultation and Public Participation in Policy-Making, 2001 and Mandelkern Group on Better Regulation, Final Report, and OECD, Background Document on Public Consultation, available at: <https://www.oecd.org/mena/governance/36785341.pdf>.

<sup>51</sup> See, for instance, Bosnia and Herzegovina (<https://ekonsultacije.gov.ba/>), Croatia (<https://savjetovanja.gov.hr/>), Denmark (<https://hoeringsportalen.dk/>), Scotland (<https://consult.scotland.gov.uk/>).

<sup>52</sup> See Ministry of Interior of Slovakia, Proposal of Procedure to Introduce Methodology for Public Consultation at Elaboration of Government Documents, 29 June 2007, page 11, available at: [https://www.google.pl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&uact=8&ved=0ahUKEwiyjumA2trOAhXLhiwKH\\_V\\_nBYgQFfguMAM&url=http%3A%2F%2Fwww.mvcr.cz%2Fsoubor%2Fmethodology-for-public-consultation.aspx&usq=AFQjCNGJhRQ64IUw7KS0e-weZ8leouIoaA&sig2=k3JmbOx\\_X2SZwIsMW2IHg](https://www.google.pl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&uact=8&ved=0ahUKEwiyjumA2trOAhXLhiwKH_V_nBYgQFfguMAM&url=http%3A%2F%2Fwww.mvcr.cz%2Fsoubor%2Fmethodology-for-public-consultation.aspx&usq=AFQjCNGJhRQ64IUw7KS0e-weZ8leouIoaA&sig2=k3JmbOx_X2SZwIsMW2IHg).

<sup>53</sup> See Public consultations materials available at: <http://www.vie-publique.fr/forums/rub1308/formes-participation.html>.

<sup>54</sup> See e.g., United Kingdom, *Code of Practice on Consultation*, 2008, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/100807/file47158.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/100807/file47158.pdf).

<sup>55</sup> See Vlada Republike Hrvatske, Ured za udruge, Priručnik za savjetovanje sa zainteresiranom javnošću, 2012, available at <https://udruge.gov.hr/UserDocsImages/UserFiles/File/Prirucnik%20za%20savjetovanje.pdf>.

<sup>56</sup> The UK Code of Practice on Consultation as one of the main criteria for public consultations lists clarity of scope and impact by stating that: “*Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the*

European Commission perceives clarity on the scope of consultations to be an important element to ensure the transparency of the process.<sup>57</sup>

46. Article 8 par 2 (5) requires the consultation document to contain information about the “stakeholders”. It is unclear whether this refers to a list of stakeholders who should be and/or have been invited to participate in the consultations or whether this should include a list of specifically identified stakeholders (for example by name, affiliation etc.). Public consultations should be open and transparent processes, which any interested parties should be allowed to participate in. Moreover, it would be impossible in practice to provide a detailed list of all identified potential stakeholders in advance. It is, therefore, recommended to clarify that this refers to an indicative and non-exhaustive list of stakeholders who are particularly recommended and/or may be interested to participate in the public consultations.
47. The Draft Law also requires that the consultation document includes information on the forms, timing and duration of public consultations (Article 8 par 2 (7)). While it may sometimes not be known in advance where the consultation will take place, it is a good practice to include on the list also information on the tentative venue where public consultations/discussions are to take place. Such public consultations may indeed be organized in different places, such as parliaments or town halls and notifying the interested stakeholders beforehand will help them effectively plan for their involvement and participation in the process.
48. As stipulated by Article 8 par 4, “[p]ublic consultations shall start on the day of posting the consultation document and the draft act on the public authority’s official website”. If the consultation document and the text of the draft act are posted during the weekend or a state holiday, the start date for consultations should be the first working day following the day when both documents were posted. It is recommended to reflect this accordingly in the provision.
49. Finally, as far as storing public consultation materials posted on the public authority’s website is concerned, Article 8 par 5 of the Draft Law requires the documents to be archived and stored for a period of at least three years. This period appears to be relatively short. By comparison, the term of office of the members of parliament is five years<sup>58</sup> and the President of Ukraine is elected for a 5-year term.<sup>59</sup> **It is, therefore, recommended to prolong the period of storing the consultation documents to at least five years. This would serve the interests of continuity of legislation and help avoid duplication, once the terms of office of the present government and President are over, to provide the successors with adequate access to past consultation materials.** It is further recommended that consultation materials are archived both electronically and in hard copy. This would constitute an additional safeguard against losing important data, and provide an opportunity for all stakeholders (also those who do not have any or have limited access to computer and online resources) to obtain consultation documents.

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*expected costs and benefits of the proposals.*” (for more, see: The Government of the United Kingdom, Code of Practice on Consultation, 2008, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/100807/file47158.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/100807/file47158.pdf)).

<sup>57</sup> See *Op. cit.* footnote 43, page 7 (European Commission, *Code of Good Practice for Consultation of Stakeholders*).

<sup>58</sup> See Article 76 of the Constitution of Ukraine of 2004 (amended in 2014), available at [http://www.legislationline.org/download/action/download/id/5492/file/Ukraine\\_Constitution\\_am2014\\_en.pdf](http://www.legislationline.org/download/action/download/id/5492/file/Ukraine_Constitution_am2014_en.pdf).

<sup>59</sup> See Article 103 of the Constitution of Ukraine of 2004 (amended in 2014) which reads that: “*The President of Ukraine is elected by the citizens of Ukraine for a five-year term, on the basis of universal, equal and direct suffrage, by secret ballot.*” The full English text of the Ukrainian Constitution is available at: [http://www.legislationline.org/download/action/download/id/5492/file/Ukraine\\_Constitution\\_am2014\\_en.pdf](http://www.legislationline.org/download/action/download/id/5492/file/Ukraine_Constitution_am2014_en.pdf).

#### 4. Formats of Public Consultations

50. According to Article 9 of the Draft Law, public consultations can take the form of electronic consultation, which is mandatory in all cases, with the possibility to additionally organize “public discussions” when the draft act concerns a number of issues listed in Article 11 par 1. While both formats, with different modalities, are widely applied in OSCE participating States<sup>60</sup>, it would be recommended to provide for a more open wording of the provision to ensure that also other forms of public consultations are possible.
51. Electronic consultations take advantage of new communication technologies and aim to increase stakeholders’ understanding of policy issues and the quality of their participation in policy-making. At the same time, electronic consultations should ensure the inclusiveness of public consultation processes and not exacerbate the risk of a “digital divide”<sup>61</sup> in the country.<sup>62</sup> Also in Ukraine, there may be regions with lower access to internet and other electronic tools. Hence, while electronic (online) consultations should be a mandatory format of public consultations (Article 10 par 1 of the Draft Law), in regions that are less digitalized, people should also have adequate access to other formats of public consultations (such as roundtables, public hearings, conferences, focus groups etc.). This should allow a wider array of the public, including all groups interested in the issues at stake, to take part in the consultation process, and would be in line with the principle of participation (inclusivity) mentioned in Article 4 par 1 (3) of the Draft Law.
52. Article 10 par 3 of the Draft Law states that, “[t]he public authority shall make sure that all stakeholders, including those entered into the Information Registry of Stakeholders, are properly notified about the publication of the consultation document and the draft act.” The provision uses the expression “properly notified” but does not specify how such notification would be performed. While this would not be an issue with respect to those stakeholders included in the Information Registry of Stakeholders (Article 13 of the Draft Law), for whom basic contact information, such as e-mail addresses and telephone numbers, would *a priori* be available, the Draft Law does not explain how other stakeholders should be informed. To ensure equal involvement and inclusiveness of public consultation processes, it is recommended to further specify in Article 10 par 3, in general terms, how the respective information would be disseminated, whether, e.g. via e-mail notification, publication on the website of a public authority, information in the media and/or official letters. More detailed modalities for disseminating information about public consultations could then be further described in another official document (i.e., official guidelines or codes of practice), which could supplement the Draft Law. Moreover, the provision of Article 13 par 1 of the Draft Law stipulates that: “[t]he Registry shall contain information on the stakeholders that have applied to the public authority stating their willingness to participate in public consultations”. This suggests that the Registry may only contain information on stakeholders that have contacted it beforehand. In order to make the database of stakeholders as comprehensive as possible, it is advisable to also foresee some outreach activities on the side of the public authority managing the Registry, to ensure wider participation.

<sup>60</sup> See e.g., OECD, Background Document on Public Consultation, available at: <https://www.oecd.org/mena/governance/36785341.pdf>.

<sup>61</sup> i.e., the exclusion of certain categories of the population which may not have access to or do not necessarily use the Internet and new technologies.

<sup>62</sup> See *Op. cit.* footnote 8, pars 10 and 25 (2015 *Recommendations on Enhancing the Participation of Associations in public Decision-Making Processes*).



53. Article 10 par 4 of the Draft Law requires public authorities to make sure that a service allowing for electronic comments on draft acts is operational on its official website. The same term is used in Article 14 par 1 of the Draft Law which states that “[p]articipants of electronic consultations shall send their contributions/proposals to the e-mail address indicated in the consultation document or post them as electronic comments on the public authority’s website in the ‘Public Consultations’ section”. In this context, it is unclear whether such “electronic comments” will be published directly by interested stakeholders or whether they will be uploaded by the competent public authority. It is recommended that to specify the manner in which these comments will be posted or uploaded. Article 10 par 4 also refers to such comments being posted by “stakeholders who have undergone a required identification”. It is not clear what is meant by this, particularly whether this involves a mere registration as a user through the website or whether this would involve another process of identification. It is, thus, recommended to clarify in Article 10 of the Draft Law that this refers to the former, in order to ensure that the consultation process is open to anyone who is interested to participate.
54. Public discussion provides an opportunity not only for oral submissions but also for written comments. As specified by Article 14 par 2: “[d]uring the event held as part of the public discussion, their participants shall submit their proposals in writing [...]”. By introducing this requirement, the authorities could exclude less experienced or well-staffed stakeholders who are not able to prepare written comments beforehand. Usually, there are reports and transcripts summarizing an exchange of views made during such open discussions. Therefore, while written input understandably facilitates the collection of input on the side of the party organizing consultations, it would not appear to be indispensable. One solution would be to make the submission of written comments optional and to include in the text of the Draft Law a requirement for public authorities to take minutes during discussions conducted in the framework of public consultations, to ensure that also non-written submissions are thus collected.
55. Another public consultation format is to hold public discussions, meaning in-person discussions with stakeholders. According to Article 11 of the Draft Law, public discussions shall supplement electronic consultations. Article 11 par 1 of the Draft Law provides for a number of instances when a public authority may decide to organize a public discussion. It is positive that these instances include, among others, acts that affect citizens’ fundamental rights, freedoms and duties, as well as individuals’ social security and rights of people with disabilities.<sup>63</sup> To ensure that, if need be, it is possible to organize public consultations also in relation to other areas, it is recommended to supplement Article 11 par 1 to provide that public discussions could also be organized in other cases, when the respective public authorities consider that such discussions could contribute to the improvement of proposed draft act.
56. In both cases, meaning in the case of electronic consultations and during public discussions, Article 14 par 5 of the Draft Law states that anonymous submissions as well as those using offensive language shall not be published. While it is fully understandable that submissions using offensive language are not acceptable, applying the same rule to anonymous submissions would seem to be excessive. There may be cases when persons

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<sup>63</sup> Inclusion of a requirement to hold public discussion in addition to electronic consultations in cases where a draft act concerns the rights of people with disabilities is in line with the United Nations Convention on the Rights of Persons with Disabilities (ratified by the Verkhovna Rada of Ukraine on 16 December 2009) which requires that: “*In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.*” (Article 4 par 3 of the Convention).

who submitted comments do not wish to make their identities known, possibly because they fear retaliation or harassment. Therefore, the anonymity of a submission should not prevent it from being published, provided that the submission is relevant to the topic of the consultation. It is thus recommended to limit cases where the submissions are not published to instances where they use offensive language, or where they are not relevant for the discussion at hand.

## **5. Limitations to Public Consultations**

57. Article 1 par 6 of the Draft Law states that the Draft Law shall not apply to the drafting of acts containing restricted data. As mentioned in par 25 *infra*, the Draft Law does not include a legal definition of the term “restricted data”. In principle, such limitations should only be possible in extraordinary and duly justified cases. Indeed, omitting the consultative stage of the legislative process may have significant drawbacks.<sup>64</sup> To avoid the possible misuse of such a provision by public authorities, **it is once more recommended to define more precisely what is meant by acts containing “restricted data,” which are to be exempted from public consultations** (for example, the data relating to the issues of public security). Should the term “restricted data” be defined in other legislation, then it is recommended to include a reference to such legislation.
58. Another exception from the obligation to organize public consultations is contained in Article 16 of the Draft Law. On the basis of this provision, a public authority can apply an expedited procedure and thus not hold public consultations when drafting acts regulating emergency situations, introducing martial law or counter-terrorism measures. It is positively noted that the Draft Law clearly circumscribes the types of acts for which such an expedited procedure may be applied. At the same time, counter-terrorism measures, given their potential to encroach upon human rights and fundamental freedoms, should still be subject to public consultations. Any temporary derogation in this area is possible, but only in case of emergency. It is, therefore, recommended to specify in the Draft Law the exceptional character of expedited decision-making in the area of counter-terrorism measures, which shall be possible only in cases of emergency. Furthermore, as the rules and requirements for applying expedited legislative procedures are provided in the Ukrainian Constitution, law drafters should ensure that the wording of Article 16 is in line with the wording of the Constitution.<sup>65</sup>
59. Moreover, while the Draft Law requires the authorities to provide information on the need to adopt a draft act in the expedited procedure, it does not introduce any form of review mechanism to verify, at a later date, whether applying the expedited procedure was in fact justified.<sup>66</sup> It is, thus, recommended to introduce such a review procedure which would be exercised by an independent body, for example by a competent court, which could, depending on the individual case, potentially even lead to the annulment of a law. Should this type of review procedure be set out in other Ukrainian legislation, then special reference to such legislation should be made in the present Draft Law.

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<sup>64</sup> See *Op. cit.*, footnote 2, page 28 (Mandelkern Group on Better Regulation, Final Report, November 2001).

<sup>65</sup> See Article 106 pars 20-21 which states that the President adopts a decision on the introduction of martial law or state of emergency, which should then be approved by the Parliament (Article 85 par 31); the legal regime of martial law and a state of emergency should be exclusively determined by law (Article 92 par 19) of the Constitution of Ukraine of 2004 (amended in 2014), available at [http://www.legislationline.org/download/action/download/id/5492/file/Ukraine\\_Constitution\\_am2014\\_en.pdf](http://www.legislationline.org/download/action/download/id/5492/file/Ukraine_Constitution_am2014_en.pdf).

<sup>66</sup> See *Op. cit.*, footnote 8, par 21 (2015 *Recommendations on Enhancing the Participation of Associations in public Decision-Making Processes*).

## 6. Feedback, Evaluation and Monitoring

60. Public consultation should be a result-oriented process providing all stakeholders involved with a tangible opportunity to have an actual impact on an adopted policy, legislation, decisions or other public acts or programs.<sup>67</sup> One important element of the result-orientated character of public consultations is the requirement for authorities to provide feedback on the consultation process and its outcome. This is expressly stipulated in the Aarhus Convention which states that “[e]ach Party shall ensure that in the decision, due account is taken of the outcome of the public participation”.<sup>68</sup> Examples from OSCE participating States show that providing feedback to those who submitted their comments builds public trust in the consultation process and raises the motivation to participate.<sup>69</sup> Such an approach also takes into account the fact that interested stakeholders generally invest their time, human and financial resources in public consultation processes.
61. It is therefore positively noted that the Draft Law requires the public authority concerned to prepare a summary of proposals received in the course of public consultations (Article 15 par 2 (4) of the Draft Law), that shall be published no later than 15 days after the end of public consultations. This is in line with international good practice, including OECD Guidelines for Online Public Consultation.<sup>70</sup> Nevertheless, there are still certain elements regulated by Article 15 that would benefit from some changes.
62. Along with the obligation to provide feedback on all the comments that were submitted, authorities should establish a monitoring mechanism in order to assess the compliance of the consultation process with binding standards on effective public participation and reporting on the results to the public. According to Article 17 par 1 of the Draft Law which introduces an obligation to conduct monitoring of public consultation: “The public authority shall monitor the public consultation process. Annual reports on the monitoring results shall be posted on the public authority’s official website”. International standards also recommend having monitoring conducted by a designated independent body (for example, the Office of the Ukrainian Parliament Commissioner on Human Rights). **It would be, thereafter, recommended to supplement the monitoring conducted by the executive and legislative bodies themselves, with the possibility of additional monitoring conducted by an independent body (for example, by the Office of the Ukrainian Parliament Commissioner for Human Rights).**
63. Monitoring of public consultations process should be focused not only on regulations and procedures that are in place but should also analyse their implementation.<sup>71</sup> Such analysis shall take into account the equal involvement of various groups of stakeholders (with regards to their gender, age, region, affiliation, ability and region), and should clearly indicate which comments were accepted and which were not.<sup>72</sup> It is

<sup>67</sup> See *Ibidem*, par. 4.

<sup>68</sup> See *Op. cit.*, footnote 7 (UN Economic Commission for Europe (UNECE), *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matter*).

<sup>69</sup> See Bundeskanzleramt Österreich, *Standards of Public Participation. Recommendation for Good Practice*. 2008, available at: [http://www.partizipation.at/fileadmin/media\\_data/Downloads/Standards\\_OeB/oebs\\_standards\\_engl\\_finale\\_web.pdf](http://www.partizipation.at/fileadmin/media_data/Downloads/Standards_OeB/oebs_standards_engl_finale_web.pdf) and Vlada Republike Hrvatske, Ured za Udruge, *Smjernice za primjenu kodeksa savjetovanja sa zainteresiranom javnošću u postupcima donošenja zakona, drugih propisa i akata*, 2010. Available at: [https://savjetovanja.gov.hr/UserDocsImages/dokumenti/kopija/Savjetovanja/Smjernice\\_PDF.pdf](https://savjetovanja.gov.hr/UserDocsImages/dokumenti/kopija/Savjetovanja/Smjernice_PDF.pdf).

<sup>70</sup> See *Op. cit.*, footnote 22, item 6 (OECD, *Guidelines for online Public Consultations*).

<sup>71</sup> See *Op. cit.*, par. 30.

<sup>72</sup> *Ibidem*. See also: OECD, *Guidelines for online Public Consultations*, available at: <http://www.oecd.org/about/civil-society/guidelinesforonlinepublicconsultation.htm>.

recommended to ensure that all this information is included in annual reports on the monitoring results which are referred to in Article 17 par 1 of the Draft Law.

## **7. Sanctions**

64. Article 19 of the Draft Law sets out liability for breaching the procedure for holding public consultations, and notes that deliberations on draft acts that were not subject to consultation procedures should be postponed until after such consultations have taken place. The main weakness of this provision is that it does not specify which body is in charge of deciding in such cases, nor does it stipulate what procedure should be followed. This lack of specificity may hinder the proper implementation of the provisions of the Draft Law. An oversight function should be exercised by an independent body, for example, by a court. Courts may well act as guardians of proper public consultations. For example, in Croatia, the Constitutional Court may declare laws unconstitutional if they were not passed through democratic procedures, which includes public consultations. **To ensure the proper implementation of this provision, it is thus recommended to specify which body should be in charge of implementing the provisions of Article 19 and what procedure should be applied.**
65. Article 19 par 3 of the Draft Law introduces administrative liability of public authority officials in charge of holding public consultations for lack of compliance with the Draft Law. The provision does not, however, explain what is understood under “administrative liability”. According to a generally accepted standard - *nullum crimen sine lege* - in order to involve any liability, a sanction should be included in a law. Any sanctions should be tied to specific actions. It is thus recommended to clarify what administrative sanctions Article 19 par 3 refers to (for example, by including reference to a provision of another legal act where such administrative liability of public officials is described in more detail) and who should fall under its scope- those officials who drafted the law or the ones responsible for organization of public consultations. Another problematic issue is that such officials could be acting in accordance with instructions from the higher officials. Furthermore, it is questionable whether, in practice, it would really be possible to hold public officials, such as ministers liable in case of breaching the requirement of conducting public consultations. This should be discussed and re-evaluated by the drafters of the Draft Law. Finally, also this provision should determine which body would be in charge of assessing whether there was a failure to comply with the Draft Law (this should be done, preferably, by a competent administrative court).
66. Finally, it is noted that while the Draft Law speaks of administrative liability for breaches of law, it does not mention other possible consequences of the failure to hold public consultations, such as annulment of a law by a court, or at least re-evaluation of a draft law. The law drafters may contemplate this as an alternative, or complementary consequence of cases where an independent body felt that a draft law was passed in violation of the required procedure (including public consultations), see also par 64 above on the role of the Croatian Constitutional Court in this respect.

## **8. Final Comments**

### ***8.1 Final Provisions***

67. Regarding the final provisions, it is positively noted that the Draft Law expressly refers to the development of secondary legislation to enhance the implementation of its provisions. At the same time, it may be beneficial to prepare a list of all secondary legislation and other relevant documents, which could be appended to the Draft Law with a specific and realistic adoption schedule. Such a package of secondary legislation and documents should ideally be adopted together with the Draft Law.

### ***8.2. Gender Neutral Legislative Drafting***

68. It is noted positively that overall, the Draft Law uses gender neutral drafting. However, certain individual provisions still use only the male gender. This is not in line with general international practice, which normally requires legislation to be drafted in a gender neutral manner, by referring to both genders equally. Unless the result of inaccurate translation, it is recommended to review the respective provisions and supplement the male form of nouns such as “participant”<sup>73</sup>, “citizen”<sup>74</sup>, “representative”<sup>75</sup>, “foreigner”<sup>76</sup> and “member of parliament”<sup>77</sup> by adding also their female equivalents.

### ***8.3. Participatory Approach, Funding and Impact Assessment***

69. According to relevant OSCE commitments, laws shall be made following “[...] an open process reflecting the will of the people [...]” (OSCE Moscow Document of 1991, par 18.1). In cases involving legislation on public consultations, such an open, participatory approach becomes even more relevant. Public discussions and an open and inclusive debate will increase all stakeholders’ understanding of the various factors involved and enhance confidence and trust in the adopted legislation. Particularly, in the area of public consultations one of the basic conditions for the process to be successful involves building a culture of participation. The text of the Draft Law should thus be consulted extensively with key stakeholders, and with the wider public, including vulnerable and marginalized groups.
70. The public authorities should also provide adequate funding for public consultation activities. Moreover, strengthening government-citizen relations requires both financial resources and human capacity. Next to financial resources, it is thus essential that entities tasked with organizing public consultations have sufficient staff at their disposal to organize consultations; they should also be able to provide necessary training to the personnel in charge. Both of these elements are vital for the effective implementation of the Draft Law. It is, therefore, recommended to ensure that adequate financial and human resources are allocated in order to allow for the effective organization and conduct of consultation processes.

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<sup>73</sup> See Article 5 par 1, Article 15 par 2 (3) and (5), Article 18 par 2 of the Draft Law.

<sup>74</sup> See Article 8 par 1, Article 5 par 1 (1) and (2), Article 11 par 1 (1) of the Draft Law.

<sup>75</sup> See Article 6 par 2 (3), Article 11 par 2 (1), Article 13 par 2 of the Draft Law.

<sup>76</sup> See Article 5 par 1 (1) of the Draft Law.

<sup>77</sup> See Article 20 par 3 (2<sup>1</sup>) of the Draft Law.

71. Moreover, before adoption of any new legislation, including legislation regulating the area of public consultations, it is crucial that policy-makers and other stakeholders carry out a full impact assessment, including a gender and social impact assessment, addressing specifically the impact of such laws, particularly on indigenous peoples, and minorities, including Roma and other ethnic, linguistic or religious minorities, or internally displaced persons.

*[END OF TEXT]*

**ANNEX:**

**Draft**

**LAW**  
**On Public Consultations**

**Article 1. Subject Area and Scope of the Law**

1. This Law shall define the procedure for holding public consultations in the process of drafting legal acts and regulations; national, regional and local policy documents (concept papers, strategies, programmes and action plans to implement them) (hereinafter referred to as “the draft acts”) by the public authorities in order to take account of the public opinion and strike a balance between public and private interests based on the principles set up in this Law.

2. The public authorities in the meaning of this Law shall include:

- 1) the President of Ukraine and the Verkhovna Rada of Ukraine;
- 2) the Cabinet of Ministers of Ukraine, ministries and other central executive power bodies;
- 3) local executive power bodies;
- 4) authorities of the Autonomous Republic of Crimea;
- 5) local self-government bodies;
- 6) public collegial bodies;
- 7) the National Bank of Ukraine.

3. Public consultations on draft acts to be issued by the President of Ukraine can be conducted with due regard to specifics of holding public consultations as defined in the acts of the President of Ukraine.

4. The Verkhovna Rada of Ukraine shall carry out public consultations on the draft acts introduced by Members of Parliament with due regard to specifics of holding such consultations as defined by the Verkhovna Rada Rules of Procedure and the Law of Ukraine “On Committees of the Verkhovna Rada of Ukraine”.

5. The Cabinet of Ministers of Ukraine shall establish a procedure for organising and holding public consultations by the central and local executive power bodies in compliance with the requirements set up by this Law.

6. Provisions of this Law shall not apply to the drafting of acts containing restricted data.

7. Acts falling in the category of regulatory acts shall be drafted as specified in the Law of Ukraine “On Fundamentals of State Regulatory Policy in the Sphere of Business Activities”.

8. Provisions of this Law shall not apply to legal relations associated with introducing local initiatives, holding public hearings, general meetings of citizens and local referenda as envisioned by the Law of Ukraine “On Local Self-governance in Ukraine”, as well as to legal relations associated with ensuring access to information on public spending as envisioned by the Law of Ukraine “On Openness of Spending Public Funds”.

## **Article 2. Objectives of the Law**

1. Objectives of this Law shall be as follows:

1) to secure transparency and accountability in decision-making by the public authorities;

2) to ensure participation of the general public and other stakeholders in the process of preparing draft acts;

3) to improve the quality and legitimacy of decisions prepared and made by the public authorities.

## **Article 3. Legislation in the Sphere of Public Consultations**

1. The holding of public consultations shall be regulated by the Constitution of Ukraine, this Law, international agreements deemed binding by the Verkhovna Rada of Ukraine and other legislative acts.

## **Article 4. Principles of Public Consultations**

1. Public consultations shall be held based on the good governance principles, in particular those of:

1) the rule of law;

2) legality;

3) participation (inclusivity);

4) transparency;

5) accountability and feedback;

6) accessibility;

7) efficiency.



## **Article 5. Public Consultation Participants**

1. Participants of public consultations shall include:

- 1) citizens of Ukraine, foreign nationals and stateless persons;
- 2) public associations and unions;
- 3) trade unions and their associations;
- 4) employer organisations and their associations;
- 5) charitable and religious organisations;
- 6) local self-government bodies and their associations;
- 7) population self-organisation entities (community associations);
- 8) not-for-profit organisations and institutions;
- 9) business entities, their associations and self-regulatory organisations.

2. In the course of public consultations, the concerned public authority shall ensure proper awareness raising and informing of the general public and individuals who are likely to be affected by the adopted act, who will be engaged in its implementation and who are experts in respective areas (hereinafter referred to as “the stakeholders”).

## **Article 6. Public Authorities’ Rights and Responsibilities in Legal Relations Associated with Holding Public Consultations**

1. The public authority that has drafted an act shall organise and hold public consultations.

2. The public authority shall:

- 1) ensure that the content of the public consultation materials is clear;
- 2) facilitate access to the public consultation materials for all stakeholders;
- 3) facilitate participation of the stakeholders’ representatives in public consultations;
- 4) allocate sufficient time for the preparation and submission of proposed amendments to the draft act;
- 5) promote the stakeholders’ participation in drafting the acts and ensure the use of effective forms of consulting;
- 6) create organisational conditions for running public consultations;
- 7) report on the outcomes of public consultations.

**Article 7. Stakeholders’ Rights and Responsibilities in Legal Relations Associated with Holding Public Consultations**

1. In the course of public consultations, the stakeholders shall be entitled to:

1) suggest that the public authority initiate the drafting of acts;

2) submit to the public authority responses/proposals regarding the discussed draft acts in the order established by Article 14 of this Law;

3) receive from public authorities and officials thereof data and information necessary for their participation in public consultations (public consultation materials), except for restricted data;

4) monitor the process of preparation and adoption of draft acts by public authorities.

2. In the course of their participation in public consultations, the stakeholders shall provide accurate and reliable information to the concerned public authority.

**Article 8. Procedure for Holding Public Consultations**

1. The public authority shall conduct public consultations in accordance with the following procedure:

1) draw up a consultation document as required by part two of this Article, and publish the document on its official website and, if need be, publicise it in any other acceptable way;

2) receive proposed amendments to the draft act and publish them on its official website;

3) analyse the responses/proposals;

4) publish a report on the public consultation results and the revised draft act on its official website.

2. The consultation document shall contain information about:

1) the name of the public authority running public consultations;

2) the format of holding public consultations;

3) the title of the draft act subject to public discussion;

4) the definition of the problem to be addressed by the draft act;

5) the stakeholders;

6) potential impacts of the act (if adopted) on the stakeholders;

7) the forms, timing and duration of public consultations;

8) the e-mail address, timeframes and form of submitting written responses/proposals;

9) the format of submitting responses/proposals;

10) the name of the public authority’s official responsible for running public consultations and their contact information;

11) the timing and method of publicising the public consultation results.

3. The draft act shall be published together with the consultation document.

4. Public consultations shall start on the day of posting the consultation document and the draft act on the public authority’s official website.

5. The public consultation materials posted on the public authority’s official website shall be archived and stored for at least three years.

### **Article 9. Public Consultation Formats**

1. Public consultations can take the format of:

1) electronic consultations by way of publishing the consultation document and the draft act on the public authority’s official website for feedback (proposals and comments);

2) public discussion by way of conducting public events (roundtables, public hearings, conferences, focus groups, meetings, Internet or video conferences, etc.).

### **Article 10. Specifics of Electronic Consultations**

1. Electronic (online) consultations shall be a mandatory format of public consultations.

2. Electronic consultations shall be held by way of the public authority’s publishing the consultation document and the draft act on its official website in the “Public Consultations” section.

3. The public authority shall make sure that all stakeholders, including those entered into the Information Registry of Stakeholders, are properly notified about the publication of the consultation document and the draft act.

4. The public authority shall make sure that a service of electronic comments on the draft act operates on its official website in the “Public Consultations” section. Electronic comments on the draft act can be posted by the stakeholders who have undergone a required identification.

### **Article 11. Specifics of Holding Public Discussions**

1. The public authority can resolve to hold a public discussion in addition to the electronic consultations where the draft act:

- 1) affects the citizens’ fundamental rights, freedoms and duties;
- 2) concerns social security and rights of people with disabilities;
- 3) affects the interests of territorial communities and the exercise of powers by local self-government bodies;
- 4) concerns financing and legal status of public associations, public unions, other not-for-profit organisations;
- 5) defines strategic goals, priorities and objectives in a respective sphere of public administration (including in draft national and regional programmes of economic, social and cultural development, decisions regarding their implementation);
- 6) provides for granting benefits or introducing restrictions for business entities, public associations, public unions, other not-for-profit organisations;
- 7) has an impact on the natural environment, ecological, biological and genetic security.

2. The forms of public discussion shall be determined with consideration given to the need for engaging the stakeholders in such consultations and for ensuring their free access to the public consultation process.

3. The public discussion shall involve:

1) circulating, no later than three working days before the discussion date, information on the public discussion and/or sending to selected stakeholder representatives an invitation to take part in the public discussion, with the consultation document attached thereto;

2) holding public events;

3) preparing, as a follow-up to the public discussion, a record (minutes) thereof and posting it on the public authority’s official website no later than within ten working days of the public discussion date.

#### **Article 12. Timing and Duration of Public Consultations**

1. The timing and duration of public consultations shall be determined by the concerned public authority.

2. The total consultation period shall be at least 15 calendar days from the day of publication of the consultation document and the draft act, unless otherwise established by law, and can be prolonged in view of the draft act complexity and a need for holding a public discussion thereof.

#### **Article 13. Information Registry of Stakeholders**

1. The concerned public authority shall maintain an Information Registry of Stakeholders posted on its official website. The Registry shall contain information on the

stakeholders that have applied to the public authority stating their willingness to participate in public consultations.

2. The Information Registry entry shall comprise data on an individual’s surname, name and patronymics; or an organisation’s name, e-mail address, sphere of activity and contact information (e-mail address, means of telephone communication), surname, name and patronymics of its representatives.

3. The public authority shall send the consultation document and other materials of public consultations on the draft act to all stakeholders included into the Information Registry.

4. In order to keep the Information Registry up to date, the public authority shall ensure periodical updating of entries in the Information Registry of Stakeholders.

#### **Article 14. Submitting Proposed Amendments to Draft Acts**

1. Participants of electronic consultations shall send their contributions/ proposals to the e-mail address indicated in the consultation document or post them as electronic comments on the public authority’s official website in the “Public Consultations” section.

2. During the events held as part of the public discussion, their participants shall submit their proposals in writing; these proposals shall then be attached to the public discussion record.

3. Submitting their proposals, the public discussion participants shall indicate their surname, name and patronymics, name and contact information (e-mail address, means of telephone communication). [*of their organisation* – translator]

4. Received proposals, with their authors’ names, shall be published on the public authority’s official website no later than within three days of their receipt.

5. Anonymous submissions, as well as those containing offensive language, shall not be published and considered.

6. Proposals received in the course of public consultations shall be studied and analysed.

7. Requirements set in the Law of Ukraine “On Citizens’ Petitions” shall not apply to the procedure for analysing proposals received in the course of public consultations.

#### **Article 15. Report on Public Consultation Results**

1. Upon analysing the public consultation results, the public authority shall prepare a report containing information on all events held as part of public consultations.

2. The report on public consultation results shall include the following data:

1) name of the public authority that ran public consultations;

2) title of the draft act subject to public consultations;

3) information on the public consultation participants;

4) summary of proposals received by the public authority in the course of public consultations;

5) brief overview of accepted proposals of the public consultation participants, with substantiation of the decision made and the explanation why certain proposals and comments could not be taken up in the draft act.

3. The public authority shall publish the report on public consultation results and the draft act, revised as the result of public consultations, on its official website in the “Public Consultations” section no later than 15 working days after the public consultation closure.

4. No individual feedback on the results of analysing specific proposals shall be provided.

### **Article 16. Expedited Decision Making**

1. The public authority can apply an expedited procedure – without holding public consultations – while drafting acts regarding emergency situations, introduction of martial law or counter-terrorist measures, provided the requirements of parts two and three of this Article are met.

2. Information on the need to adopt draft acts in the expedited procedure without public consultations, as well as the text of the act so adopted shall be published on the day of its adoption by way of posting relevant information on the public authority’s official website and/or disseminating it through the mass media.

3. The rationale for an expedited adoption of the act without public consultations shall be communicated to the general public and other stakeholders no later than within five working days of making the respective decision, through posting this information on the public authority’s official website and/or publishing it in the mass media.

### **Article 17. Monitoring of Public Consultations**

1. The public authority shall monitor the public consultation process. Annual reports on the monitoring results shall be posted on the public authority’s official website.

### **Article 18. Coordination of Holding Public Consultations by Public Authority**

1. Structural units of the public authority that prepare draft acts shall be placed in charge of holding respective public consultations.

2. The public authority shall designate a structural unit or a responsible official to coordinate the holding of public consultations and to ensure continuous interaction with the stakeholders and public consultation participants.

## **Article 19. Liability for Breaching the Procedure for Holding Public Consultations**

1. Deliberations on the draft acts that were not subject to public consultations shall be postponed till after such consultations are held, with the exception of decisions made in the expedited procedure, with observance of requirements set forth in Article 16 of this Law.

2. The breach of procedure for holding public consultations established by this Law can afford ground for the concerned public authority to revise and amend the adopted act.

3. The public authority officials in charge of holding public consultations shall be administratively liable for failing to comply with this Law.

## **Article 20. Final Provisions**

1. This Law shall take effect three months after the day of its publication.

2. Where the public authority has no official website, pending its creation, the information on public consultations shall be posted on another official website that is used by the public authority for these purposes.

3. Amendments shall be incorporated into the following legislative acts of Ukraine:

1) part one of Article 16 of the law of Ukraine “On Committees of the Verkhovna Rada of Ukraine” (Bulletin of the Verkhovna Rada of Ukraine (Vidomosti Verkhovnoyi Rady Ukrayiny), 2006, #17, P. 146), after par. 2 shall be supplemented with new par. 2<sup>1</sup> reading as follows:

“2<sup>1</sup>) carry out public consultations on draft laws introduced to the Verkhovna Rada by the Members of Parliament in the order established by the Law of Ukraine “On Public Consultations””;

2) part three of Article 93 of the Rules of Procedure of the Verkhovna Rada of Ukraine laid down in the Law of Ukraine “On the Rules of Procedure of the Verkhovna Rada of Ukraine” (Bulletin of the Verkhovna Rada of Ukraine, 2010, #14-17, P. 133; 2012, #9, P. 63; 2014, #11, P.132; 2014, #20-21, P. 723) shall be supplemented with paragraph two reading as follows:

“Once a leading committee receives a draft law introduced to the Verkhovna Rada by a Member of Parliament, provided no public consultations on this draft law were conducted at the drafting stage, the Secretariat of the Verkhovna Rada of Ukraine shall, within three working days, post the text of the draft law on its web-page of the Verkhovna Rada official website for holding public consultations in the order established by the Law of Ukraine “On Public Consultations”.

With regard to the above, parts three through seven shall be deemed parts four through eight, respectively;

3) part four of Article 41 of the Law of Ukraine “On Local State Administrations” (Bulletin of the Verkhovna Rada of Ukraine, 1999, #20-21, P. 190; 2014, #22, P. 816) shall read as follows:

“Draft legislative acts and regulations of the local state administrations shall be put to the public discussion in the order established by the Law of Ukraine “On Public Consultations”.

4. The Cabinet of Ministers of Ukraine, within three months of the date of the Law publication, shall:

bring its legislative acts in conformity with this Law;

ensure the bringing of regulations issued by ministries and other central executive power bodies in conformity with this Law.