

PUBLIC CONSULTATIONS ON DRAFT LEGISLATION

**Practical guidelines for public officials,
who are responsible for organizing public
consultations in Ukraine**



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I. INTRODUCTION

What is the purpose of these guidelines?

These practical guidelines are intended for all public officials who may be responsible for initiating and conducting public consultations on draft legislation in Ukraine. The guidelines strive to offer recommendations that are realistically achievable in the Ukrainian context and are in line with the existing legal framework and the current draft law on public consultations.¹

Public consultation is a formal process which public authorities use to seek information and views from individuals and organizations on an existing or proposed policy, law or decision. It involves a two-way flow of communication between public authorities and the public. A consultation process implies an active effort on the part of public authorities to reach out to, and engage with, all potentially affected parties.

Public consultation is an important tool for ensuring that new legislation is effective in achieving its goals, well written and fully understood by all interested parties, and, crucially, fully compliant with human rights obligations. Every important law should undergo genuine and inclusive consultations with every potentially affected group before it gets adopted. Such consultations should take place at all key stages in the legislative process – and not only when there is already a fully drafted legislative text. Initial consultations should happen when different policy options are still being considered, that is, before a decision is made on whether to go ahead with developing a new law.

The guidelines address all key elements (stages) of a consultation process, from planning to monitoring and evaluation. While the

1 The Draft Law of Ukraine “On Public Consultations” was developed with extensive technical support from the OSCE Project Co-ordinator in Ukraine. In 2016, ODIHR published a legal opinion on this draft law which is available at <http://www.legislationline.org/documents/id/20027> (in English) and <http://www.legislationline.org/documents/id/20028> (in Ukrainian).

guidelines focus on public consultation in the context of developing and drafting new legislation, they can be also useful to officials and public authorities engaged in public consultations on issues other than draft laws.

Why are public consultations important?

Public consultations provide policy makers with vital information that may not be otherwise available to them. When properly conceived and conducted, public consultations are a relatively inexpensive tool which is capable of delivering significant benefits:

- (a) **In the long run, meaningful public consultations save money, time and effort.**

It is a frequent complaint that public consultations slow down the legislative process and put a strain on the limited financial, technical and human resources of the public authorities. However, when new laws are adopted in a hurried manner without a meaningful dialogue with all potentially affected parties, civil society and the expert community, they are likely to be ineffective, incomplete, contradictory or/and in breach of human rights. As a result, they need to be amended (often many times) or even replaced. When these laws result in human rights violations because their impact on human rights was not fully foreseen and assessed during their development, they can also lead to potentially costly legal challenges initiated by victims and interest groups.

A meaningful public consultation process helps the authors of a draft law deepen their understanding of the policy problem(s) they are seeking to address. It also helps identify all available policy options (solutions) and assess their respective costs and benefits, including assessing whether specific solutions would be workable in the existing circumstances. It helps find the right balance between conflicting or opposing interests. Finally, meaningful public consultation is instrumental in assessing the full impact of the draft law, including impact on different social groups and their human rights, and identifying unintended effects and previously unnoticed weaknesses of the proposed approach.

(b) Meaningful public consultations improve the implementation of adopted legislation.

Public consultations enable lawmakers to introduce and explain proposed legislation to those who will be affected by it and those who will be responsible for its implementation. For potentially controversial or unpopular legislation, such as laws limiting certain rights or reducing social benefits, public consultations give lawmakers a degree of control over their message to the public and an additional opportunity to persuade the public that such legislation is indeed necessary.

Providing all stakeholders and the public at large with a meaningful opportunity to influence the contents of proposed legislation, public consultations create a sense of shared ownership. They also increase the openness and transparency of the legislative process which result in greater public trust in it. Timely communication about proposed legislative changes, the sense of buy-in on the part of all relevant actors and public trust in the legislative process, lead in turn to better voluntary compliance with new legislation.

What is the basis for these guidelines?

These guidelines address the practicalities of organizing an effective public consultation. They are meant to fit into the legal framework for public consultations which exists in Ukraine, so any recommendations that would require changes to the current legislation or are clearly beyond the powers and capacity of Ukraine's public authorities have been avoided.

Public consultations have been increasingly embraced by OSCE countries as an essential part of good lawmaking. These guidelines are based on good practices existing at national and international levels. In particular, they draw on various policies, recommendations and practices developed by the EU,²

² European Commission, Better regulation guidelines – Stakeholder consultations, available at <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-stakeholder-consultation.pdf>

OECD,³ the Council of Europe,⁴ the OSCE,⁵ and national authorities.⁶ Ms. Sandra Pernar, Senior Advisor to the Croatian Government Office for Cooperation with NGOs, contributed to the drafting of the guidelines, drawing on the extensive practice of public consultation in Croatia.

These guidelines follow discussions and recommendations made by a working group composed of Ukrainian experts from the secretariats of Verkhovna Rada committees, the secretariat of the Cabinet of Ministers, the Ministry of Justice, the Verkhovna Rada Institute for Legislation, the office of the Parliamentary Commissioner for Human Rights, and several civil society organizations.

3 OECD, Background Document on Public Consultations, available at <https://www.oecd.org/mena/governance/36785341.pdf>; Citizens as Partners: OECD Handbook on Information, Consultation and Public Participation in Policy-Making, available at <https://www.internationalbudget.org/wp-content/uploads/Citizens-as-Partners-OECD-Handbook.pdf>.

4 Guidelines for civil participation in political decision making (adopted by the Committee of Ministers on 27 September 2017), available at <https://rm.coe.int/guidelines-for-civil-participation-in-political-decision-making-en/16807626cf>.

5 OSCE/ODIHR has formulated a number of specific recommendations for enhancing public consultations on draft policies and laws in the framework of its comprehensive assessments of the legislative process in Georgia, Armenia, and several other countries. The assessment reports can be found at <http://legislationline.org/search/runSearch/1/category/93>.

6 See, eg, Better together: improving consultation with the third sector, available at <https://www.involve.org.uk/wp-content/uploads/2011/03/Better-together-interactive-handbook.pdf>; Consultation principles of the UK government, available at <https://www.gov.uk/government/publications/consultation-principles-guidance>.

II. GUIDELINES

II.1. Principles

Every consultation process should meet the following basic criteria:

II.1.1. Participation

You should:

- consult as widely as possible;
- be proactive in reaching out to all potentially relevant stakeholders, especially those directly affected by the proposed law;
- treat all stakeholders equally and without discrimination of any kind. This includes both refraining from discrimination on any grounds and taking positive measures to ensure fair and meaningful participation of men and women, underrepresented and/or marginalized groups;
- ensure that the consultations are accessible to all interested stakeholders, that is, they are physically accessible and the consultation documents and procedures are understandable to everyone whose input you are seeking;
- make sure that all participants are treated fairly and with respect.

II.1.2. Effectiveness

You should ensure that:

- you have the necessary capacity to organize a consultation that meets all the principles listed in this section;
- you stand to benefit from the consultation in a concrete way;

- everyone involved in the planning and delivery of the consultation is clear about their respective roles and the process;
- consultations start early in the process of developing a new law;
- the timing of the consultation allows for participants' input to be taken into consideration and have meaningful impact on the drafted law;
- stakeholders are given sufficient time to formulate and submit their views;
- the methods and formats of your consultation are adapted to your goals, the nature of the draft legislation or policy issue under consultation, the capacity of stakeholders you are seeking to consult with, and the human and financial resources you have at your disposal;
- all stakeholders you are seeking to consult have a clear understanding of the purpose of the consultation, its procedure and the kind of input you are expecting of them;
- you regularly monitor and evaluate the quality of your public consultations.

II.1.3. Transparency and accountability

You should ensure that:

- your consultation follows clear understandable rules that are published and easily accessible to all stakeholders;
- you have explained how consultation will affect the decision-making process;
- all important documents related to the consultation, including stakeholder contributions, are publicly available and remain so after the consultation process is finished;
- you provide feedback on how you have used the input received during the consultation.

II.1.4. Advisory nature

You should:

- see public consultations as a way of obtaining information that may not be otherwise available to you and increasing the legitimacy and acceptance of the legislation you are seeking to adopt;
- give due consideration to all contributions received;
- accept the ultimate responsibility for choosing the right policy approach and for drafting your legislation.

You should not use public consultations to outsource the policy-making or the legislative drafting to civil society or external experts.

II.2. Planning and coordination

Every public consultation process requires careful planning.

II.2.1. Before starting a consultation process, make sure that you thoroughly review and define its purpose and essential parameters.

From the very beginning you should be clear about:

- the purpose of the consultation (what specifically do you want to achieve by consulting?);
- the overall timeframe for developing and adopting the legislation or policy under consultation (how will your consultations fit into that timeframe? will there be enough time left to reflect the outcomes of the consultation in the proposed legislation/policy?);
- who you want to consult with, including the different needs your target audience may have to be able to participate effectively;
- the resources required for the consultation and if they match the human, technical and financial resources you have at your disposal.

You need to have a clear understanding of how the consultation outcomes will feed into developing the legislation or policy in question.

You also need to assess your own capacity realistically so that you have the actual capacity to carry out planned consultation activities, such as those requiring large amounts of data processing, analysis or follow-up, etc.

II.2.2. Make sure that the timeframe for your future consultation works both for your target audience and for you.

You need to decide at what stage(s) in the lawmaking process consultation should take place, how long it should last, and how much time there will be left to process the outcome of the consultation and reflect the findings in the draft law before it moves on to the next stage. Chapter II.5 provides some guidance on these issues.

II.2.3. Make sure that you understand who the relevant stakeholders are.

‘Stakeholders’ are persons, groups, and public and private organizations and institutions that may have influence on the contents and future implementation of a given draft law or will be affected by it when it comes into force. Knowing who the potential stakeholders (i.e., your target audience) are will determine your communication strategy and consultation methods/tools. Recommendations relating to stakeholder identification, communication, and consultation tools are provided in Chapters II.3, II.4, and II.6 respectively.

II.2.4. Consider the possibility of getting external help to conduct your consultation

It may be useful to enlist the help of a civil society organization to design and conduct the consultation. This can help increase your consultation’s impact and reach. For example, NGOs can give feedback on your consultation methodology and the language of

your consultation documents to ensure that they suit the target audience. They can also provide you with additional information about your target audience. Involving umbrella/membership-based organizations may have additional benefits because they would be able to inform their members and networks about the consultation process and coordinate or collate responses from them.

II.2.5. Summarize your consultation plan in writing.

It is good practice to have a simple template for a consultation plan which should be filled out before each consultation process. The consultation plan should include:

- the specific objectives of the planned consultation;
- an overview of relevant stakeholders (a stakeholder analysis), including, if appropriate, the contact details of specific stakeholders;
- the methods/tools selected for the consultation;
- specific activities that will be required for the implementation of the chosen consultation methods (e.g. preparing a consultation document, hiring a venue, advertising in the media, preparing a summary of oral submissions, etc.) along with persons/departments responsible for their implementation;
- main deadlines for all consultation activities;
- estimated costs and other resources required for the consultation;
- partners in the organizing and delivering of the consultation and their respective role.

II.2.6. Ensure that your consultation is coordinated with other consultation processes conducted by your public body.

It is good practice to have one person who serves as the main contact and focal point for all consultation processes in a given public body. Such a person would be responsible for coordinating consultation processes and supporting their implementation and

act as an interface between the public authority and the public/civil society. Their role would typically include:

- ensuring that all consultation processes meet legal requirements;
- monitoring and evaluating the overall process of public consultation within their public body;
- advising whether consultation is needed in specific cases and, if so, what consultation tools will be most suitable;
- ensuring a regular flow of information on upcoming consultation needs from all teams and departments responsible for developing policies and legislation;
- sharing knowledge across the public body about new trends and good practices in relation to public consultations;
- responding to consultation-related inquiries and feedback from the public;
- keeping consultation-related information up to date on the public body's website.

II.3. Stakeholder analysis

'Stakeholders' are those who:

- will be affected by the draft law under consultation;
- or will be involved in the implementation of the draft law under consultation;
- or have a stated interest in the subject matter of the draft law (e.g. experts, academic institutions or think-tanks specializing in the relevant issues).

You need to understand your target audience so that you can develop an effective communication strategy and choose consultation methods that are adapted to your target audience's needs and capacity and do not inadvertently exclude some of the relevant stakeholders.

II.3.1. Always conduct a stakeholder analysis before you start a new consultation process.

Your preliminary 'stakeholder analysis' should include:

- the identification of all potentially relevant categories of stakeholders, including those based on your needs for specific experience or technical knowledge;
- an explanation of the nature of their interest in the draft law or policy under consultation, including an assessment of their potential role in the implementation of the draft law;
- specific needs each identified category has to be able to participate effectively (e.g., special accessibility requirements for persons with various types of disability);
- the list of specific stakeholders (individual experts, NGOs, etc.) who can represent/participate on behalf of each relevant category, including, as appropriate, some brief assessment of their record of previous participation in public consultation and the quality of their past contributions.

One of the useful criteria for dividing stakeholders into different categories is the nature of the direct and indirect impact the proposed law/policy will have on them – for instance, it is useful to differentiate between those who will benefit from the new law or policy and those who will have to pay for it or change their behaviour or have their rights restricted.

II.3.2. Ensure that every relevant stakeholder is given a chance to participate in the consultation.

You may be tempted to fall back on the experts and organizations you already engaged with in previous consultations. However, those actors may not necessarily represent the full spectrum of interests and opinions. You should take special care that you do not always consult with the same narrow range of experts and organizations.

Even if you have done your best to identify all relevant stakeholders

in advance, there is always a chance that you have missed some because you did not fully understand the direct and indirect impact of the draft law/policy. In fact, the full impact of a proposed law/policy can often be understood only after consultation has taken place. Whatever communication strategy and consultation methods you choose, it should be possible for new stakeholders, who you did not think of initially, to come forward and provide their input.

When deciding on consultation methods, you have a choice between open (self-selected) and targeted consultations. Targeted consultations, such as workshops, involve only participants that you have pre-selected. One of the advantages of targeted consultations is that they help you ensure quality responses from stakeholders who you consider particularly relevant. The main risk associated with targeted consultations is that, as was explained above, you may unwittingly exclude some relevant stakeholders who were not on your radar. It is advisable that you always use a combination of open and targeted methods. Your criteria for selecting participants should always be clear and transparent.

II.3.3. Ensure that consultation is always accessible to all stakeholders in practice.

Even if a consultation method is open to everyone (e.g. online consultation), this does not guarantee that all relevant stakeholders will be able to participate in practice. You need to make sure that your communication and process are inclusive and suitable to the special needs some stakeholders may have.

A good stakeholder analysis will help you set realistic deadlines, choose appropriate language and communication style (including being able to explain to your target stakeholders why the draft law/policy is relevant to them), and choose appropriate consultation tools.

You should always review if 'open consultations' are actually accessible in terms of:

- location, e.g. hearings conducted only in big cities may exclude rural population/persons living in remote areas;

- physical infrastructure, e.g. the venues for your meetings may not be accessible to persons with disability;
- format, e.g. conducting consultations exclusively online may exclude elderly persons (especially those living in nursing homes) and people living in remote areas;
- language, e.g. conducting consultations exclusively in Ukrainian may exclude certain linguistic minorities; using technical or complicated language will exclude everyone who are not experts in the relevant field; failing to provide sign language interpretation will make meetings and workshops inaccessible to deaf and hard of hearing persons;
- timing, e.g. your deadlines may be too demanding for smaller NGOs with limited human and technical resources.

II.4. Communication

A successful consultation process is impossible without good communication.

II.4.1. Develop a clear and detailed communication plan for every forthcoming consultation.

Your communication strategy for each consultation should address:

- Communication ahead of the consultation: How are you going to make sure that all interested parties (your target audience) will be aware of the upcoming consultation and will understand its purpose, rules, and their role in it?
- Communication during the consultation: Is the language and style of your consultations documents suitable for your target audience? Is the information provided in the consultation documents relevant, sufficient, comprehensive and up-to-date? Do consulted stakeholders receive sufficient guidance from you to provide the kind of input you are seeking?

- Communication after the consultation: How will you provide feedback on the submissions made during the consultation and report its outcomes?

Depending on your target audience, the launch of the consultation process can be publicized:

- in different media, such as newspapers, radio, television, and the internet, including social media platforms,
- through fliers or notices at relevant facilities, such as social care facilities, hospitals, etc.;
- through the networks of umbrella/membership-based organizations;
- on online platforms created specifically for the NGO sector, such as <https://www.prostir.ua> (Громадський простір).
- by using your own contact databases and emailing lists.

II.4.2. Help all relevant stakeholders understand the purpose and process of the consultation and their role in it.

All participating stakeholders should understand why they are being consulted, how their responses will be used, and to what extent they will be able to influence the final decision. This helps ensure that the responses you receive during the consultation are relevant and of good quality. It also means that participants will have realistic expectations about the consultation process and its outcome. In your communication before and during the consultation it is very important that you are clear about the purpose and the process of your consultation. In particular, you should be specific about any aspects of the draft law that cannot be changed and, therefore, are not open to consultation (such as those required by international obligations).

II.4.3. Ensure that all stakeholders understand what kind of input you are interested in.

It is always a good idea to guide your target audience with a set of questions which draw attention to the key points you especially

want to consult on. For complex and/or lengthy pieces of draft legislation, it may be also useful to summarize key issues in plain language understandable to a lay person and not only to experts in the relevant field (see point 4.4 below).

II.4.4. Always use plain language and ensure that your language and communication methods are fully accessible to your target audience(s).

Using plain language and easy-to-read formatting should be a general standard for all your communications. It is good practice to test your consultation documents with persons who were not involved in their drafting and whose profile is comparable to that of your target audience. Alternatively, you may ask an NGO working with your target audience to review the consultation documents. The purpose of such testing is to make sure that the consultation documents contain all necessary guidance and will be easily understood by your target audience.

Certain groups (e.g., elderly persons, persons with certain physical disabilities, persons with intellectual disabilities, ethnic minorities, etc.) require additional efforts. Those include making your website disability-friendly, preparing summaries in easy-to-read language, using a sign language interpreter at a public hearing, translating consultation documents in a minority language.

II.4.5. Summarize all key information in a consultation document.

It is good practice to have a standard form for a consultation document which should be published along with the draft law/policy presented for consultation. Such a consultation document should include:

- the title of the draft law/policy under consultation;
- the name of the body conducting the consultation;
- the purpose of the draft law/policy;

- a short summary of the draft law/policy, including an explanation of who are likely to be affected by it and how;
- the purpose of the consultation;
- specific issues or aspects of the draft law/policy on which you want participants to focus, comment, provide additional information;
- references/links to other documents related to the draft law/policy, such as an explanatory report, a regulatory impact assessment, etc.;
- references to external sources that can provide interested parties with additional information relevant to the draft law;
- the consultation's method/format;
- procedure and deadlines for submitting responses;
- the name, phone number and e-mail address of the contact person for the consultation;
- an explanation of what type of feedback will be provided and how.

II.4.6. Publish and update a plan/calendar for all upcoming consultations.

By informing all potentially interested parties about planned consultations well in advance, you increase the chances of their participation as well as the quality of their contributions. It is good practice for all governmental bodies to publish annual plans of their policy-making and legislative activities which include information on envisaged consultations. In addition, they should maintain on their website a regularly updated calendar for public consultations with contact details for inquires, including requests for additional information.

Recommendations for communication of the outcomes of the consultation are provided in Chapter II.7.

II.5. Timing

Setting realistic deadlines and choosing the right moment on the decision-making timeline are essential to a successful consultation process.

II.5.1. Consult at all important stages in the lawmaking process.

Before any legislative drafting takes place, there should be a problem analysis and an assessment of all available solutions, of which legislating is but one. Once the main drafting process is completed, the draft law should undergo a meaningful and rigorous scrutiny at parliament, which should be able to make substantial changes to the proposed bill. Consultations should take place at all three key stages outlined above (policy making, drafting, and parliamentary scrutiny).

In a well-organized legislative process new legislation is generally initiated and drafted by the executive branch, so it is initially the responsibility of the relevant ministry or governmental agency to conduct meaningful public consultations. However, once a draft law is submitted to the Verkhovna Rada, the Rada should conduct additional consultations if it needs additional information to review the draft law or when the consultations conducted by the government (the authors of the draft) have not been of adequate quality (e.g, when they failed to include some relevant stakeholders). When a law is initiated and drafted by members of parliament, they are responsible for conducting public consultations. Verkhovna Rada committees should be flexible in choosing consultation methods and should not limit their choices to the methods expressly mentioned in the parliamentary rules of procedure. Consultations at the Verkhovna Rada may include public committee hearings or plenary hearings, advisory councils, working groups, seminars, or/and online consultations.

II.5.2. Start consultation early in the process of developing a new law, i.e., before it is drafted.

Adopting new legislation is usually only one of the available solutions to a particular policy problem, so before considerable

time and resources are invested into the drafting of a new law, it is important to ascertain that this law is really necessary and, if so, that its overall concept (approach) is correct and will not lead to human rights violations or other undesirable results. Consequently, at these early stages, the key questions to consult on are:

- Is new legislation at all needed?
- What general approach should the proposed law follow?
- What is the impact of the proposed legislation, including on various social groups, such as women, persons with disability, the elderly, etc.?

II.5.3. Give all interested parties sufficient time to provide their comments.

Giving all interested parties enough time to participate in your consultation process will help improve the quality of their responses. The nature of your target audience should be taken into account. For instance, big business corporations are more likely to be able to quickly mobilize their resources and attract necessary legal expertise to comment on legislation affecting their interests, while NGOs tend to be under-resourced and are likely to have insufficient or limited capacity to assess, and comment on, complex legal texts. You should also keep in mind that some participating organizations may wish to conduct their own consultations with individuals whose rights or interest they represent or/and with their partner organizations before they submit their response.

The timeframe for submitting comments should be also proportionate to the length and complexity of the draft legislation under consultation, but should never be less than 15 days. It is not unusual in European countries to have a consultation process open for at least 30 days. Consultations on policy reforms or strategies are typically extended to 8 weeks or longer.

The length of your consultation process should be extended if it falls on a period when public participation is expected to be lower than usual, for instance, in the summer and during the winter holiday season.

II.5.4. Ensure that the consultation period fits into the legislative timeframe for the draft legislation under consultation, leaving enough time for its potential revision in light of received comments.

The timing of the consultation should be planned in such a way as to give the drafters enough time to analyse and, if necessary, reflect received comments in the draft law before it is submitted to Parliament (or, if the consultation is conducted by Parliament, before the draft law reaches the final stages of its consideration).

II.6. Consultation methods

There are many ways in which public consultations can be conducted, including written online consultations, public hearings, workshops, focus groups, and semi-structured interviews, among others. The effectiveness of your consultation process will be determined by your choice of consultation tools. When deciding on consultation tools, it may be a good idea to seek advice from NGOs representing specific target groups or working on relevant issues.

Ensure that your consultation method is appropriate for your target audience.

Each consultation method/tool has its advantages and limitations. For example, online consultations are relatively cheap, easy to organize, and convenient for participants (with internet access). They also have a wide reach, allowing large numbers of people to participate without any restrictions imposed by geographical location. However, despite the obvious appeal of online consultations and the fact that they are the default format for public consultations in Ukraine, you must be mindful of the so-called digital divide, that is, the existence of parts of the population that have no or limited access to the internet because of their economic background, age, geographical location or other factors. For example, if you are consulting on a draft law dealing with institutional care and your consultations are conducted exclusively online, you risk excluding a vast majority of people directly affected by this legislation who

should be part your target audience (i.e. persons living in social care homes, psychiatric in-patients, etc.).

Match your consultation tools to the subject matter of your consultation and the type of input you are seeking from your target audience.

Certain consultation tools, such as open space, are suitable for gathering new ideas or setting a policy agenda, but they are less adapted for gathering feedback on an already existing draft law. Some tools (e.g. surveys and focus groups) are designed to capture pre-existing opinions, while others are more interactive and will enable participants to develop their opinions in the process (e.g. deliberative workshops).

Make sure that the necessary human, financial and technical resources.

Compared to online consultations, a series of public hearings or discussions organized across the country may be a better way to reach out to certain demographics that do not have wide access to the internet (e.g. elderly people living in rural areas). However, their logistics will require considerably more human and financial resources. Using methods like half-structured interviews or surveys will also require specific technical knowledge and special skills.

Use a combination of different consultation tools for each consultation process and, in particular, combine open consultations with targeted consultations.

Consultations can be open for everyone to participate (e.g. online written consultations or public hearings), or they can be targeted at specific groups of stakeholders and involve pre-selected participants (e.g. workshops). Open consultations reduce the risk of unwittingly excluding relevant stakeholders because you failed to realize that they would be affected by the draft legislation under consideration. However, the formal openness of your consultation method does not guarantee that all relevant stakeholders will actually participate. Targeted consultations will help you ensure participation of specific

groups of stakeholders in whose input you are particularly interested. They will also allow you to achieve a better gender balance among the participants and sufficient diversity in terms of age, disability, education, income level, etc. So, it is always a good idea to use open consultations in combination with a targeted approach.

For reasons discussed in section II.6.1 below, you should not rely exclusively on web-based forms of consultation. Each consultation has its advantages and limitations, so, ideally, your consultation process should involve a combination of different online and offline formats.

Make sure that your consultations are accessible to persons with disabilities.

Though it may seem obvious, it is worth reminding that persons with disabilities have the same right to participate in public life as other citizens. They are not simply a separate ‘target group’ that only needs to be consulted on legislation and policies concerned with disability. Persons with disabilities, whether they wish to be involved as experts in a specific field or as ordinary members of the public, must be able to participate in public consultations on *any* legislation on an equal footing with others. At a minimum, you should always ensure that a website used for online consultations and consultation documents posted there are fully accessible to persons with various types of disability. For public hearings you should choose venues that are accessible and should also provide a sign language interpreter, if you anticipate a need for them. You may also consider providing accessible transport to ensure that persons with disabilities can reach the venue. Do not forget to mention all special accommodations you have made for the needs of persons with disabilities (a venue accessible to wheel chair users, a sign language interpreter, etc.) when you advertise your consultation, as otherwise many of them would be likely to refrain from attending. If there is some form of advance registration for the consultation event, you should ask participants to indicate in the registration form what special accommodations they will require.

Engaging with disability organizations is a very good idea. In addition to contributing their views and comments on the subject of your consultation, they can advise you on accessibility needs, check if your consultation tools and materials are accessible (or help you make them accessible), and mobilize their networks/constituencies as well as assist individuals who wish to participate.

Use clear, transparent and fair criteria for selecting participants for workshops, expert groups and other targeted forms of consultation.

You should be transparent about how you choose participants so as to give your consultation process greater legitimacy and avoid the impression of favouring some individuals and organizations while unfairly excluding others. No one should be excluded because they expressed, or are likely to express, critical views.

Ensure that participants provide information about themselves.

It is common practice that anonymous responses are not allowed, i.e., that participants are required to provide certain personal details about themselves. This information can be very useful, as it allows you to monitor and evaluate the profile of all participants in terms of their interest in the subject of your consultation and other characteristics. Apart from a participant's name and contact details, other personal details that may be of interest include age, gender, geographical location, professional occupation, education, and disability (though you may consider if it should be optional for participants to provide some of those details).

Your consultation website should include a privacy statement explaining how this personal data will be handled by you - and of course you should ensure that your handling of the data is fully compliant with Ukrainian legislation. Not all of those personal details should be made public, and you should clearly indicate which details will be kept confidential and are for your own use only (so that participants feel more comfortable sharing them). It is a good idea to explain why you need this information.

All participants should be given the option of having their responses published anonymously.

II.6.1. Written online consultations

Innovative forms of online consultations include blogs, social media and live chat events which enable real-time interaction between participants and policy makers. They are particularly useful at the early stages of a legislation cycle (i.e., when an underlying policy is being formulated and before any legislation has been drafted) and on issues of special relevance to people who are likely to be active users of such digital platforms (e.g., the youth, academics, media professionals, etc.).

As for draft laws and policies, online consultations are typically conducted through a dedicated consultation website or webpage where all consultation documents and information are posted and a function for submitting comments is provided. This could be a dedicated section of the official website of a state body running the consultation or a special official website serving as a single platform or gateway for all public consultations run by all state bodies.

Web-based consultations are cheap, easy to manage, and convenient for participants.

Provided that a consultation website is already available, setting up an individual consultation process is quick and cheap, and it is easy to collate, analyze and publish input from a large number of participants. Web-based consultations offer an exceptionally wide reach as they are open and available for everyone with internet access to participate. Participants are able to submit their comments in their own time and regardless of their location.

Beware of the digital divide!

Significant numbers of people still do not have access to the internet or do not use it. The level of internet access varies greatly depending on a number of factors, such as age, geographical location, and income. Relying exclusively or predominantly on

online consultations would lead to certain demographics being constantly excluded from all of your consultations. Depending on the subject matter of your consultation, it could also mean the exclusion of stakeholders who are specifically your target audience.

Web-based consultations do not guarantee high levels of participation.

The open nature of web-based consultations and their wide reach do not automatically translate into a sufficiently high level of participation. In addition to the digital divide, there are many other reasons why stakeholders may fail to take part:

- they are not aware that the consultation is taking place;
- they do not understand what is expected of them;
- they do not believe that their contribution will make a difference;
- the language of the consultation documents is too complicated or confusing for people who are not experts in the relevant field;
- the consultation website is not accessible to persons with certain types of disability.

Take steps to ensure a broad and representative spectrum of opinions.

A large number of responses does not necessarily mean that you have obtained a balanced representation of opinions. Open (self-selected) consultations can be dominated by a 'vocal minority.' Making your website easy to use as well as accessible to persons with disabilities, directly notifying organizations and individuals belonging to your target audience, and supplementing your web-based consultation with other, targeted formats, such as workshops, are among the measures which would help you achieve both a good level of participation and a balanced representation of opinions.

Using a standard template for all official consultations websites will help you make the process more user-friendly, and it is a cost-effective way of ensuring that all accessibility requirements are met.

All responses that comply with the rules of the consultation should be published.

In principle, all submitted comments should be published on your consultation website. However, you should establish simple and clear criteria for types of comments that are inadmissible and will not be made public. These criteria should be easy to apply and should not preclude opinions that are critical, controversial or divisive. They should include clearly irrelevant submissions (e.g. spam advertising) and submissions containing hate speech and other offensive and discriminatory language and incitement to violence. Make sure that you have a clear written policy on inadmissible submissions which is visible on your website.

When comments are submitted through a special comment function or an online form, technically they can become visible from the moment of their submission. You should consider if you want to pre-moderate such submissions before they get published or, alternatively, regularly monitor published submissions and remove those containing prohibited content. Comments submitted by email can be published with some delay, which should not be long.

Even though participants are required to disclose their identity when submitting their comments, when it comes to *publishing* them, each participant should have an option to have their comments published anonymously.

Submissions should be acknowledged.

It is good practice to send every contributor an acknowledgment of receipt and also inform them when their contribution is expected to be published (if it is not published immediately). For example, you can set up automatically generated acknowledgements of receipt.

Quick checklist for web-based consultations:

- (i) providing necessary information on the consultation website
 - up-to-date consultation documents;
 - description of the consultation objective(s) and procedure;

- the consultation website is accessible to persons with disabilities;
- consultation materials are accessible to persons with disabilities;
- explanation of how comments can be submitted, including relevant email addresses and deadlines;
- contact person details;
- privacy statement (with regard to personal details provided by participants)

(ii) visibility

- easily accessible from the home page of your website;
- the consultation website is easy to navigate;
- functioning link to your consultation webpage available on civic.kmu.gov.ua

(iii) target audience

- identification of relevant stakeholder who have little or no access to the internet;
- direct email notification to target stakeholders

(iv) acknowledgment of receipt

- automatically generated acknowledgments of receipt to be sent to all contributors

(v) publication of submissions

- timeframe for publishing received comments;
- policy on inadmissible content (i.e. what kind of comments will not be published);
- participants have an option to publish their comments anonymously.

II.6.2. Public hearings

Public hearings allow interested parties to present their comments on a proposed law in person. Public hearings are seldom used as a sole format for a public consultation process. They work best when used in combination with other formats, such as web-based written consultations. Public hearings are open to the general public.

Public hearings can be an attractive consultation format for a number of reasons:

- this is an “old-school” format quite familiar to the general public, and it can be enhanced by, but is not dependent on, digital technology;
- compared to written consultations, public hearings allow for direct interaction between the policy makers and the public and give their participants a stronger sense of direct involvement in the decision-making process;
- public hearings can be relatively straightforward and inexpensive to organize (unless the consultation process involves a series of hearings held in different regions).
- The disadvantages of public hearings include the following:
 - there is always a very real probability of low turnout, so the efforts required to organize a hearing may not always be in proportion to the hearing’s ultimate usefulness;
 - just as with other ‘open’ formats, participants are self-selected, so they may not represent all main stakeholders or the majority view of a particular group of stakeholders;
 - there is a risk that a small but vocal minority will dominate the discussion;
 - when complex emotion-charged issues are involved, having individuals with widely different perspectives and experiences in the same room can result in tensions and divisions that will make a constructive discussion all but impossible.

Some of these limitations can be countered by careful planning, including selecting the date and time which is convenient for your target audience (e.g. parents with small children are unlikely to be able to attend an evening meeting), making the location accessible to persons with disabilities, and devising an effective public campaign to advertise the hearing. You should also consider if there is a need to make publicity materials available in Braille, on tape, and/or in different languages.

Your choice of the moderator/chair is very important because their role is to diffuse any possible tensions and ensure that the discussion is well structured and everyone is given a fair opportunity to present their views. The moderator/chair does not need to be an expert on the topic, but they should have some understanding of it. You should choose someone who will be perceived as independent and neutral.

Make sure that at the start of the hearing the participants are informed about the purpose of the hearing, its procedure, and the manner in which you plan to use the contributions made at the hearings.

You should publish the public hearing's summary/minutes.

Quick checklist for arranging a venue:

(i) general specifications:

- convenient location with easy transport links
- heating
- lighting
- electrical sockets
- catering facilities
- toilet facilities
- nappy changing/baby feeding facilities
- no distractions such as loud heating or ventilation systems

(ii) room layout:

- no physical barriers between the audience and the speakers
- seating arrangement encouraging participation
- visual aids seen from all seats

(iii) accessibility:

- the building, room and toilet facilities are fully accessible to persons with disabilities

(iv) equipment:

- all equipment checked and in working order
- spare extension cables
- on-site technical assistance

Additional considerations:

- sign language interpreter
- hearing aid
- interpretation in other languages

II.6.3. Workshops, seminars, conferences

These tools allow for a structured in-depth discussion. In contrast to public hearings, participants are usually pre-selected.

These tools offer a number of advantages:

- pre-selection helps you involve stakeholders whose input is particularly important to you; it also helps ensure that your target group is adequately represented in terms of gender, age and other key characteristics;
- they allow you to ensure that diverse/conflicting perspectives are represented in a balanced manner (e.g. service providers vis-à-vis service users);

- they allow for a more focused discussion on issues that are of particular interest you;
- they allow for interaction and discussion among participants, i.e. *within* your target group(s).

Quick tips for planning and organizing workshops:

Agenda:

- make sure that at least two thirds of the time is allocated for discussion;
- engage the participants in discussion earlier on;
- make the programme sufficiently flexible and allow the participants to have a say in it (discuss the agenda with the participants at the beginning of the workshop).

Time-keeping:

- always start on time (being punctual shows respect towards participants who show up on time and sends a message to late-comers that you are taking the schedule seriously).

Moderating:

- make sure that the moderator/facilitator is an experienced individual who is skilled in group work, has good communication skills, and is unobtrusive and neutral.

Note-taking:

- make sure to arrange a note-taker who will summarize key points raised during the workshop.

Evaluation:

- from time to time, have a quick 'satisfaction check' to get the participants' feedback on how the workshop has been going so far;
- make sure to leave 10 min. at the end of the workshop for a final evaluation.

Summary report:

- at the end of the workshop, summarize any action points following from the discussion and inform the participants about when they should expect to receive the workshop's summary report.

II.6.4. Other consultation tools

Early on in the legislative cycle, the following consultation tools can be used to help you understand the issue you want to address and identify and assess possible solutions:

Surveys

This tool consists in presenting members of the public with a series of questions and collecting and analyzing their responses by using statistical methods. Surveys rely on the use of a structured questionnaire which typically combines closed questions (which ask participants to choose between pre-defined answers) and open questions (which participants answer in their own words). It is important for the validity of a survey that its participants provide a representative sample of the entire population or of a specific stakeholder group. Online surveys are cheap and easy to organize, and they can be more attractive to young people and certain other demographics. However, it is difficult to ensure that they are representative and statistically valid. By contrast, mail and telephone surveys are more representative, but they are also more expensive. For a high-quality survey, you most probably will need to hire a consultant or a public opinion research company.

Focus groups

This method consists in the in-depth exploration of specific issues within a small group of representatively selected members of the public (usually 6-8 persons) who are gathered together for a day or less. A focus group can represent the public at large or a specific target group. A focus group is guided by a moderator who introduces topics and facilitates the discussion. The defining feature

of this method is intensive group interaction. It provides in-depth information on the participants' values and opinions and clarifies the reasoning behind their responses. An appropriately skilled moderator is essential for this method.

Interviews

This method is used to collect mostly qualitative data through an in-depth conversation with one or several individuals. Structured interviews rely on a set of pre-defined questions that all respondents are asked in the same order. Unstructured interviews rely on the spontaneous generation of questions prompted by the natural flow of the conversation. Semi-structured interviews combine both approaches so that the interviewer uses an interview guide but also has an opportunity to ask new questions to follow-up on the interviewee's responses. Interviews help obtain detailed information about personal perceptions and opinions. In comparison to surveys, they offer the possibility to clarify ambiguous or incomplete answers and explore ideas that emerge in the course of the conversation. However, this method can be quite expensive as you will need to hire trained professionals to conduct the interviews.

Open Space Technology

This innovative method is based on self-organization and designed to inspire creativity and leadership among participants. It involves hosting a meeting that is focused on a specific and important purpose or task, without giving the participants any formal agenda. It is for the participants to formulate the agenda at the beginning of the meeting by sharing their most important issues in a 'marketplace of ideas.' The participants can then organize themselves into smaller groups around those issues. This method can accommodate a large number of participants.

II.7. Analysis and reporting

Once your consultation process is closed, all contributions need to be thoroughly analyzed. For open consultation methods such as web-based written consultations and public hearings, you should

keep in mind that the actual participants cannot be considered as a statistically valid representation of your target group(s). You should be careful about how much weight you attach to the quantitative aspect of the received responses (e.g. the ratio of those opposing the draft law to those supporting it).

Although your analysis should be mostly qualitative (i.e. focusing on the substance of the contributions), you should start with a **brief quantitative overview**, including:

- the total number of contributions;
- the distribution of contributors by stakeholder category;
- a further breakdown of the responses according to other relevant criteria, such as gender, geographical location, etc.

As you move on to the **qualitative analysis** of the substance of each contribution, you should consider the following questions:

- Does the contribution address the consultation topic/consultation questions? (At this point, you are filtering out responses, or elements of responses, that are irrelevant);
- Does the contribution contain any factual data (as opposed to the respondent's views and opinions)? If so, is there a way to verify the accuracy of that information? Note that the distinction between 'facts' and 'opinions' is not always clear-cut, as a person's opinion can be borne out by their firsthand experience of dealing with the issues on which you are consulting;
- Does the contributor represent only themselves or a group of stakeholders? For instance, some NGOs may first conduct their own internal consultations within their constituencies and then submit a consolidated response. Alternatively, some NGOs choose to speak on behalf of their entire constituency because they believe that they already know what the interests and concerns of their constituency are. Such claims should be treated with caution, as there is always a difference of opinion within any group of stakeholders;

- What is the nature of the contributor's interest in the proposed law/policy? How are they going to be affected by it?
- Does the contribution support measures proposed in the draft law/policy, or oppose them, or suggest modifications to them? Does the contribution propose an alternative approach?
- Does the contribution offer additional evidence regarding the impact of the draft law/policy?

You should assess the extent to which the contributors match your target group(s). If your target audience is not well represented, you should consider if an additional consultation round is necessary.

You should present the results of your analysis in an objective and unbiased manner. Your **consultation report** should include:

a summary of the consultation's objectives and process;

a brief descriptive overview of the contributions received and the profile of the contributors (see above);

a summary of the substance of the contributions (which can be organized by stakeholder category or/and by issue);

the state authorities' response to the comments made in the contributions, in particular, making it clear which recommendations have been accepted and which one have not – and why;

annexes containing a full list of contributors, the listing of meetings held, consultation materials, etc.

Your consultation report should always be published, as it is also a means of giving feedback to those who participated in the consultation and showing them that their contributions have been taken seriously.

II.8. Evaluation

Once your consultation process is completed, you should make time for evaluating it. Such evaluation boils down to answering these

simple questions: Did the consultation achieve its objects? What elements of the consultation process worked well? What elements did not work well, and why?

Specifically, you should assess the following components of your consultation process:

(i) the objectives:

- Were they well-defined and realistic?
- To what extent were they met?

(ii) the participants:

- Did you succeed in getting responses from your target audience(s)?
- Were the participants sufficiently diverse to be representative of your target group(s), e.g. in terms of gender, age, etc.? Which sections of your target group were un(der)represented?
- Did the participants show an understanding of the objectives and process of the consultation?

(iii) the methods:

- Did the consultation tools match the consultation objectives?
- Were they suitable for your target group(s)?
- Did you have sufficient resources and expertise for the tools you had selected? If not, what was missing?
- Did you stay within the budget? If not, why was the original budget exceeded?
- For resource-intensive tools, did the outcome justify the money and effort invested? Could you have achieved the same results with simpler, cheaper tools?
- Were your consultation tools fully accessible to persons with

disabilities? Did they encourage the participation of vulnerable/marginalized groups?

(iv) communication:

- Was your communication strategy effective in informing your target audience about the consultation?
- Were the consultation materials understandable to the target audience?
- Were they fully accessible to persons with disabilities as well as relevant linguistic minorities?

(v) the timeframes:

- Did the participants have sufficient time to prepare their responses?
- How long did it take you to analyze the responses and prepare a consultation report? Was it longer than you had planned originally?
- Did the drafters/decision-makers have sufficient time to reflect the results of the consultation in the draft law/policy?

(vi) the outcome:

- How would you assess the overall quality of the responses in terms of their relevance, clarity, reasoning and usefulness?
- What impact did the consultation have on the draft law/policy under consultation?

To make sure that all information necessary to address the above questions is properly captured throughout the consultation process, you should prepare your evaluation methodology before you start the consultation. In particular, some of the questions can be answered only on the basis of feedback received from participants. Such feedback can be obtained through online satisfaction surveys, evaluation forms distributed at the end of hearings, workshops and

other events and other means, so it is important that these measures are planned for from the start.

Crucially, evaluation's purpose is not just to measure the success of past consultations – it is also to learn lessons for future consultations. Evaluation is instrumental in learning how to choose the most appropriate consultation tools, what resources you actually need to implement them, and how to devise an effective communication strategy tailored to the needs of your target audience.

