

International Centre for Policy Studies

# **Democratic Governance: How to establish an effective mechanism for public consultations**

*Policy Brief*

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"Democratic Governance: How to establish an effective mechanism for public consultations" is a Green Paper analyzing the current mechanisms for policy-making consultations with stakeholders in Ukraine. It contains an analysis of problems and the means to resolve them that are intended for discussion by all interested parties, including government agencies, business, community organizations, political parties, and the academic and expert communities.

The next phase of working on the analytical brief will involve: summarizing comments and observations that were received during the course of public debate; drafting the final version of the document as a White Paper; holding further discussions and consultations; incorporating changes to the final draft; summarizing the results of this study; and formulating the results as a policy brief.

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# Foreword



As it enters its third decade of democratic independence, Ukraine still lacks a key component of good governance—the participation of civil society and interest groups in the policy-making process. Too often, policy decisions are made behind closed doors. And in not taking into consideration the positions of interest groups, the level of dissatisfaction among ordinary voters continues to rise, with even strategically important policies running into widespread resistance. In western democracies, by contrast, no critical government policy

is adopted without having been discussed among all interest groups that will potentially either benefit or lose by it.

In the past, a totalitarian system of government made it virtually impossible for any opinions or attitudes to be expressed other than the official line because of the political monopoly. The line was that the government knew what every interested party might need. Of course, that was not true. Government policies affect a variety of often contradictory yet legitimate interest groups. For instance, raising customs duty on imported cars has a negative impact on importers and consumers, while having a positive impact on domestic car makers by reducing competition from imported vehicles. The result of the search for a compromise among the three groups is where good policy emerges, whether for the economy or for other ends.

The International Center for Policy Studies has been deeply involved in the issue of public consultations for more than a decade. With its assistance, a number of steps have been taken in Ukraine to include consultations with all interested parties during the policy-making and implementation processes. Back in 2004, ICPS prepared a guideline for civil servants entitled “Improving consultations with interested parties in the day-to-day work of the Government of Ukraine.”

Shortly thereafter, based on the recommendations in this brief, the Government drew up a "Procedure for holding consultations with the public when formulating and implementing state policy." However, public consultations failed to become a standard, remaining mostly formalized among central executive bodies and local governments.

Understanding that social transformation is a lengthy process, ICPS continues to work on instituting new democratic mechanisms and social institutions that can meet contemporary challenges and respond properly to the needs of both individual citizens and interest groups. We continue to focus our efforts on assisting our country in taking the path towards a central and local policy-making process that includes all interested parties. For this is, in our opinion, one of the most fundamental components of effective, properly balanced policies.

*Volodymyr Panchenko*  
*Director, ICPS*

# Overview

Political and economic reforms can never really succeed without there being a proper feedback mechanism between a government and its citizens. In the years since it became independent, Ukraine has taken many steps to include consultations with stakeholders in the process of shaping and enacting state policy. In general, European standards were used as the basis.

In practice, however, such consultations with all stakeholders, including non-government interest groups, have never actually taken root or become the standard in the policy-making process in Ukraine. Today, they remain largely in the form of declarations of intent.

When the process of forming and enacting key policies remains effectively without any meaningful, workable or effective mechanism for consulting with voters and non-state interest groups, both those in power and society as a whole, not to mention individual groups within it, suffer. The failure to resolve this problem can lead to serious negative consequences, including:

- Poor quality policy by those in government.
- Policies that only reflect the interests of a narrow circle.
- Poor institution and enforcement of policies at the mid-level government bureaucracy.
- Voter resistance to reforms, little confidence in the government's actions, and loss of reputation for individual politicians.
- Dissatisfaction among voters leading to growing radicalism among those who dissent.

It is our opinion that Ukraine's government must take the necessary steps to bring the practice of public consultations between government agencies and non-state interested parties in line with European standards—for its own sake and for that of its citizens. In order such mechanisms for consulting with interested parties to be effectively established, Ukraine needs not only progressive regulatory measures

based on European approaches, but also appropriate measures to ensure execution, including measures to shore up institutional capacity, monitoring the process and overseeing it. Civil society must take measures to bring forth the problems experienced by key interest groups and to promote the practical application of European standards of consultations with interested civil groups.

# Introduction

**The most all-encompassing aspect regarding the institution of reforms in Ukraine is the quality of the policies that are drafted and how they will be executed.** On the one hand, poor-quality public policy leaves voters dissatisfied and risks that the government will face serious protests. Moreover, the government will fail to garner support from the public for its reforms if government agencies or local governments adopt such policies without taking public opinion into account. On the other hand, the pace of reforms, especially the President's Economic Reform Program, remains extremely slow at the mid-level bureaucracy.<sup>1</sup>

**The chronically low rate of enactment of reforms that have been approved by the government is the result of the way that the public administration system operates in Ukraine.** There already is an economic reform program in place and it is economically sound. But it is being carried out by an unreformed bureaucracy that lacks the capacity to actively generate fresh ideas, to transform policy decisions into administrative procedures, to keep voters informed of its efforts, or even to encourage outside experts to offer their propositions during the drafting of reforms. The implementation of reforms faces a number of obstacles, including:

- Widespread misunderstanding of reforms. There is no publicly expressed basis for the public to actually understand what has to be changed, how exactly it will be changed, and what the consequences are of not making those changes.
- Little public support for reforms. Because interested parties are not consulted with, no support or trust is generated with regard to those reforms.

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<sup>1</sup> During the January 16, 2013 meeting of the Economic Reforms Committee President Yanukovich severely criticized the unusually low progress with economic reforms so far: only 25-30% of the measures planned have been implemented as scheduled. [http://www.ukrinform.ua/ukr/news/yanukovich\\_zvinuvachue\\_organu\\_vikonavchoii\\_vladi\\_v\\_sabotagi\\_1787400](http://www.ukrinform.ua/ukr/news/yanukovich_zvinuvachue_organu_vikonavchoii_vladi_v_sabotagi_1787400)

- A bureaucracy that stonewalls reforms. There is no link between policy decisions and the administrative procedures in place for them to be carried out.
- No transparent image about which government agencies are responsible for reforms and how they are supposed to carry them out.

In our opinion, the quality and speed of economic reforms could be improved if the government moves from the old-style centralized command approach to a more democratic approach to reforms in the process of planning and carrying them out. Effective democratic methods of instituting reform must include a number of key components:

- The analysis of policy issues and the drafting up of public documents. These clearly state the purpose of each reform, initiative or regulatory act; provide arguments in support of the reforms, along with information about current legislation and the reasons why it needs to be changed; and state specifically whom the reform will affect, who will win, and who will lose.
- The engagement of interested parties and public consultations. This means identifying and analyzing the positions of all sides interested in a given issue or affected by it, and engaging them in order to build public support for state policy. All interested groups should have an opportunity to express their opinions in a structured manner regarding a given policy, followed by analysis and reflecting the positions in developing the policy document.
- A legislative and institutional audit and the formation of an organizational chart of executors. Identifying and planning specific legislative and institutional changes is necessary for the implementation of a new policy to be effective.
- Evaluation, monitoring and oversight of the implementation of reforms.
- Training and capacity-building at government agencies in how to design and implement reforms.

**This paper looks at the absence of meaningful public consultations or engagement of interested parties as components of an effective approach to reforms.** It analyzes current practice in consulting with interested parties in the work of Ukraine's government agencies and

the extent to which European procedures have actually been institutionalized.

**In the absence of a workable, effective mechanism for consulting with the public and interest groups during the policy-making process, both those in power and those who elected them suffer.** This problem has a negative impact on the capacity of the government to engage in a public dialog regarding reforms, to engage all interested parties in identifying the needed policies, to establish their positions, to mobilize the support of those who favor reform and to neutralize its opponents. The problem also has a negative impact on the capacity of social groups to constructively defend their interests and have influence on the policy-making process. When there is political competition and voters have varying viewpoints on state policy, it is impossible to undertake reforms without broad-based public support. And garnering that support is impossible, in turn, if ordinary citizens are not engaged in a dialog during the development of reform plans and are not given any opportunities to express their positions, viewpoints and opinions on issues that affect their interests.

**This brief was prepared for the purpose of providing a complete and persuasive set of arguments to support the recommendations provided as to how to set up an effective mechanism for public consultations between government agencies and ordinary citizens and interest groups in the policy-making process.**

# Problem analysis

## Problem symptoms and assessment

**The main symptom of the problem is the recent rise in large-scale demonstrations and protests by specific social groups against the government for ignoring their interests in the course of implementing economic reforms:**

- 2010 Tax Protest. When the Verkhovna Rada passed the Tax Code and cut back on the eligibility for the simplified tax system, all hell broke loose. As a result of mass protest, the Tax Code was partly amended and some of the protestors' demands met.
- 2011 Afghan veterans and Chernobyl clean-up personnel rally. When the Cabinet of Ministers talked about introducing a "more flexible" system of benefits for these two groups, protests began across the country. As a result, the introduction of the new mechanism was postponed indefinitely.

The nervousness of the country's top leadership reflects the seriousness of the situation it faces. Even Presidential Decree №212 dated March 24, 2012 noted the obvious problems with instituting democratic standards and procedures for engaging voters in the policy-making process. It mentioned, among others:

- "A continuing tendency towards opacity, lack of openness and overly bureaucratized activity among central executive bodies and local government bodies alike, rather than establishing a proper dialog with the people."
- "The mechanisms for the participation of voters in the forming and implementation of state policy are not being put in place as they should be."

- “Positive examples of establishing effective cooperation among central executive bodies (CEBs), local governments, and civil society organizations (CSOs) are few and far between rather than system-wide practice.

## Comparison to European practice

**On a practical level, the differences between public consultations in Ukraine and public consultations according to European standards lie in the approach to preparing documents for the consultations, the phasing of the process, the identification of participants, and the analysis and application of propositions received.**

### *Principles and standards of consultations*

The European Union has developed official principles and standards for consultations with stakeholders and interested parties, which are enshrined in a White Paper on European governance<sup>2</sup> and a Memorandum from the European Commission regarding the basic principles and minimal standards for consultations.<sup>3</sup> Consultations with interested parties are an integral component of contemporary European societies and a necessary condition for democratic governance.

Ukraine already has a regulatory base for holding consultations with interested parties based on European standards, but the requirements and procedures for doing so are either paid lip service and no more—or are completely ignored.

### *Document quality*

According to European standards, no consultations can start without a document that clearly and understandably describes:

- what exactly is the purpose of the reform proposed by the initiative or piece of legislation;
- what is the justification for the reform, information about the structure of existing legislation, and the reasons why it might need to be changed;

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<sup>2</sup> White Paper on “European governing behavior,” the European Commission, Brussels, COM (2001) p. 428.

<sup>3</sup> “Strengthening the culture of consultation and dialog: General principles and minimal standards for consultations held by the European Commission with interested parties,” European Commission Memorandum, Brussels, COM (2002) p. 704.

- who might be affected by this reform;
- who is being consulted;
- what issues are being raised and what is the deadline for responding.

In Ukraine, such documents either do not really meet the requirements of a document suitable for consultations, such as they lack a clear list of interest groups, who stands to win or lose, or an impact analysis—or they are simply not prepared at all.

### *Phased consultations*

The European approach involves holding consultations at a stage when it is still possible to affect the resulting policy. A Green Paper is presented for open discussion, along with draft concepts, strategies, analytical rationales, and other documents that are in progress. At this stage, interest groups can have input into the formulation of the main goals, approaches and performance indicators of the particular state policy.

In Ukraine, most often what participants are presented for discussion are the draft policies themselves.

### *Identifying participants*

Based on European standards, the focus of consultations is target groups. The government agency holding the consultations identifies all possible target groups prior to actually running them, actively distributes the documents under consideration to them, asks them questions, and collects their comments and propositions. For example, the target groups for consultations that concerned revising the VAT rate were identified as: transnational companies, major corporations, SMEs, national associations, all-European associations, non-government organizations (NGOs), tax specialists, ordinary individuals, academics, and so on.<sup>4</sup>

The general public is aware of which specific parties are involved in the consultations and what positions they are defending.

In Ukraine, such consultations are mostly held with an unidentified "public."

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<sup>4</sup> Consultations on the revision of existing legislation on reduced VAT reduced rates. [http://ec.europa.eu/taxation\\_customs/common/consultations/tax/2012\\_vat\\_rates\\_en.htm](http://ec.europa.eu/taxation_customs/common/consultations/tax/2012_vat_rates_en.htm)

## *Analyzing and making use of propositions*

The European approach is to describe and analyze the results of the consultations.

An analysis of the consultation results is published, along with information about who participated and what their positions were. The concluding remarks from various target groups are also analyzed and presented with explanations of what propositions were used, which ones were rejected and why, and what decisions were made as a result of the consultations. The results of the consultations are the basis for clarifying and reworking the original document that was presented for public debate.

In Ukraine, typically, a set of propositions is collected, but it is impossible to analyze it according to target group. Propositions are often rejected without sufficient explanation.

## **Problem statement**

**Ukraine has a major problem in that there is complete incompatibility between the current democratic system, with its perfectly legitimate variety of interests and political competition, and policy-making mechanisms inherited from a totalitarian system.** The government machine we have inherited in Ukraine was designed to carry out the policies of a single ruling group. It does not allow for functions such as developing and implementing policy based on the competition of different interest groups. For the Government, the lack of such mechanisms complicates the process of making policies that will have a major impact on society and the effectiveness of which requires support from that same society. This kind of support for Government decisions is necessary because the disagreement of key interest groups can make it impossible to carry a policy out. By interest groups or interested parties is meant people whose financial or social status could change because of the adoption of a particular policy by the Government.

Consultations with interest groups are an instrument that can improve the policy-making process for a Government, increase its capacity to develop and implement policy that enjoys public support, and speed up the pace at which reforms are carried out. By consultation is meant the process through which a Govern-

ment gets comments and propositions from interested parties prior to the adoption of a particular policy.<sup>5</sup>

**In Ukraine, politicians see the consultation process as mere window-dressing.** There is no understanding that taking into account the positions of their citizens during the policy development process is important not only in terms of upholding democratic procedures and the constitutional rights of their citizens, but a critically important means for them to actually survive by maintaining the support of their electorate.

**The problem is that government agencies adopt socially important policies without the necessary consultations with all interest groups.** In practice, there is no meaningful, workable or effective mechanism for the Government to consult with voters and interest groups during the policy-making process. Interest groups are not identified, nobody asks them any questions, and nobody analyzes their positions.

**In the context of trying to carry out reforms, this problem can no longer be set aside.** It is becoming impossible to succeed without ensuring a feedback loop with voters. And this is done through public consultations with representatives of all groups whose interests are affected by the particular reforms. When all interested parties are consulted with, voters feel that they have been heard. The reforms announced in the President's Reform Program and the Association Agreement with the European Union currently have little support and no mechanism for establishing it, putting at risk their implementation because of resistance on the part of Ukrainian society.

## Reasons underlying the problem

**There are four main reasons why interested parties are not involved and public consultations are not meaningful:**

- a low level of institutional capacity among those trying to organize public consultations;
- government officials who ignore the many procedural requirements regarding how consultations should be organized;
- lack of reliable means of controlling the quality of consultations;
- legislation that fails to properly regulate the binding nature of consultations.

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<sup>5</sup> "Improving consultations with interested parties in the day-to-day practice of the Government of Ukraine," V. Naniwska, N. Hnydiuk and A. Bega, Kyiv, 2004.

## *Little institutional capacity among government agencies*

**The level of institutional capacity among central and local government agencies is too low to allow them to work properly with interest groups.** The subunits of central executive bodies (CEBs) that are responsible for working with the public do not have the necessary skills to engage interest groups or run consultations. For instance, they lack the practical knowledge to prepare documents on which consultations will be based, to identify all interest groups, to study and systematize their positions, to analyze and rework their propositions, or to prepare a report on the way the consultations went. Official documents from government agencies often fail to simply, clearly and fully explain the essence of proposed initiatives. There are no handbooks, templates or instructions about how the requirements of regulatory acts regarding public consultations should be applied in practice. Moreover, there are no opportunities for profile government departments and departments involved in community relations among CEBs to receive training or undertake professional development.

Because of staff limitations, such subunits are expected to undertake functions that they simply cannot carry out effectively. Firstly, not all county state administrations even have units responsible for community relations and where such units exist, all the functions are supposed to be handled by one or two employees because of staff limitations.

Not enough budget is allocated to pay for events involving public consultations with civil society.<sup>6</sup>

## *Lack of respect for requirements and poor executive discipline*

**Surveys of participants from public consultations show that in many cases, consultations between government agencies and interest groups pay mere lip service to the concept, while in some cases, no consultations are held at all.<sup>7</sup>**

Central and local executive bodies (CEB/LEB) do not uphold the requirements of the Cabinet Regulation approved by Cabinet Resolution №950 dated July 18, 2007, regarding the holding of public consultations and the Procedure for holding public consultations on

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<sup>6</sup> Improving consultations with the public: Propositions from the community and the government, final analytical report, Committee of Voters of Ukraine, 2012.

<sup>7</sup> Ibid.

issues related to the formulation and implementation of state policy, approved by Cabinet Resolution №996 dated November 3, 2010.

For the most part, politicians merely imitate the engagement of voters in the policy-making and implementation process: drafts of legislative or regulatory acts are posted on the individual CEB's official website. Beyond that, consultations as such are not carried out in the manner and procedure established by the Government, making it impossible for voters to be heard and influence policy.

A look at the practice of holding public consultations among LEBs and CEBs shows that most of them do not uphold democratic standards in the process of involving voters in a number of areas:<sup>8,9</sup>

- maintaining timeframes for publishing information related to the holding of public consultations with interest groups;
- providing participants in the consultations the necessary information about the goals, arguments and evaluations of the impact of the reform or initiative;
- identifying a complete list of target groups whose interests will be affected by the adoption of the policy, in order to involve them in the consultations;
- studying the various positions of interest groups;
- holding public hearings or consultations in the format designated by the Procedure;
- preparing and publishing a report on the results of the public hearing of a draft piece of legislation that contains argumentation for the final choice of policy and the reasons for rejecting certain comments and propositions.

**The fact that government agencies merely go through the motions of holding public consultations raises distrust among interest groups and discourages them from participating in such consultations.** In violating the requirements of the Procedure for holding and publishing the minutes of public events and reports on the consultation process could negatively affect the desire of participants in the consultations: if representatives of various interest groups do not know which of the propositions they submitted were actually accepted and which ones were not, and what the reasons were for their observations and

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<sup>8</sup> Ibid.

<sup>9</sup> Report of National Institute of Strategic Studies "On the progress of civil society in Ukraine," V.O. Kulyk, V.M. Yablonskiy, M.M. Rozumnyy et al., Kyiv, 2012, pp 24, 25, 34.

recommendations to be rejected, they are unlikely to want to participate in future consultations.<sup>10</sup>

### *The lack of reliable state oversight mechanisms*

**As a component of administrating the process of public consultations intended to ensure that conditions and procedures are followed, state oversight is not reaching its objectives.** Although those units responsible for internal oversight of the executive branch are carrying out their designated functions, officials who are actually responsible for bringing perpetrators to justice, that is applying fines and penalties for violations, tend to apply the law as they see fit: when they feel like it, they charge the guilty; when they don't, they don't. In short, the enforcement of legislation depends only on their will or willingness. The misconduct of such officials is not controlled by anyone in the government, leaving them unpunished. The result is that laws are not upheld.

Most civil servants are motivated to meet the deadlines for issuing documents—not to ensure their quality or to fulfill all the conditions for preparing policy documents. The executive branch of government has a strict system for compliance with deadlines, but there is virtually no oversight over whether the requirements to hold public consultations are met. Too often, legislation fails to establish culpability or penalties for such evident forms of violations as not following a procedure or meeting requirements regarding the urgency and quality of consultations with interested parties. In Ukrainian lawmaking tradition, there are general provisions for liability under which those officials who are guilty of not carrying out a particular law are simply “guilty under law.”

No legislation actually legally fixes the powers of CEBs to hold consultations. The Law of Ukraine “On central executive bodies” and other Standard Provisions governing ministries and central executive bodies affirmed by Presidential Decree №1199 dated December 24, 2010, make no mention of the functions of these bodies in engaging interested parties and organizing the process of public consultations regarding the formulation and implementation of state policy. Similarly, such functions are missing in the provisions governing sub-units or departments of these bodies and from official job descriptions. Thus, there is not even a formal basis for holding official responsible for not carrying out procedures or meeting requirements for the need and quality of the consultations carried out.

<sup>10</sup> Improving consultations with the public, Committee of Voters of Ukraine.

## *Incomplete regulation*

**Central executive bodies often make decisions regarding the need to hold public consultations at their own discretion because the Procedure for holding consultations with the public on issues related to the formulation and implementation of state policy inadequately regulates the range of issues for which such consultations with interested parties are mandatory.**<sup>11</sup> According to this Procedure, public consultations in the form of public debates are mandatory in four cases:

- draft normative and legislative acts that have major social ramifications and affect the Constitutional rights, freedoms, interests and duties of individual citizens, as well as acts intended to provide privileges or to establish restrictions on commercial entities and civil society institutions, and the exercise of powers of local governments or the relevant councils that have been so delegated by executive bodies;
- draft regulatory acts;
- draft state and regional economic, social and cultural development programs and decisions regarding the progress of their execution;
- annual expenditure reports by the primary managers of budget funds.

The formulation "major social ramifications" is overly vague and allows various interpretations by those officials who make the policies about submitting draft legislation to consultations.

**There is no systemic approach to the process of involving interested parties in the policy-making process and the public consultation process.** Provisions in individual legislation only partly and often differently regulate the institution of public consultations. Individual laws contain requirements regarding the holding of consultations that require following certain procedures, such as when adopting environmental policy and policies affecting urban development and commercial activities. Provisions in a slew of other legislation only provide a general requirement to engage the public in the policy-making process or to publish draft regulatory and legislative acts.

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<sup>11</sup> Cabinet of Ministers Resolution №996 dated November 3, 2010, "On ensuring the participation of the public in the formulation and implementation of state policy," Official Bulletin of Ukraine, №84, 2010, Section 36, p. 2945.

The legal requirement to hold public consultations is binding only with regard to policies that are adopted by central executive bodies. However, similar mechanisms do not apply to initiatives involving other kinds of legislative activity. As to involving interested parties in the preparation of bills that are drafted by National Deputies as legislative initiatives, the Law of Ukraine “On the Regulations of the Verkhovna Rada of Ukraine” contains no provisions at all that might make the holding of public consultations mandatory. Looking at all the legislation that regulates the work of the Verkhovna Rada, it appears that there is no requirement to reflect the results of any consultations with interested parties when preparing an explanatory brief to a bill or the conditions under which it was reviewed.<sup>12</sup> Nor is it mandatory to hold public consultations when drafting Presidential decrees or other legal documents. Not only does Presidential Decree №970 dated November 15, 2006, make it optional to use them, but the decision to do so or not is the exclusive prerogative of the President.

## Whom does this problem affect—and how

**This problem affects those in power, society as a whole, and specific groups within that society.** When government agencies make policies without the involvement of interested parties, they lose the opportunity to carry on a public dialog about reforms, to involve all interested parties in determining which policy decisions are most needed, to determine what their positions are, to mobilize supporters of the reform, and to neutralize its opponents.

**The problem also increases the level of dissatisfaction in among voters and is likely to radicalize those who dissent.** It deprives social groups of the opportunity to constructively defend their interests and influence the policy-making process. In an environment with political competition and alternative views of state policy in the society, reforms become impossible without broad voter support. But gaining support becomes impossible if ordinary voters cannot have their say on issues that touch on their interests.

**Those who stand to gain when the government makes policy decisions without public participation include:**

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<sup>12</sup> Public Participation in the Lawmaking Process: Problems and ways to increase effectiveness, Legal Initiatives Lab, 2009. <http://parlament.org.ua/upload/docs/Participation.pdf>

- individual private businesses whose interests are being taken care of by key policies that are adopted without broad voter input;
- individual bureaucrats, who are keen to see decisions made swiftly and have no desire to consult with a broad circle of interested parties in order to economize on time .

**Possible consequences if this problem remains unresolved include:**

- Poor quality policy by those in government.
- Policies that only reflect the interests of a narrow circle.
- Poor institution and enforcement of policies at the mid-level government bureaucracy.
- Voter resistance to reforms, little confidence in the government's actions, and loss of reputation for individual politicians.
- Dissatisfaction among voters leading to growing radicalism among those who dissent.

## Prior efforts

**In recent years, any number of attempts have been made to increase the engagement of interested parties in the state policy making and implementing process. Moreover, European practice was taken as the basic standard.**

Consulting regularly with the public on vital issues facing their society and state at the legislative level has actually been set down as one of the foundations of domestic policy.<sup>13</sup> Moreover, Ukraine has ratified a number of international conventions guaranteeing its citizens the right to participate in the decision-making of their government.<sup>14</sup>

A series of regulatory acts was also adopted that outlined the legal mechanisms for CEBs and LEBs to consult with the public. The basic act that regulates the mechanism for CEBs to hold such public consultations with interested parties is the Procedure for holding consultations with the public on formulating and implementing state policy, approved by Cabinet Resolution №996 dated November 3, 2010. The adoption of this Procedure resolved a number of problems that had plagued this sphere by:

- establishing a procedure for CEBs and LEBs to hold consultations;
- listing the set of issues that required consultations to be held;
- identifying who precisely was to be engaged in such consultations;
- providing a mechanism for summarizing the comments and propositions and reporting on the consultations.

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<sup>13</sup> Law of Ukraine №2411-VI dated July 1, 2010, "On the foundations of internal and external policy."

<sup>14</sup> Law of Ukraine №832-XIV dated July 6, 1999, "On the ratification of the Convention on access to information, the participation of voters in the policy-making process and access to justice on environmental matters" and the Decree of the Presidium of the Verkhovna Rada of the Ukrainian SSR №2148-VIII dated October 19, 1973, "On ratifying the International Convention on Civil and Political Rights."

In practice, CEBs and LEBs have indeed begun posting drafts of legislative and regulatory acts on their official websites.

The agencies and departments or sub-units that are responsible for organizing these consultations with the public have also been designated. In accordance with the Regulation of the Cabinet of Ministers of Ukraine, this responsibility has been delegated to CEBs, the Council of Ministers of the Autonomous Republic of Crimea, the oblast state administrations and the municipal state administrations of Kyiv and Sevastopol. Within these organizations, the sub-units that handle this function are the same ones that are responsible either for drafting regulatory and legislative documents or for maintaining public and community relations. The Information and Public Communications Department of the Secretariat of the Cabinet of Ministers of Ukraine analyzes and publishes information about consultations with the public held by central executive bodies on a quarterly basis.<sup>15</sup>

In addition, consultative community councils have been formed and attached to ministries, other CEBs, the Crimean Council of Ministers, and state administrations at the oblast level and in Kyiv and Sevastopol, including the state administrations in their districts. Their purpose is to establish effective interaction between CEBs and LEBs and the public by taking public opinion into account when formulating and implementing state policy.

In early 1990s, Ukraine instituted the practice of social partnership among the Government, employers and unions. Employer associations and trade unions were given the right to participate in process of making of policy at the level of CEBs where such policies affected social and labor relations.

In the table (see Annex) a full list is provided of regulatory and legislative acts that, in one way or another, regulate the issue of engaging interested parties in formulating and implementing state policy.

**These efforts at resolving the problem have been supported by civil society organizations (CSOs) and international donor organizations.**

In recent years, considerable efforts have been made by CSOs and the international community to improve the quality of interactions between those in power and those who elected them during the policy-making process and to institute a culture of public consultations in Ukraine through technical assistance, training and exchanges.

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<sup>15</sup> See Government of Ukraine site, "Civil Society and the government" at <http://civic.kmu.gov.ua>.

The issue of establishing a mechanism for public consultations has long been a subject of study by ICPS. Back in 2004, ICPS proposed improving the existing process by developing clear and understandable standards based on international best practice and European principles and standards. Our analysts then drafted a document that analyzed international and domestic practice of consultations with interested parties and provided recommendations for how to improve the process in Ukraine. ICPS also prepared a guidebook that was meant to assist civil servants in organizing an effective consultation process and thus improve the quality of Government policy.<sup>16</sup>

In 2009, the Legal Initiatives Laboratory also prepared recommendations for ways to improve the effectiveness of public participation in the policy-making process.<sup>17</sup> The Independent Ukrainian Center for Policy Studies prepared a White Paper in 2011 on reforming the legislative environment for the development of civil society.<sup>18</sup> In 2012, the Committee of Voters of Ukraine (CVU) assessed the way that government agencies used and followed the procedure for holding public consultations and prepared additional proposals for changing existing legislation.<sup>19</sup>

**So far, efforts have only partly resolved the problem of government agencies making policy without the participation of interested parties.** The necessary procedures were set up but in practice, they are not being properly followed. The potential of the instrument of consultation is not being used fully. In our opinion, the main reason for this is the fact that progressive legislative initiatives generally have not provided for suitable measures to ensure their implementation, including measures to build institutional capacity, monitor progress and oversee the process.

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<sup>16</sup> Op. cit, Nanivska, Hnydiuk and Bega 2004; Guidebook to Public Consultations by N. Hnydiuk, V. Horoshkova, N. Dniprenko et al., Kyivska Typografia, Kyiv, 2004, 67 pp; and ICPS Project "Voter opinion of Government priorities and the institutionalization of Government consultations with the public in the process of formulating state policy in Ukraine," with funding from the Canadian International Development Agency (CIDA).

<sup>17</sup> Public participation in the law-making process: Problems and ways to improve effectiveness, Laboratory of Legal Initiatives, 2009. <http://parlament.org.ua/upload/docs/Participation.pdf>

<sup>18</sup> Reforming the legislative environment for civil society to develop in Ukraine, a White Paper, M. Latsyba, A. Krasnopilska, O. Vinnykov, T. Yatskiv, under the UNDP project "Developing Civil Society," Kyiv, UNDP, 2011, 28 pp.

<sup>19</sup> Improving consultations with the public: Propositions from the public and the government, final report, Committee of Voters of Ukraine, 2012, under the UNDP Project "Developing Civil Society," with funding from the Ministry of Foreign Affairs of Denmark.

**The problem remains unresolved despite general consensus that the public must be included in the policy-making process.** No open opponents to the idea of public participation in the policy-making process can be found at any levels in the executive branch, in business, in civil society, among political parties, in the academic or expert communities, among both Ukrainian and foreign donor foundations or development organizations. Yet, even the progress that has been made in improving legislation in this regard and the critical self-assessment that the government has made regarding the state of affairs, and its awareness of the importance of having a dialog with the public, engaging civil society and interested parties to the policy-making process still hasn't become the norm in public life, remaining instead largely a formality. Unfortunately, old ways dominate over new views.

# Alternative responses

**There are two possible responses to this situation:**

- a) Maintain status-quo (do nothing).
- b) Make European standards of public consultations a part of real practice and engage all stakeholders and interest groups in the policy-making process.

Maintaining the current state of affairs will not require any effort or resources to bring about, but it will not affect the problematic situation at all.

Most stakeholders no longer have any doubts about the need to move ahead into putting public consultations of a European standard in to practice. It is our opinion that to bring Ukrainian practice in public consultations and engaging the public in the formulation and implementation of state policy in line with European standards will require both the government and civil society to take certain steps.

The government needs to take a set of measures directed at:

- increasing institutional capacity among those who have to organize public consultations;
- having government agencies follow procedural requirements regarding public consultations in a meaningful and quality manner;
- setting up reliable means of controlling the quality of consultations and the way that interested parties are involved;
- systematically regulating the obligatory nature and quality of all consultations.

**The government could take several key steps to reach these objectives:**

**1. Strengthen institutional capacity among government agencies to organize and hold public consultations by:**

- providing methodological support in preparing documents intended for consultations, establish who all the interested parties are, analyze and rework their propositions, and prepare a report for the actual consultation;
- strengthening the sub-units that are responsible for interacting with the public;
- ensuring that their work duties and the duties of specialized sub-units include organizing consultations with the public;
- introducing ongoing professional development for civil servants in the area of community relations.

**2. Develop reliable mechanisms of state monitoring and control over the quality of consultations, mechanisms that do not depend on the whims of individual officials of any level.** Legal consequences need to be attached to such oversight mechanisms in the case where government agencies do not follow the proper procedure in public consultations. These should be serious disciplinary and administrative sanctions as well as automatic liability for violating the law on public consultations.

**3. Establish, in legislation, the proper basis for engaging interested parties, holding public consultations and debates, for all levels of government and in the relevant area of regulatory and legislative acts. For instance, a single basic law is needed that would:**

- based on the existing Procedure for holding consultations with the public on matters related to the formulation and implementation of state policy, set forth in law the minimal standards, mechanisms and procedures for the public to participate in the policy-making and implementation processes;
- be binding on all sponsors of policies and decisions with major social ramifications, without exception, including the President of Ukraine and National Deputies;
- increase executive discipline among government agencies in the sphere of public consultations with interested parties;
- clearly delineate violations for which officials will be held liable.

**4. Amend existing legislation, prior to adopting the basic law, including:**

- the Law of Ukraine "On the Regulations of the Verkhovna Rada of Ukraine," clarifying that the public must be allowed to par-

ticipate in the process of drafting bills sponsored by National Deputies;

- the Law of Ukraine "On central executive bodies," the Standard Provision on Ministries and the Standard Provision on Central Executive Bodies, whose activity is directed and coordinated by the Cabinet of Ministers of Ukraine through the relevant Minister, which were approved by Presidential Decree №1199 dated December 24, 2010, obligating these bodies to engage interested parties and hold public consultations in the process of formulating and implementing state policy. This will then become the basis for establishing this standard in the provisions for sub-units and job descriptions.
- the Law of Ukraine "On local state administrations," providing for norms that obligate local executive bodies (LEBs) to engage interested parties and hold public consultations when drafting policy on issues within their competence.
- the Provision on the procedure for drafting and submitting draft Presidential acts, approved by Presidential Decree №970 dated November 15, 2006, ensuring that the authors are obligated to engage interested parties in the drawing up of reform strategies and concepts, other draft bills of the President of Ukraine, and other draft acts of the President of Ukraine that aim to resolve critical issues of broad general significance and affect the enjoyment of citizen and human rights and freedoms.
- the Procedure for holding consultations with the public on issues related to the formulation and implementation of state policy, approved by Cabinet Resolution №996 dated November 3, 2010, by adding a list of specific issues regarding which public consultations must be carried out.

**Civil society in Ukraine needs to actively bring this problem to the attention of the main stakeholders and promote the application of European standards of public consultations.**

For this purpose, it is necessary to consolidate efforts among activists and community organizations and to apply such mechanisms of promotion influence as:

- Make sure that the "Procedure for holding consultations with the public regarding the formulation and implementation of state policy"<sup>20</sup> is widely disseminated among Ukrainians to

<sup>20</sup> Cabinet of Ministers Resolution №996 dated November 3, 2010, "On ensuring the participation of the public in the formulation and implementation of state policy," Official Bulletin of Ukraine, №84, 2010, Section 36, p. 2945.

inform them about the available mechanisms for influencing the government during the policy-making process; undertake training for representatives of interest groups regarding the basic stages of the consultation process, where and how to find information, to whom to turn, and how to prepare and submit propositions to government agencies.

- Launch a campaign to get the Cabinet of Ministers, CEBs and LEBs, and their various officials to uphold their own decisions, such as the Regulation of the Cabinet of Ministers, which was approved by Cabinet Resolution №950 dated July 18, 2007, regarding the holding of public consultations, and the Procedure for holding public consultations that was approved by Cabinet Resolution №996 dated November 3, 2010.
- Demand that the Government provide a clear picture of executors and another of state oversight over the holding of consultations with interested parties, and to hold accountable the guilty officials in every case where such consultations were treated as window dressing or avoided altogether.
- Pressure the Verkhovna Rada to amend legislation to make it mandatory for all government agencies, including the President of Ukraine and National Deputies, to ensure that interested parties participate in the formulation and implementation of state policy.
- Pressure the President and Government to amend the provisions on ministries and other CEBs and job descriptions to add the functional requirement that these bodies and their officials must hold consultations with the public.
- Begin to develop an understanding among government agencies of the need to put into practice European standards of public consultations, through dialog, consultation, informational and educational support to reduce resistance to change.

## About the authors



**Vira Nanivska** – concept, advisor to the ICPS Supervisory Board, renowned expert on public administration and the reformation of political institution, proponent of desovietization. Ms. Nanivska was the director of ICPS over 1997 – 2006 and 2010 – 2012, president of the National Academy of Public Administration under the Office of the President (NAPA), and Chair of the Board of the Lviv City Institute over 2009-2010. During the course of many years, Ms. Nanivska has actively worked on issues related to the democratization of public institutions, the modernization of Ukraine's economy, and decentralization.



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# About ICPS

Established in 1994, the **International Center for Policy Studies (ICPS)** is a top independent think-tank in Ukraine. For nearly two decades, ICPS has been actively involved in implementing democratic principles of governance in Ukraine.

ICPS has evolved from studying the approaches and methods of leading think-tanks and governments in the West to applying the principles and tools of public policy in Ukraine, before then going on to train others. Constantly importing the key elements that make successful reforms, ICPS ultimately helped change the understanding of why reforms fail and how to make them work in Ukraine.

We are now at the point where we are consolidating our knowledge and skills in each component of policy-making and implementation into an effective reform cycle. While confined by the scope and time-frames of individual projects, we were unable to implement the entire cycle of a particular reform to demonstrate its advantages over the outdated approach still widespread in Ukraine. The prospect of renewed financial support will enable us to carry this important work out, to make a significant contribution to overcoming Ukraine's long-standing problems, to successfully move the country towards integration with the European Union, and to improve transformation processes in the entire region.

**The ICPS mission** is to promote reform and social change in Ukraine and advocate for European principles of governance through high-quality analytical products. ICPS aims to make a sustainable impact by building effective partnerships, applying international best practice, and providing innovative solutions.

## Services available from ICPS

Thanks to its extensive experience in economic and other spheres, ICPS is able to assist its clients, be they private business, government agencies or international organizations, to make better strategic decisions based on certain key principles: having all stakeholders and interest groups involved in the process; presenting and analyzing all opinions and positions; and providing independent conclusions and recommendations. We emphasize the continuing expansion of our

knowledge base and capacities and offer consultative support for the reform process.

## Our partners and clients

We see our partners and clients as organizations and individuals whose interest in reforms ranges from understanding and conceptualization to implementation and monitoring. ICPS is accountable to them for the quality of our products. These organizations represent all sectors, including:

- Government at all levels;
- Business and civil society;
- Political parties, academia and the expert community;
- National and international donors and development partners.

We maintain our already extensive base of partners and clients and attract new ones through high quality products that serve their needs, while also constantly improving our communication and forms of cooperation.

As of March 2013, Volodymyr Panchenko is the director of ICPS.

For more information about ICPS, visit our site at: [www.icps.com.ua/eng](http://www.icps.com.ua/eng)

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# ICPS Publications

Since 1997, the International Centre for Policy Studies has published a number of periodicals:

- *Quarterly Predictions*, a quarterly review of Ukraine's economy with three-year rolling forecasts;
- *Business Review*, a quarterly study of business activity;
- *Transformation*, an economic bulletin about countries with transitional economies;
- *Regional Trends*, an analysis of the economies of Ukraine's oblasts and their prospects;
- *Consumer Confidence*, a monthly analysis of the consumer mood in Ukraine, jointly with GfK Ukraine;
- *Inside Ukraine*, a monthly review of current political events in Ukraine providing a deeper analysis of key trends in domestic and foreign policy in Ukraine
- *Policy Studies*, an irregular series of studies of key issues in state policy, around 10 issues a year
- *European Focus*, a publication that shapes discourse on key issues in Ukraine's policies regarding European integration and EU policy towards Ukraine
- *Economic Insights*, an analysis of economic trends intended to help with strategic decision-making
- *ICPS Newsletter*, a biweekly bulletin of information on current research and projects and other news at ICPS

## *Project documents*

As part of projects carried out over 2010-2011, ICPS published a number of papers:

- Ukraine's Foreign Policy as seen by analysts (2010)
- Economic Reforms in Moldova: Avoiding the Ukrainian trap (2010)
- Assessing the capacity of the Government of Ukraine to organize Association Agreement implementation (2010)

- Green and White Papers: Market Surveillance in Ukraine: Reforms on the way to a European market (2011)
- Community Based Development: Conditions and obstacles (2011)
- Green and White Papers: Reducing Emissions From Thermo-electric Stations (TESs) in Ukraine by Meeting EEC Requirements (2011)
- New Foreign Policy: Ukraine has a plan (2011)
- Norwegian-Ukrainian joint project on municipal development: Networking to increase the effectiveness of public services (2012)
- Setting up a Civic Platform for land reform in Dnipropetrovsk Oblast: Guidebook (2012)
- Land Reform in Dnipropetrovsk Oblast: Public paper (2012)

# Projects

Since 1997, ICPS has completed **257** projects in various areas:

## *Reforms:*

- Transferring Slovak experience with economic reforms (2004-2005)
- Reforming public administration (2006)
- Reforming Ukraine's security sector (2006-2007)
- Public consultations for political reform (2007-2008)
- Economic reforms in Moldova (2010)
- Reform Program for the new President (2009-2010)
- Reforming local administration in Ukraine (2009-2011)
- Analyzing Ukraine's reform priorities (2011)

## *Institution-building:*

- Functional analysis of Ministry of Finance procedures (2003)
- Professional Development for civil servants (2004)
- Public Administration (2004-2005)
- Analysis of the Professional Development system for civil servants (2006)
- The system of training and professional development of civil servants (2006)
- Assessment of the institutional needs of the Lesser Academy for Science of Ukraine (2011)

## *Building capacity to analyze policy:*

- A method for strategic planning for the Economy Ministry (2003)
- Developing analytical capacity in regional centers (2003-2004)
- A method for assessing the regulatory environment (2004-2005)

- Policy Analysis Groups: Fiscal decentralization (2005-2006)
- Analytical capacity among regional NGOs (2006-2007)
- Policy Analysis Group Network (MEGAPOL) (2007)
- Strengthening policy analysis in Kyrgyzstan (2007)
- Regional Development in Ukraine (2009-2010)

### *Economic research:*

- Macroeconomic analysis and forecasts (2003-2011)
- Economic modeling and projection (2003-2004)
- Analyzing the banking sector (2007)
- Macroeconomic forecasting models for the Economy Ministry (2009)
- Economic research on behalf of the Embassy of Japan (2010)
- Open Budget Study 2012 (2011-2012)

### *Foreign policy:*

- The impact of EU expansion on fulfilling the Schengen Treaty (2002)
- The EU's new borders after expansion (2002)
- Security and defense policy (2005-2006)
- Ukraine's new foreign policy (2009-2010)
- Preparing to implement the Association Agreement (2010-2011)