

Analysis of "Citizens in Action" Project of Ukrainian Center of Independent Political Research on¹

Draft Law of Ukraine "On Amendments to the Tax Code of Ukraine on ensuring the openness to the society of information on the financing of the activities of the civil society organizations and the use of international technical assistance " No. 6675

Draft Law of Ukraine "On Amendments to some regulations on ensuring the openness to the society of information on the financing of the activities of the civil society organizations and the use of international technical assistance " No. 6674

Having analyzed Draft Laws 6674 and 6675, the USAID "Citizens in Action" Project team of the Ukrainian Center for Independent Political Research expresses its concerns because the provisions of the Draft Laws violate some principles and norms of international law in the area of freedom of association, the right to protection of personal data and provisions of the national laws. Moreover, the proposed provisions contrary to the purpose of ensuring the openness to the society of information on the financing of the activities of the civil society organizations, in fact, partially overlap those already existing and impose additional burden that does not correlate with the best practices of the democratic states.

When drafting the laws on the reporting of the civil society organizations the **principle of proportionality that is an element of the fundamental principle of a democratic state - the rule of law** - fixed in Art. 8 of the Constitution of Ukraine was not observed. In particular, reporting and its disclosure was introduced only for civil society organizations, while **reporting of other non-profit organizations and state institutions are not envisaged**.

That is, the declared goals and objectives of the Draft Laws, as well as the forecast of social, economic and other consequences mentioned in the explanatory notes to the Draft Laws, including for the purpose of introduction of "transparent reporting", **do not correspond to reality**. The State is the biggest recipient of the international assistance on non-refundable **basis** (in 2016 - 2017 - \$3.1 B or 87% of the total amount of assistance²). Therefore, in order to ensure the principle of proportionality, we consider it appropriate **to introduce similar reporting for charitable organizations and state institutions with regard to the use of international technical assistance and funds from the state and local budgets**.

Aside from this, Draft Laws do not reflect the democratic movement of the state and **are in conflict with international practices**. Thus, the obligation to publish an annual financial statement applies to civil society organizations that received the total annual income of more than 300 minimum subsistence levels for able-bodied persons that is set as of January 1, 2017 (January 1 – UAH 1,600). **That is, for CSOs which total annual income exceeds UAH 480,000 that is insignificant amount, disclosure of the financial reporting is mandatory**. In Ukraine, more than 80% of the

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² Reference to the cited article: <http://www.epravda.com.ua/rus/publications/2017/05/16/624853/>.

civil society organizations³ receive on balance more than UAH40,000 per month and, respectively, all of them will be eligible to additional burden. **If they fail to submit or publish the financial statement**, CSO will be stripped off the non-profit status and will pay 18% of the income tax, fine and penalty in accordance with the rules of the Tax Code of Ukraine. In addition, according to Draft Laws, civil society organizations that do not have the non-profit status and are eligible to taxation to the full extent, shall also submit and publish a detailed financial statement.

This practice does not meet international standards, as **CSOs without the non-profit status** submit regular financial statements.

Moreover, in the explanatory note to the Draft Law 6674, the authors refer to the "Fundamental Principles on the Status of the Civil Society Organizations in Europe" adopted by the Council of Europe in 2002, but at the same time they violate these principles. Article 63 of the Fundamental Principles states that **all reporting and inspection** of the civil society organizations should be subject to the obligation **to respect the statutory secrecy with regard to donors, recipients of assistance and personnel**, as well as the **right to protect legitimate business confidentiality**.

Publication on the web portal of information on the "list of Top-10 employees of the civil society organization in terms of the salary in the reporting year" "expenditures of the civil society organizations made in favor of other individuals (including individual entrepreneurs), as well as data on individual entrepreneurs who received income from donors of international technical assistance, have signs of **violation of international and national legislation on the protection of personal data**.

According to the Law of Ukraine "On Information"⁴, decision of the Constitutional Court of Ukraine, confidential information about an individual, in particular, include the address, the date and place of birth, **information on the property status and other personal data, information about personal property and non-property relations** of the person in question with other persons.

It should be emphasized that **information on employees is a personal data base** in accordance with the clarifications by the Ministry of Justice of Ukraine⁵ dated December 21, 2011.

We note that **the requirement to provide the personal membership of the governing bodies is duplicative**. For the purpose of the state registration of the civil society organization one shall submit information about the governing bodies of the civil society organization stating the name, date of birth of the manager, members of other governing bodies, means of communication and other information published in the Unified State Register of legal entities, individual entrepreneurs and civil society organizations. At the same time, the laws do not oblige civil society organizations

³ According to the state of the State Statistics Service of Ukraine, as of July 1, 2017, 79,456 civil society organizations operate in Ukraine -

http://www.ukrstat.gov.ua/edrpoj/ukr/EDRPU_2017/ks_opfg/ks_opfg_0717.htm

⁴ Law of Ukraine "On information" // Official Journal of the Verkhovna Rada of Ukraine (VVR). – 1992. – No.48. – Art. 650 - <http://zakon3.rada.gov.ua/laws/show/2657-12>

⁵ Clarifications of the Ministry of Justice of Ukraine as of 21.12.2011 "Some issues of practical implementation of the Law of Ukraine "On protection of the personal data"" - <http://zakon2.rada.gov.ua/laws/show/n0076323-11>

to maintain the register of members of the organization, which may make it impossible to report information about the number of members of the civil society organization or result in an accurate data.

We emphasize paragraph 2 of the Final Provisions of the Draft Law No. 6674 that provides for a detailed financial report for civil society organizations that in 2017 received international technical assistance irrespective of the amount of income which fact **contradicts the supplements to Article 23 of the Law of Ukraine "On Civil Society Organizations"** that provides for mandatory detailed reporting for civil society organizations with the total annual income of more than 300 minimum subsistence levels for able-bodied persons.

Such burdensome reporting **does not ensure the transparency of the organization activities, but rather creates artificial barriers for the implementation of community initiatives**, the formation and activities of certain types of associations of the civil society representatives.

In addition, the reporting proposed by Draft Law No. 6675 partially duplicates the reporting that is already submitted to the competent authorities and is provided for in paragraph 133.4.7 of the Tax Code of Ukraine. In particular, the report on the use of income (profit) of a non-profit organization as a part of the annual tax (reporting) period, approved by the Order of the Ministry of Finance of Ukraine dated June 17, 2016 No. 553. The indicated duplication unduly burdens the activities of both civil society organizations and the State Fiscal Service authorities and leads to additional spending of resources.

No.	Contents of the Annual Financial Report according to Draft Law 6675	Provisions that actually regulate the submission of the said information
1.	Information about the amount of contributions in the reporting year and their actual receipt on the accounts of a civil society organization	Stated in line 1.7 of the Report
2.	Information about the total amount of income received by the civil society organization	Stated in line 1.4., 1.5., 1.6. of the Report
3.	Information about the number of employees of the civil society organization working full time and part time, total amount of their labor remuneration	Stated in form 1-DF approved by the Order of the Ministry of Finance of Ukraine of 13.01.2015 No. 4
4.	Information about the total amount of expenses of the civil society organization	Stated in Expenditures (expenses of the non-profit organization (sum of lines 2.1 – 2.6) of the Report

Moreover, the selective imposition of duties on civil society organizations violates the principle of equality of all payers before the law and the prevention of any manifestations of tax discrimination (paragraph 4.1.2 of the Tax Code of Ukraine).

Amendments to chapters 1, 4 and 8 of Section XX of the Tax Code of Ukraine violate the principle of stability, since changes to any elements of the taxes and fees can not be made later than 6 months

before the start of a new budget period in which the new rules and rates will apply. Taxes and fees, their rates, as well as tax breaks can not be changed during the budget year (paragraph 4.1.9 of the Tax Code of Ukraine).

Draft Law No. 6675 does not define the **donor of international technical assistance** which leads to the multiple interpretations of this term and, consequently, to abuse of paragraphs 177.11.2 and 296.7 of the Tax Code of Ukraine.

There is no provision for amendments to Article 21 of the Tax Code of Ukraine that obliges competent authorities to publish information on annual financial statements about their activities. There is no procedures and deadlines for such publication either. At the same time, taxpayers shall be responsible for such non-disclosure and it is precisely to them that sanctions shall apply.

In conclusion, it should also be noted that the Draft Laws **violate** the norms of the paragraph 2.4. of the National Strategy for the Development of the Civil Society in Ukraine for 2016-2020 approved by the Decree of the President of Ukraine as of February 26, 2016, No. 68/2016, according to which the level of harmonization of Ukrainian legislation with the laws of the European Union and taking account of the best international experience in the field of civil society development are insufficient.

In view of the above, UCIPR considers it **unacceptable to include the Draft laws 6674 and 6675 in the current versions into the agenda of the session of the Verkhovna Rada of Ukraine**. We believe it is reasonable to set up the working group to finalize these Draft Laws based on the Coordination Council for the Promotion of Civil Society development under the President of Ukraine and launch an open discussion with the civil society.

**USAID "Citizens in Action" Project
Ukrainian Center of Independent Political Research**

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