

PROGRESS ON THE SDG INDICATOR 16.10.2 IN UKRAINE: WHAT DO THE RESULTS OF INTERNATIONAL ASSESSMENTS SHOW?

REPORT ON MONITORING RESULTS



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Kyiv, 2021

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This report is prepared with support of the UNDP Ukraine project “Human Rights for Ukraine” that is funded by the Danish Ministry of Foreign Affairs.

Opinions, conclusions or recommendations are those of the authors and compilers of this study and do not necessarily reflect the views of the Ministry of Foreign Affairs of Denmark, United Nations Development Programme or other UN agencies.



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INTRODUCTION

For three consecutive cycles Ukraine has been participating in the assessment of progress towards the Sustainable Development Goals based on the SDG indicator 16.10.2 (“number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information”). The SDG indicator 16.10.2, along with other indicators of progress towards the Sustainable Development Goals, was developed and approved by the United Nations Statistical Commission to establish universal evaluation standards at the global and national levels. The focus of this indicator is on the status of adoption and implementation of constitutional, statutory and/or political guarantees for public access to information. The definition of public access to information includes the direct right to receive information, which is broader than the right to seek information that has been included in the right to freedom of expression and the right to association.

This document aims to analyse the key findings of the three assessment cycles of the SDG indicator 16.10.2 in Ukraine and to substantiate the recommendations for improvement. The assessment was conducted in accordance with the methodology developed by the Freedom of Information Advocates Network - an international network that brings together organisations and individual experts in access to information sphere. In general, Ukraine demonstrates a high level of implementation of this indicator, however at the same time, the results of the evaluation clearly outline the key shortcomings of legislation and administrative practice in access to information sphere.

The Freedom of Information Advocates Network has already conducted three rounds of evaluation in 2018¹, 2019² and 2020 in several countries. In 2019 UNESCO, in turn, conducted a survey³ among 43 countries regarding progress on the SDG indicator 16.10.2. This survey involved countries that submitted the Voluntary National Report in 2019, and Ukraine, alas, was not among them. Nevertheless, the results of the evaluation carried out in accordance with the Freedom of Information Advocates Network methodology (further – the Methodology) provide sufficient data for analysis and conclusions on the current situation regarding the observance of the right to information and ways to improve the ensuring of this right.

Same as in other countries that participated in the evaluation, in Ukraine the assessment was carried out in accordance with three sections of the Methodology. It should be noted that unlike the initial assessment of 2018, the second (2019) and third (2020) monitoring cycles were conducted using the revised and improved Methodology.

1 Measuring SDG 16.10.2: A Synthesis Report on the Freedom of Information Advocates Network (FOIANet) Methodology https://www.law-democracy.org/live/wp-content/uploads/2018/11/SDG-Parallel-CS-Report.18.09.20.final_.pdf

2 Road to 2030: Access to Information in the Driver’s Seat <https://gfmd.info/gfmd-content/uploads/2019/07/Road-to-2030-ATI-in-the-Drivers-Seat.pdf>

3 Powering Sustainable Development with Access to Information <https://unesdoc.unesco.org/ark:/48223/pf0000369160>

PROACTIVE DISCLOSURE

Both the original and the revised version of the Methodology consisted of three substantive assessment areas and all of them were applied to assess the SDG indicator 16.10.2 in Ukraine.

The first section of the Methodology aimed to verify how well responsible authorities disclosed information about their activities, or in other words, the level of “proactive disclosure”. The Methodology was designed to be applied in different countries and its authors obviously took into consideration national differences in the legislative regulation of information disclosure. With few exceptions, the disclosure of all categories of information, assessed in accordance with the first section, was envisaged by the current legislation of Ukraine. However, these exceptions point at the provisions of the law that should be improved. Thus, for example, according to the first assessment area of the Methodology (paragraph “Availability of institutional information”), it was required to assess whether public information managers disclose their strategies, plans and policies. Article 15 of the Law of Ukraine “On Access to Public Information” does not mention the obligation to disclose the above documents among the information mandatory for disclosure by all information administrators who are public officers, although such a requirement would definitely contribute to a greater transparency and accountability of state authorities.

Likewise, in accordance with the first section of the Methodology (paragraph “Availability of information about the right to information”), the assessment took into consideration whether responsible authorities publish the annual reports on the status of implementation of the right to information legislation including the number of requests granted, refused and the time taken to respond to requests. Article 15 of the Law of Ukraine “On Access to Public Information” provides for the obligation of information administrators to publish reports, including the number of information requests granted. However, the results of the all-Ukrainian monitoring conducted with the support of UNDP Ukraine in 2020⁴ showed that lack of detailed breakdown of this obligation in the current law has led to varying interpretations by responsible officials. Some state authorities produce reports on the status of implementation of the right to information law monthly, while others do it annually. Only a small number of information administrators account separately for the requests granted and refused, and almost none of information administrators measures whether the requests were processed in time. Thus, the results of the evaluation according to the first part of the Methodology indicate the possibility of improving the current legislation of Ukraine and these amendments were already discussed at the working group aimed at revising the provisions of the Law of Ukraine “On Access to Public Information”.

The evaluation criteria for the first part of the Methodology included, among others, the level of disclosure of detailed information on public procurement, tender results, copies of contracts concluded by the public information administrators and reports on their execution. In general, Ukraine improved its rating from 76.62% to 84.65% in the three-year period based on this part of the Methodology, mainly due to the fact that public information administrators were obliged to disclose proactively the information on public procurement and spending of public funds on the Unified Web-portal on Public Funds Spending in accordance with the Law of Ukraine “On Public Procurement”.

⁴ Report on monitoring the implementation of legislation on access to public information in the regions of Ukraine in 2020 https://www.ua.undp.org/content/ukraine/uk/home/library/democratic_governance/report-on-implementation-of-legislation-on-public-information-ac.html

INSTITUTIONAL MEASURES

The most remarkable and important conclusions were obtained as a result of assessment under the second assessment area of the Methodology, which focuses on the institutional measures aimed at supporting the proper implementation of regulations on the right to information. This part of the Methodology, in turn, assessed two levels of implementation of access to information legislation: measures at the national level and measures taken by individual information administrators. At the national level, the evaluation covered the activity of two institutions: i) a so-called Right to Information Nodal Agency aimed at developing and implementing state policy in access to information sphere, and ii) a Right to Information Oversight Body - an institution authorised to observe and control compliance with the legislation on access to information. This differentiation is new for Ukraine and the idea to develop an RTI Nodal Agency has appeared in Ukraine only in recent years. Typically an RTI Nodal Agency is a central authority inside the government, most often a ministry, capable of developing and implementing strategic plans for the access to information sphere, for example setting requirements for authorities' official websites as well as implementing other systematic and planned activities aimed at preventing violations rather than monitoring compliance with the law. At present, it seems most appropriate to assign the functions of an RTI Nodal Agency in Ukraine to the Ministry of Culture and Information Policy, which is authorized to develop state information policy and take measures to protect the rights of citizens to freely collect, store, use and disseminate information⁵. According to the baseline assessment of 2017, in Ukraine both institutions received rather low scores, which, however, increased over time. This happened primarily due to the fact that the control over the observance of the right of access to information was entrusted to the Ukrainian Parliament Commissioner for Human Rights (the Ombudsperson) and during the three-year period the control over access to information has improved.

A step that can significantly affect the assessment progress of Ukraine according to the second part of the Methodology and on SDG indicator 16.10.2 in general is the long-awaited establishment of an independent and powerful controlling body in access to information sphere. As mentioned above, this function is currently performed by the Ombudsperson. Both Ukrainian and international experts make serious critical comments⁶ on the capacity of the Ukrainian Parliament Commissioner for Human Rights, an authority that is quite limited in its powers and means, to respond effectively to numerous cases of right to information violations in Ukraine. Discussions about the model and election process of such a body have been going on for years, but the realization of it largely depends on the opportune moment within political context.

Although the score for the second part of the Methodology is the lowest in each round of the evaluation compared to other parts, these findings indicate a window of opportunity for substantial improvement (score increased from 50% to 71.42% over the three-year period). Unfortunately, the current legislation of Ukraine does not impose any obligations of planning on the state authorities when it concerns their efforts in the sphere of access to information: neither in terms of compliance with the law, nor in terms of education for responsible officials. This shortcoming also affects another component of the assessment under the second part of the Methodology, which evaluates the measures to implement legislation on access to information at the level of individual information administrators. The criteria of this part of the assessment mainly concerned the activity of so-called "information officers" who are special civil servants in the structure of a state authority dealing with access to information issues. The

⁵ Regulations on the Ministry of Culture and Information Policy <https://zakon.rada.gov.ua/laws/show/885-2019-%D0%BF#-Text>

⁶ Report of DGI (2016) SASG/2016/07 (Directorate of Information Society and Action Against Crime, Information Society Department, Media and Internet Division), Institutional Mapping Analysis In Sphere of Information Policy and Media In Ukraine, prepared on the basis of the expert opinion by Eve Solomon, Tanja Kerševan Smokvina and Nataša Pirc Musar, 26 September 2016

Ukrainian legislation stipulates that public authorities and local self-governments should envisage in their structure a special official or unit responsible for access to information, but it does not specify the requirements for this special official or head of special unit. In practice, as the results of the all-Ukrainian monitoring of 2020 show⁷, the access to information responsible officials are often barely familiar with the requirements of legislation on access to information, do not have the respective professional background and do not attend special regular trainings on this topic. A major problem in this context is a total lack of a unified curriculum and continuing professional development program for the officials responsible for access to information implementation. This ineffective in terms of planning and control approach does not facilitate proper ensuring of the right to access information at the level of individual information administrators.

⁷ Report on monitoring the implementation of legislation on access to public information in the regions of Ukraine in 2020 https://www.ua.undp.org/content/ukraine/uk/home/library/democratic_governance/report-on-implementation-of-legislation-on-public-information-ac.html

PROCESSING OF REQUESTS

The third assessment area of the Methodology was devoted to the assessment of how public information administrators process the information requests. Compared to previous monitoring cycles, the last cycle in 2020 showed an excellent result of requests processing, as the score increased from 85.42% in 2018 to 100% in 2020. Almost all information administrators responded to information requests in full and in a timely manner. However, it is important to note that this result represents only the procedural side of requests processing, in other words, the proper functioning of the channels for receiving requests (for example, e-mail boxes for receiving requests), compliance with deadlines for requests processing and providing information in the form requested. The requests asked for open information that did not call for the “three-component test” prescribed by Article 6 of the Law of Ukraine “On Access to Public Information” and thus it was not needed to decide on restricting the access to information. It is possible that if confidential information - for example personal data of civil servants being related to the performance of their duties - had been requested, the evaluation results would have been lower. The application of the Methodology, however, emphasized another procedural shortcoming that was indicated by many experts, namely the absence of obligation of public information administrators in Ukraine to inform the requester that the request is registered and accepted for processing by the administrator. Probably, this provision was not included in the Law of Ukraine “On Access to Public Information” due to a rather short, compared to the laws of other countries, deadline of 5 working days for processing of requests. However nowadays, when most requests are submitted via e-mail, the obligation to notify the requester on the request being registered would not be an excessive burden for the responsible officials. These notifications would be more than appropriate in emergencies, such as Covid-19 pandemic, when it was important for requesters who had sent an e-mail request to know whether and when the administrator received their request. It should be mentioned that some of the information administrators assessed in accordance with the Methodology sent these notifications on a voluntary basis.

KEY FINDINGS AND RECOMMENDATIONS

To sum up, the high level of progress of Ukraine in the implementation of the SDG indicator 16.10.2 (from the average value of 70.41% in 2018 to 85.35% in 2020) is a result of significant efforts in the implementation of the Law of Ukraine “On Access to Information” and the related legislation by all stakeholders in this process. Assessment of Ukraine’s progress according to the SDG indicator 16.10.2 is important for a comprehensive analysis of shortcomings in legislation and administrative practice. This assessment represents the best standards in the world practice of access to information regulation and allows for progress in achieving the Sustainable Development Goals in general.

KEY FINDINGS:

Three SDG 16.10.2 evaluation cycles according to the Freedom of Information Advocates Network Methodology identified the following key issues:

- the need to improve the efficiency of the supervisory authority and increase the role of the authority that will implement measures aimed at forming and implementing state policy in access to information sphere,
- the need to review legislation and administrative practices with the purpose of introducing work planning in the sphere of access to information at the individual administrators level,
- the need to improve the education on access to information legislation at the level of individual administrators and introduce a unified curriculum for civil servants specialising in access to public information.

RECOMMENDATIONS:

1. Regarding institutional measures at the national level: key stakeholders should put effort into establishing a new or strengthening the existing RTI Oversight Body. Legislative regulation of this body’s work should provide it with the powers and resources necessary to perform its functions effectively. The state body that is responsible for the formation and implementation of state policy on access to information (an RTI Nodal Agency) should develop strategic and current planning involving the widest range of stakeholders.

2. Regarding measures at the level of individual public information administrators: the state body, empowered to organize a system of professional training of civil servants should introduce a unified curriculum of training and continuing professional development of civil servants working with the topic of access to information. A set of recommendations aimed at detailing obligations to plan and report on right to access to information at the levels of individual public information administrators should be developed.