

PUBLIC CONSULTATION: OPPORTUNITIES FOR CITIZENS & GOVERNMENT

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The report aims to enhance the understanding of the practice of conducting public consultations among ministries and promote their improvement through the understanding of the key challenges and opportunities associated with citizen and stakeholder engagement in decision-making. It will be useful to government officials, especially those who provide support in the process of preparing and coordinating public consultations, as well as to all stakeholders, including civil society actors dealing with this topic.

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The CHESNO Movement is a non-governmental organization with expertise in the fields of parliamentarism, local government, political finance and elections.

CHESNO works to help the Ukrainian society shift from electoral to representative democracy. To this end, we provide citizens with objective, unbiased and accurate information about politicians and parties, implement civil education projects, promote open data, and conduct advocacy campaigns and events.



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Abbreviations

E-consultations — electronic consultations

CMU — Cabinet of Ministers of Ukraine

OECD — Organization for Economic Cooperation and Development

Resolution — Procedure for holding public consultations on public policy formulation & implementation approved by Resolution #996 of the Cabinet of Ministers of Ukraine dated November 3, 2010



REPORT OVERVIEW

This report summarizes the results of the analysis of consultation practices in **18** ministries in the period spanning 2019 through the first half of 2020. It contains consolidated data on compliance with the Procedure for holding public consultations on public policy formulation and implementation approved by Resolution **#996** of the Cabinet of Ministers of Ukraine dated November 3, 2010 (hereinafter referred to as “the Resolution”) and outlines the practical aspects of conducting consultations. The analysis became a basis for producing recommendations aimed at boosting citizen and stakeholder engagement in the consultation process.

The analysis revealed both strengths and challenges in the consultation process. Most ministries are consistent in observing the regulations that are key to conducting consultations. These include the availability of dedicated consultation sections on their websites, the timely publication of consultation notices, the provision of information on the issue under discussion, compliance with proposal submission deadlines and the publication of annual consultation plans. Another positive trend is a high rate of considered proposals that ministries receive during consultations. Where relevant data are available, it exceeds **40%** or even **60%** (however, due to the lack of data in most ministries, this indicator does not necessarily reflect the overall situation).

Although ministries comply with the requirements for the preparation of consultations, a number of serious challenges persist such as reporting on consultation results, the use of various forms of citizen engagement and the establishment of effective communication with target groups. According to the analysis, **28%** of ministries do not publish reports or do so only for individual consultations, while **67%** of ministries do so in an inappropriate manner. Another typical practice is a strong preference for e-consultations versus public hearings and other formats of citizen involvement. E-consultations were conducted **3.5** times more often than public hearings (**73%** and **20.8%** respectively). This trend is not unique for the period of lockdown restrictions. It was observed in 2019 as well. The approach to e-consultations also needs improvement as

the format mostly used by ministries — emailing proposals — does not envisage interaction and is limited to one-way communication.

However, these indicators reflect only formally documented public consultations, which are usually held as discussions of ready-made draft documents published on the websites of ministries. Some ministries involve civil society representatives, experts and citizens in the early stages of drafting relevant documents, namely in formulating the concept and overall vision of the draft.

It is noteworthy that ministries face significant challenges in the consultation process. These include a large number of draft decisions subject to discussion, limited financial resources, lack of specialists to provide support in organizing and conducting consultations, time constraints and poor quality of proposals received during consultations. The process of implementing consultation as a real tool citizens and stakeholders can utilize to exert an influence on policy and decision-making can be complex and time-consuming and requires considerable attention and efforts from ministries.

The role of citizens as initiators of public consultations (and consequently their role in agenda-setting) remains limited. The share of consultations initiated by citizens is still insignificant — **5.8%**. Moreover, ministries make almost no use of indirect forms of consultation such as opinion polls, surveys, questionnaires and focus groups. During the period under review, only five ministries conducted indirect consultations and only two ministries actively and systematically used this tool to explore public opinions or the viewpoints of specific groups in the population.

Nevertheless, the analysis revealed examples of ministries that display a willingness to improve the tool of public consultation and try to use available resources for active citizen and stakeholder engagement in the decision-making process. The recommendations resulting from the analysis can serve as a basis for rethinking the approach to public consultation and establishing effective relations between policymakers and their target groups.

PUBLIC CONSULTATION: OPPORTUNITIES FOR CITIZENS & GOVERNMENT

To analyze the current use of the public consultation tool in Ukraine, it is essential to first clearly outline the core concepts and the theoretical framework for assessing the relations between government and interest groups and citizens. This analysis draws on the approach of the Organization for Economic Cooperation and Development (OECD) that defines public consultation as “a key regulatory tool employed by governments to improve the transparency, efficiency and effectiveness of formulated decisions and policies.”¹

In countries with a developed democratic system, interaction between government and citizens is an important principle of governance. Depending on the level of citizen participation and their potential influence on agenda-setting and decision-making, there are three levels of interaction between government and citizens: **1) information**; **2) consultation**; **3) active participation**. This approach is important for assessing the current state of interaction between government and citizens, as well as for outlining opportunities for enhancing citizen and interest group engagement. While **information** flows essentially in one direction, from the government to citizens, during decision-making and policy-making, **consultation** is already an example of two-way communication in which citizens have the opportunity to provide feedback on proposed decisions and submit their own suggestions. At the same time, democracies are moving towards building partnerships with citizens based on constant dialogue and their **active participation** in political processes. Such relations presuppose that citizens themselves become initiators of decisions and formulate their own policy options, thus gaining real authority to make policy decisions.²

Governments constantly face difficult problems and new challenges that need to be addressed in a comprehensive manner. The development of policies and strategic plans requires the involvement of a wide range of stakeholders, experts,

members of the scientific community and citizens in order to seek solutions that will best suit the interests of different populations and have a lasting impact on resolving issues that are high on the public agenda. However, the need to engage a wide array of interest groups and citizens is conditioned not only by the nature of the current challenges, but also by a gradual transition from electoral democracy, where the role of citizens is largely limited to participation in elections, to participatory democracy, where citizens actively participate in framing decisions and policies through the use of various tools, including public consultation. OECD³ emphasizes that active citizen engagement in the development of regulations and regulatory proposals offers considerable benefits to policymakers, in particular:

- **Transparency and access to information:** Public consultation increases the transparency of decision-making by offering opportunities to join the process as well as by providing timely information on the subject of consultation.
- **Added value:** Participants in public consultations, including representatives of various professional communities, are an important source of information and ideas, and therefore their previous experience and knowledge can create value in the decision-making process and improve its quality.
- **Building relations:** Public consultation enables citizens to feel engaged in the decision-making process and exert influence on the government.
- **Compliance with the adopted decisions and regulations:** Public consultation is one way to reach consensus in the decision or policy making process. Citizen and interest group engagement reduces the risk of citizens not accepting the implemented changes or reforms and creates preconditions for better implementation of decisions through social

¹ OECD. (n.d.). *Background Document on Public Consultation*. Retrieved from <https://www.oecd.org/mena/governance/36785341.pdf>

^{2, 3} OECD. (2001). *OECD Handbook on Information, Consultation & Public Participation in Policy-Making*. Paris: OECD Publications.

acceptance of the changes developed in dialogue with the public.

- **Raising public awareness:** Public consultation is also an educational tool as it allows citizens to learn more about the policies being framed as well as about the decision-making process in public institutions, including restrictions and regulations that require compliance.
- **Predictable impact of decisions:** Consultation is essential to predict the impact of decisions on different interest groups, determine their potential implications and, if necessary, formulate alternatives.
- **Conflict management:** Consultation is a mechanism that helps identify possible conflicts and take measures to minimize them in the early stages of decision-making. Engaging citizens in an open discussion on policy options is a way to reconcile the interests of various populations and shape a culture of compromise.
- **Legitimacy:** Active citizen engagement in formulating decisions allows for better representation of their interests during policy and decision-making, which ensures that the needs and expectations of different interest groups are met and thus enhances the legitimacy of such decisions.
- **Trust:** Consultation fosters trust between citizens and public institutions through effective communication and opportunities to influence government decisions.

This list is not exhaustive, but it demonstrates that public consultation and active citizen engagement are beneficial for government in the first place. Although consultation requires additional resources from the implementing body and prolongs the decision-making process, its effective application yields positive outcomes in the long term. However, effective public consultation requires special in-house skills and abilities at

all stages — from determining the consultation format, moderation of the process and analysis of the proposals received to the formulation of final decisions. Another key factor is the willingness of citizens and individual interest groups to actively partake in consultation processes, study draft proposals and formulate alternative decisions or policy options. Thus, implementing public consultation as a tool of citizen participation in policy-making and decision-making is a long-term process that is contingent on the organizational capacities of public institutions and the maturity of civil society. For public consultation to become an effective mechanism of government-citizen interaction, it is important to adhere to the core principles underpinning the proper organization and conduct of consultation activities. In addition to guiding the government in the public consultation process, these principles can also serve as criteria for evaluating current consultation practices and identifying existing gaps to better consultation in the future. For example, the Australian Government, whose actions are a role model of the effective use of public consultation as a public policy-making stage, sets out nine principles for its policymakers⁴, which should guide their efforts towards citizen engagement. These principles can be considered criteria for choosing the form of consultation and implementation approach thereof.

- **Consistent and flexible:** Consistent consultation procedures can make it easier for stakeholders to participate. They can also permit better coordination of regulatory quality initiatives across a wide range of policy areas. Consultation processes may vary depending on the issues in question and should be tailored to particular circumstances (for example, in some cases there is a need for confidentiality, such as for national security or defense matters).
- **Not rushed:** The lack of time to provide feedback when asked for it may be an obstacle in the consultation process. While consultation

might have a considerable impact on the speed of decision-making by agencies, the latter should provide realistic timeframes for participants to consider the issue and respond. Depending on the significance of the proposal, between **30 to 60** days is usually appropriate for effective consultation.

- **Accessible:** Consultation should ensure that citizens can easily access essential information on both the ongoing consultation processes and the issues under consideration. For example, the Australian Government applies an electronic system that automatically notifies citizens of consultations in areas where they have registered an interest. The form of consultation should be chosen in a way to ensure the involvement of those groups that will be most affected by a particular decision. Therefore, agencies should consider a range of consultation strategies other than e-consultations.
- **Continuous:** Interaction and consultation with key stakeholders should start as early as possible and should continue through all stages of policy development.
- **Broad-based:** It is crucial to consider the scope of the proposed regulatory changes and consult widely to ensure that consultation captures the diversity of stakeholders affected by the changes. Relevant individuals and groups may include the general public, individual professional groups or interest groups at national and regional levels to ensure broad representation and incorporation of divergent views in policy development and decision-making.
- **Not burdensome:** When choosing the form and timing of consultation, it is important to take into account the interests and capabilities of the groups that will be involved in the consultation process. Remember that many people you wish to consult have full-time jobs or business commitments and cannot participate

in activities during working hours. Avoid holiday periods and the end of the financial year, particularly where stakeholders are small businesses and individuals.

- **Transparent:** You should explain the objectives of the consultation and the context for it. To avoid creating unrealistic expectations, clearly state those aspects of the proposal that are subject to change and how the final decision will be made.
- **Subject to regular evaluation and review:** Policy agencies should evaluate their consultation processes and continue to examine ways of making them more effective. This includes the use of new opportunities in conducting e-consultations or the application of new approaches to public hearings.
- **A means rather than an end:** Consultation should be used as a way to improve decisions and policies and ensure better representation of various interests, not as a substitute for making decisions. Therefore, reasonable limits must be pre-defined and established in the consultation process.

Although each country's context is unique and there are no single right ways to engage and consult with citizens, these principles are useful in outlining certain criteria that should be sought in a bid to improve public consultation practices. The method of citizen engagement and the format of public consultation are determined by the merits of the decision being formulated. Some issues (for example, technical aspects or harmonization of internal documents with the new legislation) do not require the active involvement of citizens and interest groups. In such cases, it may be sufficient to publish a draft decision with an option of public comment. On the other hand, draft documents of strategic importance or significant conceptual changes in a particular sector require a lengthier consultation process using various forms of discussion to engage a variety of target groups.

⁴ Australian Government, Office of Best Practice Regulation. (2016). *Best practice consultation*.

METHODOLOGY

It is impossible to improve the public consultation process as part of policy development without a thorough understanding of the current use of public consultation tools and a comprehensive analysis of their implementation. Therefore, this analysis focuses on **1)** compliance of public consultation practices across ministries with the requirements of the Resolution that determines the rules to be observed during public consultation; **2)** practical aspects of conducting public consultations, such as the number of consultations conducted, the share of included proposals received from citizens, methods and forms of consultation.

This report has a dual purpose. First, it aims to analyze the current state of public consultation across ministries with focus on identifying the main challenges in conducting consultations as well as the opportunities used to engage citizens and stakeholders in decision-making and policy development. Second, it pursues to use the analysis findings to develop recommendations for improving public consultation at all stages.

The sample included **18** ministries and spanned the period of 2019 through the first half of 2020. **It should be noted that data for several ministries cover a shorter period, which is related to their restructuring and creation, in particular: Ministry of Digital Transformation, Ministry for Reintegration of the Temporarily Occupied Territories, Ministry of Environmental Protection and Natural Resources and Ministry of Culture and Information Policy.**

Data collection lasted from October to December 2020 and was carried out in two ways: analysis of ministries' websites and sending in queries. In addition, in-depth interviews were conducted with representatives of the CMU Secretariat and relevant line ministries to obtain detailed and more profound information on the practical aspects of public consultation.

To attain the identified goal, the analysis included the following stages:

- 1.** Developing evaluation criteria, including quantitative and qualitative indicators for all ministries, and devising a conceptual framework for data collection and further analysis thereof.
- 2.** Analyzing the content of the ministerial websites for data collection as per the conceptual framework.
- 3.** Sending in queries to the ministries to obtain data not published on their websites.
- 4.** Structuring the data obtained in the previous stages based on the conceptual framework for each ministry.
- 5.** Consolidating and analyzing data based on each of the criteria.
- 6.** Conducting in-depth interviews with ministerial representatives for additional information.
- 7.** Based on the data obtained and the analysis thereof, producing a report that contains information on the main public consultation trends across ministries, including recommendations on the aspects that can be improved to ensure more effective citizen and stakeholder engagement in policy development and decision-making.

The key results of the analysis are presented in this report comprised of three main sections: **1)** compliance of public consultation practices with the formal requirements of the Resolution; **2)** practical aspects of conducting public consultations, including comparison of the number of consultations across different ministries, analysis of the main forms of consultation and approaches to citizen engagement; **3)** recommendations for improving public consultation and more effective citizen engagement in the policy development and decision-making process.

PUBLIC CONSULTATION ACROSS UKRAINIAN MINISTRIES: ANALYSIS RESULTS

COMPLIANCE WITH THE REQUIREMENTS OF THE RESOLUTION IN THE PUBLIC CONSULTATION PROCESS

“Consultations are a matter of readiness of [the authorities] to engage in a constructive dialogue.”⁵

Public consultation is regulated mainly by the Resolution, which contains a list of provisions that have to be complied with in the process of preparation and consultation on matters related

to “socio-economic development of the nation, implementation and protection of rights and freedoms of citizens, accommodation of their political, economic, social, cultural and other interests.”⁶ However, the draft law “On Public Consultations”⁷, developed by the government and currently under consideration by the parliament, contains the list of matters that are exempt from discussion and public consultation. Specifically, these extend to issues related to the imposition of martial law, maintenance of the state’s defence capabilities, ratification and approval of international agreements, and relations covered by the Budget Code.

⁵ Interview with a representative of the Ministry of Youth & Sports of Ukraine, December 2020.

⁶ Cabinet of Ministers of Ukraine (2010). Resolution “On Public Participation in Public Policy Development & Implementation.” Retrieved from <https://zakon.rada.gov.ua/laws/show/996-2010-p#Text>

⁷ Cabinet of Ministers of Ukraine (2020). Draft Law “On Public Consultations.” Source https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70235

The Resolution contains the provisions for the publication of announcements about consultations, methods of their conduct, provision of necessary information to stakeholders related to the topic under discussion, as well as proper reporting on the results of consultation and decisions taken.

The core provisions that ministries are required to comply with include:

- Availability of the “Public Consultation” section on the Ministry’s website.
- Availability of subheadings on the website of the Ministry “Electronic Public Consultation.”
- Publication of the annual provisional consultation plan on the website of the Ministry.
- Information related to the organization and conduct of public consultations is published in the section “Public Consultation.”
- The consultation notice shall contain the information required by law, specifically: options for the resolution of the issue at hand, social groups, the effect of potential decisions, their consequences for different social groups, procedure for participation, consultation organizer contacts.
- When conducting e-consultation, the terms and procedure for the publication of draft regulations and regulatory acts defined by the Laws of Ukraine “On Access to Public Information” and “On Principles of Public Regulatory Policies with Respect to Economic Operations” shall be complied with.
- As a result of such consultation, reports were published with the information required by law, including information on persons who took part in discussions, information on proposals received by the executive body as a result of

discussions, indicating the submitter of each proposal, information on the acceptance of proposals and public comments with the obligatory rationale for any decision taken and the reasons, for which specific suggestions and comments were discarded, information on any decisions taken following the results of discussion.⁸

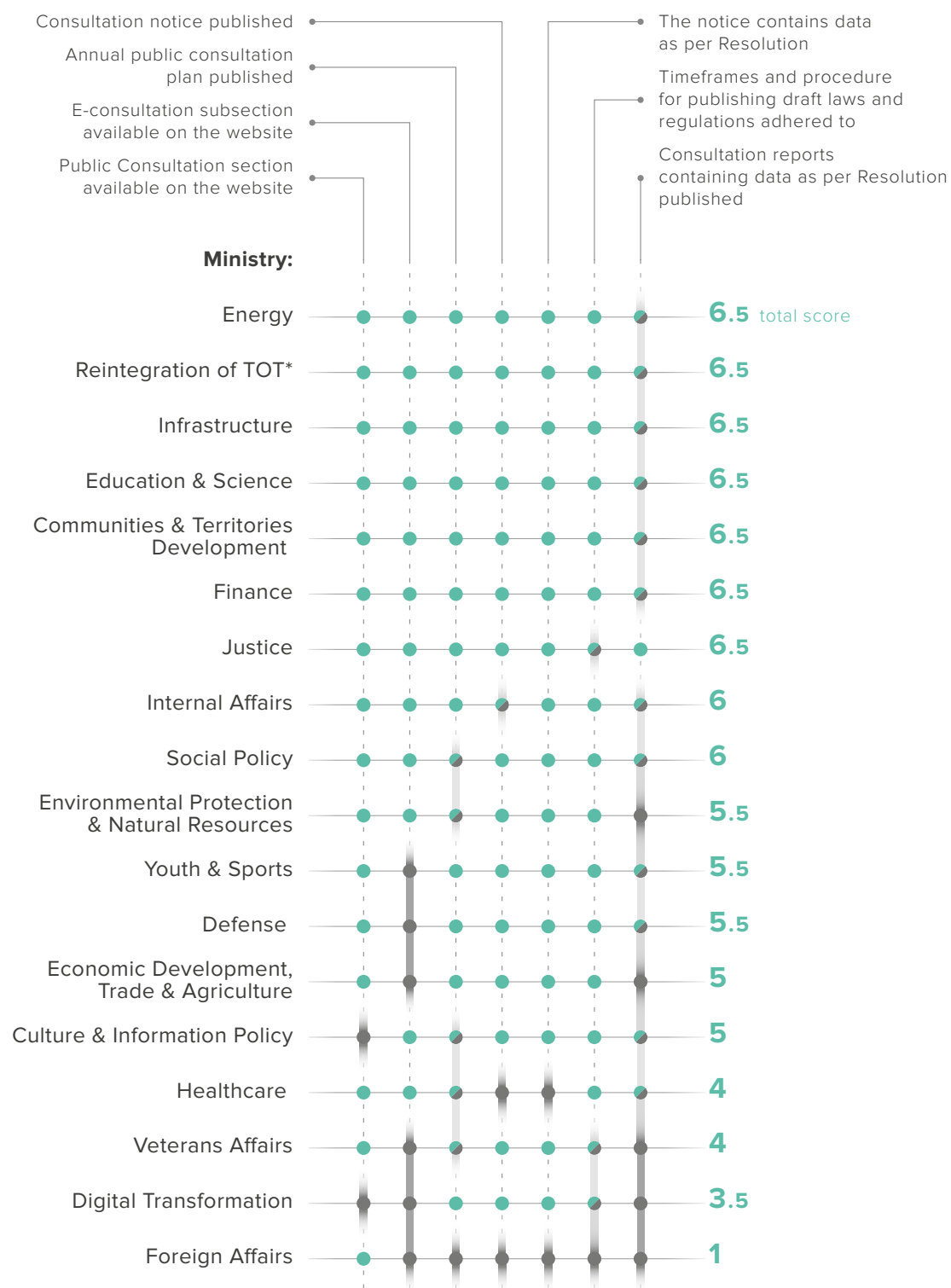
Although public consultation as a practice was embedded in the Resolution and introduced in 2010, the analysis of the ministries’ compliance with the provisions for holding consultation shows that many of them still do not fully comply with all the provisions applying to public consultation. Even those ministries that are recognized as leaders in conducting public consultation do not fully comply with the provisions, in particular, with respect to the proper publication of reports and the results of consultations.

It should be noted that the analysis does not assess the quality of the consultations themselves or the provisions of the Resolution, but only allows us to understand the extent, to which consultation practices are consistent with the existing regulation of public consultation. Matters related to legal regulation and improvement of the regulatory framework that determines the consultation procedure are outside the scope of this analysis.

For a comprehensive assessment of compliance with the provisions of the Resolution, a content analysis of the ministries’ websites was carried out. Consistent with the seven criteria that reflect the provisions of the Resolution as mentioned above, the assessment was carried out on the basis of the following principle: if any provision is fully complied with, it is scored with **1** point, complied with in part — **0.5** points, and not complied with — **0** points. The overall results of the ministries range from the lowest score of **1** point to the highest of **6.5** points, while none of the ministries received the highest score of **7** points.

⁸ Cabinet of Ministers of Ukraine (2010). Resolution “On Public Participation in Public Policy Development & Implementation.” Retrieved from <https://zakon.rada.gov.ua/laws/show/996-2010-p#Text>

COMPLIANCE WITH THE REQUIREMENTS OF CMU RESOLUTION #996



* TOT — temporarily occupied territories of Ukraine



However, the results of the analysis show that most ministries are consistent in implementing specific provisions, which play an important role in proper consultation and civic involvement. In particular, almost all websites contain a section entitled “Public Consultation,” where the general public and other stakeholders may access on-going consultations held through the website, learn about public discussions or to obtain information about earlier consultations. Despite this, the analysis established that the ministries often use different names for that page, including “Public Liaisons” and “Public Relations.” Lack of a uniform approach (Paragraph 5 of the Resolution stipulates that the title “Public Consultation” has to be used⁹) to page naming may be inconvenient for users and complicate website navigation. In addition, such section is often not available on the main page and is not always easily accessible to regular users (sometimes access to the page requires three or four transitions).

In most cases, the annual consultation plans developed by the ministries at the end of the year are available on the relevant ministries’ websites with a list of consultations and their provisional schedules. Good practices introduced by some ministries include quarterly updates to relevant plans to reflect latest changes in the number and exact time of consultations and enable stakeholders to prepare for discussion. Throughout 2019, the Ministry of Youth and Sports also published monthly consultation plans. Annual consultation plans are prepared by the ministries in line with the mandated procedure, i.e. on the basis of the tasks contained in the roadmap of the Cabinet of Ministers and the law drafting plan. The structural units of the ministries designated as owners submit relevant consultation plans, which are then compiled into a single document. While the Resolution provides for an option to involve the public in the development of annual consultation plans, the websites of the ministries contain no reports on the option to participate in the preparation of plans during their development. Thus, the ac-

tive involvement of the public at the stage of the development of annual consultation plans will increase the opportunities for the general public to impact the shaping of the agenda rather than just be involved in consultations initiated by ministries. It should also be noted that the ministries are consistent in conducting those consultations that are included in the annual indicative plan: most ministries, except for those in the middle of restructuring and temporary liquidation procedure, held more consultations than were listed in their provisional plans.

In general, ministries consistently comply with the provision on the publication of consultation notices. This applies both to compliance with the deadline for disclosure of information and the provision of information on the topic of discussion, specifically, the draft act under discussion, alternative ways to address the matter, potential consequences of decision to be taken. Such reports often go with analytical materials and comparative tables, which enable all stakeholders to better understand the nature of the issue under discussion and thus prepare for participation in the proposed consultation. The situation with e-consultation is similar: ministries accept proposals and comments on discussed draft decisions at least **15** days after the publication of relevant information, and failure to comply with this provision is an exception. Moreover, a good practice that is already common among several ministries, such as the Ministry of Education and Science, is to extend such consultation to one month for all draft documents under discussion, enabling more members of the public and stakeholders to be involved.

The results of the analysis revealed not solely positive trends in the implementation of the provisions of the Resolution, but also typical systemic gaps in compliance with the provisions applying to the consultation procedure. If the availability of headings on websites, timely notification of consultations, and provision of necessary information are the aspects that have received a largely

⁹ Cabinet of Ministers of Ukraine (2010). Resolution “On Public Participation in Public Policy Development & Implementation.”

positive assessment, the typical deficiencies in compliance include the reporting and publication of consultation results. Paragraph 10 of the Resolution stipulates that the executive body conducting a consultation shall prepare a report based on its results. Such report shall include, inter alia, information on the participants of discussions, proposals submitted, including the names of submitters, information on the acceptance or rejection of each proposal, together with the rationale for such decision, as well as the decisions taken following the consultation. In general, analysing the systemic approach of the ministries to the publication of reports and their compliance with the provisions of the Resolution, it is possible to distinguish two categories: **1)** ministries that do not publish reports at all or publish them only for individual consultations, and this is the case of **28%** of the ministries; **2)** ministries that publish reports, but do so in an inappropriate form and do not comply with the provisions of the Resolution, which is the case with **67%** of the ministries. The most widespread instance of improper reporting is the publication of information on the total number of proposals received using the wording “submitted proposals were partially accepted” or “submitted proposals were not accepted,” such reports do not contain information on the nature of proposals and do not explain how they were (or were not) reflected in the final decision. Another, somewhat better, example of reporting is the publication of information on the total number of proposals submitted with a summary list of suggestions that such proposals concerned, as well as information on their acceptance or rejection. Of all the ministries, only the Ministry of Justice published all consultation reports, but it is important to note that, throughout 2019, the Ministry of Justice did not receive any proposals in the public consultation process, which is why reports for this period are only represented by reports that include no proposals. Only one report dating back the first half of 2020 contains proposals from participants (in most cases, no proposals were submitted).


Thus, the problem of reporting on the outcomes of public consultation remains pervasive across all the ministries. The analysis of submitted pro-

posals and the preparation of the reports based on the results of the discussions is just as important as consultations themselves and calls for due attention from the executive bodies. Firstly, the preparation of proper reports enables the initiating authority to effectively analyse the proposals submitted, process them and reflect them in the final draft decision. Secondly, throughout the consultation process, it is important to provide feedback to the participants of the discussion, including information on how their proposals were reflected in the decision. Lack of such communication may discourage participants from participating in later consultations and may contribute to a sense of distrust of the authority holding the consultation. Thirdly, the publication of reports constitutes an important prerequisite for ensuring the transparency of the consultation process, as it reflects accepted or rejected proposals and the rationale for relevant decisions. Fourthly, the preparation and dissemination of reports is also a tool for informing the general public and target groups about the policies in development and helps to better cover the activities of the ministries and their decisions.

The reasons for such problems may be related to the absence of individual departments or responsible officials, whose core responsibilities include the organization and conduct of consultations. At present, in most ministries, public consultation is supported by communication and public relations departments. It is important to emphasize that the functions of such communication departments are far-reaching and not limited to coordination and facilitation of public consultation. Therefore, it would be appropriate to establish units or clearly designate responsible officials tasked with the coordination and provision of organizational, methodological and communication support in the consultation of all units of ministries. As long as such function remains fragmented between different departments or public consultation remains an “auxiliary” responsibility for officials responsible for other functions in the ministry, it is doubtful that consultation will be conducted properly with the active involvement of a wide range

of stakeholders. At the same time, the role of the drafting unit remains crucial, because it is specifically the policymakers who have to analyse the proposals submitted and provide rationale for their acceptance or rejection in the final draft decision. Accordingly, consultation should take place in close cooperation between the structural unit that is the developer of the draft decision and the department that provides support in matters related to the choices of consultation formats, organizational modalities, ways of dissemination of information and involvement of the general public. It is also important to emphasize that the work associated

with the analysis of proposals submitted during consultation and the preparation of reports should be included in the job description of the officials who will perform the relevant tasks. Considering that such responsibilities, where consultation is conducted in a proper manner, may take up a significant portion of the relevant professional employee’s working time and efforts, such activities should not constitute an additional load, but should be duly reflected in the allocation of their job responsibilities.



Drawing the line under the analysis of compliance of consultation practices with the provisions provided by the Resolution, it is possible to clearly trace the trend towards compliance with aspects related to the organization of consultation (public disclosure of information, provision of access to consultation materials, meeting deadlines and receipt of proposals). The situation is excellent with the processing of submitted proposals and preparation of reports that reflect the information on the impact of consultation on the decision-making process, with a proper explanation of relevant results. It should be emphasized at this point that the consistent analysis of proposals and their consideration are key aspects that reflect the true impact of participants on the decision-making process. In the absence of a proper procedure for the processing of such proposals and preparation of reports based on their results, which make it possible to understand the results of consultation, as well as reflect the arguments in support of the acceptance or rejection of proposals, consultations as a tool will have a limited effect for both participants and hosts.

PRACTICAL ASPECTS OF CONDUCTING CONSULTATIONS: CAN CITIZENS EXERT AN INFLUENCE?

1. QUANTITATIVE INDICATORS & FORMS OF PUBLIC CONSULTATION

The number of public consultations held in 2019 and the first half of 2020 varies greatly between ministries, ranging from almost **300** (Ministry of Social Policy) to a mere eight consultations (Ministry for Reintegration of the Temporarily Occupied Territories) over the past year and a half. The schedule clearly shows the gap between the “leaders” in terms of public consultations and the ministries, which hosted virtually no discussions.

The three leaders are the Ministry of Social Policy, the Ministry of Economic Development and Trade, and the Ministry of Education and Science. It has to be noted that the number of consultations depends on the specifics of the operation of each ministry: some of them are drafters of a significant number of regulations that need to be discussed, while others, such as the Ministry of Foreign Affairs or the Ministry of Defence, develop fewer decisions that require public consultation due to the specifics of their activities. However, the draft law “On Public Consultations”¹⁰ developed by the government and currently under consideration by the parliament contains the list of matters that are exempt from discussion and public consultation. The provisions of this consultation law do not apply, in particular, “to legal relations associated with general or limited mobilization, imposition of martial law in Ukraine or in certain locations thereof, deployment of the Armed Forces of Ukraine, Joint Forces operations, anti-terror operations and other urgent matters associated with the state’s defence capabilities,” “draft acts related to the execution, ratification, approval or adoption of international agreements of Ukraine and accession thereto or termination or suspension thereof,” and “legal relations governed by the Budget Code of Ukraine.”

Over in-depth interviews, ministry representatives also noted that not all decisions made by the ministries require broad public involvement and con-

sultation, and, in some cases, such requirement may even be an obstacle to an effective response:

“When it comes to technical functions or the need to respond quickly to critical situations, there must be a certain level of trust in the government. If we slow down the rapid response mechanism with consultation, is it going to work out for us? In such situations, professionals must have room for quick and effective decision-making.”¹¹

The situation is similar with consultation on changes that concern the internal procedures of ministries and do not involve fundamental changes:

“There are documents of a technical nature: amendments to specific regulations of ministries, which bring such documents in line with the changes introduced in connection with the adoption of new laws or overarching regulations.”¹²

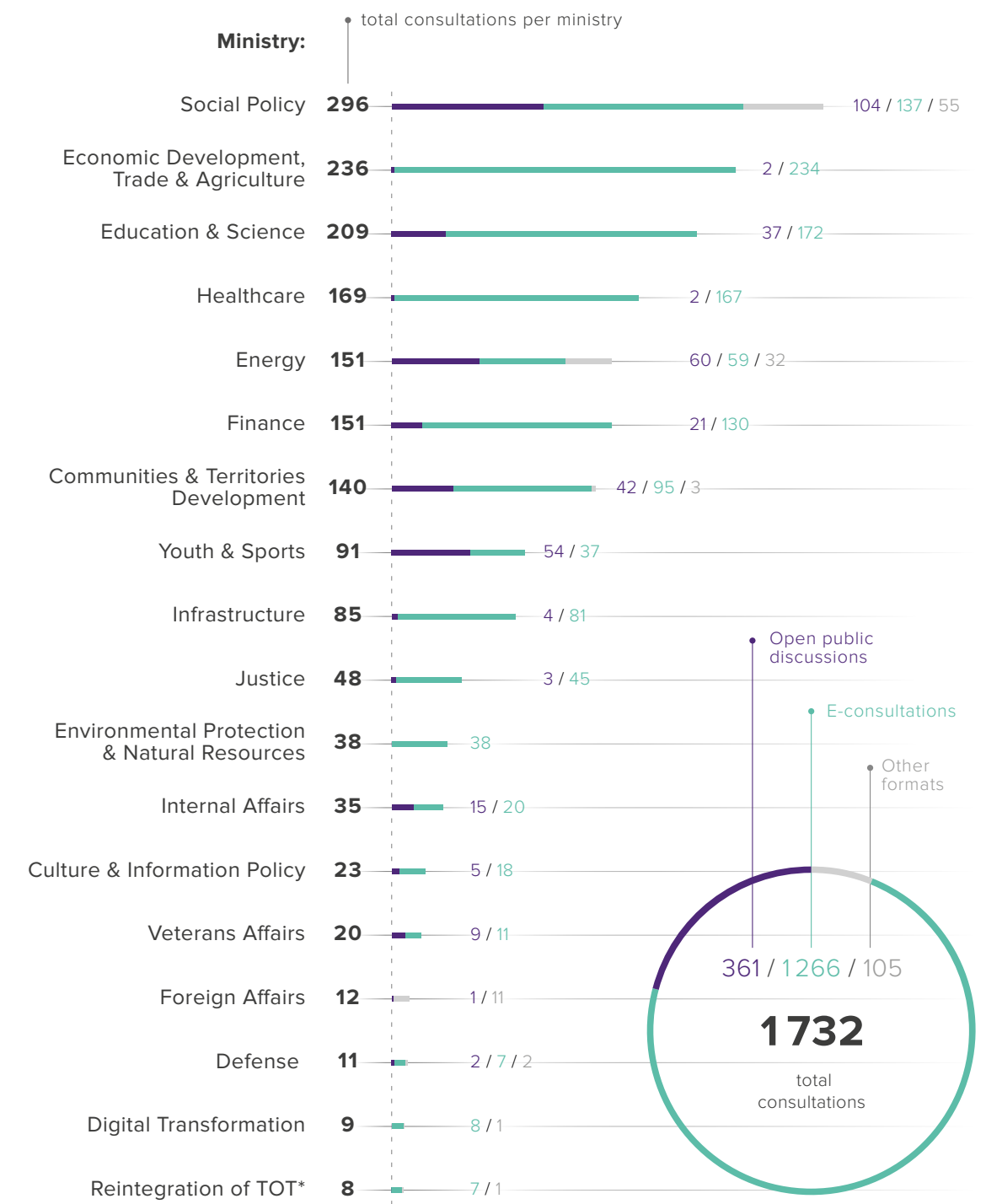
Therefore, it will be appropriate to distinguish between draft decisions that involve conceptual and strategic issues and those that are technical in nature or require a rapid response. At the same time, it is important to prevent the abuse of the “fast-track” procedure and to allow its use only in cases where there is a proper rationale for such approach and the disclosure of relevant arguments to the public.

¹⁰ Cabinet of Ministers of Ukraine (2020). Draft Law “On Public Consultations.” Source https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70235

¹¹ Interview with a representative of the Ministry of Youth & Sports of Ukraine, December 2020.

¹² Interview 1 with a representative of the Secretariat of the Cabinet of Ministers of Ukraine, December 2020.

NUMBER OF CONSULTATIONS BY FORMS



* TOT – temporarily occupied territories of Ukraine

However, these indicators reflect only formally recorded public consultations, which are usually held in the format of discussions of already developed draft documents published on the websites of the ministries. Some ministries engage civil society representatives, experts and the general public at the early stages of drafting relevant documents, specifically, during the development of the concept and the overall vision of the draft. In particular, the representative of the Ministry of Youth and Sports believes that stakeholders should be actively involved at the initial stages, when they have the opportunity to co-author documents rather than just make their own changes:

“We never publish [for discussion on the site] unfinished documents, we publish a thorough document, which emerged as a result of a large number of discussions, debates and round tables. When it shows up [on the website], few stakeholders who have already participated in its discussion go there. More often, those who did not participate in the discussion join in at this stage, but we do not get a large number of ideas from this process, it is rather an element of transparency and openness. It seems to me that the involvement should be earlier.”¹³

In fact, this approach actually expands the opportunities for the participants in the consultation, enabling them to shape the conceptual framework of the documents in development and to have a true impact on policy development. In this case, e-consultation is treated as a secondary stage in the involvement of the general public, where the draft document, which was developed in close cooperation with stakeholders, is submitted for discussion to wider audiences.

In general, the most common forms of consultation among the ministries include e-consultation

and public hearing. At the same time, when comparing the number of consultations conducted in the format of public discussion and e-consultation, a significant advantage of the latter becomes evident. E-consultations were conducted **3.5** times more often than public discussions (**73%** and **20.8%** respectively). This trend is not peculiar to the period of lockdown restrictions, but is typical for consultations held throughout 2019. For half of the ministries (nine out of **18** covered by the analysis) e-consultations accounted for more than **80%** of all consultations, and this figure dropped below **50%** only in four of the ministries. At that time, three ministries did not hold any consultations in the format of public consultation, while, in five other ministries, public consultations accounted for less than **10%** of all consultations.

In general, the use of information and communication technology in the study of public opinion, in particular, the use of e-consultation, is an effective way to get a wide range of citizens involved, conduct discussions, increase transparency in the decision-making process, and ensure the accessibility of the policy-making process. Meanwhile, the analysis of e-consultation practices among ministries revealed a significant number of shortcomings that prevent them from unlocking all the benefits from the use of information technology in the consultation process. Instead, in a significant number of cases, e-consultation is used solely to ensure compliance with the provisions of the Resolution on the discussion on draft acts, thus replacing actual consultation.

Almost all ministries use an e-consultation format, which involves distribution of proposals for a draft decision under discussion to e-mail addresses. This method does not provide an opportunity for discussion between the body that initiated the decision and the participants in the consultations, as well as discussions between participants themselves. The imperfection of this consultation format was confirmed by the representatives of the ministries in an interview:

“This is the worst way, but it is also the easiest one — it does not entail financial costs, does not require constant involvement — it is a strategy to avoid unnecessary difficulties.”¹⁴

With this approach, there is virtually no two-way communication and interaction, and participants do not feel they have an impact on the decision-making process. Firstly, as noted above, the publication of consultation reports is a major issue for all the ministries, as discussion participants may not be aware of the status of their proposals. E-consultation in this format also signals the problem with transparency, as it is not possible to track the total number of proposals submitted and the arguments for their consideration or rejection. This problem was also noted by respondents:

“When a person submits their suggestions [to our e-mail] and then does not see if they are included, they accumulate a lot of negative attitude.”¹⁵

Secondly, even when the consultation report is published, consultation participants will learn about the decisions on their proposals only in retrospective, when they no longer have the opportunity to suggest changes or provide additional arguments for their proposed changes. One proof of the low efficiency of this approach to involving the general public in the discussion process is the significant number of consultations, when the ministries did not receive any proposals for the draft under discussion.

The prevalence of the practice of holding consultation without real involvement of citizens

may be a way to avoid confrontation and conflicts in the process and to reduce the number of non-substantial proposals received during the consultations. During the interviews, difficulties in interfacing with consultation participants were repeatedly raised as a factor that reduces the readiness of authorities to actively involve the general public in the discussion process:

“Sometimes it is difficult to talk to consultation participants, because you [the consultation organizer] may be a trigger for aggression, so there is a feeling that it is better to approve the draft rather than discuss it and get negative attitude in return.”¹⁶

This is confirmed by the content analysis of the reports, which reflect the proposals submitted during a consultation. The most widespread problems are the lack of relevant proposals or description of tools for their implementation, the expression of ideas that do not relate to the subject of discussion, criticism of a particular body hosting the discussion or the government as a whole, and lack of arguments in support of the proposal.

The inconsistency of the proposals with respect to the subject matter of discussion and the overall low quality of such proposals have adverse consequences for both discussion organizers and participants:

“People are dissatisfied or frustrated with the consultation process, with not being heard. But they were not heard not because someone chose to ignore them, but because their proposals did not relate to the issue we were discussing.”¹⁷

¹³ Interview with a representative of the Ministry of Youth & Sports of Ukraine, December 2020.

¹⁴ Interview 2 with a representative of the Secretariat of the Cabinet of Ministers of Ukraine, December 2020.
^{15, 17} Interview with a representative of the Ministry of Education & Science of Ukraine, December 2020.
¹⁶ Interview with a representative of the Ministry of Youth & Sports of Ukraine, December 2020.

Thus, the problem of “spam” coming in the process of e-consultation is yet another proof that sending proposals out via e-mail is not an effective way to interact with citizens and may cause significant difficulties, including for consultation organizers. However, even this process may be optimized and streamlined. This approach is used by the Ministry of Youth and Sports:

“If we, as the consultation organizer, do not set a framework, we will receive proposals that are vague and make little sense. This is why, we publish a document together with a proposal submission form, where the participant puts their name, then we provide a framework showing the proposed text and a comparison table for proposals — these should be specific, and then — a space for argument, and we work from there in a more constructive way. We also have a feedback option to contact the submitters of relevant proposals — this is our approach to improvement of the process.”¹⁸

It should be emphasized that the publication of consultation announcements on the website is not sufficient to actively involve the general public in the discussion process. The key role is played by the process of dissemination of information on opportunities to participate in public consultation and to clarify the purpose of the consultation, the essence of the issue to be discussed, possible alternatives, and the impact of the issue on different groups of citizens through different communication channels. This aspect was brought up by respondents during in-depth interviews. Specifically, the representative of the Ministry of Youth and Sports was convinced that the bulk of work associated with consultation should be carried out in advance, before actual discussions:

“The authorities have to provide clarifications well before the discussions start. For example, make an announcement that a document will be posted on the website for discussion and a relevant presentation will be held to explain why this or that conceptual approach was chosen. There should be communication, not just a “comfortable” [for the concerned authority] proposal submission mechanism.”¹⁹

This approach is useful for several reasons: it enables an active involvement of citizens through proper information disclosure, offers participants an opportunity to prepare for consultation by letting them become acquainted with the essence of the issue and outlining alternative solutions, and thus improves the quality of proposals and makes it possible to avoid a flood of comments that are irrelevant for discussion or may not be implemented.

During interviews, representatives of the ministries noted the advantages of “live” consultation. These include, in particular, the opportunity to provide participants with additional arguments and clarifications on various provisions, explain the need for change, which is particularly important in implementing reform in a specific area, and to “defuse tensions” among the general public and stakeholders who have a biased attitude to the proposed decisions or changes.²⁰ Being able to build dialog and provide informed answers to questions that concern the participants of discussions is an important step in reducing resistance to change, and sometimes provides support in implementing such change. Therefore, it is important to choose the consultation format that best meets the needs of discussing the specific issue that constitutes the subject matter of the consultation. In developing strategic decisions or concepts for the development

of specific industries or introducing large-scale changes, involvement of stakeholders in a multi-lateral dialogue with the opportunity to engage in a discussion of various aspects of the problem will serve as a more effective approach to accommodate stakeholders’ interests and create favourable conditions for the implementation of resulting policies in the future.

The work of the Ministry of Education and Science in the course of the development of the reform of the **New Ukrainian School** and basic education standards²¹ stands out as a truly successful example of public consultation and active involvement of target groups in the development of decisions. Firstly, it should be noted that different consultations were held for the representatives of different regions involved in the discussion, i.e. the consultation was not limited to one-time interaction with the target audience, but was rolled out as a series of consultations. Secondly, despite the fact that, during the lockdown period, the consultation was held online, a format was used that facilitates active discussion between participants and ensures interaction with the organizer. In addition to six online discussions, the ministry conducted an online survey, i.e. used different forms to learn the opinion of the target audience for further decision-making in parallel. The indicators of involvement of participants were also high: **701** people took part in the discussion, **546** — in the survey. This is both the confirmation and the result of an effective communication and information campaign among the target audience. It is important to note that, in the process of this consultation, the framework for discussion was clearly set, the questions that the participants tried to answer during the discussion were articulated, and all the necessary documents were provided to enable the participants to properly prepare for the consultation. The report on the results of the consultation published in two formats deserves a special attention: a short brochure summarizing the main results and a detailed report containing in-depth explanations of the consultation process, the main findings, and the decisions taken. In addition, the report

explains the subsequent steps to be taken in the policy approval and implementation process, as well as answers to the most frequently asked questions of the consultation participants. Such elements of the report have very important functions: firstly, they give participants an understanding of how their participation has influenced policy-making and when appropriate decisions will be made, and, secondly, they enable the participants to understand the ministry’s position on the most contested issues among the target audience and reduce the number of recurring comments that may be submitted in the absence of such information. It is important to note that this consultation was conducted in partnership with international donor organizations and civil society organizations, which significantly expanded the opportunities to effectively engage target groups and prepare quality analytical materials based on the results of the consultations. It also highlights the significant benefits that ministries can derive from building relationships with partners that provide comprehensive support in conducting public consultation.

Some ministries, such as the Ministry of Social Policy and the Ministry of Infrastructure, use other options, specifically, discussion of drafts on the site, where users can either vote for or against the draft or comment on the draft as a whole or any part of it. Although this method creates more opportunities for discussion and debate, in practice, the use of this tool is also associated with user barriers and technical drawbacks. For example, in order to participate in the discussion, the Ministry of Infrastructure offers the user to log in through the social network Facebook, without offering alternative registration options. This is contrary to the principle of accessibility, which provides for several methods of user verification and registration on the website. A person, who is not a user of that specific social network or does not want to use it for reasons other than participation in the discussion, is effectively excluded from participation in the consultation. The Ministry of Social Policy provides a wider choice of authorization options, but due to technical problems,

18, 19 Interview with a representative of the Ministry of Youth & Sports of Ukraine, December 2020.


20 Interview with a representative of the Ministry of Education & Science of Ukraine, December 2020.

21 The consultation was supported by the NDI & the UK Government.

it is impossible to leave comments on the draft under discussion. For example, when we tried to access the page of a consultation that just started, we found out that the option to comment was deactivated, with the message “discussion completed” displayed on the page, which may be due to an incorrectly set date for the consultation, specifically, **from December 2, 2020 to January 2, 2020**. In general, this demonstrates technical drawbacks and errors in the operation of such platforms, which may be due to the improper administration of the relevant platform. It is important that the relevant sections are simple, easy to use and do not create obstacles for users who want to participate in the consultation. The Ministry of Digital Transformation, together with the Secretariat of the Cabinet of Ministers, is currently developing a new platform that will integrate the public consultation process across all ministries and support interactive elements to ensure better interaction between participants, the document developer and stakeholders. It is equally important that such platform will be the single “entry point” for the general public, where it will be possible to access consultations on various draft documents and areas of interest. In addition, the ability to comment on and support already submitted proposals will significantly simplify the process of preparation of reports for ministries, as it will solve the problem of duplication of proposals.²² In general, the platform may constitute an important step in rethinking the approach to e-consultation, making it more understandable and transparent to users. This, in turn, will encourage potential participants to engage in the discussion in a more active manner and reduce the resources that ministries spend to support consultations and the processing of proposals.

It is also important to offer participation opportunities to different population groups during the consultation process. The principle of inclusivity, which has to be taken into account in planning and conducting consultation, involves the involvement of a wide range of citizens and interest groups, which requires the use of different ways and tools of interaction with them, accordingly. The dominant role of e-consultation, among other forms of discussion, excludes part of the public from the consultation process, thus limiting its ability to influence the decision-making and policy-making processes. Therefore, when planning consultations, it is essential to consider first of all the goals and groups and the specific issue under discussion, and to use communication channels and forms of consultation that will ensure the involvement of these groups in the discussion. In particular, Paragraph 11 of the Resolution provides for the option to hold parallel consultations on the same matter in different formats. This approach will enable the ministries to reach out to a wide audience and provide the general public with a number of options to join the decision-making process and participate in the discussion.

²² Interview 2 with a representative of the Secretariat of the Cabinet of Ministers of Ukraine, December 2020.



The number of consultations varies greatly among different ministries and is down to the specifics of their operation. Despite the substantial number of public consultations, most of them are conducted in electronic form, which involves submission of proposals by e-mail. This approach does not provide for bilateral interaction, options for communication between participants and does not fully comply with the principle of the transparency of the consultation process. In addition, the low effectiveness of this format of consultation is evidenced by the significant proportion of consultations, in which no proposals were submitted. Another challenge for ministries is the low quality of proposals submitted, their recurrence and inconsistency with the subject matter of discussion. These difficulties may be addressed through a single government consultation platform, which is currently developed by the Ministry of Digital Transformation in cooperation with the Secretariat of the Cabinet of Ministers.

2. CITIZENS AS INITIATORS OF PUBLIC CONSULTATIONS

In using the OECD conceptual approach in the analysis of consultation practices (information — consultation — active participation²³), one of the key features of the transition from consultation to active civic participation will be an opportunity for the general public to drive consultations on decisions or policies. Such option is explicitly provided in Paragraph 7 of the Resolution, which offers public associations and public councils an opportunity to initiate discussions that are not included in the provisional consultation plan of a ministry.

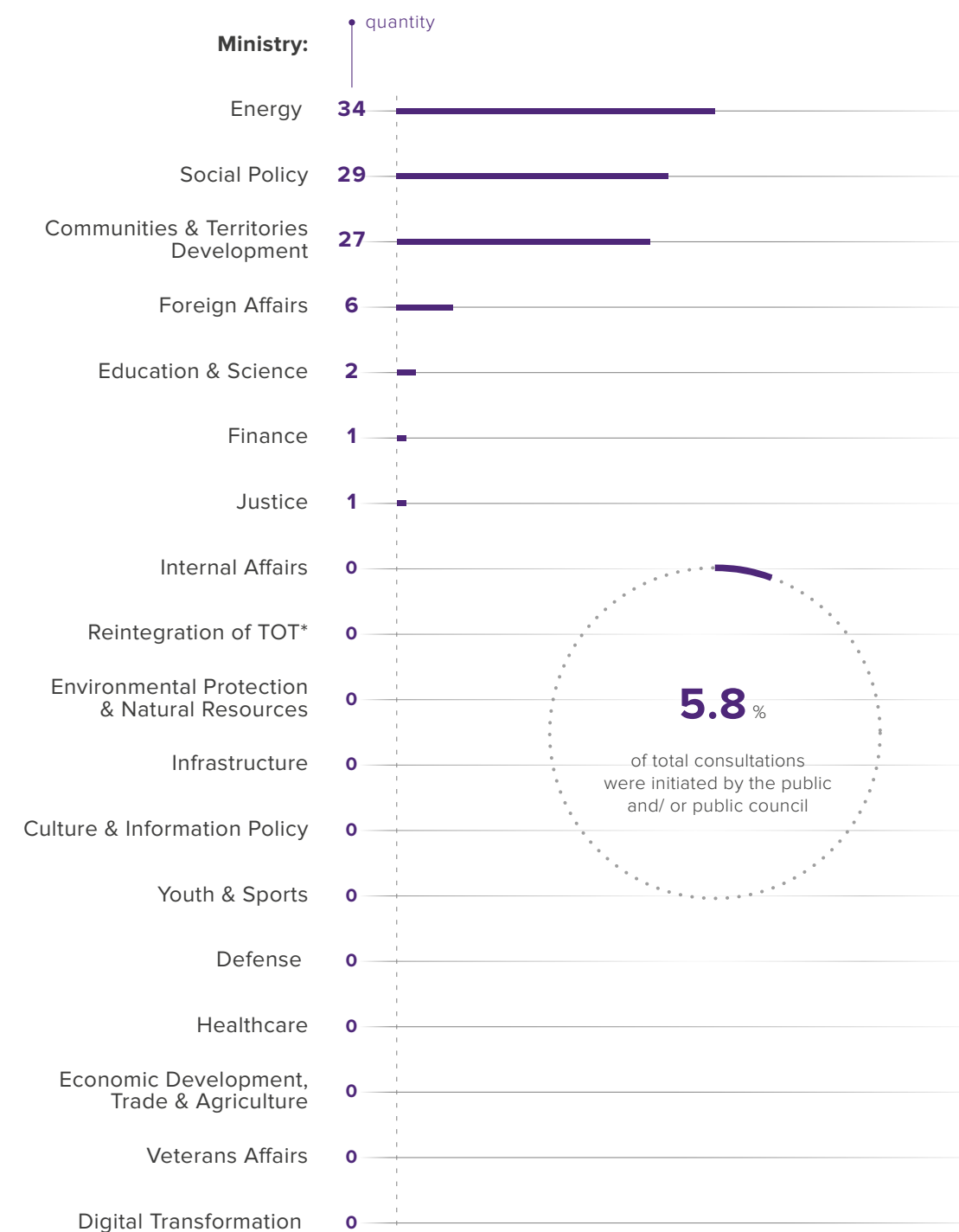
The number of public consultations driven by the general public is an important indicator of their actual impact on the development of the agenda and the decision-making process. The above chart shows that the role of the general public in decision-making remains largely limited and is down to consultation as opposed to active participation and the ability to drive

the decision-making process. Only in the case of three ministries, specifically, the Ministry of Energy, the Ministry of Social Policy and the Ministry for Communities and Territories Development, could the general public operate as an active initiator of the consultation process. In most ministries, such consultations were not held at all, indicating a limited impact of the public as an active participant in the policy-making process. This situation may be due to the lack of information and a clear mechanism for initiating consultations with NGOs. As mentioned earlier, members of the general public should be involved at the stage of the preparation of provisional annual consultation plans, having an opportunity to make suggestions.

Despite the generally high number of public consultations, most of them are initiated by ministries. Only a small proportion of consultations were driven by the public, indicating its limited role in shaping the agenda. Simple and clear mechanisms for initiating public consultation may expand its capacity to influence policy development and decision-making advocacy.

²³ OECD. (2001). *OECD Handbook on Information, Consultation & Public Participation in Policy-Making*. Paris: OECD Publications.

NUMBER OF CONSULTATIONS INITIATED BY THE PUBLIC AND/ OR PUBLIC COUNCIL



* TOT — temporarily occupied territories of Ukraine

3. INDIRECT FORMS OF PUBLIC CONSULTATION

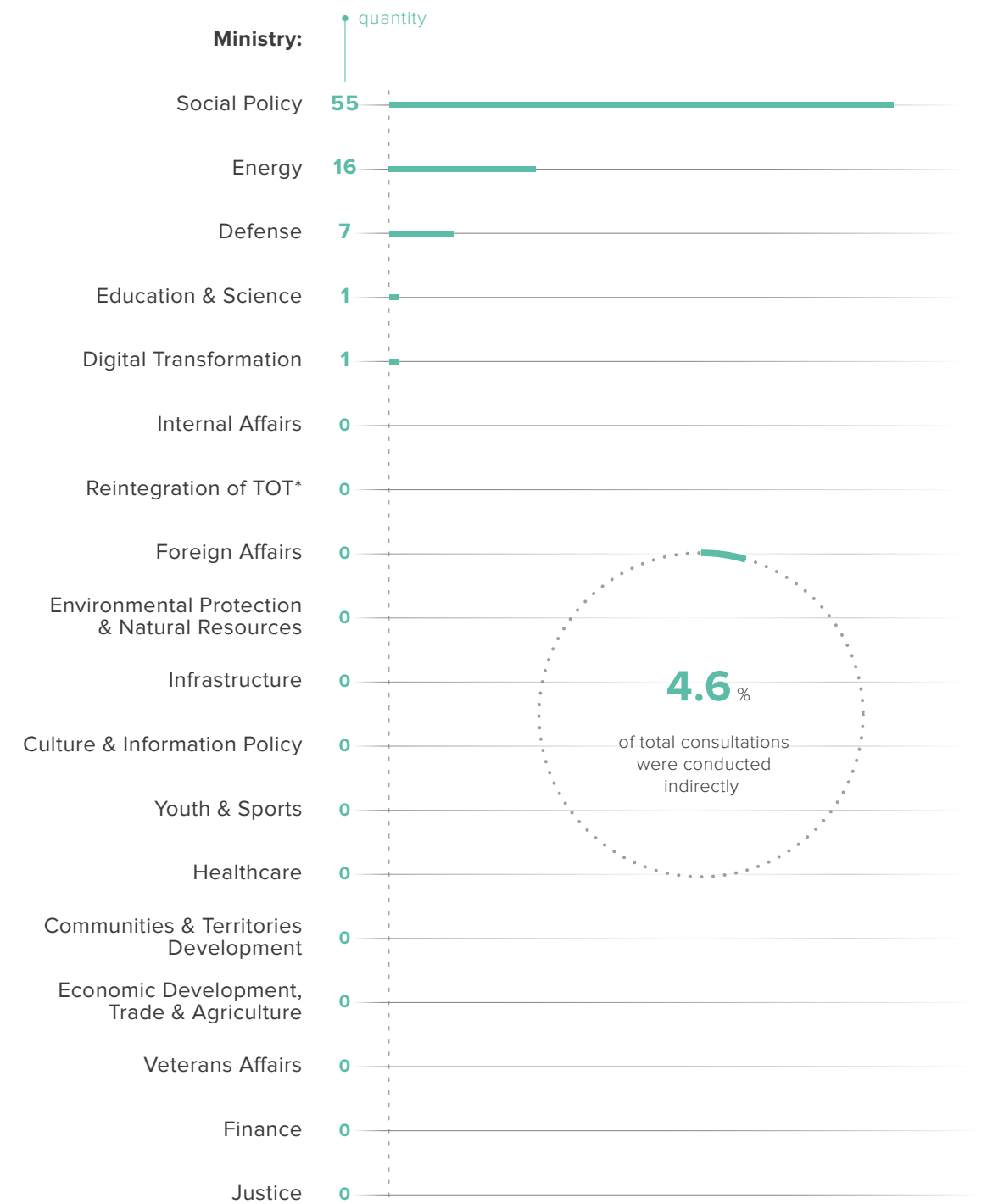
Public consultations include a wide range of opportunities and tools that may be used in public opinion polling on a particular issue. Consultation is not limited to discussions and direct involvement of the general public in the discussion process, but it may also be conducted indirectly. In particular, ministries may conduct sociological surveys, polls, questionnaires, focus groups to better understand the positions of various stakeholders and accommodate their suggestions. Despite the significant potential for such methods, most ministries make almost no use of indirect forms of consultation. During the period under review, only five ministries conducted indirect consultations, and a mere two of them — the Ministry of Social Policy and the Ministry of Energy — used this tool actively and systematically to engage with the public.

However, it is worth emphasizing the importance of using such methods of public opinion polling, because they may serve as a valuable source of information for decision-making. This is especially true for the development of strategic documents that will have a long-term impact and concern broad categories of stakeholders. In particular, research is a key step in reforming certain industries and areas and should be used as a source to draw on in the development of concepts for change. Surveys and research in general have many benefits, including the ability to examine the views of specific populations and stakeholders who are affected by the policy implementation process. They may also be used for public opinion polling purposes thanks to the involvement of a representative sample, which is valuable for identifying potential challenges and problems by taking specific decisions and making necessary changes in advance. In addition, these methods enable a better understanding of the needs of different population groups, their interests in the context of emerging policies, and prioritization of the goals to be achieved in the process of making and implementing the decision in development accordingly. Thus, the effective use of indirect consultation mechanisms allows to develop better solutions based on data

that reflect the position of both individual groups and the general population, as well as to anticipate problems that may arise in the course of the implementation of such policies and develop a strategy to mitigate such problems at the decision-making stage.

The existing situation with the limited use of such consultation may be due to the lack of relevant competencies in ministries and staff that can develop and apply such tools. Conducting surveys, focus groups and research is a complex and time-consuming process that requires special skills in collecting and analysing data and their further interpretation, and therefore requires professionals with expertise in relevant areas. There are no separate units in the existing organizational set-up of the ministries that can deal exclusively with consultation and analysis of the obtained data. Instead, relevant responsibilities constitute an additional load on policymakers with priorities differing from such activities. Relevant forms of consultation may also be rolled out on an outsourcing basis, i.e. by commissioning relevant research from organizations that have the expertise and ability to qualitatively study public opinion or focus on individual target groups. Research, surveys and the use of other tools for indirect consultations require significant financial resources and should therefore be covered from the ministries' budget as part of the decision-making process. Although such stages are an important element of public policy-making and should be used by ministries as part of the decision-making process, funding for such consultation forms is generally not allocated in ministries' budgets. However, there are cases when ministries use existing and available resources to collect various data in the consultation process. For example, the Ministry of Education and Science conducts surveys using publicly available tools, such as Google forms, which are user-friendly and make it possible to easily save the answers and use them for further analysis.

NUMBER OF INDIRECT CONSULTATIONS



* TOT — temporarily occupied territories of Ukraine

These data show that public consultation is primarily perceived as a form of direct interaction with the general public. However, the possibilities of indirect consultation, which offer many advantages and are an important source of data for decision-making and especially for drafting strategic changes or implementing reforms that are usually comprehensive and require the alignment of a large number of interests and positions, are significantly underutilized.

4. DOES THE VOICE OF THE PUBLIC MATTER: INDICATORS OF INCLUDED PROPOSALS

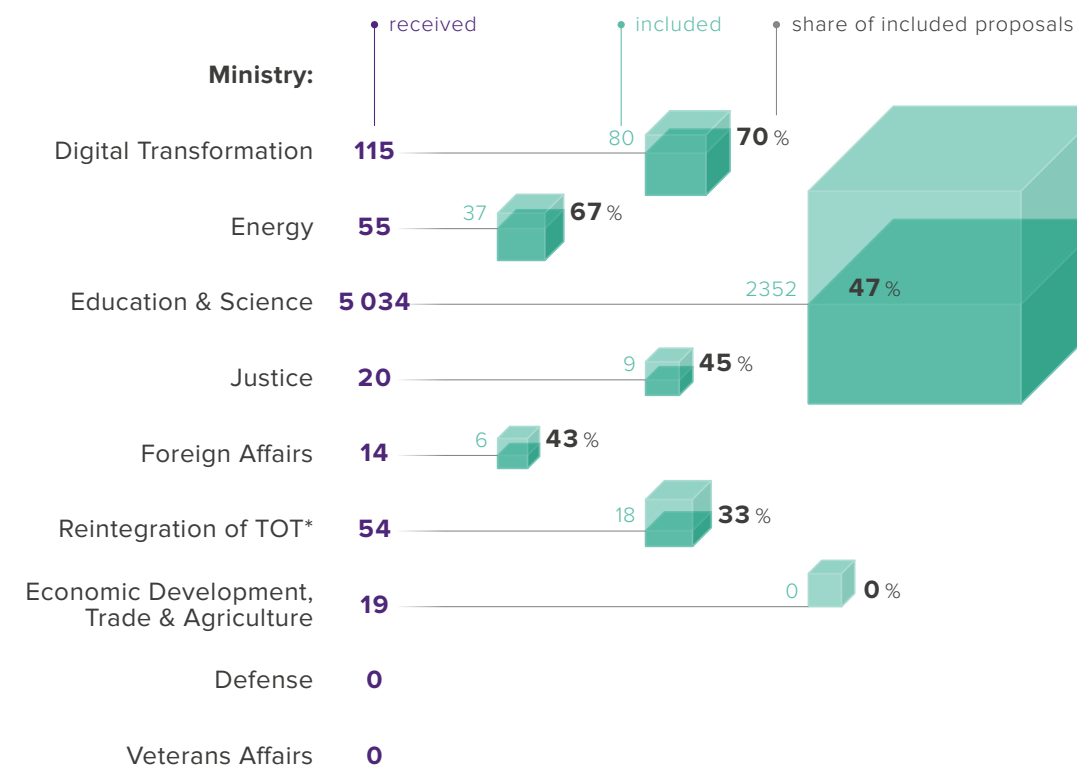
To assess the effectiveness of public consultation as a mechanism for involving the general public in the decision-making process, it is important to analyse not only the number of consultations (as this value does not necessarily indicate the actual policy-making impact), but also the share of proposals reflected in the decisions taken.

First of all, it has to be noted that such data could be analysed only for a limited number of ministries, because, in most cases, the resulting consultation reports are published in an inappropriate format or not published at all, which makes it impossible to analyse. Despite the provisions of the Resolution, which contain a clear requirement to publish reports containing information on each individual proposal with its status (included / rejected) and the relevant rationale, in most cases, such reports may not be obtained even in response to an information request.

Among the six ministries, for which information is available, the indicator of proposals accepted in the aftermath of consultation is more than **30%**, in two cases — more than **60%**. This indicates that the general public has real tools to impact and represent its interests in decision-making, and the probability of acceptance of their suggestions is quite high. The willingness of such ministries to accommodate submitted proposals is an important step in building confidence in the consultation mechanism and contributes to the active involvement of the general public in the future. Instead, in case of three other ministries, no proposals from the general public or other stakeholders were accepted for the entire period under analysis, which is one and a half years. Moreover, two additional ministries did not receive any proposals during the consultation period, which may indicate a low level of civic involvement or ineffective communication on consultation.

The results show a high share of acceptance of the proposals received by the ministries in the consultation process. This demonstrates the ability of the general public and stakeholders to impact the decision-making and policy development processes. Nevertheless, the preparation of consultation reports and the lack of data, which make it possible to identify such indicator, remain a major challenge. Due to the lack of reports in appropriate formats, the analysis of relevant data was only possible for a few ministries. Meanwhile, available data remain fragmented and do not necessarily reflect the situation across all the ministries.

NUMBER OF PROPOSALS RECEIVED & INCLUDED DURING CONSULTATION



- Communities & Territories Development
 - Culture & Information Policy
 - Environmental Protection & Natural Resources
 - Finance
 - Healthcare
 - Infrastructure
 - Internal Affairs
 - Social Policy
 - Youth & Sports
- no data

* TOT — temporarily occupied territories of Ukraine



BARRIERS & CHALLENGES IN THE CONSULTATION PROCESS

When evaluating public consultations and identifying aspects for improvement, it is important to accommodate objective factors that may be an obstacle for ministries in the process of effective citizen engagement. Having summarized the data obtained during the analysis and interviews, we can identify several factors that challenge the active and proper use of public consultation by ministries as part of their decision-making and policy development processes:

- **Large number of draft decisions subject to consultation:** Ministries are active developers of laws and regulations. They also systematically amend existing regulatory documents. Consultation on each of the draft decisions is a time-consuming process that requires active employee involvement. Due to limited resources, public consultations are often held in a formal manner — through the public notice and comment process where citizens can send proposals by e-mail.
- **Limited financial and organizational capacities:** Most ministries do not have dedicated structural units and officials whose main function is to provide for public consultation activities. Lack of a single focal point, coupled with limited financial resources for public consultation, is a serious obstacle to effective public participation.
- **Lack of will and leadership in citizen engagement:** Ministerial employees may view consultation as an unnecessary step in the process of drafting decisions or an obstacle to their activities. As mentioned earlier, the tasks associated with conducting consultations usually become the responsibility of decision drafters and thus create an additional load for them. Besides, consultations often imply a large number of proposals coming in, many of which have nothing to do with the issue under consideration or cannot be taken into account for objective reasons. This means that unless there is a full understanding of the importance and need for conducting consultations as well as of the benefits they may offer to policymakers, they will be held in a formal manner and with minimal resources.

- **Lack of specialists:** Consultation requires special skills and competencies at all stages — from organization, communication and moderation to the analysis of proposals and preparation of reports. Conducting consultations based on active citizen and stakeholder engagement requires considerable effort and time from professionals who currently combine these tasks with their full-time jobs.

- **Lack of a single platform for e-consultations:** At present, ministries conduct e-consultations using available resources, with preference being given to one-way communication through the collection of proposals by e-mail. This approach can be burdensome for policy agencies as proposals may be repetitive or irrelevant to the issue under consideration, and each comment received requires a separate answer and rationale. Interactive consultation platforms would allow participants to track previous suggestions, express their support for the comments published by other participants and better understand the arguments provided by agencies in their responses. As mentioned earlier, the Ministry of Digital Transformation, together with the Secretariat of the Cabinet of Ministers, is currently developing a single government platform for all ministries. The platform will become a “single entry point” for users. It will help significantly improve the quality of e-consultations and eliminate the aforementioned difficulties by adding such features as commenting, support for previously submitted suggestions and discussions between participants.

- **Time constraints:** Laws and regulations are often drafted within tight timeframes. In situations when “the deadline was yesterday”, there is hardly any time left for proper consultations. Differentiation between drafts that contain conceptual changes or decisions and technical ones that amend internal procedures or bring regulations in line with the new legislation will allow for better prioritization of those drafts that require consultation with a wide range of stakeholders.

KEY CONCLUSIONS & RECOMMENDATIONS

The analysis results show that, despite some progress in conducting consultations and sporadic examples of effective citizen engagement, there are still many systemic gaps in most ministries. The implementation of public consultation as a real tool citizens and stakeholders can use to influence policy development and decision-making can be a complex and time-consuming process that requires considerable attention and efforts from ministries. These recommendations can serve as a basis for identifying the key aspects of consultation to be improved. They can also become the first steps towards building a productive and trusting relationship between policymakers and citizens. The recommendations are as follows:

- 1. Create a dedicated structural unit (or appoint a responsible person) that will have the necessary resources and capabilities to establish and coordinate an effective public consultation process.** Establishing an effective mechanism for public consultation requires appropriate financial and organizational support from the budget. At present, the responsibility for conducting consultations rests mainly with communications and public relations units or with the departments responsible for drafting the decision under consideration. Besides, consultation requires significant efforts, specific competencies and time at all stages: preparation and organization, notification of citizens and stakeholders through various communication channels, preparation of materials on the draft decision and alternative solutions and, most importantly, subsequent analysis of the proposals received and communications on their status. This move is also important to establish a clear responsibility for coordinating and supporting the consultation process and prevent the “scattering” of functions between different departments and professionals.
- 2. Change the approach to electronic consultations by providing opportunities for interaction and discussions between consultation participants and with the organizers**

as opposed to one-way communication. Currently, the most common consultation method is when the ministry places a notice on its website about the possibility of submitting proposals on the draft decision by e-mail within a specified period. Within the OECD conceptual model, this practice borders on information and consultation. However, modern technologies provide a wide array of opportunities for active citizen engagement in policy development and discussion of draft decisions. In addition to only one channel, the ministry’s website, being used to inform the public about consultations, the process itself does not allow stakeholders to actively participate in the discussion and debate about various aspects of the issue under consideration. Another shortcoming of this consultation method is lack of transparency due to lack of feedback from consultation participants and improper communication regarding the inclusion of the relevant proposals. Since users are not able to leave comments on the website and track their status, consultation participants do not really know how many and what kind of suggestions have been made during the discussion process.

- 3. Strengthen relations with relevant civil society organizations that can use their own expertise and provide support in involving other population groups, as well as expand the channels used to notify citizens of consultations.** The analysis of data on consultations and ministerial websites revealed that a good part of consultations are of formal nature and are not really aimed at engaging citizens and stakeholders in the discussion process. This finding is corroborated by the fact that a large number of consultations result in ministries receiving no proposals on the draft documents under discussion. For some ministries, this indicator constitutes **100%** (no proposals have been received during the consultations conducted so far). In addition to the above mentioned gaps in the organization of the consultation process, such a low engagement

rate may be partially conditioned by the use of a limited number of channels to inform citizens about consultations. In general, active engagement in discussions and interaction with the public are key aspects for improving public consultation practices and creating opportunities for citizens to influence decision-making. Communication channels and citizen engagement methods should be defined depending on the target group. Relevant NGOs can facilitate the effective dissemination of information to ensure wide coverage of stakeholders and citizens.

4. Establish a system for preparing proper reports as an important stage in the consultation process and ensure the communication of decisions made to consultation participants. Consultation reports, including information on the participants, the proposals received, acceptance or rejection thereof as well as the resulting decisions, shall be put together and published by the agency conducting consultations. At the same time, practice shows that ministries often do not fully comply with this requirement and do not publish consultation reports or provide only generic information indicating that the proposals received were partially incorporated in the decision-making process. Not only does this approach to reporting constitute a violation of the Resolution, it is also a negative practice in terms of transparency and building public trust in the ministry in general and the consultation mechanism in particular. Communication regarding the acceptance or rejection of proposals, as well as rationale behind such decisions, is key in the consultation process as it allows participants to understand their impact on the formulation of decisions and encourages further participation in policy development and decision-making. When consultation participants do not receive feedback and do not have access to information on the status of their proposals, or there is no explanation for rejection thereof, they do not feel their influence on the decision-making process, which ultimately undermines their trust and reduces their participation in policy development.

Therefore, consultation reports, timely information on the number and status of proposals received and proper explanation of decisions made should be readily available to all consultation participants and other stakeholders in the policy-making process. Currently, there are examples of proper reporting among ministries. For example, the Ministry of Education and Science produces reports that contain the aforementioned information, which significantly boosts the transparency of the process and helps understand the reasons for including or rejecting proposals.

5. Use indirect forms of consultation to collect public opinions and stakeholder positions. Such forms include, inter alia, studies, public opinion polls, questionnaires, focus groups and other forms of interaction with citizens and individual groups, which can help gain insights into their viewpoints and incorporate them in the decision-making process. Although this method of consultation is valuable and provides for effective decision-making based on the information obtained, it is hardly used by ministries. According to the analysis findings, only five ministries used indirect forms of consultation and public opinion polling. The actualization and widespread use of such mechanisms is an important step towards incorporating public opinions and positions of individual groups in the decision-making process, especially in the formulation of strategic documents and policies.

6. Standardize “Public Consultation” sections on ministerial websites and minimize technical barriers to participation in consultations. An important prerequisite for active citizen participation is the accessibility and clarity of opportunities for participation in decision-making. This means, in particular, that information should be easily accessible, the essence of the proposed decisions and alternative solutions should be clearly defined, and participation in the discussion should not require installing special software. The analysis of the ministries’ websites shows that navigation and search of

information on the draft decisions under discussion pose a challenge for the average citizen. First, there is no single approach to naming this section on the websites, which makes it difficult to find relevant information. Second, it is typical for documents to be published in a format that is not supported by the most common user programs, making it difficult to access information. Thirdly, in some cases, participation in e-consultations is possible only through Facebook authorization, which restricts the participation of citizens who do not use this social network or do not want to use this method of verification for other reasons. Therefore, it is crucial that ministries use the heading “Public Consultation”, as stipulated by Paragraph 5 of the Resolution, and place the relevant section on the homepage to facilitate information search. In addition, it is important to carefully check the accessibility of attached documents and files and avoid barriers to participation in consultations by creating only one user authorization option (instead, several options should be offered). The implementation of a single centralized government platform, which is already under development, will be an important step in changing the approach to e-consultation and will significantly improve the quality of citizen engagement and electronic consultation. Such a platform will be a “single entry point” for citizens who want to partake in the formulation of decisions and will facilitate information search as it will not require visiting the websites of different ministries.

7. Expand forms of consultation, including the use of “live” methods of interaction with citizens and stakeholders. E-consultations dominate among other forms of consultation. They were held three times more often than open public discussions (73% and 20.8% of all the consultations conducted respectively). Given that e-consultations are currently conducted in a format that does not allow for real discussion and debate among participants, it is essential to provide more opportunities for public discussions (including online). It is most effec-

tive to hold parallel consultations in various formats on the same issue, which ensures wide coverage and creates diverse opportunities for citizen participation.

8. Extend the consultation timeframe for the development of conceptual and strategic documents. Consultations shall last at least two weeks, as provided for in the Resolution. Although most ministries comply with this requirement, this consultation timeframe may be insufficient for involving all stakeholders in the discussion process. It is paramount that consultations begin as early as possible, which will enable more participants to join in the formulation of decisions or policies, as well as give them enough time to prepare better proposals. Some decisions (technical aspects or issues that require an immediate response) do not require a lengthy consultation process, while draft documents of strategic importance or significant conceptual changes in a particular sector should be subject to a longer consultation process.

9. Elaborate simple and intelligible mechanisms that will enable members of the public to initiate consultations, thus empowering them to participate in agenda-setting. The ability of citizens and civil society organizations to initiate public discussions is an important indicator of citizen-government relations having shifted from information and consultation to active participation. Although this possibility is provided for in Paragraph 7 of the Resolution, only seven ministries held consultations initiated by public councils or other organizations (only four ministries hosted upwards of five consultations of this kind).

In summary of these recommendations, it should be noted that active citizen engagement in the decision-making process offers significant benefits to policymakers in the first place. By reflecting the positions and interests of different population groups in the early stages of document drafting, they can better anticipate potential challenges in the implementation

process, inform target groups on various aspects of the decision, enlist the support of the groups that are key to successful policy implementation and use the expertise of professionals who participate in consultations. Proper consultation is an important prerequisite for developing high-quality decisions and thus avoiding significant changes and amendments once the policy has been approved. This provides for increased efficiency of financial resources and policymakers' efforts by avoiding unnecessary costs in finalizing changes that could have been incorporated through public consultation. The willingness of ministerial representatives to work hard on improving public consultation is a key step towards building productive relations with stakeholders and the public. Citizens in general and

individual interest groups should also be willing to take an active part in consultations, examine draft decisions and formulate policy alternatives or options. Thus, implementing public consultation as a tool of citizen engagement in policy development and decision-making is a long-term process that is contingent on the organizational capacities of public institutions and the maturity of civil society.

"It is beneficial for us to be open."²⁴

"There is no other way than communication and interaction."²⁵

²⁴ Interview with a representative of the Ministry of Education & Science of Ukraine, December 2020.
²⁵ Interview with a representative of the Ministry of Youth & Sports of Ukraine, December 2020.



Public Consultation: Opportunities for Citizens & Government

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