



USAID
FROM THE AMERICAN PEOPLE



MEMORANDUM

From: UNITER Project, Pact Inc.

To: All interested parties

Re: Access to Public Information Legislation Approved by Verkhovna Rada

Date: 17 January 2011

NGOs push for break-through legislation

On 13th of January 2011, after three years of relentless efforts of NGOs, journalists and committed politicians the Verkhovna Rada of Ukraine finally passed the law “On Access to Public Information.” The legislation, formally initiated by MP Andriy Shevchenko (BYUT) grants more rights and freedoms to citizens and organizations in attaining information from government bodies and institutions. Four hundred and eight MPs voted in favor of the Law. As a part of a legislative package, another bill “On changes to some laws on access to information” initiated by MP Olena Bondarenko (PoR) was also approved by four hundred and twelve MPs.

Background:

The draft law “On Access to Public Information” was registered in Verkhovna Rada on July 11th, 2008 and initiated by MP Andriy Shevchenko. Representatives of Center for Political and Legal Reforms, Kharkiv Human Rights Protection Group, Association of Media Lawyers, Media Law Institute, Ukrainian Association of Periodic Press Publishers, Academy of Ukrainian Press were involved in drafting the bill. The law was approved in the first reading already in February 2009 with an overwhelming majority. The high number of votes from across the party-spectrum was a positive signal for future consensual policy-making in Ukraine. In July this year, the consensus around the law was broken during the second reading vote, when only a third of MPs supported its ultimate adoption. In this climate, another parallel legislation began competing watering down the progressive elements of the consensual draft. On 16th of December 2010, Verkhovna Rada planned to review the Law again but due to the peak of the political parties’ conflict it was postponed to early 2011.

The legislation in force before adopting these bills limited the access of the citizens to the public information. Both the governmental bodies with special status and local level authorities could respond to the informational requests within the 30 days but most of the answers for these requests were irrelevant. The new legislations are a crucial step of Ukrainian government’s greater transparency and important mechanism in fighting corruption on different levels of governance.

The legislative course:

As a result of the public pressure created by NGOs and journalists the ruling Party of Region started to cooperate closer with the original BYUT initiators of the Access to Public Information legislation. A working group was formed, which consisted of MPs Andriy Shevchenko, Olena

Bondarenko, Yuriy Miroschnyenko. Importantly, the working group included NGO representatives Maxim Latsyba of the Ukrainian Center for Independent Political Research, Taras Shevchenko of MLI, Roman Golovenko, Institute of Mass Information as well as journalists, such as Yegor Sobolev of Svidomo, a group representing investigative journalists.

The working group agreed on the following terms:

- The group worked on improvement of “Draft Law on Making Some Changes to Some Legal Acts of Ukraine” – a cryptic title on changing the competing legal act, which governs the classification of government information: it regulates the issues regarding the types of information, collection and dissemination of information, and protection of information.
- The group also agreed on the draft of the Law on Access to Information. This law will regulate the realization of the right to access to public information and provides the exact mechanisms how citizens can access the information from government; establishes the creation of the informational unit of government body, which would guarantee the access to public information. The law will be in effect within three months after it is signed by the President.
- It was also decided to bundle these laws and introduce it to the floor simultaneously. With this move, both PoR and the opposition pledge its commitment to the consensus.

On December 9, 2010 the Verkhovna Rada Committee discussed all the pending changes and recommendations. The law was planned to be on the Verkhovna Rada agenda on December 16th but due to the opposition blocking of the Parliament it was rescheduled for the next week. On the 22nd of December both drafts were brought to the floor but due to the absence of opposition as a reaction to the political conflict of the previous week the voting for the law did not happen. The Deputy Speaker of the Rada deferred the vote citing the formal reason that it contradicts the procedures of the Rada. The law was finally approved in the voting on January 13th, 2011.

Civil society’s role:

Access to information is the essence for effective citizen participation in decision making process. The New Citizen platform, which convenes about sixty Ukrainian civil society organizations and about two-hundred activists collaborating with a wide spectrum of the media, were the most prominent supporters of the right to access to public information. In September 2010, the Platform started actively advocating for the draft law when it became clear that it will not be easily approved by Verkhovna Rada. Advocacy activities included mobilizing civil society and media on this issue; personal meetings with different representatives of government; intense media campaign in Ukraine as well as outside of Ukraine; personal appeals to the international institutions; European Parliament and Council of Europe; experts participation in the legislation process.

In particular, the Ukrainian NGOs and media addressed different international institutions through letters, public statements and personal meetings that resulted in including the issue of access to information in the resolution of the European Parliament that was approved on November 25th, 2010.

The issue was raised widely in Ukrainian and foreign media. This included numerous reports in printed media, TV channels, and internet publications.

International organizations, such as the Czech chapter of Transparency International raised the issue of access to information as an anti-corruption legislation. The matter of access to information was also supported by entrepreneurs during protests against the tax code on Maidan in December 2010.

Journalists' involvement also played critical role in negotiations process. As was reported by civil society experts, the behavior of the MPs in the working group has changed significantly when journalists were present at the meetings.

Main terms of the legislation on access to information

The law grants extended access to journalists to report on government activities. It even includes mandatory clauses for government to regularly report on their work without the formal request and opens information on all budget spending.

The access cannot be denied to the information on available budget funds, possession, utilization or controlling of public and communal property, including copies of relevant documents, terms and conditions of receiving such funds or property, names of individuals and legal entities who have received the funds or property.

The law indicates that intentional interference in journalists' professional activities and harassment of journalists for their professional activity or for criticism of officials will result in amenability with the laws of Ukraine.

Classified information does not include income declarations of individuals and their family members who are running for public office or currently has the status of government employee, or public servant of local government of first and second categories.

Every citizen is able to request information from the government, monopolies and businesses that are financed from the state budget. The authorities must reply no later than five days from the day of receiving the request. In cases, when the request is dealing with the information necessary for the protection of life or freedom of an individual, environment, quality of food and household items, accidents, hazards, natural disasters and other emergencies that have occurred or may occur and threaten the security of citizens, the answer must be given no later than 48 hours.

The law "On changes to some laws on access to information" prohibits authorities and their heads to classify the information as secret or confidential by themselves. Classifying documents only possible in accordance with the process described in legislation.

This law allows journalists to freely visit government bodies, unless they applied special restrictions. It also prohibits anybody, even the owners of the media outlets to interfere in journalists professional activities. The media owners can have restrictions only in editorial agreements, agreed by the journalists.

The law will enter into force three month after its publication. It will be published once signed by the President of Ukraine who has publicly promised to do so back in November 2010. Yuriy Miroshnichenko, the representative of the President in the Verkhovna Rada and active member of the working group confirmed that the President aims to sign both laws after they were approved by parliament.

Restrictions:

Even though the law opens more doors it still has some restrictions. For instance, the access to information will be denied if it's in the interest of national security, territorial integrity or public

safety or non disclosure will prevent disorder or crime, protect public health, reputation or rights of other individuals as well as prevent exposure of information received in confidence.

The law specifies that only information may be restricted, not a document. In cases when a document contains information with limited access, the non-restricted information should still be released.

Even after the President of Ukraine signs the bills, it does not automatically mean sound implementation. It is still necessary that the Cabinet of Ministers will be actively involved in implementation. The Cabinet should become the key engine of the implementation process. Every public authority and government body must completely change or restructure their system of processing information, determine the structural unit and contact person responsible for information requests, create a public register of information and post it on their web sites, as well as to publish a new manual on determining the status of information, etc.

Pact's support to civil society efforts to date and the months ahead:

The New Citizen Platform was a key player in ensuring the success of the legislation. Pact, through the USAID-funded Ukraine National Initiatives to Enhance Reforms (UNITER) project assists the NGO Center UA since 2009. It was UNITER's contribution to create the network of prominent local and national level Ukrainian NGOs, to bring together leaders of public opinion and civil society activist. In May 2010, as a result of the strategic planning facilitated with Pact assistance Center UA decided to take the Access to Public Information as the focus of their work for the next year. It was then, when New Citizen members became involved in the campaign.

Henceforth, Pact helped Center UA to emerge as the main convener of the need for access to public information for journalist work. This gave important boost to the success of the New Citizen platform. It included the facilitation and creation in summer 2010 of the Stop Censorship movement that unites media professionals in defending their rights for freedom of speech and access to information. The intensive collaboration New Citizen platform and Stop Censorship movement resulted in the reinforced media attention to the legislative struggle.

UNITER continues to strengthen the New Citizen platform and its allies to proactively engage in policy implementation. Once the President of Ukraine promulgated the bill, the New Citizen platform will act as a safeguard of effective implementation of the new legislation. A series of training of activists as well as government employees of various levels of the executive branch are already in the works. New Citizens are intended to:

- Invite organizations who would like to implement the Law in order to discuss joint plans;
- Initiate a new partnership "For transparent government" that will coordinate the activities of all NGOs and pressure government for implementation of the law;
- Create an expert group, which will start developing draft policies (government decrees), participate in the Cabinet and Ministry on Justice working groups, and prepare methodological recommendations for executive bodies regarding the implementation of the legislation;
- Prepare plan of activities in order to implement reforms "For transparent government";
- Conduct a donor meeting in order to present the action plan and propose them to choose the sphere of interest;
- Select a consultant for every region, who will provide consultations, conduct monitoring and coordinate the activities;

- Create a website for the reform, (<http://gromrady.org.ua/>) where the information regarding every executive body and its activities on reform implementation will be available for public;
- Prepare guidelines for citizens and journalists (in order to avoid misunderstandings); to prepare trainers and training programs; to create the web-page for this purpose;

In sum, with the help of the journalist community, New Citizens will continue conducting a massive information campaign and ensure that the law becomes a regular means of citizen participation in decision-making.