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PASS UKRAINE

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METHODOLOGY HANDBOOK

LEGISLATIVE IMPACT ASSESSMENTS

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CONTENT

IMPLEMENTING ORGANIZATIONS

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The Agency for Legislative Initiatives is a nonprofit research organization that places a particular focus on conducting analytical work, in order to strengthen democratic institutions in Ukraine. The Agency was founded on April 28, 2000, by Alumni of the National University of Kyiv-Mohyla Academy. We have grown, from our formative years, into a leading think tank that has implemented many socially essential projects. We aim to achieve even more vital goals in the future. The mission of The Agency for Legislative Initiatives is to strengthen democratic values and develop political culture. We wish to increase the legal awareness of citizens and politicians and disseminate best international practices. Our mandate is to create effective public institutions, which will go a long way to support the Euro integration vector of Ukraine's development.

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FOREWORD

OLEKSANDR KORNIYENKO, FIRST DEPUTY SPEAKER OF THE VERKHOVNA RADA OF UKRAINE

During the period of martial law, the Verkhovna Rada of Ukraine continued its work as a single legislative body. During the first month from the beginning of the full-scale invasion of Russia, MPs developed proposals and made decisions that primarily concern the economic and social spheres, the direction of defense capability; carried out personnel changes; prioritized directions for the recovery of Ukraine. More than 300 MPs participate in all meetings of the Verkhovna Rada during the martial law period, which indicates the legality of the decisions made[1].

In addition, MPs worked in the direction of parliamentary diplomacy. Among the main issues: the restoration of destroyed cities and critical infrastructure facilities, sources of financing for the restoration of Ukraine, the European perspective of Ukraine and support for reforms, the introduction of sanctions against Russia, the protection and restoration of the cultural heritage of Ukraine, humanitarian aid, the delivery of weapons and military ammunition, communication with international media, parliaments, organizations, about Russia's war crimes and the appropriate response to them.

Parliamentary reform is a particularly important direction that will be able to ensure the recovery of Ukraine. This reform is primarily about the interaction between the legislative and executive branches of power - the Parliament and the Government.

[1] More details about the first month of the war: https://parlament.org.ua/2022/04/04/shho-robila-verhovna-rada-protyagom-misyatsya-vijni/
In what format does the Verkhovna Rada work after a full-scale invasion? | Agency for Lagislative Initiative (parlament.org.ua)

The working group on parliamentary reform has identified 7 problematic issues that need to be resolved in order to strengthen institutional capacity:

1) low quality and excessive number of legislative initiatives, which leads to inefficient use of parliamentary resources

2) inconsistency of the level of institutional capacity of the system of ensuring the work of the Verkhovna Rada of Ukraine with current needs and challenges

3) low level of citizens' awareness of the work of the Verkhovna Rada of Ukraine

4) problems of organizing the work of the Verkhovna Rada of Ukraine caused by the inconsistency of acts of parliamentary law with the Constitution of Ukraine

5) insufficient level of parliamentary control

6) shortcomings of the constitutional structure of the power triangle (Parliament, Government, President)

7) inconsistency of legal and actual parliamentary procedures, which can negatively affect the quality of decisions

Improving the quality of legislative initiatives of MPs and the quality of expert support for draft laws are urgent problems. Their solution requires the following measures: creation of competent structures (parliamentary research service), improvement of requirements for explanatory notes and other accompanying documents (in particular, regarding impact assessment, gender analysis, preparation of post-legislative control plan).

Implementation of legislative impact assessment practice is an effective tool for improving expert and analytical support of draft laws. For MPs who make decisions, the legislative impact assessment document provides an opportunity to understand the consequences of the adoption of the draft law, the impact on social categories and spheres, and is also a mechanism for effective communication during the consideration of the draft law.

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CHAIR OF THE COMMITTEE ON UKRAINE'S INTEGRATION INTO THE EUROPEAN UNION

The gender component in the legislative impact assessment is gradually updated among the members of the committee and structural divisions of the Verkhovna Rada of Ukraine, which conduct a preliminary review of draft laws. Of course, spreading the importance of this component requires more and more systematic work of both state authorities and the public since not all Verkhovna Rada and MPs committees attach significance to gender equality and gender analysis of draft laws.

Research conducted by the Agency for Legislative Initiatives among the secretariat of the Committee on National Security, Defense and Intelligence, the Committee on Law Enforcement, and the Committee on Ukraine's Integration into the European Union shows that, in general, gender analysis of proposals for draft laws proposed for consideration is not a widespread phenomenon. Moreover, some members of the secretariats of the committees suggested that such an analysis is optional but can be carried out only if necessary. Even though the implementation of gender analysis and the affirmation of gender equality are declared goals of Ukraine, as well as prerequisites for Euro-Atlantic and European integration, there is little evidence that such efforts are consistently made in the context of the committees' activities. There is a gap between the state policy enshrined in the documents and its implementation.

This implies, firstly, the need to spread the experience of preparing a legislative impact assessment, which includes gender analysis. Secondly, given the high workload and the insufficient number of personnel in the secretariats of the committees, the most suitable and practical solution is the use of expert knowledge of non-governmental organizations and civil society on gender-related issues. Such synergy will currently contribute to developing quality documents on analyzing the impact of draft laws and support of the public sector.

INTRODUCTION

The aim of this Handbook is to provide Secretariat staff and other officials with a useful tool to help guide their preparation of impact assessments of draft laws brought forward for consideration and decision by MPs of the Verkhovna Rada of Ukraine.

The information contained in this document draws on the training and guidance provided to Secretariat staff of two Rada committees – the Committee on Law Enforcement and the Committee on Ukraine's Integration into the European Union – as part of a professional development opportunity to help strengthen their capacity to prepare such analysis. The purpose behind creating the handbook is to share the experience and knowledge acquired by the staff of these Committees more broadly, so that staff of other Rada committees and the structural units that examine draft laws may also gain a better understanding and ability to prepare good quality analysis of legislative proposals.

The Handbook is structured into four main parts, accompanied by a contextual prologue and epilogue, as well as related appendices.

PROLOGUE — provides a brief overview of the OECD's best-practice Principles that should guide the tools, practices and institutional arrangements that help support a robust law-making system.

PART 1 — "Nature and Value of Legislative Impact Analysis " – describes the concept of impact assessment in legislative and regulatory processes, the importance of impact assessment of draft laws for the legislative process, and international experience of using impact assessment in legislative and regulatory processes.

PART 2 — "Legislative Approval Process, Role of Impact Assessments" – provides a brief overview of the norms of the legislative process in Canada and Ukraine, respectively, the essence and role of accompanying documents, and expert-analytical support of draft laws by the structural divisions of the Verkhovna Rada of Ukraine.

PART 3 — "Legislative Impact Assessment Methodology" – describes Canadian and Ukrainian practices in developing legislative impact assessment methodology, detailing the assessment stages and structural elements for its implementation. Taking into account the experience with preparing and using legislative impact assessments, brief considerations on ensuring efficiency in the assessment process are also presented.

PART 4 — "Gender-Based Analysis – GBA+" – allows readers to familiarize themselves with the essence and role of gender analysis as an analytical process that assesses the impact of draft laws on different groups of men and women, boys and girls.

EPILOGUE — provides a few observations about challenges in the current legislative system of Ukraine that hinder the ability for effective impact assessment, in order to help raise awareness of the consequences they have for effective decision-making.

APPENDICES — this section provides more detailed information ion the methodology of legislative impact assessment (tailored to both the Canadian and Ukrainian contexts), a list of valuable references to sources regarding impact assessment in legislative and regulatory processes, and examples of legislative impact assessment carried out by staff supporting two Verkhovna Rada of Ukraine committees: the Committee on Law Enforcement and the Committee on Ukraine's Integration into the European Union.

oIt is useful to note that the analysis conducted by the Committee on Law Enforcement to the Law "On the Right to Civilian Firearms" was prepared earlier than the legislative impact assessment prepared by the Committee on Integration of Ukraine into the EU to the Law "On Amendments to the Criminal Procedure Code of Ukraine to Improve Activities" joint investigative groups." Accordingly, the evaluation methodology used by the respective committees is somewhat different in structure because over the course of the training and development project, Committee staff adapted and changed the way the methodology is applied to better reflect the Ukrainian context and provide more effective support to Ukrainian decision-makers.

With the support of the project, the committees significantly improved their skills in conducting legislative impact assessments. The feedback from the project expert indicates that the quality of the work carried out by the committees' employees has notably improved. In total, 18 analytical documents were prepared – eight by the Committee on Law Enforcement, and 10 by the Committee on Ukraine's Integration into the EU. The application of the Canadian experience of conducting an impact assessment in Ukraine contributed to a more in-depth study of the problem solved by the legislative initiative, its causes, and as a result, to determine the forecast of the consequences in the event of the adoption of the draft law. The Committee on Law Enforcement and Integration in Ukraine in the EU continues to work with an adapted impact assessment methodology. In the future, it is planned to conduct training, prepare educational materials, and spread this experience to other committees of the Verkhovna Rada of Ukraine.

PROLOGUE

Legislative/Regulatory Impact Analysis – Good Governance Framework

Legislation and regulations are important tools for achieving a government's public policy objectives. As the Organization for Economic Cooperation and Development (OECD) has noted in its work on regulatory policy and governance, the quality of both the regulatory environment and policy outcomes is strongly dependent on the quality of the processes and tools for developing, assessing and approving appropriate policies.

This Handbook is focused primarily on one aspect of a robust law-making system – the principles and practices involved in undertaking high-quality policy analysis of legislative/regulatory proposals. But as important as this is in helping to support well-informed decision-making, it is not sufficient on its own. It needs to be accompanied by appropriate institutional governance arrangements, accountability, and operational capacity.

The OECD has established a set of best practice Principles that are intended to help guide policymakers, civil servants, and other public sector practitioners in developing an overall Regulatory Impact Assessment[2] (RIA) system of governance. It notes that if used systematically and as a government-wide approach, RIA provides a critical tool that can help ensure greater quality of government legislative/regulatory intervention. The Principles cover the range of institutional organizations' tools and practices that support a working RIA system, and are organized according to five topics:

1. Political commitment and buy-in for using RIA to support the decision-making process;

2. Appropriate governance arrangements that integrate RIA into a country's legal and administrative system and decision-making culture, and encourage Parliaments to establish procedures to improve the quality of legislation;

3. Strengthening the capacity and accountability of public administration through the availability of detailed guidance material, adequate training on RIA analysis for public servants, and limited exceptions to a general requirement for RIA analysis of all regulatory proposals;

4. Targeted and appropriate RIA methodology that is as simple and flexible as possible, supported by sound data strategies, and adapted to the needs of decision-makers;

5. Continuous monitoring, evaluation, and improvement of laws/regulations after implementation to validate the real impacts of adopted laws and regulations after their implementation.

[2] The OECD uses the term "Regulation" as a general term covering both primary legislation (statutes) as well as secondary legislation (implementing regulations).

PART 1

Nature and Value of Legislative Impact Analysis

1.1. IMPACT ASSESSMENTS IN THE LEGISLATIVE & REGULATORY PROCESS

Since laws (or government policy action in general) are enacted with a stated objective and expected outcome, assessing how the law (or other policy action) will achieve the objective is an important part of legislative scrutiny. Simply defined, "Impact Assessment" (IA) is the structured process through which the future consequences and likely impacts of a proposed course of action can be identified and judged before the measure is put into place. IAs are a common feature of the policy development process for many governments worldwide, used as a formal, evidence-based procedure that assesses the effects of public policy action. It can also serve as a tool to help improve public transparency in decision-making.

As an analytical tool, an impact assessment can be applied in a variety of different circumstances, whether the need is to assess a new economic/social policy initiative, an administrative program delivery measure, or a legislative/regulatory change. For the purpose of this Handbook, the term Legislative Impact Assessment (LIA) will be used to refer to a structured approach for critically assessing the need for an identified government intervention in the form of a proposed legislative measure (i.e. a draft law).

The essential value of an impact assessment lies in its ability to help elected officials judge whether a proposed measure is fully developed and appropriate to the circumstances, and will actually achieve the intended objective. This analytical tool is particularly important in those situations where a measure is proposed with very little accompanying information or justification (or where the supporting material is very technical in nature). The aim of the LIA is therefore to help ensure that Parliamentarians and Government Ministers can be confident that they have the information, analysis, and clarity they need to make well-informed, evidence-based decisions.

The focus and form of impact assessments often vary in nature and structure, depending on the issue being addressed and how the assessment is used in supporting the decision-making process.

- → In some cases, elected decision-makers are looking for analysis and advice on options for how best to address a given situation;
- → In other situations, elected decision-makers may simply be looking for an assessment of a proposal that has been suggested for action.

In either case, an LIA provides a structured way of comprehensively analyzing a situation. In general, such assessments almost always comprise three main elements:

→ **Context Analysis/Problem Definition** — What is the nature of the issue, is there a need to act?

→ **Purpose/Policy Objective** — What is the proposed course of action and why?

→ **Expected Impact** — What is the effect of the proposed action, what will it take to make it work?

How these elements are organized into an overall Impact Assessment piece will depend largely on the analysis that decision-makers would find most useful for supporting their decision-making process. What this means in practice will be explained in more detail in subsequent sections of this Handbook. What is important to note is that there is considerable flexibility in how an Impact Assessment can be structured and focused to be of greatest use to decision-makers; policy analysts should therefore feel comfortable in adapting the elements described above to suit their specific circumstance.

1.2. OECD BEST PRACTICES FOR DEVELOPING REGULATORY IMPACT ASSESSMENTS[3]

Evidence-based policymaking is a well-understood and accepted tenet of good governance. Policies and/or regulations should be always based on the best available information, data, analysis and scientific expertise and take into account all potential alternative solutions to a problem. However, government interventions, whether they are a policy, law, regulation, or other type of "rule", do not always fully consider their likely effects at the time of their development. In addition, government intervention has costs, and there might be cases where those costs might outweigh the anticipated benefits. As a result, there are many instances of unintended consequences and ultimately negative impacts for citizens, businesses and society as a whole that essentially result from badly designed interventions, and could be avoided.

Regulatory Impact Assessment (RIA) (also commonly referred to as Legislative Impact Assessment, or LIA) provides decision-makers with crucial information on whether and how to regulate to achieve public policy goals. It can help policymakers defend decisions not to intervene in markets where the costs of doing so outweigh the benefits, as well as help them to defend decisions by demonstrating that there are benefits to regulation – something that is often overlooked by society and governments.

In order for an impact assessment to be a relevant and useful part of a country's decision-making process, the RIA/LIA methodology should be as simple and flexible as possible while ensuring key features are covered. That said, the OECD has

[3] This section is adapted from the OECD (2020), Regulatory Impact Assessment, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, https://doi.org/10.1787/7a9638cb-en.

identified what it considers to be the best practice elements that should form part of an effective RIA/LIA:

- → **Problem definition** — a description of the nature and extent of the problem to be addressed by the regulatory proposal, preferably in quantitative terms;
- → **Objective** — a clear statement of the policy objective(s) and goal(s) of the regulatory proposal;
- → **Description of the regulatory proposal** — a description of both the existing regulatory framework and the proposed measure, identifying administrative bodies and institutions responsible for drafting, implementing and enforcing the proposal, and outlining the enforcement regime and proposed strategy for ensuring compliance;
- → **Identification of alternatives** — a list of practical alternatives, including any non-regulatory approaches considered as potential solution of the identified problem;
- → **Analysis of benefit and costs** — a clear description of the benefits and costs expected from the proposed approach and possible alternatives; insights from behavioral science and economics should be considered, as appropriate;
- → **Identification of the preferred solution** — an assessment of how and in what ways the identified regulatory proposal is superior to the alternatives that were considered;
- → **Implementation considerations** — the development of enforcement and compliance strategies should be included as part of the analysis;
- → **Monitoring and evaluation framework** — a description of how the performance of the regulation will be evaluated after implementation (identifying the necessary data requirements to conduct this evaluation).

As a final point, it is worth noting that an RIA/LIA should always be undertaken at the inception phase of the regulation-making/law-making process, be based on all available evidence and scientific expertise, be developed transparently with stakeholders, and have the results clearly communicated.

PART 2

Legislative Approval Process, Role of Impact Assessments

As noted in section 1.1 of this Handbook, a well-structured Legislative Impact Assessment will examine the context that has created pressure to act, what could be done and the impact that a proposed course of action will have. However, how this analysis is structured to be of most use to decision-makers will often depend on where and how it is used in the overall decision-making process. This largely depends on how a country's overall policy development and decision-making process is structured and governed. The following sections briefly outline how the overall process for statutory development and approval is managed in situations where it is either the Executive Branch or the Legislative Branch of Government, respectively, that has the lead governance role and how legislative impact assessments come into play as part of these processes.

2.1. LEGISLATIVE DECISION-MAKING – EXECUTIVE BRANCH LEAD

In some Parliamentary systems, it is the Executive Branch of Government that plays the lead role in initiating and steering legislative proposals through the parliamentary approval process. Canada is a good example of this model. Almost all substantive draft laws that ultimately receive approval in Parliament are developed and brought forward for consideration by the Minister responsible for the issue at hand. Once an issue of concern is identified, departmental officials (public servants) undertake appropriate research and impact analysis to identify a possible course of action for Ministerial consideration. This analysis often compares a proposed approach with alternative options to determine which approach would produce the best result, and identifies possible consequences/effects (positive and negative) and potential shortcomings. The responsible Minister then uses the Impact Analysis to decide upon a preferred course of action and then takes the proposal forward to the Prime Minister and Cabinet to seek their approval to introduce the draft law into Parliament for approval by the Legislative Branch.

In the Canadian model, it is also possible for members of the Legislative Branch of Government (Parliament) to initiate and introduce draft laws – so-called "Private Member Bills". While there may be many such draft laws tabled for consideration during a Parliamentary session, the number that actually proceeds through the Parliamentary approval process are usually limited in number and almost always ultimately need the support of the Executive Branch if they are to get the traction necessary to obtain approval. This is not to say that the Legislative Branch does not have an important role to play in the public policy and statutory development process. Quite the contrary. Often it is elected Parliamentarians who identify and raise public awareness about important issues, in the hope of spurring the Government to consider and develop an appropriate policy response.

Within this overall process, it is the legislative impact assessment work done by public servants that helps ensure that Government Ministers – and ultimately Parliamentarians – can be confident that they are well informed about the issues that are relevant for the proposed statutory change as they consider their approval. Overall, this LIA

analysis helps ensure that Parliament's time and effort can be focused on scrutinizing proposals that are rigorous in their development, important enough to act on, and have a strong likelihood of approval and passage into law.

STATUTORY DEVELOPMENT AND APPROVAL PROCESS – CANADA

EXECUTIVE BRANCH

1. Identification/adoption of issue by the Executive Branch (usually the responsible Department)
2. Responsible Department undertakes assessment of the issue, identification of potential action

- **a.** Detailed legislative impact assessment (LIA)
- **b.** Often includes public consultations

3. Responsible Minister seeks Cabinet approval for proposed action

- **a.** Approval in principle of approach, legislative drafting instructions

4. Legislative drafting commences

- **a.** a.Departmental officials and Department of Justice legal drafters jointly write the draft Bill
- **b.** Draft Bill is reviewed with sponsoring/responsible Minister

LEGISLATIVE BRANCH

5. Draft Bill introduced into Parliament

- **a.** Introduction to House of Commons -- First Reading vote
- **b.** Preliminary debate and Second Reading vote to refer Bill to relevant Standing Committee for review
- **c.** Standing Committee conducts detailed review/scrutiny
  - **i.** Testimony from Departmental officials to explain proposal
  - **ii.** Public hearings, witnesses
- **d.** Potential amendments identified, debated, possibly made to Bill
- **e.** Standing Committee refers the Bill back to House

6. Third Reading vote for approval by House of Commons

7. Consideration and passage by the Senate

8. Royal Assent and enactment of the Bill

2.2. LEGISLATIVE DECISION-MAKING – LEGISLATIVE BRANCH LEAD

In other Parliamentary systems, it is the Legislative Branch of Government that plays the lead role in initiating and steering legislative proposals through the parliamentary approval process. Ukraine is a good example of this model. This subsection outlines the usual procedure for the consideration and adoption of draft laws in the Verkhovna Rada of Ukraine and general information about subjects involved in the legislative process at various stages, from the registration of a draft law to the adoption of a decision on it. The analysis of norms and practices is based on a review of the legislative procedure without considering the description of the budget process and amendments to the Constitution of Ukraine. The text does not include information about the peculiarities of the legislative process during the period of martial law in Ukraine.

2.2.1. LEGISLATIVE ENTITIES AND THEIR ROLES

The only legislative body in Ukraine is the Verkhovna Rada of Ukraine. MPs consider and adopt laws by a majority from their constitutional composition. The constitutional composition of the Verkhovna Rada of Ukraine is 450 MPs[4].

MPs, the Government, and the President can all be initiators of legislative proposals – that is, they can develop and submit draft laws to the Parliament. Together with the text of the draft law, they prepare accompanying documents, which are mandatory for the registration of the draft law. (The accompanying documents and their role in the legislative process will be described in more detail in the next section.)

For any draft law, the **main committee** is identified based on the subject matter of the legislative proposal. The identified main committee is responsible for managing the direction of legislative work for the draft law – from the beginning of its registration, through preliminary analysis and preparation of the proposal for consideration in the Verkhovna Rada, to the stage of making a final decision on the proposal. In total, 23 Verkhovna Rada of the IX convocation committees are responsible for covering the full range of policy issues that could be brought forward for consideration. For example, if the draft law concerns the issue of civilian weapons, then it would be assigned to the Committee on Law Enforcement activities (which takes care of this issue). All further work associated with the proposal would then be carried out at the meetings of this Committee – finalization of the work, discussion of the proposal among Committee members, and providing conclusions for consideration by the full Verkhovna Rada based on the recommendations of other structural units, committees, and the public.

[4] As of today, the number of MPs is 420, in connection with the temporary occupation of the territories of Crimea, Sevastopol and certain districts of Donetsk and Luhansk regions

At the stage of preliminary analysis of draft laws, the cooperation of the public, scientific institutions, subject-matter experts, and the Parliament is important. Committees have tools that allow for feedback in drafting bills: a public discussion portal, roundtable sessions, committee hearings, and working groups. The effectiveness of working groups with the involvement of subject-matter specialists can be quite varied, depending on the composition of the group, the organization of the work process of these groups, the professional potential of the group's composition, and, in general, the willingness of the committee members to cooperate with the public.

Committees on the Budget, Anti-corruption Policy, and Ukraine's Integration into the European Union also carry out mandatory preliminary consideration of draft laws (for those aspects of the proposal that are relevant to their area of responsibility) and prepare a conclusion on the expediency of including the draft law on the agenda.

→ The **Budget** Committee examines the impact of the draft law on budget indicators and compliance with laws regulating budgetary relations.

→ The Committee on Ukraine's **Integration** into the European Union assesses the conformity of the draft law with the Association Agreement between Ukraine and the EU and other international legal obligations.

→ And the **Anti-corruption** Policy Committee reviews the proposal's compliance with anti-corruption legislation and absence of corruption factors.

The assessments of these Committees are provided back to the main committee, which in turn incorporates this information as part of its overall conclusions regarding the inclusion of the draft law on the agenda.

In addition, each registered draft law at each stage of the law-making process undergoes a further separate examination and analysis to check the relevance and quality (primarily technical and legal) of its provisions before a final decision can be taken on its adoption. **The process of preliminary analysis and examination of draft laws is important for screening out low-quality (or unnecessary) draft laws and, thus, preserving the resources of the Verkhovna Rada of Ukraine and making effective decisions.** This analysis is carried out by two important structural subdivisions of the Verkhovna Rada – the Main Scientific and Expert Department and the Main Legal Department.

→ The Main **Scientific and Expert** Department examines all draft laws submitted to the Parliament before the first reading to assess them at a conceptual level: legal basis, economic and social expediency, compliance with the Constitution of Ukraine and international treaties, and compliance with the principles of state policy. The conclusions of this analysis are sent to the main committee.

→ In preparation for the second and third reading of a draft law in the Rada, the draft law undergoes a legal examination at the Main **Legal** Department. This Department analyzes the provisions of the draft law regarding compliance with clear legal terms and with legal norms. The conclusions of this work are also sent to the main committee.

Finally, other specialists from relevant Central Bodies of Executive Power, the public, and the scientific community may be involved in the analysis of draft laws. This is not a mandatory norm, but committees, when processing draft laws, often request expertise from outside (most often from Central Bodies of Executive Power and scientific institutions, sometimes from specialized public organizations and international organizations).

2.2.2. DRAFT LAW APPROVAL – STAGES IN THE PROCESS

In order for a draft law to acquire the status of law in Ukraine, it must go through several preparatory stages before being considered and voted on by MPs, each of which may involve different timeframes:

→ Before registering the draft law in the Apparatus of the Verkhovna Rada of Ukraine, the initiators prepare the text of the draft law together with accompanying documents.

→ If the draft law complies with the norms of the Rules of Procedure (Regulations of the Verkhovna Rada of Ukraine) – importantly, that the documents specified for registration are provided with the draft law – then the Apparatus of the Verkhovna Rada registers the draft law and places it on the official website of the Verkhovna Rada.

→ After the draft law is registered, work on its development begins. First, within 5 days must be sent to the main committee, as well as to the committee on the budget, anti-corruption policy, and integration of Ukraine into the EU. Then, the main committee compiles the conclusions of these committees and, based on them, formulates its proposals within 30 days regarding the practicality of including the draft law on the agenda.

→ However, other committees, on their own initiative or at the request of the main committee, can send their proposals. If the committees have not submitted their recommendations within 21 days from the date of receipt of the draft law, the main committee adopts its conclusions without them.

→ If the draft law is registered and included in the agenda, then before first reading in the Verkhovna Rada, it is sent to the Main Scientific and Expert Department for scientific examination[5].

[5] At this stage, the employees of the main committee prepare a document on the legislative impact assessment, which together with the conclusions of the Main Scientific and Expert Department, is submitted to the members of the committee for review. As part of the "Parliamentary Accountability of the Security Sector of Ukraine" project, a pilot launch of this initiative was conducted among the Committee on Law Enforcement and the Committee on Ukraine's EU Integration.

The stage at which a draft law is considered by MPs in the Verkhovna Rada of Ukraine is one of the most important in the law-making process, because the fate of the draft law depends on its outcome – it can be rejected, sent for revision or acquire the status of an official normative Act. According to the Rules of Procedure, all draft laws must, as a rule, be considered through a procedure of three readings.

1. In the first reading, there is a discussion of the main provisions, the structure of the draft law, and its probable adoption. MPs consider the draft law, taking into account the conclusions of the main committee and the Main Scientific and Expert Department. They also listen to the reports of the draft law's initiator and the main committee's representative, as well as speeches from other MPs. Based on this information, they make their decision, which can be: 1) adopting the draft law in its current form and preparing it for the second reading; 2) returning the draft law for revision to prepare for a repeated first reading; 3) publishing the draft law for public discussion and resubmission for the first reading; or 4) rejection of the draft law.

2. In the second reading, a paragraph-by-paragraph discussion of the draft law takes place. If the draft law is accepted in the first reading for potential approval, proposals are made to its individual points within 14 days. Before the second reading, the draft law's text undergoes a legal examination in the Main Legal Department, whose conclusions are taken into account by the main committee when preparing the bill for the second reading. According to the consequences of the discussion at this stage, MPs make a decision on the draft law: 1) accept it as a whole; 2) adopt the draft law in the 2nd reading and prepare it for the 3rd reading; 3) adopt the draft law in the 2nd reading except for certain sections or articles, subject then to re-submission of the draft law for a second reading; 4) return the bill to the main committee for revision with a submission for a second reading, or 5) reject the draft law.

3. The third reading is the final decision-making stage on any draft laws that needs to be revised. Amendments to draft laws that are being prepared for the third reading are made within five days after their adoption in the second reading. At this stage, amendments are only made in the case of inconsistency between structural elements or parts of the draft law, but without changing its content. After the third reading, MPs can make the following decisions: 1) adopt the law as a whole and send it to the President for signature; 2) approve the text of the draft law as a whole and submit it to an all-Ukrainian referendum; 3) postpone voting on the draft law as a whole or 4) reject the draft law.

If the majority of MPs vote for the draft law, it is signed by the Chairman of the Verkhovna Rada of Ukraine and forwarded to the President for signature. The president then has 15 days to sign the law or return it with his proposals for reconsideration. If the President has signed the law, its text is published in official publications and on

the website of the Verkhovna Rada of Ukraine. Then the law is considered to have entered into force.

The periods from registration to adopting the draft law are different, depending on factors such as the specifics of the draft law, the field to which it relates, its structure and scope, the quality of the presentation of the provisions, etc. At the plenary session, those draft laws included on the session's agenda are usually considered. However, an exception may be the adoption of a procedural decision, in which case a draft law that needs to be considered urgently is included in the agenda, because it is important in the context of certain social events.

2.2.3. SUPPORTING DOCUMENTS IN THE LEGISLATIVE PROCESS

As noted in the previous subsections, many important documents and assessments accompany a draft law and are integral to the process of consideration and approval by MPs. The purpose of this subsection is to focus on the role and structure of two additional documents that are equally important in the decision-making process – the **explanatory note** that must accompany a proposed draft law, and the **legislative impact assessment** document prepared by Secretariat staff that is provided to Committee members before the draft law is considered at the main committee meeting.

The **explanatory note** is an accompanying document that is mandatory for draft laws. Its purpose is to provide a summary of the main provisions of the draft law, described in a way that is understandable by non-experts, in order to help MPs and others familiarize themselves with the proposal in a short period of time. It also serves as a communication tool for explaining the proposed legislative activity in a way that contributes to receiving more meaningful feedback in the process of consultations and preparation of the draft law for adoption. Specifically, it should contain the following information:

- → justification of the problem and its causes, which will serve as an argument for the need to adopt the draft law;
- → the purpose of the draft law (that is, the result that is planned to be achieved);
- → a summary of the main provisions of the draft law;
- → legislative acts that regulate the relevant field (in order to understand the reasons for drafting the draft law);
- → the position of stakeholders (both state and non-state) regarding the draft law;

→ financial and economic justification (if changes in the budget are foreseen - calculations are submitted; if they are not foreseen - this is indicated in the explanatory note); and

→ expected consequences of the draft law (legal, social, economic, etc., probable risks in case of adoption or rejection of the draft law).

The **legislative impact assessment** (LIA) document is aimed at analyzing the draft law from the point of view of its implementation, impact on various social groups, consequences and risks in case of its adoption or rejection by the members of the Verkhovna Rada. The assessment is prepared by employees of the Secretariat of the main Committee which is responsible for the subject of the draft law, and it is provided to Committee members in advance of their deliberation of the issue. As noted earlier in this document, this LIA analysis helps facilitate more effective decision-making and is a tool with well-defined criteria for predicting the likely consequences of a proposed legal mechanism. The specific structure and issues to address in these LIAs in the Ukrainian context will be discussed in more detail in subsection 3.2.

PART 3

Legislative Impact Assessment Methodology

As noted earlier in this document, the purpose of this Handbook is to provide an organized framework for structuring and undertaking an impact assessment of a policy proposal (statutory or regulatory action, program measure or administrative arrangement). The approach is based on the premise that if a decision-maker understands up-front **what** the issue of concern is and **why** it is a concern, they can better assess the evidence that is presented and the arguments/considerations made for taking action. There are different ways to organize such analyses, depending on the nature of the issue at hand, the kind of information needed by decision-makers and the role that public servant analysts/Secretariat staff have in supporting the decision-making process. In general, these impact assessments almost always comprise three main elements:

01

Problem Definition/Context

What is the nature of the issue? Why is there need to act?

02

Policy Rationale/Purpose

What should be done, and how?

03

Impact Analysis

What is the effect of the proposed action? What will it take to make it work?

The following two sections provide alternative methodology templates designed to help guide the development of an overall Impact Assessment. As you will see, the organizing structure and guiding questions involving these three main components vary according to when the impact analysis is undertaken in the overall decision process and the kind of role that the analyst plays in supporting decision-makers. What is important to keep in mind is that there is considerable flexibility in how an Impact Assessment can be structured and focused on being of greatest use to decision-makers. Accordingly, policy analysts should feel comfortable in adapting the elements described in the following sections to suit their specific circumstance.

3.1. GENERAL PRACTICE WHERE THE EXECUTIVE BRANCH LEADS – CANADA

As noted in Part 1 of this Handbook, in Canada it is the Executive Branch and associated administrative Departments (e.g., Department of Agriculture, Department of Public Safety, etc.) that have lead responsibility for identifying policy or legislative action needed to address emerging issues or advance the Government's policy agenda. Impact assessments are used extensively in the policy development and decision-making process, whether it is for legislative proposals that are to be brought before Parliament for approval or for public policy/administrative measures that are decided by the Executive Branch. These assessments are almost always developed and used **early** in the decision-making process, to help guide the consideration of options and the development of a potential course of action.

The public servants who work in the various Departments have two main roles – firstly, to **administer** the operational programs, laws and regulations in their Department's area of responsibility; and secondly, to serve as a subject-matter **expert** and policy **advisor** on those issues in support of their responsible Minister. This latter role entails two broad responsibilities:

→ monitoring developments and emerging issues that affect their area of responsibility, and assessing whether there is a need to take action;

→ responding to their Minister's request for advice on how best to take action on an identified policy idea.

In this context, the policy analyst has an important role to play in helping to ensure that Ministers have a clear understanding of the issues at play for a given issue, and the implications of possible ways of taking action (or not). In this way, Ministers can have some assurance that they are in a position to make an informed decision. An Impact Assessment is a critical tool in helping to achieve this, and it would typically involve the following logic flow:

1. The analyst would typically begin by identifying and analyzing the various factors that have given rise to the issue at hand. This may be thought of as the "**problem definition**" stage of the overall assessment process;

2. From this, the analyst would then develop a judgment on whether there is a need to act, and if so, identify the desired outcome with options on how best to proceed ("**policy rationale**");

3. Finally, the analyst would provide a detailed assessment of the expected effects and implications of the proposed action, along with considerations regarding implementation ("**impact analysis**").

Let's look at these three main component pieces in a little more detail. (See Appendix A2 for a more detailed template of such an assessment).

3.1.1. PROBLEM DEFINITION

The first point of analysis in an overall Impact Assessment is the problem definition itself – is there something that needs to be done, and why.

The intent here is to get a good understanding of the issue of concern and factors at play, to help assess whether and how to react. This is important because often there can be an inherent tendency to push quickly to a prescribed course of action based on a presumed understanding of the evidence. Elaborating the problematique more fully can helpfully shape the policy direction to pursue. Accordingly, the analysis would look at the context in which the issue has arisen, aiming to identify the causal factors of the issue, not just the observable symptoms. It also tries to identify the factors that would make the situation untenable without taking the policy or legislative action, and whether there have been past efforts to address the issue.

3.1.2. POLICY OBJECTIVE/GOAL

The next step of the analysis would then aim to identify how the issue will be addressed and the desired outcome from taking action.

The objective here is not to specify the main provisions of the proposed action (that will come in the subsequent impact analysis section), but rather to describe the outcome/result that is to be achieved. It is important to be as clear and specific as possible in specifying the desired outcome of taking action, for this will help in formulating an appropriate and effective policy measure and will also provide a basis for subsequently assessing the success (or failure) of the measure (and judging whether adjustments are needed). A best practice for achieving clarity in defining the desired outcome is to specify the objective using so-called "S.M.A.R.T." parameters:

Specific – is the objective clear and well-defined;

Measurable – is there a clear, specified indicator that shows progress towards the objective;

Achievable – can the desired outcome be achieved with reasonable action;

Realistic/Relevant – will the proposed action actually address the issue; and

Timeliness – is there a clear target date for the result, is it reasonable.

This part of the overall Assessment also typically looks at the question of instrument choice for addressing the issue. This involves determining whether the issue should be addressed through an administrative arrangement of some sort (policy measure or operational delivery response) or whether statutory action is necessary. It would also assess whether it is necessary to create a new policy program or a legislative measure, or whether adjustments to existing programs/statutes can achieve the desired outcome. The aim is to identify an approach this is expected to be most effective.

3.1.3. IMPACT ANALYSIS

With clarity on the above two issues, the overall Impact Assessment would then turn to focus on assessing the expected results and implications of implementing the proposed policy action.

The aim here is to assess how well the proposed approach will work, and what it will take to make it effective. This analysis typically entails a wide array of factors intended to evaluate not only the desired/intended impact of the proposed measure, but also to assess its potential indirect consequences and administrative considerations. While the specific elements of this analysis may vary from case to case, a robust impact assessment would typically cover the following factors:

→ Identification of possible **options** for action – this would include not only a description of the preferred/recommended approach, but would also highlight the implications of not taking action and identify possible alternative courses of action.

→ Assessment of **expected results** – this would look at whether the measure's impact is reasonable and proportionate to the issue being addressed, assess uncertainties and risks that might influence the proposed approach, and try to identify the likelihood of unintended consequences (and possible mitigating actions).

→ Implications for **affected groups** – this would identify the impact on the group targeted by the proposed measure, and their anticipated reaction to the measure. The analysis would also look at whether the proposed measure could have collateral impacts on other groups, and if so, whether this is of concern and how it could be mitigated.

- This part of the assessment now also typically involves a thorough gender-based analysis (GBA+) – an analytical process that assesses the extent to which a proposed measure can have unintended differential impacts and results on people depending on their gender and other identity features, such as race, ethnicity, religion, age, sexual orientation, etc. The aim is to recognize and break down systemic barriers in policy development. (Details on this analytical process can be found in Part 4 of this Handbook).

- Implications for **jurisdictional authority** – in some cases, the issue of concern has implications for other jurisdictions, either sub-nationally or internationally, and there may be issues of shared responsibility. The aim here is to flag such connections and identify how they should be addressed in the proposed course of action.

- For a statutory measure, the analysis would look at the question of **statutory consistency**, identifying whether the proposed draft law would give rise to the need to make consequential amendments to other existing statutes.

- **Enactment** and **enforcement** provisions – does the responsible authority have the capacity and powers to implement and enforce the proposed action, and will the general public be willing/likely to comply with the measure.

3.2. GENERAL PRACTICE WHERE THE LEGISLATIVE BRANCH LEADS – UKRAINE

In Ukraine, it is members of the Legislative Branch of government (the Verkhovna Rada) who typically take the lead in initiating new statutory measures for the consideration and approval of Parliament. The approval process involves a review of the draft legislative proposal by select Committees of Rada members, who in turn are supported in this review process by Secretariat Staff (analysts) who are assigned to each Committee.

In this context, the role of Secretariat Staff is to provide analytical support (and sometimes advice) to Committee members in order to help them better understand what is being proposed in a given draft law, why it is being brought forward for approval, and whether it is fully formulated in terms of its expected impact and implications. In this case, the structure of a Legislative Impact Analysis (LIA) would be somewhat different than was described for the Canadian context in order to be most useful to Rada decision-makers. What is important to note here is that the impact assessment is being prepared after a potential solution to an identified problem has been proposed, and the analyst is being asked to provide insight into the appropriateness of the proposed course of action. Accordingly, a typical LIA would usefully be structured as follows:

1. The impact assessment should start with a clear description of what is being proposed and why it is deemed to be necessary ("**policy rationale/purpose**");

2. This would be followed by a relatively succinct analysis of the key features of the issue at hand ("**context**"), identifying the activities of concern, who is affected and how, the practices of other jurisdictions, etc.;

3. Finally, the bulk of the overall analysis would then focus on an "**impact analysis**" that examines the features of the proposed action in terms of expected results and implementation considerations.

Let's look at these three main component pieces in a little more detail. (See Annex A3 for a more detailed description of such a Legislative Impact Assessment).

3.2.1. PURPOSE/POLICY RATIONALE

The starting point for a Legislative Impact Assessment of a draft law is to provide a clear description of what is being proposed and why it is being put forward for consideration and approval at this time. The aim here is to succinctly summarize what the sponsor of the draft law indicates is the scope and purpose of the measure. In cases where the proposed measure is very technical or administrative in nature, it is useful to paraphrase the sponsor's stated purpose using plain language.

3.2.2. CONTEXT

The next step of the analysis is to provide context that helps to frame the proposed course of action. This involves summarizing the various factors and dynamics that have motivated the draft law sponsor to propose a change in Ukrainian law. This would typically include not only those issues identified by the sponsor as being relevant but also any other issues that may have a bearing on whether and how the proposed statutory action should be enacted. The aim is to give lawmakers a good understanding of the factors that will shape the success or shortcomings of the draft law, including considerations around international best practices and obligations.

3.2.3. IMPACT ANALYSIS

Having set the stage by providing clarity around purpose and context, the focus of analysis then turns to a description of the expected impact and consequences of the proposed statutory change(s). As described in the previous section, the aim of this

analysis is to provide a thorough assessment of the consequences of enacting the draft law, with a focus on whether the proposed measure will deliver the intended result in a manner that is reasonable, consistent with the country's existing body of law and respectful of international obligations. While the specific elements of this analysis may vary from case to case, it will typically be centered around many of the same factors that were identified in section 3.1.3 above:

- → A description of the situation that will result from enacting the proposed legislative changes, including an explanation of the situation that would exist if the draft law is not approved, and whether there are uncertainties or risks about the current situation that could affect the outcome;
- → An assessment of whether the measure will affect different societal groups differently – following the principles of Gender-Based Analysis (GBA+) – and what the public reaction is expected to be;
- → Whether there are jurisdictional authority issues and/or international obligations that need to be taken into account, and how these should shape the specific framing of the proposed statutory measure;
- → A description of changes that may need to be made to other existing laws, to ensure statutory consistency;
- → A judgment on whether the responsible departments or agencies have the authorities and resources necessary to enact and enforce the draft law if it is approved.

3.3. CONSIDERATIONS FOR EFFECTIVE IMPACT ASSESSMENTS

The sections above provide a description of the kind of analytical process that is typically applied to the policy development and assessment process in many developed countries. While it may appear to be quite detailed in content, it is by no means intended to be an exhaustive description of the factors that should go into an effective Impact Assessment – there may be other equally relevant factors that should be examined depending on the issue at hand and local circumstances. Accordingly, a degree of flexibility should be applied when undertaking an Impact Assessment.

Further, experience has identified some clear challenges to preparing a good Impact Assessment. In some cases, there can be a tendency to jump to a favored solution when developing a policy proposal ("policy bias"), and for the related assessment to be limited in scope when considering the impact of the measure. Related to this is the problem of having an LIA that is homogeneous in its assessment of potential

impact, without adequately considering the broader effects of the proposed policy or law. Arguably, the biggest challenge is probably the ability to prepare an Impact Assessment that is sufficiently comprehensive in its coverage of relevant issues without becoming so detailed as to be unmanageable (and hence, too much trouble for the decision-maker to read). The ability to do this is "more art than science", and requires an ability to separate the information that is crucial to decision-making from information that is simply interesting.

Finally, a comment on the timing for the preparation and consideration of Impact Assessments. As noted earlier in this document, Legislative Impact Assessments can be prepared and used by the Executive Branch of Government before introducing a statutory measure into Parliament; alternatively, they can be prepared after a draft law is brought forward to support Parliamentarians' consideration of the measure. There is really no right or wrong timing for this analysis – it can be adapted to the rules and practices of a country's Parliamentary system, and it can evolve over time. From the perspective of making the most efficient and effective use of the Parliamentarian's time, there is an argument in favour of having the LIA prepared and available before being introduced and considered by Parliament. However, whatever the timing, what is important is that a detailed assessment along the lines of what is described in this Handbook is actually prepared and made available to legislators and other decision-makers to support informed decision-making.

PART 4

Gender-Based Analysis Plus (GBA+)

[6] Information in this section is adapted from Status of Women Canada, "What is Gender-based Analysis Plus" (2022) and "Demystifying GBA+: Job Aid" (2019)

Gender-Based Analysis Plus (GBA+) is an analytical process that provides a rigorous method for the assessment of systemic inequalities, as well as a means to assess how diverse groups of women, men, and gender diverse people may experience policies, programs, and initiatives. The “plus” in GBA Plus acknowledges that GBA Plus is not just about differences between biological (sexes) and socio-cultural (genders). We all have multiple characteristics that intersect and contribute to who we are. GBA Plus considers many other identity factors such as race, ethnicity, religion, age, and mental or physical disability, and how the interaction between these factors influences the way we might experience government policies and initiatives.

4.1. VALUE OF GBA+ IN THE LEGISLATIVE PROCESS

All of the legislative work a Parliament does affects citizens. Groups of people are not homogeneous, and giving visibility to gender is an important way for public policy to positively affect all members of society. The gender perspective may not immediately be obvious, but there is almost always an important gender dimension to public policy.

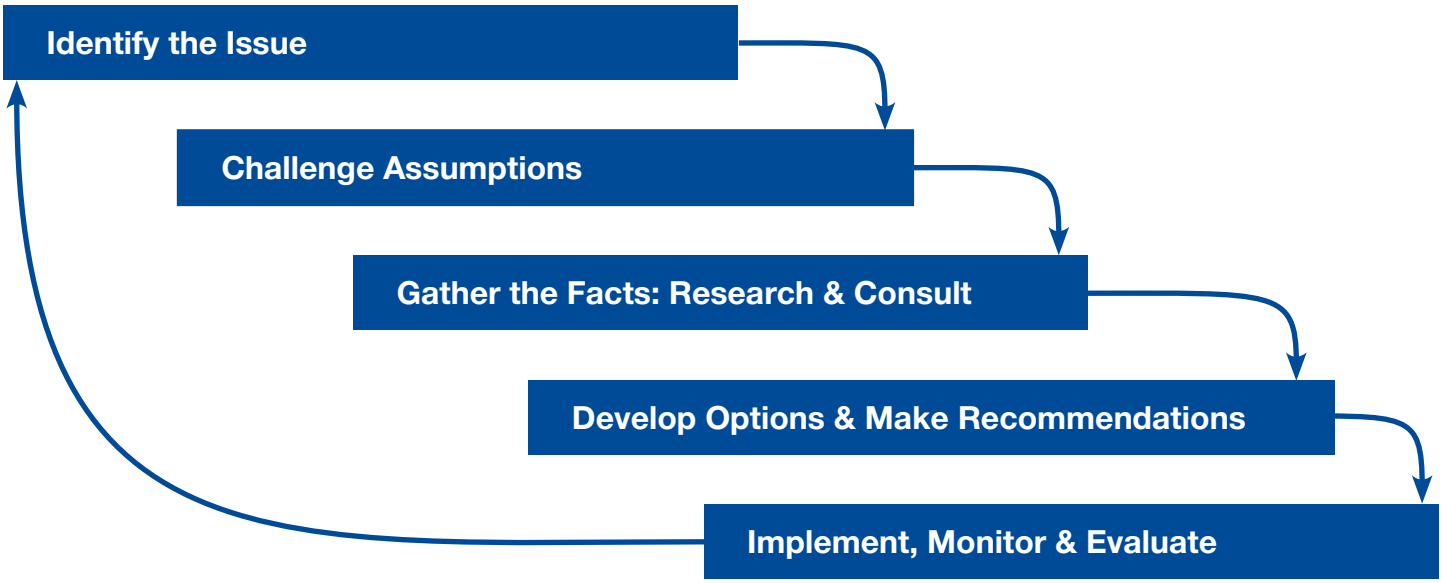
Although gender is usually conceptualized in a binary manner (girl/woman and boy/man), there is considerable diversity in how individuals and groups understand, experience, and express gender. The “plus” in GBA+ acknowledges that GBA goes beyond biological (sex) and socio-cultural (gender) differences. We all have multiple identity factors that intersect to make us who we are. The intersectional nature of these identities demonstrates that gender is only one factor that can affect an individual’s role and identity within society.

4.2. INCORPORATING GBA+ INTO LEGISLATIVE IMPACT ASSESSMENT ANALYSIS

Legislative and other policy initiatives vary in nature and purpose, and the gender perspective may not immediately be obvious. GBA + is a tool that can help guide the analytical process of considering the potential impacts – positive and negative – of legislation, policies, and programs from the perspectives of diverse people. Its aim is to identify potential risks and challenges at an early stage, and help create appropriate mitigation strategies. GBA+ is not something to be tacked on after the fact, nor can it be carried out by just one person. It is a tool that should be used at all stages of the policy cycle, from development to implementation. In short, GBA+ is about effective analysis that can help support well-informed decision-making.

Public policy initiatives vary, and there is no one-size-fits-all GBA+ template; however there are some key considerations and questions to examine through the assessment process.

GBA+ ASSESSMENT PROCESS



→ **Identify the Issue** – Similar to the LIA analysis more generally, the first step in doing GBA+ is to have a clear understanding of the issue that the initiative is designed to address. The aim is to look beyond the narrow objective and consider the depth and breadth of the issue. A key question to ask here is whether there are historical disparities related to the broader issue.

→ **Challenge Assumptions** – Everyone has assumptions, both at an individual level and an organizational level (where formal and informal policies can affect the development or outcome of an initiative). Although a proposed initiative may appear to affect everyone equally, it is important to assess whether there are gender and other diversity implications. Key questions in this regard could include:

- Whose point of view is reflected in defining the problem?
- What assumptions informed the identification of the topic as an issue?
- What assumptions are being made about the uniformity of population groups? Could certain groups be affected differently?
- If the issue is considered to be “neutral”, can this be supported with evidence?

→ **Gather the Facts: Research & Consult** – Data is needed to assess whether the proposed measure will have a more significant impact on a particular group of people, or whether barriers exist. Research data should be disaggregated by as many different identity factors as possible. Relevant information can also be obtained through consultation with diverse stakeholders, taking note of any differences between the views and opinions of these groups on the issue that is being researched. Key questions that can help shape this stage of the analysis include:

- What groups of people might experience this issue differently?
- What types of disaggregated data are needed to understand the gender-plus dimensions of the issue?
- Does the information suggest that the issue/initiative affects diverse groups of people in different ways? If so, how?
- Does the proposed initiative improve the situation for all, or does it have unintended differential impacts or create barriers for some groups of people?

→ **Develop Options & Make Recommendations** – Using the data gathered, develop possible options for proceeding, indicating how they address any gender-plus differential impacts or unintended barriers that have been identified. Key considerations in developing options and advice for proceeding include:

- What are the outcomes that stakeholders would expect from this initiative?
- What outcomes will improve current inequitable situations between men and women, and between different groups of people?
- Would the recommended approach serve to reinforce or address historical inequities?
- Are the gender-plus issues identified in the above analysis identified as risks and/or addressed through mitigation strategies?
- What would decision-makers expect to know when considering the options in order to make an informed decision?

→ **Implement, Monitor & Evaluate** – The final aspect of a thorough GBA+ analysis involves monitoring the implementation of the initiative. The purpose here is to assess whether it is delivering the intended results and operating in a manner that is effective and appropriate for different groups of people. To the extent that adverse issues are identified, the analysis could then identify ways in which the initiative could be adapted to reduce barriers and/or better serve those affected.

A final point to bear in mind relates to the way in which a policy measure (such as a draft law) is written and communicated. Language itself is not neutral, and in many cultures, it can reflect the values of a patriarchal society. Accordingly, it is important to use language that is gender and diversity appropriate (e.g., generic) so as not to perpetuate stereotypes and/or societal biases.

EPILOGUE

CHALLENGES WITH UKRAINE'S LEGISLATIVE SYSTEM

The main purpose of this Handbook has been to provide a guide to help policy analysts strengthen their ability to undertake thorough impact assessments of legislative and other policy proposals. More broadly, it has also identified key principles and practices that underpin a transparent, well-informed decision-making process. Assessed against the OECD best practice Principles for establishing an effective impact assessment system outlined in the introductory section of this document, there are a number of current features of Ukraine's legislative system that could pose challenges. The purpose of this closing section of the Handbook is to briefly raise awareness of these inter-related challenges and the implications they have for effective decision-making.

1. VOLUME OF LEGISLATIVE INITIATIVES – LACK OF EFFECTIVE TRIAGING MECHANISMS

In any given year, Ukraine lawmakers (MPs and the Government) identify a large number of potential draft laws covering a wide range of issues. While there are legal mechanisms in place that could filter the number of proposals down to a more manageable volume, in practice virtually all of these are registered and placed on the agenda for consideration in the Verkhovna Rada. This puts considerable pressure on the structural units that are responsible for the preliminary analysis and preparation of bills for consideration by Deputies, affecting the timeliness and quality of expert/analytical support in the decision-making process.

Related to this is the incidence of draft law approvals by Deputies through the different stages of readings in the Rada. In the 6th session of the IX convocation of the Verkhovna Rada, fully one-third of the laws that were adopted were done so at first reading, meaning they were not subject to review by the Main Legal Department before approval. Further, all the rest were approved at the second reading, meaning none went to the third-reading stage where full-fledged implementation plans would normally be considered. The result is that there is often insufficient subordinate legal authority to effectively implement the measure, which leads to the need to introduce additional bills to make changes to already adopted laws. On average, more than three-quarters of adopted laws are for the purpose of making amendments to existing statutes.

2. 2. ANALYTICAL CAPACITY – WORKLOAD PRESSURES

A large number of draft laws and the relatively short prescribed timelines for various committees to provide their assessment of the initiative can create significant workload pressures. Some Committees can be very busy – the Committee on Law Enforcement Activities being the busiest during recent Rada sessions. With limitations on the number of employees at the Main Scientific and Expert Department and secretariat staff supporting the Main Committee, the ability to provide thorough research and analysis of a draft law proposal is constrained, creating the risk of superficial analysis and/or missed deadlines.

3. 3. QUALITY OF SUPPORTING DOCUMENTATION AND ANALYSIS

The quality of the explanatory notes that accompany proposed draft laws is mixed. Some are quite good, with a clear description of the intent, substance and expected result of the proposed measure. Many others, however, are more superficial and unclear in nature, often written in very technical language or lacking explanations of purpose or implications. Part of the reason for this may be that initiators of draft laws may not fully appreciate how the explanatory note should be crafted, or lack the time and analytical capacity to prepare a better-quality product. But another important factor is likely that the Regulation of the Verkhovna Rada of Ukraine – the main document that regulates the content of supporting documentation – lacks clear explanation of the necessary informative content for these documents. Improving this guidance and encouraging feedback and training for draft law initiators would help improve the overall decision-making process.

4. MAIN SCIENTIFIC AND EXPERT DEPARTMENT RECOMMENDATIONS

A final concern relates to ambiguity over whether draft law proposals are obliged to take into account the conclusions of the Main Scientific and Expert Department. The Rules of Procedure indicate only that registered draft laws shall be sent for expert review, and if no opinion is provided back within 14 days, then it is deemed that there are no remarks pertaining to the proposal. With limits on the capacity of scientific and expert analysts to fully consider the large number of draft laws being brought forward for consideration, it can be the case that Rada Deputies do not end up receiving all the pertinent information they should have in the decision-making process.

APPENDICES

Appendix A1	LIA Methodology Template – Executive Branch Lead (Canada)
Appendix A2	LIA Methodology Template – Legislative Branch Lead (Ukraine)
Appendix A3	Useful Reference Links – OECD Publications on Regulatory Impact Assessment
Appendix A4	Examples of LIAs Conducted by Rada Committee Secretariats
Appendix A4.1.	Draft Law № 5708 “On the Right to Civil Firearms”, Law Enforcement Committee
Appendix A4.2	Draft Law № 7330 “On Amendments to the Criminal Procedure Code of Ukraine on Improving the Activities of Joint Investigation Teams”, Committee on Ukraine’s Integration into the European Union

APPENDIX A1

LIA METHODOLOGY TEMPLATE – EXECUTIVE BRANCH LEAD (Canada)

This template describes a structured framework for undertaking an impact assessment of proposed policy action (statutory measure, regulatory measure, another administrative arrangement) in the context of Executive Branch-led decision-making (as is the case in Canada). It is intended to provide general guidance on the kind of questions/considerations that should be examined when undertaking legislative impact assessment. Depending on the nature of the issue being examined, there may be other related questions or considerations that should be taken into account. Typically, such analyses consist of three main components, with the analysis ordered as follows:

1. Problem Definition – Is there something that needs to be done, and why?
2. Policy Objective/Goal – What do we want to achieve, and how?
3. Impact Analysis – What is the effect of the proposed action, and what will it take to make it work?

1. PROBLEM DEFINITION

("Is there something that needs to be done? Why?")

Initial analysis phase – important to get a good understanding of the issue of concern, to help assess whether and how to react. Examine the context within which the issue has arisen, to identify the root causes of the issue, not just the observable symptoms. Obtain as detailed/disaggregated data as possible – are there heterogeneous or diverse factors at play that are not evident from aggregated data?

Clarity about the issue to be addressed

→ What are the main features of the problem?
→ How and why has the issue arisen?
→ Who is affected by the issue?
→ How are they affected?

Rationale for intervening

→ Why is the issue a concern? Are the calls by the public or other groups to act? If so, who and why?
→ What factors – security, economic, social – make the situation untenable without legislative or policy action?
→ Why is there a need to act? Have there been past efforts to deal with the issue?

2. POLICY OBJECTIVE/GOAL

("What do we need/want to do/achieve? What approach will be taken")

Objective of this phase – specify what is the desired outcome of taking action, and what approach is to be taken. What is important here is to be as clear and specific as possible, in order not only to develop an appropriate and effective policy action but also to be able to assess success (or failure) after implementation/enactment. The objective here is not to specify the main provisions of the proposed action (that will come in the analysis section), but rather to describe the outcome/result to be achieved.

Desired outcome – specify clearly using S.M.A.R.T. parameters
("What is to be achieved?")

Specific – is the objective clear and well-defined (i.e., more than simply "an improvement in the situation")

Measurable – is there a clear, specified indicator that can show progress towards the objective

Achievable – is the desired outcome something that can actually be achieved with reasonable effort/action

Realistic/Relevant – will the proposed action actually address the issue

Timely/Timeliness – is there a clear target date for the result, and is it reasonable

Instrument choice
(What approach will be most effective?")

→ Can the issue be adequately addressed through an administrative arrangement of some sort (policy measure or operational delivery response)?

→ Is the force of statutory action necessary?

⟶ Can the expected result be achieved through new or changed regulatory rules (secondary legislation) within an existing statutory framework?

⟶ Is there a need for new statutory action / supporting regulation?

→ If new statutory action is needed, does the department/agency responsible for the issue have sufficient statutory authority to act?

3. IMPACT ANALYSIS

("Will the proposed approach work? What will it take to be successful?")

Options for possible action

→ Rationale for intervening – "non-action" scenario

⟶ Describe what the situation will be if no action is taken; be as detailed as possible

→ Preferred approach, other viable alternatives

⟶ Describe the key features of the proposed action
⟶ Describe the situation that will result from taking this action (be as detailed as possible)
⟶ Have alternative solutions been suggested by others? If so, describe their key features and expected impacts

Expected results/impacts

→ Using the metrics identified in the policy goal description, how does the situation improve as a result of the action taken?
→ Are there any negative effects or unintended consequences from the action taken? If yes, what could be done to alleviate the problem?
→ Sensitivity analysis – are there any uncertainties or risks about the current situation that could affect the result of the action taken? If yes, what could be done to manage this?
→ Cost-benefit analysis results – if possible, try to put a value on the benefits/improvements that result from the action taken, and costs associated with the action; do this for each alternative.
→ Are there other related actions that are necessary complements to help improve the results?

Implications for **jurisdictional authority**

→ Do sub-national jurisdictions have any responsibility and authority to help address the issue of concern? How does the proposed action take this into account?
→ Have other countries/jurisdictions faced this issue? What did they do?
→ Are there international commitments/obligations that are affected by the situation and proposed action? How will these be addressed?

Implications for the **target population**, others

- → Gender-based analysis (GBA+)
  - → Does the issue to be addressed affect males and females differently? If yes, how/why?
  - → Does the issue have different impacts according to age, race, religion, education, urban/rural, etc?
- → What will be the public reaction to the proposed action? How does it relate to calls for action (if there have been any)? Will people accept the need for the proposed action?
- → Does the proposed action have effects/impacts that are broader than for just the target population?

Implications for **existing statutes**, regulations

- → Is the proposed measure consistent with existing statutory rules/obligations?
- → If the proposed measure is implemented, is there a need to make consequential amendments to other statutes, regulations to ensure overall consistency?

Enactment & enforcement considerations

- → Cost implications of proposed approach
  - → Does the responsible department/agency have the adequate staff capacity to implement and enforce the proposed action?
  - → Does the responsible department/agency have the financial resources it needs to implement and enforce the proposed action?
  - → Are there human resource or financial cost implications for other government departments/agencies as a result of the proposed action?
  - → Are there cost or operating implications for other third parties (businesses, etc)?
- → Will the general public (people, businesses) be willing/likely to comply with the proposed action? Are additional compliance measures or incentives needed?

APPENDIX A2

LIA METHODOLOGY TEMPLATE – LEGISLATIVE BRANCH LEAD (Ukraine)

This template describes a structured framework for undertaking an impact assessment of a proposed draft law in the context of Legislative Branch-led decision-making (as is the case in Ukraine). It is intended to provide general guidance on the kind of questions/considerations that should be examined when undertaking legislative impact assessment. Depending on the nature of the issue being examined, there may be other related questions or considerations that should be taken into account. Typically, such analyses consist of three main components, ordered as follows:

1. Purpose/Policy Rationale – What is being proposed, and why?
2. Context – What has given rise to the issue of concern? What is the experience of others?
3. Impact Analysis – Will the proposed approach work as described? What will be the result?

1. PURPOSE/POLICY RATIONALE

("What is being proposed? Why is it being put forward for approval?")

The objective of this initial part of the assessment is to identify what is being proposed by the draft law sponsor and why it is deemed necessary. What is important here is to ensure that what the sponsor is proposing is clearly described, while still being succinct – the analysis will follow in subsequent parts of the assessment. Typical questions that could be helpful in framing this are as follows:

→ What is being proposed?
→ Why is the issue of concern; what is the stated rationale for acting?
→ Why is the draft law being put forward for approval at this time?
→ What is the stated outcome of the proposed action?

There may be cases where the draft law is not clearly specified, and/or the sponsor has not been clear about what is the intent of the proposal. If this is the case, simply indicate such and provide a reasonable explanation of what the proposed statutory measure appears to achieve.

2. CONTEXT

("What has given rise to the issue of concern?")

This part of the analysis looks at the various factors and dynamics that have motivated the draft law sponsor to propose a change in Ukrainian law. The analysis should summarize not only those factors identified by the sponsor of the draft law, but also any other issues that may be relevant. The aim here is to provide a good description and understanding of the issues that have created the pressure to act. It is often useful to think of these "context" issues as follows:

Nature of the issue being addressed

→ What are the main features of the problem?
→ How and why has the issue arisen?
→ Who is affected by the issue?
→ How are they affected?

Rationale for action

→ Are the calls by the public or other groups to act? If so, who and why?
→ What factors – security, economic, social – make the situation untenable without legislative or policy action?
→ Have there been past efforts to deal with the issue?

3. IMPACT ANALYSIS

("Will the proposed approach work? What will be the results?")

Expected results / impacts

→ Describe the situation that will result from taking the proposed action; this should include an explanation of what the situation would be if the proposed measure is not approved/implemented

→ Are there any negative effects or unintended consequences from the action taken? If yes, what could be done to alleviate the problem?

→ Sensitivity analysis – are there any uncertainties or risks about the current situation that could affect the result of the action taken? If yes, what could be done to manage this?

→ Cost-benefit analysis results – if possible, try to put a value on the benefits/improvements that result from the action taken, and costs associated with the action

Implications for **target population**, others

→ Gender-based analysis (GBA+)

⟶ Does the issue to be addressed affect males and females differently? If yes, how/why?

⟶ Does the issue have different impacts according to age, race, religion, education, urban/rural, etc?

→ What will be the public reaction to the proposed action? How does it relate to calls for action (if there have been any)? Will people accept the need for the proposed action?

→ Does the proposed action have effects/impacts that are broader than for just the target population?

Implications for **jurisdictional authority**

→ Do sub-national jurisdictions have any responsibility and authority to help address the issue of concern?[7] How does the proposed action take this into account?

→ Have other countries/jurisdictions faced this issue? What did they do?

→ Are there international commitments/obligations that are affected by the situation and proposed action? How will these be addressed?

Implications for **existing statutes**, regulations

→ Is the proposed measure consistent with existing statutory rules/obligations?

→ If the proposed measure is implemented, is there a need to make consequential amendments to other statutes, regulations to ensure overall consistency?

[7] In Canada, this analysis is included because government authority is decentralized. This type of analysis is used less often in Ukraine. However, in the conclusions of the Main Scientific and Expert Department on draft laws in the field of state and regional construction, it is possible to observe critical remarks about attempts to regulate at the level of law that belongs to the competence of local self-government. Therefore, in the context of the decentralization in Ukraine, it is important to include this issue in a typical legislative impact assessment.

Enactment & enforcement considerations

→ Cost implications of proposed approach

- ⟶ Does the responsible department/agency have adequate staff capacity to implement and enforce the proposed action?
- ⟶ Does the responsible department/agency have the financial resources it needs to implement and enforce the proposed action?
- ⟶ Are there human resource or financial cost implications for other government departments/agencies as a result of the proposed action?
- ⟶ Are there cost or operating implications for other third parties (businesses, etc)?

→ Will the general public (people, businesses) be willing/likely to comply with the proposed action? Are additional compliance measures or incentives needed?

APPENDIX A3

OECD Publications on Regulatory Impact Assessment

OECD, 2021, **OECD Regulatory Policy Outlook 2021**, Paris, **https://www.oecd.org/gov/regulatory-policy/oecd-regulatory-policy-outlook-2021-38b0fdb1-en.html**

OECD, 2018, **OECD Regulatory Policy Outlook 2018**, Paris, **https://doi.org/10.1787/9789264303072-en**

OECD, 20175, "**Chile Evaluation Report: Regulatory Impact Assessment**", OECD Reviews of Regulatory Reform, Paris, **http://www.oecd.org/gov/regulatory-policy/Chile-Evaluation-Full-Reportweb.pdf**

Deighton-Smith, Erbacci and Kauffmann, 2016, "**Promoting inclusive growth through better regulation: The role of regulatory impact assessment**", OECD Regulatory Policy Working Papers, No. 3, Paris, **https://doi.org/10.1787/5jm3tqwqp1vj-en**

OECD, 2015, **OECD Regulatory Policy Outlook 2015**, Paris, **https://doi.org/10.1787/9789264238770-en**

OECP, 2015, **Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015**, Paris, **https://doi.org/10.1787/9789264241800-en**

Jacob, Ferretti and Guske, 2012, **Sustainability in Impact Assessments: A Review of Impact Assessment Systems in Selected OECD Countries and the European Commission**, OECD Publishing, Paris, **http://www.oecd.org/gov/regulatorypolicy/sustainability%20in%20impact%20assessment%20sg-sd(2011)6-final.pdf**

OECD, 2012, **Recommendation of the Council on Regulatory Policy and Governance**, OECD Publishing, Paris, **http://dx.doi.org/10.1787/9789264209022-en**

Klaus et al., 2011, **Integrating the Environment in Regulatory Impact Assessments**, Paris, **http://www.oecd.org/gov/regulatory-policy/Integrating%20RIA%20in%20Decision%20Making.pdf**

OECP, 2009, **Regulatory Impact Analysis: A Tool for Policy Coherence**, Paris, **http://dx.doi.org/10.1787/9789264067110-en**

OECP, 2008, **Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA)**, OECD Publishing, Paris, **http://www.oecd.org/gov/regulatory-policy/44789472.pdf**

OECP, 2008, **Building an Institutional Framework for Regulatory Impact Analysis (RIA): Guidance for Policy Makers**, Paris, **http://www.oecd.org/regreform/regulatory-policy/40984990.pdf**

Rodrigo, 2005, **Regulatory Impact Analysis in OECD Countries Challenges for developing countries**, Paris, **http://www.oecd.org/gov/regulatory-policy/35258511.pdf**

OECD, 2004, **Regulatory Impact Analysis (RIA) Inventory**, Paris, **http://www.oecd.org/gov/regulatory-policy/35258430.pdf**

OECD, 1997, **Regulatory Impact Analysis: Best Practices in OECD Countries**, Paris, **https://doi.org/10.1787/9789264162150-en**

More OECD publications can be found here: **https://www.oecd.org/regreform/regulatory-policy/ria.html**

APPENDIX A4

Examples of LIAs Conducted by Rada Committee Secretariats

APPENDIX A4.1

Draft Law № 5708 "On the Right to Civil Firearms"
Law Enforcement Committee

1. Problem definition

The problem that has developed in Ukraine over the circulation of civilian firearms is extremely complex, but hardly unique. **Non-regulated firearms or unregulated legal status of firearms and/or ammunition is a term actively used**, for example, by Flemish Peace Institute[8] **analysts to identify inconsistencies in gun authorization that may result from changes in legislation or military conflict.**

Only a few relatively recent examples from the history of European countries that have left behind thousands of weapons still circulating on black markets, such as the war in Yugoslavia, the conflict in Northern Ireland, or ETA's terrorist activities in the Basque Country (Spain), have posed a similar challenge. . In general, the situation with unregulated weapons is typical of countries in political transit. **Non-regulated firearms are the main problem for Ukraine, especially in the context of the conflict in eastern Ukraine**. This makes the use of this term extremely appropriate for further analysis.

The draft law aims to "strengthen compliance with the rule of law in determining the legal regime of ownership of weapons, enshrining the basic rights and responsibilities of citizens and legal entities for the production, acquisition, possession, disposal and use of weapons and ammunition, settlement of other social relations. directly related to this." In other words, **it is an attempt to establish effective control over firearms currently on the territory of Ukraine.**

According to the Ministry of Internal Affairs of Ukraine, the total number of registered weapons is 1.2 million[9]. At the same time, according to the most modest estimates, there are more than a million units of unregistered weapons. With some limitations, the author of a study of illegal arms flows in Ukraine, conducted specifically for the Small Arms Survey[10] in 2017, puts the figure at 2-3 million units of illegal weapons[11]. However, these are the author's assumptions based on conversations with experts. Already in 2018, the Small Arms Survey

[8] https://vlaamsvredesinstituut.eu/en/report/5040/
[9] https://mvs.gov.ua/press-center/news/mvs-sfera-obigu-zbroyi
[10] The Small Arms Survey is an independent research project at the Geneva Institute of International Relations and Development
[11] https://www.smallarmssurvey.org/resource/measuring-illicit-arms-flows-ukraine

reported 4.4 million weapons in total, 3.6 million of which are unregistered[12]. It is important that the exact figures are unknown, and this is of public importance and additional relevance to the draft law.

Thus, **Ukraine ranks first among European countries in the ratio of illegal weapons to legally registered ones**[13]. Analysts at the Small Arms Survey indicate a figure of 9.9 civilian firearms per 100 people for 2018 (the authors of the draft law in the Explanatory Note to the draft law write about 5.5 units). The scale of the problem has grown significantly, if you look at the dynamics: in 2007, this figure was 6.6 weapons per 100 people[14].

Currently, the right to possess weapons in Ukraine is regulated only at the level of a legal act, namely Order of the Ministry of Internal Affairs of Ukraine № 622 of August 21, 1998[15]. The need to improve legal regulation and make legislation relevant to modern challenges has arisen since the first years of independence when it came to effective control over large quantities of weapons left over from the collapse of the Soviet Union. It is important that both the initiators of the draft law and the stakeholders agree that the existing legislation is fragmented, inconsistent, and does not comply with the principle of legal certaint[16].

Now the world press mentions Ukraine as a source of instability in light of the possible proliferation of illegal weapons, along with, for example, Libya[17]. Such fears are, in particular, about the possibility of weapons from Ukraine falling into the hands of terrorists directly in the European Union, where after the terrorist attack on the newspaper “Charlie Hebdo” (Paris, 2015) raised issues of tighter arms control. European politicians have drawn attention to the issue of illegal weapons in Ukraine, in particular after the largest attempt to smuggle ammunition into the EU from Donbass, involving French citizen Gregoire Muto, who was sentenced to six years in prison for plotting a terrorist attack[18]. The image of the “supermarket country” of weapons[19], reinforced by the unfolding of military conflict and ineffective regulation, is at the same time reputational damage to Ukraine in the international arena.

Due to fears that weapons from Ukraine will fall into the hands of terrorists and the research focus of analysts at the Flemish Peace Institute. In their article “Illegal distribution of firearms on the periphery of the EU: the example of Ukraine”, they focus on the risks of increasing the circulation of weapons and ammunition on the black market[20]. According to them, the potential availability of these weapons makes the threat of proliferation even more visible and urgent. They also draw parallels between the Ukrainian context and the situation resulting from the war in the Balkans, where the largest flows of illegal arms supplies to Europe come from.

Weapons are also the object of property, which is subject to a special regime of regulation, which can be carried out only by the Law of Ukraine. **In fact, the**

[12] https://www.smallarmssurvey.org/sites/default/files/resources/SAS-BP-Civilian-Firearms-Numbers.pdf
[13] https://www.rferl.org/a/guns-in-europe/29551062.html
[14] https://www.smallarmssurvey.org/sites/default/Small-Arms-Survey-2007-Chapter-02-annexe-4-EN.pdf
[15] https://zakon.rada.gov.ua/laws/show/z0637-98#Text
[16] http://www.golos.com.ua/article/354081
[17] https://time.com/how-europes-terrorists-get-their-guns/
[18] https://hromadske.ua/posts/kontrabanda-zbroi-z-ukraini-v-evropu
[19] https://www.newyorker.com/culture/photo-booth/ukraine-a-supermarket-for-guns
[20] https://flemishpeaceinstitute.eu/safte/files/project_safte_eu_neighbourhood_ukraine.pdf

legislation is not comprehensive at present, and the existing regulation cannot be called effective. This situation poses a significant problem and dictates the main relevance of the draft law № 5708. Finally, the authors of the latest study Small Arms Survey on Ukraine "Making the Rounds: Illicit Ammunition in Ukraine" (2021) call for long-term coordinated efforts of Ukrainian authorities and the international community. only in this way can munitions and illegal weapons pose a threat to local and regional security threats[21].

a. Clarity on the issue to be addressed

The problematic point is that the draft law is based on ensuring the right of citizens "to actively protect their lives and health, as well as the lives and health of others from criminal encroachment, in a state of emergency with firearms," although it addresses the problem effective control. Thus, **the principle of clarity is violated, as the justification is not consistent, both with the purpose of the draft law and with the content of the provisions of the document.**

First, the wording of the authors of the Explanatory Note "the vast majority of the developed world (established democracies) have provided such a right [to civilian firearms] to their citizens" is a significant exaggeration. Yes, **there are two fundamental approaches in arms law: weapons as a basic right and weapons as a privilege**. A thorough analysis of the regulation of civilian firearms by researchers from the Small Arms Survey, conducted on a sample of 42 countries, showed that only two of these countries approach weapons as a right (US and Yemen), and all others as a privilege[22]. Instead, most countries around the world strive to strike a balance in legislation between protection against harm to society (crime, violence, suicide) and the legal use of weapons by civilians[23].

Secondly, the reference to the Constitution of Ukraine on "the human right to life, life and health, honor and dignity, inviolability and personal security" in the Explanatory Note to the draft law in the light of arms settlement puts even the necessary self-defense in the context of armed conflict. The text of the draft law itself does not detail the right to personal protection.
Third, the proposal to grant the right to purchase short-barreled firearms (pistols, as the purchase and use of revolvers, is prohibited by the draft law) only to athletes, ie a limited group of citizens, seems inconsistent with the content of the draft law itself. In other words, the use of weapons is regulated only for sports, not for self-defense, because the storage of such weapons is provided only in the shooting range or shooting range. At the same time, weapons must be transported with depleted stores, which makes it impossible to use weapons for self-defense, in fact, in cases of extreme necessity mentioned above.

Fourth, the discussion of how the right to protection differs between the continental and Anglo-Saxon legal systems is an important part of the debate over arms settlement in Ukraine[24]. **The example of the United States, the absolute world leader in the possession of small arms (120.5 units per 100 people[25]),**

[21] https://www.smallarmssurvey.org/sites/default/files/resources/SAS-Report-Illicit-Ammunition-Ukraine.pdf
[22] https://www.smallarmssurvey.org/sites/default/files/resources/Small-Arms-Survey-2011-EN.pdf
[23] https://www.smallarmssurvey.org/sites/default/files/resources/Small-Arms-Survey-2011-summary.pdf
[24] https://voxukraine.org/the-right-to-armed-self-defence-ua/
[25] https://www.smallarmssurvey.org/sites/default/files/resources/SAS-BP-Civilian-Firearms-Numbers.pdf

mentioned by the authors of the Explanatory Note, is in fact an extreme. The country is a leader in both the number of suicides and the number of crimes committed with weapons[26]. In both cases, the availability of weapons is key. This situation is primarily due to the traditions declared in the constitution (Second Amendment). At the same time, American society is now actively arguing over gun control[27]) and is quite divided in its views on settlement[28].

On the contrary, **none of the constitutions of the member states of the European Union provides for armed self-defense and does not guarantee the right to bear or possess firearms at the individual level.** However, following the aforementioned terrorist attack in Paris in 2015, **the European Commission amended the EU Arms Directive to further strengthen the fight against illicit trafficking in firearms in order to take a more coordinated and coherent approach.** The directive laid down stricter rules for converting even sporting weapons to automatic weapons, banning certain types of semi-automatic weapons, the same standards for all weapons deactivation, and limiting the validity of a firearms license to five years[29]. Thus, we can conclude that in recent years the EU has been pushing for stricter weapons laws, primarily related to counter-terrorism measures.

The discussion of the right to self-defense in the EU itself is more in the context of gender equality and combating domestic violence and primarily concerns women who are abused, mainly by their partners (see, for example, a study commissioned by the European Parliament Policy Department for Citizens' Rights and Constitutional Affairs[30]). At the same time, such a discussion ignores the issue of weapons as such.

b. Rationale for the intervention

The issue of weapons is socially sensitive. The inability to reach a compromise was the main obstacle to the lack of a special law. So, only in the period from 1998 to 2020, 20 draft laws on weapons were submitted to parliament. Different approaches and differences in interpretation determine the debate that has been active in Ukraine in recent years.

Calls for action were most likely expressed in two petitions on the website of the President of Ukraine, which gathered the required number of votes in 2015[31] and 2019[32] where the issue of weapons is considered through the prism of the right to defense. At the same time, the formation of the order of the debate on weapons is primarily a matter of self-defense that divides society rather than unites it. According to various polls, more than 70% of citizens do not support the legalization of gun ownership[33] and do not believe that guns will help increase personal security[34].

[26] https://www.vox.com/policy-and-politics/2017/mass-shooting-gun-violence-statistics-charts
[27] https://www.nytimes.com/interactive/2015/10/07/us/gun-control-explained.html
[28] https://www.pewresearch.org/fact-tank/2021/09/13/key-facts-about-americans-and-guns/
[29] https://ec.europa.eu/growth/sectors/firearms-directive_en
[30] https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2016)571385
[31] https://petition.president.gov.ua/petition/40
[32] https://petition.president.gov.ua/petition/53416
[33] https://ratinggroup.ua/research/ukraine/ukraina_v_fokuse_sociologicheskie_izmereniya.html
[34] https://rb.com.ua/uk/blog-uk/omnibus-uk/stavlennja-ukrainciv-do-volodinnja-vognepalnoju-zbroieju/

The submitted draft law №5708 also removes the need for intervention on the "right to arms" and self-defense, which complicates the consensus within even the working group[35]. An alternative is to consider the issue separately from the "right to bear arms", ie through the prism of regulation and harmonization of legislation.

2. POLITICAL FOUNDATIONS

a. Clarity about the desired result

According to the text of the Explanatory Note, the task of the draft law is to *"strengthen compliance with the rule of law in determining the legal regime of ownership of weapons". It goes on to "consolidate the basic rights and responsibilities of citizens and legal entities in the production, acquisition, possession, disposal and use of weapons and ammunition", as well as "the regulation of other public relations directly related to this".*

Using the parameters of S.M.A.R.T., we analyze the clarity of the desired result.

The purpose and objectives of the draft law are clearly stated, ie they are quite specific. In fact, it is about effective control over weapons in the state. The experience of other European countries shows that the same goal was faced at different times by the authorities in Germany and Poland (weapons left after the Second World War), Northern Ireland, Spain and the countries of the former Yugoslavia[36].

Measurable is ensured by the provisions of the draft law, which provide for the development of a procedure for the creation and maintenance of the Unified State Register of Civilian Firearms. Such a register can serve as an indicator of progress towards the goal. In addition, the role of an additional indicator will be the statistics of criminal offenses, in particular, the dynamics of crime.

The desired result can be called achievable for a number of reasons. First, the feasibility of the goal follows from a) the specificity of the goal and b) the ability of public authorities to put it into practice (the ability to enforce). Secondly, the above-mentioned examples from the history of European countries, including Eastern and Southern ones, demonstrate realistic models to follow. Third, the situation in Ukraine with firearms, although well-founded, is not critical. For example, a recent Small Arms Survey report on Ukraine notes that it has so far found no evidence of large-scale international trade in illegal weapons from Ukraine to other European countries[37].

[35] http://komzakonpr.rada.gov.ua/documents/zasid/75228.html
[36] https://vlaamsvredesinstituut.eu/wp-content/uploads/2021/04/Def-DIVERT-NonReg-Report.pdf
[37] https://www.smallarmssurvey.org/sites/default/files/resources/SAS-Report-Illicit-Ammunition-Ukraine.pdf

The proposed result is relevant, as it meets a) Ukraine's international obligations and cooperation (UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms[38], OSCE Special Program on Strengthening the Capacity of the Ukrainian Government to Prevent and Combat Illicit Trafficking in Weapons, Ammunition and Explosives[39]; b) the obligation of the state to its citizens (Article 3 of the Constitution of Ukraine); c) relevant to the specifics of the local context.

Finally, the timely of the law is dictated by the challenges of time, ie the need to take prompt action until the problem is exacerbated. As for the timing of achieving this result, the problem caused by the proliferation of weapons and ammunition in Ukraine will require a coordinated and sustained effort by the Ukrainian authorities and the international community for many years to come[40].

b. Tool selection

It is not possible to solve this problem with the help of an administrative mechanism alone.

The Supreme Court's decision that the absence of a law on the procedure for issuing a firearms permit does not make it possible to prosecute a person, effectively equating Order of the Ministry of Internal Affairs of Ukraine № 622 of 21 August 1998 with a law[41] enforcement defect. In practice, due to the lack of a special law, Ukrainian courts often return confiscated weapons to their owners and do not take into account the provisions of departmental instructions that restrict private ownership of weapons[42]. Therefore, such measures can be implemented only at the level of law.

At the same time, the adoption of amendments to the legislation alone will not solve the problem of the lack of effective arms control in Ukraine. The effectiveness of the desired outcome will also depend on building the capacity of the relevant Ukrainian authorities, training staff, strengthening coordination and the legal framework. That is, a comprehensive approach to tackling the challenges posed by illicit weapons and ammunition is needed.

According to the draft law, the holder of the Unified State Register of Civilian Weapons is the Ministry of Internal Affairs of Ukraine, which currently maintains similar records[43]. Also in recent years, the agency has strengthened its institutional capacity through a network of Service Centers of the Ministry of Internal Affairs in all regions of Ukraine. Despite the fact that the alternative (draft law №5708-1) proposes that this Register be administered by the Ministry of Justice, the body refused to be its holder and offered to keep the register of the Ministry of Internal Affairs of Ukraine.

[38] https://zakon.rada.gov.ua/laws/show/995_792#Text
[39] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019D2009
[40] https://www.smallarmssurvey.org/sites/default/files/resources/SAS-Report-Illicit-Ammunition-Ukraine.pdf
[41] https://supreme.court.gov.ua/supreme/pres-centr/news/539261/
[42] http://www.golos.com.ua/article/354081
[43] https://mvs.gov.ua/uk/activity/licenzuvannya/licenziyi

3. IMPACT ANALYSIS

a. Options for possible action

In the absence of intervention, the situation will worsen. This assessment is based on the growth dynamics of attempts to illegally import firearms from Ukraine to neighboring countries[44]. In addition, analysts at the Flemish Peace Institute describe in detail the threats of weapons falling into the "wrong hands" (terrorism, mass shootings[45]). The lack of a single and clear law remains favorable for arms dealers, as criminals primarily use legal loopholes to transport and sell weapons, and look for loopholes in legislation and legal differences between EU countries[46].

If the draft law is passed, the number of legally registered weapons is likely to increase gradually. Law enforcement agencies will have more capacity to monitor the use of weapons, and thus increase the effectiveness of investigations (ballistic examinations, certification tests, technical inspection, and shooting of weapons, etc.). This could have an additional impact on the security situation in the country.

However, it should be noted that currently, the investigation of crimes with the use of legal or illegal weapons is not divided. However, despite the figures given by the initiators of the draft law in the text of the Explanatory Note on the small number of crimes committed with weapons, they should be considered with some caution. Thus, if we look only at crimes against public safety (and not the totality of all crimes in general), weapons, ammunition, explosives, and explosive devices were the subject of 55,714 crimes in 2014, which accounted for 65.7% of the total number of crimes against public safety (in 2018 there were already 80.97% of such crimes or 54,910)[47]. In other words, if adopted, the project has the potential to visibly affect public order.

At the same time, **the adoption of the law is necessary but insufficient for effective arms control**. Attempts to tighten legislation are often the first means of responding to gun events. The vast majority of illegal weapons disappear from the legal market and generally have a long life cycle. An effective policy should focus on strengthening the regulation of the rule of lawful possession of weapons and building the capacity of agencies involved in the fight against illicit possession of weapons on a daily basis.

The best option for intervention is the adoption of this draft law with the introduction of the Unified State Register of Civil Firearms. However, it would be appropriate to abandon the conceptualization of the initiative as a "right to bear arms". This wording is clearly contrary to international experience, as **in the case of arms settlement it is more about rules** ("Balancing Acts: Regulation of the Civilian Firearm Possession"[48]). At the same time, the debate on weapons can be re-actualized in a new context.

[44] https://euobserver.com/world/153792
[45] https://vlaamsvredesinstituut.eu/mass-shootings-in-europe-how-did-weapons-fall-into-the-wrong-hands/
[46] https://www.unodc.org/documents/firearms-protocol/2020/UNODC-EU-Report-A8_FINAL.pdf
[47] https://er.dduvs.in.ua/bitstream/kryminalna_vidpovidalnist_zbroya_monografia_2020.pdf
[48] https://www.smallarmssurvey.org/sites/default/files/resources/Small-Arms-Survey-2011-EN.pdf

b. Expected results

In the short term, it is predicted that the number of offenses committed with the use of weapons may increase, as law enforcement agencies will receive a certain instrument of law enforcement.

Forecasting, however, should be based on existing law enforcement practices. Thus, in the period from 2016 to 2020, only 6 licenses were revoked (for more details, see Annex 1). In general, the situation with state supervision over the issued licenses leaves much to be desired, and therefore one of the next steps should be to increase the institutional capacity of relevant bodies.

In the long run, it is expected that legislative changes will significantly remove the problem of non-regulated firearms, which currently exist in Ukraine.
With the adoption of the draft law, it is also expected that the data of the newly created Unified State Register of Civilian Firearms will better reflect the current situation with weapons. In turn, accurate data allows evidence-based policies to be adopted in the future.

c. Implications for the target audience

Despite some conceptual differences, it can be expected that the adoption of the draft law will be positively perceived by the target audience, as it will allow outlining the most pressing challenges of arms circulation, which have been brewing in Ukrainian society for more than two decades.

However, the problem of arms settlement will have different consequences depending on gender. Thus, according to surveys, only 5% of women have experience in using weapons (compared to 35% among men), and only 9% of Ukrainian women believe that weapons will help them feel safer (29% of men)[49]. The same trend can be seen in differences in ownership. That is, the owners of weapons in Ukraine are mostly men. This gender gap is broadly echoed in the European Union pattern, where 9% of men and 2% of women identified themselves as gun owners, according to the 2013 Eurobarometer[50].

Criminological intelligence also traces the pattern that the presence of weapons is more likely to make domestic violence fatal. In other words, in homes/families where there are firearms, women are more likely to be victims of murder[51]. Another study found that domestic violence involving firearms was 12 times more likely to result in the death of one partner than domestic conflicts involving firearms[52]. This also corresponds to a well-established observation in criminology: women often die in private rather than public hands at the hands of their partners[53]. The Weapons in the Lives of Women Victims of Domestic Violence study illustrates that only 7% of women who have been subjected to domestic violence have successfully used weapons to defend themselves. In two-thirds of cases, it was men who used

[49] https://rb.com.ua/wp-content/uploads/2021/03/zbroja_berezen_2021_ukr-1.pdf
[50] https://vlaamsvredesinstituut.eu/wp-content/uploads/2019/03/firearms_and_violent_deaths_in_eu.pdf
[51] https://www.acpjournals.org/doi/10.7326/M13-1301?articleid=1814426
[52] https://pubmed.ncbi.nlm.nih.gov/1588718/
[53] https://pubmed.ncbi.nlm.nih.gov/30100045/

firearms against women[54]. Finally, a number of studies show that women are more likely to commit suicide[55] and more likely to die from careless use of weapons[56].

However, it should be borne in mind that the overall distribution of all homicides is most often male homicide[57], which also occurs in private - according to various estimates, it accounts for more than two-thirds of all homicides and is a universal trend[58]. Thus, most offenders and victims are men. At the same time, the analysis of court decisions in Ukraine confirms the observation of international criminological research[59]. Yes, a typical Ukrainian murder is committed by a drunken man who inadvertently kills another man (acquaintance or friend) during an argument. An important conclusion of the review of available criminological research is that the presence of weapons at home is a factor in the increased risk of death[60].

d. Implications for legislation

The proposed measure is in line with Ukraine's international obligations (UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms) and is not contrary to applicable law.

At the same time, the adoption of the draft law requires amendments to a number of laws (in particular, the Law of Ukraine "On National Police", the Law of Ukraine "On Security Activities", the Law of Ukraine "On Licensing Economic Activities").

[54] https://repository.upenn.edu/cgi/
[55] http://www.ncbi.nlm.nih.gov/pubmed/17426563
[56] https://pubmed.ncbi.nlm.nih.gov/15949457/
[57] https://www.cbs.nl/en-gb/news/2018/51/fewer-women-than-men-fall-victim-to-violence
[58] https://www.liebertpub.com/doi/10.1089/vio.2017.0016
[59] https://texty.org.ua/fragments/102380/typovyj-ukrayinskyj-ubyvcya-pyanyj-muzhyk-statistika/
[60] https://www.sciencedirect.com/science/article/abs/pii/

ANNEX 1

Measures of state supervision in the field of weapons licensing in 2016-2020[61]

Year	Number of planned measures of state supervision (control) over compliance	Number of orders to eliminate violations of requirements	Number of unscheduled measures of state supervision (control)	Number of revoked licenses
2016	44	15	4	1
2017	It was not carried out in connection with the established moratorium on the implementation of planned measures for state supervision (control) in the sphere of economic activity.			
2018	It was not carried out in connection with the established moratorium on the implementation of planned measures for state supervision (control) in the sphere of economic activity.			
2019	110	68	5	4
2020	20	12	1	1

The table shows the number of measures of state supervision (control) and their results in the production and repair of non-military firearms and ammunition, cold steel, air guns over 4.5 millimeters and bullet speeds over 100 meters per second, firearms trade non-military purposes and ammunition to it, melee weapons, pneumatic weapons with a caliber of more than 4.5 millimeters and a bullet speed of more than 100 meters per second; production of special means charged with tear gas and irritants, personal protection, active defense and their sale, subject to licensing.

[61] Source: Licensing Department of the Ministry of Internal Affairs of Ukraine

APPENDIX A4.2

Draft Law № 7330 «On Amendments to the Criminal Procedure Code of Ukraine on Improving the Activities of Joint Investigation Teams»

Committee on Ukraine's Integration into the European Union

1. POLICY RATIONALE

The initiators of draft law No. 7330 "On Amendments to the Criminal Procedure Code of Ukraine on Improving the Activities of Joint Investigation Teams" outline the goal as improving the procedure for the creation and operation of joint investigative teams in criminal proceedings. In order to achieve this goal, it is proposed to make changes to the Criminal Procedure Code of Ukraine, namely to Article 571 (making certain changes to the first three paragraphs of the article, completely replacing the fourth paragraph and adding a new fifth paragraph).

The current version of the CCP, namely Art. 571, lays the legal basis for the organization of joint investigative teams. However, the initiators of the draft law propose to make the following changes: to the first three paragraphs of the article on procedural practice, completely replacing the fourth paragraph to specify the powers of joint investigative teams, and adding a new fifth paragraph on the admissibility of evidence.

The initiators of the draft law justify the need to introduce legislative changes such as ensuring the completeness of the pre-trial investigation of criminal offenses committed by the armed forces of the Russian Federation on the territory of Ukraine, the creation of adequate guarantees for documenting the facts of their criminal activities, ensuring the effective process of obtaining evidence and using it to bring guilty persons to criminal responsibility both in national courts and international institutions.

Of course, the creation of joint investigative teams is important in the context of international cooperation between countries. **Firstly**, it facilitates the enhanced investigation of criminal activity that affects more than one country. **Secondly**, it simplifies the process of data exchange between countries, if it concerns a common cause, because these groups directly exchange information and evidence and cooperate by mutual consent. Thus, the organization of the investigation is more efficient. **Thirdly**, it provides an opportunity to minimize the use of resources as countries conduct investigations together rather than in parallel. **Fourthly**, the effectiveness of the investigation will increase significantly, since different services from different countries are working on the case, which makes it possible to obtain a larger amount of evidence and data.

2. CONTEXT ANALYSIS

How do joint investigative teams function now? The creation and activity of joint investigative teams are regulated by the Criminal Procedure Code of Ukraine (Article 571)[62]. In particular, the Code states that:

1) joint investigative teams are created to conduct pre-trial investigations of criminal offenses committed on the territory of several countries

2) the issue of creating joint investigative teams is decided by the Office of the Prosecutor General at the request of the investigative body of the pre-trial investigation, the prosecutor of Ukraine and the competent authorities of foreign countries

3) coordination of their activities is carried out by the initiator of the joint investigation group or by one of its members. Members of the joint investigative team directly interact with each other, coordinate the main directions of the pre-trial investigation.

4) Investigative and other procedural actions are performed by members of the joint investigative team of the country on the territory on which they are conducted.

International practices. Within the framework of international practices of creation and operation of joint investigative teams for the investigation of criminal offenses is regulated by the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union from 2000[63], the European Convention on Mutual Assistance in Criminal Matters from 2001[64], the United Nations Convention against transnational organized crime[65], the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters[66], the Framework Decision of the EU Council on joint investigative teams[67].

The most detailed procedural features of joint investigative teams are described in the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (which supplements the EU Convention) and the Framework Decision of the Council of the EU.

Other documents provide general information on the types of crimes that are transnational in nature and require international investigation and mutual legal assistance. For example, the UN Convention specifies the types of crimes that may be subject to international investigation; on sanctions for crimes; on the transfer of convicted persons, the confiscation of property; exchange of information for effective investigation of crimes, its collection, and analysis. As in other international documents related to mutual legal assistance, this Convention states that for the maximum effectiveness of law enforcement measures, all processes should be governed by national legislation. Each country designates a central authority responsible for receiving requests for mutual legal assistance and for their

[62] https://zakon.rada.gov.ua/laws/show/4651-17#Text
[63] https://zakon.rada.gov.ua/laws/show/994_238#Text
[64] https://zakon.rada.gov.ua/laws/show/995_036#Text
[65] https://zakon.rada.gov.ua/laws/show/995_789#Text
[66] Другий додатковий протокол до Європейс... | від 08.11.2001 (rada.gov.ua)
[67] https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002F0465

implementation, or for delegating them to competent authorities. It is the central bodies that ensure prompt and proper fulfillment of requests. Based on this, the issue of mutual legal assistance for the investigation of transnational crimes is regulated and joint agreements are concluded regarding cases that are the subject of investigation in one or more countries. *Competent bodies of these countries can create bodies to conduct joint investigations.*

The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, which was ratified in Ukraine in 2011, outlines the procedural features of the creation of joint investigative teams (Article 20): requests for the creation of joint investigative teams, the purpose and conditions of creation, competent bodies, territory of operation of joint investigative groups.

This document also specifies that a joint investigative team is created to conduct criminal investigations on the territory of one or more countries that created the team. An agreement is concluded between them, which specifies the composition of the group, the purpose of its creation, and the term of operation, which can be extended by mutual agreement. The provisions of the Second Protocol specify the entities that have the right to participate in the activities of joint investigative teams. In particular, it is noted that other persons who do not belong to the competent authorities creating the investigative teams may be involved in the work of the joint investigative teams, but if this does not contradict the national legislation of the countries involved and the agreement or legal document on the basis of which the joint investigative teams operate . That is, the agreement actually legitimizes the activities of joint investigative groups for a limited period.

Different countries use different practices regarding the conclusion of the agreement. However, in general, the parties to the agreement may be judicial or law enforcement representatives. The head of the group is a representative of the competent authority, which participates in the criminal investigation of the case from the country on the territory of which the group operates. The head of the group acts within their competence in accordance with national legislation. Group members perform their duties under the coordination of the group leader.

In the Framework Decision of the Council of the EU, the priority of the goal of creating joint investigative teams relates to a more effective fight against international crime, namely, offenses committed by terrorists. In addition, the document defines the possibility of involving representatives who do not represent competent authorities of member countries, such as Europol, international organizations, or representatives of authorities of non-member countries, and in particular representatives of law enforcement agencies of the United States, in joint investigative teams. In such cases, the agreement on the creation of the group should define issues regarding the possible responsibility of such representatives. The procedural features of the creation of joint investigative teams, which are described in this document, essentially correspond to the clauses of the Second Additional Protocol to the EU Convention.

3. IMPACT ANALYSIS

The creation of joint investigative teams is an established European practice. Therefore, in the context of international cooperation and mutual legal assistance, this bill plays an important role.

The current wording of Article 571 of the Criminal Procedure Code is sufficient to provide a legal basis for the activities of joint investigative teams. Although international documents that describe the standards of work of joint investigative groups provide more detailed information about the functioning of such groups.

In Part 1 of Art. 571 of the Criminal Procedure Code of Ukraine, it is proposed to establish that "to ensure the comprehensiveness and completeness of pre-trial investigation and court proceedings, obtaining evidence or verifying already received evidence, establishing circumstances that are significant for criminal proceedings, which are carried out on the territory of one or more countries, or if the interests of these countries are violated, joint investigative groups can be created." The draft law significantly expands the purpose of creating joint investigative teams. The draft law proposes the possibility of creating joint investigative teams both at the stage of pre-trial investigation and court proceedings.

Considering the conditions of the full-scale invasion of Russia into the territory of Ukraine, the investigation of the criminal crimes that Russia has committed and continues to commit is necessary. And accordingly, improvement of the procedural mechanism of joint investigative teams is necessary to bring the guilty to justice in national courts and international institutions.

After the liberation of the Kyiv region from the russian occupiers, which was announced by the Ministry of Defense on April 2, hundreds of dead people were found in settlements of the region. Dozens of civilians die in Ukraine every day. The death toll is increasing.

As of April, the Office of the United Nations High Commissioner for Human Rights (OHCHR) recorded 3,455 civilian casualties in the country: 1,417 killed and 2,038 wounded[68]. From February 24, 2022, when the armed attack of the Russian federation on the territory of Ukraine began, until July 24, 2022, the Office of the UN High Commissioner for Human Rights recorded 12,272 cases of death or injury of civilians in Ukraine: 5,237 dead and 7,035 wounded[69].

According to the Office of the Prosecutor General, as of July 26, 2022, during the full-scale invasion of Russia, 25,165 war crimes were registered, 358 children were killed and 690 children were wounded[70].

The actions of the occupying forces were condemned in Great Britain, France, Germany, and other countries. However, this mechanism is not sufficient to stop the killing of civilians in Ukraine.

[68] Ukraine: civilian casualty update 3 April 2022 | OHCHR
[69] Ukraine - civilian casualty update as of 24 July 2022 UKR.pdf (un.org)
[70] Головна - Офіс Генерального прокурора (gp.gov.ua)

In March, the Office of the Prosecutor General signed an agreement on the creation of a joint investigative team with Lithuania and Poland to investigate russian crimes, which was later joined by the Office of the Prosecutor of the International Criminal Court. The document was also signed by the representatives of the countries in Eurojust.

Also, after the liberation of Kyiv region, the head of the European Commission, Ursula von der Leyen, announced the creation of joint investigative teams to investigate the crimes of killing civilians by Russia. On April 4, she reported that the EU is ready to send joint investigative teams to document russian crimes on the territory of Ukraine in coordination with the General Prosecutor's Office of Ukraine. Therefore, in order to coordinate with international processes, compliance with national legislation on the establishment of joint investigative teams with European standards is important. The provisions of the draft law appear to be sufficient, even if they do not detail all the procedural features of the functioning of joint investigative teams (as is done in the Second Protocol, the EU Convention or the Framework Decision). Instead, the draft law expands the circumstances of the creation of joint investigative teams, the goals of creating these teams, defines the specifics of the creation of joint investigative teams, the authorized persons responsible for the decision on its creation and coordination. And some provisions of the proposed draft law do not correspond to international practices. Taking into account the fact that joint investigative teams are created by mutual consent of the countries, some procedural features must be taken into account when making changes to the Criminal Procedure Code.

The goals of creating joint investigative teams, which are described in the draft law, will be determined not only by general pre-trial investigations, but also by checking the already received evidence, establishing circumstances that are important for criminal proceedings. Moreover, a change is added that joint investigative teams act to investigate cases that are carried out on the territory of one or more countries, or if the interests of these countries are violated. The current version of the law provides only that investigative teams act to conduct a pre-trial investigation into the circumstances of criminal offenses committed on the territories of several countries. This change is important for Ukraine, because it provides a mechanism for investigating crimes committed by Russia on the territory of Ukraine. International documents also provide that the activities of joint investigative teams take place on the territory of one or more countries. Thus, such a provision is acceptable both from the point of view of international documents and the application of this norm during the war for the investigation of russian crimes.

As mentioned above, Ukraine ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. The provisions of Part 1 of Art. 571, which is proposed by the draft law, contradicts Art. 20 of this protocol. In particular, it states that a joint investigative team is created by mutual consent to conduct criminal investigations on the territory of one or more countries that created it. That is, this norm does not provide for the possibility of involving joint investigative teams at the stage of court proceedings. Therefore, the prescriptions of the current wording of this part of Article 571, according to which the basis for the creation of joint investigative teams is the need to conduct a pre-trial investigation,

are more correct. The work of joint investigative teams in court proceedings is not common European practice and contradicts international documents.

In part 2 of Art. 571 it is defined that "the decision to create a joint investigative team and determine its composition, including the senior investigator of the joint investigative team, is taken in the form of a resolution by the head of the pre-trial investigation body in agreement with the Prosecutor General (a person who performs their duties)". This, firstly, significantly increases the responsibility of the Prosecutor General, since the final decision is approved by the Prosecutor General. Secondly, this proposal requires an addition regarding the need for an agreement, because in all international documents this is a mandatory condition for consolidating the work of joint investigative teams.

Although there is an order in the CPC on the provision of international legal assistance without a contract (Article 544), on the basis of a request. However, this article does not provide a separate legal basis for agreeing and creating joint investigative teams. Art. 571 of the Criminal Procedure Code separately regulates the creation of joint investigative teams, as do international documents detailing these procedures. Therefore, in the context of international cooperation, it is important to establish a condition for concluding an agreement between countries in the proposed text of the draft law. After all, the agreement prescribes and establishes in which country the trial will ultimately take place, in order to avoid critical difficulties with the admissibility of evidence, especially in cases where the country in which the investigation is conducted and the country in which the trial takes place take different approaches to this; composition of the group, terms, etc.

Of course, it is not mandatory to prescribe detailed information in the amendments to the draft law regarding all the features of the conclusion of the agreement. However, it should be mentioned in paragraph 2 of Art. 571, that after the decision of the Prosecutor General to create a joint investigative team at the request of the relevant authorities, an agreement is concluded with the competent authorities of the interested foreign countries.

Changes in the draft law are also provided for the organization of joint investigative teams. In particular, it is proposed to replace the phrase "Prosecutor General's Office" with "Prosecutor General (the person performing their duties)" for the purposes of consideration and resolution of questions about the creation of joint investigative teams. Requests for the creation of joint investigative teams may not be submitted by investigative bodies of pre-trial investigation of Ukraine, the prosecutor of Ukraine and competent bodies of foreign countries, but by the head of the body of pre-trial investigation, the head of the regional prosecutor's office and authorized persons of competent bodies of foreign countries. Then, the Prosecutor General (a person performing their duties) issues a mandate to the head of the pre-trial investigation body to create a joint investigative team, if the criminal offense was committed on the territory of Ukraine. That is, in fact, all important decisions should be made at the level of management positions. But Ukraine increases the procedural independence of prosecutors (and investigators as well), as a result of which the prosecutor makes decisions related to the investigation on their own without the approval of executives. However, in practice, they informally coordinate

their decisions with executives. Probably, such a change is based on the fact that the creation of joint investigative teams is not only about making decisions related to national procedures, but also about the international dimension. If we take into account the long-term perspective related to the reform of the prosecutor's office, then this change is undoubtedly inappropriate.

Another issue concerns the members who can be part of joint investigation teams. The draft law mentions only the senior investigator who coordinates the work process of the group. And in particular, the members of the joint investigative group carry out their investigative and other procedural actions on the territory of the country with the written agreement of the senior investigator of the group. It is insufficiently substantiated whether there are any restrictions on who can be part of the group, according to which parameters the selection is made, whether its composition will be limited in any way. There is a practice where investigative teams can include various specialists (prosecutors, investigative judges), not only investigators. But the bill describes only the role of the senior investigator. If it is expected that the group will include not only investigators, but also prosecutors or investigative judges, then perhaps it would be better to specify which parameters are important in the selection of members of joint investigative groups, to clearly define the criteria for the concept of "competent authorities", the members of which are included to the investigative team.

Why is this important to consider? If it is expected that the composition of groups in Ukraine will also include prosecutors and investigative judges, this may affect the principle of independence of prosecutors and investigative judges. After all, prosecutors and investigative judges cannot be subordinate to a senior investigator during the performance of their prosecutorial and judicial functions. In this case, if the participation of these specialists is expected, the draft law should provide for a more detailed procedure for such participation, which would not violate the principles of their independence.

Again, in clause 3 of Art. 571 the category "criminal proceedings" is used. International documents provide for the activity of joint investigative teams for pre-trial investigation. If the members of the joint investigative team agree on the main directions of the criminal proceedings, then this may also cover the issue of court proceedings. There is no such practice in the international context, and the activities of joint investigative teams are covered only by the conduct of criminal investigations.

It is also important to settle the issues of interaction between group members, exchange of information and evidence, since difficulties may arise at the stages of disclosure of this information, in the legal process. Because the national legislation of the countries differs and each country applies different approaches. The conclusion of an agreement between the parties would contribute to more coordinated cooperation between the countries and the planning of the investigative team's operational activities.

Contradictions may arise with Clause 4 of Art. 571, where it is stated that the members of the joint investigative team carry out procedural and investigative

actions with the written agreement of the senior investigator who coordinates the group's activities. In international practices, a joint investigative team can operate on the territory of one or more countries that created the team to investigate crimes. In order to avoid further uncertainties in cooperation with the authorities of other countries, this item requires an addition - taking into account the national legislation of the country that is also a member of the joint investigative team. After all, with the proposed content of this clause, it seems that the joint investigative group can operate exclusively on the territory of Ukraine and according to the rules of the Ukrainian context. And competent authorities of Ukraine can only participate in investigations conducted on the territory of Ukraine.

The introduction of the new paragraph 5 to Article 571 fully complies with international legal norms. After all, in the Second Additional Protocol to the EU Convention, there is a clause on information that is used for the investigation of cases. And a member of the joint investigative team, within the framework of national legislation and their competence, provides the team with information that is necessary for criminal investigations and the purposes of creating the team. That is, all the evidence obtained in accordance with the national legislation of the country, the competent authorities of which are members of the group, are recognized as admissible.

The addition that the evidence is admissible if during obtaining such evidence on the territory of the country the principles of fair trial, human rights and fundamental freedoms were not violated only reinforces the best European practices and emphasizes that the evidence must be obtained in a legitimate way.

Thus, changes to the article of the CPC are primarily necessary for the investigation of war crimes being committed by Russia on the territory of Ukraine - in particular, additions regarding the possibility of creating joint investigative teams to investigate cases that are committed on the territory of one or more countries. However, some procedural features of the organization of joint investigative teams require clarification in accordance with international practices. In particular, this applies to:

- → the need to conclude an agreement between countries which will conduct joint investigations
- → clarification of the "court proceedings" category and the expediency of joint investigative teams functioning at this stage
- → forming the composition of the group: parameters, restrictions, etc
- → additions to some points of the article with the possibility of taking into account the national legislation of other countries which will participate in the activities of joint investigative teams