

Public Consultations as a Tool for Public Participation in Governance

This publication examines the current state of one of the key areas of public administration reform — effective governance — with a particular focus on public consultations as a tool for public participation in governance.

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Public participation is an integral part of the democratic policymaking process. Engaging stakeholders in discussions on pressing policy issues, including draft regulatory legal acts, allows them to voice their opinions, provide recommendations or comments, and fosters effective dialogue between state authorities and society. One of the [OECD/SIGMA Principles of Public Administration](#) stipulates that policy development should involve active consultations with key external and internal stakeholders, as well as the public.

Currently, the primary legal framework regulating consultations conducted by executive authorities is the [Procedure for Conducting Public Consultations on the Development and](#)

[Implementation of State Policy](#) (hereinafter — the Procedure), approved by the Cabinet of Ministers.¹

Under this Procedure, the executive authority organising consultations should draft an annual tentative plan for their implementation, considering:

- › key objectives outlined in the Programme of Activities of the Cabinet of Ministers of Ukraine;
- › the State Programme for Economic and Social Development of Ukraine;
- › the legislative work plan and other strategic documents;
- › results of previous public consultations.

However, an analysis of tentative plans of ministries reveals a lack of a uniform approach to their formation. For instance, the [tentative plan of the Ministry of Defence of Ukraine](#) does not include any draft regulatory legal acts, instead proposing only general issues of state policy for public discussion, such as providing housing for service members or anti-corruption restrictions during military service under martial law. A similar pattern is observed in the [tentative plan of the Ministry of Justice of Ukraine](#).

The Procedure stipulates that public consultations may take three formats: public discussions, electronic consultations (a direct form), and public opinion surveys (an indirect form). Ministries tend to use only one format. For instance, the [tentative plan of the Ministry of Digital Transformation of Ukraine](#) includes only electronic public consultations.

The Procedure also allows for consultations on issues not covered by the tentative plan to be initiated by the public itself, provided that the relevant proposals are submitted to the public council or directly to the executive authority.

Public discussions are mandatory when a draft regulatory legal act concerns citizens' vital interests or affects the legal status, funding, or activities of NGOs.

In the [2023 SIGMA Monitoring Report](#), public consultations regarding state policy received a low score on the relevant indicator,² largely due to insufficient regulation of the process and

¹ Various legal acts also stipulate consultations in one form or another. For example, the Law of Ukraine '[On the Principles of the State Regulatory Policy in the Sphere of Economic Activity](#)' contains the obligation to publish each draft regulatory act in order to receive comments and proposals from individuals, legal entities and their associations. Environmental impact assessment reports, draft professional standards, etc., also require public discussion.

² The value of this indicator is **one point** on a five-point scale.

the absence of a requirement for mandatory public consultations on all draft laws and regulatory acts approved by the government.

Limiting the range of issues that must be subject to public discussion³ allows authorities to decide at their own discretion which projects require consultations. This approach turns what should be a tool for public engagement in decision-making into a mere formality by narrowing opportunities for citizens to participate in discussions on issues that may significantly impact society, weakening the effectiveness of consultations, and reducing the transparency of policymaking.

An analysis of explanatory notes to government draft laws shows that ministries that did not hold public consultations neither justify such decisions nor even mention them.

While the Procedure sets a two-week deadline for publishing consultation results, it ties this to the date a relevant decision is made following the discussions, without setting a clear timeframe for when the decision must be made. This creates a risk of delays in both decision-making and report publication.

Some authorities fail to comply with the reporting requirements set out in the Procedure. They either publish reports that omit information on whether public proposals were considered and how they influenced the final decision, or do not publish reports at all. Without transparent reporting on the impact of public consultations on policymaking, this process of engaging citizens in state governance risks becoming a box-ticking exercise.

The [Public Administration Reform Strategy for 2022–2025](#) (hereinafter — the Strategy) provides for a review of procedures and workflows in state authorities, with a particular focus on public consultations on policy development and implementation, as well as monitoring and controlling the execution of administrative decisions. Auditing these processes will help identify systemic negative trends and make these processes more user-friendly for citizens, particularly through the use of modern digital solutions.

The Strategy sets out **tasks** aimed at improving the process of public consultations on issues related to the development and implementation of state policy.

³ The Procedure defines ten categories of draft regulations for which public consultations are mandatory, including issues related to the socio-economic development of the state, the implementation and protection of citizens' rights and freedoms, the fulfilment of their political, economic, social, cultural and other interests, etc.

The Strategy Implementation Action Plan includes two **components** directly related to public consultations:

- supporting the Draft Law of Ukraine 'On Public Consultations' ([No. 4254](#) of 23 October 2020) in the Verkhovna Rada of Ukraine;
- ensuring the reengineering of the process of public consultations on the development and implementation of state policy.

State of Play and Progress of Reform

› Law of Ukraine 'On Public Consultations'

In June 2024, the Verkhovna Rada adopted the [Law of Ukraine 'On Public Consultations'](#) (Law [No. 3841-IX](#)), which will take effect 12 months after the termination or cancellation of martial law.

Law [No. 3841-IX](#) establishes the principles and procedure for conducting public consultations. Specifically, the consulting authority must publish a consultation document on the online platform for public consultations and/or on its official website, while also informing relevant stakeholders. After the consultations, the body must publish the submitted proposals, **analyse them**, and prepare and publish a report on the consultation results. The consultation period cannot be shorter than 15 working days, and the final report is published within 30 working days after the end of the consultation.

Law [No. 3841-IX](#) defines an exhaustive list of consultation formats:

- 1) electronic consultations;⁴
- 2) targeted consultations;⁵
- 3) public discussions.⁶

Public consultations can be held in multiple formats simultaneously; however, according to Law [No. 3841-IX](#), online consultations are mandatory. Public discussions are also obligatory for some authorities in specific cases, such as when a draft act affects constitutional rights, freedoms, and obligations of citizens or impacts the environment, ecological, biological, or genetic safety.

⁴ Publication of the consultation paper on the online platform for public consultations and/or on the official website of the authority conducting public consultations.

⁵ Sending consultation paper to stakeholders, conducting surveys and questionnaires.

⁶ Holding public events (roundtable meetings, hearings, conferences, focus groups, online and video conferences).

The Law also clearly defines the liability of state authorities that attempt to evade public consultations or violate the procedure. The adoption of the act in violation of the Law may serve as grounds for its cancellation or invalidation by a court.

Thus, one of the measures outlined in the Action Plan is fully implemented.

Between its first and second readings in Parliament, Draft Law [No. 4254](#) lost several crucial provisions. Specifically, the adopted Law [No. 3841-IX](#) **does not mandate** public consultations for MPs or parliamentary committees. While MPs **may** hold public consultations before submitting a draft law to the Verkhovna Rada, and committees **may** do so after a draft law passes its first reading, the President is not mentioned among the authorities holding public consultations at all.

Unlike the current [Procedure](#),⁷ Law [No. 3841-IX](#) **does not allow civil society to initiate consultations**. Stakeholders are limited to submitting proposals on the subject of consultations to the relevant authority, in line with legal requirements.

Unlike the current Procedure, Law [No. 3841-IX](#) somewhat **narrows the scope of public consultations**, limiting them to the preparation of draft programme documents and regulatory legal acts, leaving out current issues related to the implementation of state policy.

Also, the requirement for mandatory public consultations covers numerous regulatory legal acts of varying legal force and significance. This creates additional workload for state authorities and raises the risk of them being unable to manage the volume of consultations, particularly when it comes to processing received proposals effectively within the [timeframes](#) set by the Law, which may undermine the very essence and purpose of this procedure.

Law [No. 3841-IX](#) states that consultation reports by consulting authorities should include only *generalised* summaries of received proposals and *generalised* information about their acceptance or rejection, with justification for the decisions made. However, the Law fails to define how generalised the received proposals may be (their number, substance, etc.), leaving authorities free to report in an arbitrary manner and depriving stakeholders of clear information on whether their proposals were considered.

The Laws of Ukraine '[On Public Consultations](#)' and '[On Lawmaking](#)' are interconnected, as public consultations are an important element of law-making, although the latter somewhat

⁷ The Procedure stipulates that consultations are held on issues related to the socio-economic development of the state, the implementation and protection of citizens' rights and freedoms, and the fulfilment of their political, economic, social, cultural and other interests, i.e. not necessarily only on legal acts.

downplays their role. These laws also use different terminology (for example, the term 'programme document'), which creates inconsistencies and calls for harmonisation.

Special attention is needed to harmonise the principles underlying law-making activities and the conduct of public consultations. The Law of Ukraine 'On Lawmaking' states that public consultations are held to implement the principles of openness and transparency in law-making.⁸ However, the list of law-making principles defined in this very Law does not actually include these concepts.⁹ It is Law [No. 3841-IX](#) that establishes the principles of participation, openness, and transparency, though only in the context of public consultations.¹⁰

Another measure provided for in the Plan for reengineering the process of conducting public consultations is directly linked to the implementation of Law [No. 3841-IX](#). Yet, according to the final and transitional provisions of this Law, the government is required to adopt and/or update regulations arising from this Law only six months after the termination or cancellation of martial law to ensure that the relevant regulations come into force simultaneously with the Law.¹¹ Until then, the existing requirements for conducting public consultations, regulated by the current Procedure, remain in effect.

› Online Consultations

Law [No. 3841-IX](#) also provides for the creation of an online public consultation platform for interaction with citizens and civil society institutions. The Cabinet of Ministers is tasked with determining the operation procedure, functional requirements, and technical administrator of the platform.¹²

The introduction of a unified platform is seen as beneficial, as it would allow stakeholders to access consultations across all state authorities and local government authorities. It would also simplify the identification and verification of stakeholders and help standardise the process of submitting proposals. Currently, ministries and other central executive authorities publish information about public consultations and reports on their results on their own websites.

However, the future of this platform remains uncertain. Law [No. 3841-IX](#) stipulates that until the technical capacity for holding electronic consultations on a specialised online platform is

⁸ [Article 45](#) of the Law of Ukraine 'On Lawmaking'.

⁹ [Article 3](#) of the Law of Ukraine 'On Lawmaking'.

¹⁰ [Article 4](#) of the Law of Ukraine 'On Public Consultations'.

¹¹ Paragraphs 1 and 4 of Section IV 'Final and Transitional Provisions' of Law [No. 3841-IX](#).

¹² [Article 14](#) of Law No. 3841-IX.

created, such consultations are to be carried out on the websites and/or social media pages of the consulting authorities.¹³ Additionally, the Law does not set a deadline for creating the online platform, specify when it should become operational, or clarify what exactly is meant by 'creating technical capacity'. As a result, there is a risk that the 'creation of technical capacity' could be delayed, blocking the launch of the platform for an unknown period.

The [VzaemoDiia](#) portal was initially expected to include a public consultation module, but it currently functions only as a platform for conducting competitions within NGO projects and for submitting petitions to local self-government authorities.

In December 2022, [changes](#) were made to the Strategy that narrowed the scope of one of the tasks under the 'Effective Governance' pillar by removing the provision on implementing a public consultation module on an online platform for interaction between executive authorities, citizens, and civil society institutions. This suggests that implementing online consultations is currently not a priority in public administration.

Recommendations

Public consultations serve as a tool for public participation in shaping and implementing state policy and decision-making. To ensure effective communication between consulting authorities and stakeholders, the following measures are needed:

- 1) making public consultations mandatory for MPs and Verkhovna Rada committees, since MPs initiate most draft laws;
- 2) setting clear deadlines for creating an online public consultation platform;
- 3) ensuring analytical and reporting components in the consultation process: public consultations should not just collect proposals from stakeholders but also analyse them properly. State authorities must review received proposals, justify decisions to accept or reject them, and publish reports on the results of consultations;
- 4) harmonising Law [No. 3841-IX](#) with the Law of Ukraine 'On Lawmaking';
- 5) making necessary amendments to Law [No. 3841-IX](#) and the Law of Ukraine 'On Lawmaking' before they come into force, which would facilitate proper implementation of the processes they regulate.

¹³ Paragraph 2 of Section IV 'Final and Transitional Provisions' of Law [No. 3841-IX](#).