



B R I E F

POLICY BRIEFS ON GOOD E-GOVERNANCE

Policy Brief #5: E-consultations: Implementation trends in Ukraine



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The use of new technologies for strengthening good governance and democracy in Ukraine has increasingly gained importance. The Policy Brief Series on Good E-Governance launched by the Ukrainian-Swiss E-Governance for Accountability and Participation (EGAP) Program, the State Agency for E-Governance in Ukraine and the Center for Innovations Development (CID) at Kyiv-Mohyla Academy aim to serve as pragmatic, evidence based briefs that seek to inform policy makers and practitioners about key policy issues related to the mainstreaming of good electronic governance in Ukraine. The Policy Briefs Series are distributed electronically; they are also available on EGAP Program's website (www.egap.in.ua/natsionalna-polityka) and at the Center for Innovations Development at the Kyiv Mohyla Academy (www.cid.center).

The intensified penetration of information and communication technologies (ICT) into public administration, including the use of e-participation tools, is making the legislative and political decision-making processes in Ukraine more inclusive. In September 2018, Ukrainian Prime Minister Volodymyr Groysman announced an allocation of UAH 500 million for participatory public budgeting initiatives to be implemented across Ukraine; more than 150 cities across Ukraine already using this participatory tool. Ukraine also ranks among the top 20 countries on the Open Data Barometer while the National E-Democracy Concept (2016-2018) adopted by the Government of Ukraine has been recognized as one of the best regional practices among EU Eastern Partnership countries. Yet, to ensure a sustained and dynamic ecosystem for e-democracy, it is important to roll out a critical mass of e-participation tools at national level and locally. This fifth Policy Brief on Good E-Governance focuses on the early assessment of the use of e-consultations in Ukraine. While e-consultations are not yet as commonly used as electronic petitions or participatory budgeting, the currently ongoing discussions on the revised draft Law on Public Consultations are topical and important, especially for the vibrancy of local level democracy in Ukraine.

PUBLIC CONSULTATIONS: DEVELOPING A PARTICIPATORY CULTURE AND TRUST IN GOVERNMENT

Globally, diverse tools and practices seeking to ensure transparency and civic participation in decision-making processes are increasingly being used. Public consultations are one among such tools. Public consultations (PC) allow the public to engage and provide inputs into policy and decision making processes between two election points. They can be used at different stages of the policy making process, typically during the agenda setting, policy formulation and policy evaluation phases. When effectively designed, public consultations can catalyze dialogue between authorities and citizens, provide a wider spectrum of options to improve public policies and thereby enhance the bottom-up participatory political culture where citizens as well as authorities assume responsibility in shaping policies and political decisions.¹ Most commonly, public consultations are used in social, environmental, education, healthcare policy making process as well as in urban planning settings.

While conventional offline channels for conducting public consultations can include surveys or face-to-face public hearings, forums, facilitated focus group

discussions, with the development of ICT, electronic consultations are becoming more common². Similarly as offline public consultations, e-consultations engage ordinary citizens and civil society in the development of policy decisions via designated online platforms or via consultative features on authorities' websites. With the help of ICT, they can be conveniently synchronous or asynchronous, designed to inform the government and targeted public institutions about citizens' opinions in a transparent and participatory manner³.

Open government standards and the enhancement of public engagement in political decision making through inclusive public consultations have been well documented in numerous international publications and guides such as: the Organization for Economic Cooperation and Development (OECD)'s Handbook on Information, Consultations and Public Participation in Policy-Making (2001)⁴; the 15th OSCE State-

1 Tomkova, Jordanka. (2009) E-consultations – New tools for civic engagement or facades for political correctness?, European Journal of ePractice, No. 7, March, <https://joinup.ec.europa.eu/sites/default/files/document/2014-06/ePractice%20Journal-Vol.7-March%202009.pdf>

2 Public consultation instruments such as polls and referendums can be also used to adopt higher level policy decisions.
3 E-public, e-participation and e-voting in Europe - prospects and challenges, European Parliament, Science and Technology Options Assessment, final report, 2011
4 OECD, Handbook on Information, Consultation and public Participation in policy-Making, <https://www.internationalbudget.org/wp-content/uploads/Citizens-as-Partners-OECD-Handbook.pdf>



gy to Address Threats to Security and Stability in the XXI Century (2003)⁵; the Council of Europe’s Code of Good Practice for Civil Participation in the Decision-Making Process (2009)⁶ and the EU Stakeholder Consultations Guidelines (2014)⁷.

Table 1. Types of public consultations⁸

Individual	Collective
Survey questionnaires	Public hearings and discussion fora
Polls	Focus groups
Expert opinions	Public juries
Open hours provided by public authorities	Ad hoc consultative/technical advisory groups or committees
Open Written Consultations	Commissions and joint task force hearings
Referendums	

GLOBAL E-CONSULTATIONS PRACTICE

The international practice of e-consultations has evolved since the late 1990s. Among the early proponents of e-consultations include the United Nations and the OECD where the former included E-participation as a separate section within the E-Government Development Index (EGDI) with 15 targeted indicators. Three of these indicators directly relate to e-consultations, where countries are evaluated on their practice of:

- engaging citizens in consultations to improve online/ mobile services and raise citizens’ satisfaction;
- engaging citizens in consultations in areas of education, health, finance, social welfare, labour, environment;
- governments’ publishing the outcomes of policy consultations online⁹.

5 OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century, <https://www.osce.org/mc/17504>.
 6 Council of Europe, Code of Good Practice for Civil Participation in the Decision-Making Process, <https://www.coe.int/en/web/ingo/civil-participation>
 7 EU Stakeholder Consultation Guidelines 2014, http://www.ccre.org/img/uploads/piecesjointe/filename/CEMR_response_EU_stakeholders_consultation_guidelines_EN.pdf.
 8 International Centre for Policy Studies. Manual on Public Consultations, http://icps.com.ua/assets/uploads/images/files/manual_on_public_consultations_icps_.pdf.
 9 United Nations E-Government Survey 2016. E-Government in Support of Sustainable Development, <https://publicadministration.un.org/egovkb/en-us/Reports/UN-E-Government-Survey-2016>

Public consultations are also widely used in the European Union, namely by the European Commission and the European Parliament. One good example is European Parliament’s 2017 public consultation on ethical, legal, economic and social issues related to robotics and artificial intelligence. The consultation was structured in the form of quick surveys targeting two audiences: i) a wider public audience (15 questions) and ii) experts specialists in this area (64 questions). Interestingly, an overwhelming majority of the 300 respondents favored the development of robotics and artificial intelligence - 79% and 68% respectively¹⁰.

At country level, the practice of e-consultations has also steadily grown. According to the UN E-Participation Index, Western European and North American countries are among the top users of e-consultations, however, in recent five years Asian countries such as South Korea, Taiwan and Singapore but also some South American countries are topping the list (see Tables 2 and 3). In the 2018 UN E-Government Survey, for example, South Korea, Denmark and Finland topped the E-Participation Index rankings.

Table 2. UN E-Participation Index Leaders

Index Score	Country
100%	Denmark, Finland, Netherlands, Norway, South Korea, Russia
96%	Australia, Brazil, Bulgaria, Hungary, India, Italy, Japan, New Zealand, Spain, UAE, UK, USA
91%	Albania, France, Ireland, Malaysia, Mexico, Moldova, Philippines, Portugal, Singapore, Sweden, Turkey, Uruguay

10 A. Svitlychna, A. Yemeljanova, S. Loboyko ‘E-consultations. The European Practice: Analytical Note’, 2018, <http://cid.center/index.php/7076363>.
 11 United Nations E-Government Survey 2018. Gearing e-government to support transformation towards sustainable and resilient societies, <https://publicadministration.un.org/egovkb/en-us/Reports/UN-E-Government-Survey-2018>.



Table 3. Examples of e-consultations platforms

Country	Link
EU	ec.europa.eu/info/consultations_en
UK	www.gov.uk/government/publications?publication_filter_option=consultations
Netherlands	www.internetconsultatie.nl/
Singapore	https://www.reach.gov.sg/participate/public-consultation
Australia	https://www.australia.gov.au/news-and-social-media/public-consultations
Croatia	https://vlada.gov.hr/e-consultation-portal-launched-for-citizens-to-take-more-active-part-in-law-making/16865

E-CONSULTATIONS IN UKRAINE AT NATIONAL AND LOCAL LEVEL

Regulatory and legal framework. There are several direct and indirect references made to e-consultations in Ukrainian legislation and policies. Public discussions and public hearings are regulated by the Cabinet of Ministers of Ukraine (CMU) Resolution No. 996 - On Ensuring Public Participation in State Policy Development and Implementation (2010). The Resolution applies only to executive authorities, and remains merely advisory for local self-government bodies. E-consultations are specifically addressed in the CMU Order No. 386 - On the Approval of the Information Society Development Strategy (2013) while the National Concept of E-Democracy Development in Ukraine (2017) refers to and defines e-consultations as a 'form of public consultations envisaging the publication of draft acts initiated by state authorities or relating to issues requiring solutions in the form of proposals and comments'¹².

Draft Law of Ukraine On Public Consultations. Draft law On Public Consultations was submitted to the Ukraine's Verkhovna Rada in December 2017. It 'determines the general standards for public consultations initiated by state authorities and local

self-government bodies to engage the public and other stakeholders in national and regional policy development, to solve issues of local significance and to take into account the interests and needs of all stakeholders in the development and adoption of decisions by mandated powers'¹³. Under the draft law, e-consultations constitute an obligatory form of public consultations and are to be published as an advisory document to draft acts in the 'Public Consultations' section on authorities' official websites for a minimum period of 15 business days.

Despite civil society's ardent efforts, the draft law On Public Consultations has not been passed yet but it is being reviewed by the Parliamentary Committee for State Construction, Regional Policy and Local Self-Government. The Parliament's Main Scientific and Expert Office has since commented on the draft law, drawing attention to the unstandardized structure and sub-optimal navigation functions on state bodies' websites, as well as the need for relevant allocation of staff and budgetary resources for conducting public consultation processes¹⁴.

OSCE's expert opinion on the draft Law On Public Consultations highlighted that 'despite the Draft Law's introduction of liability for breaching the procedure for holding public consultations, the sanctions system would be more effective if accompanied by clear procedures and allocation of responsibilities. Moreover, the public consultations' monitoring and enforcement system would be enhanced if conducted by an independent body, focusing on the law's effective implementation'¹⁵.

Public portal for draft law discussion. Under the 'Open Parliament' Action Plan, supported by the US-AID RADA Program and through the Parliament's Executive Office Computerized System Administration initiative, a 'Public portal for Consultations on Draft Laws' has been developed. The portal is located on the website of the Verkhovna Rada of Ukraine and it seeks to engage citizens in the legislative process by enabling them to provide comments and suggestions on proposed draft laws available for online discussion¹⁶.

12 Order of the CMU as of November 8, 2017 No. 797-p On Approval of the Concept of E-Democracy Development and the Action Plan for Its Implementation, <https://zakon.rada.gov.ua/laws/show/797-2017-%D1%80>.

13 Draft Law On Public Consultations, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63237

14 Opinion of the Main Scientific and Expert Administration 02.02.2018, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63237.

15 OSCE, Opinion of the Draft Law of Ukraine On Public Consultations, www.legislationline.org/documents/id/20028.

16 Official site of the Verkhovna Rada of Ukraine, <http://rada.gov.ua/fsview/156424.html>.



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So far, however, only limited amount of draft laws have been placed on the Parliamentary portal for consultation, and the public is ‘consulted’ only once draft laws are already developed¹⁷. This means that citizens are unable to make substantial changes to the proposed laws. While some statistical information is available, qualitative information about the process and results of consultations is also absent. Based on the records of completed public consultations, the Draft Law On Civil Weapons and Ammunition, for example, evoked the greatest public interest with 854 votes ‘in favour’ and 7 votes – ‘against’¹⁸.

E-consultations at the executive level. Analytics on the Central Portal for Ukraine’s Executive Authorities further suggest that the highest number of public consultations over the second quarter of 2018 were conducted by ministries: the Ministry of Education and Science initiated 45 e-consultations, Ministry of Health (31), Ministry of Finance (28) while among the central executive authorities – the State Property Fund (32), the State Doctor Service (19) and the State Fiscal Service (15) were most active. Kyiv City State Administration (59), Cherkasy (29), and Vinnytsia (25) Regional State Administrations were also among the most pro-active in using public consultations at the local level.

Table 4. Ukraine Data: 1-2nd Quartal 2018¹⁹

Institution	Public consultation activities	Number of issues discussed
Ministries	503	493
Other central executive authorities	417	414
Regional, Kyiv City State Administrations	738	752

Center for Innovations Development

Despite these records, majority of central executive authorities do not publish substantive comments from public discussions or e-consultations, as required by Articles 20 and 21 of Cabinet of Ministers’ Resolution No. 996. For the most part, published information on e-consultations includes name of the

17 However, between, August 2018 and March 2019 there were no draft laws open for discussion on Parliament’s website.

18 The Verkhovna Rada of Ukraine, Public portal for draft law discussion, <https://itd.rada.gov.ua>.

19 Government of Ukraine portal. Consultations with the public. Analytical materials. <https://www.kmu.gov.ua/ua/gromadskosti/gromadyanske-suspilstvo-i-vlada/konsultaciyi-z-gromadskisty/informacijno-analitichni-materiali>

legislative or policy document to be consulted, the starting date and the type of public consultation. The few ministries that have publicized comments include the Ministry of Regional Development, Construction, Housing and Communal Services; Ministry of Culture, Ministry on Temporarily Occupied Territories and Internally Displaced Persons, and Ministry of Education and Science.

Ministry on Temporarily Occupied Territories and Internally Displaced Persons, the Ministry of Infrastructure, the Ministry of Economic Development and Commerce, the Ministry of Environment and Natural Resources as well as the Ministry of Social Policy also provide an opportunity for registered users to support or oppose draft laws online. Most commonly, however, opportunities for ‘public discussions’ conducted by executive authorities, are provided in the form of emailed feedback and already in an advanced stage of legislative development. Similarly as in the case of Parliamentary consultations, this means that there is no opportunity to significantly influence the drafts or to engage in the legislative discussion online, to have an overview of dismissed proposals or about institutional arguments that ultimately informed a certain policy choice.

The situation is similar at regional level. An overwhelming majority of regional administrations publish legislative drafts for online public discussion already in very advanced stages without the possibility of following the policy discussion process online in real time. At least, reports on the outcomes of consultations are made available. Regional State Administrations of Vinnytsia, Donetsk, Zaporizhzhia, Kharkiv, Cherkasy actively use e-consultations. Annual plans of executive authorities and of all regional state administrations are also listed on the national portal under the section of ‘Public Consultations’²⁰.

Introduction of e-consultations in local self-government bodies (OSGB). Despite the fact of Resolution No. 996 being only advisory in nature for local self-government bodies, some cities have already started actively introducing public e-consultations since they recognize their public value. Regulations on public consultations (annex to the territorial community charter)²¹ have been developed in Lviv, Nizhyn, Chernivtsi, Khmelnytskyi, Kropyvnytskyi, Rivne, among other cities and towns. Provisions for

20 See footnote 14.

21 Typical regulation On Public Consultations in City N, public activist’s reference book, Ukrainian Centre for Independent Political Research (UNTSPD), http://dovidnyk.org.ua/index.php?option=com_content&view=article&id=430.



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local public consultations by OSGB include:

- proposals on draft regulatory and legal acts
- the issues of welfare (public surveys)
- street renaming
- development of the new 'Civil Budget Regulation'
- proposals on public activities.

Format of e-consultations at OSGB level is mixed and depends on the issue being discussed. For example, to update civil budget regulations in Kyiv and Lviv, first offline public hearings were held while consolidated recommendations were collected via e-mail. The Lviv City Council published the contents of all

legislative proposals related to the city's new Civil Budget Regulation draft for public discussion, with detailed comments by the City Council on each of them²². Public consultations not related to regulatory legal acts are often conducted by OSGB through quick survey, online voting or through a quick poll format. Thus, the public is directly engaged in the decision-making process, and not just in the proposal submission stage.

Introduction of e-consultations in amalgamated territorial communities (ATCs). Based on the research conducted by the Centre for Innovations Development on electronic services in ATCs, 30 out of 619

Table 5. Examples of e-consultations in Ukraine

Authority	E-consultation	Web address
Kyiv City Council	The most popular consultations so far involved: the renaming of two streets with 354 and 337 participants, and a recent e-consultation on setting of public transport tariffs with 1289 citizens participating.	http://projects.kievcity.gov.ua
Lviv City Council	Public consultation on amendments to the public budget received 4 comments from the general public. Feedback on each of the points proposed was duly provided by the Lviv City Council with disclosure whether the proposal would be "taken into full account", "taken into account partly", or would "not considered".	https://city-adm.lviv.ua/public-consultation/249019-materialy-rozhliadu-propozytsii-podanykh-pid-chas-konsultatsii-iz-hromadskistiu-shchodo-proektu-vnesennia-zmin-do-polozhennia-pro-hromadskiyi-biudzheth-m-lvova
Sumy City Council	E-consultation on the 2018 city budget project attracted 6 participants, while the Sumy Social and Economic Development Program (2018) and the Strategic Plan for 2019-2020 received 24 proposals which were published. In addition, responses from the City Council and information about the intermediate status of considerations were also published online.	https://smr.gov.ua/uk/2016-03-14-08-10-17/gromadski-obgovorennia/elektronni-konsultatsii-z-hromadskistiu/8106-elektronni-konsultatsiji-shchodo-proektu-miskogo-byudzhetu-ta-programi-ekonomichnogo-i-sotsialnogo-rozvitku-m-sumi-na-2018-r.html
Kropyvnytskyi City Council	The Kropyvnytskyi City Council conducted an e-poll related to the reconstruction of the Kovalivsky and Peremohy parks. Residents of Kropyvnytskyi could vote through the electronic service "Your Opinion" or by sending an SMS; the survey lasted a month and engaged 404 citizens.	http://www.kr-rada.gov.ua/news/miska-rada-kropivnitskogo-zaprovadzhu-spilni-iz-gromadskisty-publichni-elektronni-konsultatsiyi.html
Lutsk City Council	E-consultation on the 'Procedure for the control and system access to the executive committee of the Lutsk City Council' reported 13 participants, most of whom were NGOs. All submitted proposals were summarized with concrete proposals for completing the relevant document.	https://www.lutskrada.gov.ua/static/content/files/a/1e/3u5zvfltd6xew3zu-wvnvj4yq5otjmiea.pdf

²² Lviv City Council: Proposals submitted during public consultations on the draft amendments to the Civil Budget Regulation of the City of Lviv, <https://city-adm.lviv.ua/public-consultation/249019-materialy-rozhliadu-propozytsii-podanykh-pid-chas-konsultatsii-iz-hromadskistiu-shchodo-proektu-vnesennia-zmin-do-polozhennia-pro-hromadskiyi-biudzheth-m-lvova>.



(5%) analyzed amalgamated territorial communities' websites have an e-survey or e-questionnaire feature²³. Mena ATC in Chernihiv region surveyed residents' satisfaction about the quality of public service provision²⁴ while another common practice by ATCs is to conduct public surveys on a range of topics via TsNAPs (administrative service provision centres). Citizens can also express their support or opposition to solicited issues by authorities via e-mail.

The Swiss-Ukrainian Program EGAP also features an 'Unified Local E-Democracy Platform' (e-dem.tools) that houses the existing 'Local E-Petitions', 'Civic Budget', and 'Open City' features with 'Public E-Consultations' component. 'Public E-Consultations' is thus the latest tool providing local self-government bodies an opportunity to solicit residents' proposals on city and community development issues, to organize discussion of draft documents prior to their consideration and approval, conduct local public opinion surveys²⁵.

E-CONSULTATION DEVELOPMENT OPPORTUNITIES IN UKRAINE

International research provides many recommendations on effective methodologies for e-consultations. Most relate to their initiation, planning, advertisement, execution and finally on how to derive meaningful inputs from e-consultations. However, most challenges arise in the coordination and implementation of decisions offered by the public. Despite e-consultations providing opportunities for citizens to interact with and influence political actors in policy development processes, their impact on actual policy outcomes is less evident and more complex to trace²⁶.

23 Litvinova K., Mayevska O. (2018) 'Public services and e-services for ATC residents. Examples, references, statistics'. <http://cid.center/index.php/23765432345>.

24 The All-Ukrainian Public Organization 'Association of Self-Organization Promotion'. (2018) 'Mechanisms of authority-public interaction in ATCs: Success stories'. samoo.org.ua/blog/2018/04/20/mehanizmi-vladno-gromadskoyi-vzayemodiyi-v-otg-uspishni-praktiki.

25 East Europe Foundation, July 2018, <http://eef.org.ua/fsye-v-mezhah-realizatsiyi-shvejtsarsko-ukrayinskoyi-programy-egap-ogoloshuye-konkurs-na-vybir-pidryadnyka-dlya-rozrobky-brendyngu-veb-platfomy>.

26 Tomkova J., E-consultations – new tools for civic engagement or facades for political correctness?, European Journal of ePractice, №7, March 2009.

To ensure the effective launch of an (e)public consultation practice in Ukraine, adopted, enacted and subsequently implemented legislation on public consultations is urgently needed. This requires a reboot of discussions on the draft law On Public Consultations which would identify procedures for the launch, coordination and publishing of results from e-consultations at the central as well as local level calling for:

- Citizen engagement in all stages of the policy development process, and not only at the approval stage of finalized government decisions;
- Provision of information about the outcomes of e-consultation processes, which proposals were considered and brief justifications for those rejected – on respective authorities' websites/ portals;
- Appointment of a coordinator/ facilitator for the duration and follow-up of public e-consultations;
- Development of a dedicated portal for e-consultations and participatory e-tools (based on a one-stop-shop principle) – based on European best practice;
- E-consultations to comply with user-friendly interface, user authorization, and content materials.p principle) – based on European best practice;
- Ensure parallel offline processes with public groups, representatives of the public in government authorities.

As e-consultations are a relatively new practice in Ukraine, it is essential to educate the public as well as public authorities to ensure the adoption and quality of e-consultation processes. Otherwise, e-consultations stand a risk of being purely formal instruments with low democratic dividends. Authorities need to clearly understand the purpose, the appropriate format and potential benefits of e-consultations they intend to initiate. Effective dissemination and implementation of inputs gained from e-consultations is also essential. As public consultations rarely lead to 100% consensus, both the government and the public need to have realistic expectations about respective outcomes of such initiatives. Moreover, it needs to be clear that online consultative spaces and platforms should by no means replace those offline. They are merely complementary. Yet, when designed effectively, they do offer another convenient and transparent channel for citizens to interact with and influence public authorities on matters of public importance.



BRIEF

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The expanded version of the research “E-Consultation as a Component of Public Consultation” is available here: <https://cid.center/096306376-2/>

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Swiss Agency for Development and Cooperation funds the EGAP Program www.eda.admin.ch



EGAP is a four-year (for 2015-2019) Swiss program in Ukraine on e-governance development aimed at ensuring reporting and participation, funded by the Swiss Confederation. www.egap.in.ua.



Center for Innovations Development – The team of the Center for Innovations Development (CID) enhances the development of e-Democracy in Ukraine, starting with successful initiation of e-petitions in 2014-2015, legalization of e-appeals, co-founding of Reanimation Package of Reforms e-Dem Coalition, development of citizen engagement tools and high-quality governance www.cid.center



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