

METHODOLOGY FOR THE INDEPENDENCE RATING OF KEY PUBLIC INSTITUTIONS OF UKRAINE: LIST OF PARTICIPANTS AND EVALUATION CRITERIA

Authors:

Michal Piško,

Transparency International Slovakia

Yehor Kyian,

Economic Analyst at ICPS

Kateryna Moskalenko,

Director of Legal Affairs at ICPS

Maksym Stepanenko,

Expert of Internal Policy Department at ICPS

August 2020

ABOUT THE PROJECT

The project “Strengthening democratic resilience of key public institutions in Ukraine” is being implemented by the International Centre for Policy Studies (ICPS) in partnership with the Institute for Economic and Social Reforms in Slovakia (INEKO) and is financially supported by the Embassy of the United States in Ukraine. The project aims to improve the efficiency of state institutions, administration, self-government and civil society in the area of creation and oversight of regional policies, administration of state-owned enterprises, and monitoring of budgets and information openness of local authorities in Ukraine.

The independence of public institutions in Ukraine has always been and is remaining a topical issue. This is due to the fact that the influence of various stakeholders in their functioning can create asymmetries in market transformation of Ukraine and threaten good governance, increase the risk of corruption, shake the democratic foundations, negatively affect the well-being of the population and, even, jeopardize future economic development.

In turn, the purpose of the "Independence rating of key public Institutions of Ukraine" is to analyze the degree of independence of key state agencies of Ukraine from various stakeholders and to provide recommendations for improving their independence. In addition, such an approach will contribute to the public debate on the degree of independence of key state institutions in Ukraine, will improve the public control over the functioning of state bodies.

The evaluation of independence of public institutions will focus on criteria such as appointments and dismissal of top-management personnel, sovereignty and legal basis of the institution, transparency of incomes of appointees.

The results of this project will be useful for anyone who can use them as a source of information to assess trends in the functioning of public institutions.

We hope that this project will be able to increase the independence and professionalism of the state bodies of Ukraine, will promote good ideas and inspire their implementation throughout Ukraine.

The indicators of independence of key state institutions of Ukraine

| Nr. | Independence criterion | Points for state institutions without a management board | Points for state institutions with a management board | Source |
|---|---|--|---|------------------------|
| I. Appointment of the Governing Body and Board Members | | | | |
| 1 | The governing body is comprised of multiple persons | 2 | – | Legislation of Ukraine |
| 2 | The Head of the state institution does not participate in the election of board members | – | 1 | Legislation of Ukraine |
| 3 | An employment contract was not concluded with the Head of the Management Board | – | 0,5 | Legislation of Ukraine |
| 4 | An employment contract was not concluded with the Board members | – | 0,5 | Legislation of Ukraine |
| 5 | Members of the governing body are not replaced simultaneously | 1 | 0,5 | Legislation of Ukraine |
| 6 | Board members are not replaced simultaneously | – | 0,5 | Legislation of Ukraine |
| 7 | Members of the governing body are appointed in various ways (by several actors) | 1 | 1 | Legislation of Ukraine |
| 8 | The head of the state institution is nominated by a collective body | 1 | 0,5 | Legislation of Ukraine |
| 9 | Board members are nominated by a collective body | – | 0,5 | Legislation of Ukraine |
| 10 | Members of the governing body are elected by multiple actors | 1 | 0,5 | Legislation of Ukraine |
| 11 | Board members are elected by multiple actors | – | 0,5 | Legislation of Ukraine |
| 12 | Candidates for the governing body position must meet specific education requirements | 1 | 1 | Legislation of Ukraine |
| 13 | Candidates for the governing body position must meet specific work experience requirements | 1 | 1 | Legislation of Ukraine |
| 14 | Candidates for the governing body position must meet specific requirements regarding their political independence | 1 | 1 | Legislation of Ukraine |
| 15 | Members of the governing body are not allowed to hold certain offices after their office term ends | 1 | 1 | Legislation of Ukraine |

| | | | | |
|------------------------------------|---|-----------|------------|--|
| 16 | Term of office of members of the governing body is limited | 1 | 1 | Legislation of Ukraine |
| 17 | The same person may not be appointed a member of the governing body for more than two consecutive terms | 1 | 1 | Legislation of Ukraine |
| 18 | Public hearing is part of the selection process for governing body positions | 1 | 1 | Legislation of Ukraine |
| 19 | CVs of members of the governing body are publicly available | 1 | 1 | Official website of the agency, google search, or official information request |
| 20 | Members of the governing body were not politically active 2 years prior to being appointed | 1 | 1 | Official website of the agency, google search, or official information request |
| Number of points | | 15 | 15 | |
| II. Dismissal of Appointees | | | | |
| 1 | Dismissal of the head of the state institution is possible for reasons related to policy | 1 | 1 | Legislation of Ukraine |
| 2 | Dismissal of the head of the state institution is possible at the discretion of the authorized state institution | 1 | 1 | Legislation of Ukraine |
| 3 | Dismissal of the head of the state institution is possible if the appointed head of the state institution has been convicted of a crime or if he no longer meets a political independence criterion | 2 | 1 | Legislation of Ukraine |
| 4 | Dismissal of a board member is possible only on the grounds provided by law and must be justified | – | 1 | Legislation of Ukraine |
| 5 | Dismissal of the head of the state institution must be carried out by multiple actors | 1 | 0,5 | Legislation of Ukraine |
| 6 | Dismissal of a board member must be carried out by multiple actors | – | 0,5 | Legislation of Ukraine |
| Number of points | | 5 | 5 | |

| III. Sovereignty and Constitutional Basis | | | | |
|--|---|-----------|------------|-------------------------|
| 1 | Legal regulation of the activity of the state institution is carried out by the Constitution of Ukraine | 1 | 1 | Constitution of Ukraine |
| 2 | The appointment procedure of the head of the state institution is defined in the Constitution of Ukraine | 1 | 1 | Constitution of Ukraine |
| 3 | The appointment procedure of the deputy head of the state institution is defined in the Constitution of Ukraine | 1 | 1 | Constitution of Ukraine |
| 4 | Constitutional majority is required for the election of the Head of the state institution or a member of its governing body | 1 | 1 | Constitution of Ukraine |
| 5 | Competencies of the state institution are defined in the Constitution of Ukraine | 1 | 1 | Constitution of Ukraine |
| 6 | The influence in any way on the state institution by the Cabinet of Ministers of Ukraine is excluded | 1 | 1 | Legislation of Ukraine |
| 7 | The state institution is independent in its decisions | 1 | 1 | Legislation of Ukraine |
| 8 | The Head of the state institution cannot make individual decisions | 1 | 0,5 | Legislation of Ukraine |
| 9 | Only in the case of equal distribution of votes, the vote of the Head of the Management Board is decisive | – | 0,5 | Legislation of Ukraine |
| 10 | The formation of the budget of the state institution is defined in the Law of Ukraine | 1 | 1 | Legislation of Ukraine |
| 11 | The state institution is the main administrator of the State Budget of Ukraine | 1 | 1 | Legislation of Ukraine |
| 12 | The state institution is financed not only from the state budget | 1 | 1 | Legislation of Ukraine |
| 13 | The state institution has the authority to decide on its own the internal organization | 1 | 1 | Legislation of Ukraine |
| 14 | The head of the state institution is not appointed solely by the government | 1 | 1 | Legislation of Ukraine |
| 15 | The state institution is authorized to independently determine its staff list | 1 | 1 | Legislation of Ukraine |
| Number of points | | 15 | 15 | |

| IV. Income of Appointees and Employees | | | | |
|---|---|-----------|-----------|---|
| 1 | Information on the average monthly salary of the head of the state institution is publicly available | 2 | 1 | Official information request, Annual report |
| 2 | Information on the average monthly salary of the deputy head of the state institution is publicly available | 1 | 1 | Official information request, Annual report |
| 3 | Information on the average monthly salary of members of the Management Board of the state institution is publicly available | – | 1 | Official information request, Annual report |
| 4 | Information on the average monthly salary of high-ranking officials of the state institution is publicly available | 1 | 1 | Official information request, Annual report |
| 5 | Information on the average monthly salary of employees of the state institution is publicly available | 1 | 1 | Official information request, Annual report |
| Number of points | | 5 | 5 | |
| TOTAL | | 40 | 40 | |

| Nr. | Score for each category | Points for agencies without a management board | Points for agencies with a management board |
|-------------|--|---|--|
| I. | Appointment of the Governing Body and Board Members | 15,0 | 15,0 |
| II. | Dismissal of Appointees | 5,0 | 5,0 |
| III. | Sovereignty and Constitutional Basis | 15,0 | 15,0 |
| IV. | Income of Appointees and Employees | 5,0 | 5,0 |
| | TOTAL | 40,00 | 40,00 |

The list of participants of the independence rating of key state institutions of Ukraine

| | Public authorities with functions of regulation, control, provision of services and in the field of judicial activity (hereinafter - public entities) | Web address |
|----|--|---|
| 1 | State Tax Service of Ukraine | https://tax.gov.ua/ |
| 2 | State Fiscal Service of Ukraine | http://sfs.gov.ua/ |
| 3 | State Customs Service of Ukraine | https://customs.gov.ua/ |
| 4 | Antimonopoly Committee of Ukraine | http://www.amc.gov.ua/ |
| 5 | National Commission for State Regulation of Energy and Utilities | http://www.nerc.gov.ua/ |
| 6 | National Agency on Corruption Prevention | https://nazk.gov.ua/ |
| 7 | National Anti-corruption Bureau of Ukraine | https://nabu.gov.ua/ |
| 8 | Prosecutor General's Office | https://www.gp.gov.ua/ |
| 9 | National police of Ukraine | https://www.npu.gov.ua/ |
| 10 | Supreme Court | https://supreme.court.gov.ua/ |
| 11 | Constitutional Court of Ukraine | http://www.ccu.gov.ua/ |
| 12 | Ukrainian Parliament Commissioner for Human Rights | http://www.ombudsman.gov.ua/ |
| 13 | Business Ombudsman Council | https://boi.org.ua/ |
| 14 | National Bank of Ukraine | https://bank.gov.ua/ |
| 15 | State Property Fund of Ukraine | http://www.spfu.gov.ua/ |
| 16 | Pension Fund of Ukraine | https://www.pfu.gov.ua/ |
| 17 | National Securities and Stock Market Commission | https://www.nssmc.gov.ua/ |