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TRANSPARENCY
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CRIMES
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UA: UKRAINE ANALYTICA

RECOVERYY

UA: Ukraine Analytica is the first Ukrainian analytical journal in English
on International Relations, Politics and Economics. The journal is aimed
at experts, diplomats, academics, students interested in the international
relations and Ukraine in particular.

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TRANSPARENCY AS A BASIC PRINCIPLE OF RECONSTRUCTION: HOW TO OVERCOME THE HABIT OF UNDERESTIMATING UKRAINE

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The issue of transparency is currently at the forefront of the attention of the EU, IMF, G7, and other international institutions. This aligns with the demands of Ukrainian society, which, unlike its international partners, takes a more radical position in understanding the concept of "transparency" and advocating for this principle. Hence, the question arises: Is Ukraine still lagging behind in openness of processes and ensuring transparency in recovery? Are international partners ready to accept the current level of transparency in relations and processes advocated by Ukrainian civil society? The purpose of this article is to seek answers to these questions and highlight the specific Ukrainian concept of transparency, which can become one of the fundamental principles of the country's recovery.

Principle of Transparency

One of the fundamental principles for the reconstruction of Ukraine is expected to be a principle of transparency. All parties involved in the process — the government, business, civil society organisations, and international partners — unanimously agree on this. However, the definition of 'transparency' and how to measure it in the country's recovery processes, the ideal degree of transparency, and its limits in a country at war remain open questions.

Uncertainty about what Ukraine's recovery will look like has made the search for a common denominator in the interpretation of the category of transparency even more urgent. On examining the official documents of foreign or Ukrainian governments regarding Euro-integration, reforms, or cooperation, formulations such as "...for the sake of increasing transparency and accountability..." can be attributed to newly coined bureaucratese. However, the frequency and context of appeals to determine the efficacy of these categories create a false impression of a widespread lack of transparency and accountability in Ukraine. The traditional underestimation of Ukrainian decisions, along with active Russian propaganda abroad, ultimately contribute to an exaggeration of typical minor domestic political difficulties to absurd proportions. Thus, speculation often occurs on the topics of corruption, nepotism, bureaucracy, institutional weakness, societal paternalism, and, specifically, the lack of transparency in the state.

Open Data is Just a Component

However, let us consider the contents typically associated with the issue of transparency concerning politics and the overall governance of the country. In Ukraine, the principle of transparency is embedded in a range of legislative acts and is applicable in areas such as budgeting, public service, security, public procurement, access to information, and the activities of governmental bodies, among others. A more detailed approach to transparency has been reflected in the identification and publication of open data by the state. The relevant regulation, "On datasets subject to disclosure in the form of open data," considers one of the advantages of disclosure to the public — enhancing the transparency of information providers[1]. Thus, the proximity of the categories of openness and transparency as both a tool and a goal become manifest, thus forming one of the dominant approaches in the perception and interpretation of the principle of transparency, namely, that they constitute a narrow area. In this case, the concepts are seen as practically identical, and they are applied more often to data and information, with societal expectations primarily focused on free access to and completeness of data.

Viewing the notion of transparency through such a lens allows us to assert that Ukraine is one of the most transparent countries in Europe. The empirical basis for this claim is The Open Data Maturity (ODM) assessment, conducted annually by the European Union, based on four criteria:

1. "Policy — investigates countries' policies and strategies regarding open data, the national governance models for managing open data and the measures deployed to implement the policies and strategies.

2. Portals — investigates the functionality of national open data portals, the extent to which users' needs and behaviour are examined to improve the portal, the availability of open data across different domains and the approach to ensuring the portal's sustainability.

3. Impact — assesses whether countries have defined reuse and the extent to which they are prepared to measure it, the actions taken by countries to measure reuse and understand the needs of reusers, and the presence of examples of reuse cases in the domains of government, society, the environment and the economy.

4. Quality — assesses the measures adopted by portal managers to ensure the systematic and timely harvesting of metadata and the monitoring mechanisms in place to ensure the publication of metadata compliant with the DCAT-AP metadata standard and several deployment quality requirements".[2]

According to this assessment, Ukraine shared third place with Estonia among 35 European countries in 2023, with an ODM of 96%[3]. This is 1% lower than the previous year's figures, when the country held second place in the rating. Furthermore, throughout the year, the European neighbours improved their scores.

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1 The Regulation "On datasets subject to disclosure in the form of open data", 2015, Cabinet of Ministers of Ukraine, https://zakon.rada.gov.ua/laws/show/835-2015-%D0%BF#Text

2 Measuring Open Data Maturity, The Publications Office of the European Union, 2023, https://data.europa.eu/sites/default/files/odm2023_method_paper.pdf

3 The Open Data Maturity (ODM) Assessment, The Publications Office of the European Union, 2023, https://data.europa.eu/en/publications/open-data-maturity/2023

Comprehensive Approach to Transparency

However, is having a high level of data transparency sufficient for Ukraine to be considered a transparent country? It is not, judging by the requirements and recommendations of international partners regarding transparency in the context of governance, institutions, and mechanisms on the one hand, and the demands of Ukrainian civil society on the other. Therefore, it is relevant to consider transparency in a broader sweep, not merely limited to data and information. What other attributes and dimensions should be considered for the reconstruction of Ukraine to be deemed an acceptably transparent process?

Firstly, let us examine the formal requirements and declared goals towards transparency, based on the analysis of narratives in three types of documents:

- bilateral (the Association Agreement with the EU);
- provided by international partners (the letter listing priority reforms from the USA);
- drafted by the Ukrainian side (the draft of the plan for the Ukraine Facility).

All three documents repeatedly mention transparency as a tool, goal, defining characteristic, etc., and depending on the context, are applied to a broad spectrum of interventions. However, none of the cases provides detailed explanations or indicators for measuring transparency. In the text of the Association Agreement, the use of the 'transparency' category can be reduced to five main meanings:

1. Transparency as the exchange of information, particularly between the EU and Ukraine or Ukraine and its residents concerning:

- Any changes in legislation or policy,
- Providing full information upon request from the other side,
- Timely warning regarding investigations or suspicions that may affect cooperation.

2. Transparency as timely publication of all information and ensuring access to it for all stakeholders. This includes aspects of clarity, the ability to seek clarification, and having enough time for the implementation of updates.

3. Transparency in mechanisms and procedures. These articles most frequently emphasize ensuring clarity and equal access to information about mechanisms and procedures, where the possibility of hiding parts of information or from a certain category of individuals is excluded.

4. A separate aspect of transparency is understandable and consistent 'rules of the game' based on objective criteria, meaning that no one has unjustified preferences.

5. A specific form of transparency, only discussed in one section of the agreement related to competition, is a tracking of budget allocation, i.e., state aid to enterprises. However, here, 'tracking' is considered in a very limited sense — providing information about goals, amounts, and recipients to the other party (EU)[4].

Regarding economic and sectoral cooperation, the agreement also mentions the development of transparent markets, particularly in the energy and agricultural sectors. It can be assumed that this refers to clear rules of the game, and bringing any elements of these markets out of the

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4   The Association Agreement, 2014, Verkhovna Rada of Ukraine, https://zakon.rada.gov.ua/laws/show/984_011/stru#Stru

shadows. Overall, the theme of market transparency in Ukraine has gained popularity recently. There are parallel tracks in the current discourse, including the emphasis on transparent markets for land, gas, real estate, timber, biofuels, and more. All these topics share the intention of creating a clear trading model where all parties have equal and comprehensive information about prices, conditions, and all other aspects necessary for making decisions on buying or selling.

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The text of the letter outlining the conditions for financial assistance from the USA, sent by the White House in September 2023, also contains numerous appeals to transparency. Out of the 25 requirements (reforms) outlined in the letter, 18 directly or logically relate to increasing transparency. These can be grouped into five categories:

1. Transparency in mechanisms and procedures:

- Evaluation, requalification, and updating of personnel based on objective indicators (supervisory boards of state enterprises, the Bureau of Economic Security, the National Police, the Prosecutor General's Office, the State Property Fund).

- Armament and state procurement.

2. Transparency as consistent with 'rules of the game' in terms of defining clear criteria and evaluation methodology for candidates (High Qualification Commission of Judges).

3. Open competitions for leadership positions (the Specialized Anti-Corruption Prosecutor's Office, National Agency on Corruption Prevention, The Supreme Court of Ukraine, the Asset Recovery and Management Agency, the Economic Security Bureau of Ukraine, the Security Service of Ukraine, and the State Migration Service).

4. External oversight as a component of ensuring transparency, involving the creation of supervisory boards and strengthening the role of audits. This includes systemic work to enhance the institutional capacity of audit bodies and preparing entities for audits (the National Anti-Corruption Bureau, the JSC Ukrainian Defence Industry, the Accounting Chamber, and the State Audit Service).

5. Transparency with a manifestation in the disclosure of information. In practice, to achieve the goals of the letter, this should be manifest in the following ways: the restoration of asset declaration and disclosure of relevant information, public disclosure of reports by the State Fiscal Service, and digitisation of customs rules by the State Migration Service[5].

In the Association Agreement, a separate clause is dedicated to ensuring transparency in the electricity market. However, there is an obvious difference in the emphasis on transparency and the indicators that will prove it. Although there are common features that have allowed us to categorise the requirements into three cohorts: procedures and mechanisms; rules of the game; and information, the contents of the categories are quite different.

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5   Statement on Proposed List of Priority Reforms, U.S. Embassy in Ukraine, 25.09.2023, https://www.pravda.com.ua/news/2023/09/25/7421354/

The third document under consideration is the draft plan for the EU Facility, prepared by the Ukrainian government. The essence of the document lies in its working title "Reform Implementation Plan", with the ultimate goal being the establishment of the Ukrainian Fund, considered an important instrument for the country's recovery. Among the guiding principles of this reconstruction, those of financial stability, inclusivity, transparency, and accountability are highlighted. In this document, transparency also emerges in the context of attracting investors to Ukraine, thus raising questions about transparency in the relations between the state and business (essentially the "rules of the game" mentioned earlier). Aspects related to external transparency also surface, such as justifying the need to demonstrate transparency in the use of foreign aid.

While describing the transparency in reconstruction in this document, the authors have employed a more understandable approach for Ukrainians, that of 'everyone sees everything,' which became actively used during the launch of the electronic procurement system and remains quite popular today. It is noteworthy that although this expression is not limited in its application, it is most often used in the context of digitalsolutions. The digitalisation of processes and services in various spheres of life is currently seen as one of the most effective ways to ensure transparency. Ukraine indeed has strong potential in this direction, with rapid development, despite the ongoing war. Among the best-known digital solutions influencing transparency levels, the majority are portals somehow related to public finances, and the tracking of their routes.

Key National Transparency Instruments in Ukraine:

- *The Register of Tax Declarations* — a portal containing declarations of persons authorised to perform state or local government functions;

- *Register of Corrupt Officials* — a portal containing information on all individuals and legal entities that have committed corruption offences;

- *Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organisations* — the only state information system that collects, accumulates, processes, protects, records and provides information on legal entities, individual entrepreneurs and public organisations that do not have the status of legal entity;

- *Prozorro* — an online platform where state and municipal customers announce tenders for the purchase of goods, works and services, and through which business representatives compete for the opportunity to supply these to the state;

- *Open Data Portal* — the Unified State Open Data Web Portal was created according to the Law of Ukraine 'On Access to Public Information'. The portal provides access to information on public authorities, with the possibility of its further use;

- *E-data and its modules (Open Budget, Spending, proIFi, etc.)* — the open data platform in the field of public finance is an official state information resource that provides information in the open data format; an accessible tool for public control over the planning and use of public funds;

- *Court Register* — a state information system that is part of the Unified Judicial Information System, and which ensures the collection, recording (registration), accumulation, storage, protection, search and viewing of electronic copies of court decisions of all instances and in all jurisdictions;

- *Politdata* — a portal developed by the National Agency for the Prevention of Corruption that contains financial data on political parties operating in Ukraine.

Local authorities have their own resources for publishing data required by law. For example, the Lviv open data portal and the Dnipro open data portal[6].

The full-scale Russian invasion has undoubtedly disrupted the functioning of various data portals in Ukraine. Some information was temporarily restricted due to security concerns, while other data collection activities were halted. However, the restrictions imposed on this sphere prompted a swift response from civil society. Open letters, comments, and even legal actions were initiated by civic organisations in the summer of 2022, to demand the reopening of access to information and the restoration of access to electronic registers.

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The most significant criticism and apprehension regarding the non-restoration of access were directed towards the Unified State Register of Legal Entities, Individual Entrepreneurs, and Public Formations. Also, concerns were raised concerning questions about the publication of information in open data format and the declaration of assets by officials. By the end of 2022, a number of the issues had been resolved, and data publication was restored, apart from in areas where hostilities were ongoing.

The resumption of asset declaration and the disclosure of public officials' declarations

required more pressure than the statements made by civil society organisations. By the end of 2023, the United States officially voiced their own demand, elevating the consideration of the issue to a new level. It is important to acknowledge that, concerning the transparency achieved through digitalisation, Ukraine has not fully regained its pre-war positions. Nevertheless, the open data community actively and effectively propels this process forward.

Returning to the discussion about theoretical perception transparency, and measuring it in the context of reconstruction, it is rational to leverage one of Ukraine's inherent strengths for ensuring transparency — digitalisation. One pivotal solution in this regard is the development of the DREAM ecosystem, which, coupled with the appropriate legislation, can deliver transparency in Ukrainian standards, encapsulated in the motto "everyone sees everything." However, the international community, when demanding transparency from us, does not always envision such a manifestation, and thus, digitalisation is not universally considered a panacea for ensuring this principle.

As highlighted in the analysis of narratives above, the cardinal difference lies in the approach. International actors and our foreign partners emphasise a formalised approach, understandable rules of the game, open policies, and timely information exchange. Conversely, Ukrainians tend to adopt a practical approach — open information, process automation, and minimising or significantly reducing human intervention. And each of the approaches has its own logic and effectiveness, but in the global balance of opportunities to mobilise resources to confront Russia, Ukraine's success in adopting the country's approach

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6   Institute of Analytics and Advocacy. Transparency: a basic principle for the success of Ukraine's reconstruction. Policy brief, August 2023, https://iaa.org.ua/portfolio/transparency/

to transparency remains underestimated, and of little interest to the rest of the world.

Conclusions

Is Ukraine able to overcome the stereotypes associated with its perceived closeness and, as a result, total corruption while acting on its own? The existence of these stereotypes is further complicated by the fact that corruption is a real phenomenon, not a complete myth. The question is as to the actual scale and trends of corruption, along with the sensitivity of the issue in the information space. For instance, news about corruption scandals is more likely to be picked up by the international media and to make headlines than articles containing an analysis of successes in combating corruption. A similar situation exists in the sphere of ensuring transparency.

For instance, the demand from international partners for transparency in the use of funds for reconstruction could be met by fully disclosing procurement deals conducted within reconstruction projects and contracts. However, only procurements with budgetary funds and state or common entities as clients remain transparent. Often, the policies of international partners do not mandate such a level of openness, and information about procurements is limited to plans (what they intend to purchase), or else procurements may be conducted through specialised portals with restricted access.

Although the Ukrainian electronic procurement system allows procurements to be conducted through its platforms, to date, only a few international organisations have utilised this option (the EBRD and the Global Fund). Recently, the first procurement using World Bank funds was also announced. Launching all the procurements through the Prozorro system to ensure transparency in the expenditure of reconstruction funds, might be a significant step forward. However, the readiness of foreign companies to showcase their profiles, commercial proposals, licences, contracts, recommendations, and all other documents, the disclosure of which is common practice for Ukrainian companies when entering into contracts with the government, remains uncertain.

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In discussions about the openness and transparency of the activities of government bodies, and the movement of budgetary funds between European countries and Ukraine, this subtle nuance often escapes attention — the tremendous progress Ukraine has made over the past 10 years. Open data, process digitalisation, online state services, disclosure of information about budgetary funds, the incomes of officials, government contracts, etc., are perceived by Ukrainians as commonplace, while foreigners tend to view them as underdeveloped due to inertia. However, in assessing Ukraine's capacity on the path to reconstruction, objectivity is crucial. While we still have a weak institutional structure, regarding transparency, we have a much greater potential than others are accustomed to perceiving.

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