

# ICPS newsletter<sup>®</sup>

## Legislative gaps make public oversight of government bodies difficult

*In general, Ukrainian legislation includes the principle of free public access to information about government activities. In fact, a variety of flaws or the absence of subsidiary legislation that would define the criteria for restricted information, the timeframes for providing information or fee-based access to information, and flaws in the court system mean that government bodies are effectively allowed to operate opaquely. Full and free access to information on the activities of government institutions is guaranteed only to the media*

Free public access to information is a sticking point in public oversight of Government activities in any area. Only full, objective and timely information gives the public an opportunity to evaluate how effective a Government's activities are and how effectively that Government spends taxpayers' money.

### Legislation actually supports transparent government

Ukrainian legislation actually contains a solid foundation for providing free public access to information about the government. The right to information is viewed as one of the fundamental human rights. The Constitution of Ukraine contains several articles that secure the right of Ukrainians to obtain any information they need. The basic law that regulates this in Ukraine is the Law "On information," which:

1. obligates central and local governments to inform the public about their activities and the policies they adopt;
2. provides for the establishment of special information services or systems within government bodies in order to provide access to information according to an established procedure;
3. defines mechanisms for implementing the right to information.

Although Ukrainian law establishes favorable conditions for the average person to have access to information and obliges government bodies to be public,

a large number of obstacles remain that effectively prevent most people from having easy access to the necessary information.

### Serious flaws completely kill the spirit of the law

The Law on information allows for public access to certain information to be restricted. According to the logic of the Law on information, such restrictions are to be applied only in exceptional cases. However, government bodies have their own interpretation of this and first and foremost restrict access to information on decisions related to the numbers and purposes for spending State Budget funds.

The problem of unjustified restriction of public access to information has its roots not in the fact that the Law on information allows the possibility of restricting access, but in the fact that neither this law nor any other pieces of legislation clearly establish the criteria for classifying information as "confidential."

At the moment, different government bodies make their own calls as to what information at their disposal will be classified as confidential. Such a decision is made on the basis of approximate criteria approved by the Cabinet of Ministers (Appendix 13, 27 November 1998 Cabinet Resolution №1893). Based on these criteria, information that "is generated at the cost of the State Budget" can be considered "confidential," that is, any and all information that is the result of government activity.

### ***In the latest issue of Political Commentary***

President Yushchenko's response to the total failure of reforms and the warring among key members of his team was to fire the entire team. But changing his team does not guarantee that he will be able to carry out the transformations Ukrainian voters have been looking for or to stop the decline in his popularity prior to the election of a new Verkhovna Rada. Time has been lost, the Rada no longer has a working majority, and Yulia Tymoshenko has turned out to be his most powerful opponent.

Official Kyiv, which has been trying since the start of the year to establish equal relations with a hostile Kremlin, has been avoiding unnecessary confrontations. Against all predictions, Ukraine did not appear keen to bury the CIS at the Commonwealth's summit in Kazan. The EU postponed granting Ukraine market economy status, but the US dropped trade sanctions.

In order to improve his support in the upcoming election, the president initiated a move to raise the threshold for entry to the Verkhovna Rada. Prior to their dismissals, the National Security Council secretary revealed his plan for reforming the SBU, while the premier succeeded in returning the Nikopol Steel Alloy Plant to state ownership, which the courts took away from Viktor Pinchuk.

The National Bank is trying to prevent a new revaluation of the hryvnia using non-market methods. The pace of economic growth has fallen to 3.7% while FDI has plunged by 14%. Inflation has grown to 15% annually. A worsening in world commodities markets and the revaluation of the hryvnia have dampened export growth.

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Among the factors that complicate the access of ordinary Ukrainians to information, three stand out:

- **No clear timeframes for providing information.** The Law on information allows replies to be postponed without providing a clear indication of acceptable reasons, the maximum extent of any delay, and sanctions for unjustified refusals or postponements.
- **No effective procedures to appeal against illegal actions by government bodies.** Ukraine does not have simple and effective mechanisms to appeal against activities of the government that violate the right of citizens for information. Given the shortcomings of the Ukrainian judiciary, consideration of a suit in court can go on for more than one month and involve significant expense.
- **Lack of transparency in collecting fees for access to information.** Official practice in Ukraine is for

government bodies to charge a fee for providing information to individuals. The size of such fees is supposed to be set out in regulations, but the question of non-fee or partial-fee services, the size of such fees, and the procedure for paying all remain undetermined to date. In this kind of situation, both local and central government bodies tend to raise fees for access to information without any justification, which makes it difficult for the average person to exercise their rights.

### The media remain the main source of information

The 23 September 1997 Law №539/97-VR "On the proper procedure for media coverage of the activities of central and local government bodies in Ukraine" contains a number of provisions that guarantee that the general public will receive full and objective information on government activities in different areas through the media. These provisions:

- give mass media the right to cover all aspects of the activities of central and local government bodies;
- make it mandatory for central and local government bodies to provide media representatives with complete information on their activities and to provide individual journalists with free access to such information, except for those instances outlined in the Law "On state secrets."

According to the Law on information, the media can obtain free access even to information classified as confidential, which is very important, but individual Ukrainians do not have this opportunity. ■

*Research into the options for Ukrainian voters to oversee government bodies has been carried out under the "Model for Public Oversight of Healthcare Spending" project, which is being financed by LGI/OSI. For additional information, contact Oksana Remiga by phone at (044) 484-4400 or by e-mail at oremiga@icps.kiev.ua.*

## Government shuffle won't affect stability of hryvnia

***The resignations of key government officials have led to retail exchange rate fluctuations. However, there are no significant economic grounds for rate changes. ICPS economist Oleksandr Zholud expects the official hryvnia exchange rate to remain stable until at least the 2006 elections to the Verkhovna Rada***

As in previous times of uncertainty, Ukrainians began to buy dollars during the latest crisis. Banks immediately took advantage of the situation and on 9 September raised rates to UAH 5.15–5.30. Instead of having the country's central banker appear on television to ease any panic, the National Bank restricted itself to a statement about the country's commercial banks having "taken the path of unbridled speculation." The fact that NBU Governor Volodymyr Stelmakh rarely comments on any situations typifies the low level of transparency of the Bank's work.

Nevertheless, ICPS economist Oleksandr Zholud says the official exchange rate will stay stable until after the VR elections in March. Even if demand for hard currency suddenly grows, the NBU

has sufficient reserves not to have to lower the hryvnia rate. During the last demand bubble, which took place during the Orange Revolution, NBU reserves stood at USD 2.2bn less than today, yet the official rate remained stable then.

On 9 and 12 September there was a surplus of hard currency on the interbank currency market and the NBU did not cover all bids to buy hryvnia. This indicates that, at least at the moment, pressure on the hryvnia is not downward but upward. This is due to fundamental factors such as the current account surplus and a slew of temporary factors, including supplies of hard currency from grain traders on world markets who are interested in the new crop of Ukrainian wheat, loans taken out on international markets by Ukrainian corporations, and so on. In anticipation of a new issue of

Ukrainian T-bills worth EUR 600mn at the end of September and the scheduled sale of KryvorizhStal this year for as much as US \$2bn will also have a positive effect on the supply of hard currency.

The stability of the hryvnia exchange rate will depend not only on the actions of the National Bank, but also those of the new Government. Despite the central bank's nominal independence, the spring revaluation of the hryvnia was in large part due to pressure from the Cabinet. If the export lobby in the new Government proves strong, then even a slight devaluation in the hryvnia need not be excluded. Although the Bank has enough reserves to cover another revaluation, this does not mean it will favor strengthening the national currency, given that exports grew only 7.6% over January–July 2005, while imports grew 24.3%. ■

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