

Main Department of Civil Service of Ukraine
Center for Adaptation of the Civil Service to the Standards of the European Union
Center of Social Expertise of the Institute of Sociology, NAS of Ukraine

*Development of a Network of Policy Analysis Groups
in the System of Central Executive Bodies in Ukraine*

**Dissemination of Information on Public
Procurement: Adaptation of Ukrainian
Legislation to the *Acquis Communautaire***

Kyiv
2009

This policy document was developed within the framework of the "Development of a Network of Policy Analysis Groups in the System of Central Executive Bodies in Ukraine" project, implemented by the Center of Social Expertise of the Institute of Sociology, the National Academy of Sciences of Ukraine under the contract with the Center for Adaptation of the Civil Service to the Standards of the European Union. The project was financed by the State Budget of Ukraine. Expert support was provided by the "Technical Support to Public Sector Reforms in Ukraine" project team (DANIDA funded).

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The electronic version of the policy document can be found on the web-site of the Center for Adaptation of the Civil Service to the Standards of the European Union at: www.center.gov.ua.

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Foreword

Development of the Ukrainian State and its movement towards the European community requires establishment of modern, professional civil service that would function in accordance with the requirements of democratic governance. Civil servants of Ukraine must be politically neutral and professional, armed with modern knowledge and skills in public administration.

Among the key functions of public officials in democratic countries is the development of policy recommendations and policy alternatives to solve the existing problems in specific sectors. Civil servants also hold consultations with stakeholders and carry out monitoring and evaluation of the policy efficiency and effectiveness.

Comparing with EU practice, the system of policy coordination and development in Ukraine is not sufficiently transparent and is too centralized. Requirements to analyze policy alternatives and hold consultations with stakeholders are not always fulfilled. The Ukrainian officials often lack practical skills to analyze policy problems and their causes, possible consequences and obstacles to implementation of various options for problem solution.

In order to strengthen the capacity of civil servants to analytical support of the strategic government decisions, the Main Department of Civil Service of Ukraine during 2005–2008 supported a number of initiatives dealing with activities of a network of the policy analysis groups in the central executive bodies in Ukraine. Around 130 civil servants of top and middle managerial levels from the Secretariat of the President of Ukraine, Secretariat of the Cabinet of Ministers of Ukraine, National Bank of Ukraine, ministries and other central executive bodies received training and acquired relevant public policy skills and knowledge needed for application of democratic procedures to the decision-making process.

Results of the policy analysis groups' activities include publication of green and white policy papers. This is an effective tool used in the EU member states and other developed countries to ensure efficiency, transparency, consistency and predictability of work of public authorities.

Requirements to the quality of public policy development and implementation become even more exacerbated in the context of preparation of the EU – Ukraine Association Agreement. Success of the relevant negotiation process largely depends on the capacity of the Ukrainian officials to formulate a coherent, effective and far-sighted strategy of mutual relationships.

Given the magnitude of the obligations of Ukraine in the framework of the future Association Agreement with the European Union, in 2008 the Main Department of Civil Service of Ukraine put forward an initiative, which was supported by the Government, to expand the network of policy analysis groups and to focus their work on the issues of implementation of Ukraine's commitments under the future Free Trade Agreement with the EU.

In December 2008 the initiative on “Development of a Network of Policy Analysis Groups in the Central Executive Bodies in Ukraine” was launched by the Center for Adaptation of the Civil Service to the Standards of the European Union. It was implemented by the Center of Social Expertise of the Institute of Sociology of the National Academy of Sciences of Ukraine. 10 cross-sectoral groups were created to deal with the sectoral issue of the EU–Ukraine Free Trade Agreement and 3 policy analysis groups—to deal with issues of the civil service reform. Each of the groups consisted of 7–10 top-level civil servants (II–IV categories).

Policy analysis groups dealing with priority issues of the EU-Ukraine Free Trade Agreement:

- Development of a strategy to overcome technical barriers to trade: standardization and compliance assessment.
- Development of a strategy in the field of financial services.
- Development of a strategy in the field of trade in services: the movement of capital.
- Development of a strategy in the field of public procurement.
- Development of a strategy in the field of sanitary and phytosanitary regulations.
- Development of a strategy in the field of protection of intellectual property.
- Development of a strategy in the transport sector.
- Development of a strategy in the environment sector.
- Development of a strategy in the energy sector.
- Development of a strategy in the field of taxation.

Policy analysis groups dealing with priority issues of the civil service reform:

- Reform of the classification system in connection with the civil service compensation system.
- Introduction of new approaches for the annual performance evaluation of civil servants’ activities.
- Reform of the system of professional development for civil servants.

In 2008–2009 the main task of policy analysis groups was the development of the sectoral strategies to meet the obligations imposed by the future Association Agreement with the EU. These strategies defined objectives and steps of implementation of the Agreement, as well as resources needed to implement a strategy (financial, human, and institutional). The draft strategies, discussed with all stakeholders, will enable to prepare for implementation of future Agreement and strengthen the position of the Ukrainian party at the currently running negotiations with the EU.

Public discussions of policy options for solving sectoral problems will promote better understanding and support by the stakeholders of the government policy and provide a feedback for the government.

This year, the policy analysis groups have had a number of innovations. First of all, it is their inter-ministerial structure: representatives of the Ministry of Justice, the Ministry of Economy and the Secretariat of the Cabinet of Ministers participated in almost all policy analysis groups. Secondly, the number of involved public officials and authorities significantly increased comparing to previous years—130 civil servants from 20 central executive bodies as well as from the Secretariat of the Cabinet of Ministers and the National Bank of Ukraine took part in policy analysis groups. In addition, analytical support to members of policy analysis groups was provided by both international and local sectoral experts from the International Center for Policy Studies (ICPS) and the Ukrainian-European Policy and Legal Advice Centre (UEPLAC).

During the year members of policy analysis groups participated in trainings and seminars guided by the EU and Ukrainian experts. They mastered the methodology of development of policy documents and decision-making procedures according to the European standards. The groups organized public consultations aimed at discussion of proposed drafts strategic documents with representatives of NGOs, business community and experts. Considerable number of received comments and suggestions greatly improved the quality of the policy documents.

The key to successful implementation of this initiative was a permanent monitoring and evaluation of the results of policy analysis group's work. According to the survey, most participants consider such trainings in policy analysis as very useful and effective because they provided opportunity to get equipped with skills in policy analysis, cost-benefit analysis and effective communication in the context of the requirements posed by the process of adaptation of the Ukrainian legislation and norms to the EU norms and standards, taking into account national interests of Ukraine.

Moreover, activities of policy analysis groups generate a multiplication effect; they become a basis for the new quality civil service and new administrative capacity of the central executive bodies. Despite the fact that only about ten civil servants are official participants of the policy analysis group, the practice shows that the number of public officials involved into the process of development of strategic policy documents is actually bigger.

In 2008, the School of Senior Civil Service was established, the task of which is to create institutional conditions for developing leadership in the civil service and public administration reform. Given the fact that policy analysis groups have proved their effectiveness as a progressive form of the civil servants' on-the-job training, the follow-up initiatives relating to policy analysis groups are planned to be carried out on the basis of the School of Senior Civil Service. This will contribute to further development of both policy analysis groups' network and strengthening of the in-service training system of the civil servants.

Introduction

The right of citizens to have access to information is guaranteed by Article 34 of the Constitution of Ukraine, Article 19 of International Covenant on Civil and Political Rights and Article 10 of the European Convention on Human Rights and Fundamental Freedoms. The duty of the state is to provide citizens with access to information that gives them an opportunity to be aware of the situation in various areas of the activities of the state, provides them with an opportunity to participate in the management of the state, to participate in activities which are organized by a state and also to have the right to challenge violation of their personal rights in the court.

Among the whole range of citizens' rights to have access to information, an individual right of citizens to obtain information on procurement of goods, works and services to be paid for from the public funds plays an important role. This right includes the right to unimpeded acquaintance with the information concerning the tender bidding process to be held, with detailed information about goods or/and services to be procured in order to be able to participate in such tenders as well as to get information about the results of the tender so that citizens may be able to get acquainted with the winner of the tender and tendering procedure.

The issue of adaptation of Ukraine's legislation to the European Union legislation is especially important in the context of dissemination of information on the public procurements – primarily due to desire of Ukraine to establish a Free Trade Zone with the European Union and, later on, to become an equal member of the European community.

Currently, the procedure of information dissemination on public procurement is ineffective. The volume of disseminated information, first of all, does not give a complete picture both about any future public procurements or, for those procurement tenders that took place in the past, and, secondly, available information does not meet the requirements for such type of information established by the European Union. In order to solve these two problems a comprehensive approach, which envisages a number of organizational, legal and logistical arrangements is required. The development of the policy analysis document on “**Dissemination of information on public procurement: adaptation of the Ukrainian legislation to the *acquis communautaire***” is one of the measures to improve the situation.

This policy document is designed to:

- analyze the current situation on dissemination of information on public procurement;
- evaluate possible approaches to solution of the problems that currently exist in this area;
- provide recommendations on possible ways of improvement of public awareness about the way the public procurements are organized and carried out.

The results of the implementation of this document will include:

- effective and transparent use of public funds;
- prevention of abuse and corruption in the field of public procurement;
- development of the competitive environment in the government procurement market;
- improvement of the international image of Ukraine as a country with the market economy;
- improvement of trade opportunities;
- attraction of foreign participants into the Ukrainian market.

The policy analysis document has been developed under the framework of the project on “Development of a Network of Policy Analysis Groups in the Central Executive Bodies of Ukraine” by the policy analysis group, established by the Order of the Cabinet of Ministers of Ukraine “On support of activities of policy analysis groups in the central bodies of the executive power and at the Secretariat of the Cabinet of Ministers of Ukraine” dated 07.02 .2007, ¹ 32-p and the Order of the Cabinet of Ministers of Ukraine dated 30.12.08, ¹ 43542/99/1-08.

The following representatives of the policy analysis group developed the document :

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- Olena L. Omelchenko, Oksana V. Zolotaryova, Yana V. Roginska (Ministry of Justice of Ukraine).

While developing the policy document, members of the policy analysis group carried out public consultations with:

- representatives of other central bodies of the executive power;
- potential participants of tender procedures;
- representatives of the World Bank;
- representatives of the European Commission;
- representatives of various NGO;
- leading Ukrainian scholars.

1. Description of the Situation

Dissemination of information on public procurement is, in general, one of the key issues in functioning of public procurement, which includes the need for dissemination of information among the stakeholders and general public. Dissemination of information on public procurement includes the following elements:

- provision of permanent and free access to all announcements concerning public procurement;
- inclusion into content of such announcements about planned tenders of detailed information on the subject of the planned tender, essential conditions of the tender, criteria for awarding the contract, the procedure of awarding the contract, the contract award criteria and procedure for procurement implementation. The volume of such information should match economic interests of market operators;
- publication of announcements about the results of the procurement tendering which would include all information about the tendering procedure, winner of the tender and conditions of signing contracts.

Such dissemination of information on governmental procurement is carried out **in order to** examine the possibility to appeal against the results of the procurement tendering by all interested physical persons and legal entities.

Analysis of the situation and main factors associated with the problem.

Legislation of Ukraine regulating issues of public procurement.

According to the Constitution of Ukraine the legal relations in the field of procurement of goods, works and services, to be paid for by the public funds, are regulated by the relevant laws of Ukraine. However, currently, the main legal act dealing with the public procurement is the Decision of the Cabinet of Ministers of Ukraine “On public procurement of goods, works and services” dated 17.10.2008, ¹ 921. During 2008 legislative regulation of legal aspects of public procurement has undergone some radical changes, which was caused by the repeal on March 20, 2008 of the Law of Ukraine on “Public procurement of the goods, works and services” adopted on 22.02.2000, ¹ 1490-III, which essentially did not meet basic principles of the public procurement, such as transparency and non-discrimination. Since the time of abolition of this law, the Cabinet of Ministers of Ukraine has adopted 3 versions of the Decree of the Cabinet of Ministers of Ukraine “On public procurement of the goods, works and services”.

At the present time, dissemination of information about public procurement in Ukraine is governed by such **legal norms and regulations**:

- Constitution of Ukraine;

- Decree of the Cabinet of Ministers of Ukraine “On public procurement of the goods, works and services” dated 17.10.2008, ¹ 921.

Secondary law regulatory acts:

- Order of the Ministry of Economy of Ukraine “On approval of the form of documents for public procurement” dated 30.01.2009, ¹ 61;
- Order of the Ministry of Economy of Ukraine “On approval of procedure for acceptance and publication of announcements about procurement of the goods, works and services in the “Public Procurement Bulletin” dated 30.01.2009, ¹ 66.

According to the above mentioned laws and regulations, the procedure for spreading information in the field of the public procurement includes the following elements: submission and publication of an announcement about planned public procurement, as well as the submission and publication of the results of the public procurement tender bidding.

Announcements about planned procurement or pre-qualification are published (free of charge) in the “Public Procurement Bulletin”, issued by the Department of Public Procurement and are hosted (free of charge) on the web-site devoted to public procurement issues and news (tender.me.gov.ua). There is an open access for users of the information placed on this public procurement web-site. Announcements may also be published at the web-sites of customers or main bodies in charge of dispensing public funds under their web-site sections on “Public Procurement” and in printed publications contained in the mass media sources of the national scale coverage.

Bidding for public procurement tenders can not take place before the date of publication of announcement about public procurement tender “Public Procurement Bulletin” and at the public procurement web-portal.

Announcements about planned public procurement or pre-qualification of participants are placed in the international printed publication or on the international network of electronic communication if the expected value of the public procurement object exceeds an amount equivalent to:

- for goods – 200 thousand Euro;
- for services – 300 thousand Euro;
- for works – 500 thousand Euro.

Announcement about carrying out an open, two-stage public procurement tender bidding contains the following information:

Customer:

- full name;
- identification Code under NSRUEO (National State Registry of Ukrainian Enterprises and Organizations) (not for publication);

- location;
- a person, responsible for bidding (surname, name, telephone number and facsimile with indication of inter-city telephone access code, e-mail).

Information about the subject of public procurement:

- subject of procurement;
- type and quantity of goods, works and services to be procured;
- place and terms, (delivery of goods, implementation of works or rendering of services);
- procurement procedure.

Reception of tender documents:

- place;
- procedure for getting documents.

Bid security:

- method (form) of provision;
- size.

Terms of submission of tender bids:

- place;
- method;
- deadline.

Opening of tender bids:

- place;
- date;
- time.

Additional information.

Position, surname and initials of a person, who signs the announcement.

Announcement about the results of the public procurement bidding includes the following information:

Customer:

- Full name.
- Identification Code under NSRUEO (National State Registry of Ukrainian Enterprises and Organizations) (not for publication).

Information about the subject of public procurement:

- subject of public procurement;
- type and quantity of goods, works and services to be procured.

Date and number of “Public Procurement Bulletin”, in which the announcement of the public procurement offer was published

Results of the implemented public procurement bidding:

- date of acceptance of tender offer, which has been selected as the best one;
- date of conclusion of the procurement contract;
- biddings which were cancelled or declared to be not carried out, the date of taking such decision, and its reasons;
- value of the procurement contract (including VAT).

Information about winner of the tender bidding:

- full name (for legal entity) or surname and initials (for physical person);
- position, surname and initials of the person who signed the announcement.

In addition, the adaptation of the Ukrainian legislation to the EU legislation is a priority component of the process of Ukraine’s integration into the European Union.

According to Article 51 of the Partnership and Cooperation Agreement between the European Communities and Their Member States and Ukraine dated June 16, 1994 (hereinafter – PCA), Ukraine has committed to take measures for the gradual approximation of the national law to the EU legislation in some priority areas, which also include the area of public procurement.

In order to implement obligations under Article 51 of the PCA on March 18, 2004 the Law of Ukraine ¹ 1629-IV “On the National Program of Adaptation of The Ukrainian Legislation to Legislation of the European Union” (hereinafter – the Program) was adopted. It defined the basic principles of bringing legislation of Ukraine into line with the *acquis communautaire*.

According to Section IV of the Program, adaptation of the laws is considered to be a planned process that includes several successive stages, where a certain level of adaptation of the Ukrainian legislation to the EU *acquis communautaire* should be achieved.

The first stage of the Program implementation was designed for the period of 2004–2007. At this stage, adaptation of the Ukrainian legislation to legislation of the European Union was based on the principle of expediency. It means that while preparing proposals for action on aimed at adaptation of a specific law, central authorities, first of all, should have taken into account the consequences of implementing norms envisaged by the norms included into the *acquis communautaire*, from the point of view of their impact on economic, social and political situation in Ukraine.

In the European Union, legal aspects in respect to dissemination of information on public procurement issues are regulated by:

- the Directive 2004/17/EC of the European Parliament and the Council of March 31, 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors;
- the Directive 2004/18/EC of the European Parliament and the Council of March 31, 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts;
- the Commission Regulation (EC) No 1564/2005 dated September 7, 2005 establishing standard forms for the publication of notices in the framework of public procurement procedures pursuant to Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council.

Requirements, defined in the EU legislation, in respect to provision by the public awarding authorities of the relevant public procurement notices to the *Office for Official Publications of the European Communities* aimed at their publication with the help of the TED (Tenders Electronic Daily) system, as well as a possibility of publication by the public awarding authorities of Internet notices on relevant “buyer profile”, are met by the national Regulation norms in respect to general conditions of publication of notices about planned public procurement or about invitation to pre-qualification in respect to a certain public procurement with this Regulation stipulating that:

- submission of notices to the information “Public Procurement Bulletin” and hosting on the Public Procurement web-portal are free of charge;
- access of users to information available on the public procurement web-portal is also free;
- possibility to place an announcement about planned public procurement on the web sites of customers or on the web-sites, under their sections on “Public Procurement”, of the principal public funds awarding authorities, as well as in the national printed media;
- announcement of the annual plan of public procurement measures information about amendments to public procurement plans by placing such info on the Internet (on their own web sites, or, if it is unavailable, on the web-site of the chief administrator of public funds);
- the ban on implementation of a public procurement activity before the date of publication of the public procurement notice in the information “Public Procurement Bulletin”.

The EU legislation provides a **somewhat different mechanism** for dissemination of information on public procurement than the one that exists in Ukraine today.

Thus, the EU legislation provides a broader list of requirements for information that should be contained in the announcement or notice about bidding and in the announcement of the results of the bidding procedure. In addition, the legislation of the European Union establishes the forms of the notices which are more detailed. This provides an opportunity for the customers to avoid errors in preparation of announcements, and for bidders - to evaluate fully their economic interest in respect to each specific public procurement event.

In addition, in the European Union there is a broader list of announcements (contract notices) on public procurement depending not only on the type of procedure, but also on stages of publication of such notices.

Thus, inadequate mechanism established in the Ukrainian legislation in respect to regulation of relations in the sphere of dissemination of information on public procurement, if compared to requirements of the European Union legislation, pre-defines the objective need for its further adaptation to the *acquis communautaire*.

The main factors affecting the situation in the dissemination of information about public procurement.

Political:

- a lack of political will in regard to change of the situation (political elite of Ukraine is, so far, not yet ready to adopt a law that would regulate relations in the field of the public procurement and would preclude the possible use of corruption-based schemes for public procurement tender bidding process).

Legal:

- absence of legal regulation which would adequately regulate the process of the public procurement, as it is required by the Constitution of Ukraine;
- a need to secure compatibility of the current national law with the requirements of the international treaties.

Economic:

- establishment of a Free Trade Zone with the European Union (currently negotiations are being carried out on the establishment of a Free Trade Zone between Ukraine and EU, and one of the working groups participating in this process is the group on public procurement);
- global financial crisis that negatively impacts both public procurement awarding authorities and participants of the process of public procurement (due to the latter sharply worsened financial situation).

Social and cultural:

- a low level of professional education of the personnel (civil servants and the members of tender committees);

- availability of stand-by agreements (under which contracts are awarded only to participants with disabilities).

Technological:

- complicated access to information;
- poor level of development of information technologies (in particular, electronic trading).

Institutions, involved into solving the problem.

Bodies of general competence:

- the President of Ukraine;
- the Verkhovna Rada of Ukraine;
- the Cabinet of Ministers of Ukraine.

Bodies of special competence:

- the Ministry of Economy of Ukraine;
- the Ministry of Finance of Ukraine;
- the Ministry of Justice of Ukraine;
- the Antimonopoly Committee of Ukraine;
- other central executive authorities;
- local governments.

The main target groups:

- **public procurement awarding authorities** since introduction of an effective system of dissemination of information will give them an opportunity to provide all detailed information on the subject of public procurement, to choose the best offer among those presented by all participants, to explore the market situation using results of the previous similar tenders already held by other public procurement awarding authorities;
- **subjects of the entrepreneurial activities** (business entities) and individuals as potential bidders, because from the very early stage of implementation of the procedure of public procurement, they will be able to receive full information about the subject of public procurement, and assess adequately their economic interest and their own potential and ability. After publication of contract award notice they can study the way the tendering procedure was run and, if necessary, to appeal contract award decision;
- **the Ukrainian society in general**, because public procurement of goods, works and services paid for from public funds is an important element in the effective use of public funds, which is primarily aimed at meeting the needs of the population.

2. Description of the Problem

Currently, the main problem in the public procurement sphere is the **lack of sufficiently wide dissemination of information about public procurement activities**.

Despite the practical steps to streamline public procurement in Ukraine, the current state of dissemination of information on bidding for public procurement offers does not allow, on timely and equal terms, to obtain all necessary information which leads to the following consequences:

- **closure of access to the market.** Delay in introduction of information technologies in the sphere of public procurement, including, in particular, software and Internet resources for the automation of public procurement procedures, which limits access to the market of other economic operators which does not comply with the principles of openness, transparency, legitimacy, competitiveness and equal access to the market;
- **limited information provision in announcements about the implementation of public procurement measures which does not make it possible for economic operators to evaluate their economic interest properly.** Transparency of the procedures means a possibility to obtain information about the availability of a need for a public procurement, and the existence of information about the results of the tender.

Information about the need for public procurement is delivered through publication of the announcement about public procurement tender. According to the Directive ¹ 2004/18 dated March 31, 2004, on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114) and Regulation ¹ 1564/2005 dated 7.09 .2005, which sets the standard forms of notices about the public procurement (OJ L 257, 01.10.2005), an announcement (notice) about proposed tender is published by the Office for Official Publications.

The Office for Official Publications publishes a relevant notice in the Appendix to the *Official Journal* of the European Union within twelve days and also informs about such tender using Tenders Electronic Daily (TED) system. Notices are posted fully in the original language and in a shortened form in other EU languages.

According to the Ukrainian law, for the information about bidding to be equally available to all market participants, the Regulation for public procurement of the goods, works and services, approved by the Cabinet of Ministers of Ukraine on 17.10.2008, ¹ 921 (hereinafter - Regulations) stipulates that in order to be legally valid a publication of a tender notice should be done only in one official publication—“Public Procurement Bulletin”. Announcements about the planned public procurement event may be made public at the web-sites of the customers or key public procurement award authorities in their sections devoted to “Public Procurement” and, as well, in the national printed mass media sources.

Internet-resources where information related to public procurement is published or hosted, should comply with the requirements set out by the law in respect to protection of information. However, despite all above-mentioned norms stipulated by the Regulations, forms and content of such announcements and notices about planned tender bidding do not enable economic operators to assess their own economic interest and compel them to contact the customers in order to obtain additional information.

Such situation causes some mistrust in the existing public procurement system from some economic operators. Also, in accordance with paragraph 15 of the Regulations, the announcement of the planned public procurement or pre-qualification of the participants are placed in the relevant international journals or in the international network of electronic communication if the expected value of the subject public procurement exceeds an amount equivalent to:

- for goods – 200 thousand Euro;
- for services – 300 thousand Euro;
- for works – 500 thousand Euro.

These requirements do not contain any specific features but are obligatory for compliance with. In order to carry out any activity connected with running of any printed mass media enterprise it should be subjected to the state registration. In our case, in the registration certificate for a publication the following: sphere of the publication distribution (foreign, thematic specialization of the publication) the so called sphere of public procurement should be obligatorily mentioned. In this case, it must be understood that such publication is the national (as far as Ukraine is the country of establishment), specialized publication with the foreign sphere of distribution. The latter fact should also be in the registration documents, namely indicating the country, in addition to Ukraine, where this publication is distributed

It is necessary to point out that the international registration of international publications is also necessary. Such registration is made in accordance to International standard ISO 3297 which regulates the rules of assignment of ISSN code - International standard serial number. Coordination of the process of assigning ISSN number is by *The International Center for the Registration of Serial Publications*, located in Paris, which is supported by UNESCO and the Government of France. This Center manages more than 85 national centers of the international registration of international publications. Unfortunately, nowadays in Ukraine there is no such center, and the registration is available only through the Paris International Center.

It should be also noted that, first of all, the notion of “electronic media” in the Ukrainian legislation still does not appear, therefore, relationships in this sector so far have not been regulated. The current legislation of Ukraine concerning the mass media can be extended to the publication hosted on the Internet only by analogy, because according to Article 20 of the Law of Ukraine «On information» only publicly distributed printed and audio-visual information is considered to be the mass media;

- **incorrect filing of bidding offers.** Imperfection of the legislation in the field of dissemination of information on public procurement bidding complicates tender documentation due to some violations of the law, failure

to submit or incorrect submission of tender proposals which could harm the interests of economic operators, because they can not always properly assess their economic interest judging only by the information contained in public procurement notices, as well as due to complexity of placement and provision of information on the national web-site (www.tender.me.gov.ua). In the EU, all messages and exchange of information in respect to a tender bidding can be transmitted by mail, fax, telephone or electronic tools or through a combination of these means, according to the choice of the public procurement award authority. Member States may require that electronic tender offers to be accompanied by the advanced electronic signature. If tender bidding applications are submitted by phone their written confirmation should be sent within the established time period. Public procurement award authority can request that applications, send by fax, were later on confirmed by the mailed letter or an electronic message, if it is necessary for legal verification. Public procurement award authority should inform in its public procurement notice about any requirement posed by it and also inform about established deadlines for submission of bidding offers. The Ukrainian regulations in respect to the type of procurement notice are only those tender offers and notices which were submitted in writing form, pre-defined by the public procurement award authority. If, in the course of implementation of public procurement procedures, the parties passed relevant information in other forms but the written one, the content of such information exchange should be confirmed in written form.

- **deterioration of the situation with the ability to appeal the results of the tender;**
- **not all economic operators are involved into this market**, because they can not assess their economic interest due to the limited volume of information presented in procurement notices;
- **no competition.** Competition is needed in order to get the best price-quality ratio. Competition should be ensured at all stages of tendering - from the moment of the tender announcement till the time when possible disputes are to be considered. Despite the market is not joined by all economic operators, the proper competitiveness during tender bidding can not be ensured;
- **tender may be won not by the best tender proposal;**
- **corruption.** Corruption in public procurement results in enormous loss and damage in any country. These are financial losses resulting from conclusion of contracts on unfavorable conditions both for the state and society, these are also losses of quality due to breach of the existing norms and standards, and these are political losses – loss of trust by the citizen and business community. Corruption also leads to breach of the principle of free competition and, as a result, to slowing down the speed of the social and economic development.

- **inefficient use of public funds.** Transparency of use of public funds and impartiality in selecting winners improves competitive environment and prevents corruption.

Among the factors that cause this problem, the following ones can be singled out:

- a lack of legislation that would regulate the volume of the detailed information that must be submitted in procurement notices (currently, in Ukraine there are two regulations that deal with the issue of publication of public procurement notices: the Order of the Ministry of Economy of Ukraine “On approval of the forms of documents to be used in the public procurement”, dated 30.01.2009, ¹ 61 and the Order of the Ministry of Economy of Ukraine “On approval of the Guidelines for acceptance and publication of announcements about public procurement of goods, works and services in the information publication “Public Procurement Bulletin”, dated 30.01.2009, ¹ 66. However, these regulations did not resolve the issue of the volume of information that should be given in the notices about procurement tenders);
- a lack of funds to support operation of IT systems;
- a lack of political “will”;
- a lack of proper coordination between the state authorities.

Development of a mechanism for dissemination of information on public procurement tenders should be based on an integrated, system approach to problem solution and to deal with the following issues: legislative, methodological, information, personnel and control.

The current system of information about tenders does not meet the needs of the state in development of international relations, harms international image of the country, inhibits the growth of competitive proposals, creates opportunities for illegitimate and ineffective use of public funds, causes significant economic damage, and slows down the development of competitive environment and integration of Ukraine into the European Union.

3. Policy Objectives

The policy objective in the area of provision of information about public procurement tenders is to expand the scope of the relevant information to be used by a larger possible number of interested economic operators and as a result the **effective use of public funds**.

The main goals arising from the need to implement this objective:

- adoption of a new comprehensive legal act which would take into due account

requirements of *acquis communautaire*, and which would fully regulate the issue of provision to interested economic operators of the relevant information about tenders which would facilitate harmonization of the national legislation with international norms and rules.

Specific goals:

- opening of the market to competition;
- access to information by wider range of economic operators;
- effective use of public funds;
- solution of situations arising from filing appeals against the results of tender bidding;
- reduction of opportunities for use of corruption schemes by the officials tender committees;
- transparency of the results of the tender.

Operational goals:

- upgrading of the systems of electronic public procurement;
- streamlining interagency coordination of the public procurement;
- raising professional level of specialists who work in the tender committees;
- securing correct submission of tender bids by the interested economic operators.

4. Policy Alternatives

The above problems can be solved through:

- optimization of the regulatory framework for public procurement: It is necessary to adopt a new Law of Ukraine “On public procurement of goods, works and services”, which would take into account the norms of acquis communautaire relating to provision of information about public procurement to economic operators;
- strengthening the control over compliance with the competitive principles of public procurement bidding (increase in the number of inspections and audits of the public funds award authorities);
- improvement of general professional qualification of civil servants, including those whose work is related to the implementation of public procurement (it is necessary to held inter-regional workshops and to introduce regular training courses on the issues of public procurement);
- deepening of international cooperation on issues of public procurement;
- upgrade of Internet web-site intended for placement of notices about public procurement tender;
- establishment of specialized international printed publication.

Therefore, there are three alternative ways of solving the problem:

- publication of public procurement notices relating to delivery of goods, works and services on the Internet web-site of the national level;
- upgrading of the Internet web-site, which is used to host public procurement notices, so that this web-site to be compatible to the model which exists in the European Union;
- publication of public procurement notices and announcements for delivery of goods, works and services paid for by the state in the specialized Ukrainian internationally-oriented publication.

Alternative solution 1.

To resolve the above mentioned problems by development commissioning of new Internet web-site where public procurement notices presented in the forms and with a content of the ones adopted in the EU will be hosted.

The result of such innovations will be:

- increase in the number of proposals from economic operators;

- creation of a competitive environment;
- involvement of small and medium size enterprises into public procurement;
- improvement of the well-being level of the population;
- increase in employment rates;
- improvement of the administrative system.

In addition, it is necessary to approve the Law of Ukraine “On the public procurement of goods, works and services”, where the procedure of placement of announcements and notices at the relevant web-sites with the due account for the *acquis communautaire* should be defined.

Funding of this solution can be implemented through sponsorship, profit received from advertising activities or some other funding sources. Also, there will be a need for involvement of experts into the field of information technology and other professional staff.

The risk of introduction of this solution lies in the possibility of occurrence of such circumstances as lack of real funding for this solution or lack of a political will.

Alternative solution 2.

Upgrading the existing Internet web-site, where the notices about public procurement are hosted according to the model that exists in the European Union.

The result of such innovation will be:

- increase in the number of proposals from economic operators;
- creation of a competitive environment;
- involvement of small and medium enterprises into public procurement;
- improvement of the population well-being;
- increasing in the rates of the employment of the population;
- improvement of the administrative system.

Funding of this solution can be implemented through sponsorship, profit received from advertising activities or some other funding sources. Also, there will be a need for involvement of experts into the field of information technology and other professional staff.

The risk of introduction of this solution lies in the possibility of occurrence of such circumstances as lack of real funding for this solution or lack of a political will.

Alternative solution 3.

Another solution of the above-outlined problem is the publication of announcements and notices about the public procurement of goods, works and services in the specialized Ukrainian, internationally oriented, printed publication.

The result of this innovation will be:

- attraction of high-quality goods, works and services to the Ukrainian market;
- improvement of the competitive environment in Ukraine;
- better dissemination of information on economic potential of Ukraine;
- procurement of environmentally-friendly goods, works and services;
- encouragement of the Ukrainian administrative bodies to be in “legally correct field” when dealing with the public procurement issues.

Funding of this solution can be implemented through the use of available budget funding, profit received from advertising activities or some other funding sources. Also, there will be a need for involvement of experts into the field of information technology, journalists and other professional staff.

The risk of introduction of this solution lies in the possibility of occurrence of such circumstances as lack of real funding for this solution or lack of a political will or lack of registration of this publication by the authorized international body

Comparative table of the alternative solutions

			1-st alternative solution		2-nd alternative solution		3-rd alternative solution	
Criterion	Scale	Weight (in points)	Value	Sum	Value	Sum	Value	Sum
Costs	0–10	2	7	1,4	8	1,6	10	2
Number of involved economic operators	0–5	0,5	5	0,5	4	0,4	3	0,3
Access to information	0–10	1	10	1	8	0,8	5	0,5
Scope of information made available	0–10	1	10	1	9	0,9	8	0,8
Total	4,5		3,9		3,7		3,7	

Sum = (value /scale/ weight)

According to the scale range of 0 to 10 (“cost criterion”–10 is the cheapest alternative), the third alternative was ranked at 10, but the first and the second were ranked at 7 and 8, respectively, because the introduction of the printed media source requires less expenses than upgrading or creation of a new Internet web-site identical. The reason is that despite the same expenses for personnel, equipment and premises, the Internet web-site requires software, special software means to protect the site against unlawful intrusions and also the funds for regular upgrade of such software are required.

According to the criterion “number of economic operators involved” (scale range from 0 to 5 points) the value of 5 points is the largest number of economic operators involved. For this criterion the first alternative received 5 points, because in case of establishment of a new Internet web-site compatible with the EU model, economic operators will be provided with the maximum information about public procurement event.

For criterion “access to information” (scale range from 0 to 10 points where 10 represents the most convenient access to information), the first alternative received 10, the second and the third alternative received, respectively, 8 and 5 points, because the newly established web-site will be brought to a wide circle of interested economic operators and will contain wider scope of information.

According to the criterion “scope of information provided” (scale range from 0 to 10 where 10 is the widest scope of information provided), the first alternative received 10 points, the second and the third 9 and 8 respectively, because of the fact that the scope of information hosted at the newly established web-site will be wider than the amount of information which can be provided in the printed media source of information.

Therefore, given the results of the multi-criteria analysis the first or the second alternative could be a possible option to be applied for the problem. However, it should be emphasized, in view of the prevailing economic situation in the country and with the due account for the current economic crisis, it will be feasible to choose the second alternative for solution of the above mentioned problem because its implementation requires less resources.

Selection of the second alternative may result in such financial, social and economic benefits as the increase in the number of proposals from economic operators, creation of a competitive environment, and the attraction of small and medium enterprises to public procurement business, improvement of the well-being of the population, increase in the rates of the population employment and improvement of the administrative system.

5. Key Activities and Responsible Institutions

For effective implementation of the policy aimed at the improvement of dissemination of information on public procurement, it is envisaged to upgrade the Internet web-site, which is used to host announcements and notices about public procurement tenders. Such upgrade will make this web-site compatible with the web-site model used in the European Union.

Direction of activities 1

Task	Result	Term	Resources	Organization in charge
Legal fixation of all requirements concerning the form, content and feed-in of information to the web-site	Development and registration of the relevant orders of the Ministry of Economy of Ukraine	1 year	—	Ministry of Economy of Ukraine Ministry of Justice of Ukraine

Direction of activities 2

Funding of the Program	Allocation of funds by the Ministry of Finance of Ukraine and obtaining of the commitment for funds allocation from alternative sources of funding	6 months	—	Ministry of Finance of Ukraine
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Direction of activities 3

Upgrade of the existing Internet web-site, to be used for hosting announcements and notices about public procurement tenders, in order to make it compatible with the web-site model used in the European Union	Commissioning of the modernized Internet web-site, to be used for hosting announcements and notices about public procurement tenders, in order to make it compatible with the web-site model used in the European Union	1 year	—	Ministry of Economy of Ukraine Ministry of Justice of Ukraine Ministry of Finance of Ukraine
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Direction of activities 4

Provision of the personnel to run the Internet website	Employment of specialists in the field of information technologies	6 months	—	Ministry of Economy of Ukraine
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Information about the Activities of Policy Analysis Groups

The project “Development of a Network of Policy Analysis Groups in the System of Central Executive Bodies in Ukraine” is aimed at:

- promoting the development of democratic governance in Ukraine;
- promoting the strengthening of institutional capacity of central bodies of executive power for policy making;
- improving the coordination of public policy development;
- strengthening the strategic character and analytical support of decisions and enhancing the quality of overall government planning; and
- enhancing civil servants’ professionalism in developing policy proposals.

The legal basis for policy analysis groups functioning includes:

1. Order of the Cabinet of Ministers of Ukraine on “Activities of Policy Analysis Groups”, dated December 30, 2008 ¹ 43542/99/1-08.
2. Regulation of the Cabinet of Ministers of Ukraine “On approval of the year 2008 “EU – Ukraine Action Plan“, dated August 6, 2008 ¹ 1072-p.
3. Memorandum of Understanding between the Government of Ukraine and the Government of Canada concerning Ukrainian Civil Service Human Resources Management Reform Project, signed on May 26, 2008.
4. Regulation of the Cabinet of Ministers of Ukraine “On Ensuring Functioning of the Policy Analysis Groups in Central Executive Bodies and the Secretariat of the Cabinet of Ministers of Ukraine”, dated February 7, 2007 ¹ 32-p.
5. “Civil Service Development Program for 2005–2010”, approved by the Cabinet of Ministers of Ukraine on June 8, 2004 ¹ 746, with changes approved by the Cabinet of Ministers of Ukraine on September 3, 2008 ¹ 776.

The objectives of the project are the following:

- holding a series of practical target-oriented trainings and ensuring exchange of experience between the groups in respect to policy analysis, including methodology and practice of the comprehensive study of a situation and identification of a problem, assessment of its causes and implications, selection of alternative approaches to problem solution based on cost-benefit analysis and consideration of different stakeholders’ opinions;

- drafting policy documents relating to fulfillment of obligations imposed by the future EU – Ukraine Association Agreement with clear definition of tasks and steps for implementation of this Agreement;
- organizing public consultations aimed at discussion of proposed policy documents.

Policy documents developed by policy analysis groups in 2009:

- A policy on overcoming technical trade barriers: standardization and conformity assessment;
- Improvement of risk management in financial services sphere in Ukraine;
- Consultations on improving the investment climate of the agricultural sector of the Ukrainian economy;
- Dissemination of information on public procurement: adaptation of the Ukrainian legislation to the *acquis communautaire*;
- Strategy for the improvement of state sanitary and phytosanitary control and surveillance at state border crossing;
- Determination of optimal ways to reduce the level of piracy in Ukraine with respect to copyright and related rights in the course of circulation of copyright objects on tangible mediums;
- Harmonization of the national aviation safety system with European standards within the framework of the common aviation area Agreement. Participation of Ukraine in the European Aviation Safety Agency;
- Development of water resources management policy under the “Environment” Section of the EU Association Agreement;
- Priority efforts for the integration of unified power system of Ukraine into unified power systems of the European Union;
- Harmonization of Ukrainian legislation on the application of excise duty on alcohol and tobacco products in the context of the future Agreement on Association with the European Union.

Previous Initiatives on Policy Analysis

This project is a logical follow-up of the previous policy analysis initiatives carried out by the Main Department of Civil Service of Ukraine and international donors:

- “Public Policy Capacity Building” (1999–2003);
- “Establishing Policy Analysis Groups and an Information Resource Centre in the Government of Ukraine” (2000–2001);
- “The Activity of Policy Analysis Groups (PAGs) in Government Bodies in Ukraine” (2005–2006);
- “Strengthening the Institutional Capacity of Central Executive Power Bodies for Policy Making in the Context of the Concept Development of a Training and Consultative Center for the Highest Corps of Civil Servants” (2007–2008).

Firstly, such initiatives were funded by foreign donors, in particular, by the Canadian International Development Agency (CIDA) and the Swedish International Development Agency (SIDA).

Within the framework of the first project “Public Policy Capacity Building” (1999–2003) students of the National Academy of Public Administration under the President of Ukraine (NAPA) were engaged in the policy analysis training. The training included the internship in Canada and drafting of policy papers. Based upon project results, a course on policy analysis was included into the Academy’s curriculum, with practical assignments in drafting policy papers on selected topics.

The next project “Establishing Policy Analysis Groups and an Information Resource Centre in the Government of Ukraine” (2000–2001) was implemented as a joint initiative of the Cabinet of Ministers of Ukraine, International Center for Policy Studies (ICPS), Open Society Institute (OSI) and International Renaissance Foundation (IRF) with financial support from IRF under the tripartite agreement on cooperation between the Secretariat of the Cabinet of Ministers of Ukraine, ICPS and the IRF. The participants of this project were 49 governmental officials of higher and middle rank from the Ministry of Economy, Ministry of Finance and the Secretariat of the Cabinet of Ministers.

The outcome of these projects was inclusion into Regulations of the Cabinet of Ministers of Ukraine of a section that set requirements to policy documents (“policy decisions”), in particular, with regard to analysis of alternative solutions.

Upon the initiative of the Main Department of Civil Service of Ukraine, the efforts towards creation of policy analysis groups in central bodies of executive power continued in 2005. The projects were implemented by the Center for Adaptation of the Civil Service to the Standards of the European Union (the former name – Center

for Civil Service Institutional Development under the Main Department of the Civil Service of Ukraine), and were financed from the State Budget. List of policy documents developed by policy analysis groups during 2005–2008, is presented in Table 1.

In 2005–2006 the International Centre for Policy Studies implemented a project “The Activity of Policy Analysis Groups in Government Bodies in Ukraine”. The Department for International Development of the United Kingdom (DFID) and the Delegation of the European Commission to Ukraine provided assistance in engaging foreign consultants and trainers. The project results demonstrated the need to modify the training programs, to create policy analysis groups in other governmental bodies and to develop the network of policy analysis groups as a permanent forum for the articulation of new policy priorities and discussion of trends and prospects of social development.

The project “Strengthening the Institutional Capacity of Central Executive Power Bodies for Policy Making in the Context of the Concept Development of a Training and Consultative Center for the High Corps of Civil Servants”, which was implemented during 2007–2008, showed the importance of enhancing professional capacity of top civil servants in policy analysis and democratic decisions-making process. The need to acquire more knowledge and skills is emphasized in the context of participation of the government bodies in the Twinning projects.

Table 1. Analytical documents prepared by the policy analysis groups in 2005–2008

¹	Central executive body	Period of activity of PA groups	Subject of study
1.	Secretariat of the President of Ukraine	2005–2006	Strategy of democratic development of Ukraine and institutionalization of public policy tools in work of central bodies of executive government
2.	Secretariat of the Cabinet of Ministers of Ukraine	2005–2006	Democratization of decision-making process and compliance with the European requirements on applying democratic procedures in the decision-making process
3.	National Bank of Ukraine	2007–2008	Building the National Bank of Ukraine on the basis of independent, open and transparent activity
4.	Ministry of Economy of Ukraine	2005–2006	Policy and procedures for the preparation of state budget as the strategy for economic development of the country
5.	Ministry of Finance of Ukraine	2005–2006	State fiscal and taxation policy

6.	Ministry of Transport and Communication of Ukraine	2005–2006	State policy of Ukraine on integration of Ukraine to trans-European transport networks
7.	Ministry of Fuel and Energy of Ukraine	2007–2008	Creation of minimum supplies of oil and oil products
8.	Anti-Monopoly Committee of Ukraine	2005–2006	Policy in respect to liberalization of the domestic market and raise of competition at this market
9.	State Tax Administration	2007–2008	Improvements in tax information exchange
10.	State Committee of Ukraine on Technical Regulation and Consumer Policy	2005–2006	Policy of adaptation of the national legislation to norms and standards to requirements of the European Union
11.	State Nuclear Regulatory Committee of Ukraine	2007–2008	Increasing safety for resources of ionizing radiation in Ukraine
12.	State Agency of Ukraine for Investments and Innovations	2005–2006	Attracting foreign investments to Ukraine: problems and solutions
13.	State Commission on Securities and Stock Market	2007–2008	Increasing the level of corporate governance in joint-stock companies and ensuring of investors' rights
14.	National Electricity Regulatory Commission of Ukraine	2005–2006	Policy on regulation of the domestic electricity market
15.	National Space Agency of Ukraine	2005–2006	Policy on institutional development of the national space industry under market conditions
16.	Administration of State Border Service of Ukraine	2007–2008	Improvement of the system of border crossing in Ukraine for persons and transport vehicles
17.	State Department for the Execution of Punishment of Ukraine	2007–2008	Identification of the most optimal ways for minimizing the number of detainees in custody, and observance of norms for detention procedures in Ukraine

Information edition

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**Dissemination of Information on Public Procurement:
Adaptation of Ukrainian Legislation to the *Acquis Communautaire***

developed within the framework of the "Development of a Network of Policy Analysis Groups in the System of Central Executive Bodies in Ukraine" project

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Publisher – Center for Adaptation of the Civil Service to the Standards of the European Union by the Main Department of the Civil Service of Ukraine
Prorizna Str. 15, Kyiv, 01601, Ukraine
tel. (044) 278-36-50, fax (044) 278-36-44
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Certificate of State Registration № 13280 dated 17.09.08.