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OVERVIEW OF POLICY DOCUMENTS IN THE FIELD OF NON PROFIT ORGANIZATIONS AT EU LEVEL

Problem statement. Nonprofit organizations are actively developing all over the world and, in particular, in Ukraine. However, Ukrainian NGOs and society in general lacks knowledge about experience of developed countries. Thus, studying leading European experience of policy documents regulating nonprofits could serve as useful example.

Main goal of this article is to analyze European policy in the field of nonprofit organizations as example of possible development of Ukrainian policy in this field.

Main material. According to Article 2 of the Treaty on European Union, its' values are: respect for human dignity, democracy, freedom, equality, and human rights (including rights of minorities). Those are common values for all EU member states in society where pluralism, non discrimination, tolerance, and justice prevail, and which is characterized by solidarity and equity between men and women. [1] A lot of non profit organizations are working to promote these values, for example, gender organizations, minority organizations, charities, organizations protecting human rights etc.

According to Article 11 of Treaty of the European Union, EU Institutions should grant citizens and their unions, possibility to publicly state their opinions and exchange views in all fields of EU actions. Thus, EU Institutions should have regular dialogue with associations, representing citizens, and with civil society organizations. This dialogue should be conducted openly, transparently and constantly. European Commission should consult wide array of interested parties in order to ensure that EU actions are coordinated and transparent. Moreover, at least one million citizens of essential number of EU countries can undertake initiative, i.e. ask European Commission, in areas of its competence, to submit any needed proposals on problems where citizens consider that new EU legal act is needed to implement Treaties. Paragraph 1 of Article 24 of the Treaty of the Functioning of European Union should be base for procedures and conditions of these initiatives. [2] And first paragraph of Article 24 TFEU just states that there should be some regulation concerning this issue. [3]

In April 2012 special Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative entered into force. According to it, if organizers of some Initiative manage to gather one million signatures to support their idea, they may put their concerns at EU agenda. At first organizers should register their Initiative at European Commission web-site. After that, the process of gathering statements of support starts. And this process can't be longer than 12 month. These can be paper signatures or electronic declarations of support. Online system for collection of electronic declarations of support should be also

verified by Member States. Moreover, people should be asked some personal identification data in order to enable their national authorities to later verify these data. Organizers should collect at least one million statements of support form at least one quarter (currently 7) different EU Member States. In addition, there are different minimum requirements on minimum number of statements of support for different Member States corresponding to the number of members of European Parliament representing these states multiplied by 750. So, one needs more signatures in large countries than in smaller ones. Minimum age of supporters should be the same as minimum wage for voting in European Parliament elections. Organizers should be organized as citizens' committee and also come from at least 7 different Member States and should have some representatives for cooperation with the Institutions. After that organizers should provide these statements of support to Member States for verification. State authorities have 3 month to check these data. After that these statements of support should be submitted to the European Commission. And it has to decide within 3 month if some actions should be taken regarding this Initiative. Organizers should present their ideas at public hearing. Files with statements of support should be destroyed by European Commission during one month after the Initiative was submitted or 18 month after the Initiative was registered. Member States also should destroy these files one month after certification [4,5]

In the EU, laws in the field of NGOs are to a great extent competence of Member States and thus some aspects may vary greatly [6]. However, there are some policy documents at the EU level.

White Paper on European Governance indicates that European Commission should actively interact with civil society. [7] There is even special Economic and Social Committee that should be composed of representatives of different economic and social elements of organized civil society, and, in particular, representatives of manufacturers, farmers, carriers, working people, salesmen, craftsmen, professionals, consumers and general interest [8]. Its members are nominated by national governments and appointed by the Council on 5 years [9]. There are three main groups: Employer's Group – Group I, Workers Group – Group II and Various Interests – Group III (it represents civil society operators) [10] Official motto of Group 3 is "Achieving real participatory democracy in the EU, through civil dialogue" and there are three pillars of activities: diversity in democracy, consensus building and European civil engagement – local action [11].

Moreover, there is a special Liaison Group established for interaction with civil society organizations and their networks. [10] The European Parliament, the Council or the Commission should consult this Committee when Treaties require it or they may consult it when they think it is appropriate or Committee may issue its own opinions [12]. In addition, Economic and Social Committee annually organizes "Civil Society Day" dealing with problems of organized civil society at the EU level [13].

In general, the process of consultation and dialogue between the EU Institutions and civic society is called "civil dialogue". However, this term does not have generally accepted legal definition yet, as there are still some different views on of this concept. There are three complementary forms of 'civil dialogue':

- Dialogue between civil society organizations and respective authorities at sectoral level – ‘vertical dialogue’
- Dialogue between civil society organizations and EU Institutions – ‘transversal dialogue’
- Dialogue between different civil society organizations – ‘horizontal dialogue’ [13]

In addition, there is special Civil Society website of European Commission [14] and Your Voice in Europe website [15] where interested organizations can leave their contributions about ongoing consultations. Currently there is voluntary Register of those who wish to be consulted by Commission [16] and European Parliament has obligatory register. However, in this register all lobbyists, i.e. or people or organizations that want to influence EU decision-making, are included [17]. Moreover, Commission and European Parliament plan to create one common Join Transparency Register of everybody who wishes to influence their decisions. And now participants will have to provide more information: how many employees are active in advocacy, which legislative proposals they already covered, and how much EU funding they already received. In addition, those, joining the Transparency Register will undertake obligations to act according to a Common Code of Conduct [18]

Economic and Social Committee created eligibility criteria for “civil dialogue”: European organization should be permanently present at EU level, it should give access to its members expertise, provide fast and constructive consultations, represent common interests that comply with European society interests, its bodies should be recognized by Member States as those, representing particular interests, have member organizations in most EU member states, its members should be accountable, it should possess authority to be representative and conduct activities at EU level, it should be independent and have mandate, not taking instructions from external bodies, it should have transparency, especially financial and in decision-making bodies [19]

However, Commission issued its own “Communication from Commission towards a reinforced culture of consultation and dialogue – General Principles and Minimum Standards for consultation of interested parties by the Commission” [20] in order to consider even minor opinions, and respecting different situations in EU countries. The key General Principles are:

- Participation

Commission should ensure as wide participation of interested parties as possible

- Openness and accountability

It should be understandable what issues are being discussed, what mechanisms are used for consultation, whom the Commission consults and why these parties are chosen for consultation, what influenced final decisions. It should also be clear which interests are lobbyists representing and how inclusive this representation is.

- Effectiveness

Consultation should start at the earliest possible time. Interested parties should be involved in stage where they can still influence formulation of main goals, methods of delivery, indicators for assessment of implementation of activities, and, where appropriate, initial outline of policy concerned. It may require consultations at more than one stage.

Both Commission and interested parties are interested in knowing opinions of each other. Work of the Commission is influenced by a range of different factors. For

example, Commission needs to take into consideration its obligations to other EU institutions as well as to third countries and international organizations.

Principle of proportionality should also be respected. So, the method and extent of consultation should be appropriate to the influence of concrete proposal. In addition, possible limitations connected with this proposal should be considered as well.

In order to understand what they should expect interested parties should realize such factors and the way how Commission works.

- Coherence

Minimum standards have the following requirements: content of consultation should be clear, all interested appropriate parties should have possibility to express their opinions about the issue, the Commission should publish consultations on “Your Voice in Europe” website, participants have enough time (8 weeks) to respond, there should be acknowledgement and feedback.

Minimum standards are:

A. Clear Content of Consultation Process (all communications dealing with consultation should be easily understandable, and should include all information needed to respond).

B. Consultation of target groups (Commission should consult those affected by policy, those who will be involved in implementation of policy or bodies that have stated objectives giving them a direct interest in the policy).

C. Publication (Commission should publish open public consultations in “Your Voice in Europe” web-site as “single access point” and also communicate it in other appropriate ways)

D. Time limits for participation (Commission gives interested parties 8 weeks to respond to written public consultations and 20 working days to respond to invitations to meetings)

E. Acknowledgement and feedback (Commission should acknowledge when it receives contributions. Results of public consultations should be available through Internet) [20]

Moreover, there is “access to documents” Regulation (EC) No 1049/2001, according to which EU citizens can require access to unpublished documents of Institutions. In addition, there is register of Commission documents and register of ‘comitology’ committees’ documents. Commissioners also should act according to their “Code of Good Administrative Behavior” and Staff Regulations and rules [17]

In addition, in 2005 Commission launched “European Transparency Initiative”. According to it, information about beneficiaries about EU projects and programmes under centralized management should be available through special web-site. This site also should have direct links to sites of the states where should be information about beneficiaries of EU funds under shared management [17]

Green Paper on European Transparency Initiative among other issues deals with lobbying. Lobbying is defined as all activities conducted with goal to influence processes of policy formulation and decision-making by the EU Institutions. [17] Accordingly, lobbyists are defined as people, who conduct such activities, working in wide range of organizations, such as PR consulting firms, law companies, NGOs, think-tanks, lobbying departments of corporations (“in-house representatives”) or trade

associations. [17] So, civil society organizations are part of lobbying organizations and should act according to rules on lobbying.

The Commission asked lobbyists to establish their own voluntarily Codes of Conduct based on minimum criteria: lobbyists should be honest and always tell what interests they are representing, they should not provide misleading information, they should not offer any inducement for access to information or aiming to achieve preferential treatment [17] And many lobbying organizations adopted Codes of Conduct based on these minimum criteria, but these Codes apply only to consultants. By contrast, lobbyist in European Parliament should act according to the obligatory Code of Conduct. If somebody breaks this Code, he/she may lose accreditation and thus possibility to enter the European Parliament [17]

Moreover, Council of Europe also cooperates with NGOs. There is a special Conference of INGOs (International NGOs) for nonprofits, which have participatory status. This Conference periodically takes place in Strasbourg and is main body where INGOs make their decisions in the Council of Europe. It defines policy directions, what actions should be taken in order to achieve aims of these INGOs and in order to organize their cooperation with the Committee of Ministers and with Parliamentary Assembly and the Congress of Local and Regional Authorities. In 2005, this Conference was even recognized to be one of four pillars of Council of Europe. The Bureau is executive body, which should ensure implementations of the Conferences' and Standing Committees' decisions. The Standing Committee is responsible that committees work according to policy lines of the Conference. Conference and Bureau consult the Standing Committee. In addition, Standing Committee can make proposals to them. Committees are responsible for activities in particular fields, such as democracy or gender equity. Council of Europe can consult NGOs, nonprofits may take part in its projects or in activities of intergovernmental committees, make memorandums, oral or written statements, visit meetings, widespread info about Council of Europe's activities. Moreover, there is the Expert Council of NGO Law. It evaluates NGO laws in EU countries and how it is implemented, and promotes compliance with good European Practice and Council of Europe Standards. There is also The Code of Good Practice for Civil Participation in the Decision-Making Process. [21] In addition, there are special "Civil Society Initiatives" of the Council of Europe conducted with partner NGOs. [22]

Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe sets up minimum standards for member states how to deal with NGOs [23] And there is Explanatory Memorandum created to make it easier to understand this Recommendation. [24] Moreover, there is European Convention of the Recognition of the Legal Personality of the International Non-Governmental Organisations [25] and Explanatory Report to this Convention. [26] In the field of humanitarian aid in developing countries, there is even Article 214 of the Treaty of European Union [27]

Summary. Within the EU, many aspects of NGO activities differ from one member state to another. However, there are some important policy documents at EU level. Article 2 of the Treaty of European Union states its general democratic values. And Article 11 of this Treaty elaborates that EU Institutions should widely consult civil society. Moreover, concerned citizens may bring their views into consideration of the European Commission, using European Citizens Initiative.

Moreover, within European Commission there is Economic and Social Committee that should consist of representatives of civil society. Sometimes EU Institutions consult this Committee because the Treaties require them to do so. Or they may consult it because they feel that it is appropriate. Committee may issue its own opinions as well.

In general, the process of consultations and dialogue between EU Institutions and civil society is called “civil dialogue”. Interested organizations can take part in it through the European Commission web site and special web site “Your Voice in Europe”.

Because of large number and different institutional capacities of nonprofit organizations in Europe, Economic and Social Committee created criteria for participation in civil dialogue. And European Commission issued its own general principles and minimum standards for consultation.

Moreover, EU citizens can require access to unpublished documents of Institutions. And they can see at special web site which organizations received EU funds to implement projects and programs under centralized management.

In addition, Recommendation CM/Rec (2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe describes in detail minimum standards for EU member states in the field of state policies dealing with NGOs.

In general, EU legal framework in the field of nonprofit organizations can be characterized as broad and well developed. And it helps to achieve high levels of transparency and accountability of both NGOs and Institutions.

References:

1. Article 2, Treaty of European Union [Электронный ресурс.] / Режим доступа до ресурсу: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:0013:0046:EN:PDF>
Consolidated version of the Treaty on European Union, Official Journal of European Union 26.10.12
2. Article 11 (1,2) of the Treaty of European Union [Электронный ресурс.] / Режим доступа до ресурсу: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:0013:0046:EN:PDF>
Consolidated version of the Treaty on European Union, Official Journal of European Union 26.10.12
3. Treaty of the Functioning on European Union, Article 24(1) [Электронный ресурс.] / Режим доступа до ресурсу: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:0047:0200:EN:PDF>
Consolidated version of the Treaty of the Functioning of the European Union, Official Journal of European Union 26.10.12
4. Your guide to the European Citizen’s Initiative, 2nd edition – March 2012. European Economic and Social Committee, written by Bruno Kaufmann. [Электронный ресурс.] / Режим доступа до ресурсу: <http://www.eesc.europa.eu/?i=portal.en.civil-society-european-citizens-initiative>
5. Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on citizens’ initiative. Official journal L 065, 11/03/2011

P.001-0022 [Электронный ресурс.] / Режим доступа до ресурсу:

6. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:065:0001:01:EN:HTML>
7. EU Regulation of Charitable Organizations: the Politics of Legally Enabling Civil Society OOnagh B. Breen The International Journal of Non-for-Profit Law Volume 10, Issue 3, June 2008 [Электронный ресурс.] / Режим доступа до ресурсу: http://www.icnl.org/research/journal/vol10iss3/special_3.htm
8. European Governance. A White Paper. Commission of the European Communities. Brussels, 25.7.2001. COM(2001) 428 . [Электронный ресурс.] / Режим доступа до ресурсу: ec.europa.eu/governance/white_paper/en.pdf
9. European Economic and Social Committee. The Committee. Groups [Электронный ресурс.] / Режим доступа до ресурсу: <http://www.eesc.europa.eu/?i=portal.en.groups>
10. European Economic and Social Committee. About the Committee. Membership [Электронный ресурс.] / Режим доступа до ресурсу: <http://www.eesc.europa.eu/?i=portal.en.about-the-committee>
11. European Economic and Social Committee. Liaison Group [Электронный ресурс.] / Режим доступа до ресурсу: <http://www.eesc.europa.eu/?i=portal.en.liaison-group>
12. Treaty of the Functioning of the European Union, Article 304
13. European Economic and Social Committee. Civil Society Day 2012 [Электронный ресурс.] / Режим доступа до ресурсу: <http://www.eesc.europa.eu/?i=portal.en.events-and-activities-civil-society-day-2012>
14. Towards a structured framework for European civil dialogue. Brussels, 15 February 2010. [Электронный ресурс.] / Режим доступа до ресурсу: <http://www.eesc.europa.eu/?i=portal.en.events-and-activities-civil-society-day-2012>
15. European Commission – Transparency – Civil Society. [Электронный ресурс.] / Режим доступа до ресурсу: http://ec.europa.eu/transparency/civil_society/
16. European Commission. Your voice in Europe [Электронный ресурс.] / Режим доступа до ресурсу: <http://ec.europa.eu/yourvoice/>
17. EUROPA. Transparency register [Электронный ресурс.] / Режим доступа до ресурсу: http://europa.eu/transparency-register/index_en.htm#en
18. Green Paper European Transparency Initiative (presented by the Commission) November 2005 Brussels, 3.5.2006 COM (2006) 194 final [Электронный ресурс.] / Режим доступа до ресурсу: ec.europa.eu/transparency/eti/docs/gp_en.pdf
19. European Commission – Press Releases. Commission and European Parliament launch Joint Transparency Register to shed light on all those seeking to influence European policy [Электронный ресурс.] / Режим доступа до ресурсу: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/773&format=HTML&aged=0&language=EN&guiLanguage=en>
20. Opinion on 'European Governance – a White Paper' of 20 March 2002; CES 357/2002 . European Economic and Social Committee, subcommittee European Governance (White Paper). Brussels, 20 March 2002 [Электронный ресурс.] / Режим доступа до ресурсу: ec.europa.eu/governance/contrib_esc_en.pdf

21. European Commission – Transparency – Civil Society – General overview – Coherent framework for consultation: Consultation standards - Communication from the Commission. Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission. Brussels, 11.12.2002, COM (2002) 704 [Электронный ресурс.] / Режим доступа до ресурсу: ec.europa.eu/transparency/civil_society/general_overview_en.htm

22. The Conference of International Non-Governmental Organisations of the Council of Europe. History, structures, projects. Written by Iamvi Totsi [Электронный ресурс.] / Режим доступа до ресурсу: http://www.coe.int/t/ngo/overview_en.asp

23. The Council of Europe and Non-Governmental Organizations: Promoters of democracy and active citizenship in Europe [Электронный ресурс.] / Режим доступа до ресурсу: http://www.coe.int/t/ngo/overview_en.asp

24. Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe (Adopted by the Committee of Ministers on 10 October 2007 at the 1006th meeting of the Ministers' Deputies) [Электронный ресурс.] / Режим доступа до ресурсу: <https://wcd.coe.int/ViewDoc.jsp?id=1194609&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

25. Council of Europe. Committee of Ministers. Explanatory Memorandum to Recommendation CM/Rec (2007) 14 of the Committee of Ministers to member states on the Legal Status of Non-Governmental Organisations in Europe [Электронный ресурс.] / Режим доступа до ресурсу: www.coe.int/t/dghl/.../cdcj/ONG/Explanatory%20memorandum.pdf

26. Council of Europe. European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations. Strasbourg, 24.IV.1986 [Электронный ресурс.] / Режим доступа до ресурсу: <http://conventions.coe.int/Treaty/en/Treaties/Html/124.htm>

27. Council of Europe. European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124). Explanatory Report. [Электронный ресурс.] / Режим доступа до ресурсу: <http://conventions.coe.int/Treaty/EN/Reports/HTML/124.htm>

28. Treaty of European Union, Article 214 [Электронный ресурс.] / Режим доступа до ресурсу: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:0013:0046:EN:PDF> Consolidated version of the Treaty on European Union, Official Journal of European Union 26.10.12