

Adam Smith International for
Construction Sector Transparency Initiative:

Ukravtodor Scoping Study: Final Report

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International



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Acronyms & Abbreviations

AAC	Anticorruption Action Centre
CoST	Construction Sector Transparency Initiative
CPSA	Centre for Political Studies and Analysis
CSO	Civil Society Organisations
EBRD	European Bank for Reconstruction & Development
EIB	European Investment Bank
EU	European Union
GBP	British Pound Sterling
IFC	International Finance Corporation
IFI	International Financing Institutions
IS	International Secretariat
IT	Information Technology
MEDT	Ministry of Economic Development & Trade
MSG	Multi-Stakeholder Group
PE	Procuring Entity
PIU	Project Implementation Unit
SFI	State Financial Inspection
TI	Transparency International
ToR	Terms of Reference
UAD	Ukravtodor
UAH	Ukrainian Hryvnia
USD	United States Dollar
WB	World Bank

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Executive Summary

Ukravtodor (UAD) joined the Construction Sector Transparency (CoST) Initiative in November 2013 with the ambition to benefit from good international practice in the area of transparency and openness in construction sector. In doing so UAD reiterated its **commitment to reforms** that are aimed at increasing organisational and financial efficiencies, improvement of road safety standards and making its work more transparent and accessible to the citizens of Ukraine. This is consistent with the fact that UAD is one of the biggest recipients of IFIs' and donor funding in Ukraine; and for many years it has planned and delivered large-scale investment projects on the basis of international standards and practices.

In the course of the scoping study, it was found that **UAD's procedures and practices for information disclosure are sound** and largely consistent with the domestic legal requirements. Its internal regulations and instructions are in line with the most recent legislation on public procurement and public access to information; and its website is up-to-date and filled with important and practical information, including information on public consultations. Its official communications with the public are intensive (due to the visibility of the sector) and the summary of communications is duly published on the website. However, website usability and accessibility is in need of improvement, so that visitors may more easily access information without contacting UAD with direct requests.

UAD has a functioning **Public Council** comprised of business associations and CSOs working in the road sector. It holds largely consultative functions and has a limited ability to influence UAD's actions. Moreover **it lacks technical expertise** in the oversight of investment project planning and implementation, monitoring of spending and engineering oversight. These skills are critical for the CoST assurance process, which could be carried out by either existing state supervisory agency or consultants with relevant skills contracted by a multi-stakeholder group (MSG). If the proposed pilot project is to be successful, more specific expertise must be leveraged for its oversight. This expertise will be also necessary in the essential process of the integration of recommendations into further UAD work.

It is recommended that **the Public Council becomes one of the participants of UAD's multi-stakeholder group (MSG)**. In this way, CSOs and business associations with direct and/or relevant experience in public oversight and monitoring are included in the MSG, alongside representatives of key UAD's departments and state audit agencies. There is a critical mass of skilled and experienced CSOs/business associations that are committed to enhancing the transparency of the road sector in Ukraine. These organisations and associations champion a constructive, non-hostile approach and could become good partners for UAD in its reform efforts. In order for the MSG's work to be sustainable and CoST standards of disclosure to be replicable in other projects and in other construction sectors, the engagement of control and audit agencies of Ukraine in MSG activities from the very start is also essential.

More generally, despite good standards of 'outgoing' information procedures, UAD lacks mechanisms and tools for responding to 'incoming' information from the public and expert community. The work of the CoST MSG and its related assurance process should help to establish the missing link in the cycle of transparency and openness of UAD; it should introduce clear procedures and instructions for integrating recommendations and criticism in ongoing and future projects and organisational activities, as per results of public oversight and assurance.

In the parts of its work funded by international sources, **UAD is also broadly compliant with international standards** and disclosure practices. Specifically, the Project Implementation Unit (PIU) is collecting, processing, analysing and monitoring information according to the standards set up by international investment partners. Information disclosure in this component of UAD's work is good but inconsistent, as not all information about all investment projects is available on its website. Connections between planning, implementation and completion stages of individual project should be made more prominent on the UAD website, possibly through using links to other pages or producing consistent summary spreadsheets for each project for the entire cycle. Data gathered at IFIs' websites proves that there is sufficient information in the public domain elsewhere, but it needs to be better systematised, (translated) and presented on UAD's website.

The costs of additional data collection, processing and publication are to be determined during the implementation of the CoST pilot project, which will include the M03 road project co-funded by WB and possibly investment project(s) /activities funded exclusively from the state budget. Two (or more) investment projects will differ significantly as IFIs and donors already have high standards of disclosure and produce more analytical information than UAD does for its projects that are funded solely from the budget. Any costs associated with additional data production and publication should be relative to the quality of the final outcomes and financial efficiency of the relevant project and compared to the wastes of resources

observed in the situation where there is no strict oversight and feedback reaction. A more fundamental shift towards introducing performance indicators that would measure use of resources against achieved outcomes is needed, which we believe is the process being currently underway with the support from WB TA project. A proposed disclosure standard for UAD, which is largely based on existing Ukrainian legal requirements and practice of implementing IFI-funded projects, will be tested during implementation of the CoST pilot project and possible changes/ modifications will be offered upon its completion.

Finally, UAD's commitment to greater transparency and openness in its work could be undermined by frequent reshuffles and structural changes, and a chronic lack of money for the administrative functions of head office (e.g. website maintenance). **Providing UAD with a more 'secure' framework for implementing the CoST pilot is recommended** to ensure consistency and continuity of actions. Such a framework could be enabled by the Decree of the Cabinet of Ministers on the implementation of transparency pilot project at UAD. The CoST IS and UAD, together with IFIs and donor partners working in the sector, might need to work closely with the Cabinet of Ministers and the Ministry of Infrastructure – agencies that are responsible for developing public policy in the road sector – to create a special regime for the CoST pilot project. This regime should ensure the necessary status for MSG members, access to information and flexibility in communications with various departments of UAD and other government agencies, and audit organisations when required. Such Decree is not a necessity but rather an enabling instrument for achieving sustainability of the CoST pilot project's outcomes. It is, however, possible to implement the project without the Decree if the strong and consistent political will and flexible approach to current management techniques is demonstrated by UAD leadership and mid-level management.

1. Introduction

The Ukraine National State Roads Agency (Ukravtodor: UAD) joined the Construction Sector Transparency (CoST) initiative in November 2013. The CoST International Secretariat (IS) undertook a technical assistance visit to Ukraine in May 2014 and a number of issues were identified that it was agreed, required investigation and analysis through a scoping study. They include, importantly, the development of a draft 'disclosure standard' to be tested on the first project that will be subject to disclosure as part of the UAD CoST programme, the Kiev-Kharkov Road Rehabilitation.

This report documents the findings and recommendations of the scoping study.

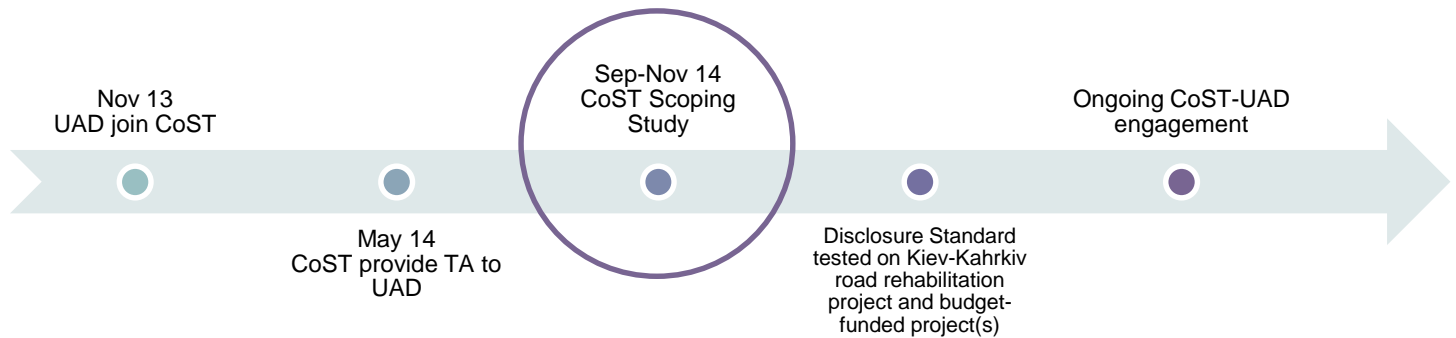


Figure 1: Timeline of CoST's Engagement with UAD

The recommendations have been developed based on a series of consultations with CoST IS, UAD staff and stakeholders, including members of civil society and the business community. Interviews with key informants took place in Kyiv in September and October 2014. A list of key informants met with is enclosed as **Error! Reference source not found.** and Annex 2.

Next steps include the refinement of the disclosure standard recommended in this report, and its pilot testing on the M03 Kiev-Kahrkiv road rehabilitation project and possibly UAD's investment project(s)/activities funded solely by the state budget. The scope of further engagement between the CoST IS and UAD is contingent on attracting donor funding to the cause.

1.1. Objectives of the Study

The functions of the study are fourfold:

1. Gathering the information needed to adapt CoST to the local situation;
2. Providing a baseline measure of 'transparency' in construction projects managed by UAD;
3. Identifying a disclosure standard for UAD; and
4. Exploring if the Public Council, in its current or a modified form, is an appropriate vehicle for civil society and industry participation in the CoST UAD programme.

These functions can be broken down further, into three objectives' areas:

Scoping

- > Identify the agencies responsible for overseeing public procurement and conducting technical and financial audits of publicly funded construction projects in the roads sector;
- > Provide information on other transparency, accountability and anti-corruption initiatives in the roads sector and assess their potential alignment with (or duplication of) CoST;
- > Provide an overview of civil society organisations active in the area of transparency, accountability and/or public sector infrastructure; and
- > Provide an overview of the private construction industry and organisations representing the industry.

Providing a baseline measure of transparency

- Summarise the laws and regulations governing the procurement and delivery of public construction projects in the roads sector and identify which core items of project and contract information for 'proactive disclosure' are required by law/regulations/policy to be disclosed by UAD;
- Identify what additional information (if any) is available to the public on a reactive basis (i.e. on request);
- Assess, from a sample of UAD projects, which core items of project/contract information are currently being disclosed to the public; and
- Assess the barriers (legal, administrative, capacity, technology) to mainstreaming the release of this information by UAD.

Assessing how CoST should be designed in Ukraine

- Analyse the results of the scoping and baseline studies to identify the relative strengths and weaknesses with regard to transparency and accountability in the delivery of public sector construction;
- Identify a CoST disclosure standard for the UAD programme; and
- Outline a multi-stakeholder approach for CoST Ukraine.

1.2. Structure of this Report

The report is structured as follows:

- *Chapter 1: Methodology* – includes an outline of the scope of work and tasks involved;
- *Chapter 2: Background Information* – includes a summary of Ukrainian laws on public procurement and public access to information and regulations and other on-going transparency and good governance initiatives;
- *Chapter 3: Baseline Indicators of Information Disclosure* – includes a narrative overview of the findings of the survey of disclosure practices and understanding within UAD;
- *Chapter 4: Conclusions & Recommendations* – identifies a disclosure standard for UAD; and recommends appropriate vehicles for civil society and industry participation in the CoST UAD programme;
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- Annexes – includes snapshots of datasheets analysing the UAD disclosure baseline, and lists of key informants met with during the study.

2. Methodology

The methodology followed in the study is presented below.

2.1. Stage 1: Secondary Research

This stage involved the collection of data from secondary sources, and the presentation and analysis of the following:

- Agencies involved in the oversight of the planning, procurement and delivery of publicly funded construction projects in the roads sector;
- Agencies involved in the auditing of publicly funded projects in the roads sector;
- Other on-going or planned transparency/anti-corruption/good governance initiatives (including government measures) that affect the roads sector, focusing on processes and outcomes and the way in which they relate to CoST;
- The structure and composition of the private construction industry and the organisations representing the various stakeholder groups within it;
- Civil society organisations and their main interests and objectives related to construction activity in the roads sector; and
- Laws and regulations governing the procurement and delivery of publicly financed construction projects in the roads sector, including the legal requirements for the release of any of the individual items of project information and for access by the general public to documents.

Findings from this stage are presented in the report section 'Baseline Indicators'.

Where appropriate, the secondary research was supplemented by interviews with key informants. The Team Leader undertook a mission to Kyiv between 23rd September and 3rd October. Details of informants met with, and events attended can be found in **Error! Reference source not found.** and Annex 2.

2.2. Stage 2: Capturing Data from UAD

This stage involved the collection of data from key informants, and the presentation and analysis of the following:

- In consultation with the CoST IS, set up, test and populate a database to record the information collected from UAD during the study;
- Conduct interviews with appropriate officers in UAD to gather information on their current practice related to the disclosure of project information, as well as their understanding of the current law and policy on disclosure;
- From the information provided by UAD officers, record which core items are:
 - Released by UAD into the public domain, indicating a sliding scale of always/majority of cases/minority of cases/never;
 - Forwarded from UAD and released into the public domain by others;
 - Required by law to be released into the public domain;
 - Prevented by law from being released into the public domain;
 - Prevented by other factors from being made available to the public;
 - Carry out checks on a small sample of projects to confirm that the information that UAD commits to disclose is actually available in the public domain and record any discrepancies;
- From the information provided by UAD officers, record which items are:
 - Made available to the public on demand – indicating a sliding scale of always/majority of cases/ minority of cases/never;

- Required by law to be made available to the public;
 - Prevented by law from being made available to the public;
 - Prevented by other factors from being made available to the public; and
- Summarise the data compiled above in an appropriate format, documenting any existing or potential barriers to the release of project information.

Findings from this stage are presented in the report section 'Baseline Indicators'.

3. Background Information

The planning and delivery of large-scale road infrastructure projects in Ukraine is characterised by a dense interplay of external factors. It is inflected by a wide range of legal acts and regulations; is dependent on partnership and collaboration with a significant network of government and non-government partners; is shaped by reshuffles in government and changes in public service; and is influenced by ongoing and newly proposed reforms.

Most works and activities are managed by Ukraine's key procuring entity –Ukravtodor – and by its regional offices. Day-to-day decisions made at UAD determine the way in which projects are implemented and money is spent. However, the decisions of related authorities can significantly advance or derail planned activities at any juncture. This should be taken into account while launching any collaborative initiative with UAD.

Several characteristics are common to the environment in which road construction investment projects are being implemented, including:

1. **Investment process is based on an annual budget cycle** as Ukraine still has not adopted a multiannual planning and spending approach in public finance.¹ Ukraine does have a legal framework for strategic planning and indicative financial forecast for the periods of 2-5 years. However, apart from for IFI-funded projects, very few investment actions can secure stable multiannual funding. The Cabinet of Ministers, the Parliament and the Ministry of Finance are the key institutions that determine the budgetary policy of Ukraine.
2. **Ukraine does not have a strong tradition of project-based funding.** The 'Targeted Programme Method' is widely used for planning and implementing spending from state and local budgets. Most agencies and institutions that receive funding from the state budget have their own targeted budget programmes, whose preparation and implementation is strictly regulated.² UAD has one budget targeted programme: the State Targeted Budget Programme of Development of Roads of State Significance for 2013-2018, approved by the Cabinet of Ministers in 2013.³ All investment activities and projects are based on and implemented in accordance with the framework of this programme. The only clearly defined investment projects are those that are implemented by UAD with the use of foreign lending. Therefore it is challenging to assess the standards of information disclosure for specific projects when they are funded exclusively from state budget or by private investors.
3. **Unfair business practices and corruption in road construction sphere are large-scale and persistent.** According to experts interviewed in the process of preparing this study, losses from unscrupulous financial management could reach up to 50% of the total budget for road construction and repairs. There is a perception that procurement procedures (during the entire cycle) are accountable for the large share of corrupt actions (often companies that are close to the management of UAD's and its regional services win tenders or receive orders through non-competitive procedures⁴), while implementation of projects that require multiple checks, certificates, agreements and signatures from various technical departments and inspectorates represent another big opportunity for corrupt actions. According to the report from State Financial inspection in 2011-2012 the losses of state budget from the activities of UAD were equal to 225 million UAD.⁵
4. **Chronic under-financing of road construction sphere.** Market operators and UAD persistently complain about the inadequate budget funding. Real allocations are 4-5 times less than what is required for maintaining the roads in their current state, and even more is required for their significant improvement. For many years there has been lobbying to create a ring-fenced multiannual Road Fund, which would accumulate all the resources from fuel excise duty and road

¹ [Budget Code of Ukraine](#), 08.07.2010

² [Law on State Targeted Programmes](#) #1621-IV, 18.03.2004

³ Approved by the Cabinet of Ministers [Decree No 696](#) on 11 July 2013

⁴ See for example articles at [www.nashigroshi.org](#): (1) <http://nashigroshi.org/2014/10/24/shlyahovyk-dav-kolyshnij-druzhyni-pivmiliona-na-mist-cherez-strumok/>; (2) <http://nashigroshi.org/2014/10/22/dorozhnyky-kupyly-asfaltu-na-11-miljoniv-u-donky-dyrektora-kyjivavtodoru-i-ridnoji-firmy-tihpka/>; (3) <http://nashigroshi.org/2014/10/20/v-oblavtodoru-zabraly-pidryad-na-6-miljoniv-bo-joho-predstavlyav-syn-chlena-tendernoho-komitetu/>; (4) <http://nashigroshi.org/2014/09/22/tendernyj-schaslyvchyk-chasiv-yanukovycha-maje-povernuty-oschadbanku-ponad-70-miljoniv/>

⁵ See reference in the article of AndriyChernikov "[Corruption does not affect the quality of roads. Diplomacy a-la-Ukravtodor](#)", 27 September 2013

tax. In 2014 the total receipts from fuel excise duty are estimated to be close to 40 billion UAH; yet UAD's budget is only 16 billion UAH, of which 11 billion UAH are spent on servicing the debt. It is because Road Fund resources are not ring-fenced and the Government uses them for meeting more pressing social needs in such areas as health protection and welfare. The (annual) Law on Budget determines the use of road-related incomes and there is little predictability of how much the sector is going to get from the state budget each year. One of the negative results of such a budget policy is the chronic debts of UAD and its regional offices in paying the bills for works/services provided by private and state-owned companies. Yet corruption in the sector is so prevalent that the underfinance will be less dramatic if all allocated money were used properly.

5. **Frequent changes in legislation and regulations.** Some areas are more affected by fluidity of the legal regime than others. Procurement and permit/control regulations is one such area, where Parliament and executive institutions continuously introduce changes to already existing laws, making life of private and public sector partners unpredictable.
6. **Inconsistent public oversight and formulaic participatory democracy.** Despite the fact that Ukraine has a strong legal basis for information disclosure and participation of the public in the decision making, in many cases the approach is formulaic. Civil initiatives are characterised by lack of systemic approach and implemented on an ad-hoc basis. There are no mechanisms for integrating proposals emerging from complaints/appeals back into the execution system. Public consultations and the work of Public Councils is often non-binding and superficial as in reality they struggle to get access to relevant information even in cases when it's stipulated by the law. Instead of concentrating on the content, non-governmental partners often have to waste their resources and energy on court battles and appeals to controlling authorities for protecting their "right to know".
7. **Overarching reforms.** Ukraine is currently at the stage of fundamental rebuilding of its statehood – from security and defence to procurement and e-governance. A significant amount of relevant legislation is being approved continuously – in September-October 2014 alone the Parliament voted and President signed Law on "Purification" of Power, package of Anti-corruption laws, that among other things enhance criminal responsibility for corruption, changes to the Law on Prosecution, etc. After the election of the new Parliament on 26 October 2014 it is expected that Ukraine will adopt new legislation on e-governance, electronic tender procedures, changes to laws on taxation, and dramatic changes in the judicial system. Moreover, Ukraine and the EU have recently signed and ratified the Association Agreement. According to the Action plan approved by the Cabinet of Ministers in September 2014, over the next 3-5 years, the public sector and economy will undergo systemic changes, including in the areas of procurement, fair business practices, regulations and taxation, financial control and audit.

3.1. Political and Economic Factors Shaping the Functioning of the Road Building Sector in Ukraine

As in any other policy areas, the road construction sector has underpinning political and economic factors that significantly affect the dynamics of reforms. The Ukrainian governance model – even after dramatic changes caused by the Revolution of Dignity in winter 2013-2014 and fundamental shifts in Ukraine's space that left some parts of Ukraine occupied and others almost demolished– continues to be quite centralised with strong vertical of power.

It is also a country dominated by oligarchic groups that exert a great deal of influence and receive substantial financial gains from large infrastructure projects. These groups tend to oppose large-scale reforms that would increase the efficiency of investments in infrastructure projects, improve their transparency and introduce responsibilities for misuse of funds and power of the office.⁶ Since these groups also tend to have significant influence over policy formulation, decision making and fund allocation, they are powerful lobbyists to effectively oppose meaningful reforms.

In February 2014 the Parliament voted for constitutional changes, which reinstated the parliamentary-presidential republic of 2004. This model envisages significantly fewer powers for the President and more powers for the Parliament. Parliament's majority coalition has a right to form the Government and the President de jure has limited influence over its formation and functioning. In reality, the President remains an important agent of change for the Government. Currently there is a unity in the position and decisions taken by the President and the Government.

⁶ See for example ["Who has stolen the roads?"](#), Weekly Mirror, 22 February 2013

The Cabinet of Ministers is the most important source of decision making in infrastructure policy. Decrees of the Cabinet of Ministers usually stipulate the procedures and instruments for implementation of national laws approved by Parliament. Within the Cabinet of Ministers, the Vice Prime Minister is also the Minister of Infrastructure.⁷

UAD does not develop and shape the policy in the road infrastructure sector, which is the function of the Ministry of Infrastructure. Rather, it is responsible for policy implementation, developing and implementing procedures and instruments in the road building industry, and for monitoring road building activities performed by other organisations/companies from public and private sector.

UAD has recently undergone numerous reshuffles and structural changes, the most recent of which is still ongoing. This has resulted in much fluidity and uncertainty about the roles and functions of certain structural units and officials, which has impacted performance negatively.

Over the last 6-8 months some government agencies and local authorities in Ukraine have embraced society's new demands for greater transparency and openness, and a more consultative and interactive approach in developing and implementing policies. They were doing so in the framework of existing and recently adopted legislation, but also in adopting a more proactive approach "what is not prohibited is permitted". However many agencies still favour a reactive approach and are not keen on opening up information about their activities and the way public funds are spent. UAD is in the latter type of government agencies.

UAD is not obviously a major driver of change. This could be explained by the 'transition status' atmosphere and expectations of yet more reshuffles and changes after the forthcoming Parliamentary elections.

UAD traditionally has a reputation for being a very closed organisation. Reshuffles over the last 5-10 years significantly eroded the technical expertise of UAD, which lost many of its professional cadres.

For the current situation to change there is a need for a powerful political drive towards reforming UAD into an effective agency that performs large-scale investment projects according to the high standards of transparency and openness. All external counterparts emphasised that political will is essential for the CoST programme or any other transparency initiative in the road construction sector to be successful. Neither UAD nor the Ministry of Infrastructure has emphatically made this commitment. It is the Cabinet of Ministers that could spur large-scale reform in UAD aimed at enhancing efficiency of its operations and spending, reducing opportunities for corruption and misuse of funds. In order to do so, it might be advisable to support the Cabinet in issuing a Decree stipulating the conditions for implementing a 'transparency pilot' in UAD, where the latter will be charged with the tasks to release information, and to co-operate with experts, business and civil society in the framework of an officially established expert group. This special regime would enable UAD to shore against political reshuffles and restructuring derailing the progress of the CoST pilot project. Without such a decision any tangible and sustainable progress outcomes will be largely dependent on the political will and consistency of UAD's management in pursuing the greater transparency initiative.

Ensuring an adequate regulatory and institutional setup for the future CoST pilot project in UAD will also help to counteract to powerful economic forces that are interested in the current status quo and build coalition of like-minded partners from business and civil society who are keen to collaborate with UAD on developing a new model of its operations that is transparent and open for public/business inputs.

3.2. Key Stakeholders

There are several stakeholders already championing the objectives of the CoST programme in Ukraine, including in the areas of:

1. Policy development and implementation;
2. Procurement;
3. Information disclosure and public engagement;
4. State control and audit;
5. Public oversight and monitoring;

⁷ At the moment (November 2014) the position of Vice Prime Minister responsible for infrastructure at the Cabinet is vacant and there is no Minister for Infrastructure. Any change is unlikely to happen until the formation of a new coalition and Government (December 2014).

6. Participatory policy making.

3.2.1. Government Agencies

The Cabinet of Ministers

The Cabinet of Ministers is the senior representative body of executive power which executes its authority directly and through the various ministries and agencies, directs co-ordinates and controls their activities. It is responsible for formulating strategic priorities for the national economy and its various sectors. The Cabinet is a collegial body that is formed by a Parliamentary majority coalition. It prepares and submits to Parliament the annual Budget Law which is the most important legal act regulating financing of large infrastructure projects in Ukraine. Up till now Ukraine has not adopted the principles of multiannual financial planning and budgeting; rather the annual budget determines the timeframe and procedures for appropriation of budget funding. The Law on Budget is the primary source of information on priorities for capital investments and their sources.

The Cabinet of Ministers is the body that co-ordinates overall programme of reforms of Ukrainian economy and public sector. It has a dedicated Centre for Co-ordination of Reforms that ensures consistency and complementarity of changes and reforms in various sector and areas, as well as implementation of 'generic reforms' throughout the whole executive power (e.g. financial planning and audit, procurement, e-governance, public service etc.).

The Ministry of Infrastructure is the body responsible for formulating and overseeing implementation of the policies in transport sphere, including road construction policies. Its activities are guided and co-ordinated by the Cabinet of Ministers. Usually the Minister of Infrastructure also holds the position of the Vice Prime Minister and proposes a candidate for the position of the Head of UAD to the Cabinet of Ministers. The Ministry directly steers and co-ordinates the work of UAD.

Ukravtodor

Ukravtodor (UAD) is the policy implementation agency subordinated to the Cabinet of Ministers through the Ministry of Infrastructure. It has limited ability to influence the formulation of strategic priorities for the transport industry; however its expertise and actions are key for identifying the practical tasks and concrete actions aimed at improving the road infrastructure of Ukraine. Among the main tasks of UAD are:⁸

- › Implementing state policy in road management and presenting proposals for its formulation;
- › Managing roads of state significance;
- › Providing information on and explaining state policies in the road management sector;
- › Organising the reconstruction, refurbishment and maintenance of roads, related engineering infrastructure, services and other constructions;
- › Maintaining relationships with other state authorities, local self-governments, civil society and mass media, publication of information on UAD's website, dissemination official information about UAD's activities via mass media.

The following departments of UAD play a key role in developing, implementing and overseeing regulations that determine the way in which investment projects in the road construction sector are implemented and monitored:

- › Project Implementation Unit (PIU) – responsible for management of all investment projects co-funded by IFIs and donors (WB, EBRD, EIB etc.) according to international standards and requirements;
- › Department of International Co-operation and Investments – leading on relationships with all international partners and international organisations, ensuring continuous dialogue between UAD management and international partners. It is the focal point for co-ordination of the CoST initiative;
- › Financial and Economic Department – responsible for all aspects of economic and financial activities of UAD, including annual budget planning, execution, monitoring and reporting, managing UAD's targeted budget programme for 2012-2018;
- › Department of Road Development – specific plans and projects for development and upgrade of the road infrastructure;

⁸ [Statute of Ukravtodor](#), approved by the Decree of the Cabinet of Ministers #439, 10 September 2014

- Department of Tender Methodology and Organisation – responsible for managing the initial stages of procurement process for all UAD spending;
- Internal Audit – responsible for internal monitoring and audit of all financial activities of UAD;
- Press Office – responsible for information disclosure, managing UAD’s website, managing relationships with the media, it is key co-ordinating unit for UAD’s Public Council;
- Department of Innovative Development and Prices – responsible for introducing novel technologies and practices, adjusting price policy of UAD.

Since UAD has limited authority in formulation of the policy and is the key executive and monitoring agency, any decision that requires significant changes in its operations, including enhancing transparency of activities and openness of information about investment projects, including procurement and assurance stages, requires a decision by the executive authority of the higher rank. The Cabinet of Ministers should therefore be engaged in the process of creating an enabling regime for the implementation of the CoST pilot project in UAD. This is necessary for overcoming possible barriers and challenges of access to information and engagement with UAD officials who are following strict subordination rules. It will also ensure that the CoST programme in Ukraine is closely co-ordinated with other initiatives and reforms in the spheres of improving transparency and openness of public service, public finances, increasing efficiency of procurement procedures, anti-corruption initiatives, and increasing civil oversight and participatory decision-making. A Decree by the Cabinet of Ministers will be a sufficient legal framework for implementing the CoST programme, which outcomes should have a sustained and long-term impact for the entire road-building sector, and potentially large capital investment projects in other sectors.

UAD’s Public Council

As per the Decree of the Cabinet of Ministers on Ensuring Public Participation in the Formulation and Implementation of State Policy, each central, regional and local executive government agency should have a Public Council.⁹ This consultative body has no real power to influence the decisions of the specific agency, however it has a right to provide inputs into the planning documents, draft regulatory acts, monitor activities of the agency, and provide recommendations for improvement and change, including recommendations to higher level executive authorities.

In September 2014 UAD went through the process of renewing its Public Council, based on an open invitation to join the council published on UAD’s website. 12 organisations applied and were included in the council. Information about the council’s activities, including minutes of the meetings, is published on the dedicated page of UAD’s website.

Among the members of the Public Council are heads of business association and federations, trade unions, charitable foundations working in the road sector. Currently the council contains no representatives of CSOs/pressure groups that specialise in monitoring the transparency of actions and accountability of funding in public sector. There are also no representatives with a technical/engineering background.

Ministry of Economic Development and Trade (MEDT)

MEDT is the central government agency responsible for developing and implementing policies, issuing regulations in the sphere of public procurement, and promoting transparency in and disclosure of information about tenders. All information about the legal and regulatory base, as well as full information on competitive procurement procedures of all public procuring entities of Ukraine is published on their website www.tender.me.gov.ua which is managed by state enterprise Zovnishtorgvydav. MEDT is also responsible for organising the monitoring of all procuring entities (PEs). Monitoring could be self-imposed (a PE asks MEDT to review their practices in order to improve them) or initiated by the Ministry. Institutions for conducting the monitoring are selected on the basis of scanning of their procurement information published on the website.

State Financial Inspection (SFI)

SFI is the key state agency responsible for monitoring the compliance with financial legislation and the internal audit of all executive authorities – procuring entities of state budget. It co-ordinates activities of internal audit departments which exist in all state agencies and publicly owned companies. SFI is responsible for the implementation of reforms that will bring

⁹ [Decree of the Cabinet of Ministers of Ukraine on Ensuring Public Participation in Formulation and Implementation of State Policy](#)
#996, 03.11.2010

Ukrainian legislation and regulations in the sphere of financial audit and monitoring in compliance with the European standards, as per the Action Plan for implementation of Association Agreement between Ukraine and the EU.¹⁰

It should be noted that monitoring of UAD's financial procedures and spending is included in the plan of actions of MoU signed between Ukraine and the EU on provision of macro-financial credit line of 610 million Euros.¹¹

SFI is also responsible for complying with the EU conditions of transparent public spending and strict monitoring which is adhered to in the package of financial aid provided to the Government of Ukraine in May 2014. UAD is one of the selected agencies under strict financial monitoring and audit in the framework of this financial arrangement.

Antimonopoly Committee

The Committee is responsible for ensuring fair competition in the private and public sectors of the economy. According to the Law on Procurement, it is charged with the function of overseeing the fairness and legality of procurement procedures carried out by all public agencies and state owned companies whose activities falls under the force of the Law. Any complaints related to procedures and results of tenders (announced on the official procurement website www.tender.me.gov.ua) should be addressed to the Committee. The Committee keeps a register of such complaints (open to the public). The Special Collegium of the Committee (in central and regional offices) then reviews the complaints and rules on follow-up action (for example, annulment of the tender). The Committee also has a register of companies which were caught performing unfair business practices; such companies are banned from taking part in any public sector procurement operations for a period of three years. This register is publicly accessible on the Committee's website.

Accounting Chamber

The Accounting Chamber is subordinated to the Parliament of Ukraine and is responsible for the independent audit of the spending of State budget funds, including by executive authorities at the central level. It performs audits of specific institutions, results of which are published in brief press releases on the website of the Chamber. Full texts of audit reports are not available online; they are, however, available upon submission of an information request.

One of very few full texts of audit reports available on the Chamber's website focuses on UAD's use of State budget funding and funds from IFIs performed in 2008.¹²

Ombudsman

The ombudsman is appointed by the parliament of Ukraine and is responsible for protecting the rights of Ukrainian citizens, including their right for information. Following the approval and enactment of the Law on Public Access to Information, the Office of Ombudsman has played an active role in ensuring that public agencies at all levels and in all sectors are complying with the new standards of disclosure and transparency. Jointly with CSOs and with the support from international organisations and donors, it implements a range of activities aimed at protecting the rights of citizens and civil organisations in courts and in pre-court review procedures. According to the most recent amendments to the Law on Prosecution (approved on 14 October 2014) the Office of Ombudsman will perform the functions of registering complaints with regard to information disclosure. New procedures are aimed at reducing the court caseload related to information disclosure and performing effective pre-court procedures for dealing with public complaints.

3.2.2. Business Sector

Ukraine has a number of business associations that bring together firms working in various sectors of construction. These associations and confederations represent a powerful lobbying mechanism, effective in influencing state policies, legislation and regulations in the area of road construction, implementation and legal enforcement.

There is no specific association of road-building companies, however several organisations have a significant number of such companies and are able to mobilise relevant expertise and power to lobby their interests at the highest political level.

¹⁰ [Decree of the Cabinet of Ministers of Ukraine on Implementation of the Association Agreement between Ukraine and the EU](#) #847-p, 17 September 2014

¹¹ [Law on Ratification of Memorandum of Understanding between Ukraine as the borrower and the EU as the lender on provision of macroeconomic aid package of 610 million Euro](#) #848-VII 04.04.2014

¹² Text is available on Accounting Chamber [website](#).

Three associations presented below are able and willing to take part in the work of a CoST MSG and contribute the technical expertise necessary for performing monitoring and assurance of specific engineering parameters of road building.

Federation of Employers in Transport Sector

The Federation joined Public Council of UAD in September 2014. It does not have any members that represent the road construction sector, and some private companies suggested that this is due to the fact that Federation does not belong to the group of “loyal” UAD organisations. However the Federation does bring together some of the key and regular users of the roads who are interested in enhancing their quality and safety, and in the rational use of public funds allocated to road construction and refurbishment.

According to Federation officials, traditionally UAD has an image of a closed organisation which is not happy to share the information. There are doubts as to whether UAD will grant free access to necessary information in the framework of the CoST pilot project without a high-level decision to do so (at the level of the Cabinet of Ministers). They also believe that the two key problems faced by the road sector are: (1) deficit of funding; and (2) lack of transparency.

The Federation believes that control and monitoring functions could be effectively performed by parties that do not have a direct financial interest in the industry. These might be the biggest consumers of the services of road sector – automotive companies and their associations. Their “distance” from distribution of funding and winning the tenders will ensure objectivity of the process. Experts, preferably local experts with good knowledge of the sector’s realities, who will be taking part in the monitoring/assurance process, should work on the pilot project non-stop for several months.

In general Federation is interested in transparent process of project planning and implementation, in financial efficiency of road building projects and high technical standards of the roads. Their interest is the interest of the primary consumer of the services/works performed by UAD.

Association of International Automotive Transport Operators

The Association has had membership of UAD’s Public Council since the day of its creation, and its president is the Head of the council, as well as the head of the Public Council of the Ministry of Infrastructure.

Overall, in the opinion of Association’s leadership, UAD’s tender committees could be strengthened by the inclusion of engineers, economists and lawyers. This would ensure the selection of truly effective and viable proposals.

Systemic civil oversight is very important in the road sector. The Association is ready to take part in the multi-stakeholder group if it is permitted to take part in the process of monitoring and assurance. It is ready to find and train specialists who will be directly taking part in the process.

Confederation of Builders of Ukraine

The Confederation, being one of the most active supporters of transparency initiatives in construction sector of Ukraine, including CoST, is very positive about the pilot project in the road construction sector.

Currently the Confederation is not a member of UAD’s Public Council. They have only several members representing the road construction industry, however all their members are significant users of the roads and have direct interest to make the process of funding and operations more transparent – to increase financial efficiency and quality standards.

The Confederation has some very concrete outcomes of joint work with IFC/WB on reforms in the construction sector procedures¹³ that resulted in the dramatic positive change in Ukraine’s position in the Doing Business ranking. The work that led to these changes was very intensive and Confederation engaged specialists who were working for half a year in the framework of the working group to offer legislation and practical instruments for its implementation.

The Confederation believes that the crucial factor for the successful implementation of the CoST programme in Ukraine is political will; and that that political will should emanate from the highest level. UAD’s decision to carry on reforms or even Ministry of Infrastructure’s decree will not be enough. Cabinet of Ministers should take a decision that will enshrine the commitment of transparency in the regulatory framework, even if only on a temporary basis, through introducing ‘pilot regime’.

¹³ Outputs include the brochure “What you need to know about the construction procedures?” published in partnership with IFC, WB and supported by Swiss Government

3.2.3. Civil Society

There is a critical mass of CSOs and business associations in Ukraine that are interested in making road building projects more transparent, spending of budget funds more efficient, and Ukrainian roads safer. Some CSOs have significant experience in monitoring the procurement procedures of central, regional and local authorities; monitoring the execution of the Law on Public Access to Information; taking part in the expertise of capital investment projects; and appealing to control/audit institutions and courts with regard to unlawful decisions and corrupt practices.

Centre for Political Studies and Analysis (CPSA)

This is one of the most active players in the field of transparency, anticorruption policy, and control over use of budget funding. The Centre is also interested in the legality of procurement procedures used by central and local authorities, and in monitoring the implementation of legislation in the sphere of public access to information. It is a think tank with strong presence in the regions, having developed a network of regional organisations in all 25 Ukrainian oblasts.

The Centre has published a range of very practical textbooks/guides on the interpretation and implementation of the Law on Public Access to Information (2011) which is available in Ukrainian in hard copies and online. Its experts launched a special website www.advohub.org for various advocacy campaigns which should simplify the process of launching and managing the public campaigns (it is largely based on their own experience of an [ongoing advocacy campaign](#) for the adoption of the Law on publishing full information about budget spending in all sectors and at all tiers). CPSA also launched the website [Transparent Bureaucracy](#)¹⁴ where visitors can learn about the principles of information management in the state apparatus, and the rights and obligations of each party.

The Centre adopts a very positive and constructive approach to the dialogue with the authorities. They strive to explain to their counterparts in the state authorities that they want and can help in the process of building their capacity in the areas of information disclosure and public oversight over actions and expenditures of authorities. Thanks to Centre's regional presence, it has very good contacts with the leadership of regional/local authorities and in many oblasts it has managed to achieve a high degree of trust and true partnership with oblast and rayon administrations, city councils. These regions achieved significant progress in the ranking of 'openness of local authorities' published by the Centre.

For the last three years, the Centre has monitored the execution of the Law on Public Access to Information by all regional and local authorities of Ukraine (oblast and rayon administrations, city councils). This monitoring resulted in some very useful publications and evidence about disclosure and transparency.¹⁵ The Centre is also monitoring all Cabinet's decrees with regard to potential corruption opportunities created by those decrees.

The Centre has experience in monitoring the efficiency and effectiveness of large capital projects, including in the water, energy generation and road building sectors. It is keen to take part in the work of the CoST MSG, and potentially to host a TA project, should there be a need for the project to be hosted outside UAD.

Transparency International (TI)

The Ukrainian chapter of Transparency International has, for many years, worked to increase the transparency and openness of Ukrainian politicians, civil servants, public sector in general, decision making, public spending, and increasing oversight over planning and execution of state policies. Along with CPSA and AAC (see below) it is leading on anti-corruption reform in the coalition of Ukrainian CSOs called "Reanimation Package of Reforms".¹⁶

Due to the high pressure exerted by this group exerted on political elites and its ability to mobilise significant public interest, on 14 October 2014 Ukrainian Parliament approved a package of legislation that significantly strengthens the anti-corruption policy of Ukraine. It includes the National Anticorruption Strategy 2014-2017, whose laws stipulate the creation of the new institutional arrangements (National Committee for Anti-corruption bureau), empower authorities to monitor and disclose information about corrupt action in the public sector, and define the notion of the conflict of interests and measures for managing it. These laws also require the disclosure of various information about suppliers of goods, services and works funded from public money, including ultimate beneficiaries.

¹⁴ <http://access-info.org.ua/>

¹⁵ [Monitoring of Openness of Local Authorities](#), CPSA, 2014 This initiative is implemented in co-operation with the Office of Ombudsman who is responsible for protecting the right of citizens for information, and supported by UNDP

¹⁶ <http://platforma-reform.org/>

TI in Ukraine has a number of projects that are aimed at: (1) increasing the transparency of public procurement (see Figure 2, below); (2) strengthening anti-corruption policies and actions, monitoring the execution of anti-corruption legislation; and (3) capacity building of civil organisations and activists in monitoring the efficiency of decision-making, public finance and corrupt actions.

TI will be a very effective partner in the CoST MSG as it can bring a solid experience of monitoring the transparency in the public sector, advocacy and campaigning, capacity building, and creating partnerships for achieving higher effect from the public campaigns.

In November 2014 the pilot project on e-tenders in the public sector was launched jointly by the members of the Parliament, Cabinet of Ministers, Presidential Administration, international experts and business representatives. Private IT companies developed software that would enable electronic purchases of goods and services up to 100,000 UAH. This software along with all associated intellectual property rights was transferred to Transparency International Ukraine for the testing period, which is due to start in December 2014. During trial period three public agencies – Presidential Administration (some of its divisions), Kyiv City State Administration and State Nuclear Energy Company “Energoatom” – will be using platform for purchasing below-threshold goods and services. After completion of the trial period and necessary modifications to make system workable, Transparency International will transfer this software to the Government, also free of charge.

Figure 2: Transparency International’s Experience in Ukraine’s Procurement Sector

Anticorruption Action Centre (AAC)

AAC is one of the youngest CSOs working in the area of transparency and anti-corruption policies. However it managed to achieve significant success in preventing corrupt and unfair business practices in the procurement procedures of various state agencies at the national and local levels. It specialises in judicial aspects and usually launches court cases against procuring agencies and unscrupulous businesses using available legal tools. Often these initiatives lead to annulment of tenders or non-competitive procurement procedures.¹⁷

AAC is one of the most active participants of the ‘Reanimation Package of Reforms’ – a coalition of Ukrainian CSOs that are working on developing and adopting the most pressing legislation in various areas of the economy and public life. AAC has good experience of lobbying various government agencies and collaboration with the Parliament of Ukraine on enhancing transparency of public spending and fighting corruption in the public sector.

Other CSOs and Initiatives

There are many other organisations in Ukraine working at the central or local level with the aim of increasing openness and transparency of public sector, its decision-making and public spending. Some of those organisations specialise in investigative journalism that sometimes lead to criminal cases (e.g. [Nashi Groshi](#)); others protect the rights of investigative journalists and represent their interests in the policy process (e.g. [Institute of Media Law](#)); or concentrate on educating citizens about their “right to know” and right to request the information from state authorities (e.g. “[Access to Truth](#)”).

Unfortunately Ukraine has no professional associations of engineers or experts in road building. So it will be impossible for MSG to contract such network of professionals for performing technical assurance of road construction projects. This gap could be filled in part by business associations which could recommend individual experts.

Overall it should be highlighted that some Ukrainian CSOs have significant experience and expertise in monitoring the openness and transparency of the public sector, including large investment projects and procurement procedures. Many of those, having co-operated with numerous state agencies at the central and local level, have a very realistic and positive approach to dialogue with government agencies. They are eager to help public institutions to build capacity in order to function effectively and in compliance with the new standards and demands of planning, implementing and monitoring budget spending/capital projects. There is a strong evidence of positive dynamics of relationships between these organisations and government agencies over time, which leads to greater transparency and closer engagement with the public. The CoST MSG might use this positive experience in its pilot project with UAD and enshrine core principles of collaboration and partnership in MSG’s ToR.

¹⁷ Some details about the results of their work are available at <http://antac.org.ua/en/corruption-cases/>

3.3. Legal and Regulatory Framework

There are multiple legal acts and regulations that stipulate conditions and procedures for planning and implementing large road construction projects in Ukraine.

This study has focussed three key components that are crucial for disclosure of information about management and financing of investment projects. These are:

1. Procurement;
2. Public access to information; and
3. Public participation in decision-making.

Some key characteristics of the most crucial legal acts are presented in Table 1. Various other legal initiatives are also important and some of them are mentioned in the text of this Chapter, in particular in the spheres of financial management and audit and anti-corruption policies. When relevant there is also reference to ongoing initiatives and anticipated reforms that might become the reality by the time CoST pilot projects is launched.

Law/Act with access address	Core objectives	Elements relevant to CoST programme
Decree of the Cabinet of Ministers of Ukraine on the Statute of Ukravtodor #439, 10.09.2014	Establishes the fundamentals of UAD operations, its key functions and responsibilities	<ul style="list-style-type: none"> › Responsibility for publishing information proactively and responding to reactive requests; › Monitoring of construction and refurbishment of roads; › Planning and implementing investment programmes and projects, including those with the funding from IFIs and other international partners.
Law on Performing Public Procurement # 1197-VII, 10.04.2014	Establishes the legal and economic fundamentals for procurement of goods, services and works for satisfying the needs of the state and local communities. It aims to create competitive environment in the sphere of public procurement, counteract corruption and enhance fair business practices	<ul style="list-style-type: none"> › Stipulates: <ul style="list-style-type: none"> - Thresholds for using competitive procurement procedures – 100,000 UAH for goods and services (300,000 in construction sector) and 1,000,000 UAH for works; - Exceptions from general rules of public procurement (e.g. defence and security, currency printing etc.); - Standards for planning, implementing and disclosing information about annual procurement plans; - Mechanisms for public oversight of procurement procedures; - Standards and demands for all procuring entities as for organising procurement process and submitting all information throughout the procurement cycle to central public procurement website www.tender.me.gov.ua; › Establishes principles of public procurement which include transparency and openness, fairness, economy and

Law/Act with access address	Core objectives	Elements relevant to CoST programme
		<p>best value for money, non-discrimination, objective evaluation, preventing corruption, free movements of goods and service provision;</p> <ul style="list-style-type: none"> › Establishes exceptions from domestic rules and regulations for projects that are (co-) funded by IFIs and other international organisations, if Agreements on Co-operation and specific procurement procedures is approved by the Parliament of Ukraine.
Law On Information , #2657-XII, 02.10.1992,	Regulates relationships for creating, collecting, obtaining, storing, using, sharing, protecting and securing information; stipulates core principles and mechanisms of state information policy.	<p>Stipulates:</p> <ul style="list-style-type: none"> › Universal right on free access to information, its use, sharing, storing, protecting and securing, except when information is classified as confidential, secret or for internal use only; › The obligation for all government agencies to inform public and mass media about its activities and decisions; › The obligation of government agencies to create special units responsible for ensuring access to the information.
Law on Public Access to Information #2939-VI, 13.01.2011	Introduces procedures for ensuring the universal right for public access to information produced by authorities at different tiers, as well as by other providers of publicly significant information.	<p>Stipulates:</p> <ul style="list-style-type: none"> › Obligations of state authorities to publish information – proactively or reactively; › Mechanisms, timeframe and costs related to disclosure; › Clear limitations when information cannot be disclosed and procedures for communicating these limitations to the public; › Procedure for substantiating the refusal to release information in the public domain (three-stage test).
Presidential Decree on Provision of Public Access to Information by the Executive Power agencies#547, 05.05.2011	Regulates public access to information produced and administered by the executive power authorities	<p>Stipulates:</p> <ul style="list-style-type: none"> › Forms and procedures, timeframe for disclosing information in the public domain; › Standards of dealing with information requests and appeals for all executive power agencies.
Decree of the Cabinet of Ministers on Ensuring Public Participation in Formulation	Established mechanisms for public participation in developing, implementing and monitoring state policies.	<p>Stipulates:</p>

Law/Act with access address	Core objectives	Elements relevant to CoST programme
and Implementation of State Policy #996, 03.11.2010		<ul style="list-style-type: none"> › Typical procedure for establishing and functioning of Public Councils, their responsibilities and rights; › Mechanisms for public consultations, survey of public opinions, submitting proposals, recommendations and complaints; › Mechanisms for organising public hearings.

Table 1: Key Legislation Relevant for the CoST Programme in Ukraine

Source: Study team based on database of Ukrainian legislation and regulatory acts at <http://zakon1.rada.gov.ua/>

3.3.1. Procurement

Procurement is one of the spheres of state activities that attract the most of public attention. Many of the challenges related to lack of transparency and extreme corrupt and/or unfair business practices employed by both procuring entities and suppliers are found here.

Ukrainian state agencies and state-owned enterprises spend around 35 billion USD annually on procurement of goods, services and works. Even 20% loss through corrupt or unfair procedures results in billions of hryvnias of losses that are unaffordable for Ukrainian state and society; particularly now when Ukraine faces deep and systemic economic crisis. The pressure to increase military and state security budgets, and the imminent need in large amounts of public funds on reconstruction of destroyed public infrastructure and housing in the East of Ukraine demand rationalisation of current state budget spending and increased efficiency of procurement procedures, when best value for money is gained through fair and competitive procedures. The pressure to change the way procurement process is managed, the contracts are implemented and monitored is huge; and is exerted from both business and civil society sectors.

Ukrainian procurement legislation underwent a multitude of changes and its fluidity and lack of consistency is one of the biggest problems facing the sphere. Even now there are dozens of proposals to amend the current law on procurement registered in Parliament. The most recent Law on Performing Public Procurement was approved by Parliament on 10 April 2014¹⁸ as a result of huge pressure from society and foreign partners who committed considerable financial packages of aid and lending to help Ukraine to go through the difficult period of its statehood. The Law removed multiple exceptions clauses that allowed the majority of PEs and state enterprises to use non-competitive procurement procedures (negotiations, single-supplier procedure), increased disclosure of information about the tenders, and abolished hard copy of 'Procurement Newsletter' which was cumbersome and admitted as ineffective by majority of market players. It also strengthened the monitoring and control over planning and execution of procurement procedures, including the enhanced role of Antimonopoly Committee.

Further changes are proposed in introducing electronic tenders, first for below-the-threshold procurement; (currently information about all purchased goods/services in construction sector below 300,000 UAH and works below 1 million UAH should not be released and competitive procurement procedures are not required). Joint up efforts of the business community (IT companies and their association), civil initiatives (e.g. New Country), Presidential Administration, Parliament and the Government (MEDT), as well as international experts, are currently focussed on preparing a draft law on electronic tenders for below threshold purchases in public sector. Several state agencies volunteered to take part in piloting the platform (i.e. Presidential Administration, Kyiv Metro). With the support from CoST, potentially, UAD could also join this initiative at earlier stage.

MEDT is the key government agency responsible for procurement policy and monitoring of the legality of procurement procedures, carrying out 800-900 monitoring checks a year (out of total 100 thousand tender procedures organised each year across all PEs). Half of these checks results in some remarks about inadequate practices and recommendations for

¹⁸ <http://zakon1.rada.gov.ua/laws/show/1197-18>

change. Copies of those reports are sent to key controlling agencies – the State Financial Inspection (responsible for audit of budget spending), the Office of Prosecutor General (which is tasked with ensuring the legality of tender practices and initiating investigations if malpractices are detected), and the State Antimonopoly Committee (responsible for monitoring unfair business practices at tenders and maintaining a ‘black list’ of organisations that were caught at ‘arranged tenders’).

In reality MEDT’s monitoring does not have much impact on the process of tenders as it cannot annul tenders if they are organised in improper manner. MEDT can only recommend what a PE should do, leaving it up to the PE to either agree or disagree. It is rare that Ministry’s negative report results in special checks by auditing agencies. Usually auditing agencies have their own timetable of checks and can also launch checks as a result of submission by the Cabinet of Ministers or the Parliament.

It should be noted that MEDT is gradually expanding the range of procurement information it publishes on the dedicated website, as per new legal requirements. However, according to the Ministry’s officials, there were no observed increases in public requests as a result of such enhanced transparency. This suggests that proves that enhanced proactive disclosure of information does not necessarily lead to increased reactive requests from the public.

3.3.2. Public Access to Information

Ukraine significantly improved its legislative base and regulations in the area of public access to information, which incorporates best international standards. In 2011, the Parliament of Ukraine approved the Law on Public Access to Information which, according to experts, is one of the best examples of this type of legislation in the world.

Implementation of legislation is challenging due to the lack of capacity and often will of civil servants and officials in public companies to disclose information (there is chronic lack of funding for professional training and explanatory documents) and also due to the lack of knowledge in the society about how to use the right for information. Those people who have access to the internet have higher chances of getting necessary information, as gradually more official information is published on the websites of official agencies rather than in printed media. In the future this trend will be only stronger as the agenda of e-governance is implemented and as the ‘digital inclusion’ of Ukrainian citizens is growing.

Some experts estimate that for proper execution of existing legislation there is a need for systemic and comprehensive implementation support during first 5-8 years.¹⁹ This work requires close collaboration between official agencies that are responsible for ensuring that right to information is not violated (Office of the Ombudsman) and civil society organisations who perform regular monitoring of the public access to information and provide training/capacity building for representatives of central, regional and local authorities as for how to implement in practice these legal requirements. More information on such initiatives is presented in the Key Stakeholders section, above.

Table 2 presents a summary of three types of information to which public access might be limited or prohibited. During interviews with the stakeholders in Kyiv, the issue of confidentiality of information was raised as the area, which requires more clarifications and explanations. It is particularly important with regard to contractual information that is integral part of the CoST spreadsheet of information for disclosure. On the one hand, the public needs to know the full information about the contractual obligations and conditions for implementing large road infrastructure projects, including extensions, amendments, change in the volume of financing and the quality of works. On the other hand, it is standard international practice (which is also enshrined in the CoST disclosure standards) to withhold some commercially sensitive and proprietary information from public domain and there are penalties/sanctions against infringing the rights of confidentiality (see the Chapter ‘Baseline Indicators of Information Disclosure’ for more on this).

¹⁹ Centre for Political Studies and Analysis “Internal information: procedures for classification and access”. Practical textbook, Kyiv, 2014

	Confidential	Secret	Internal
Definition	Information, access to which is limited by physical or judicial person, except representatives of state authorities, and access to which is defined and should be permitted by these persons. The only cases when information could be published without permission of its owners are: in the interest of national security, economic wellbeing and human rights' protection.	Information, access to which is limited due to the danger of harming the individuals, society and the state. Secret information contains state, professional, or banking secrets, secret of pre-trial investigations and other cases stipulated by the Law on State Secret.	Information which is presented in internal business correspondence of state authorities and concerns internal processes, internal audit and control, procedures that precede public discussions and publication of information, internal investigations and security/safety information that is not classified as secret. It is compulsory to publish the register of all Internal information by respective state authorities.

Table 2: Definitions of Restricted Information

Source: based on the Law on Public Access to Information

While some CSOs are performing a range of actions aimed at enhancing the capacity of official authorities and their staff to deal with the issues of information disclosure and public access, others are launching initiatives that are aimed to raise the awareness of citizens about their right to request the information. There are a number of online campaigns that help users to prepare and send public requests to any state agency, (see section on 'Key Stakeholders', above).

3.3.3. Public Participation in Decision-Making

The key document that stipulates the mechanisms of public participation in the policy making, implementation and monitoring is the Decree of the Cabinet of Ministers on Ensuring Public Participation in Formulation and Implementation of State Policy.²⁰ According to this document there are several ways for representatives of the public to take part in the state policy planning and implementation:

1. Public consultations;
2. Public hearing;
3. Survey of public opinions; and
4. Taking part in the work of Public Council.

All executive institutions should have a plan of public consultations about the most significant aspects of their activity, spending, new legal acts and strategic document etc., which is prepared in consultation with the Public Council and published at the beginning of each calendar year.

According to the Decree, all central, regional and local executive government agencies should have a Public Council, which is key representative body for public interests. Composition of such council is determined by the objectives of each individual institutional and should include relevant business associations, CSOs and public initiatives which are active in the specific sector. Membership of the council is granted upon completion of an application procedure, which is clearly explained on the website or the printed media of the agency.

Public Councils have no significant power to influence the decisions of the specific agency, however they have a right to make proposals about consultations with the public, draft regulatory acts, monitor activities of the agency, and provide recommendations for improvement and change, financial allocations, including recommendations to higher level executive authorities. The council has the right to perform public expertise and anticorruption public expertise of all draft regulations and acts of the specific agency, request information from central and local executive agencies information necessary for its

²⁰ [Decree of the Cabinet of Ministers of Ukraine on Ensuring Public Participation in Formulation and Implementation of State Policy](#)
#996, 03.11.2010

work. If necessary Public Councils can create expert working groups for considering specific issues, engage experts and consultants, and organise events. The council should publish results of its work on the website of the relevant agency.

Potentially UAD's Public Council could be a platform for establishing multi-stakeholder group on CoST pilot project. It should be one of the stakeholders as the membership of the CoST expert group should not be limited to the members of UAD's Public Council. Other CSOs and business associations along with the officials from UAD and some other government agencies that are responsible for monitoring and auditing financial activities/projects should be involved in the work of the expert group with the equal status.

4. Baseline Indicators of Information Disclosure

4.1. General Characteristics

As outlined in the Chapter 'Background Information', Ukraine has a solid legal and regulatory base in the areas of public access to information and transparency, and the openness of tender procedures for publicly funded goods and services (above legally established thresholds). Ukraine also significantly improved its legislation in the sphere of public participation in the activities of central and local authorities and public agencies at all tiers. Among the most recent reforms is the solid legislative anticorruption package approved by the Parliament on 14 October 2014 (which is expected to be signed by the President soon).

It is the implementation of these laws and regulations that is the challenge; and implementation varies from agency to agency. Some central and local authorities are efficient in implementing the legislation, while others have more "relaxed" attitudes disclose only the bare minimum, and often after public enquiries rather than on a proactive basis, as required by law.

The reasons for poor implementation are manifold, including:

1. **Weak capacity:** public agencies struggle to catch up with multiple legal changes and innovations. This is caused by an almost total absence of targeted training programmes and explanatory materials, as well as pertaining organisational culture that discourages interaction and initiative. Sometimes the problem stems from low headcount in relevant departments. This particularly affects the speed and quality of replies to public enquiries and appeals/complaints;
2. **Legal inconsistencies:** internal regulatory acts can contradict laws and regulations of higher order. Some authorities still follow internal instructions originating from Soviet Era and which are not compliant with the laws approved in 2010-2014, especially with the Law on Public Access to Information which supersedes all "sector" legislation and secondary regulatory acts;
3. **Unclear role of control & audit authorities:** staff are concerned that the authorities could proffer multiple interpretations of compliance with legislation and regulations; this in turn could lead to an increase in checks and audits, and consequently in administrative punishments;
4. **Unclear disclosure guidelines:** staff are concerned not to disclose "too much" information, meaning that they often disclose "too little". There is a lack of clear instructions on (a) what should and should not be published proactively; and (b) should be included in the replies to reactive enquiries. This has encouraged staff to adopt formal approach to disclosure, meaning that there is a lack of information in the public domain, in spite of disclosure of that information being required by law;
5. **Corruption-driven motives:** often officials withhold information that could reveal unfair practices and corruption in the given authority or agency.

As explored in the chapter 'Background Information', there are several Ukrainian CSOs that are monitoring the compliance of central and local level authorities and public agencies with legal requirements (e.g. Centre for Political Studies and Analysis (CPSA), Transparency International, Anticorruption Action Centre).²¹ There are also multiple local CSOs that are performing regional and local level monitoring.

To date, no monitoring exercise has looked at UAD, so its disclosure record versus other central level public agencies and authorities is unknown. However, according to experts from CPSA, there is a general observation that local and regional authorities are more transparent and willing to disclose information than central level authorities. The disclosure and collaboration with civil society is the greatest in the regions where there is a coalition of CSOs, business leaders and active representatives of public committed to helping authorities on disclosure. This is particularly noticeable where authorities lack capacity; in these instances, coalitions have been known to build the capacity of the authorities, towards helping them comply with legislation and regulation.

²¹ See for example ["Monitoring of Transparency of Local Authorities"](#), CPSA, September 2009

The accessibility of Kyiv-based central agencies and institutions is likely complicated by 'power distance', as well as the scale of central agencies' responsibilities and budgets.

4.2. Compliance of UAD's Disclosure Practices with Ukrainian Legal Requirements

For the purpose of verifying compliance with the legal requirements of information disclosure, two sources of information were thoroughly screened: (1) UAD's web-site <http://www.ukravtodor.gov.ua/>; and (2) <https://tender.me.gov.ua>: the central portal for publishing information about all public-funded procurement activities above legally identified thresholds (less projects co-funded by IFIs, see below). A number of other online sources were used for screening necessary information about legal requirements, budget allocations, audits etc.

UAD has the necessary institutional setup for disclosing information and processing enquiries/ complaints from the public, as stipulated by the Law on Public Access to Information. The Administrative Records Department is responsible for gathering all public enquiries and complaints, and managing a register of such enquiries, open to the public. The Press Office is responsible for the publication of information and work with the media, and for the co-ordination of activities with Public Council. It is not responsible for the content of various pages of the website which is a task of the individual policy and administrative departments of UAD. There is schedule of regular meetings with the management of UAD open for the general public.

UAD does not have its own printed media and all information is published either in the Government newspaper *Uriadovyi Kurier* (Government's Courier) or on the agency website. Some information is also published at the websites of the [Ministry of Infrastructure](#)²² and of the [Cabinet of Ministers of Ukraine](#).²³ Administrators of these two websites use their own filters/criteria for publishing news and UAD has no direct influence on what is published (as per information from the UAD Press Office). Information about checks and audits is published on the websites of the respective audit authorities, such as the Accounts Chamber or the Antimonopoly Committee.

It should be noted, that, according to UAD's Press Office, the annual budget for supporting the website operation is equal to 500 UAH (25 GBP as per the exchange rate in the middle of October 2014). Often regional road services do not have any financial resources for website support and maintenance and need to find funding elsewhere, which often has a negative impact on the content of regional road services' websites. The access to regional websites is possible through the [main UAD website](#).²⁴

These constraints and capabilities should be taken into account while planning any work on UAD's website as plans must first be secured with funding from non-budget sources (at least until the decision on reallocation of budget funds is approved, which is unlikely to happen in the current macroeconomic and fiscal climate). Recently, UAD has had an unfortunate experience of aborted innovation: in July 2014 it introduced a separate website (connected with UAD's main website) where people could report road problems that need addressing using interactive map. In the several months it was active, this service drove down the number of public enquiries and complaints: a positive outcome. However due to lack of funding, it was impossible to support this service and currently it is not operational. Consequently, UAD has reverted to the normal channels of communicating with the public about problems on the roads: telephone, post and emails.

It is expected that the ongoing Technical Assistance project funded by the World Bank and implemented by the HPR/IMC consulting team will be supporting and funding activities aimed at enhancing the content, design and navigation tools of UAD's website. This source of expertise and funding should be factored into the preparation of the CoST pilot project ToR, as a way of maximising use of the project's resources for other activities.

4.2.1. Proactive Disclosure

According to the Law on Public Access to Information, all authorities and proprietors of public information have to release (within five working days of decision making) and update information about their "activities and financial resources (structure and volume of budget resources, procedure and mechanisms of their spending etc.)". Only three types of information are prohibited from disclosure: information that is confidential, secret or internal (see Table 2, above). There is however some lack of clarity with the interpretation of what "confidential" and "internal" information is, as noted by several interviewees in

²² <http://www.mtu.gov.ua/>

²³ <http://www.kmu.gov.ua/>

²⁴ <http://www.ukravtodor.gov.ua/sluzhbi-avtomobilnikh-dorig-v-oblastyakh.html>

Kyiv. For example, publication of detailed contractual information could be interpreted as confidential, while others would dispute that it is in the public interest for it to be disclosed, and that this mandate is greater than the danger of disclosure. These issues need to be clarified in official documents; and the CoST pilot project can help to address this issue, given that CoST has developed the its standard of disclosure in a way that takes into account confidentiality elements of contracting.²⁵

By law, UAD must also release all legal and regulatory acts and their drafts for public consultation. Content of UAD's website, when analysed in the framework of this scoping study (September-October 2014), was quite full and up-to-date. It is clear that there are good procedures and mechanisms of co-ordination between UAD's policy and administrative departments (responsible for content provision) and its Press Office (responsible for online publication and media release), and information disclosure is largely in compliance with the legal requirements.

However, it is not always easy to find exact information. Website navigation could be made more user friendly, with more 'hints' and 'Frequently Asked Questions' pages; (according to other public agencies, these are often very useful).²⁶ Such inaccessibility of the website for a significant share of its visitors means that the most visited pages of the website are 'About UAD' and 'Contacts'. For comparison, the procurement/tenders page of UAD's website is not among the popular pages, and according to Google analytics provided by UAD's Press Office, it is in the 30-40th position among all landing pages²⁷ of UAD's website visited in 2014.

Since the majority of website visitors almost immediately go to the 'Contacts' page, they rarely look into other segments where they can find the information they require. According to the Press Office, often when answering public enquiries and appeals/complaints, UAD simply refer people to the exact page on UAD's website where information could be found. There is a chance that through improving "usability" and visibility of specific elements of UAD's website it is possible to decrease the number of public enquiries. However, the vast majority of complaints can only be addressed by improving the roads themselves.

Information about financial resources is published in a dedicated segment of the website called '[Financial and Economic Activities](#)'.²⁸ This portion details information about financial plans and hosts detailed annual reports on use of resources, which include a range of efficiency indicators (i.e. number of requests processed per one employee or cost of works per kilometre of road). UAD publishes its annual procurement plans (including updated versions every time they change) that list all the intended categories of procurement and types of procedures to be used (competitive or non-competitive). Unfortunately, in UAD's procurement plan for 2014 there are no sums of estimated costs for separate categories of goods/services and works to be purchased.

The presentation of financial data on the website is in the form of brief prose summaries on the landing page, and detailed Excel files as attachments. It should be noted that these contain no direct reference to procurement information/tender details, nor information on the executing companies of specific road building/construction initiatives/programmes. See Table 8: Proactive Disclosure on Budget Projects Table 8 in Annex 1 for current situation with proactive disclosure of information about budget-funded investment activities (projects). Such information is included on separate information pages for a limited number of activities, and usually these are investment projects co-funded by IFIs. For example, there is information on progress in building the road M03 'Kyiv-Kharkiv-Dovzhansky' (Lubny-Poltava stretch) in 2013 (see Table 7 in Annex 1). [This publication](#) might be an output of the requirement to report on the progress in implementation of nationally significant projects and investment programmes included in the National Action Plan for 2013.²⁹ Also more procurement information and information about the progress in implementation is published in the segment [International Co-operation and](#)

²⁵ CoST has considerable experience in dealing with such concerns. What is not normally in doubt is that taxpayers have the right to know details of the overall tender values (though not necessarily the breakdown of rates), the contract award value, and the total amount finally paid following any subsequent contract amendments. Such amendments are common on road contracts and can be entirely innocent. The Assurance Team appointed by the MSG would normally have a role in interpreting this data in order to avoid unnecessarily generating public perceptions of impropriety where none may exist.

²⁶ During one of the round tables attended by ASI project team leader in Kyiv representative of the Secretariat of the Parliament of Ukraine noted that when they encounter significant amount of public requests about certain questions they tend to publish brief "FAQ" page which results in fewer information requests and enquiries.

²⁷ Landing page here is defined as a web page which serves as the entry point for a particular section of a website.

²⁸ <http://www.ukravtodor.gov.ua/finansovo-ekonomichna-diyalnist>. As a general rule, an important principle of road sector accountability is to avoid any unnecessary separation of technical and financial data.

²⁹ <http://www.ukravtodor.gov.ua/finansovo-ekonomichna-diyalnist>: [National Action Plan for 2013](#) for implementing Programme of Economic Reforms for 2010-2014 "Rich Society, Competitive Economy, Effective State".

[Investments](#),³⁰ which is usually the requirement of the IFI. For each IFI/donor there is a separate page with information (not always consistent and complete) on project design, implementation and final results. Separate pages exist for projects funded by WB, EBRD and EIB. Often documents in this segment of the website are published in both Ukrainian and English.

Information about the procurement stage of IFI-funded projects is not published on the state website www.tender.me.gov.ua. IFIs usually require the publication of all tender information in one domestic and one international media. UAD's website is used as a domestic media and IFI's website – as international (from there information in English is retranslated into other online media). According to some interviewees, PIU does not use the official procurement website for publishing procurement notices or reports due to its cumbersome procedures. In general, all IFI-funded projects are implemented strictly on the basis of international standards and procedures, which is in compliance with Ukrainian legislation.³¹

It should be noted, that while performing the search on the website it is necessary to input the exact name of the document/subpage in order to get positive search results. For example, there will be no result with the search input “Report 2013” – only with the “Report of the State Road Agency of Ukraine for 2013”. This is an important technical shortcoming that needs to be addressed if disclosure is to be meaningful.

There are two core UAD planning documents available online. On UAD's website there is the Action Plan for 2012-2015 that covers both reporting (2011) and planning (2012-2015). This document is based on the second strategic framework document – the State Targeted Budget Programme of Development of Roads of State Significance for 2013-2018, approved by the Cabinet of Ministers in 2013.³² The State programme itself contains a detailed prognosis on the resource allocation from various sources (state, borrower, and investor) and with specific targets (in kilometres of built roads) for each particular year (to 2018). This document is published [in the database](#) of legal acts on the website of the Parliament.³³

As indicated in the ‘Background Information’ chapter, all procurement information for goods and works that qualify for tenders (above thresholds set up by the law) is available free of charge on the government portal – www.tender.me.gov.ua. However, the portal is not widely accessible as it requires users to login to access information. The search function is cumbersome and ineffective, as the user must use specific information in order to get manageable search results. Most documents uploaded are not machine-readable which makes aggregation and analysis a very challenging, mostly manual task. All procuring entities are required to publish all tender documents throughout the entire procurement process – from tender notice to the final report of the tender commission.

It is, however, difficult to see the link between the procurement plan published on UAD's website and specific activities. Activity-specific information is available on the procurement website and partially on the UAD website. The study team was not able to meet a representative of the procurement department of UAD who could explain the transformation of quite widely-defined types of procured works/services as they are presented in the procurement plan (without estimated cost) into the specific packages of goods/services/works to be purchased based on the competitive or non-competitive basis. That is why the analysis of data disclosure of budget-only-funded investment activities is limited to monitoring online sources only; and the study team was not able to obtain information about the availability of such data in UAD.

Disclosure of the monitoring and audit information about investment projects/programmes implemented by UAD was also analysed. Only some information about the monitoring and audit is published on the website of the Ukrainian controlling authorities. There is no consistency or “rule” of the disclosure. For example the Accounting Chamber – the audit body reporting to the Parliament – usually publishes only brief press releases about their audit reports. However there is one report – about progress in implementing UAD investment projects in 2008 – that is published in full. It is difficult to fathom the reasons behind the full disclosure in this instance.

4.2.2. Reactive Disclosure

Conclusions on the state of UAD's reactive disclosure are based on an analysis of the depth of proactive disclosure by IFIs; and the gap between these practices and those of UAD. It is presented, in detail, separately for WB-funded and budget-

³⁰ <http://www.ukravtodor.gov.ua/mizhnarodne-spivrobitnitstvo-ta-investitsii>

³¹ Law on Public Procurement (2014) stipulates that when agreement between IFI and the Government is signed and ratified by the Parliament it is IFI's standards and requirements in procurement, audit and supervision areas, that supersede domestic standards and requirements.

³² Approved by the Cabinet of Ministers [Decree No 696](#) on 11 July 2013

³³ <http://zakon4.rada.gov.ua/laws/show/696-2013-%D0%BF>

funded projects, in Table 9 and Table 10. Any information that is ‘in-between’ these two systems could be freely disclosed by UAD on reactive basis, as stipulated by the Law on Access to Public Information: “any information previously published or that is already in the public domain could not be withheld from public”. There is a challenge in the shape of resources available for translation (in case original documents are not in Ukrainian) and printing (there is a limit of free 10 pages to be provided for each public request – anything on top of this should be paid for according to the tariffs established by each authority individually). Both aspects need to be addressed in the pilot project.

In general UAD’s website contains all the information necessary for reactive disclosure, including clear instructions about preparing and submitting public enquiries and public appeals/complaints, necessary forms, the relevant legal base and contact details. UAD also publishes brief quarterly statics reports on all public enquiries received and processed.³⁴ However, no statistics on appeals/complaints exists in the public domain.

UAD’s website also has a separate section that publishes information about the activities of its Public Council. This could be construed as a facet of reactive disclosure as it might enquire on specific issues of UAD’s activity.

4.3. Compliance of UAD’s Disclosure Practices with International Standards, Including CoST’s

There are some fundamental differences in the structure of information provided, obligations to publish information, media for publishing and the levels of disclosure by UAD and its project partners (e.g. IFIs). Subsequently the gaps between the disclosure standards for “budget projects” and “IFI projects” on the one hand, and CoST requirements/standards on the other, are different.

UAD has working closely with several IFIs on road reconstruction and building since 2000. It has dedicated unit – the Project Implementation Unit (PIU) – that is solely responsible for preparing, implementing, supervising and reporting on execution of IFI funded projects. Since all credit agreements with IFIs include clauses about compliance with international standards and requirements – including in the areas of procurement, supervision, monitoring and audit, engaging public and disclosing various information about the investment projects – UAD is already complying with international standards in the largest segment of its investment activities.³⁵ UAD publishes information according to the standards/demands of IFIs; and it also engages with the public (i.e. organising public hearings, registering and responding to complaints etc.) according to international standards. Further, it publishes environmental assessments, resettlement plans, maps, audits and other documents.

IFIs also clearly stipulate the manner in which information is gathered, processed, stored and shared – see for example the Anticorruption Action Plan for Road and Safety improvement Project.³⁶ Thus, the PIU already performs significant amount of information gathering, disclosure and assurance according to international standards, including those advocated by CoST.

The datasheets in Annex 1 illustrates the level of compliance with international standards of disclosure (as developed by CoST). It consists of four parts that cover proactive and reactive disclosure for WB-funded and budget-funded projects. For all these parts data from three online media was analysed: UAD website, official procurement website for all state procuring entities www.tender.me.gov.ua and WB’s website (Road and Safety Improvement project pages). A range of secondary websites was also scanned (e.g. Cabinet of Ministers, Ministry of Infrastructure, Parliament, Accounts Chamber, Antimonopoly Committee, State Financial Inspection, and EBRD). Websites of regional road construction departments, which are usually responsible PEs for smaller scale budget-funded projects, were not analysed (as per advice from CoST IS) so the data for budget-funded projects might be incomplete.

The focus on the World Bank’s website is explained by the decision by CoST to use the Second Road and Safety Improvement Project (construction stage) implemented by UAD and co-funded by WB as a pilot project for information disclosure and public monitoring/assurance process (potentially alongside budget-funded UAD’s investment activities). The World Bank has high standards of information disclosure and transparency in decision making; it publishes the majority of

³⁴ See for example report on public enquiries in the first quarter of 2014 (in Ukrainian) - http://www.ukravtodor.gov.ua/dostup-do-publichnoi-informatsii/%D1%81_zvit-pro-stan-rozglyadu-zapitiv-na-informatsiyu-v-derzhavnomu-agentstvi-avtomobilnikh-dorig-ukraini-za-%D0%86-kvartal-2014-r.html

³⁵ According to UAD’s data, most of large-scale capital building and reconstruction works are co-funded by IFIs.

³⁶ http://www.ukravtodor.gov.ua/svitovii-bank/%D1%81_pershii-proekt.html

its project documentation and data, which is not always the case for other IFIs. However, the World Bank publishes only in English and Russian, and not in Ukrainian, which is the only official language in Ukraine.

Thus information disclosure for WB-funded projects implemented by UAD is significantly deeper than for “budget funded” projects or projects co-funded by other IFIs. It means that during the CoST pilot projects it will be possible to gather a lot of information about WB-funded without additional cost for its production and compilation, and only translation might add some costs. At the same time if decision is made to also include budget-funded investment project(s) in the CoST pilot project then it will require more time and resources to generate and analyse all necessary information as per proposed disclosure standard (see Table 4 and Table 5 in Chapter 5: Conclusions & Recommendations).

According to Ukrainian Law on Public Access to Information, the information already published by the World Bank or any other agency could not be withheld from Ukrainian citizens. So even if it is not proactively disclosed, it could and should be provided as a response to reactive information enquiry. The example of First Road and Safety Improvement Project is used for illustrating Excel datasheet on reactive disclosure characteristics (see Table 5). Some positions of data disclosure could not be fully characterised due to possible interpretations of confidential and proprietary information, which according to WB and Ukrainian regulations could not be disclosed publicly.

Overall, then: UAD already produces and discloses a lot of information about its financial and investment activities, including for individual projects. Legally all of CoST information is available for disclosure, according to the analysis performed by the study team. Figure 3 (which is based on Table 7-Table 10 in Annex 1) illustrates the relative indicators of the scope of disclose performed by UAD with regard to CoST IS’s standard of disclosure. It is provided separately for proactive and reactive disclosure for WB-funded and budget-funded projects.

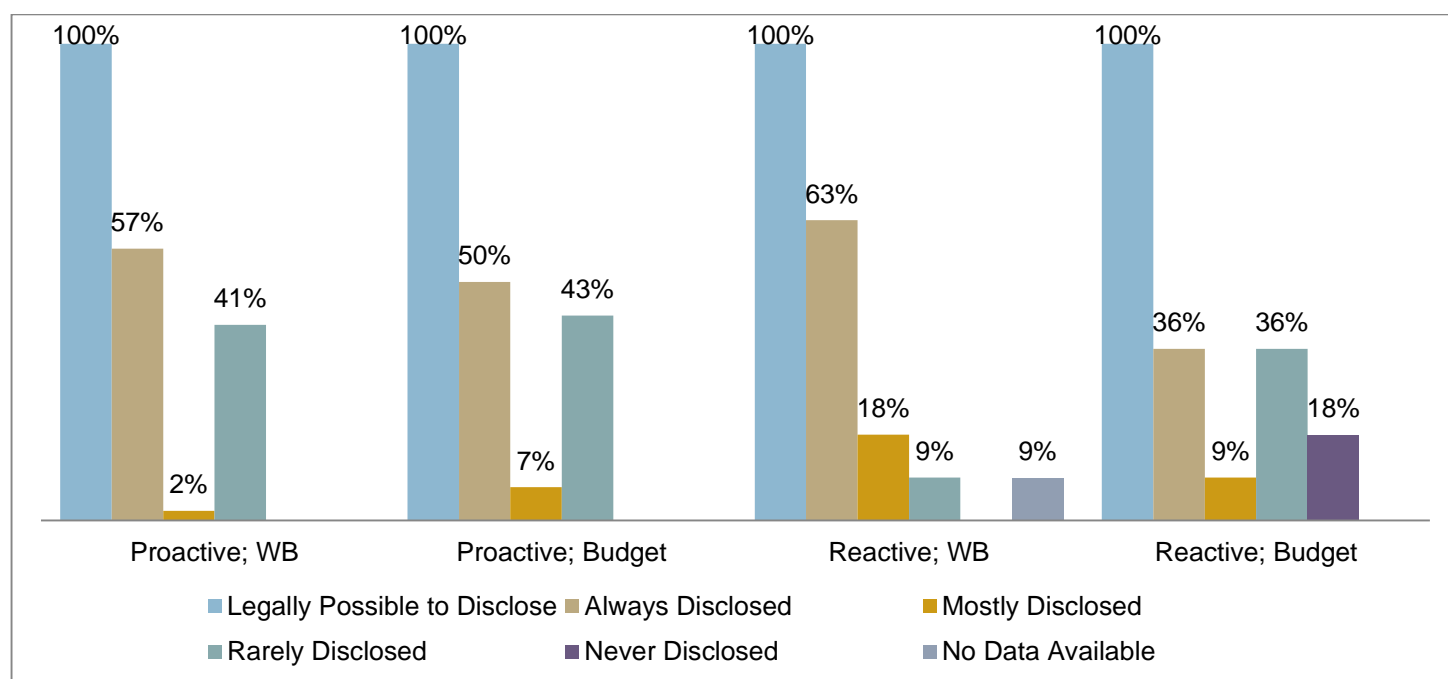


Figure 3: UAD and WB Disclosure Rates Relative to the CoST Disclosure Standard

It has dedicated well-qualified division – the PIU – which is responsible for managing projects funded by IFIs throughout their cycle according to strict international standards. Most of the data published on IFI websites on the progress of project implementation is usually produced by the PIU. It also has extensive experience of communications and reporting to domestic controlling and audit authorities. The logical step is to disseminate the disclosure standards employed by the PIU to other UAD’s activities which are funded by both state budget and private investors.

The CoST pilot – the M-03 Road project and potentially budget-funded project/investment activity(ies) – will have to estimate the costs and resources necessary for performing high-standard information production and disclosure, and possibly suggest the relative cost of such transparency and due diligence to the final outcomes of the projects (cost and quality of roads constructed/repaired). The potentially higher costs for producing and disclosing information proactively in a user friendly and accessible way should be assessed against the losses due to the lack of transparency and corrupt actions, waste of UAD’s time and resources on reactive responses to the members of public who has limited access to initial

information. Ultimately, any transparency initiative, including CoST, needs to be financed by Ukraine without external support.

UAD already has standards for disclosure that are very close to CoST standards and requirements (see Table 7 - Table 10 in Annex 1); these are employed for all IFI/donor (co-)funded projects. These standards now should be employed consistently for all UAD's IFI and budget funded projects at different stages of their planning implementation and completion monitoring.

5. Conclusions & Recommendations

5.1. Conclusions

Ukraine and its state machinery are going through a period of dynamic reforms and the degree of predictability of further political, social and economic shifts is limited. Fundamental societal changes that were prompted by the Revolution of Dignity in winter 2013-2014 are creating a great pressure on the state to change. Reforms are demanded actively and persistently by representatives of business and society, who are also prepared to collaborate with the state institutions on designing and implementing fundamental reforms that were delayed during the 23 years of Ukraine's independence. The challenges of ongoing changes in the country's leadership, and a clear demonstration of power by the political elite motivate Ukrainian citizens to act to exert control over politics, above and beyond the usual "vote and forget" model. Consequently, inclusive governance, public engagement in decision-making and civic control has significantly improved in the past last year.

There is no better time than now to drive through reforms in the area of transparency and openness of state institutions and state-owned companies. Despite significant security challenges that are caused by the aggressive behaviour of Ukraine's neighbour, and loss of a significant part of its territory, Ukrainian society is determined to change the country for the best. State officials do not always share the same enthusiasm and their response to tectonic changes in the public demand for information and control over spending of public money is diverse. Some have reacted faster and are more open to public inputs into reforming their institutional structure, decision-making and the way in which money is spent and accounted for. Others have been more passive and have not demonstrated clear leadership in proposing and implementing reforms aimed at greater accountability and transparency. UAD – the state agency responsible for implementing state policy in the road building sector and for managing investment programmes/projects – has been in the latter category of state agencies.

According to various formal indicators, Ukraine has a beneficial environment for increasing the transparency of decision making and spending of public money; i.e. it has adequate laws in the areas of procurement, public access to information and the role of public in the decision-making. Many of the laws and regulatory acts are of high standards and were developed on the basis of good international practices. Implementation and legal enforcement are the key challenges that prevent the public from leveraging real pressure on a bureaucratic and often corrupt state machinery.

In general, UAD is complying with the legal demands for information disclosure – its website has rich content and it is up to date. It is complying with the requirements of procurement legislation and full information on all competitive tenders is published on dedicated government website www.tender.me.gov.ua. Reactive disclosure is working as well, as there are publications in the media about various aspects of UAD's activities and spending that are based on the responses from UAD to media enquiries.

However there is one significant missing link – there is no evidence that disclosure and availability of information in the public domain have had any significant impact on changing the way UAD's business is managed and money is spent (see Figure 4, below). Despite multiple changes in the leadership and a significant amount of funding from IFIs that impose strict control over efficiency and effectiveness of the investments, it continues to be perceived by many people as one of the most corrupt state agencies in Ukraine.

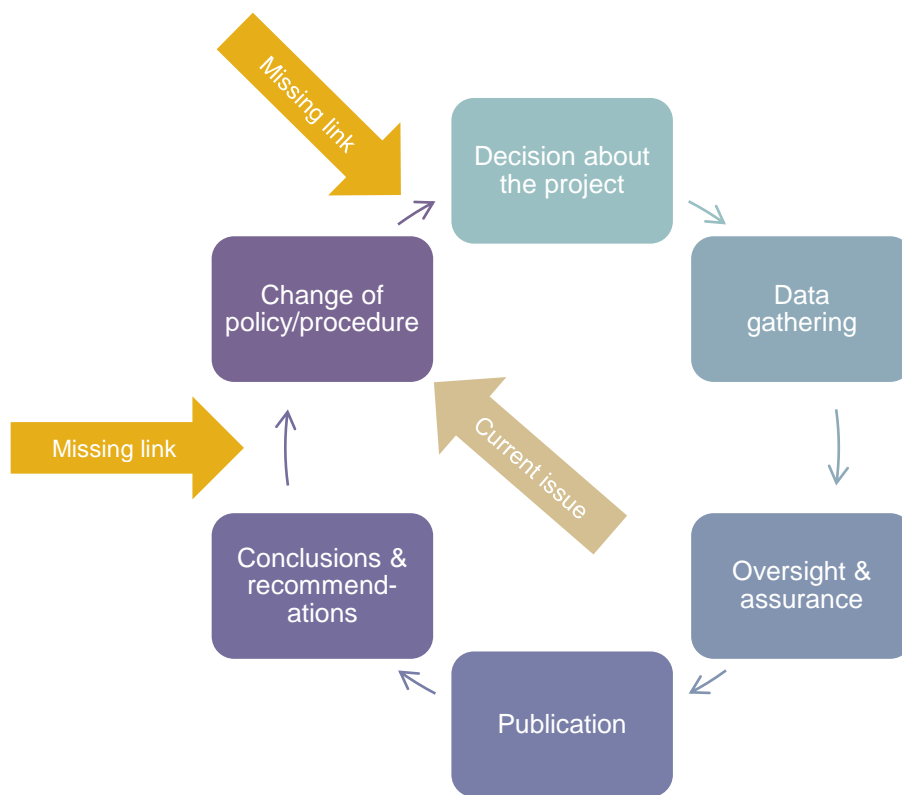


Figure 4: Cycle of Information Disclosure

We believe this might be due to the fact that disclosure is performed on ad-hoc basis. There is no systemic and consistent mechanism of civil monitoring of UAD's actions and spending which would ensure that uncovered malpractices and mistakes are corrected immediately rather than being only acknowledged and promises are made to "improve in the future". The CoST multi-stakeholder group mechanism, with the membership as recommended by this report, will be a significant step forward in launching the platform for such a systemic and consistent public oversight and assurance process for large-scale investment projects in the road building sector.

UAD became a member of CoST in November 2013 as a result of lobbying from the World Bank, which encouraged membership of CoST as an instrument for enhancing the transparency in the process of implementation of the Second Road and Safety Improvement Project.³⁷ It is possible, then, that UAD's decision to join CoST was not motivated by a deep-set interest in changing agency policies and procedures in order to make the process of designing, implementing and monitoring execution of large construction projects more transparent. It is plausible that the intentions of some managers might be driven by the demands of one of the biggest lenders, which funds projects that aimed at bringing the standards of Ukrainian roads to international level. However there are experts and officials at UAD who clearly see the potential and benefits of enhanced transparency and high-quality public oversight process in the road building sector. This is an important fact that needs to be taken into account while developing the Terms of Reference for the design and implementation of a CoST pilot project. The initial stage of the project will have to concentrate heavily on education, capacity building and on building an understanding of the necessity of transparency reforms, for UAD and its staff in the first instance, and for implementation partners thereafter.

Unlike in other countries where CoST has worked, Ukraine has yet to establish the multi-stakeholder group responsible for monitoring the management and spending of UAD's large road construction projects. Fortunately, there is a critical mass of well-informed, experienced and committed partners from business and civil society sectors. So with the correct steering strategy for operationalising the group, there is a good chance that the CoST pilot project, which will include oversight and assurance for both IFI-funded and budget-funded investment projects, can deliver positive results and formulate realistic and workable solutions for a sustainable process of civil monitoring and assurance.

While trying to understand the motivation and logic of partners at UAD, it is important to recognise two key misconceptions that we believe exist at UAD about the CoST programme and its *modus operandi*. These are the following:

1. **Fixed database vs continuous process** of monitoring and assurance – "help us to create a database/electronic cabinet on our website, whose content will result in significant reduction (or complete absence) of public

³⁷ http://www.ukravtodor.gov.ua/svitovii-bank/%D1%81_programa-cost-%D0%86nitsiativa-iz-prozorosti-u-budivelnii-galuzi.html

enquiries/complaints". It seems some officials at UAD perceive the CoST exercise as something you can do once (with occasional updates) to protect the institution from public scrutiny and permanent complaints. UAD at this stage lacks vision of the CoST initiative as a continuous interactive process for considerable period of time that ensures civic oversight over implementation of capital projects. Moreover, such comments are in direct conflict with the existing legislation on public access to information and participation of the public in the activities of state agencies at all tiers. It clearly stipulates obligations of all state agencies and companies that have budget funding to provide public with the information about its activities and spending. There are clear instructions about exemptions from the general rule of public accessibility of information produced and kept by the state authorities.³⁸

2. **The release of more information (proactively) will result in more requests from the public (reactive disclosure).** Though there is no comprehensive empirical evidence from the Ukrainian context that an increase in proactive disclosure results in a reduction of reactive requests, in conversations/presentations at the conferences attended by study team during their mission to Kyiv in September-October 2014 there were examples from central government institutions, who had adopted a strategy of active disclosure of information into public domain. They reported fewer questions/ requests or no change in the flow of enquiries as a result of enhanced scope of published information (e.g. Parliament Secretariat and Ministry of Economic Development and Trade).

Overall there is a good chance that the CoST programme in Ukraine will contribute to developing sustained mechanisms of transparency, public accountability and oversight over implementation of large-scale construction projects. The factors that contribute to this are as follows:

1. Huge demand from society for greater transparency;
2. Commitment of the experts, business representatives and active civil society institutions with the experience of public oversight over government decisions and spending;
3. Prospect of huge investments in the reconstruction of destroyed infrastructure in Eastern Ukraine and thus a growing pressure for establishing new mechanisms and procedures to make spending in the framework of these projects as transparent as possible;
4. Efficient use and economy of budget funding are essential in the situation of Ukraine's deep and systemic economic crisis;
5. Possibility of a TA project that could cover some costs related to gathering and analysing additional pieces of information and performing a thorough assurance process (including on the ground);
6. Strong support from donor organisations and IFIs, in particular WB; and
7. Ongoing process of harmonising Ukrainian legislation and policy implementation mechanisms with those of the EU, as per Association Agreement signed in 2014 and Action Plan adopted by the Cabinet of Ministers in September 2014.

With the right combination of political will, committed thought leadership in UAD, and external funding, the CoST programme might deliver very positive results. This could be compounded by the programming of activities aimed at building trust between government agencies and civil society, training for civil servants about obligations in the area of information disclosure, progress in reforming procurement system and introducing an electronic tender platform. Such actions could create good demonstration effect provide a basis for further deeper transparency initiatives in the construction sector.

5.2. Recommendations

Recommendations below are presented in three key components – policy, MSG and disclosure standard - and are prepared on the assumption that:

1. The CoST IS will secure donor funding for implementing a pilot project and a host organisation that will perform the role of the CoST national secretariat (e.g. one of CSOs/business associations or UAD), which will enable to cover costs of imminent preparation and additional activities;
2. The multi-stakeholder approach is fundamental for implementing a pilot. Participation of non-governmental partners is essential; and participation of the audit agencies of Ukraine is desirable. If the pilot is to be constructed around UAD's internal procedures/capacities, this process will be simpler and potentially quicker; but this comes at a risk to sustainability and the true engagement of civil society/business. MSG is chaired by the representative from non-governmental sector;
3. UAD is co-operative and remains committed to the CoST pilot project and CoST programme in Ukraine.

³⁸ Law on Public Access Information, 2011

Validity of these assumptions combined with some risks suggests the possibility of two scenarios for implementing CoST presented in Figure 5, below – “realistic” and “optimistic”.

The **Minimal scenario** envisages smaller scope of engagement of various government stakeholders and leadership of CoST programme exerted by UAD solely, through the issue of internal resolution establishing a special regime for the CoST pilot project, that allows free access to information and greater horizontal co-ordination in UAD which is necessary for collecting, processing the information and enabling oversight and assurance process. This resolution should also enable “opening up” of PIU as a source of important knowledge and skills in the area of information disclosure, among others.

The **Optimal scenario** envisages a greater scale of actions through engaging the Cabinet of Ministers for supporting special regime and authorities of UAD necessary for CoST pilot implementation, which are wider than those determined by current legislation/regulations. This scenario is desirable if not only WB-funded project but also budget-funded projects are selected for oversight and assurance in the framework of CoST pilot project. Information on budget-funded projects/ investment activities, as explained in Chapter “Baseline Indicators of Information Disclosure”, is more restricted and a greater effort will be required to obtain various components for filling in the project datasheets. The optimistic scenario also enables wider participation of public audit agencies that in the longer run could become engaged in the monitoring and assurance processes in the framework of CoST programme.

Please note, that for both scenarios the appointment of host organisation for CoST national secretariat is variable – it could be either UAD, or one of CSOs suggested below. The latter option is preferable for ensuring a truly independent civil oversight of road construction projects.

Scenario 1: Minimal



Scenario 2: Optimal



Figure 5: Scenarios for the Implementation of the CoST Pilot Project

5.2.1. Policy

All external stakeholders expressed the same strong opinion – changes aimed at enhancing transparency and tackling corruption in the road construction sector are impossible without strong and clearly articulated political will at the highest level. UAD – or even the Ministry of Infrastructure – cannot singlehandedly design and implement the package of fundamental reforms necessary to make its operations more transparent and controlled by the representatives of business and public. This is not so much due to the limitations of UAD’s capacity and authorities, but due to the organisational culture in Ukraine’s public sector and specifics of political economic factors and influence of power elites.

The decision of the Cabinet of Ministers – in the form of a Decree – might be necessary for introducing a special regime in order to implement the CoST pilot project in UAD. Without such a decree, there is a high probability that the current regulations and internal procedures of UAD will be too restricting or disrupting and would not allow CoST to create a truly effective MSG with access to the necessary information and officials. Also, it might limit UAD’s ability to engage with business associations, and with CSOs who are not currently taking part in the work of UAD’s Public Council. It will also challenge the engagement of other government agencies responsible for monitoring and auditing the financial and technical aspects of UAD’s activities. The Decree needs to clearly stipulate the objective of the pilot project; the means to achieve it; the timescale for its implementation; conditions for its replication in other UAD’s projects (and possibly other sectors of investment projects); the responsible parties (UAD being the key); and results and further actions. The newly established MSG should be granted special status to allow representatives of business associations and civil society organisations to acquire and process information, and perform necessary procedures as per CoST standards, so that they can assure that the pilot project is implemented and funded in the best interests of public.

To issue such a Decree, the Cabinet of Ministers will need considerable persuasion. This is the role for donors and IFIs – WB, DFID, EC and others – as well as business representatives to achieve the right degree of pressure so that Government issues such Decree. On a positive side, there is strong support from representatives of business associations in the construction sector, including those who are members of UAD's Public Council, in making this Government's decision a reality. The lobbying potential of various stakeholders should be harnessed effectively. The process of harmonising Ukrainian legislation and implementation practices with the specific conditions of Association Agreement, including in the areas of procurement, fair business practice, deregulation and anticorruption, will be a strong supportive factor in the process of lobbying for Government decision on the CoST pilot project.

It might be possible to implement the CoST pilot project without the Cabinet's Decree, however in this case substantial and continuous commitment and leadership by UAD's high- and mid-level management is a must. In order to achieve ultimate objective – enhance transparency and accessibility of information in the road building sector on the example of specific project(s) – pilot project needs special regime that goes beyond usual functions, tasks and access opportunities. Both UAD has its non-governmental partners from CSOs and business association require “beefing up” of their status and rights to request, process and publish information in the format that is currently not required by Ukrainian legislation. Only then MSG's role will be effective and only then recommended disclosure standard could be achieved.

5.2.2. The Multi-Stakeholder Group and CoST National Secretariat

Based on the analysis of the key stakeholders presented in Chapter “Key stakeholders” the following recommendations for MSG are suggested.

Given the limited powers of existing UAD's Public Council and the inability of their expansion without changing the Government's Decree that regulates activities of all Public Councils in Ukraine, it is recommended that an MSG is created as a separate stand-alone group (in Ukrainian it could be called CoST Expert or Co-ordination Group) in which UAD and business/civil representatives have equal status and where chair represents non-governmental sector (business association or CSO). Members of UAD's current Public Council should be invited to take active part in the work of MSG but preference should be given to organisations that have relevant technical and expert capacity to deliver high-quality oversight activities and ensure proper assurance procedures are performed by contracted consultants.

One of these organisations – CSO or business association – could become host organisation for national secretariat that will be responsible for administrative support of MSG. Based on the analysis provided in the Chapter “Background information. Key stakeholders” it is recommended that one of the following organisations is appointed as a host organisation:

- Centre for Political Studies and Analysis (CPSA);
- Transparency International; or
- Confederation of Builders of Ukraine.

This recommendation is based on the analysis of the organisations' experience in implementing similar initiatives or projects; in-depth knowledge of the transparency and integrity issues in Ukraine's public sector, including public construction projects; capacity to deliver technical advice and guidance; familiarity with the modus operandi of IFIs/international organisations (see Figure 2 in Chapter 3.2). Using one of these organisations as a hub for MSG will also enable smooth expansion of CoST Ukraine programme in other construction sectors, beyond the road construction sector.

UAD can also perform the role of host organisation, however since it will be responsible for administrative support to MSG and managing its daily activities, including administering of financial grant, relations with contracted assurance consultants, it might limit the independence and objectivity of MSG.

It is recommended that representatives of several UAD departments take part in the work of MSG, rather than representatives of one department only. These for example should include representatives of PIU, Department of International Co-operation and Investments, Financial and Economic Department, Department of Road Development, Tender Organisation and Methodology Department, Internal Audit, Press Office, Department of Innovative Development and Prices etc. It might be difficult to engage all these departments in the work of MSG directly, that is why it is suggested that UAD creates internal technical group comprising the representatives of above mentioned departments, which will then select 2-3 representatives that will be permanent members of MSG, for example Department of International Co-operation and Investments, which already performs a co-ordinating role in CoST programme on behalf of UAD, and PIU. Other UAD representatives might be invited to take part in MSG's meetings when relevant questions are discussed. UAD's technical group will ensure horizontal co-ordination inside the Agency and exchange of information and knowledge among various departments

Representatives of CSOs with experience of monitoring the standards of information disclosure and efficiency of use of public funds should be included in the group along with the representatives of business associations who can offer technical expertise in the road building sector.

Participation of public oversight and audit agencies is essential for ensuring the consistency of CoST oversight and assurance processes with the national standards and procedures, and for building capacity for long-term sustainability of CoST programme in Ukraine, which is best achieved through embedding some of its functions into public agencies. It is unlikely that rigorous assurance process could exist independently outside state apparatus for a long time. CSOs and business associations have limited financial and institutional capacities, and their objectives/agendas might change over time. With state service reform and “cleansing” of power institutions currently under way, plus the process of reforms prompted by the implementation of the Association Agreement with the EU, there will be a good ground for entrusting state controlling and audit authorities with the additional functions of assurance. Civil control, through enhanced use of independent experts, publication of detailed results and less ‘ceremonial’ role of Public Councils should ensure the productivity of such an approach in the medium term.

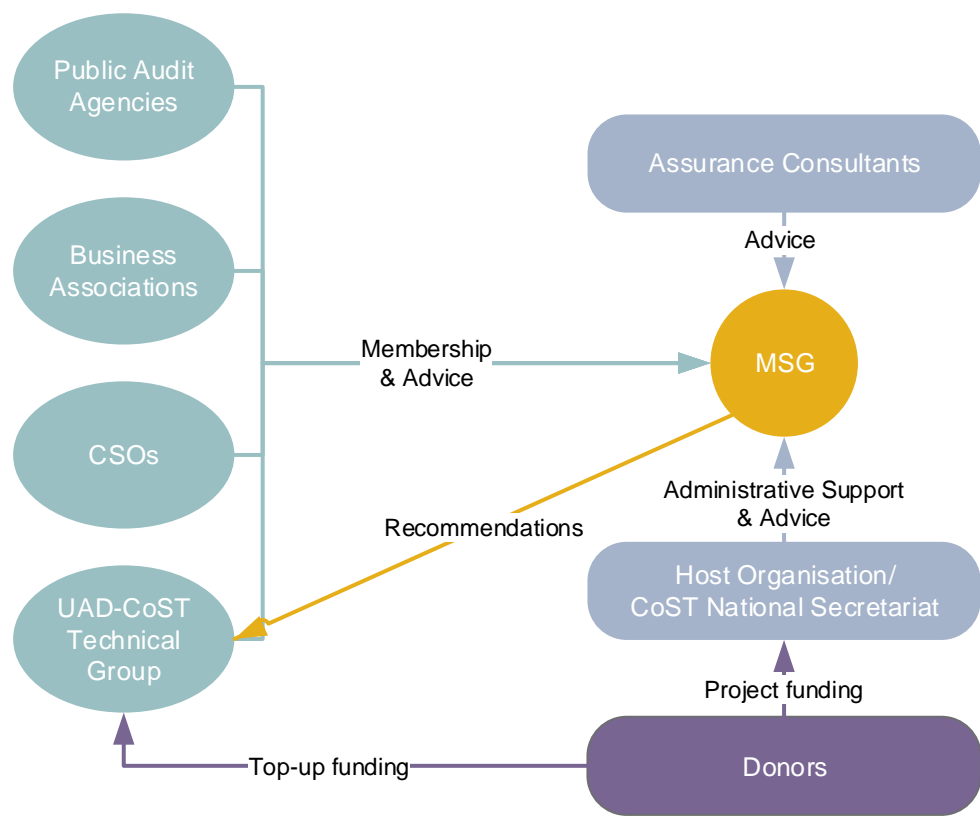


Figure 6: The Composition of a UAD MSG, and each Party's Function

The composition of MSG should be balanced, so each sector – government, civil society and business – should have roughly the same share of votes. Figure 6, above presents the composition of MSG, as well as key elements of its functioning. Also Table 3 suggests the organisations/agencies that need to be included in MSG for it to be truly effective. Figure 7, below presents some example from other countries of CoST operation where different approaches are used for setting up MSG.

Sector	Organisations
Government	<ul style="list-style-type: none"> › UAD - PIU, Department of International Co-operation and Investments; plus through CoST technical group in UAD - Financial and Economic Department, Department of Road Development, Tender Organisation and Methodology Department, Internal Audit, Press Office, Department of Innovative Development and Prices etc.; › Ministry of Economic Development and Trade (Procurement Department); › State Financial Inspection › Accounting Chamber › Antimonopoly Committee › Office of Ombudsman
Business (associations)	<ul style="list-style-type: none"> › Confederation of Builders of Ukraine (potential host organisation) › Association of International Automotive Transport Operators › Federation of Employers in Transport Sector
Civil Society (CSOs)	<ul style="list-style-type: none"> › Centre for Political Studies and Analysis (potential host organisation) › Transparency International Ukraine (potential host organisation) › Anticorruption Action Centre › Researchers/experts/academicians specialising in road construction sector

Table 3: Proposed Composition of MSG

Financial, technical and intellectual supporting to MSG and national secretariat located in the host organisation will be one of the crucial tasks of TA project, which is envisaged by CoST IS. Large share of resources will have to be dedicated to capacity and training of MSG members, continuous guidance and advice, as well as contracting highly qualified consultants to perform assurance process.³⁹ Some sum will have to be allocated to UAD for performing additional functions for gathering, aggregating and analysing information for specific investment projects, as well as for presenting and disseminating it through official online sources and media. The latter activity should be closely co-ordinated with the ongoing WB TA project, which is assisting UAD in making its web-site more functional, accessible and up-to-date.

Building trust and shortening the distance between the UAD's management, business and civil partners should be a priority of the first stage of MSG work. Among CSOs there are organisations with a positive attitude to state institutions and a good understanding of their limitations (financial, capacity etc.). Local CSOs should be given an opportunity to lead on initial capacity building exercises for UAD officials, as they have relevant local experience and expertise. Further on all members of MSG should receive relevant training by the CoST IS's specialists and/or international experts in the part of CoST standards and rules of operations, their relevance in a Ukrainian context.

The **CoST Tanzania Association**, which comprises representatives from the public sector, private sector and civil society, established the Electoral College for electing MSG. A weighted voting system is used whereby each stakeholder group has the equivalent of one collective vote per group regardless of the number of organisations or individuals within each of those groups. Each group votes to elect the civil society, private sector and public sector representatives in turn. This means that representatives are likely to require the support of the other stakeholder groups in order to be elected; for example, a private sector member is likely to require the support of civil society and government as well their own sector to be elected. A Chair and Vice Chair are then elected on the same weighted voting system by the elected MSG. A third of the MSG is elected each year on a rotational basis. This means a member will serve for 3 years.

In the Philippines the MSG brought together representatives of the public and private sectors and civil society who were committed to improving transparency and accountability. It established itself as an independent legal entity and eventually appointed a civil society representative as Chairperson. The MSG worked closely with the Commission on Audit (COA)

³⁹ According to CoST's experience in other countries, MSG's key function is public oversight and developing/updating a methodology for assurance process. It rarely performs the assurance function itself, usually contracting it out to institution or individual consultants with the relevant technical skills.

which it persuaded to agree to obtain and verify project information as part of its routine functions. The MSG also worked closely with PhilGEPS — an electronic government procurement system — which agreed to use its system for the disclosure of project information. In this way CoST Philippines was able to reduce its reliance on external support and ensure that CoST processes were institutionalised.

Figure 7: Case Studies: Setting up MSGs around the World

Basic principles of conduct should be enshrined in MSG's Terms of Reference or MoU to be signed by all members. This will be an obligation to behave with mutual respect and understanding, striving to resolve internal discrepancies and conflicts jointly, within the framework of MSG, rather than through naming and shaming in the media. Further information on the process of creating MSG and key principles and areas of responsibility for national secretariat, are presented in CoST IS's Guidance Note #4 "[Establishing a Multi-stakeholder Group and National Secretariat](#)".

5.2.3. Information Disclosure Standard

Table 4 and Table 5, below, propose a proactive and reactive disclosure standard for UAD, to be tested during the implementation of the pilot project. The pilot project will take in one WB-funded investment project, and possibly one or several investment projects (activities) funded solely by the state budget. This standard is first of all based on the requirements of Ukraine's legislation and regulatory acts, as presented in Chapter "Background Information" and is structured according to standard CoST list of information for different stages of project (investment activity according to Ukrainian terminology for budget-only-funded projects) and contract execution.

All procurement information for competitive tenders above legally identified thresholds is obligatory for disclosure on the specialised website www.tender.me.gov.ua however it is not presented on UAD's website in the context of approved procurement plans and annual financial plans. This missing link should be added to presentation of information of UAD's website. For WB-funded project no procurement information is published on the government website www.tender.me.gov.ua as it is not required by IFI or Ukrainian legislation (see Background information). There is detailed contract procurement information on WB website which should be translated and published in the corresponding section of UAD's website. The similar link between procurement plan/ annual financial plan and contract information should be established.

It is proposed that a dedicated landing page is prepared for each project selected for the CoST pilot project: the WB-funded project will be located in the section "International Co-operation and Investments" while budget-funded project will be located in the section "Financial and Economic Activities". However it is also recommended that a separate section is created on UAD's website – available on left-hand-side navigation bar – dedicated to the CoST pilot project. In the future, the CoST disclosure standard should not be treated as something separate. No dedicated segment of the website will be necessary, as the entire pool of investment projects will have the same standards of transparency and accessibility of information, and innovative functions will be integrated into UAD's routine business practices.

Project Phase	Project Information	Contract Phase	Contract or Package Information
Project Identification (6 items)	Project owner	Procurement (13 items)	Procuring entity
	Sector, subsector		Procuring entity contact details and key officer
	Project name		Procurement process
	Project Location		Contract type
	Purpose		Contract status (current)
	Project description		Number of firms tendering
Project Preparation (7 items)	Project Scope (main output)		Cost estimate
	Environmental impact		Contract administration entity and key officer
	Land and settlement impact		Contract title
	Contact details		Contract firm(s)
	Funding sources		Contract price
	Project Budget		Contract scope of work
	Project budget approval date		Contract start date and duration
Project Completion (6 items)	Project status (current)	Implementation (6 items)	Variation to contract price
	Completion cost (projected)		Escalation of contract price
	Completion date (projected)		Variation to contract duration
	Scope at completion (projected)		Variation to contract scope
	Reasons for project changes		Reasons for price changes
	Reference to audit and evaluation reports		Reasons for scope and duration changes

Table 4: Recommended Proactive Disclosure Standard for UAD

Project	Contract
Identification & Preparation Multi-year programme & budget Project brief or feasibility study Environmental impact assessment Resettlement & compensation plan Project officials & roles Financing agreement Procurement plan Project approval decision	Procurement Contract officials & roles Procurement method Tender document Tender evaluation results Project design report
Completion Implementation progress reports Budget amendment decision Project completion report Project evaluation report Technical audit reports Financial audit report	Contract Contract agreement, conditions Registration & ownership of firms Specifications & drawings Implementation List of variations, changes, amendments List of escalation approvals Quality assurance reports Disbursement record or payment certificates Contract amendments

Table 5: Recommended Reactive Disclosure Standard for UAD

For the Reactive Disclosure Standard there should always be referral to existing, proactively disclosed information, prior to preparing any “tailored” response to the public enquiry. The “organisation” of UAD’s website however should be amended to improve the visibility (in close collaboration with the WB TA project). Also, reactive disclosure might go beyond items identified in Table 5, as the Law on Public Access to Information clearly stipulates what data cannot be disclosed, which means that any other information should be made publicly available, if the specific inquiry is sent to UAD. At this stage it is difficult for study team to simulate what kind of data might be requested.

Compliance with the demands of the Law on Public Access to Information should be improved through enhancing the visibility and accessibility of information. UAD already publishes a lot of information on its website; however it is not always user-friendly. Publications should be arranged in a way that not only fulfils the institutional standards for disclosure, but also responds to the most typical and most pressing questions/enquiries from the public. Adjusting proactive disclosure to public needs will result in fewer public requests and complaints.

Disclosed information and investigation of UAD’s activities currently very rarely have an impact on further UAD’s activities. There is a missing mechanism/tool, that would ensure that criticism and resulting concrete recommendations are duly considered and where appropriate integrated into UAD’s code of practice (see Figure 4 in Chapter 5.1, above). Legal enforcement should also be strengthened as well as the level of responsibility for unfair/corrupt actions. However this is beyond the scope of work of the CoST programme and could be addressed via new anticorruption mechanisms, which were adopted by the Parliament in October 2014. The CoST programme in Ukraine could, however, contribute to formulating specific standards of enforcement in construction sector, which is based on the feedback from pilot project.

UAD has a great in-house source of concentrated expertise and knowledge that is currently quite isolated from the rest of the organisation: the Project Implementation Unit. Its experience and capacity should be opened up for other departments to learn from; and its procedures and practices (which are compliant with the best international standards in road construction) should be leveraged for the benefit of investment activities.

Commissioning a pilot project around a WB-funded project is a positive decision, which will allow the team to obtain a significant volume of information without additional costs, allowing the MSG to concentrate on the process of monitoring

and developing methodology for assurance process, and on building a relationship between UAD and business/civil society. This advantage should be used for calculating the cost of extensive information production relative to the unit of high quality final product. Relative cost will then have to be compared with the financial waste in the industry (due to corrupt practices, unfair competition or simple inefficiencies) and the business case presented for enhancing the funding of monitoring/audit/assurance procedures for achieving higher quality of roads and greater safety standards.

Taking on additional investment project(s)/activity(ies) funded from the state budget in the framework of CoST pilot project will represent a greater challenge due to greater limitations of information availability and degree of analysis. However having “multispeed” approach will mean that work on budget-funded projects will be able to benefit from available knowledge/skills in WB-funded project. It will also be an additional positive factor for actively engaging PIU’s expertise in the investment projects that are not co-funded by IFIs.

5.2.4. Recommended Timeline of Actions

A recommended timeline of activities for initial stage of CoST programme in Ukraine is presented below. It is not exhaustive guidance and some modalities are imminent due to the very dynamic developments in the political, budgetary and governance spheres of Ukraine. Also this list does not aim to substitute the ToR for CoST pilot project but rather a basis for its development.


Type	Recommendation	Stakeholders	Timeframe
Policy	Presenting to UAD the scoping study and scenarios for the CoST pilot project implementation. Core objective – changing existing practices, disseminating PIU’s skills and experience, and building capacity to collaborate with civil society and business.	CoST IS and UAD	Short-term (end of 2014)
	OPTIONAL: CoST IS jointly with UAD and IFIs/donors prepare the case for Cabinet-driven pilot regime for enhancing UAD’s disclosure and public engagement capacity. If this is not possible, CoST could help in preparing internal instructions for UAD, building in maximum flexibility for MSG to achieve the goals of the pilot project.	CoST IS – with WB, other IFIs, DFID, EC etc. – in close collaboration with UAD	Short-term (end of 2014)
	CoST IS and UAD prepare a ToR for the CoST pilot project; in consultation with IFIs and 3-5 key non-governmental stakeholders that will become the members of MSG.	CoST IS and UAD	Short-term (end of 2014)
	OPTIONAL: UAD jointly with a group of like-minded counterparts lobbies for preparation of Decree of the Cabinet of Ministers on CoST pilot; (in realistic scenario – a UAD internal decree).	CoST IS – with UAD, WB, other IFIs/donors, CSOs and business associations	First half of 2015 (Decree) or first quarter 2015 (UAD Resolution)
	OPTIONAL: Cabinet of Ministers issues the Decree with a clear timeframe and authorisation for an MSG.	Cabinet of Ministers, its Reform Co-ordination Centre	First half of 2015
	CoST IS co-ordinates its activities with IFIs and relevant donor projects working in the sphere (e.g. WB TA project, EC procurement project).	CoST IS	Throughout
MSG	A group is created from committed counterparts with relevant and/or tangential experience.	CoST IS, UAD - leading, CSOs and business	First quarter of 2015

Type	Recommendation	Stakeholders	Timeframe
		associations, audit agencies	
	Initial training for CSOs/business representatives on principles and standards of CoST.	CoST IS jointly with MSG members	Second quarter of 2015
	Significant initial “team-building” component to increase the level of trust between UAD and non-governmental partners and to build capacity of MSG to fulfil its role. Training/ consultations for UAD/audit agencies on the Ukrainian legal standards and requirements of information disclosure and public oversight of public policies and public funds.	Ukrainian CSOs with experience in this area, input from CoST IS	Second quarter of 2015
	Continuous work by the MSG on monitoring and assurance process of pilot WB project	MSG members	2015 (2016?)
Disclosure procedures	Support in making UAD’s website (which is otherwise of high standard) more user-friendly – improve navigation, include more FAQ pages, enable search with key words, publish consistent project information on the basis of clearly defined set of indicators and characteristics for each stage of planning and implementation.	MSG members and experts in close collaboration with WB TA project	2015
	Support in filling the gaps that exist between legal requirements and current practices of UAD as for information disclosure	MSG members and experts	2015
	Support in disseminating PIU’s experience and skills of planning and implementing projects according to international standards employed by IFIs/donors.	MSG members and experts	2015
	Calculate the cost of additional information disclosure relative to final outcomes of the pilot project that deliver higher standards and greater safety on the roads. Compare it with the current system.	MSG members and experts	2015
	Prepare recommendations for enhancing disclosure standards for all UAD projects/programmes as per result of pilot project.	MSG members and experts	2015

Table 6: Summary of Recommendations

Annexes


Annex 1: Disclosure Datasheets

		PLEASE ENTER DATA IN WHITE CELLS ONLY	PROCURING ENTITY:			Ukravtodor					
			Released into the public domain by PE:	Released into public domain by others (name):	Made available to the public on request:	Method of releasing information:	Required by law to be made available to the public:	Prevented by law from being made available to the public:	Prevented by other factors from being made available to the public (explain)	Comments	
PROJECT*	Project Identification	Project name	Always	WB*		Onto a website	Yes				
		Project location	Always	WB		Onto a website	Yes				
		Purpose	Always	WB		Onto a website	Yes				
	Project Preparation	Project scope (main output)	Always	WB		Onto a website	Yes				*WB's website was scanned for detailed project information about Ukraine Road and Safety Improvement projects (1 and 2)
		Environmental impact	Always	WB		Onto a website	Yes				
		Land and settlement impact	Always	WB		Onto a website	Yes				
		Funding sources	Always	WB		Onto a website	Yes				Procuring entities usually do not publish project budget in order to guarantee best price proposals from the bidders in open tenders. However IFI and GoU publish information about the approved amount of loan.
		Project budget	Minority of cases	WB		Onto a website	Yes				
		Project budget approval date	Majority of cases	WB		Onto a website	Yes				
	Project Completion	Completion cost	Minority of cases	WB	Majority of cases	Onto a website		No		Unless information classified as confidential or secret as per Law on Information	
		Completion date	Minority of cases	WB	Majority of cases	Onto a website		No		Unless information classified as confidential or secret as per Law on Information	
		Scope at completion	Minority of cases	WB	Majority of cases	Onto a website		No		Unless information classified as confidential or secret as per Law on Information	
		Reasons for project changes	Minority of cases	WB	Majority of cases	Onto a website		No		Unless information classified as confidential or secret as per Law on Information	
		Reference to audit and evaluation reports	Minority of cases	WB	Majority of cases	Onto a website		No		Unless information classified as confidential or secret as per Law on Information	

CONTRACT FOR DESIGN	Procurement	Contract title	Always	WB		Onto a website	Yes			Detailed procurement information is required to be fully published by the law, except below-threshold volumes, which are: 300,000 UAH for goods/services and 1,000,000 UAH for works
		Procurement process	Always	WB		Onto a website	Yes			
		Number of firms tendering	Always	WB		Onto a website	Yes			
		Contracted firm(s)	Always	WB		Onto a website	Yes			
		Cost estimate	Minority of cases	WB		Onto a website	No	No	Procuring entities usually do not publish cost estimate in order to guarantee best price proposals from the bidders in open tenders	
		Contract price	Always	WB		Onto a website	Yes			
		Contract scope of work	Always	WB		Onto a website	Yes			
		Contract start date	Always	WB		Onto a website	Yes			
		Contract duration	Always	WB		Onto a website	Yes			
	Implementation	Variation to contract price	Minority of cases	WB		Onto a website	Yes			
		Variation to duration	Minority of cases	WB		Onto a website	Yes			
		Variation to contract scope	Minority of cases	WB		Onto a website	Yes			
		Reasons for price changes	Minority of cases	WB		Onto a website	Yes			
		Reasons for scope and duration changes	Minority of cases	WB		Onto a website	Yes			
CONTRACT FOR SUPERVISION	Procurement	Contract title	Always	WB		Onto a website	Yes			
		Procurement process	Always	WB		Onto a website	Yes			
		Number of firms tendering	Always	WB		Onto a website	Yes			
		Contracted firm(s)	Always	WB		Onto a website	Yes			
		Cost estimate	Minority of cases	WB		Onto a website	No	No	Procuring entities usually do not publish cost estimate in order to guarantee best price proposals from the bidders in open tenders	
		Contract price	Always	WB		Onto a website	Yes			
		Contract scope of work	Always	WB		Onto a website	Yes			
		Contract start date	Always	WB		Onto a website	Yes			
		Contract duration	Always	WB		Onto a website	Yes			
	Implementation	Variation to contract price	Minority of cases	WB		Onto a website	Yes			
		Variation to duration	Minority of cases	WB		Onto a website	Yes			
		Variation to contract scope	Minority of cases	WB		Onto a website	Yes			
		Reasons for price changes	Minority of cases	WB		Onto a website	Yes			
		Reasons for scope and duration changes	Minority of cases	WB		Onto a website	Yes			

CONTRACT FOR CONSTRUCTION	Procurement	Contract title	Always	WB		Onto a website	Yes			
		Procurement process	Always	WB		Onto a website	Yes			
		Number of firms tendering	Always	WB		Onto a website	Yes			
		Contracted firm(s)	Always	WB		Onto a website	Yes			
		Cost estimate	Always	WB		Onto a website	No	No	Procuring entities usually do not publish cost estimate in order to guarantee best price proposals from the bidders in open tenders	
		Contract price	Always	WB		Onto a website	Yes			
		Contract scope of work	Always	WB		Onto a website	Yes			
		Contract start date	Always	WB		Onto a website	Yes			
		Contract duration	Always	WB		Onto a website	Yes			
		Implementation	Variation to contract price	Minority of cases	WB		Onto a website	Yes		
	Variation to duration		Minority of cases	WB		Onto a website	Yes			
	Variation to contract scope		Minority of cases	WB		Onto a website	Yes			
	Reasons for price changes		Minority of cases	WB		Onto a website	Yes			
	Reasons for scope and duration changes		Minority of cases	WB		Onto a website	Yes			
			Always - 32 Majority of cases - 1 Minority of cases - 23 Never - 0							

Table 7: Proactive Disclosure on World Bank Projects

		PLEASE ENTER DATA IN WHITE CELLS ONLY	PROCURING ENTITY:			N/a - There are no projects				
			Released into the public domain by PE:	Released into public domain by others (name):	Made available to the public on request:	Method of releasing information:	Required by law to be made available to the public:	Prevented by law from being made available to the public:	Prevented by other factors from being made available to the public (explain)	
										Comments
PROJECT*	Project Identification*	Project name	Always			Onto a website	Yes			*In Ukraine majority of investment activities are implemented on annual basis according to the Budget Law approved by the Parliament and in the framework of targeted budget programmes approved by the Cabinet of Ministers. Those programs have objectives and tasks that are used for identifying sub-categories of spending, which are later procured according to the legal requirements on competitive or non-competitive basis. For all budget-only-funded investment activities of UAD term "project" means "activity/subcategory" of targeted budget programme of UAD (see text for more explanations).
		Project location	Majority of cases			Onto a website	Yes			
		Purpose	Majority of cases			Onto a website	Yes			
	Project Preparation	Project scope (main output)	Always			Onto a website	Yes			
		Environmental impact	Minority of cases			Onto a website	Yes			
		Land and settlement impact	Minority of cases			Onto a website	Yes			
		Funding sources	Always			Onto a website	Yes			
		Project budget	Majority of cases			Onto a website	Yes			
		Project budget approval date	Majority of cases			Onto a website	Yes			
	Project Completion	Completion cost	Minority of cases		Majority of cases	Onto a website		No		Unless information classified as confidential or secret as per Law on Information
		Completion date	Minority of cases		Majority of cases	Onto a website		No		Unless information classified as confidential or secret as per Law on Information
		Scope at completion	Minority of cases		Majority of cases	Onto a website		No		Unless information classified as confidential or secret as per Law on Information
		Reasons for project changes	Minority of cases		Majority of cases	Onto a website		No		Unless information classified as confidential or secret as per Law on Information
		Reference to audit and evaluation reports	Minority of cases		Majority of cases	Onto a website		No		Unless information classified as confidential or secret as per Law on Information
CONTRACT FOR DESIGN	Procurement**	Contract title	Always	MEDT		Onto a website	Yes			**Detailed procurement information is required to be fully published by the law, except below-threshold volumes, which are: 300,000 UAH for goods/services and 1,000,000 UAH for works
		Procurement process	Always	MEDT		Onto a website	Yes			
		Number of firms tendering	Always	MEDT		Onto a website	Yes			
		Contracted firm(s)	Always	MEDT		Onto a website	Yes			
		Cost estimate	Minority of cases	MEDT		Onto a website	No	No	Procuring entities usually do not to publish cost estimate in order to guarantee best price proposals from the bidders in open tenders	
		Contract price	Always	MEDT		Onto a website	Yes			
		Contract scope of work	Always	MEDT		Onto a website	Yes			
		Contract start date	Always	MEDT		Onto a website	Yes			
		Contract duration	Always	MEDT		Onto a website	Yes			
	Implementation	Variation to contract price	Minority of cases			Onto a website	Yes			
		Variation to duration	Minority of cases			Onto a website	Yes			
		Variation to contract scope	Minority of cases			Onto a website	Yes			
		Reasons for price changes	Minority of cases			Onto a website	Yes			
		Reasons for scope and duration changes	Minority of cases			Onto a website	Yes			

CONTRACT FOR SUPERVISION	Procurement**	Contract title	Always	MEDT		Onto a website	Yes			**Detailed procurement information is required to be fully published by the law, except below-threshold volumes, which are: 300,000 UAH for goods/services and 1,000,000 UAH for works
		Procurement process	Always	MEDT		Onto a website	Yes			
		Number of firms tendering	Always	MEDT		Onto a website	Yes			
		Contracted firm(s)	Always	MEDT		Onto a website	Yes			
		Cost estimate	Minority of cases	MEDT		Onto a website	No	No	Procuring entities usually do not to publish cost estimate in order to guarantee best price proposals from the bidders in open tenders	
		Contract price	Always	MEDT		Onto a website	Yes			
		Contract scope of work	Always	MEDT		Onto a website	Yes			
		Contract start date	Always	MEDT		Onto a website	Yes			
		Contract duration	Always	MEDT		Onto a website	Yes			
	Implementation	Variation to contract price	Minority of cases			Onto a website	Yes			**Detailed procurement information is required to be fully published by the law, except below-threshold volumes, which are: 300,000 UAH for goods/services and 1,000,000 UAH for works
		Variation to duration	Minority of cases			Onto a website	Yes			
		Variation to contract scope	Minority of cases			Onto a website	Yes			
		Reasons for price changes	Minority of cases			Onto a website	Yes			
		Reasons for scope and duration changes	Minority of cases			Onto a website	Yes			
CONTRACT FOR CONSTRUCTION	Procurement**	Contract title	Always	MEDT		Onto a website	Yes			
		Procurement process	Always	MEDT		Onto a website	Yes			
		Number of firms tendering	Always	MEDT		Onto a website	Yes			
		Contracted firm(s)	Always	MEDT		Onto a website	Yes			
		Cost estimate	Always	MEDT		Onto a website	No	No	Procuring entities usually do not to publish cost estimate in order to guarantee best price proposals from the bidders in open tenders	
		Contract price	Always	MEDT		Onto a website	Yes			
		Contract scope of work	Always	MEDT		Onto a website	Yes			
		Contract start date	Always	MEDT		Onto a website	Yes			
		Contract duration	Always	MEDT		Onto a website	Yes			
	Implementation	Variation to contract price	Minority of cases			Onto a website	Yes			
		Variation to duration	Minority of cases			Onto a website	Yes			
		Variation to contract scope	Minority of cases			Onto a website	Yes			
		Reasons for price changes	Minority of cases			Onto a website	Yes			
		Reasons for scope and duration changes	Minority of cases			Onto a website	Yes			

Always - 28
Majority of cases - 4
Minority of cases - 24
Never - 0

Table 8: Proactive Disclosure on Budget Projects

PLEASE ENTER DATA IN WHITE CELLS ONLY		PROJECT NAME:	Road and Safety Improvement Project (co-funded by WB)	
		PROCURING ENTITY:	Ukravtodor	
		Made available to the public on request:	Method of releasing information:	
PROJECT*	Project Identification and Preparation	Multi-year program & Budget	Always	From UAD side: Online / hard copy if necessary (for all information below). In case of providing hard copy reply there is a limit of 10 pages per one information request that should be provided free of charge. If more documents should be provided to cover the questions the person/ organisation requesting information will have to cover the costs of printing/copying as per published tariffs.
		Feasibility study or equivalent	Always	
		Resettlement and compensation plan	Always	
		Financial agreement	Always	
		Project approval decision	Always	
	Project Completion*	Project completion report	Always	*Analysed project is still being implemented
		Project evaluation report	Always	
		Technical audit reports	Always	
		Financial audit reports	Always	
CONTRACT FOR DESIGN	Procurement	Tender evaluation results	Always	
	Contract	Contract agreement and conditions	Minority of cases	Confidential and proprietary information should not be disclosed
		Registration and ownership of firms	Always	
		Specifications and drawings	Majority of cases	
	Implementation	Progress reports	Always	
		Quality assurance reports	Always	
		Disbursement records or payment certificates		Difficult to estimate without practical feedback from users - this data is not freely available on the WB's website
		Contract amendments	Majority of cases	Unless there is confidential or proprietary information involved

CONTRACT FOR SUPERVISION	Procurement	Tender evaluation results	Always		
	Contract	Contract agreement and conditions	Minority of cases	Confidential and proprietary information should not be disclosed	
		Registration and ownership of firms	Always		
		Specifications and drawings	Majority of cases		
	Implementation	Progress reports	Always		
		Quality assurance reports	Always		
		Disbursement records or payment certificates		Difficult to estimate without practical feedback from users - this data is not freely available on the WB's website	
		Contract amendments	Always	Unless there is confidential or proprietary information involved	
		CONTRACT FOR CONSTRUCTION	Procurement	Tender evaluation results	Always
	Contract		Contract agreement and conditions	Minority of cases	Confidential and proprietary information should not be disclosed
Registration and ownership of firms			Always		
Specifications and drawings			Majority of cases		
Implementation	Progress reports		Always		
	Quality assurance reports		Majority of cases		
	Disbursement records or payment certificates			Difficult to estimate without practical feedback from users - this data is not freely available on the WB's website	
	Contract amendments		Majority of cases	Unless there is confidential or proprietary information involved	
				Always - 21 Majority of cases - 6 Minority of cases - 3 Never - 0 Not available - 3	

Table 9: Reactive Disclosure on World Bank Projects

PLEASE ENTER DATA IN WHITE CELLS ONLY		PROJECT NAME:	N/a - There are no projects funded from state budget only - there are investment programmes and investment activities. *	
		PROCURING ENTITY:	Ukravtodor	
		Made available to the public on request*:	Method of releasing information:	
PROJECT*	Project Identification and Preparation	Multi-year program & Budget	Always	From UAD side: Online / hard copy if necessary (for all information below). In case of providing hard copy reply there is a limit of 10 pages per one information request that should be provided free of charge. If more documents should be provided to cover the questions the person/ organisation requesting information will have to cover the costs of printing/copying as per published tariffs.
		Feasibility study or equivalent	Always	*All information provided in this table is PER LEGAL REQUIREMENTS ONLY AND BASED ON SOME SCANNING ON UAD AND OTHER WEBSITES. IT IS NOT BASED ON REAL SITUATION. In order to have practical information an information request should be sent to UAD. This activity was beyond baseline study's timeframe
		Resettlement and compensation plan	Always	
		Financial agreement	Always	
		Project approval decision	Always	
	Project Completion	Project completion report	Always	
		Project evaluation report	Always	
		Technical audit reports	Always	
		Financial audit reports	Always	
CONTRACT FOR DESIGN	Procurement	Tender evaluation results	Always	If competitive tender procedure was used.
	Contract	Contract agreement and conditions	Minority of cases	Confidential and proprietary information should not be disclosed
		Registration and ownership of firms	Never	This is due to change. Until recently this information was closed, however with the approval of new anticorruption legislation in October 2014 information about ultimate beneficiaries and owners should be released in the public domain.
		Specifications and drawings	Minority of cases	
	Implementation	Progress reports	Minority of cases	
		Quality assurance reports	Minority of cases	
		Disbursement records or payment certificates	Never	
		Contract amendments	Majority of cases	
CONTRACT FOR SUPERVISION	Procurement	Tender evaluation results	Always	If competitive tender procedure was used.
	Contract	Contract agreement and conditions	Minority of cases	Confidential and proprietary information should not be disclosed
		Registration and ownership of firms	Never	This is due to change. Until recently this information was closed, however with the approval of new anticorruption legislation in October 2014 information about ultimate beneficiaries and owners should be released in the public domain.
		Specifications and drawings	Minority of cases	
	Implementation	Progress reports	Minority of cases	
		Quality assurance reports	Minority of cases	
		Disbursement records or payment certificates	Never	
		Contract amendments	Majority of cases	
				Unless there is confidential or proprietary information involved

CONTRACT FOR CONSTRUCTION	Procurement	Tender evaluation results	Always	If competitive tender procedure was used.
	Contract	Contract agreement and conditions	Minority of cases	Confidential and proprietary information should not be disclosed
		Registration and ownership of firms	Never	This is due to change. Until recently this information was closed, however with the approval of new anticorruption legislation in October 2014 information about ultimate beneficiaries and owners should be released in the public domain.
		Specifications and drawings	Minority of cases	
	Implementation	Progress reports	Minority of cases	
		Quality assurance reports	Minority of cases	
		Disbursement records or payment certificates	Never	
		Contract amendments	Majority of cases	Unless there is confidential or proprietary information involved
	Always - 12 Majority of cases - 3 Minority of cases - 12 Never - 6			

Table 10: Reactive Disclosure on Budget Projects

Annex 2: Events Attended on Kyiv Mission, September – October 2014

Date	Name	Key issues
25.09.14	EU Project "Approximation of procurement legislation to EU standards" - seminar for CSOs	Role of CSOs in reform of procurement system, enhancing its transparency; successful experience of civil control; investigative journalists, access to data, court litigations, new initiatives in procurement policy, role of key procurement policy agency (MEDT).
29.10.14	Round table at the Office of Ombudsman dedicated to international day "Right to know"	Feedback on the progress of execution of Law on Access to Public Information, role of CSOs, role of the Office of Ombudsman which is responsible for protecting human rights of Ukrainian citizens, which include the right for information. Reports from state agencies which already implement active information disclosure policies.
30.09.14	Round table/ press conference "Vitaliy Klychko, mayor of Kyiv - 100 days in the office"	Release and discussion of the results of monitoring of the efficiency and effectiveness of actions by new Kyiv mayor and Kyiv city council that were elected in May 2014. Monitoring is being performed by "Open Society" foundation from Kyiv and includes monitoring over budget planning and spending. Project is supported by Renaissance Foundation.

Table 11: Events Attended on Kyiv Mission

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