IFES Opinion on Methodology for Determining Value of In-Kind Donations to Political Parties

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Background

The law On Political Parties in Ukraine establishes annual donation limits to political parties. Donations to political parties include both monetary contributions and in-kind donations which could be made in the form of work, goods and services. According to the law, the monetary value of in-kind donations should be determined based on market price according to a methodology adopted by the National Agency for the Prevention of Corruption (NAPC) and approved by the Ministry of Finance.

On January 23, 2019, the NAPC published the Methodology for determining the value of in-kind donations to political parties which the agency adopted on November 16, 2018. Approving this Methodology could have constituted an important step toward successful implementation of political finance reform. After the Law on Political Finance came into force in 2016, political parties did not evaluate in-kind donations and were unable to properly reflect its value in their financial reports. Hence, the NAPC was not able to monitor political parties’ compliance with annual in-kind donation limits to the parties and the sources of such donations.

IFES published its opinion on the latest NAPC draft Methodology on May 18, 2018 and sent it to the agency. Recommendations outlined in that opinion have been reinforced during public discussions of the draft Methodology organized by the NAPC. However, the analysis below shows these recommendations remain largely unaddressed.

The following analysis repeats many findings and recommendations previously outlined in IFES opinions on the draft Methodology; but, also incorporates additional recommendations.

Analysis

It is important to underline that despite minor improvements the Methodology document remains largely flawed and, in some respects, represents a step backward compared to its previous iterations. Several provisions require further review:

The general approach to evaluating in-kind donations is too formal and strict compared with other countries. Full compliance with all steps outlined in the Methodology to determine monetary value of in-kind donations and preparing required documentation for all in-kind donations puts unjustified burdens on political parties by requiring excessive time and resources. IFES recommends in-kind donations with small market value (below a certain threshold that should be specified in the Methodology) could be evaluated without performing all steps mentioned in the Methodology or preparing required documentation. In such case, political parties should explain their method of evaluating in-kind donations in explanatory notes added to their quarterly financial reports.

Because party management cannot always be aware of goods, work and services provided in support of a political party, the Methodology should oblige political parties to evaluate and report only those in-kind donations they know of.
1. The Methodology lacks direction on how political parties should calculate in-kind donations’ monetary value. Donations’ monetary value should be calculated as the difference between market value of identical or similar work, goods or services and actual price that a political party has paid to obtain work, goods or services. Financial reports should disclose: the market value of identical or similar work, goods or services; the actual price a political party paid to obtain work, goods or services; and, the difference between the two. We should note the most recent draft Methodology included such a definition, although it was not clear.

2. The Methodology should give political parties the right to request clarification and interpretation from the NAPC if they face difficulty evaluating in-kind donations. Interpretations could be published on the NAPC website allowing other political parties to benefit from NAPC explanations.

3. Ukrainian legislation assigns criminal responsibility to unauthorized persons willfully donating to a political party or deliberately making donations in amounts exceeding legal contribution limits. Both political parties and donors could face criminal responsibility in such cases. As the Methodology is approved, it is necessary to introduce amendments to other NAPC bylaws that should outline measures a political party should take if a donor’s in-kind contribution’s monetary value exceeds the legal donation limit or if the donor is not eligible to make the donation.

**Conclusions**

The Methodology envisages political parties evaluating and reporting information on all in-kind donations in their financial statements regardless of their value, even if just worth a few hryvnia. Meanwhile, the lack of clear procedures for evaluating donations means that political parties may face significant difficulties in determining value of in-kind donations and reflecting this information in their financial reports.

A complicated procedure for evaluating small donations may put an unjustified burden on political parties and their local organizations. Any errors in political parties’ financial reports that occurred due to lack of clear instructions on evaluating donations or lack of political party awareness of the donations that have been made may lead to administrative or even criminal liability.

Such an approach contradicts the principle of legal certainty which is an integral part of the rule of law. It can also result in biased enforcement of sanctions for political finance violations. The risk is aggravated by the perceived lack of independence and ability of the NAPC to effectively exercise its functions related to prevention of corruption, particularly political corruption.

Introduction of an effective mechanism for evaluating in-kind donations requires amendments to the NAPC Methodology which would bring it in line with Ukrainian legislation and international standards and would eliminate risks of biased law enforcement by the NAPC.

IFES also reinforces its view that development and approval of the Methodology was not transparent and inclusive and emphasizes the NAPC make further amendments to the Methodology – a process involving all stakeholders, including government and state authorities, civil society, political parties and international organizations. This will allow for thorough consideration of different stakeholders’ opinions and perspectives.

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