

dated June 14, 2024

**EXPERT OPINION  
regarding**

Draft Law "[On Amendment to Certain Laws of Ukraine Regarding Recognition of an Organization as a Terrorist Organization](#)"

**No. 5872 dated 8/27/2021  
(hereinafter referred to as Draft Law No. 5872)**

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**Stage of consideration in the Verkhovna Rada of Ukraine:** The Committee's opinion on consideration (dated 05/30/2024) has been provided, it was recommended to approve it in general.

**Initiators of the draft act:** Cabinet of Ministers of Ukraine (D.A. Shmyhal)

**Alternative Draft Law:** Draft Law "[On Amendment to Certain Laws of Ukraine Regarding Recognition of an Organization as a Terrorist Organization](#)" **No. 5872-1 dated 09/14/2021.**

**KEY CONCLUSIONS OF THE DRAFT ACT ANALYSIS**

**1. Impact of Draft Law on the legal environment of CSOs:**

Draft Law is developed to regulate the issue of determining the procedure for recognizing an organization as a terrorist organization in pursuance of the task defined in subparagraph 1 of paragraph 1 of the Decision of the National Security and Defense Council of Ukraine dated 12/29/2020 "On the Results of Inspection of the Nationwide System of combating Terrorism", enacted by the Decree of the President of Ukraine dated 12/29/2020 No. 598.

In order to achieve the above goal, Draft Law suggests to:

1) Amend Article 1 of the Law of Ukraine "On Combating Terrorism", by which it is suggested to establish that an organization shall be recognized as a terrorist organization if at least one person who is a member or has other connection with this organization carries out terrorist activities, provided that these activities are covered by the intent of at least one of the organizers or leaders (governing bodies), or the ultimate beneficial owner

2) Article 24 of the Law shall be amended to stipulate, in particular, that an organization shall be recognized as a terrorist organization upon a court decision to convict a person of criminal offenses under Articles 258 - 258-5 of the Criminal Code of Ukraine, which has entered into legal force, provided that the signs of a terrorist organization have been established in accordance with paragraph 21 of Article 1 of this Law.

3) Introduce a list of organizations recognized as terrorist organizations and to entrust the Security Service of Ukraine the duty to form and maintain this list (amendments to Article 24 of the Law of Ukraine "On the Security Service of Ukraine").

Inclusion of an organization in the List of Terrorist Organizations serves as the basis for confiscation of property and assets of such organization by authorized bodies.

**This Draft Law, if adopted by the Verkhovna Rada and entered into force, will have a direct negative impact on the activities of CSOs, as it will lay the foundation for recognizing any organization (including those not registered as a legal entity) as a terrorist organization, including CSOs, in non-transparent and unfair way.**

## **2. Risks of the adoption of Draft Law for the activities of CSOs:**

Draft Law suggests to establish that an organization shall be recognized as a terrorist organization if at least one person who is a member or has other connection with this organization carries out terrorist activities, provided that these activities are covered by the intent of at least one of the organizers or leaders (governing bodies), or the ultimate beneficial owner (sentence 2 of para. 22 of Art. 1 of the Law as drafted).

**This wording carries risks, in particular for the activities of CSOs, as it contains the undefined term "other connection" with the organization.** The content of this concept is not disclosed, which contradicts the legal certainty principle, as it allows for a broad and ambiguous interpretation. **This creates a prospect for possible abuses in recognizing an organization as a terrorist organization, as well as for possible prosecutions of CSOs without proper grounds or on far-fetched pretexts.**

**The risks for public associations (PAs) should be emphasized separately.** For PAs, the general meeting is also the governing body, which means that the intent of an ordinary member of the general meeting may also be a qualifying characteristic. A PA is unlikely to be able to control the actions of each of its members who may carry out such activities, so the risk becomes very high.

**At the same time, Draft Law contains certain internal contradictions.** Thus, the purpose of a terrorist organization is established as the implementation of terrorist activities, as part of which the distribution of functions is carried out, certain rules of conduct are established, which are mandatory for these persons in the preparation and commission of terrorist acts. That is, the activities of the organization must be aimed at preparing and committing terrorist acts. At the same time, an organization is recognized as a terrorist when a person is found guilty of offenses established by Articles 258-258-5 of the Criminal Code of Ukraine, including financing of terrorism, involvement in terrorist activities and calls for terrorist activities, not only the actual preparation and implementation of a terrorist act.

**In our opinion, such inconsistency should be eliminated in order to eliminate the legal conflict.**

Draft Law also suggests to establish that **an organization shall be recognized as a terrorist organization regardless of the presence or absence of its statutory legal form, status of a legal entity, its registration by authorized bodies of Ukraine or other states.**

In our opinion, the possibility to recognize an organization as a terrorist organization if the organization is not formally legalized is rather vague. Moreover, this provision is not unconditionally necessary, since the criminal legislation already stipulates signs of committing an offense by a criminal organization (the definition of which is similar to the definition of a terrorist organization, but does not specify the purpose of activity). Article 28 of the Criminal Code, which establishes the concept of committing an offence by a criminal organization, is applicable to all types of criminal offences provided for by the Criminal Code, including Articles 258-258-5 of the Criminal Code of Ukraine. Thus, the Draft Law actually proposes to recognize criminal organizations as terrorist organizations in a judicial procedure, granting them a certain legal personality for further inclusion in the list of terrorist organizations. At the same time, inclusion of a certain entity in a certain list will require at least the name of such entity for its identification. The draft law does not specify who would have the obligation to assign names or other attributes that would further identify a particular terrorist organization.

**Also, such a provision could potentially provide grounds for abuse of the right to freedom of association or in relation to civic activists who do not belong to any registered organizations, but carry out civic activities together.**

**It should be noted that the draft law doesn't contain any clauses defining the possibility for legal entity organizations to defend themselves in court during the trial on recognition of the organization as a terrorist one.** The draft law does not disclose the procedure, so it remains unknown whether the responsive proceeding ensures the adversarial principle. If the procedure is rather a formal approval of the terrorist status of the organization in court, then the respective organization will be deprived of its right to a fair trial.

**It is also worth noting that the conclusion of the relevant committee also notes the recommendations of the Security Service of Ukraine on further amendments to the draft law, in particular it is suggested to:**

Amend Article 24 of the Law of Ukraine "On Combating Terrorism" to introduce the list of terrorist organizations (groups), the procedure for putting such organizations (groups) on the list or removing them therefore, introduce provisions for creating the list of terrorist organizations (groups)

Amend Article 24 of the Law of Ukraine "On Prevention and Counteraction to Legalization (Laundering) of Proceeds of Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction" in terms of supplementing the grounds for putting a person on the list of persons associated with terrorist activities or subject to international sanctions or removing them therefrom.

**These provisions will require additional risk analysis when introduced as amendments.**

### 3. **Suggestions and recommendations:**

Since Draft Law despite the general useful goal of minimizing risks from terrorist organizations and groups (especially those controlled by the aggressor state) establishes unacceptable risks for the civic sector in the current wording, we recommend that the initiator of Draft Law finalizes it with the involvement and consideration of the opinion of civil society at all stages of finalization.