



Part



Volume



Chapters I–VIII

UKRAINE'S ANSWERS
to the EU Questionnaire
on the Application
for Membership

MAY 2022

RESPONSES



to the Questionnaire on
Information requested by the
European Commission to the
Government of Ukraine for
the preparation of the
Opinion on the application of
Ukraine for membership of
the European Union

Part II
Volume I
Chapters I–VIII

May 2022

CHAPTER 1: FREE MOVEMENT OF GOODS

I. GENERAL PRINCIPLES

1. Do measures exist in the laws, regulations or administrative provisions adopted at national or local level on the production, distribution and marketing of industrial products (please provide details):

a) Relating to the price of products?

[e.g. fixing the prices above or below which the importation or marketing of a product is prohibited or restricted, laying down profit margins or the other price components, etc.]

The issue of pricing in Ukraine is regulated, in particular, by the Law of Ukraine "On Prices and Pricing", according to Article 10 of which, business entities operating use free prices and state regulated prices.

At the same time, the Antimonopoly Committee of Ukraine (hereinafter - the AMCU) as a state body providing state protection of competition for business may pay attention to the first part of Article 12 of the Law of Ukraine "On Prices and Pricing", which stipulates that state regulated prices may be set for goods that have a decisive impact on the general level and dynamics of prices, have crucial social significance, as well as for goods produced by entities that have a monopoly (dominant) position in the market. State regulated prices may be imposed on goods of economic entities that violate the requirements of the legislation on protection of economic competition.

b) Which require import licences or permits for imported goods?

[e.g. licence for import of automobiles]

Article 16 of the Law of Ukraine "On foreign economic activities", which was brought into line with WTO rules and norms during the negotiation process on Ukraine's accession to the WTO, provides that the decision to apply the licensing regime for exports (imports) of goods, including quotas (quantitative or other restrictions), is adopted by the Cabinet of Ministers of Ukraine at the request of the Ministry of Economy, which contains the list of goods export (import) of which is subject to licensing, the period of licensing, quantitative or other restrictions on each product.

In connection with the above, the Government of Ukraine annually approves lists of goods, exports and imports of which are subject to licensing, and quotas. Lists of goods, exports and imports of which are subject to licensing, and quotas for 2022, were approved by the Regulation of the Cabinet of Ministers of Ukraine on 29.12.2021 No. 1424 (as amended by the regulations of the Cabinet of Ministers of Ukraine on 05.03.2022 No. 207, on 12.03.2022 No. 259, on 24.03.2022 No. 352, on 24.03.2022 No. 353, and on 09.04.2022 No. 422). According to this regulation in 2022 in Ukraine were introduced:

- 1) quotas for goods, the export of which is subject to licensing, in accordance with Annex 1;
- 2) list of controlled substances (ozone-depleting substances and fluorinated greenhouse gases), export and import of which are subject to licensing, in accordance with Annex 2;
- 3) list of goods and equipment that may contain controlled substances (ozone-depleting substances and fluorinated greenhouse gases), the export and import of which are subject to licensing (except for goods and equipment transported in containers with personal belongings), in accordance with Annex 3;

4) list of goods, the import of which from the Republic of Northern Macedonia is subject to licensing within the tariff quota in accordance with the provisions of the Free Trade Agreement between Ukraine and the Republic of Macedonia of January 18, 2001, in accordance with Annex 4;

5) list of goods, the export of which is subject to licensing, in accordance with Annex 5.

Currently (as of 05.05.2022) Annex 1 contains some agricultural products, fertilizers, precious metals, as well as waste and scrap of precious metals, Annex 5 includes some agricultural products and anthracite.

According to Article 16 of the Law of Ukraine “On foreign economic activities” licensing of imports of goods is introduced in Ukraine in the case of:

- a sharp deterioration in the balance of payments and external payments (if other measures are ineffective);

- sharp reduction or minimum size of gold and foreign exchange reserves;

- the need to ensure the protection of life, human, animal or plant health, the environment, public morals, national wealth of artistic, historical or archaeological significance or the protection of intellectual property rights, as well as in accordance with national security requirements;

- imports of gold and silver, except bank metals;

- the need to take measures to protect domestic producers in cases of growing imports into Ukraine, which causes significant damage or threatens to cause significant damage to the national producer of similar or directly competing goods. Such licensing is temporary and applies for a period that allows to prevent significant damage or to compensate for significant damage to the national producer and gives him the opportunity to restore its profitability;

- the need to ensure the protection of patents, trademarks and copyrights;

- the need to ensure the implementation of international agreements of Ukraine;

- the need to take measures in response to discriminatory and / or unfriendly actions of other states, customs unions or economic groups.

Import of automobiles is not subject to licensing, which is defined by Article 16 of the Law of Ukraine “On foreign economic activities”.

c) Which make access to the domestic market conditional upon having an agent or representative in the territory of the country?

[e.g. legislation which provides for the sale of certain goods in your country subject to authorisation that may be obtained only by a person established in your country]

There are several categories of industrial products, the sales of which on the domestic market are licensed. That includes sales of medicines, weapons, fuels, alcohol and tobacco. The following legal acts define the licensing conditions:

- Weapons: License terms for carrying out economic activities for the production and repair of non-military firearms and ammunition, cold steel, pneumatic weapons over 4.5 millimetres and bullet speeds over 100 meters per second, trade in non-military firearms and ammunition, cold steel, pneumatic weapons with a calibre of more than 4.5 millimetres and a bullet speed of more than 100 meters per second; production of special equipment charged with tear gas and irritants, personal protection, active defence and their sale

- Medicines: License terms for conducting economic activity on the production of medicines, wholesale and retail trade in medicines, import of medicines (except for active pharmaceutical ingredients) approved by the Resolution of the Cabinet of Ministers of Ukraine No.929 dated November 30, 2016

- Fuel: The law of Ukraine on the state regulation of production and circulation of ethyl, cognac and fruit alcohol, alcoholic beverages, tobacco products, liquids used in electronic cigarettes, and fuel No.481/95 dated December 19, 1995.

- Alcohol and tobacco: Licensing conditions of economic activity on production of tobacco products, wholesale, retail trade in tobacco products approved by the Order of the State Committee of Ukraine for Regulatory Policy and Entrepreneurship, Ministry of Finance of Ukraine No. 4/14 dated January 16, 2001

The license can be obtained by the economic agent registered in Ukraine.

d) Which oblige to have storage facilities in the territory of the country?

[e.g. legislation applying only to imported goods which require these imported goods to be stored for some time before being marketed]

There is no legislation applying only to imported goods which require these imported goods to be stored for some time before being marketed (given that all customs clearance procedures are fulfilled).

e) Which impose on the marketing of imported products conditions that are different from those imposed on domestic products or which require/ encourage a certain type of packaging for marketing a product, whether domestic or imported?

[Relating in particular to shape, size, weight, composition, presentation, identification and packaging, labelling (shape, size, composition) (e.g. requirement that some goods may only be sold in a package with special form)]

Regarding the provision of construction products on the market

Today in Ukraine the provision of construction products on the market is regulated by the Technical Regulations of Construction Products (products), approved by the Cabinet of Ministers of December 20, 2006 № 1764 (as amended by the Cabinet of Ministers of 22.03.2022 № 347, <https://zakon.rada.gov.ua/laws/show/347-2022-%D0%BF#n2>).

This Technical Regulation has been in force in Ukraine since 2006 and was developed taking into account the requirements of Council of Europe Directive 89/106 / EEC.

At the same time, on September 2, 2020, the Verkhovna Rada of Ukraine adopted the Law of Ukraine № 850 “On Provision of Construction Products on the Market” (<https://zakon.rada.gov.ua/laws/show/1458-2021-%D0%BF#Text>), which implements the provisions of Regulation (EU) 305/2011 into national law and enters into force in full on 1 January 2023.

Law № 850 “On the provision of construction products on the market” stipulates that manufacturers of construction products must draw up a declaration of construction products and label products with the mark of compliance with technical regulations.

The requirements of the Law № 850 "On the provision of construction products on the market" are consistent with the Law of Ukraine of January 15, 2015 № 124 "On technical regulations and conformity assessment" (<https://zakon.rada.gov.ua/laws/show/124-19 #Text>), which establishes requirements adapted to the relevant requirements of the Agreement on Technical Barriers to Trade of the World Trade Organization on legal and organizational activities in the field of technical regulation (https://zakon.rada.gov.ua/laws/show/995_342#Text).

Law № 124 “On Technical Regulations and Conformity Assessment” defines the legal and organizational principles for the development, adoption and application of technical regulations and

the conformity assessment procedures provided for by them, as well as the implementation of voluntary conformity assessment.

That is, the Law № 850 "On the provision of construction products on the market" and the Law № 124 "On technical regulations and conformity assessment" are European-oriented and implement the relevant European legislation in the Ukrainian legal field.

Law № 850 "On the provision of construction products on the market" contains the principles of marking construction products with a mark of conformity to technical regulations, its application and use, rules and conditions of marking conformity to technical regulations, responsibilities of manufacturers, importers and distributors of construction products.

The mark of conformity to technical regulations is applied to construction products for which the manufacturer has made a declaration of construction products. If the manufacturer has not made a declaration of performance, the mark of compliance with technical regulations is not applied.

By affixing the mark of conformity to technical regulations carried out by him or his authorized representative, the manufacturer assumes responsibility for the conformity of construction products to the declared indicators, as well as for its compliance with all applicable requirements specified by Law № 850 and relevant technical regulations. technical regulations.

For any construction products covered by the national standard for the purposes of this Law (№ 850 "On the provision of construction products on the market") or for which an opinion on technical acceptability is issued, the mark of compliance with technical regulations is the only mark of conformity of construction products declared indicators related to the essential performance characteristics covered by such national standard for the purposes of application of this Law (№ 850 "On the provision of construction products on the market") or a conclusion on technical acceptability.

It is prohibited to introduce any requirements for labeling certifying the conformity of construction products to the declared indicators related to the essential performance characteristics covered by the national standard for the purposes of application of this Law, other than the mark of compliance with technical regulations.

The placing on the market or use on the territory of Ukraine of construction products bearing the mark of conformity to technical regulations may not be prohibited or restricted if the declared performance of such construction products meets the requirements for its use in Ukraine.

Individuals and legal entities are prohibited from preventing the use of construction products bearing the mark of compliance with technical regulations by establishing rules or conditions, if the declared indicators of such construction products meet the requirements for its use in Ukraine.

The mark of conformity to technical regulations shall be affixed to construction products or to a label attached to them in such a way that it is visible, legible and indelible.

The sign of compliance with technical regulations is applied before the introduction of construction products. The mark of conformity to technical regulations may be accompanied by an icon or any other mark that clearly indicates a special risk or peculiarities of use.

In accordance with the requirements of the Law № 850 "On the provision of construction products on the market" manufacturer of construction products makes a declaration of construction products.

As a basis for declaring construction performance, the manufacturer shall draw up technical documentation describing all relevant elements related to the applicable system for assessing and verifying the stability of construction performance.

The manufacturer must keep the technical documentation and the declaration of performance for 10 years after the relevant construction products have been put into circulation.

Based on the relevant legislation of the European Union for certain groups of construction products, this period may be changed by the Ministry of Regional Development, based on the expected service life or significance of construction products in buildings or structures.

The manufacturer shall ensure that the construction product is marked with the type, batch or serial number or any other element that identifies such products, and if the size or nature of the construction product does not allow it - provide such information on the packaging or accompanying document.

The manufacturer shall indicate on the construction product, and if this is not possible - on its packaging or in the accompanying document its name, registered trade name or registered trademark and contact postal address. The address should indicate the only place where you can contact the manufacturer.

When providing construction products on the market, the manufacturer provides its support with instructions and / or safety information, compiled in compliance with the Law of Ukraine "On ensuring the functioning of the Ukrainian language as the state language" (<https://zakon.rada.gov.ua/laws/show/2704-19#Text>).

The importer of construction products, in accordance with the provisions of Law № 850 "On the provision of construction products on the market", indicates on construction products, and if this is not possible - on its packaging or accompanying document its name, registered trade name or registered trademark and contact address.

When providing construction products on the market, the importer provides its support with easy-to-understand instructions and information on safety, compiled in compliance with the Law of Ukraine "On ensuring the functioning of the Ukrainian language as the state" (<https://zakon.rada.gov.ua/laws/show/2704-19#Text>).

The importer shall keep for 10 years after the relevant construction products have been put into circulation a copy of the declaration of construction products for submission at the request of the state market surveillance authority and shall provide such bodies with access to technical documentation upon request.

The Law № 850 "On the provision of construction products on the market" also defines the responsibilities of distributors of construction products.

Thus, when providing construction products on the market, the distributor must make sure that: the construction products are marked with a mark of compliance with technical regulations; products are accompanied by user-friendly instructions and information on safety, compiled in accordance with the requirements of the Law of Ukraine "On ensuring the functioning of the Ukrainian language as the state language" (<https://zakon.rada.gov.ua/laws/show/2704-19#Text>) and make sure that the manufacturer or importer of construction products complies with the requirements of this law.

If an importer or distributor puts construction products into circulation under his name or trademark (mark for goods and services) or modifies construction products put into circulation in a way that may affect its compliance with the declaration of indicators, for the purposes of this Law he is considered a manufacturer and must perform the duties of the manufacturer.

For the purposes of application of the Law № 850 "On the provision of construction products on the market" national standards are adopted that are identical to the relevant harmonized European standards. Such national standards should contain methods and criteria for assessing the performance of construction products related to their essential characteristics.

Where provided for in the relevant harmonized European standard, the national standard should specify the intended use of the construction products covered by that standard.

Where appropriate and not detrimental to the accuracy, reliability and stability of results, national standards should provide methods that are less burdensome than testing to assess the performance of construction products related to their significant performance.

National standards define the applicable control of production at the enterprise, which should take into account the specific conditions of the production process of relevant construction products.

National standards should include the technical information required to apply the system for assessing and verifying the stability of indicators.

Order of the Ministry of Regional Development of 18.02.2022 № 54 "On approval of the list of national standards for the purposes of application of the Law of Ukraine" On construction products on the market "approved the list of national" sub-regulatory "(Regulation (EU) 305/2011) standards for the application of the Law of Ukraine providing construction products on the market ", which are identical to harmonized European standards. The list of national standards for the purposes of applying the Law of Ukraine "On the provision of construction products on the market" is based on a list of names and designations of harmonized European standards in the implementation of European Union legislation in the field of construction products published in the Official Journal of the European Union.

Law № 850 "On the provision of construction products on the market" establishes the possibility of using European documents to determine eligibility.

If construction products are not covered or not fully covered by the national standard for the purposes of applying this Law from the list, and in the European Union for such products is valid European document on eligibility, to issue a conclusion on technical acceptability, at the discretion of the manufacturer. such a European eligibility document.

To this end, the Ministry of Regional Development approves and publishes a list of European eligibility documents that can be used to issue an opinion on technical acceptability.

The list of European eligibility documents within 30 calendar days from the date of its approval is placed by the central executive body that ensures the formation of state policy in the field of construction, in the Unified State Electronic System in the field of construction.

Texts of European eligibility documents are entered into the Unified State Electronic System in the field of construction by the central executive body, which ensures the formation of state policy in the field of construction, and published on the portal of the Unified State Electronic System in the field of construction in agreement with the European Organization.

f) Which oblige economic operators to label their product with a “Made in ...” marking?

[i.e. an obligatory origin marking]

The Law of Ukraine "On Consumer Protection" regulates relations between consumers of goods, works and services and producers and sellers of goods, contractors and service providers of various forms of ownership, establish consumer rights, and determines the mechanism of their protection and the basis of state protection policy consumer rights.

Part 1 of Article 15 of the Law stipulates, in particular, that the consumer has the right to receive the necessary, accessible, reliable and timely information about the product, which provides the opportunity for conscious and competent choice. The information must be provided to the consumer before purchasing goods or ordering work (services).

Product information should include, in particular, the name and location of the manufacturer (performer, seller) and the company that performs its functions of accepting claims from the consumer, as well as repairs and maintenance.

According to the second part of Article 15 of the Law, the information provided in the first part of this article is communicated to consumers by the manufacturer (performer, seller) in the accompanying documentation attached to the product, on the label or otherwise (in visual form) as defined by the relevant regulations, including technical regulations, or accepted for certain products or services.

g) Which encourage or authorise the purchase of domestic products and/or give preference to the purchase of such products in advertising campaigns and/or are there incentives to buy national products?

[e.g. promotion actions with the participation of public authorities applying only to goods produced by producers in your country or from domestic raw materials]

On December 16, 2021, the Verkhovna Rada of Ukraine adopted the Law "On Amendments to the Law of Ukraine "On Public Procurement" to Create Preconditions for Sustainable Development and Modernization of Domestic Industry" No.1977-IX, introducing the temporary localisation requirements for a public procurement of selected machines and equipment. The law will be enacted on July 14, 2022.

The localisation requirements do not apply to procurement subject to the provisions of the Law of Ukraine "On Ukraine's Accession to the Agreement on Public Procurement", as well as provisions on public procurement of other international treaties of Ukraine, the binding nature of which was approved by the Verkhovna Rada of Ukraine. That is, the localisation requirements are not applied to the EU products.

h) Which exclude imported products in full or in part, from the possibility of using domestic facilities or equipment or which reserve the use of such facilities or equipment, in full or in part, for domestic products?

There are no legal requirements that exclude imported products in full or in part from the possibility of using domestic facilities or equipment or which reserve the use of such facilities or equipment, in full or in part, for domestic products.

i) Which subject imported products to controls, other than those inherent in customs clearance procedures, that are not carried out on domestic products?

[e.g. veterinary, sanitary, phytosanitary and other controls]

According to the first part of Article 319 of the Customs Code of Ukraine, goods imported into the customs territory of Ukraine (including for transit) may be subject to official control measures.

According to point 13-1 of Article 4 of the Customs Code of Ukraine, official control measures means phytosanitary control, veterinary and sanitary control, state control over compliance with the legislation on food, feed, animal by-products, animal health and welfare, carried out in accordance with the legislation of Ukraine.

According to parts two and three of Article 319 of the Customs Code of Ukraine, official control measures are carried out:

1) at control points (checkpoints) across the state border of Ukraine - carried out in the amount necessary to issue a permit for the passage of goods across the customs border of Ukraine for their shipping to destinations in Ukraine or to the point of exit (checkpoint) outside the customs territory of Ukraine, or for their release under the declared customs regime in accordance with the purpose of their import into Ukraine at the control point (checkpoint) across the state border of Ukraine;

2) at the destination points on the territory of Ukraine - in the amount required to issue a permit for the release of goods under the declared customs regime in accordance with the purpose of their import into Ukraine.

Measures of official control at control points (checkpoints) across the state border of Ukraine are carried out by customs authorities through prior documentary control.

Exhaustive list of goods (with description and code according to UCT ZED), which in case of import into the customs territory of Ukraine (including for transit) are subject to official control measures and a list of documents and information to be verified during the preliminary documentary control are approved by the Decree of the Cabinet of Ministers of Ukraine of October 24, 2018 No. 960 "Some issues of official control of goods introduced into the customs territory of Ukraine (including for transit)".

The grounds for termination of the preliminary documentary control are defined in part five of Article 319 of the Customs Code of Ukraine, namely:

1) the requirement established by law to carry out the relevant official control measure by the relevant authorized body;

2) introduction into the customs territory of Ukraine (including for the purpose of transit) of live animals (mammals, birds, bees, insects, fish, crustaceans, mollusks, frogs, amphibians and reptiles);

3) introduction of live plants into the customs territory of Ukraine (including for the purpose of transit);

4) carrying out of appropriate sanitary measures at control points (checkpoints) across the state border of Ukraine due to the threat of introduction of pathogens of animal diseases into the territory of Ukraine;

5) availability of information of the authorized body on the establishment of a ban on the introduction of relevant goods into the customs territory of Ukraine (including for transit) from the specified country in the unified automated information system of the customs authorities of Ukraine;

6) the absence of documents or information required for preliminary documentary control;

7) receiving an application from the declarant or his / her authorized person to carry out official control measures at the control point (checkpoint) across the state border by the relevant authorized body;

8) detection of signs of deterioration of goods during visual inspection.

In case of termination of the preliminary documentary control by the official of the customs authority, the official of the relevant authorized body shall be immediately involved in the relevant inspection.

At the same time, in accordance with Article 41 of the Law of Ukraine " On state control over observance of the legislation on foodstuffs, animal feedstuffs, by-products of animal origin, animal health and welfare " (hereinafter - Law № 2042) consignments with products that are introduced (sent) to the customs territory of Ukraine are subject to state control measures, carried out by the state veterinary inspector in the form of inspections at the designated border inspection post.

In addition, one of the requirements for the designated border inspection post, in accordance with Article 46 of the Law № 2042, is its location at the checkpoint across the state border of Ukraine. In case of geographical limiting factors (unloading port, mountain pass, etc.) it is possible to locate the designated border inspection post at a certain distance from the checkpoint across the state border of Ukraine, and for the railway - at the first station determined by the Cabinet of Ministers of Ukraine.

At the same time, in accordance with point 3 of the Final and Transitional Provisions of the Law № 2042, it is established that within five years from the date of publication of this Law:

1) for the purposes of this Law, designated border inspection posts and designated checkpoints at the state border of Ukraine are all checkpoints at the state border of Ukraine and customs control zones in the customs territory of Ukraine, determined in accordance with customs legislation, including if they do not meet the requirements the Law;

2) goods introduced (sent) to the customs territory of Ukraine are subject to preliminary documentary control at control points (checkpoints) across the state border of Ukraine, carried out by customs authorities in accordance with the Customs Code of Ukraine, as well as documentary checks, conformity checks and physical checks in customs control zones in the customs territory of Ukraine in accordance with the requirements established by Section VII of this Law.

At the same time, Article 38 of the Law of Ukraine "On Plant Quarantine" states that phytosanitary control of goods with regulated objects introduced into the customs territory of Ukraine (including for transit) is carried out by state phytosanitary inspectors at certain plant quarantine points at checkpoints on the state border of Ukraine. At checkpoints on the state border of Ukraine the phytosanitary control of regulated objects introduced into the customs territory of Ukraine (including for the purpose of transit) is carried out by customs authorities in the form of preliminary documentary control.

In case of termination of the previous documentary control, the customs authorities shall involve an official of the relevant authorized body to carry out phytosanitary control.

In addition, during the phytosanitary control of seeds and planting material, the state phytosanitary inspector inspects the certificates and confirmations provided for in Article 20 of the Law of Ukraine "On Seeds and Planting Material" and check the confirmation of the Competent Authority that the samples of the variety are imported into Ukraine for examination of the application (notification of the Competent Authority on acceptance of the application for consideration and import of prototypes of varieties for the purposes of examination of the application), in accordance with Article 29 of the Law of Ukraine "On Protection of Plant Variety Rights".

j) Which allow only traders holding a production licence or wholesale licence to import some goods?

[e.g. licensing system for the production and wholesale of some goods, which allow only the licence holder to import these goods]

No. The Ukrainian legislation does not require holding a production or wholesale license in Ukraine as a precondition for obtaining the import license.

k) Which creates monopolies of sale of some goods (e.g. tobacco products, alcohol products, etc.)?

In the course of its powers, the AMCU established that in accordance with the Law of Ukraine "On State Regulation of Production and Circulation of Ethyl Alcohol, Cognac and Fruit Alcohol, Alcoholic Beverages, Tobacco Products and Fuel" in the wording before 01.07.2020 in Ukraine existed monopoly of SOE "Ukrspir" on the market of wholesale sales of rectified ethyl alcohol.

However, this provision is currently not in force, as the Law of Ukraine "On Amendments to the Law of Ukraine "On State Regulation of Production and Circulation of Ethyl Alcohol, Cognac and Fruit, Alcoholic Beverages, Tobacco Products and Fuel" on liberalization of activities in the production and circulation of alcohol The Law of Ukraine amended the mentioned one, which ensured the demonopolization of the alcohol industry and allowed the privatization of alcohol enterprises, including SOE Ukrspir.

No other monopolies established by laws have been identified in the commodity markets in the course of market studies and investigations conducted by the AMCU's bodies.

1) Which reserve certain trade names for domestic products alone and, if so, on what conditions?

[e.g. rules which reserve the use of the description "mountain" to products prepared in your country from domestic raw materials]

The intellectual property rights legislation, including the Law of Ukraine On the protection of trademark rights for goods and services (#3689-XII dated December 15, 1993, most recently amended on October 14, 2020) and On the legal protection of geographical indications (#752-XIV dated June 16, 1999, most recently amended on October 14, 2020) regulates the use of trade names in Ukraine. No trade names are reserved for domestic products alone unless they are registered as geographic indications.

The use of the official name "Ukraine" is regulated by the Ministry of Education's Order On the approval of rules coordinating the use of designation containing the official name of the state "Ukraine" to mark the goods and services (#790 dated August 4, 2010).

2. Is the marketing of products with a label and instructions written in a foreign language allowed?

According to parts six, seven and eight of Article 30 of the Law of Ukraine "On Ensuring the Functioning of the Ukrainian Language as the State Language", producers (performers, sellers) of all forms of ownership in Ukraine provide consumers with information about products (goods), works or services in the state language. Such information may be duplicated in any other language.

Information on products (goods), works or services provided in the state language may use words, abbreviations, acronyms and symbols in English and / or with the use of letters of the Latin and / or Greek alphabets.

If in addition to state information on goods and services is provided in other languages, the amount of information on goods and services in the state language may not be less than the mandatory amount of information in accordance with the requirements of the Law of Ukraine "On Consumer Protection".

3. Is there a procedure set up for parallel imports?

In November 2019, amendments to the Customs Code of Ukraine regarding the protection of intellectual property rights when moving goods across the customs border came into force. The principle of international exhaustion of rights was officially introduced into Ukrainian legislation. Thereby, Ukraine has brought its legislation according to Regulation (EU) 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights.

The Customs Code defines counterfeit goods, pirated goods, and goods suspected of infringement of intellectual property rights. At the customs post, the clearance of goods can be suspended only if the inspector has a suspicion that the goods are counterfeit. The types of intellectual property rights that can be entered into the Customs Register include:

- copyright and related rights;
- patents for inventions;
- patents for industrial designs;
- trademarks;

- geographical indications;
- semiconductor layout designs;
- medicines and plant protection products with supplementary protection certificates.

The Verkhovna Rada recently approved the first reading of the draft law on medicines (#5547 dated December 14, 2021), introducing another legal framework for the parallel imports of medicines. Article 78 of the draft law states:

"Importation into the territory of Ukraine from a member state of the European Union or the European Free Trade Association that is a party to the Agreement on the European Economic Area (hereinafter - the exporting country), drugs that have been designated and released for use in the country - the exporter from whom the medicinal product is imported into Ukraine may be carried out as a parallel import of the medicinal product in compliance with the requirements specified in this Article and Article 73, only under the following conditions:

- 1) a parallel imported medicinal product is identical or similar to a medicinal product registered in Ukraine; or
- 2) a parallel imported medicinal product and a medicinal product registered in Ukraine are both a reference medicinal product or a generic medicinal product in Ukraine and in the exporting country from which the medicinal product is imported.

For the purposes of this article:

a medicinal product is identical or similar to a medicinal product registered in Ukraine, provided that it has the same qualitative and quantitative composition in relation to the active substance or active substances, is supplied in the same dosage form, has at least the same indications, the exact concentration /dosage, the same route of administration as a medicinal product registered in Ukraine has at least a similar form, which does not lead to any therapeutic difference compared to a medicinal product registered in Ukraine;

The Cabinet of Ministers of Ukraine may, if necessary, expand the list of exporting countries.

2. Parallel import of medicinal products shall be carried out by an economic entity licensed to import medicinal products (parallel importer), following the licensing conditions established by the Cabinet of Ministers of Ukraine, after the state control body decides to grant import of medicinal products, which is recorded in the State Register of Medicinal Products Imported into the Territory of Ukraine.

The procedure for granting a permit for parallel import of a medicinal product and maintaining the State Register of Medicinal Products Imported into the Territory of Ukraine shall be approved by the central executive body to ensure state health policy formation and implementation.

3. To obtain a permit for parallel import of medicinal products, the parallel importer shall submit to the state control body an appropriate application in the form and manner established by the central executive body that ensures the formation and implementation of state health policy in paper or electronic form.

The statement states:

- 1) name, dosage form, the dosage of the medicinal product registered in Ukraine;
- 2) name, dosage form, the dosage of the medicinal product to be imported into Ukraine as a parallel import;
- 3) the owner of the registration in the exporting country and the manufacturer of the medicinal product;

4) the registration number of the medicinal product in Ukraine and the marketing authorization number of the medicinal product in the exporting country from which the medicinal product is to be imported.

The following documents are attached to the application:

- a declaration that the registration holder in the exporting country has been notified of the intention to import in parallel and to provide a sample of the parallel imported medicinal product on request;

- a copy of the leaflet and a sample of the medicinal product in the form in which it was put into circulation in the exporting country;

- translation of the sheet-insert into Ukrainian, the authenticity of the translation of which has been confirmed by the authorized person specified in part six of Article 43 of this Law;

- the draft leaflet of the medicinal product to be imported in parallel, accompanied by a declaration that the contents of the leaflet are identical to the contents of the medicinal product registered in Ukraine, except for:

- names and addresses of the person carrying out parallel import;
- the name of the manufacturer if it differs for both medicines;
- shelf life (stability period), if it is different for both drugs;
- excipients listed in the tab-leaflet if they are different for both medicines.

In case of repacking and/or re-labelling of the medicinal product, the following documents are additionally attached:

- the original layout of the graphic design of the drug in the form in which it will be put into circulation in Ukraine;

- a copy of the contract between the person who carries out the parallel import of medicinal products and the persons who are engaged in the production of medicinal products, if the person who carries out the parallel import of medicinal products does not have the appropriate license for the production of medicinal products;

- a copy of the certificate of compliance with good manufacturing practice (GMP) and a copy of the license for the manufacture of medicinal products issued by the competent authority of a Member State of the European Union or the European Free Trade Association that is a party to the European Economic Area funds will be performed outside the territory of Ukraine.

4. A parallel importer may repack the outer consumer packaging or use the original foreign packaging with additional labelling of medicinal products in Ukrainian or put into circulation the medicinal product in the manufacturer's packaging in the original language, provided that the importer accompanies each package of medicinal products imported into Ukraine. A copy of the translation into the state language of the labelling text, leaflet tab (if available), and a brief description of the medicinal product (if available).

The text in a foreign language is allowed on the packaging, except for the text that contradicts the requirements for labelling the medicinal product established by this Law and the permit for parallel import. A label may cover foreign packaging material with the text in the Ukrainian language. If original foreign packaging is used, any foreign barcode must be closed.

5. An economic entity that repackages and/or re-labels a medicinal product in the Ukrainian language on the territory of Ukraine must have a license for the production of medicinal products issued by a state control body.

6. The decision to grant or refuse to grant a permit for the parallel import of medicinal products shall be made within 45 days from submitting documents to the state control body. If, as a result of

consideration of the application and the documents attached to it, it is necessary to make clarifications or provide explanations of the business entity specified in part three of this article, the period specified in this part shall be suspended until the requested information is received.

Suppose the applicant does not provide the requested documents within the period specified in this article. In that case, the procedure for issuing a permit for parallel import of medicinal products shall be terminated.

7. The decision to refuse to grant a permit for parallel import of medicinal products shall be made in case of non-compliance with the application and the documents attached to it and the information specified therein with the requirements of this article.

8. The period of validity of a permit for parallel import of medicinal products granted following the requirements of this article shall be five years. Suppose an entity referred to in paragraph 3 of this article intends to continue to operate on parallel imports of a medicinal product. In that case, it shall obtain a new authorization under the requirements of this article.

9. A permit for the parallel import of medicinal products may not be automatically revoked if the holder of the registration of the medicinal product registered in Ukraine has withdrawn the state registration of his own volition for reasons not related to the threat to the public health.

10. Business entities that have received a permit for the parallel import of medicinal products are obliged to ensure the functioning of the pharmacovigilance system following the requirements of Section IX of this Law.”

II. THE NON-HARMONISED AREA

A. The principle of the Free Movement of Goods

4. Have Steps been taken to ensure that legislation and administrative practices are in accordance with Articles 34-36 TFEU and relevant case-law of the Court of Justice of the European Union, such as a plan or strategy to ensure compliance with Articles 34-36 TFEU and CJEU case-law?

Ukraine applies a minimal number of quantitative restrictions on exports and imports of products. Most trade prohibitions are grounded on the protection of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historical or archaeological value; or the protection of industrial and commercial property.

Thus, it is prohibited to import into Ukraine:

- weapons of military designs of all kinds and ammunition for it;
- narcotic and psychotropic substances;
- potent toxic, radioactive, explosive substances;
- printed matter, clichés, negatives, films, photographs, films, video recordings, copies of magnetic information for computers, manuscripts, records and other sound recordings, drawings and other printed pictorial material containing the propaganda of war, racism, racial discrimination and genocide, as well as aimed at undermining the territorial integrity of Ukraine, its political independence, state sovereignty; pornographic products;
- goods imported with infringement of intellectual property rights.

Prohibited for export from Ukraine:

- weapons of military design of all kinds, ammunition and military equipment;

- narcotic and psychotropic substances;
- potent toxic, radioactive, explosive substances;

● works of art, cultural and historical values (paintings, sculptures, drawings, watercolours, various types of engravings, miniatures, porcelain, crystal, ceramics, wood, leather, precious and non-precious stones, precious and precious metals, bones, folk art objects crafts, tapestries, furniture, artistic clothing and footwear, numismatics, artistic weapons, books, manuscripts, records, musical instruments, postage stamps, etc.) and other items of significant artistic, historical, scientific and other cultural value;

- cancelled securities;
- goods exported in violation of intellectual property rights.

Goods prohibited for transit through the territory of Ukraine:

- weapons and ammunition of all kinds and military equipment;
- aircraft, their parts, accessories and equipment;
- machines and machines designed for the manufacture of weapons and ammunition of all kinds and aircraft, spare parts for them;
- drugs;
- radioactive objects and substances;
- highly toxic and explosive substances, other items that may harm the health or endanger the lives of people and wildlife or lead to the destruction of the environment.

According to the Cabinet of Ministers' Resolution No. 1424, dated December 29, 2021, the quantitative restrictions apply on exports of gold, silver and waste or a scrap of precious metal or metal clad with precious metal.

Ukraine has applied a temporary moratorium on exports of wood logs. Following the Arbitrage decision dated December 2020, Ukraine committed to replacing the moratorium with another market regulation system, removing trade distortions.

The list of prohibitions is published at the web-site¹.

B. Notification of Technical Regulations

5. Is the authority in question empowered to contact all authorities/bodies that produce technical regulations, to remind them of the obligation to notify such regulations at a draft stage and to ensure a follow-up of each notification with each authority/body concerned?

Pursuant to Article 22 of the Law of Ukraine of 15 January 2015 No. 124-VIII "On Technical Regulations and Conformity Assessment" the Ministry of Economy of Ukraine is entrusted with the functions of the WTO TBT Enquiry Point processing enquiries and submitting notifications.

Currently in Ukraine there are 17 public authorities, authorised to exercise the functions of technical regulation, including the power to draft and adopt technical regulations. To facilitate their compliance with WTO TBT Agreement, the Ministry of Economy is entitled to exercise the functions of organisational, methodological and informational support to the preparation and submission by the relevant public authorities of notifications and other documents to WTO Member States, as well as the discussion of comments, provided by the competent authorities of these States. The Law also stipulates that in case of drafting, adoption or application of a technical regulation significantly affecting trade with WTO Member States, a relevant public authority at the request of a WTO

¹<https://customs.gov.ua/web/content/4466?unique=008f91a3274718ba3df0d6aced2d3e3906bd1856&download=true>

Member State shall explain the need for such a technical regulation from the viewpoint of the principles for drafting, adoption and application of technical regulations, set out in WTO TBT Agreement.

The functions of reminding all public authorities that produce technical regulations of the obligation to notify such regulations at a draft stage and of ensuring a follow-up of each notification with each authority concerned fall within the scope of these requirements of the Law and are carried out by a specialised unit within the Department of Multilateral and Bilateral Trade Agreements of the Ministry of Economy of Ukraine.

Responsibility for ensuring compliance with notification obligations and for undertaking these notifications in Ukraine (as Notification Authority) has been assigned to the Division of notification and inquiries processing within the Department of Bilateral and Multilateral Trade Agreements within the Ministry of Economy of Ukraine.

In general, the Division operates as National authority under practically all WTO agreements, as Enquiry Point of TBT/SPS measures and other WTO related issues within WTO Agreements, as well as responsible contact point for submission of import statistics and tariff data to the IDB.

By every day monitoring of the official websites the Division ensures on time notification of drafted, implementing or modifying measures of Ukraine. Basically, technical, legal and administrative responsibility for notification of the measure in each specific case rests with the relevant body (ministry, state service) entrusted with lawmaking and regulatory authority. However, in each case, full information on such measures shall be immediately submitted to the Division of notification and inquiries processing, as the Division is responsible for notification to the WTO and sharing of information among WTO Members.

A notification shall be submitted when there is a complete draft of the proposed regulation and when amendments can still be introduced and comments of other stakeholders could be taken into account.

As Notification Authority, the Division is also

- responsible for timely submission of notifications through the WTO Secretariat or the WTO submission systems when a new measure is proposed or an existing one is amending;
- allows reasonable time for other WTO Members to comment in writing;
- ensures processing of such comments;
- provides additional relevant information on the proposed measures if necessary;
- upon request, provides the WTO Members with a copy of the text of the proposed or approved regulation, or information that no corresponding measure will be put into force for the time being;
- prepares and submits comments to the notifications submitted by other WTO Members.

Currently, the Division has developed the draft Resolution of the Cabinet of Ministers of Ukraine on the Procedure for providing information from the other Ministries, necessary for preparation of notifications, responses and requests in accordance with the WTO rules.

The draft Resolution provides instructions for other state authorities that develop measures which fall under WTO transparency obligations as well as fasten getting comments from state authorities when any comments are received from other WTO Members.

In general, the Division ensures communication between the WTO Members and local measures developers in term of transparency and its compliance with WTO rules.

At this moment, requirements of EU Directive 2015/1535 laying down a procedure for the provision of information in the field of technical regulations has not been implemented in Ukraine, as this Directive regulates interaction between the European Commission and Member States in the

process of development and adoption of technical regulations, other than those transposing acts of EU acquis. Ukraine, not being a Member State or a candidate, is thus not entitled to interact with the Commission in this respect. Once the legal basis for such interaction is in place, relevant amendments transposing EU Directive 2015/1535 will be introduced to the Law of Ukraine “On Technical Regulations and Conformity Assessment”.

6. Has the competent authority developed a network of contacts among national economic operators who are the beneficiaries of the notification procedure in order to ensure that an alert system or equivalent is in place?

The task of the Division of notification and inquiries processing within the Department of Bilateral and Multilateral Trade Agreements of the Ministry of Economy of Ukraine is more related to transparency obligations fulfilment. Department of Bilateral and Multilateral Trade Agreements is not involved in technical regulation drafting.

The division is preparing notifications on the basis of monitoring of the legislation on technical regulation of Ukraine as well as insures its timely submitting to the WTO when received from the appropriate developing authorities and for its part informs relative legislative authorities on other WTO Members developed measure that can affect trade.

Accordingly, a network of contacts has been established among ministries and bodies that are developers of draft technical regulations and standards, and for whom notifications on technical regulations of other countries, in particular WTO Members, may be important.

The Department of Technical Regulation within the Ministry of Economy of Ukraine is responsible for ensuring a network of contacts among national economic operators as one of the developers of Ukrainian technical regulation legislation.

The Division continually exchanges information with the Department of Technical Regulation regarding WTO Members' notifications on technical regulation.

III. THE HARMONISED AREA

7. Has the government adopted a strategy and/or action plan that foresees the alignment to all the EU acquis in this chapter?

On 22 September 2021 the Cabinet of Ministers of Ukraine approved with its executive order no. 1145-r the Action Plan for the Development of the System of Technical Regulation till 2025. The Action Plan is aimed at further development of the system of technical regulation of Ukraine in line with the Association Agreement with the EU. In particular the Action Plan envisions:

- improvement of legislation in the area of market surveillance in line with the EU acquis;
- adoption of technical regulations and standards in the sectors of construction products, motor vehicles, medical devices, household appliances, eco-design, cosmetics and foodstuffs in line with the EU acquis;
- improvement of procedures and practices of national standardisation in line with the guides of international and European organisations;
- enlargement of infrastructure of designated conformity assessment bodies;
- development of an array of primary standards (etalons) in the area of metrology;

- enhancement of international cooperation within the framework of international and regional metrological organisations and of recognition of the National Accreditation Agency of Ukraine at the international and European levels.

8. If it exists, does the above-mentioned strategy and/or action plan included planning for the alignment to the relevant framework legislation, notably Regulation (EU) 2019/1020, Regulation (EC) 764/2008, Directive 2001/95/EC and/or Regulation (EU) 1025/2012?

- Regulation (EU) 2019/1020: it has not been transposed into the Ukrainian legislation so far. Relevant amendments to the Law of Ukraine “On State Market Surveillance and Control of Non-Food Products” are under development;

- Regulation (EC) 764/2008 (replaced by Regulation (EU) 2019/515): this Regulation facilitates the relationship, cooperation and exchange of information between the Commission and the Member States with relation to the products in non-harmonised sectors. As such, it is non-applicable for Ukraine at the moment. Once there is a legal basis for Ukraine to introduce mechanisms for relations, cooperation and exchange of information with the Commission and EU Member States in the non-harmonised sectors, this Regulation will be transposed as a separate act of Ukrainian legislation;

- Directive 2001/95/EC: it has been transposed by the Law of Ukraine “On General Non-Food Product Safety” of 2 December 2010 No. 2736-VI (also see below);

- Regulation (EU) 1025/2012: this Regulation lays down the principles and procedures for the development of European standards by the European standardization organisations and national standardisation bodies. At the moment Ukraine is not a full member of CEN/CENELEC and does not participate in the development of European standards. However, some principles and provisions of Regulation (EU) 1025/2012 have been transposed into Ukrainian legislation. Once that a legal basis for Ukraine to participate in European standardisation is in place, the Ukrainian standardisation legislation will be revised and relevant amendments, envisioning Ukraine’s participation in the development of European standards, will be introduced.

1. NEW LEGISLATIVE FRAMEWORK (NLF)

A. General Aspects

9. Is there a legal basis and administrative structure in place for market surveillance, technical regulations, standards, conformity assessment, accreditation and metrology?

A legal basis and administrative structure are in place in Ukraine for the mentioned areas. In particular:

In the area of market surveillance:

The legal basis is comprised of the following laws and by-laws:

- The Law of Ukraine of 2 December 2010 No. 2735-VI “On State Market Surveillance and Control of Non-Food Products”, which transposes Regulation (EU) 765/2008 and takes into account Decision 768/2008/EEC;

- The Law of Ukraine of 2 December 2010 No. 2736-VI “On General Non-Food Product Safety”, which transposes Directive 2001/95/EC;

- CMU Resolution of 31 October 2007 no. 1280 “On Approving the Procedure for Product Sampling for Determination of Its Quality Parameters and the Form of the Product Sampling Act” - regulates how product samples are taken and tested;

- CMU Resolution of 31 August 2011 no. 921 “Certain Issues of Reimbursement by the Economic Operator of the Cost of Non-Food Product Samples and Their Examination (Testing)” - lays down the rules for reimbursement of the cost of testing by a faulty economic operator, whose product has been found non-compliant;
- CMU Resolution of 5 October 2011 no. 1017 “On Approving the Procedure for the Control of Compliance with Decisions on Restrictive (Corrective) Measures” - sets forth the procedure of a follow-up inspection on how restrictive (corrective) measures have been complied with;
- CMU Resolution of 26 December 2011 no. 1397 “On Approving the Procedure for the Operation of the National Informational System of State Market Surveillance, Entering Data and Submission of Notifications” - regulates the operation of the national informational system, akin to ICSMS;
- CMU Resolution of 26 December 2011 no. 1398 “On Approving the Procedure for the Operation of Rapid Alert System for Products Presenting Serious Risk and Submission of Notifications about Entering Thereto” - regulates the operation of the national informational system, akin to RAPEX;
- CMU Resolution of 26 December 2011 no. 1400 “Certain Issues of the Consumer (User) Rights Protection with Regard to the Non-Food Product Safety” - lays down a procedure for the registration of consumer (user) complaints and monitoring of industrial and other accidents, related to product safety;
- CMU Resolution of 26 December 2011 no. 1401 “On Approving the Procedure for Submission of Notification for the Product Non-Compliant with the General Product Safety Requirement to State Market Surveillance Authorities” - lays down a procedure on how a notification about the product, which does not comply with the general product safety requirement, is to be submitted;
- CMU Resolution of 26 December 2011 no. 1403 “On Approving the Procedure for the State Control of Non-Food Products” - sets forth a procedure for the control of non-food products, entering the territory of Ukraine, by customs authorities;
- CMU Resolution of 26 December 2011 no. 1404 “On Approving the Levels of Risk for Non-Food Product Types and Criteria by Which a Non-Food Product Is Assigned a Relevant Level of Risk” - establishes the levels of risk to be used in planning of market surveillance activities as well as the criteria by which the product under surveillance is to be assigned to a level of risk;
- CMU Resolution of 26 December 2011 no. 1406 “The Issues of Sale and Destruction of Non-Food Product Samples, Used for Examination (Testing) and Selected within the Framework of State Market Surveillance” - prescribes a procedure on how the examined (tested) product samples are to be disposed of;
- CMU Resolution of 26 December 2011 no. 1407 “On Approving the Methodology for Taking Restrictive (Corrective) Measures” - contains the methodology on how restrictive (corrective) measures are to be determined based on risk assessment, envisioned in EU RAPEX Guidelines approved by Commission Decision 2010/15/EU;
- CMU Resolution of 26 December 2011 no. 1410 “On Approving the Procedure for the Development and Revision of Sectoral Market Surveillance Programmes, Monitoring and Reporting on Their Implementation” - sets forth the procedure on how national market surveillance programmes are developed and revised;
- CMU Resolution of 30 December 2015 no. 1184 “On Approving the Form, Description of the Mark of Conformity to Technical Regulations, Rules and Conditions for Its Affixing” - contains the description and the rules for affixing of the mark of conformity to technical regulations, similar to those contained in Regulation (EU) 765/2008, to be later replaced by CE mark;

- CMU Resolution of 28 December 2016 no. 1069 “On Approving the List of Product Categories in Relation to Which the State Market Surveillance Authorities Shall Carry Out State Market Surveillance” - contains the list of market surveillance authorities for each existing technical regulation;

- CMU Resolution of 12 February 2020 no. 75 “On Approving the Procedure for Providing Free-of-Charge Consultancy Support to Economic Operators by State Market Surveillance Authorities on the Issues of Carrying Out State Market Surveillance” - sets forth a procedure on how advisory support to business in the area of market surveillance is to be rendered;

- Order of the Ministry of Economic Development and Trade of Ukraine of 19 April 2019 no. 667 “On Approving the Sample Forms of Documents in the Area of State Market Surveillance and State Control of Products” - provides for the forms of documents to be used by market surveillance and customs officials in the course of their activities.

The administrative structure is as follows:

In accordance with the legislation, the Ministry of Economy of Ukraine is responsible for the formation of public policy in the area of state market surveillance. State market surveillance per se is carried out by market surveillance authorities, designated by the Cabinet of Ministers of Ukraine. The control of non-food products before their release into free circulation on the customs territory of Ukraine is performed by the State Customs Service of Ukraine.

As of today, nine market surveillance authorities have been designated, namely:

- State Service of Ukraine for the Safety of Foodstuffs and Consumer Rights Protection;
- State Service of Ukraine for Labour Issues;
- State Service of Ukraine for Medicinal Products and Drugs Control;
- State Ecological Inspectorate of Ukraine;
- State Service of Ukraine for Emergencies;
- State Service of Ukraine for the Safety on Transport;
- State Inspectorate for Architecture and Town Planning;
- State Service for Marine and Internal Water Transport and Shipping of Ukraine;
- State Service of Special Communications and Information Protection of Ukraine.

MS authorities carry out their competencies also through their territorial (regional) bodies, depending on the organisational structure of each authority.

The area of competence of a state market surveillance authority is constituted by a list of product categories, in relation to which it is empowered to carry out state market surveillance. This list has been approved by the CMU Resolution of 28 December 2016 no. 1069.

When a new technical regulation has been developed or an existing one has been amended, relevant amendments are to be introduced to this Resolution no. 1069 and an MS authority is to be designated for the product, which is the object of a new technical regulation.

As of mid-April 2022, the list of product categories, covered by respective MS authorities, contains 67 product categories.

In the area of technical regulations and conformity assessment:

The legal basis is comprised of the following laws and by-laws:

- The Law of Ukraine of 15 January 2015 No. 124-VIII “On Technical Regulations and Conformity Assessment”, which has been developed on the basis of WTO TBT Agreement and provides the framework for introduction of the EU New Approach legislation;

- CMU Resolution of 18 June 2012 no. 708 “On Approving the Rules for Development of Drafts of Technical Regulations to be Approved by the Cabinet of Ministers of Ukraine, Based on the EU Acquis Communautaire” - details the peculiarities of drafting technical regulations to be approved by the Cabinet of Ministers of Ukraine, which are to be developed on the basis of the acts of EU acquis, to ensure their full alignment with such acts;

- CMU Resolution of 16 December 2015 no. 1057 “On Designation of the Areas of Activities, Where Central Executive Authorities and the Security Service of Ukraine Carry Out the Functions of Technical Regulation” - contains the list of public authorities with the areas of technical regulation, where they are responsible for alignment of Ukrainian legislation (technical regulations) with the acts of EU acquis;

- Order of the Ministry of Economy and Trade of Ukraine of 8 October 2015 no. 1282 “On Approving the Procedure for the Formation and Maintenance of the Data Base on Technical Regulations” - sets forth the procedure on how the database of technical regulations (their adoption, revision, amendment, withdrawal) is managed;

- CMU Resolution of 30 December 2015 no. 1184 “On Approving the Form, the Description of the Mark of Conformity to Technical Regulations, the Rules and Conditions for Its Affixing” - contains the description and the rules for affixing of the mark of conformity to technical regulations, similar to those contained in Regulation (EU) 765/2008, to be later replaced by CE mark;

- Order of the Ministry of the Development of Economy, Trade and Agriculture of Ukraine of 22 January 2021 no. 125 “On Approving the Rules for the Formation of Lists of National Standards for the Purposes of Application of Technical regulations” - sets forth how the lists of national standards, including those giving presumption of conformity, are to be compiled;

- CMU Resolution of 13 January 2016 no. 95 “On Approving the Conformity Assessment Modules to Be Used for Development of Conformity Assessment Procedures and the Rules for the Use of Conformity Assessment Modules” - approves conformity assessment modules to be used for conformity assessment procedures as well as the rules for such use, transposes Annex II of EU Decision 768/2008/EC;

- CMU Resolution of 13 January 2016 no. 56 “On Approving Special Requirements for Designated Conformity Assessment Bodies” - establishes special requirements for designated conformity assessment bodies, as contained in Article R17 of Annex I of EU Decision 768/2008/EC;

- CMU Resolution of 12 July 2017 no. 514 “On Approving the Rules for Calculation of the Cost of Work of the Assessment of Conformity to Technical Regulations Requirements, Which is Carried Out by Designated Conformity Assessment Bodies and Recognised Third Party Organisations” - sets forth the rules on how the cost of work in the regulated sectors of conformity assessment is calculated;

- CMU Resolution of 31 October 2018 no. 937 “On Approving the Criteria By Which the Level of Risk from Conformity Assessment Economic Activities of Designated Conformity Assessment Bodies and Recognised Third Party Organisations Is Assessed and the Frequency of Planned Measures of State Supervision (Control) by the Ministry of Economy Is Determined” - sets forth the criteria by which the frequency of monitoring of designated conformity assessment bodies is to be determined;

- CMU Resolution of 4 November 2020 no. 1071 “On Approving the Procedure for the Issuance or Denial of Issuance of the Certificate of Designation, Extension or Reduction of Scope of Designation, Suspension or Renewal or Termination of Such Certificate and the Amending of Special Requirements for Designated Conformity Assessment Bodies” - lays down a procedure by which the certificate of designation of a conformity assessment body is issued, extended, reduced, suspended, renewed or terminated;

- Order of the Ministry of Economic Development and Trade of Ukraine of 17 November 2015 no. 1454 “On Approving the Charter of the Commission for Consideration of Appeals of the Decisions of Designated Conformity Assessment Bodies and the Procedure for Consideration of Appeals of the Decisions of Designated Conformity Assessment Bodies” - lays down a procedure on how appeals on the decisions of conformity assessment bodies are considered;

- Order of the Ministry of Economic Development and Trade of Ukraine of 10 February 2016 no. 224 “On Approving the Procedure for the Formation and Maintenance of the Register of Designated Conformity Assessment Bodies and Recognised Third Party Organisations and the Procedure for the Formation and Maintenance of the Data Base of Information, Received by Designating Authority from Designated Conformity Assessment Bodies and Recognised Third Party Organisations” - sets forth a procedure on how the register of designated conformity assessment bodies/recognised third party organisations is operated;

- Order of the Ministry of Economy of Ukraine of 14 May 2020 no. 879 “On Approving the Unified Form of Act, Drawn Up as a Result of a Planned (Unplanned) Inspection of a Designated Conformity Assessment Body or a Recognised Third Party Organisation with Regard to Their Compliance with Requirements for Designated Conformity Assessment Bodies or Recognised Third Party Organisations and the Fulfilment by Them of Their Obligations, Set Out by the Law of Ukraine “On Technical Regulations and Conformity Assessment” and by the Relevant Technical Regulations” - establishes the form of a document resulting from the monitoring of designated conformity assessment bodies, contains a list of issues to be complied with by a designated conformity assessment body;

- Order of the Ministry of Economy of Ukraine of 18 November 2020 no. 2363 “On Approving the Sample Charter of the Sectorial (Inter-Sectorial) Group of Designated Conformity Assessment Bodies and/or Recognised Third Party Organisations” - regulates the activities of the sectoral (cross-sectoral) group of designated conformity assessment bodies, provided for in Article R30 of Annex I of EU Decision 768/2008/EC;

- Order of the Ministry of Economic Development and Trade of Ukraine of 7 August 2019 no. 1327 “On Approving the List of National Standards Compliance with Which Gives the Presumption of Conformity of Conformity Assessment Bodies and Recognised Third Party Organisations with Special Requirements for Designated Conformity Assessment Bodies or Recognised Third Party Organisations” - contains the list of standards giving presumption of conformity of designated conformity assessment bodies, as envisioned in Article R18 of Annex I of EU Decision 768/2008/EC, developed on the basis of the list contained in Commission communication, published in the Official Journal of the European Union on 15 June 2018.

The administrative structure is as follows:

Chapter II of the Law of Ukraine “On Technical Regulations and Conformity Assessment” delineates the competences of public authorities in the area of technical regulations in the following way:

all horizontal issues are entrusted to the Ministry of Economy of Ukraine;

the drafting, implementation and revision of technical regulations and conformity assessment procedures, envisioned therein, are entrusted to various central executive authorities and the Security Service of Ukraine, tasked with the functions of technical regulation by the Cabinet of Ministers of Ukraine in specific areas of activities.

Pursuant to CMU Resolution of 16 December 2015 no. 1057 seventeen central executive authorities and the Security Service of Ukraine are tasked with the functions of technical regulation, namely:

- Ministry of Economy;
- Ministry of Infrastructure;

- Ministry of Health;
- Ministry of Internal Affairs;
- State Service for Emergencies;
- Ministry of Energy;
- Ministry of Social Policy;
- Ministry of Community and Territorial Development;
- State Agency for Energy Efficiency and Energy Saving;
- Ministry of Defence;
- Ministry of Environmental Protection and Natural Resources;
- State Inspectorate for Nuclear Regulation;
- State Space Agency;
- State Service for Special Communications and Information Protection;
- Ministry of Digital Transformation;
- Security Service of Ukraine;
- Ministry of Agricultural Policy.

For proper implementation of technical regulations there are 78 accredited and designated conformity assessment bodies that perform the functions of third party conformity assessment in the areas for which they have been designated.

In the area of standards:

The legal basis is comprised of the following laws and by-laws:

- The Law of Ukraine of 5 June 2014 No. 1315-VII “On Standardisation”, which has been developed on the basis of the relevant Annex 3 to the WTO TBT Agreement; (The law establishes the legal and organizational principles of standardization in Ukraine and aims to ensure the formation and implementation of public policy in this area).

- CMU Resolution of 26 November 2014 no. 1163 “On Designation of the State Enterprise that Performs the Functions of the National Standardisation Body” (Article 11 of the Law “On Standardization” defines the powers of the national standardization body, in particular: organization and coordination of activities for development, adoption, verification, revision, cancellation and restoration of national standards, codes of good practice and amendments to them according to this Law; adoption, cancellation and restoration of national standards, codes of good practice and amendments to them according to this Law, taking measures to harmonize national standards and codes of good practice with relevant international, regional standards and codes of good practice, taking measures to harmonize national standards and codes of good practice with relevant international, regional standards and codes of good practice, development, in coordination with the central executive body implementing state policy in the field of standardization, of national standards and amendments to them on:

- procedures for developing, adopting, reviewing, revising, canceling and restoring national standards, codes of good practice and amendments thereto;
- criteria, forms and procedures for consideration of proposals for national standardization;
- procedures for the establishment, operation and termination of technical standardization committees.

ensuring compliance of national standards and codes of good practice with legislation; ensuring the adaptation of national standards and codes of good practice to modern advances in science and technology, preparation and approval of a program of work on national standardization; making decisions on the establishment and termination of technical committees of standardization, determining the scope of their activities; coordination of the activities of technical committees of standardization; participation in the preparation of international, regional standards and codes of good practice developed by relevant international and regional standardization organizations, a member of which is a national standardization body or with which it cooperates in accordance with the provisions of such organizations or relevant agreements, as well as ensuring specified activities).

- Order of the Ministry of Economic Development and Trade of Ukraine of 2 February 2015 no. 76 “On Approving the Charter of the governing Board of the National Standardisation Body”; (The Steering Committee is an advisory and supervisory body of the national standardization body. The Steering Committee is formed on a parity basis consisting of twenty-one persons. Experience and professional competence in the field of standardization of each candidate for members of the Steering Committee are taken into account during the formation of the personnel of the Steering Committee. The personal composition of the Steering Committee is approved by the order of the Ministry of Economy. The powers of the governing council include, in particular, the preparation of proposals for: the formation of state policy in the field of standardization; monitoring compliance with the national standardization body's procedures in the field of standardization; standardization procedures; joining international and regional standardization organizations, concluding agreements on cooperation and conducting work in the field of standardization with national standardization bodies of other states; appointment to the position of head of the national standardization body).

- Order of the Ministry of Economy and Trade of Ukraine of 8 September 2021 no. 508 “On Approving the Composition of the Governing Board of the National Standardisation Body”; (The composition of the Steering Committee has been renewed in order to transparently take into account the position of all stakeholders, in particular, business, which is a member of the technical committees of standardization).

- Order of the Ministry of Economic Development and Trade of Ukraine of 9 February 2015 no. 103 “On Approving the Charter of the Appeals Commission and the Procedure for Consideration of Appeals”; (The Appeals Commission is a permanent advisory body of the Ministry of Economy of Ukraine. The Commission: considers appeals submitted by any natural or legal person who has a direct or indirect interest in standardization activities and / or the application of its results, or the Technical Committee (hereinafter - the applicant) on decisions, actions or omissions of the national standardization body; considers information, documents and materials necessary for the appeal received from the applicant and the national standardization body; based on the appeal decides to uphold the appeal or reject the appeal).

- Order of the Ministry of Economic Development and Trade of Ukraine of 5 October 2016 no. 1685 “On Approving the Methodology for Determining the Complexity and Cost of Works in National Standardisation”. (This Methodology establishes basic standards for the complexity of work on national standardization, correction factors, the procedure for determining the complexity, overall complexity and cost of work on national standardization, established by the Law of Ukraine "On Standardization" and national standards. This Methodology is applied by the central executive bodies, which are the customers of the national standardization works at the expense of the state budget.

The administrative structure is as follows:

The Ministry of Economy of Ukraine is responsible for the formulation and implementation of public policy in the area of standardisation, including legal regulation.

In accordance with the Law of Ukraine “On Standardisation” there is a single national standardisation body of Ukraine and this status has been granted to the State Enterprise “Ukrainian Scientific and Research and Training Centre for the Issues of Standardisation, Certification and

Quality” (UkrNDNC). The national standardisation body has the Governing Board, which is composed of representatives of various stakeholders on the parity basis and the Appeals Commission.

Article 23 of the Law of Ukraine “On Standardisation” stipulates that national standards shall be applied on voluntary basis, unless their mandatory application is required by legal regulations. The mode of using the national standards for the purposes of technical regulations (the only or one of the means of meeting the requirements of technical regulations or giving the presumption of conformity) is set out in Articles 11 and 11-1 of the Law of Ukraine “On Technical Regulations and Conformity Assessment”.

The development of national standards is carried out in technical committees (TCs). As of the end of December 2021 there were 164 TCs in Ukraine, out of which:

- 119 TCs are active;
- 37 TCs are inactive;
- 5 TCs are non-engaged;
- 3 TCs are newly created.

Ukrainian national standardisation body is a full member of ISO and IEC and a companion organisation of CEN/CENELEC.

In the area of accreditation:

The legal basis is comprised of the following laws and by-laws:

- The Law of Ukraine of 17 May 2001 No. 2407-III “On Accreditation of Conformity Assessment Bodies”, which has been developed on the basis of international best practices and in 2011 and 2015 was amended in line with relevant Chapter II of Regulation (EC) 765/2008;

- Order of the Ministry of Economy and European Integration of Ukraine of 4 January 2002 no. 5 “On Setting Up the National Accreditation Body of Ukraine” - establishes the single national accreditation body of Ukraine;

- Order of the Ministry of Economic Development, Trade and Agriculture of Ukraine of 13 July 2020 no. 1318 “On Approving the New Wording of the Charter of the National Accreditation Agency of Ukraine” - provides for the charter of the national accreditation body of Ukraine with its status, structure, powers and competences;

- Order of the Ministry of Economic Development and Trade of Ukraine of 26 August 2016 no. 1408 “On Approving the Charter of the Accreditation Board of the National Accreditation Agency of Ukraine” - provides for the charter of the Accreditation Board, which is a part of the national accreditation body, with its competences and powers;

- CMU Resolution of 16 December 2015 no. 1170 “On Approving the Procedure for Monitoring of Compliance with the Requirements for National Accreditation Body and Amending paragraph 4 of the Charter of the Ministry of Economic Development and Trade of Ukraine” - sets forth a procedure on how the national accreditation body is monitored, as required by Article 9(2) of Regulation (EC) 765/2008;

- Order of the Ministry of Economy and European Integration of Ukraine of 21 November 2002 no. 339 “On Approving the Description and Rules of Application of the National Accreditation Mark” - describes the national accreditation mark and the rules, according to which it is to be used;

- Order of the Ministry of Economic Development and Trade of Ukraine of 5 September 2012 no. 973 “On Approving the Methodology for Calculation of Cost of Accreditation Work and Monitoring” - provides for the methodology for calculation of the cost of accreditation works (including the monitoring of accredited conformity assessment bodies) to be conducted by the single national accreditation body of Ukraine.

The administrative structure is as follows:

Pursuant to the Law of Ukraine “On Accreditation of Conformity Assessment Bodies”, the accreditation of conformity assessment bodies in Ukraine is performed by the single national accreditation body of Ukraine, which is a state organisation, set up by the Ministry of Economy, and which carries out not-for-profit activity. In accordance with its Charter, the National Accreditation Agency of Ukraine (NAAU) is Ukraine’s national accreditation body. Within the national accreditation body of Ukraine there is the consultative and supervisory Accreditation Board, which consists of representatives of public authorities, accredited conformity assessment bodies and business and civic associations, represented on the parity basis.

NAAU is a full member of ILAC and IAF and is a signatory of BLA with EA.

In the area of metrology:

The legal basis is comprised of the following laws and 40 by-laws (the list of by-laws includes only the most important ones as well as technical regulations for SI units, various measuring instruments and pre-packages):

- The Law of Ukraine of 5 June 2014 No. 1314-VII “On Metrology and Metrological Activity”, which has been developed on the basis of OIML D1:2012 “Considerations for a law on metrology”;

- CMU Resolution of 27 May 2015 no. 330 “On Designation of Scientific Metrological Centers”, 4 scientific metrological centers have been designated:

National Scientific Centre “Institute of Metrology” (in Kharkiv);

State-Owned Enterprise “UkrMetrTestStandard” (in Kyiv);

State-Owned Enterprise Scientific Research Institute “Systema” (in Lviv);

State-Owned Enterprise “Ivano-FrankivskStandardMetrology” (in Ivano-Frankivsk);

- CMU Resolution of 4 June 2015 no. 374 “On Approving the List of Categories of Legally Regulated Measuring Instruments That are Liable to Periodic Verification”, 80 categories of legally regulated measuring instruments subject to periodic verification, as well as types of activities belonging to the sphere of legally regulated metrology (Article 3 of the Law of Ukraine “On Metrology and Metrological Activity”) in which these instruments are used;

- CMU Resolution of 17 June 2015 no. 398 “On Approving the Procedure and Criteria for Granting to Primary Measurement Standards the Status of National Primary Measurement Standards”, approved Procedure and criteria determine the procedure for granting primary and secondary standards (including state standards and standards owned by enterprises and organizations) the status of national standards, their registration and deprivation of this status;

- CMU Resolution of 8 July 2015 no. 474 “On Approving the Procedure for Submission of Measuring Instruments for Periodic Verification, Maintenance and Repair”, The approved Order defines the procedure for submission for periodic verification, maintenance and repair (including dismantling, transportation and installation) of measuring equipment, the measurement results of which are used to make calculations for electricity and gas consumed for household needs, commercial calculations for consumed heat and water, which is the property of individuals, the joint property of the co-owners of an apartment building;

- CMU Resolution of 2 September 2015 no. 663 “On Approving the Charter of the Service of Reference Materials of Composition and Properties of Substances and Materials”, approved Regulations on the Service of standard samples of composition and properties of substances and materials. The service of standard samples of composition and properties of substances and materials is a system of enterprises, institutions and organizations of all forms of ownership, their structural subdivisions, which constantly carry out scientific and metrological activities on development and application of standard samples of composition and properties of substances and materials. The main

tasks of the Service are: implementation of intersectoral coordination; ensuring the unity of measurements and traceability in those types of measurements that can not be provided by standards; performing work related to the development and implementation of standard models;

- CMU Resolution of 2 September 2015 no. 664 “The Issues of the Service of Uniform Time and Etalon Frequencies”, approved Regulations on the Unified Time and Reference Frequencies Service. The Unified Time and Reference Frequencies Service is a system of structural subdivisions of enterprises, institutions and organizations that constantly conduct scientific and metrological activities to measure time and frequency in uniform units and scales throughout Ukraine and provide consumers with time and frequency information with appropriate technical base. The main tasks of the Service are: implementation of intersectoral coordination; performance of works aimed at ensuring the unity of time and frequency measurements; determination of the parameters of the Earth's rotation; providing time-frequency information and information to ensure the application of a single accounting time;

- CMU Resolution of 28 October 2015 no. 865 “On Approval of the Order of Payment of Works on Carrying Out Verification of Legally Regulated Measuring Instruments, Which Are in Operation, and Definition of Cost of Such Works”, The approved Procedure establishes the mechanism of payment by enterprises, institutions, organizations, individuals - entrepreneurs (customers) of works specified in Article 17 of the Law of Ukraine “On Metrology and Metrological Activity” and determination of their value, namely verification of legally regulated measuring instruments that are in operation;

- CMU Resolution of 16 December 2015 no. 1058 “On Approving the Criteria by Which the Level of Risk from Conducting Economic Activities in the Area of Metrology and Metrological Activity is Assessed and the Frequency of Planned Measures of Metrological Supervision of Legally Regulated Measuring Instruments in Use and Quantity of Packaged Goods in Pre-Packages, to be Carried Out by the State Service for the Safety of Foodstuffs and Consumer Rights Protection, is Determined” (needs exclusion on the basis of the following in the list of the resolution of the Cabinet of Ministers of 06.03.2019 № 185, which is valid);

- CMU Resolution of 06 March 2019 no. 185 “On approval of criteria for assessing the degree of risk from conducting economic activities in the field of regulated metrology and determining the frequency of implementation by the State Service for Food Safety and Consumer Protection of planned measures of metrological supervision of legally regulated measuring instruments in operation, and the quantity of packaged goods in packages”. Criteria for assessing the degree of risk from economic activity in the field of legally regulated metrology are: type of activity in the field of legally regulated metrology; the presence of violations of the requirements of the legislation in the field of legally regulated metrology, which were identified as a result of scheduled and unscheduled inspections during the last three years preceding the planned one. The list of criteria for assessing the degree of risk from economic activity in the field of regulated metrology, their indicators and the number of points for each indicator, the classification of the business entity to high, medium or low risk is based on the sum of points accrued for all criteria;

- CMU Resolution of 16 December 2015 no. 1110 “On Approving the Procedure for Carrying Out Control Over Compliance with the Rules and Conditions of Maintenance and Application of National Primary Measurement Standards”, the approved Order determines the procedure for monitoring compliance with the rules and conditions of storage and application of national standards;

- CMU Resolution of 16 December 2015 no. 1113 “On Approving the Charter of the Service of Standard Reference Data on Physical Constants and Properties of Substances and Materials”, approved the Regulations on the Service of standard reference data on physical steels and properties of substances and materials. The service of standard reference data on physical steels and properties of substances and materials is a system of enterprises, institutions and organizations of all forms of ownership, their structural units, united by constant scientific and metrological activities to develop and implement standard reference data on physical steels and properties of substances and materials.

The main tasks of the Service are: implementation of intersectoral coordination; ensuring the uniformity of measurements by introducing standard reference data; ensuring the implementation of work related to the development and implementation of standard reference data;

- CMU Resolution of 16 December 2015 no. 1195 “On Approving the Procedure for Establishing Verification Intervals for Legally Regulated Measuring Instruments by Categories”, the approved Order determines the procedure for establishing intercalibration intervals for legally regulated measuring instruments by categories;

- CMU Resolution of 23 December 2015 no. 1152 “On Peculiarities of Metrological Support of Activities in the Area of Defence of Ukraine”, determined the features of ensuring the unity of measurements in the field of defense of Ukraine;

- CMU Resolution of 24 February 2016 no. 117 “On Approval of the Order For Issue or Refusal in Issue of the Certificate on Authorization to Carry Out Verification of Measuring Instruments, Which Are in Operation and Are Applied in the Field of Legally Regulated Metrology, Its Cancellation”, the approved Order determines the procedure for issuing or refusing to issue a certificate of authorization to carry out verification of measuring instruments in operation and used in the field of legally regulated metrology, its revocation.

Requirements for measuring instruments provided on the market of Ukraine and / or put into operation in Ukraine are established by 3 technical regulations:

- Technical Regulation on Non-Automatic Weighing Instruments, approved by CMU Resolution of 16 December 2015 no. 1062 and developed on the basis of EU Directive 2014/31/EU on the harmonisation of the laws of the Member States relating to the making available on the market of non-automatic weighing instruments (NAWI);

- Technical Regulation on Measuring Instruments, approved by CMU Resolution of 24 February 2016 no. 163 and developed on the basis of EU Directive 2014/32/EU on the harmonisation of the laws of the Member States relating to the making available on the market of measuring instruments (MID);

- Technical Regulation on Legally Regulated Measuring Instruments, approved by CMU Resolution of 13 January 2016 no. 94, which covers the categories of legally regulated measuring instruments in Ukraine that are not covered by technical regulations developed on the basis of MID and NAWI Directives.

Metrological requirements for pre-packages are set by:

- Technical Regulation on Bottles Used as Measuring Containers, approved by CMU Resolution of 19 August 2015 no. 607 and developed on the basis of EU Directive 75/107/EEC;

- Technical Regulation on Certain Goods that Are Packed by Weight and Volume in the Finished Package, approved by CMU Resolution of 16 December 2015 no. 1193 and developed on the basis of EU Directive 76/211/EEC;

- Order of the Ministry of Economic Development and Trade of Ukraine of 5 July 2017 no. 969 "On establishing metrological requirements for pre-packages" (does not apply to packaged units manufactured according to the Technical Regulation on Certain Goods that Are Packed by Weight and Volume in the Finished Package provided that they bear the mark of conformity of the packaged unit and the Technical Regulation on Bottles Used as Measuring Containers subject to the mark of conformity of the measuring bottle), which establishes metrological requirements for pre-packages for: deviations of the quantity of pre-packages in packages from the nominal value according to the DSTU OIML R 87 "Quantity of product in pre-packages"; declared quantity of net packaged goods according to section 5 of the DSTU OIML R 79 "Packaged goods. Requirements for labeling".

Names, definitions, designations of units of measurement are established by the Order of the Ministry of Economic Development and Trade of Ukraine of 4 August 2015 no. 914 "On approval of

definitions of the basic SI units, names and definitions of SI derived units, decimal multiples and partial of SI units, permitted extra-system units, as well as their designations and rules of application of units of measurement and writing of names and designations of units of measurement and symbols”, developed on the basis of EU Directive 80/181/EEC on the approximation of the laws of the Member States relating to units of measurement.

The administrative structure is as follows:

Pursuant to the Charter of the Ministry of Economy of Ukraine, approved by the CMU Resolution of 20 August 2014 no. 459, the Ministry of Economy is tasked with coordination of activities aimed at ensuring the functioning and development of the metrological system of Ukraine. As such, the Ministry of Economy is a central metrology authority (CMA).

Conformity assessment of measuring instruments in accordance with three technical regulations is performed by 14 designated conformity assessment bodies (as of the end of December 2021).

In accordance with the Law of Ukraine “On Metrology and Metrological Activity”, legally regulated measuring instruments that are in use in Ukraine are liable to periodic verification. The current list of such instruments, approved by the Cabinet of Ministers of Ukraine, contains 80 categories of measuring instruments. As of the end of December 2021, 66 verification laboratories have been authorised to perform such verification.

Legally regulated measuring instruments, which are made available on the market or are in use, and pre-packages are subject to metrological surveillance (supervision). This surveillance is carried out by the State Service for the Safety of Foodstuffs and Consumer Rights Protection.

In terms of the National Metrology Institute (NMI), Ukraine has a “distributed” system (as envisioned in OIML D1:2020). CMU Resolution of 27 May 2015 no. 330 designated four scientific metrological centres, which create, improve, maintain and apply national primary measurement standards. These are:

- National Scientific Centre “Institute of Metrology” (in Kharkiv);
- State-Owned Enterprise “UkrMetrTestStandard” (in Kyiv);
- State-Owned Enterprise Scientific Research Institute “Systema” (in Lviv);
- State-Owned Enterprise “Ivano-FrankivskStandardMetrology” (in Ivano-Frankivsk).

Development of the national measurement standards base (creation, improvement, verification of state measurement standards) is carried out according to the Program of development of the measurement standards base for 2018-2022 approved by CMU Resolution of 28 December 2016 no. 1041.

The list of national primary measurement standards of Ukraine contains 83 state primary measurement standards for units of measurement.

BIPM CIPM MRA database contains 308 CMCs for Ukraine.

Accreditation of calibration laboratories is performed by the National Accreditation Agency of Ukraine (NAAU) in accordance with DSTU ISO/IEC 17025. The total number of accredited calibration laboratories in Ukraine is 36.

Ukraine is represented in the following international and regional metrology organisations:

CGPM - full member since 2018;

COOMET - full member since 1992;

EURAMET - partner organisation since 1998;

OIML - full member since 2021.

B. Checks for conformity on product safety rules of products imported from third countries

10. Is there legislation in place providing for conformity with the rules on product safety in the case of imported products?

The Law of Ukraine of 15 January 2015 No. 124-VIII “On Technical Regulations and Conformity Assessment” (came into force on 10 February 2016), the Law of Ukraine of 2 December 2010 No. 2736-VI “On General Non-Food Product Safety” (came into force on 5 July 2011) as well as all technical regulations, effective in Ukraine, are equally applicable to both domestic (Ukrainian) products and products of foreign origin. The purpose is to ensure the placing on the market, making available on the market and putting into service of safe products only.

Legal and organizational principles of state control carried out in order to verify compliance with legislation on food, feed, animal health and welfare by market operators, as well as legislation on by-products of animal origin during the import (shipment) of such by-products to the customs territory of Ukraine regulated by the Law of Ukraine “On state control over compliance with legislation on food, feed, by-products of animal origin, animal health and welfare”.

According to Article 60 of the Law of Ukraine, special conditions for the import of food and feed shall be established on the basis of a risk assessment confirming the existence of a relevant threat to human and / or animal health, and may include:

- 1) approval of the list of exporting states from which the import (shipment) of loads with certain types of food and feed to the customs territory of Ukraine is allowed;
- 2) approval of special forms of international certificates, which loads with certain types of food and feed shall be accompanied with;
- 3) special conditions for the import of loads with certain types of food and feed.

Special import conditions for food and feed may be established for one type of food or feed or for a group of food or feed. They can be imposed on a state, a certain region (zone or compartment) or a group of states.

The Framework for establishing special import conditions for food and feed is approved by the Resolution of the Cabinet of Ministers of Ukraine of October 9, 2019 № 869. This Framework determines the procedure for establishing special import conditions for food and feed in accordance with the Law of Ukraine “On state control over compliance with legislation on food, feed, by-products of animal origin, animal health and welfare”. The establishment of special import conditions is a means of eliminating or reducing the threat to human and / or animal health associated with the risk of the presence of a dangerous factor in the load imported (shipped) to the customs territory of Ukraine to an acceptable level.

Requirements for import (shipment) to the customs territory of Ukraine of live animals and their reproductive material, food of animal origin, feed, hay, straw, as well as by-products of animal origin and products of their treatment and processing, approved by the Ministry of Agrarian Policy Order of 16.11.2018 № 553, registered with the Ministry of Justice on April 4, 2019 № 346/33317.

In addition, the Order of the Ministry of Economy of Ukraine of January 5, 2022 № 10-22 put into force the Long-term plan of state control in certain areas of state control, the implementation of which falls within the competence of the State Food and Consumer Service for 2022-2026 (hereinafter - long-term plan).

The long-term plan contains general information on the structure and organization of control systems for food, feed, animal by-products, as well as the control system for animal health and welfare, control measures carried out within the state supervision in veterinary medicine, safety and individual indicators of food quality, quarantine and plant protection for 2022-2026.

The long-term plan was developed to meet the requirements of the laws of Ukraine “On state control over compliance with legislation on food, feed, animal by-products, animal health and welfare”, “On basic principles and requirements for food safety and quality” and in accordance with principles and requirements of legislation in the field of veterinary medicine (Law of Ukraine “On Veterinary Medicine and Wellbeing of Animals”), as well as considering the provisions of the Regulation of the European Parliament and of the Council (EU) of 15 March 2017 № 2017/625 on official controls and other official activities is carried out to ensure the application of the provisions of food and feed law, rules on animal health and welfare, plant health and plant protection products, amendments to the regulations of the European Parliament and of the Council (EU) № 999/2001, (EU) № 396 / 2005, (EU) № 1069/2009, (EU) № 1107/2009, (EU) № 1151/2012, (EU) № 652/2014, (EU) 2016/429 and (EU) 2016/2031, Council Regulations (EU) № 1/2005 and (EU) № 1 099/2009 and Council Directives 98/58 / EC, 1999/74 / EC, 2007/43 / EU, 2008/119 / EU and 2008/120 / EU, and repealing Regulations of the European Parliament and of the Council (EC) (854 / 2004 and (EC) № 882/2004, Council Directives 89/608 / EEC, 89/662 / EEC, 90/425 / EEC, 91/496 / EEC, 96/23 / EC, 96/93 / EC and 97 / 78 / EU and Council Decision 92/438 / EEC (Official Controls Regulation) (hereinafter - Regulation (EU) № 2017/625).

The State Service of Ukraine for Food Safety and Consumer Protection is a competent body that develops and organizes the implementation of a long-term plan.

Implementation of the long-term plan is ensured by drawing up, approving and implementing annual state control plans, evaluating their implementation, as well as by planning and implementing measures to eliminate identified shortcomings.

The Consumer Service annually reports to the Cabinet of Ministers of Ukraine on the state of implementation of the long-term plan in accordance with the annual report on the state of implementation of long-term and annual state control plans approved by the Ministry of Economy of March 16, 2021 № 547 “On approval of the form of the annual report on the status of implementation of long-term and annual state control plans”, and publishes the report on its official website.

C. International Agreements

11. Has the country signed mutual recognition or co-operation agreements in the field of standards, testing, certification and conformity assessment (based on international standards)?

Ukraine has concluded the Association Agreement with the EU, which was ratified on 16 September 2014 and fully came into force on 1 September 2017. Article 54 thereof stipulates that the Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement, which is hereby incorporated into, and made part of, this Agreement. In accordance with Article 56 Ukraine shall take the necessary measures in order to gradually achieve conformity with EU technical regulations and EU standardisation, metrology, accreditation, conformity assessment procedures and the market surveillance system, and undertakes to follow the principles and practices laid down in relevant EU Decisions and Regulations. Article 57 envisions the conclusion of the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA).

Ukraine is also a party to the WTO TBT, SPS and Government Procurement Agreements.

There are a number of bilateral agreements, concluded at the governmental and inter-agency levels. Overall, in the areas of technical regulation, standardisation, metrology and conformity assessment there are 34 agreements with 29 trade partners of Ukraine, in particular with Austria, Lithuania, North Macedonia, Moldova, Germany, Slovak Republic, Italy, Bulgaria, France, Azerbaijan, Vietnam, Georgia, Armenia, Egypt, Israel, Turkey, etc.

The agreements provide cooperation in the fields of standardisation, metrology and conformity assessment in order to ensure the interests of the Parties according to the legislation of the States of the Parties; achieve mutual recognition of conformity assessment results of mutually supplied

products in accordance with the legislation of the States of the Parties; exchange of national rules necessary for the preparation of national standards due to the legislation of the States of the Parties relevant to the interests of the Parties; achieve mutual recognition of verification and calibration results of measuring instruments and joint comparisons of measurement standards.

The legal framework of cooperation is constantly analysed and updated given the definition of priorities in the development of trade and economic relations of Ukraine with trading partners.

15 Ukrainian conformity assessment bodies have concluded conformity assessment recognition agreements with the relevant bodies from 27 countries.

12. Is there legislation in place providing for conformity with the rules on product safety in the case of imported products?

The Law of Ukraine of 15 January 2015 No. 124-VIII “On Technical Regulations and Conformity Assessment” (came into force on 10 February 2016), the Law of Ukraine of 2 December 2010 No. 2736-VI “On General Non-Food Product Safety” (came into force on 5 July 2011) as well as all technical regulations, effective in Ukraine, are equally applicable to both domestic (Ukrainian) products and products of foreign origin. The purpose is to ensure the placing on the market, making available on the market and putting into service of safe products only.

D. Technical Regulations & Conformity Assessment

13. Is there a basis for product conformity regulation and has legislation moved towards the principles applied in European harmonised legislation, i.e. minimum requirements, absence of mandatory standards, self-certification and the presumption of conformity?

The law that provides legal and organisational basis for the drafting, adoption and application of technical regulations and conformity assessment procedures, if required, in accordance with the WTO TBT Agreement and EU requirements is the Law of Ukraine of 15 January 2015 No. 124-VIII “On Technical Regulations and Conformity Assessment” (hereinafter - the Law). The Law came into force on 10 February 2016 and provides the foundation for implementation in Ukraine of the principal provisions of Decision 768/2008/EC and the New Approach Directives.

Article 11 of the Law mandates that products to be placed on the market, made available on the market and/or put into service shall comply with the requirements of all technical regulations applicable to such products, unless otherwise stipulated in the relevant technical regulations.

If an act of EU acquis establishes requirements for the use of the product, a Ukrainian technical regulation transposing this act shall also establish such requirements (e.g. in the case of transportable pressure equipment).

The Law provides the legal basis for transposition of acts of EU acquis of both New (Global) Approach and Old Approach. Thus, Article 10 mandates that if a technical regulation is developed on the basis of an act of EU acquis its contents, form and structure shall fully and precisely correspond to the contents, form and structure of an act of EU acquis, taking into account the possibilities of regulation of concrete societal relations by legislative acts of Ukraine.

At the same time, the Law also establishes the legal basis for the development of national technical regulations for products not covered by the EU harmonisation legislation.

The general rules, established by Articles 9 and 14 of the Law, for the development, adoption and application of any technical regulations and conformity assessment procedures are the rules laid down in WTO TBT Agreement.

The Law stipulates that the assessment of conformity to technical regulations, if required, shall be carried out by means of application of conformity assessment procedures, set out in such technical

regulations. Conformity assessment procedures are applied by manufacturers and, if their obligations are imposed by technical regulations on other economic operators, by importers, distributors or other persons.

Manufacturers and other economic operators apply conformity assessment procedures on their own and, if mandated by technical regulations or conformity assessment procedures, set out therein, - with the involvement of the relevant conformity assessment bodies, which could be:

- designated conformity assessment bodies;
- recognised third party organisations (for certain activities in the area of pressure equipment);
- accredited in-house bodies (where a conformity assessment procedure provides the manufacturer with the choice to involve his accredited in-house body or a designated body).

Thus, depending on the product category and risk such a product could pose, each technical regulation defines a possibility for the manufacturer to carry out conformity assessment on his own (self-certification) or with the involvement of the third party.

Each technical regulation sets out the mode of conformity assessment, which may include one conformity assessment procedure, several procedures or a combination thereof.

If technical regulations require the application of conformity assessment procedures, such procedures are laid down directly in technical regulations, approved by the laws or acts of the Cabinet of Ministers of Ukraine, or are approved separately by the Cabinet of Ministers of Ukraine.

For the latter case, the Cabinet of Ministers of Ukraine approved conformity assessment modules to be used for the development of conformity assessment procedures, and the rules for the use of conformity assessment modules (CMU Resolution of 13 January 2016 no. 95 “On Approving the Conformity Assessment Modules to Be Used for Development of Conformity Assessment Procedures and the Rules for the Use of Conformity Assessment Modules”). These modules have been developed on the basis of Decision 768/2008/EC and are identical with the modules set out in this Decision.

Conformity assessment modules, approved by the Cabinet of Ministers, are applied as conformity assessment procedures if referred to in relevant technical regulations. If an act of EU acquis, which serves as a basis for the development of a Ukrainian technical regulation, contains conformity assessment procedures directly, the reference to the conformity assessment modules, approved by the CMU, in this technical regulation is not allowed - it shall contain the conformity assessment procedures, as set out directly in the respective act of EU acquis.

For instance, one of the modules (module A) defines such a conformity assessment procedure as internal production control, which does not imply the involvement of the third party. This procedure shall be carried out by the manufacturer on his own and shall result in drawing up by him (or his authorised representative) of a declaration of conformity, wherein he declares that compliance with the requirements, set out in relevant technical regulations, have been proven.

Article 10 of the Law stipulates that technical regulations contain, as a rule, technical requirements to be complied with by the product, placed or made available on the market or put into service, these technical requirements could be set out as essential requirements defining the level of protection of public interests and formulated from the viewpoint of results to be achieved.

The Law also defines the means of ensuring conformity of products to the established requirements:

- through the application of national standards and/or other technical specifications, referenced in respective technical regulations. A technical regulation shall define whether compliance with such national standards and/or other technical specifications is the only or one of the ways of meeting the requirements of the technical regulation concerned;

- a technical regulation may envision that compliance of a product with standards from the list of national standards for this technical regulation or parts thereof gives presumption of conformity of such a product to the essential requirements of the technical regulation in question, covered by such standards or parts thereof and set out in this technical regulation.

Thus, presumption of conformity to the requirements of a concrete technical regulation is ensured, which is one of the fundamental principles of the EU New Approach technical legislation.

Manufacturers are entitled to adopt other decisions for meeting essential requirements of the technical regulation than the application of standards from the list of national standards for this technical regulation. Thus, the voluntary application of national standards to achieve compliance with the requirements of technical regulations is ensured.

The Law specifically stipulates that if a technical regulation has been developed on the basis of an act of EU *acquis*, which provides for the application of harmonised European standards, the list of national standards for the technical regulation in question shall include only the national standards that are identical with the respective harmonised European standards.

In Ukraine there is also the Law of Ukraine of 2 December 2010 No. 2736-VI “On General Non-Food Product Safety”, which has transposed EU Directive 2001/95/EC. It came into force on 5 July 2011. The Law on general product safety sets up the legal and organisational foundations for placing on the market and ensuring the safety of non-food products for which there are no special safety requirements, set out by technical regulations.

The Law on general product safety mandates that manufacturers shall place on the market only safe products. Safe products are the products that comply with the safety requirements of legislation or, in the absence of such, the product is deemed safe until a market surveillance authority proves that the product concerned is unsafe. The Law on general product safety contains a list of criteria for proving the safety of products.

Therefore, in Ukraine the principles of the EU *acquis* in relation to the harmonisation of requirements for products, in particular regarding minimum requirements, absence of mandatory standards, self-certification and the presumption of conformity, have been implemented.

2. QUALITY INFRASTRUCTURE

A. Accreditation

14. Has a single national accreditation body been set up, that acts under public authority, which is independent from conformity assessment & other public authorities?

A single national accreditation body has been set up in Ukraine.

In 2001, the Law of Ukraine of 17 May 2001 No. 2407-III “On Accreditation of Conformity Assessment Bodies” (hereinafter - the Law) was adopted, which defined the legal, organisational and economic foundations for accreditation of conformity assessment bodies in Ukraine. Pursuant to the Law, in 2002 the Ministry of Economy of Ukraine established the National Accreditation Agency of Ukraine (hereinafter - NAAU).

According to Article 6 of the Law, the national accreditation body of Ukraine is a state organisation, formed by the central executive body responsible for the formation of state policy in the area of economic development. The national accreditation body is entitled to conduct not-for-profit economic activities.

The Charter of the national accreditation body of Ukraine is approved by the Ministry of Economy.

The Ministry of Economy has no right to interfere in accreditation activities of the national accreditation body of Ukraine.

According to Article 6¹ of the Law, the national accreditation body of Ukraine shall be organised in such a manner as to make it independent of the conformity assessment bodies it assesses and of commercial pressures, and to ensure that no conflicts of interest with conformity assessment bodies occur.

According to Article 6² of the Law, the national accreditation body of Ukraine shall not offer or provide any activities (including services) that conformity assessment bodies provide.

NAAU compliance with these requirements is checked during peer evaluations performed by the European cooperation for accreditation (EA). NAAU is also subject to monitoring by the Ministry of Economy, as provided for by Article 9(2) of Regulation (EC) 765/2008.

NAAU is an EA member and a signatory to the EA Bilateral Agreement (EA BLA). Recent EA evaluation was performed in September 2021. To date, NAAU is an EA BLA signatory for Product Certification, Inspection, Calibration, Testing, Management Systems Certification, Certification of Persons, and Medical Examination.

15. Is there a national plan for the accreditation of conformity assessment bodies and is it being implemented according to plan?

A national plan for the accreditation of conformity assessment bodies exists and it is being implemented.

On 22 September 2021, the Cabinet of Ministers of Ukraine issued its Executive Order no. 1145-r approving the Action Plan for the Development of Technical Regulation System until 2025 (hereinafter - the Plan).

According to section 22 of the Plan, recognition agreements shall be signed between the National Accreditation Agency of Ukraine and the European cooperation for accreditation, the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF) in all scopes of accreditation where Ukraine carries out accreditation.

According to section 23 of the Plan, the National Accreditation Agency of Ukraine shall maintain its status of a signatory to recognition agreements between the National Accreditation Agency of Ukraine and the European cooperation for accreditation, the International Laboratory Accreditation Association (ILAC) and the International Accreditation Forum (IAF).

According to section 24 of the Plan, the accreditation scheme for GHG validation and verification in accordance with the national standard DSTU ISO 14065:2015 shall be implemented.

As of today, the above measures have been implemented by providing recognition of the National Accreditation Agency of Ukraine at the international and European levels through signing and maintenance of relevant agreements. NAAU has also implemented a scheme for accreditation of GHG validation and verification bodies in accordance with the national standard DSTU ISO 14065:2015 and has accredited 3 GHG verification bodies.

B. Market Surveillance

16. How is it ensured that products on the market throughout the country meet standard requirements? Alternatively, is there a reliable and standardised system of pre-marketing authorisation?

According to the Law of Ukraine “On Standardisation” standards are voluntary in Ukraine, unless otherwise provided in specific legal acts.

Mandatory requirements for products are established in technical regulations, which are developed, adopted and applied in accordance with the Law of Ukraine “On Technical Regulations and Conformity Assessment”. Seventeen public authorities have been empowered to develop and/or adopt technical regulations in Ukraine with clearly delineated areas of competence.

In the absence of technical regulations for a product, the Law of Ukraine “On General Non-Food Product Safety” is applicable, which stipulates that in the absence of mandatory requirements any product placed on the market of Ukraine shall be safe (general product safety requirement). This Law also envisions an array of criteria on how product safety can be assessed.

If envisioned in relevant technical regulations, a product may be subject to conformity assessment before it is placed on the market. The general issues of development, adoption and application of conformity assessment procedures are regulated by the Law of Ukraine “On Technical Regulations and Conformity Assessment”, while the conformity assessment procedures per se for a specific product are set out in technical regulation(s), covering the product concerned.

Compliance with technical regulations and carrying out the conformity assessment procedures, if required, constitute the “pre-market control” of products before they are placed on the market. The old UkrCEPRO system of mandatory certification for a number of products with the use of mandatory standards was ultimately abolished from 1 January 2018.

When made available on the market and/or put into service, the products are subject to market surveillance, as described below.

17. Do market surveillance authorities control products on their national market (domestic products or products coming from third countries)?

When made available on the market and/or put into service, the products are subject to market surveillance, as required by the Laws of Ukraine “On State Market Surveillance and Control of Non-Food Products” (transposing Regulation (EU) 765/2008) and “On General Non-Food Product Safety” (transposing EU Directive 2001/95/EC). During the market surveillance, products are selectively checked as for their compliance with technical regulations, conformity assessment procedures and general product safety requirement according to the annual national sectoral programmes.

No distinction is made between domestic and imported products: they are treated equally. However, certain differences exist in market surveillance procedures for non-compliant products, because for domestic products their manufacturers can be reached by Ukrainian market surveillance authorities, while for imported products the interaction has to be done with and/or through the importers.

In Ukraine market surveillance is carried out by nine market surveillance authorities, which are responsible for specific technical regulations. Joint inspections are envisioned for products, covered by technical regulations, for which different market surveillance authorities are competent. The State Service for the Safety of Foodstuffs and Consumer Rights Protection checks compliance with the general product safety requirement. Products entering the customs territory of Ukraine are subject to state control of non-food products, performed by the State Customs Service of Ukraine.

Overall coordination and evaluation of the functioning of the system of market surveillance as well as the maintenance of informational systems in this area is carried out by the Ministry of Economy of Ukraine.

18. How is the independence and impartiality of market surveillance authorities ensured?

In terms of independence of market surveillance authorities:

Article 10 of the Law of Ukraine “On State Market Surveillance and Control of Non-Food Products” clearly prohibits any illegal influence and interference with the exercise by market surveillance authorities of their competences.

Article 18 of the above-mentioned Law mandates that officials carrying out state market surveillance and control of non-food products shall be independent in their exercise of their powers and thereby shall be guided by the Constitution and the laws of Ukraine as well as by by-laws, adopted on their basis.

In terms of impartiality, the Law of Ukraine “On State Market Surveillance and Control of Non-Food Products” establishes a number of principles and mechanisms, in particular:

Article 5 of the above-mentioned Law lists among the fundamental principles of market surveillance and control of non-food products the objectivity, impartiality and competence of market surveillance authorities and customs authorities during the market surveillance and control of products.

In addition, pursuant to legislation, officials carrying out market surveillance and control of products shall be obliged, in particular:

- to objectively and impartially carry out market surveillance and control of products within the framework of their powers, defined by the laws of Ukraine;
- to adhere to the rules of business ethics in their interactions with economic operators and customs declarants;
- not to impede economic activity during the taking of measure of market surveillance and control of products;
- not to infringe on the rights of economic operators to the legal protection of their rights and interests.

Market surveillance authorities shall act impartially in the selection by them of restrictive (corrective) measures. The mechanisms envisioned by the Law of Ukraine “On State Market Surveillance and Control of Non-Food Products” and described below, are aimed at ensuring such impartiality.

The legislation stipulates that any measure regarding the restriction or prohibition of making a product available on the market, withdrawal or recall of a product, taken by market surveillance authority pursuant to the Laws of Ukraine “On State Market Surveillance and Control of Non-Food Products” and “On General Non-Food Product Safety”, shall be proportionate to the level of hazard posed by the product in question to the public interests.

If a market surveillance authority has established that a product does not comply with established requirements, it shall take relevant restrictive (corrective) measures (restriction, prohibition of making the product available on the market, withdrawal of the product, recall of the product) depending on the character of risk assessed.

The risk assessment is carried out by the market surveillance authority in accordance with the Methodology of Taking Restrictive (Corrective) Measures, approved by the Cabinet of Ministers of Ukraine on the basis of the EU RAPEX Guidelines. This Methodology sets out clear and explicit criteria of risk assessment, conditions and circumstances by which market surveillance authorities select the relevant restrictive (corrective) measures to be taken.

In taking the decision about the withdrawal of a product or its recall, the issue of involvement of distributors, consumers (users) of the product in implementing the relevant measures shall be considered.

The duration of implementation of the decision shall be justified and determined, taking into account the character of risk and/or non-compliance with established requirements, the volume of

products to be brought in conformity with established requirements, withdrawn or recalled, and real capacities of an economic operator to properly implement the decision. The duration of implementation of the decision may be changed by the market surveillance authority on the justified motion of the economic operator concerned. Such a motion may be brought in at any time during the implementation of the decision, but before the expiry of the deadline for such a decision.

Before the decision on restrictive (corrective) measures is made, the market surveillance authority shall provide an economic operator to be affected by the decision with an opportunity to submit in written form his explanations, objections to the draft decision as well as information on the measures taken by him to prevent or avoid the risks to public interests, to eliminate the non-compliance with established requirements, which is the subject matter of the draft decision.

The market surveillance authority shall be obliged to consider the information, received from the economic operator, during the making of the final decision.

In addition, the legislation also ensures the impartiality of market surveillance authorities in planning of their activities for the upcoming year. Thus, during the preparation of drafts of annual market surveillance sectoral plans and draft amendments thereto, the following shall be taken into account:

- the results of monitoring of the reasons and number of complaints from consumers (users) about the protection of their rights to product safety, reasons and number of industrial accidents and cases of injuries resulting from the consumption (use) of the product, to be conducted by market surveillance authorities within the areas of their competences and in accordance with the procedure, laid down by the Cabinet of Ministers of Ukraine;
- analysis of data, entered into the system of rapid alert about the products posing serious risk;
- analysis of information, received from the international, regional and foreign systems of alert about the products posing serious risk;
- analysis of data of the national market surveillance informational system;
- results of monitoring of restrictive (corrective) measures taken;
- the need for joint inspections by market surveillance authorities for products covered by several technical regulations.

19. How often is testing done? Please provide statistics for the last year.

Market surveillance is done on the basis of annual sectoral programmes to be developed and adopted by each of the nine market surveillance authorities. Market surveillance authorities are empowered to examine the product and have it tested, if there are grounds to suspect its non-compliance. Tests require funds to be envisioned in the annual programmes and allocated from the state budget. In case of confirmed non-compliance, the cost of testing is to be reimbursed by the manufacturer/importer of the product concerned. The number of tests is to be adjusted every year, based on the statistics of previously detected non-compliances in each product category. In practice, the availability of funds from the state budget also affects this parameter.

In 2021 out of nine market surveillance authorities only three managed to obtain the funds for testing from the state budget. The results for the year 2021 are as follows:

- Overall: 1756 tests were carried out and 1039 non-compliances confirmed;
- State Service for the Safety of Foodstuffs and Consumer Rights Protection: 1447 tests carried out and 968 non-compliances confirmed;
- State Ecological Inspectorate: 307 tests carried out and 70 non-compliances confirmed;
- State Service for Emergencies: 2 tests carried out and 1 non-compliance confirmed.

20. Do market surveillance authorities take restrictive measures which could include, for example, prohibition of their marketing or their withdrawal for reasons of health/safety, environmental risk or any other risk to public interests, incomplete labelling, inadequate consumer information, or failure to comply with EU legal requirements?

According to the Law of Ukraine “On State Market Surveillance and Control of Non-Food Products”, if a product, when used as intended or under foreseeable conditions of use and when properly installed and maintained, presents a risk to public interests or otherwise does not comply with established requirements, it shall be subject to restrictive (corrective) measures with relevant informing of the public thereof.

Market surveillance authorities are entitled to take the following measures:

- checks of product characteristics, including taking product samples and subjecting them to examination (testing);
- restrictive (corrective) measures that include:
 - restrictions on making the product available on the market (temporary ban on the product until it is brought into compliance);
 - prohibition of making the product available on the market (primarily applied to dangerous products posing serious risk);
 - withdrawal of a product;
 - recall of a product (applied to products, already supplied to consumers (users));
 - control of the state of implementation of decisions on taking restrictive (corrective) measures (follow-up inspections);
 - warning by market surveillance authorities of consumers (users) about the hazard posed by the product that they identified.

The Law provides for a procedure on how the decision on taking restrictive (corrective) measures is made, which envisions interaction with an economic operator concerned and his right to provide his explanations, objections and proposals. The decisions are taken with the use of the Methodology of Taking Restrictive (Corrective) Measures, approved by the Cabinet of Ministers of Ukraine on the basis of the EU RAPEX Guidelines.

The Law also envisions formal non-compliances, which include non-affixing or incorrect affixing of the mark of conformity to technical regulations, absence of or incorrect declaration of conformity, non-submission of or incompleteness of technical documentation. The exact list of formal non-compliances is, as rule, established in respective technical regulations. For these, the market surveillance authorities require bringing into conformity (submission of relevant documents or elimination of non-compliances) within a specified time period.

C. Metrology

21. Does Ukraine have a metrology system and an official metrology body? If so, is the metrology body adequately staffed and equipped?

Ukraine has a metrology system. In accordance with the Law of Ukraine of 5 June 2014 no. 1314-VII “On Metrology and Metrological Activity” the metrology system of Ukraine includes:

- national metrology service;
- legal basis, including legislative acts, technical regulations and other regulations regulating relations in the area of metrology and metrological activity;

- national base of the measurement standards and the system of dissemination of measurement units;

- the system of voluntary accreditation of calibration laboratories as well as of accreditation of testing laboratories, conformity assessment bodies in cases, specified by the legislation;

- educational institutions, scientific and research facilities and organisations that disseminate knowledge and experience in the area of metrology and metrological activity.

The national metrology service of Ukraine is composed of:

- the central executive authority that formulates and implements public policy in the area of metrology (central metrology authority - CMA), which is the Ministry of Economy of Ukraine;

- the central executive authority that implements public policy in the area of metrological surveillance (supervision), which is the State Service of Ukraine for the Safety of Foodstuffs and Consumer Rights Protection;

- 4 scientific metrological centres: the National Scientific Centre “The Institute of Metrology” (in Kharkiv), the State Enterprise “UkrMetrTestStandard” (in Kyiv), the State Enterprise Scientific and Research Institute “Systema” (in Lviv), the State Enterprise “Ivano-Frankivsk Standard Metrology” (in Ivano-Frankovsk), which together constitute a “distributed” national metrology institute (NMI) according to OIML D1:2020;

- 24 state enterprises, subordinate to the Ministry of Economy, that carry out metrological activity (located in each region of Ukraine);

- the Service of Uniform Time and Etalon Frequencies (with the head centre in the Institute of Metrology in Kharkiv), the Service of Reference Materials of Composition and Properties of Substances and Materials (with the head centre in the Institute of Metrology in Kharkiv), the Service of Standard Reference Data on Physical Constants and Properties of Substances and Materials (with the head centre in the UkrMetrTestStandard in Kyiv);

- metrological services of other central executive authorities and public authorities, enterprises and organisations;

- conformity assessment bodies for measuring instruments (14 CABs have been designated) and verification laboratories (66 labs have been authorised). These CABs and labs are designated and authorised by the Ministry of Economy to carry out certain tasks of conformity assessment and in-use verification of measuring instruments as third parties.

Within the Ministry of Economy the functions of formulating and implementing public policy in the area of metrology are performed by the Office of Metrology and Metrological Activity in the Department of Technical Regulation and Innovation Policy, staffed with 14 employees. The Office is composed of the Unit of Legal Metrology, the Unit of National Measurement Standards Base and the Sector of Monitoring of Metrological Activity.

22. Is there a national programme for the development of the metrology structure? Please provide details.

The national programme for the development of the metrology structure is a part of the Action Plan for the Development of the System of Technical Regulation until 2025 (sections 30-33 thereof), approved by CMU Executive Order of 21 September 2021 no. 1145-r. It is aimed at further improvement of the system of technical regulation of Ukraine, as envisioned by the Association Agreement between Ukraine and the EU.

The metrology system of Ukraine is being developed in line with the obligations of Ukraine, set out in Article 56 of the Association Agreement, according to which Ukraine:

- shall take the necessary measures in order to gradually achieve conformity with EU technical regulations and EU standardisation, metrology, accreditation, conformity assessment procedures and the market surveillance system, and undertakes to follow the principles and practices laid down in relevant EU Decisions and Regulations;

- with a view to reaching the defined objectives, shall, in line with the timetable in Annex III to the Association Agreement, incorporate the relevant EU acquis into its legislation;

- shall ensure that its relevant national bodies participate fully in the European and international organisations for standardisation, legal and fundamental metrology, and conformity assessment including accreditation in accordance with its area of activity and the membership status available to it.

23. Are scientific metrology and legal metrology treated differently? How is cooperation and coordination ensured?

Scientific metrology and legal metrology are treated differently in Ukraine. Article 3 of the Law of Ukraine of 5 June 2014 No. 1314-VII “On Metrology and Metrological Activity” defines the scope of legal metrology, where such instruments as conformity assessment and in-use verification of measuring instruments, requirements for pre-packages and metrological surveillance (supervision) are applied.

Cooperation and coordination, including the cooperation and coordination of legal and scientific metrology, is ensured by the Ministry of Economy pursuant to this Law and the Charter of the Ministry of Economy, approved by the CMU Resolution of 20 August 2014 no. 459. In particular, the Ministry of Economy is tasked with:

- ensuring the legal regulation in the area of metrology and metrological activity;
- organising the conduct of fundamental research in the area of metrology;
- ensuring the functioning and improvement of the base of national measurement standards;
- developing and participating in the development of state scientific and scientific and technical programmes, related to the unity of measurements.

CMU Resolution of 27 May 2015 no. 330 designated four scientific metrological centres: National Scientific Centre “The Institute of Metrology” (in Kharkiv), State Enterprise “UkrMetrTestStandard” (in Kyiv), State Enterprise Scientific and Research Institute “Systema” (in Lviv), State Enterprise “Ivano-Frankivsk Standard Metrology” (in Ivano-Frankivsk).

- scientific metrological centres in the areas of activities, delineated in their charters and legal acts:

- carry out fundamental scientific research in the area of metrology as well as perform the works related to the development and implementation of state programmes in metrology and the concept of the development of metrology system of Ukraine;

- carry out scientific and applied research and investigations, related to the creation, improvement, maintenance, comparison, application of national measurement standards, setting up of the system of dissemination of the units of measurement;

- participate in the development of drafts of technical regulations, other legal acts as well as standards and other specifications in the area of metrology and metrological activity;

- perform coordination and scientific and methodological support to the works in the area of ensuring the uniformity of measurements in respective areas of activities.

D. Standardisation

24. Is there an independent standardisation body able to implement European and international standards with adequate staff resources and financing?

In accordance with the provisions of the Law of Ukraine "On Standardization" established a national standardization body, whose functions are performed by the state enterprise "Ukrainian Research and Training Center for Standardization, Certification and Quality" (SE "UkrNDNC") in accordance with the Order of the Cabinet of Ministers of Ukraine from 26.11.2014 r. № 1163-p.

In its activities, the national standardization body is guided by the Law, which defines its main powers, in particular: adoption, repeal and restoration of national standards; taking measures to harmonize national standards with international and regional standards; preparation and approval of the program of works on national standardization; coordination of the activities of technical committees of standardization.

According to the Law, a national standardization body may not aim to make a profit from its activities.

The number of employees in the national standardization body is 97 people.

5 employees have the degree of Candidate of Sciences.

On May 28, 2021 the company passed the state certification and confirmed the status of a scientific institution, which is confirmed by the Certificate of state certification of the scientific institution issued by the Ministry of Education and Science of Ukraine. SE "UkrNDNC" is assigned to the II qualification group of the scientific institution and the certificate is issued for a period of 3 years.

Works on national standardization are performed in accordance with the Law of Ukraine "On Standardization" and a set of basic standards, in particular:

- DSTU 1.2: 2015 National standardization. Rules for conducting national standardization work;
- DSTU 1.5: 2015 National standardization. Rules for the development, teaching and design of national regulations;
- DSTU 1.7: 2015 National standardization. Rules and methods of adopting international and regional regulations;
- DSTU 1.8: 2015 National standardization. Rules for developing the National Standardization Work Program.

According to the Law and DSTU 1.14: 2015 "National standardization. Procedures for the establishment, operation and termination of technical committees of standardization "for the organization and implementation of work on international, regional and national standardization, technical committees are established.

During the period 2016-2021, 25 TCs were created with the participation of the national standardization body.

As of December 31, 2021, there are 164 shopping centers in Ukraine, including:

- actively working - 119 TC;
- inactive - 37 TC;
- unemployed - 5 TC;
- newly created - 3 TC.

Ukraine's participation in international and European standardization is realized through its membership in two international standardization organizations:

- International Organization for Standardization (ISO);
- International Electrotechnical Commission (IEC), and three European standardization organizations:
 - European Committee for Standardization (CEN);
 - European Committee for Electrotechnical Standardization (CENELEC);
 - European Telecommunications Standards Institute (ETSI)

For a long time, Ukraine has been a full member of the ISO Committees for Conformity Assessment (CASCO) and for Developing Countries (DEVCO), an observer in the ISO Committee on Consumer Policy (COPOLCO).

Within the framework of international and regional cooperation, the NES has concluded license agreements with:

- American Society for Testing Materials (ASTM);
- Deutsches Institut für Normung (DIN);
- European Telecommunications Standards Institute (ETSI);
- International Electrotechnical Commission (IEC).

The Ministry of Economy of Ukraine is the customer of research work under the budget program 1201220 "Scientific and scientific and technical activities in the field of economic development, standardization, metrology and metrological activities". SE "UkrNDNC" is the executor of research works and the recipient of funds from the state budget of Ukraine under the relevant program, the main administrator of which is the Ministry of Economy.

The procedure of development and adoption of standards by the translation method for budget funds is in accordance with the requirements of the Law of Ukraine "On Public Procurement" and is published on the platform <https://prozorro.gov.ua/>.

According to the Law of Ukraine "On Standardization" and DSTU 1.2: 2015 "National Standardization. Rules for conducting work on national standardization" the national standardization body publishes a notice on the development of the first editions of standards on the official website

<http://uas.gov.ua/standrarization/rozrobka-ta-skasuvannia/povidomlennia-pro-rozroblennia-natsion/> to provide comments by all stakeholders

Official site of the National Standardization Body is <http://uas.gov.ua/>.

Web- Store to purchase standards is <http://shop.uas.org.ua/>.

Facebook page is <https://www.facebook.com/uas.org.ua/>.

25. Has the standardisation body started to withdraw national standards that conflict with European Standards?

State policy in the field of standardization is based on the priority of adoption in Ukraine of international and regional standards as national standards according to the rules and methods of adoption of international and regional regulations in accordance with DSTU 1.7: 2015, which adopted in Ukraine guidelines of the International Organization for Standardization ISO/IEC Guide 21-1:2005 Regional or national adoption of International Standards and other International Deliverables — Part 1: Adoption of International Standards and ISO/IEC Guide 21-2:2005 Regional or national adoption

of International Standards and other International Deliverables — Part 2: Adoption of International Deliverables other than International Standards.

In DSTU 1.7: 2015 to determine the relationship between national and international or European ND provides in particular the degree of compliance - identical (IDT).

According to Article 17 of the Law, in case of adoption of a European standard as a national one, the identity of the national standard to the corresponding European standard is ensured.

From the date of entry into force of a national standard that is identical to the European standard, a national standard whose provisions contradict the provisions of the relevant national standard that is identical to the European standard must be repealed.

Here are examples of the abolition of national standards, the provisions of which contradict the provisions of the relevant National standards, which are identical to European ones:

- withdrawn DSTU 2465—94, replaced by DSTU EN 61000-4-8: 2017 (EN 61000-4-8: 2010, IDT; IEC 61000-4-8: 2009, IDT);
- withdrawn DSTU 4833: 2007, replaced by DSTU EN 1869: 2021 (EN 1869: 2019, IDT);
- withdrawn DSTU 4237-1-2: 2014, replaced by DSTU EN 60332-1-2: 2016 (EN 60332-1-2: 2014, IDT);
- withdrawn DSTU 4754: 2007, replaced by DSTU EN 61537: 2014;
- withdrawn DSTU 4832: 2007, replaced by DSTU EN 694: 2019 (EN 694: 2014, IDT);
- withdrawn DSTU 4469-13: 2008, replaced by DSTU EN 12094-13: 2019 (EN 12094-13: 2001, IDT).

Withdrawal work is carried out on a regular basis.

Up-to-date information on national standards (including validity, changes and amendments to them, etc.) can be viewed by users in the "Catalog of National Standards and Codes of Good Practice".

The catalog is maintained in the form of a database, which is constantly updated and filled with new information.

The catalog is available for free access on the official website <http://katalog.uas.org.ua/>.

26. What percentage of national standards has been adopted that (in the opinion of the standardisation body) are in full conformity with the European standards (CEN, CENELEC and ETSI standards)? Are they full standards aligned to EU ones, or adopted by "cover page" methods?

[The "cover page" method is a method whereby the national standards body adopts European standards in an EU language version with a cover page in the national language(s).]

The total number of national standards in the Fund of normative documents is 25781, of which the total number of national standards harmonized with international and European standards is 18067.

Of the total number of national standards harmonized with international and European standards (18,067):

- harmonized with international standards - 8414,
- harmonized with European standards - 9653.

Of the total number of national standards harmonized with international and European standards, 70,2% are:

- with international ones – 32,7%;
- with European ones – 37,5%.

Of the total number of national standards harmonized with international and European (18067):

- confirmation and reprint - 9656;
- translation - 8401;
- covers - 10.

Of the total number of national standards harmonized with European standards - 9653 (9460 with the same degree of compliance with the European standard - 98%), of which:

- ДСТУ EN – 7353 (76,2%);
- ДСТУ HD, ДСТУ CWA – 78 (0,8%);
- ДСТУ ETSI – 396 (4,1%);
- ДСТУ EN IEC – 110 (1,2);
- ДСТУ EN ISO – 1673 (17,3%);
- ДСТУ EN ISO/IEC – 23 (0,2%);
- others – 20 (0,2%).

At the same time, according to the CEN / CENELEC iProjex automated system, published on the basis of notifications provided to Ukraine, the number of European standards adopted in Ukraine is 4847.

The difference between the data is explained, in particular, by the fact that European standards have been adopted and are in force in Ukraine, which have already been repealed or replaced in the EU.

27. Is there a timetable for the standardisation body to become a full member of CEN and CENELEC?

UkrNDNC is a Companion Standardization Body with the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (CENELEC).

Acquired membership in CEN in 1997 as a corresponding member and in CENELEC on January 1, 2001 as an affiliate member.

In June 2017, agreements were signed to grant UkrNDNC the status of a standardization partner company at CEN / CENELEC.

National TCs participate in the activities of structural units (committees and subcommittees) of European standardization organizations.

30 Ukrainian experts joined the CEN / CENELEC Technical Committees as observers and work in 48 CEN and CENELEC units, including 40 CEN / TSs, 6 CLC / TCs and 2 Joint Technical Committees CEN / CLC / JTC 1 and CEN / CLC / JTC 6.

A total of 27 Ukrainian TCs joined the cooperation with the CEN and CENELEC technical committees as observers.

During 2021, 18 new applications were processed from national TCs, which intend to join the cooperation with the structural units of CEN / CENELEC / TCs.

Issues of fulfillment of the criteria for full membership in CEN and CENELEC are processed by SE "UkrNDNC" on a permanent basis in accordance with the requirements 22 Guide on the organizational structure and processes for the assessment of the membership criteria of CEN and CENELEC.

In addition, the order of the Cabinet of Ministers of Ukraine dated 22.09.2021 № 1145 approved an action plan for the development of the technical regulation system for the period up to 2025.

The action plan is aimed at ensuring further development of Ukraine's technical regulation system in accordance with the requirements of the Association Agreement with the EU, in particular, improving national standardization procedures and practices, taking into account the guidelines of international and European organizations.

The Ministry of Economy prepares and sends to the Cabinet of Ministers of Ukraine generalized information on the implementation of the action plan by April 1 of each year.

According to the Action Plan and taking into account the recommendations provided under the Twinning project, "Strengthening the institutional capacity of the Ukrainian national standardization body", the national standardization body in 2021, in particular:

- 644 NDs were adopted, of which 487 NDs are national standards harmonized with European and international ones. Of the 487 harmonized ND - 219 ND are sub-directive, including covered ACAA Directives: 2014/30 / EU - 17 ND; 2006/42 / EC - 59 ND; 2014/35 / EU - 79 ND;

- amendment № 1 to DSTU 1.1: 2015 and new editions of DSTU 1.2, DSTU 1.8, DSTU 1.14 were developed, a block diagram on the development of national standards (from idea to publication), systematic review of national standards, development of the annual Work Program was introduced;

- the strategy of enterprise development is developed, the important elements of which are: pricing issues, communication strategy, as well as establishing partnerships with associations, research institutions, conformity assessment bodies. In 2021, 40 memoranda of cooperation were signed, including most of the relevant associations;

- close cooperation with technical committees was provided and a number of webinars were held for the TC management;

- free daily online consultations from UkrNDNC specialists on national standardization were introduced on the Diya.Business online platform;

- the Pricing Policy on the sale of official copies of the ND was revised. From 01.06.2021 the sale of national standards is carried out at new prices (order of SE "UkrNDNC" from 30.04.2021 № 162 "On the sale price of copies of regulations");

- the Policy of reproduction and distribution of normative documents was implemented (approved by the order of the State Enterprise "UkrNDNC" dated 15.09.2021 № 325);

- approved systems for protection of official copies of ND from unauthorized copying (order of SE "UkrNDNC" from 02.12.2021 № 465);

- inventory of national standards in the repository of normative documents was carried out and a set of measures was taken to reflect national standards in accounting;

- a pilot project on the implementation of Scandard software for the labeling of national standards and codes of practice was launched;

- assessment of IT infrastructure was made and proposals for its improvement were provided, analysis of the availability of IT support for standardization processes was performed.

- a new website uas.gov.ua was launched, an official YouTube channel was created.

The timetable for the National Standardization Body to become a full member in CEN and CENELEC is determined by the Enterprise Development Strategy and Action Plan for the

development of technical regulation for the period up to 2025, approved by the Cabinet of Ministers of Ukraine from 22.09.2021 № 1145, which provides for full range of National standards harmonized with European standards.

3. SECTORAL LEGISLATION (non-exhaustive list of relevant *EU acquis*)

Describe the current situation per sector (as defined in each piece of the EU acquis listed below) in terms of a) your self-assessment of the degree of alignment to the EU acquis, i.e it has not started, or it is partly aligned (and – in which case – what elements are not aligned), or it is designed to be fully aligned; b) whether, for each piece of the EU acquis listed below, notably for EU acquis in the new approach/new legislative framework, each element of the quality infrastructure (standardisation, conformity assessment, accreditation, metrology, and market surveillance) is able to implement the acquis to EU levels in each sector in terms of both legal competence and competent human and financial capacity. Complementary information should be provided as necessary.

A. New Approach & New Legislative Framework

28. Lifts (Dir. 2014/33/EU)

a) in Ukraine, since 16.05.2018 is in force the Technical Regulation of lifts and safety components for lifts, approved by the Resolution of the Cabinet of Ministers of Ukraine dated 21.06.2017 № 438 (Official Gazette of Ukraine, 2017, № 54, p. 1631), which is developed on the basis of Directive 2014/33/EU of the European Parliament and of the Council of 26 February 2014 on the harmonization of the laws of the Member States relating to lifts and safety components for lifts.

This Technical Regulation defines the requirements for lifts and safety components for lifts.

This Technical Regulation applies to new lifts put into circulation after its entry into force, which constantly serve buildings and structures and are intended for transportation of:

- people;
- people and goods;
- goods alone if the carrier is accessible, ie a person may enter it without difficulty, and equipped with controls situated inside the carrier or within reach of the person inside the carrier.

Lifts covered by this Technical Regulation may be put into circulation and into service when provided that they comply with the requirements of this Technical Regulation, proper installation, maintenance and intended use.

Safety components for lifts covered by this Technical Regulation may be placed on the market and put into service when provided that they conform to the requirements of this Technical Regulation and are properly installed, maintained and used as intended.

Installers must ensure that the lift is accompanied by appropriate instructions, which are drawn up in accordance with the law on the use of languages. These instructions, as well as any markings, must be clear, understandable and obvious.

Manufacturers must ensure that the safety component for lifts is accompanied by appropriate instructions drawn up in accordance with the law on the use of languages. These instructions, as well as any markings, must be clear, understandable and obvious.

In addition to the minimum amount of information required for any equipment in accordance with the requirements of the Technical Regulation on Safety of Machinery, each cabin must have an

easily visible plate clearly indicating the nominal capacity in kilograms and the maximum possible number of passengers that can be transported simultaneously.

If the lift is designed in such a way that passengers can be released from the cabin without any assistance, clear instructions must be placed in a conspicuous place in the cabin.

In addition to the responsibilities of manufacturers of safety components for lifts and installers of lifts, the Technical Regulation defines the responsibilities of authorized representatives, importers and distributors.

It is also specified that if an importer or distributor puts into circulation a lift safety component under his name or trademark (mark for goods and services) or modifies an already introduced lift safety component in such a way that it may affect his compliance with the requirements of this Technical Regulation, he is considered a manufacturer and must perform certain duties of the manufacturer.

Economic operators should provide the state market surveillance authorities with information on their requests, which allows to identify:

- any economic entity that has supplied them with a lift safety component;
- any entity to which they have supplied a lift safety component.

Economic operators shall provide the information specified above for 10 years after they have been supplied with a safety component for lifts and for 10 years after they have supplied a safety component for lifts.

As the Technical Regulation is based on and **fully complies** with Directive 2014/33/EU, measures are being taken on a regular basis to monitor the amendments to Directive 2014/33/EU in order to bring similar amendments to the Ukrainian Technical Regulation as soon as possible, since Directive 2014/33/EU has not been amended. To this end, the Ministry of Economy on a weekly basis monitors the site <https://eur-lex.europa.eu> to obtain information on any amendments to Directive 2014/33/EU.

b) the Technical Regulation of lifts and safety components for lifts envisages that compliance of lifts and safety components for lifts with national standards included in a list of national standards, or parts thereof, presupposes compliance of such lifts and safety components for lifts with the essential safety and health requirements of this Technical Regulation covered by such standards or their parts.

The list of national standards for the purposes of application of this Technical Regulation has been approved and published on the official website of the Ministry of Economy of Ukraine.

The technical regulation of lifts and safety components for lifts stipulates that safety components for lifts must undergo one of the following conformity assessment procedures:

- the type model of the safety component for lifts must pass a type examination and confirmation of conformity of the type on the basis of internal production control with inspections of the safety component for lifts under supervision at certain intervals;
- the type model of the safety component for lifts must pass a type examination and confirmation of conformity to the type based on product quality assurance. Compliance based on total quality assurance.

Lifts must undergo one of the following conformity assessment procedures:

- if the lifts are designed and manufactured in accordance with the standard model of the lift, which has passed the examination of the type: final inspection of lifts; conformity to type based on product quality assurance for lifts; conformity to type based on quality assurance of the manufacturing process for lifts;

- if the lifts are designed and manufactured in accordance with the full quality assurance system: final inspection of the lifts; conformity to type based on product quality assurance for lifts; conformity to type based on quality assurance of the manufacturing process for lifts;

- conformity on the basis of verification of the unit of product for lifts;

- conformity on the basis of complete quality assurance with the examination of the project.

All conformity assessment procedures defined in the Technical Regulation for lifts and safety components for lifts are identical to those provided for in Directive 2014/33/EU.

As of 31.12.2021 in order to perform conformity assessment of products to the requirements of the Technical Regulation, 10 conformity assessment bodies have been appointed, which are accredited by the National Accreditation Agency of Ukraine under the Technical Regulation.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products for which the state market surveillance authorities carry out state market supervision” (Official Gazette of Ukraine, 2017, № 50, p. 1550) The State Labor Service of Ukraine is the market supervisor of compliance with the requirements of this Technical Regulation.

29. Machinery (Dir. 2006/42/EC)

a) in Ukraine, since 12.08.2013 is in force the Technical Regulation On the Safety of Machines, approved by the Resolution of the Cabinet of Ministers of Ukraine dated 30.01.2013 № 62 (Official Gazette of Ukraine, 2013, № 9, p. 344) (hereinafter - the Technical Regulation), developed in accordance with the Directive of the European Parliament and the Council 2006/42/EC of 17 May 2006 on machinery and equipment and amending Directive 95/16/EC.

This Technical Regulation establishes requirements for machines for the protection of human life or health, protection of animals or plants, as well as property and the environment, the procedure for assessing the conformity of machines and requirements for their circulation on the Ukrainian market and/or putting them into service.

According to the provisions of the Technical Regulation, its effect extends to:

machines, namely:

- a set of interconnected parts or components, at least one of which is movable, consisting of or adapted to join a power drive other than a directly applied human or animal force, and connected to perform certain functions;

- a set of interconnected parts or components, at least one of which is movable, consisting of or adapted to join a power drive other than a directly applied human or animal force, and connected to perform certain functions; these interconnected parts or components do not have components for their installation on site or for connection to a source of energy and motion;

- a set of interconnected parts or components, at least one of which is movable, consisting of or adapted to join a power drive other than a directly applied human or animal force, and connected to perform certain functions; these interconnected parts or components have or do not have components for their installation on site or for connection to a source of energy and motion, ready for installation and capable of performing certain functions only if they need to be mounted on a vehicle or building or structures;

- a combination of the interconnected parts or components mentioned above and unfinished machines, which are connected and controlled to achieve a common goal, acting as a whole;

- a set of interconnected parts or components, at least one of which is movable, connected and intended for lifting loads, the only source of power of which is the direct application of human effort;

equipment, namely:

- interchangeable equipment - device which, after putting into service of a machine (tractor), is connected to such machine (tractor) directly by the operator to change its functions or provide a new function, provided that this equipment is not a spare part or tool;

- removable mechanical transmission devices - removable component for transmitting power between a self-propelled machine or tractor to another machine by joining them at the first fixed bearing. In the case of putting into circulation together with the fence, they must be considered as one product;

- chains, ropes and textile belts - chains, ropes and textile belts manufactured and intended for lifting operations as part of lifting machines or lifting accessories;

- lifting accessories - components or equipment that are not part of the lifting machine, but allow to hold the load, placed between the machine and the load or on the load itself, or are an integral part of the load and put into circulation independently, particularly slings and their components are lifting accessories;

safety device - a component that:

- designed to perform a safety function;

- regardless of the machine put into circulation;

- threatens the safety of people in case of failure and/or malfunction;

- is not necessary for the operation of the machine or if this component can be substituted by a normal component to ensure the operation of the machine;

The term “machine” is used for all machines and equipment mentioned above in the Technical Regulation.

Also, this Technical Regulation applies to unfinished machines, which are a set of components, which is almost a machine, but cannot perform a specific function. The machine drive system is an incomplete machine. An incomplete machine is intended only for installation or connection with another machine or with another incomplete machine or equipment, together forming the machine covered by this Technical Regulation.

Executive authorities shall take appropriate measures to:

- ensuring the putting into circulation and / or putting into service only of those machines which meet the requirements of this Technical Regulation which apply to them and which do not endanger human health and safety and, if necessary, domestic animals or property and, where applicable, the environment the natural environment, subject to proper installation, maintenance and use for its intended purpose or in reasonably foreseeable conditions;

- ensuring the putting into circulation of only those unfinished machines that meet the requirements of this Technical Regulation, which apply to them.

Prior to putting the machine into circulation and/or putting into service, the manufacturer or his authorized representative shall:

- ensure its conformity with the essential safety and health requirements;

- provide access to the technical file, the requirements for which are defined by the Technical Regulation;

- prepare the necessary information provided by this Technical Regulation, in particular instructions;

- conduct appropriate procedures to assess conformity;

- draw up a declaration of conformity in accordance with the requirements set out in the Technical Regulation, which is attached to the machine;

- affixes the mark of conformity to technical regulations.

Prior to the putting into circulation of an unfinished machine, the manufacturer or his authorized representative must ensure preparation in accordance with the requirements established by the Technical Regulation:

- relevant technical documentation;
- assembly instructions;
- issued declaration of incorporation.

The assembly instructions and the declaration of installation must accompany the incomplete machine until it is installed in the final machine, and from that moment the instructions become an integral part of the technical documentation of such machine.

The manufacturer of the machine (unfinished machine) or his authorized representative shall keep the original declaration (declaration of incorporation of the unfinished machine) for at least 10 years from the date of manufacture of the last machine (unfinished machine).

Machine bearing the mark of conformity to technical regulations and accompanied by a declaration of conformity must be considered by the executive authorities as meeting the requirements of this Technical Regulation.

The executive authorities shall not prohibit, restrict or impede the putting into circulation and/or putting into service of machine and equipment that meets the requirements of this Technical Regulation.

The executive authorities shall not prohibit, restrict or impede the putting into circulation of unfinished machine if the manufacturer or his authorized representative has drawn up a declaration of incorporation in accordance with the requirements of the Technical Regulation. The declaration on incorporation shall state that the unfinished machine must be incorporated into the machine or connected to another unfinished machine in order to create a machine.

During fairs, exhibitions, presentations and similar events, the executive authorities shall not interfere with the display of machines or unfinished machines that do not meet the requirements of this Technical Regulation, provided that they have a visible inscription clearly stating that the machines (unfinished machines)) do not meet the requirements of this Technical Regulation and may not be made available on the market until they are brought into compliance with this Technical Regulation. At the same time, during the demonstration of such machines or incomplete machines that do not meet the requirements of this Technical Regulation, adequate safety measures must be taken to protect people.

Machine that meets the applicable requirements of this Technical Regulation shall bear a mark of conformity with the technical regulations. The manufacturer or his authorized representative is responsible for affixing the mark of conformity to technical regulations.

The mark of conformity to technical regulations is applied to the machine in a visible place, legibly and indelibly.

In case of reduction or increase of the image of the mark of conformity to technical regulations it is necessary to adhere to the proportions established in the description of a mark of conformity to technical regulations.

The size of the mark of conformity to technical regulations should not be less than 5 millimeters, but for machines whose size does not allow the application of the mark of conformity to technical regulations of the required size (5 millimeters), deviations from this requirement are allowed.

The mark of conformity with the technical regulations must be applied directly next to the name of the manufacturer or his authorized representative using the same method of application.

In the case of a full quality assurance procedure, the identification number of the designated conformity assessment body shall be affixed next to the mark of conformity to the technical regulations.

It is forbidden:

- application of the mark of conformity to technical regulations on machines that are not covered by this Technical Regulation;
- putting into circulation and / or putting into service machines without a declaration of conformity and / or a mark of conformity to technical regulations;
- marking other than a mark of conformity to technical regulations, if it may misinform third parties about the content or form of marking, or both.

Any other marking may be affixed to the machine, provided that it does not impair the visibility and legibility of the mark of conformity with the technical regulations.

b) Technical Regulation On the Safety of Machines provides that the conformity of a machine with national standards which included in a list of national standards or parts thereof implies the presumption of conformity of such machine with the essential safety and health requirements of this Technical Regulation covered by such standards or parts thereof.

The list of national standards for the purposes of application of this Technical Regulation has been approved and published on the official website of the Ministry of Economy of Ukraine (<https://www.me.gov.ua/Documents/List?lang=uk-UA&id=fbe1ad1b-6d48-407e-a2bd-aae55f31afec&tag=PerelikiNatsionalnikhStandartivPidTekhnichniReglamentni>):

- Order of the Ministry of Economy of Ukraine of 14.09.2020 № 1779 “List of National Standards for the Purposes of Application of the Technical Regulations on Safety of Machines, Approved by the Resolution of the Cabinet of Ministers of Ukraine of 30.01.2013 № 62”;
- Order of the Ministry of Economy of Ukraine of 26.01.2021 № 137 “Amendment to the List Formed on the Basis of the Implementing Decision (EU) 2019/436 of 18.03.2019”;
- Order of the Ministry of Economy of Ukraine of 26.07.2021 № 308 “Amendment to the List Formed on the Basis of the Implementing Decision (EU) 2019/1766 of 23.10.2019”;
- Order of the Ministry of Economy of Ukraine of 17.08.2021 № 409 “Amendment to the List Formed on the Basis of the Implementing Decision (EU) 2019/1863 of 06.11.2019”;
- Order of the Ministry of Economy of Ukraine of 13.10.2021 № 747 “Amendment to the List Formed on the Basis of the Implementing Decision (EU) 2020/480 of 01.04.2020”;
- Order of the Ministry of Economy of Ukraine of 23.10.2021 № 805 “Amendment to the List Formed on the Basis of the Implementing Decision (EU) 2021/377 of 02.03.2021”.

Technical Regulation On the Safety of Machines provides for the mandatory conformity assessment of the products covered by it.

The manufacturer or his authorized representative must use one of the conformity assessment procedures described in the Technical Regulation to assess the conformity of the machine:

- if the machine is not listed in Annex 9 (similar to Annex IV to Directive 2006/42/EU), the manufacturer or his authorized representative must apply the conformity assessment procedure (internal control of the manufacture of the machine);
- if the machine referred to in Annex 9 is manufactured in accordance with the national standards listed in the relevant list and provided that such standards meet all relevant essential health and safety requirements, the manufacturer or his authorized representative must use one of the following procedures:

- internal control of machine production;
- type examination together with the implementation of internal control of machine production (the manufacturer must take all measures necessary to ensure that the production process ensures compliance of the manufactured machines with the technical file and the requirements of the Technical Regulation On the Safety of Machines);

- full quality assurance;

- if the machine listed in Annex 9 has not been manufactured in accordance with the national standards indicated in the relevant list, or only partially conforms with such standards, or such standards do not take into account all relevant essential safety and health requirements, or if it does not exist of the national standard for the machine in question, the manufacturer or his authorized representative must apply one of the following procedures:

- type examination together with the implementation of internal control of machine production (the manufacturer must take all measures necessary to ensure that the production process ensures compliance of the manufactured machines with the technical file and the requirements of the Technical Regulation On the Safety of Machines);

- full quality assurance.

All conformity assessment procedures set out in the Technical Regulation On the Safety of Machine are identical to those provided for in Directive 2006/42/EC.

As of 31.12.2021, 19 conformity assessment bodies accredited by the National Accreditation Agency of Ukraine under this Technical Regulation have been appointed to perform conformity assessment of products to the requirements of the Technical Regulation On the Safety of Machines.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products for which the state market surveillance authorities carry out state market supervision” (Official Gazette of Ukraine, 2017, № 50, p. 1550) The State Labor Service of Ukraine is the market supervisor of compliance with the requirements of this Technical Regulation.

As a result of preliminary assessment by the EU experts of the Concordance Table of the Technical Regulation on the Safety of Machinery, partial transposition of the provisions of EU Directive 2006/42/EC has been noted.

In particular, it has been noted that the following provisions of the Machinery Directive (2006/42/EC) have not been transposed and are missing from the text of the TR on safety of machinery. This is considered acceptable for now, because these concern EU or Member State specific obligations and procedures. However, these topics shall be arranged in the text of the ACAA, or be implemented otherwise before the ACAA can come into force:

- a. Article 7.4 on inclusion of stakeholders in drafting national standards
- b. Article 8 (indicative list of safety components, scrutiny, cooperation)
- c. Article 9 (specific measures on hazardous machinery)
- d. Article 10 disputing a standard
- e. Article 11 Safeguard clause
- f. Article 14 (partly) on surveying and cooperation of designated CABs
- g. Article 15 link to OHS (occupational Health and Safety) legislation
- h. Article 17 (partly) on nonconforming marking
- i. Article 18 (partly, one line) on confidentiality
- j. Article 19 cooperation (between EU and UA)

- k. Article 20 legal remedies
- l. Article 21 dissemination of information
- m. Article 22 Committee
- n. Article 23 Penalties

It has also been noted that the difference in the structure, sequence and numbering of Annexes and of the essential requirements in the TR on safety of machinery compared to the Machinery Directive (2006/42/EC) lead to unnecessary confusion, misunderstanding and administrative burdens. As an example, it has been noted that the numbers of clauses of Annex I of the Directive, which present the essential requirements machinery shall comply with, must be mentioned on a Declaration of Incorporation, in accordance with Annex IIB. The fact that the TR on safety of machinery uses a completely different sequence and numbering, leads to a full mismatch of the Declaration of Incorporation for the EU market and the one for the Ukrainian market, and therefore to confusion and administrative hurdles.

These recommendations are being currently processed and should result in relevant amendments to the Technical Regulation on the Safety of Machinery to fully align it with EU Directive 2006/42/EC.

30. Cableways (Reg. (EU) 2016/424)

a) In Ukraine, since 04.05.2020 is in force the Technical Regulation of Cableways, approved by the Resolution of the Cabinet of Ministers of Ukraine dated 06.02.2019 № 342 (Official Gazette of Ukraine, 2019, № 35, p. 1242), developed on the basis of Regulation (EU) 2016/424 of the European Parliament and of the Council of 9 March 2016 on cableway installations repealing Directive 2000/9/EU.

This Technical Regulation lays down requirements for the putting into circulation and placing on the market of safety components and / or subsystems for cableways designed to carry persons, and for the design, construction and putting into service of new cableways designed to carry persons.

This Technical Regulation applies to:

- new cableways designed to carry people;
- modified cableways that require a new conformity assessment;
- safety components and / or cableway subsystems.

The requirements of this Technical Regulation do not apply to:

● lifts covered by the Technical Regulation of Lifts and Safety Components for Lifts, approved by the Resolution of the Cabinet of Ministers of Ukraine of June 21, 2017 № 438 (Official Gazette of Ukraine, 2017, № 54, p. 1631);

● cableways, which are classified as cultural heritage sites, which were put into service before January 1, 1986 and are still operational. However, no significant changes were made to the design or construction of such ways, ***including safety components and/or subsystems designed specifically for them***;

- installations intended for agricultural or forestry purposes;
- cableways for the maintenance of mountain shelters and huts, intended exclusively for the transportation of goods and specially designated persons;
- on-site or mobile equipment exclusively designed for leisure and amusement purposes and not as a means for transporting persons;

- mining installations or other industrial stationary objects of industrial use;
- objects where users or their means of transportation are placed on the water.

The technical regulation stipulates that:

● safety components and / or subsystems must be placed on the market if they conform to the requirements of this Technical Regulation;

● Cableways covered by this Technical Regulation may be put into service when provided that they conform to the requirements of this Technical Regulation, proper installation, maintenance and intended use, and do not pose a threat to the safety of passengers, staff or third parties, and for property security.

Safety components and / or subsystems for cableways may be installed in cableways, when provided that they allow the construction of a cableway that meets the requirements of this Technical Regulation. However, such safety components and / or subsystems must not endanger the health or safety of passengers, staff or third parties when they are properly installed, serviced and operated as intended.

Measures to ensure the protection of persons, in particular workers during the operation of cableways, shall not provide for the modification of such equipment in a manner not provided for in this Technical Regulation.

Cableways and their infrastructure, safety components and / or subsystems must conform to the essential requirements applicable to them as set out in the Technical Regulation.

On the territory of Ukraine, the placing on the market of safety components and / or subsystems that meet the requirements of this Technical Regulation shall not be prohibited, restricted or hindered.

The person responsible for the cableway designated in accordance with the law must analyze the safety status of the planned cableway, or apply the result of such an analysis carried out earlier.

For each cableway, an analysis of the safety situation is carried out, during which it is necessary:

- 1) take into account all the envisaged modes of operation;
- 2) apply recognized or defined methods;
- 3) take into account the current state of technology and the complexity of the construction of the cableway;
- 4) ensure that the design and configuration of the cable car take into account the peculiarities of the landscape and the most adverse situations in order to ensure an adequate level of safety;
- 5) take into account all aspects of cableway safety, as well as external factors during its design, construction and entry into service;
- 6) determine on the basis of previous experience the risks that are likely to occur during the operation of the cableway;

During the safety analysis, it is also necessary to analyze the safety components that affect the cableway and its subsystems so that the safety devices are:

- 1) are capable of reacting to an initial failure or malfunction in such a way as to remain in a state that guarantees safety, in a lower operating mode or in an emergency mode;
- 2) interchangeable and controlled; or
- 3) such that the probability of their failure can be assessed and verified in accordance with the criteria set out in paragraphs 1 and 2.

The results of the analysis of the safety condition are used during the compilation of the list of risks and dangerous situations, to develop measures to address such risks and to determine the list of safety components and / or subsystems for installation into a cableway.

The results of the analysis of safety condition are necessary to include in the safety condition report.

The Technical Regulation for Cableway Installations also defines the requirements for the construction and acceptance of service of completed cableways located on the territory of Ukraine, the operation of cableway, responsibilities of manufacturers of safety components and / or subsystems, authorized representatives, importers and distributors.

It is determined that when an importer or distributor puts into circulation under his name or trademark or modifies already entered into circulation safety components and / or subsystem in such a way that may affect their compliance with the requirements of this Technical Regulation, he is considered a manufacturer and must perform the duties of the manufacturer specified in this Technical Regulation.

Economic operators should provide the state market surveillance authorities with information at their request, which enables to identify:

the economic operator that has supplied them with a safety component and / or subsystem;

the economic operator to which such bodies have supplied a safety component and / or subsystem.

Economic operators shall provide the information specified above for 30 years after the safety component and / or subsystem has been supplied to them and for 30 years after they have supplied the safety component and / or subsystem.

Given that the Technical Regulation of Cableways *is developed on the basis* and *fully complies* with Regulation (EU) 2016/424, measures are taken to monitor amendments to Regulation (EU) 2016/424 on an ongoing basis in order to promptly bring similar amendments to the Ukrainian Technical Regulation. To this end, the Ministry of Economy on a weekly basis monitors the site <https://eur-lex.europa.eu> to obtain information on any amendments to Regulation (EU) 2016/424.

b) The Technical Regulation of Cableways stipulates that the conformity of safety components and / or subsystems to national standards included in a certain list of national standards or parts thereof gives the presumption of conformity of safety components and / or subsystems to the essential safety requirements of this Technical Regulation, standards or parts thereof.

The list of national standards for the purposes of application of this Technical Regulation has been approved and published on the official website of the Ministry of Economy of Ukraine (<https://www.me.gov.ua/Documents/List?lang=uk-UA&id=fbe1ad1b-6d48-407e-a2bd-aae55f31afec&tag=PerelikiNatsionalnikhStandartivPidTekhnichniReglamenti>).

Technical Regulation of Cableways provide for the mandatory conformity assessment of the products covered by it.

Before putting a safety component and / or subsystem into circulation, the manufacturer shall apply a conformity assessment procedure in accordance with paragraph 53 of this Technical Regulation.

The safety components and / or subsystems shall be subject to the following conformity assessment procedures:

1) type examination procedure (module B - type of production) and the manufacturer's product one of the following:

typical conformity procedure based on quality assurance of the production process (module D);

typical conformity procedure based on the verification of the safety component and / or subsystem (module F);

2) conformity procedure based on verification of product unit (module G);

3) conformity procedure based on full quality assurance with project examination (module H 1).

All conformity assessment procedures defined in the Technical Regulation of Cableways are identical to those provided for in Regulation (EU) 2016/424.

As of 31.12.2021, no conformity assessment body has been appointed to perform conformity assessment of products to the requirements of the Technical Regulation for Cableways.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products for which the state market surveillance authorities carry out state market supervision” (Official Gazette of Ukraine, 2017, № 50, p. 1550) The State Labor Service of Ukraine is the market supervisor of compliance with the requirements of this Technical Regulation.

31. Personal Protective Equipment (PPE) (Reg. (EU) 2016/425)

a) In Ukraine, since 30.08.2021 is in force the Technical Regulation for Personal Protective Equipment, approved by the Resolution of the Cabinet of Ministers of Ukraine of August 21, 2019 № 771 (Official Gazette of Ukraine, 2019, № 70, p. 2457), developed on the basis of Regulation of the European Parliament and of the Council (EU) 2016/425 of March 9, 2016 on personal protective equipment and repealing Council Directive 89/686/EEC.

This Technical Regulation lays down requirements for design and manufacture of personal protective equipment which is to be made available on the market in order to ensure protection of the health and safety of users and establish rules on the free movement of personal protective equipment on the Ukraine’s market.

According to this Technical Regulation, personal protective equipment is:

- equipment designed and manufactured for carrying or holding by a person to protect against one or more risks to that person's health or safety;
- interchangeable components of the above equipment necessary to perform its protective function;
- a connection system for the aforesaid equipment, which is not held or worn by a person, and that is not held or worn by a person, that is designed to connect that equipment to an external device or to a reliable anchorage point, that is not designed to be permanently fixed and that do not require fastening works before use.

Personal protective equipment covered by this Technical Regulation may be put into circulation and operation only in case of safety of such equipment for life and health of the user, ensuring his protection against injuries and diseases when used as intended, and subject to proper level of service and operation, provided that they comply with the requirements of this Technical Regulation.

The mark of conformity to the technical regulation is applied to personal protective equipment so that it is visible, legible and indelible. If such application is impossible or unjustified due to the characteristics of personal protective equipment, the mark of conformity shall be applied on the packaging of personal protective equipment and on the accompanying documents.

The Technical Regulation defines the responsibilities of manufacturers, authorized representatives, importers and distributors of personal protective equipment.

It is also established that if an importer of or distributor puts personal protective equipment into circulation under his name or trademark or modifies already entered into circulation equipment in

such a way that it may affect its compliance with this Technical Regulation, he is considered a manufacturer for the purposes of this Technical Regulation and it is subject to certain responsibilities of the manufacturer.

Given that the Technical Regulation is based on and **fully complies** with Regulation (EU) 2016/425 of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing Council Directive 89/686/EEC, follow-up measures are being taken to monitor amendments to the Regulation (EU) 2016/425 in order to bring promptly similar amendments to the Ukrainian Technical Regulation. To this end, the Ministry of Economy on a weekly basis monitors the site <https://eur-lex.europa.eu> to obtain information on any amendments to Regulation (EU) 2016/425.

b) The Technical Regulation on Personal Protective Equipment stipulates that the conformity of personal protective equipment to national standards included in a certain list of national standards or parts thereof provides a presumption of conformity of such personal protective equipment to the essential safety and health requirements of this Technical Regulation which covered by such standards or parts thereof.

The list of national standards for the purposes of application of this Technical Regulation has been approved and published on the official website of the Ministry of Economy of Ukraine (<https://www.me.gov.ua/Documents/List?lang=uk-UA&id=fbe1ad1b-6d48-407e-a2bd-aae55f31afec&tag=PerelikiNatsionalnikhStandartivPidTekhnichniReglamenti>).

The Technical Regulation provides for the implementation of a conformity assessment procedure for each risk category.

Category I: internal production control (module A);

Category II: examination of a standard sample (module B), followed by examination for compliance with a standard sample on the basis of internal production control (module C);

Category III: type examination (module B), and as one of the following procedures:

- examination for conformity with the standard sample on the basis of internal control of production with inspection of products under supervision at certain intervals (module C2);
- examination for conformity with the standard sample based on quality assurance of the production process (module D).

The procedure for assessing the conformity of personal protective equipment, which is produced as a single unit to suit individual users and is classified as Category III, is exceptional.

All the conformity assessment procedures set out in the Technical Regulation on Personal Protective Equipment are identical to those provided for in Regulation (EC) 2016/425 of the European Parliament and of the Council.

As of 31.12.2021, 13 conformity assessment bodies accredited by the National Accreditation Agency of Ukraine under the Technical Regulation of Personal Protective Equipment have been appointed to perform conformity assessment of products to the requirements of this Technical Regulation.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products for which the state market surveillance authorities carry out state market supervision” (Official Gazette of Ukraine, 2017, № 50, p. 1550) The State Labor Service of Ukraine is the market supervisor of compliance with the requirements of this Technical Regulation.

32. Electromagnetic Compatibility (EMC) (Dir. 2014/30/EU)

a) Since 30.06.2016 in Ukraine is in force Technical Regulation on Electromagnetic Compatibility of Equipment, approved by the Resolution of the Cabinet of Ministers of Ukraine dated 16.12.2015 № 1077 (Official Gazette of Ukraine, 2016, № 2, p. 72), developed on the basis of Directive 2014/30/EU of the European Parliament and of the Council of February 26, 2014 on the harmonization of the laws of the Member States relating to electromagnetic compatibility.

This Technical Regulation establishes requirements for equipment in order to ensure making available on the Ukrainian market of equipment that meets the appropriate level of electromagnetic compatibility.

This Technical Regulation applies to any equipment or stationary installation.

This Technical Regulation does not apply to:

1) equipment covered by the Technical Regulations of Radio Equipment approved by the Resolution of the Cabinet of Ministers of Ukraine of May 24, 2017 № 355 (Official Gazette of Ukraine, 2017, № 45, p. 1396);

2) aviation products covered by the Air Code of Ukraine and intended exclusively for use in air, namely:

aircraft, other than unmanned aerial vehicles, and their engines, propellers, parts and appliances not required to be installed on board the aircraft (any instrument, equipment, mechanism, apparatus, accessory, software or accessory that placed by the operator on board the aircraft, is not part of it and is used or intended for use during operation or control of the aircraft, support the survival of passengers or are capable of affecting the safe operation of the aircraft);

unmanned aerial vehicles and their engines, propellers, parts and appliances not required to be installed on board unmanned aerial vehicles, the design of which is certified in accordance with Article 13 of the Air Code of Ukraine, designed to operate only on frequencies distributed in accordance with radio regulations the International Telecommunication Union for protected aviation use;

3) radio equipment used by radio amateurs in accordance with the definitions given in the radio regulations adopted in accordance with the Statute and Convention of the International Telecommunication Union, ratified by the Law of Ukraine of July 15, 1994 № 116/94-VR, except when such equipment is available on the market. Sets of components intended for assembly by radio amateurs and provided on the market for radio equipment modified by radio amateurs for their own use are not considered to be radio equipment provided on the market;

4) equipment, which according to its physical characteristics:

is unable to generate electromagnetic radiation or cause electromagnetic radiation in excess of the level at which radio, telecommunications and other equipment operates as intended;

operates without unacceptable deterioration of characteristics in the presence of electromagnetic interference, which usually occurs during its intended use;

5) evaluation kits, made to special order or in accordance with the special requirements of the customer and intended for use by specialists exclusively in institutions engaged in research and development, for these purposes.

The equipment may be made available on the market and / or put into service only if it meets the requirements of this Technical Regulation, provided that it is properly installed, serviced and used for its intended purpose.

The placing on the market and / or putting into service on the territory of Ukraine of equipment that meets the requirements of this Technical Regulation shall not be prohibited or restricted for reasons related to electromagnetic compatibility.

Fulfillment of the requirements of this Technical Regulation shall not impede the implementation by public authorities within their powers and in accordance with the law of the following special measures related to the putting into service or use of equipment:

1) solving an existing or forecasted problem related to electromagnetic compatibility in a specific place;

2) ensuring the protection of public telecommunications networks or receiving or transmitting stations during their use for security purposes in clearly defined radio frequency bands.

Display and / or demonstration of equipment that does not meet the requirements of this Technical Regulation during fairs, exhibitions or other similar events is carried out in the presence of a visible sign clearly stating that such equipment may not be made available on the market and / or put into service until it is brought into conformity with the requirements of this Technical Regulation. Demonstration of such equipment may be carried out only if appropriate measures are taken to avoid electromagnetic interference.

The equipment must meet the essential requirements set out in Annex 1 to the Technical Regulation.

Manufacturers before putting the equipment into circulation ensure its design and manufacture in conformity with the essential requirements.

Manufacturers shall draw up technical documentation and carry out or ensure that the relevant conformity assessment procedure is carried out.

If the conformity of the equipment with the requirements applicable to it has been proved as a result of the specified conformity assessment procedure, manufacturers shall draw up a declaration of conformity and affix the mark of conformity to the technical regulations.

Manufacturers shall keep the technical documentation and the declaration of conformity for 10 years after the equipment has been put into circulation.

Manufacturers shall ensure that the procedures necessary to maintain conformity of series production with the requirements of this Technical Regulation are applied. This takes into account changes in the design or characteristics of the equipment and changes in the relevant national standards or other technical specifications, by reference to which the conformity of the equipment is declared.

Manufacturers shall mark the equipment they have put into circulation by type, batch number or serial number or other identifying element, and if the size or nature of the equipment makes it impossible to mark it, the necessary information shall be indicated on its packaging or in the document accompanying such equipment.

Manufacturers shall indicate their name, registered trade name or registered trade mark (mark for goods and services) and contact postal address on the equipment and, if this is not possible, on its packaging or in a document accompanying such equipment. The address should indicate one place where you can contact the manufacturer. Contact details are provided in accordance with the requirements of the law on the use of languages.

Manufacturers provide maintenance of equipment with relevant instructions and information, which are compiled in accordance with the requirements of the law on the use of languages. These instructions and information, as well as any markings, must be clear and understandable.

Manufacturers who consider or have reason to believe that the equipment they have put into circulation do not meet the requirements of this Technical Regulation shall immediately take restrictive (corrective) measures to bring such equipment into compliance with these requirements, withdraw it from circulation and / or recall (depending on the circumstances). If such equipment poses a risk, manufacturers shall immediately notify the relevant state market surveillance authority and

provide it with detailed information, in particular on the non-conformity of such equipment with the requirements of this Technical Regulation and restrictive (corrective) measures taken.

Also, the Technical Regulation defines the responsibilities of the authorized representative, importer and distributor in order to ensure the put into circulation and making available on the Ukrainian market of equipment (apparatus or stationary installation) that meets the requirements of the Technical Regulation.

The Technical Regulation also stipulates that when an importer or distributor puts equipment into circulation under its name or trademark (mark for goods and services) or modifies equipment already put into circulation in such a way that it may affect its compliance with the requirements of these Technical Regulations, he is considered a manufacturer for the purposes of this Technical Regulation and must perform certain duties of the manufacturer.

Economic operators shall submit to the state market surveillance authorities upon their requests information that enables to identify:

- any economic operator that has supplied them with equipment;
- any economic operator which they have supplied with equipment.

Economic operators shall provide the information specified above within 10 years after they have been supplied with the equipment and within 10 years after they have supplied the equipment.

Given that the Technical Regulation is based on and **fully complies** with Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonization of the laws of the Member States relating to electromagnetic compatibility, measures are being taken to monitor amendments to the Directive 2014/30/EU in order to bring similar prompt amendments to the Ukrainian Technical Regulation. To this end, the Ministry of Economy on a weekly basis monitors the site <https://eur-lex.europa.eu> to obtain information on any amendments to Directive 2014/30/EU.

b) The Technical Regulation on Electromagnetic Compatibility of Equipment stipulates that the conformity of equipment with standards included in the list of national standards or parts thereof gives the presumption of conformity of such equipment with the essential requirements set out in Annex 1 covered by such standards or parts thereof.

The list of national standards for the purposes of application of this Technical Regulation has been approved and published on the official website of the Ministry of Economy of Ukraine (<https://www.me.gov.ua/Documents/List?lang=uk-UA&id=fbe1ad1b-6d48-407e-a2bd-aae55f31afec&tag=PerelikNatsionalnikhStandartivPidTekhnichniReglamentni>):

- Order of the Ministry of Economy of Ukraine of 08.12.2020 № 2569 “List of National Standards for the Purposes of Application of the Technical Regulations on Electromagnetic Compatibility of Equipment Approved by the Resolution of the Cabinet of Ministers of Ukraine of 16.12.2015 № 1077”;
- Order of the Ministry of Economy of Ukraine of 15.01.2021 № 74 “Amendment to the List Formed on the Basis of the Implementing Decision (EU) 2019/1326 of 05.08.2019”;
- Order of the Ministry of Economy of Ukraine of 16.04.2021 № 805 “Amendment to the List Formed on the Basis of the Implementing Decision (EU) 2020/660 of 15.05.2020”;
- Order of the Ministry of Economy of Ukraine of 04.08.2021 № 361 “Amendment to the List Formed on the Basis of the Implementing Decision (EU) 2020/1630 of 03.11.2020”;
- Order of the Ministry of Economy of Ukraine of 23.09.2021 № 605 “Amendment to the List Formed on the Basis of the Implementing Decision (EU) 2021/455 of 15.03.2021”.

The Technical Regulation on Electromagnetic Compatibility of Equipment provides for the mandatory assessment of the conformity of the products covered by it. Conformity of the equipment

with the essential requirements set out in Annex 1 to the Technical Regulation shall be demonstrated by applying one of the following conformity assessment procedures:

- internal control of production in accordance with Annex 2 to the Technical Regulation;
- type examination in combination with type conformity on the basis of internal production control in accordance with Annex 3 to the Technical Regulation.

The manufacturer may, at his option, restrict the application of the procedure set out in Annex 3 to certain essential requirements or parts thereof, provided that the procedure set out in Annex 2 is applied to the rest of essential requirements or parts thereof.

All conformity assessment procedures defined in the Technical Regulation on Electromagnetic Compatibility of Equipment are identical to those provided for in Directive 2014/30/EU of the European Parliament and of the Council.

As of December 31, 2021, 37 conformity assessment bodies accredited by the National Accreditation Agency of Ukraine under this Technical Regulation have been appointed to perform conformity assessment works.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products for which the state market surveillance authorities carry out state market supervision” (Official Gazette of Ukraine, 2017, № 50, p. 1550) the State Service of Ukraine for Food Safety and Consumer Protection is the market surveillance authority over the conformity with the requirements of this Technical Regulation.

As a result of preliminary assessment by the EU experts of the Concordance Table of the Technical Regulation with EU Directive 2014/30/EU, it has been found that Cabinet of Ministers Resolution 1077 has transposed the Directive *nearly completely*.

Comments on Main Gaps and Shortcomings:

1. Regarding procedures related to requirements for notifying authorities (Article 22, 29 and 30 of the Directive), the experts understand that without formal procedures laid down in an ACAA or other Agreement between Ukraine and the European Union, it is, for example, not possible to implement the notification procedure of informing the European Commission of the conformity assessment bodies that have been designated by the national Competent Authority to perform certain conformity assessment functions. However, the designation procedures, including the publication of a list of designated conformity assessment bodies could be replicated.

2. Article 61 of the Cabinet of Ministers Resolution is an incorrect transposition of the EU Directive text: The Directive requires impartiality of CAB as whole plus the staff. The TR only requires impartiality of only the staff but not of the CAB itself.

33. Low Voltage (LVD) (Dir. 2014/35/EU)

a) Since July 1, 2016 in Ukraine applies the Technical Regulation of Low-Voltage Electrical Equipment approved by the Resolution of the Cabinet of Ministers of Ukraine of December 16, 2015 № 1067 (Official Gazette of Ukraine, 2015, № 102, p. 3526), developed on the basis of Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonization of the laws of the Member States relating to the making available on the market of electrical equipment intended for use within certain voltage limits. This Technical Regulation establishes requirements for the protection of health and safety of humans and domestic animals and property, which must meet low-voltage electrical equipment (hereinafter - electrical equipment) in order to make it available on the Ukrainian market.

This Technical Regulation applies to electrical equipment intended for use voltage rating of between 50 to 1000 V for alternating current and between 75 and 1500 V for direct current except for

equipment and phenomena that are not covered by the Technical Regulation of Low-Voltage Electrical Equipment:

- electrical equipment intended for use in explosive atmospheres;
- electrical equipment for radiological and medical purposes;
- electrical parts of cargo and passenger lifts;
- electricity meters;
- plugs and sockets for household use;
- electric fence controllers;
- radioelectric interferences;
- specialized electrical equipment intended for use on ships, aircraft or railways, which meets the safety requirements established by international bodies in which Ukraine participates;
- evaluation kits, made to special order or in accordance with the special requirements of the customer and intended for use by specialists exclusively in institutions engaged in research and development, for these purposes.

The making available on the market of electrical equipment that meets the requirements of this Technical Regulation shall not be prohibited or restricted in respect of those aspects covered by this Technical Regulation.

Manufacturers shall ensure that electrical equipment is designed and manufactured in accordance with safety objectives when it is put into circulation.

Manufacturers shall draw up technical documentation and carry out or ensure conformity assessment procedures.

If the conformity of electrical equipment with safety objectives has been proven by the specified conformity assessment procedure, manufacturers shall draw up a declaration of conformity and affix the mark of conformity to the technical regulations.

Manufacturers shall keep the technical documentation and the declaration of conformity for 10 years after the electrical equipment has been put into circulation.

Manufacturers shall ensure that the procedures necessary to maintain the series production of electrical equipment conform to the requirements of this Technical Regulation. Changes in product design or characteristics and changes in relevant national or international standards or other technical specifications, by reference to which the conformity of electrical equipment is declared, must be taken into account.

If the above is deemed appropriate for the risks posed by electrical equipment, manufacturers in order to protect the health and safety of consumers (users) conduct random tests of samples of electrical equipment provided on the market, consider consumer (user) applications, examine electrical equipment that does not meet the requirements of this Technical Regulation, and cases of recall of electrical equipment and, if necessary, keep records of such appeals, inappropriate electrical equipment and cases of recall, as well as inform distributors about the current results of such monitoring.

Manufacturers shall ensure that the electrical equipment they have put into circulation is marked with the type, batch number or serial number or other element which makes it possible to identify it and, where the size or nature of the electrical equipment does not allow it, the information was stated on its packaging or in the document accompanying such electrical equipment.

Manufacturers shall indicate their name, registered trade name or registered trade mark (mark for goods and services) and contact postal address on the electrical equipment and, if that is not

possible, on its packaging or in the document accompanying such electrical equipment. The address should indicate the only place of contact with the manufacturer. Contact details are provided in accordance with the requirements of the law on the procedure for the use of languages.

Manufacturers shall provide maintenance of electrical equipment with instructions and safety information compiled in accordance with the requirements of the law on the use of languages. These instructions and safety information, as well as any markings, must be clear, understandable and intelligible.

Manufacturers who consider or have reason to believe that electrical equipment they have put into circulation do not meet the requirements of this Technical Regulation shall immediately take the restrictive (corrective) measures necessary to bring such electrical equipment into conformity with such requirements, withdraw it from circulation and / or its revocation (depending on the circumstances). If the specified electrical equipment poses a risk, manufacturers shall immediately notify the relevant state market surveillance authority and provide it with detailed information, including non-compliance of such electrical equipment with the requirements of this Technical Regulation and any restrictive (corrective) measures taken.

At the reasoned request of the state market surveillance authority, manufacturers shall provide it with the information and documentation (in paper or electronic form) necessary to demonstrate the conformity of electrical equipment with the requirements of this Technical Regulation. At the request of the said state market surveillance authority, manufacturers shall cooperate with it in relation to any measures taken to eliminate the risks posed by the electrical equipment they have put into circulation.

The Technical Regulation also defines the responsibilities of the authorized representative, importer and distributor of electrical equipment in order to ensure the put into circulation and making available on the Ukrainian market of electrical equipment that meets safety objectives.

If an importer or distributor puts electrical equipment into circulation under its own name or trademark (mark for goods and services) or modifies electrical equipment already put into circulation in such a way that it may affect its compliance with the requirements of this Technical Regulation, it shall be considered a manufacturer for the purposes of this Technical Regulation and shall act as a manufacturer.

Economic operators shall provide the state market surveillance authorities with information upon their requests, which enables to identify:

- any economic operator that has supplied them with electrical equipment;
- any economic operator to which they have supplied electrical equipment.

Economic operators shall provide the information specified above for 10 years after they have been supplied with electrical equipment and for 10 years after they have supplied electrical equipment.

Given that the Technical Regulation of Low-Voltage Electrical Equipment, approved by the Resolution of the Cabinet of Ministers of Ukraine of 16.12.2015 № 1067 (Official Gazette of Ukraine, 2015, № 102, p. 3526), developed based on the Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonization of the laws of the Member States relating to the making available on the market of electrical equipment intended for use within certain voltage limits, measures are being taken to monitor amendments to the Directive 2014/35/EU in order to bring similar prompt amendments to the Ukrainian Technical Regulation. With this aim, specialists from the Ministry of Economy of Ukraine check the website <https://eur-lex.europa.eu> on a weekly basis to obtain information on amendments to the Directive 2014/35/EU.

b) The Technical Regulation on Low-Voltage Electrical Equipment stipulates that the conformity of electrical equipment to standards included in the list of national standards or parts

thereof gives the presumption of conformity of such electrical equipment to safety objectives covered by such standards or parts thereof.

The list of national standards for application of this Technical Regulation has been approved and published on the official website of the Ministry of Economy of Ukraine (<https://www.me.gov.ua/Documents/List?lang=uk-UA&id=fbe1ad1b-6d48-407e-a2bd-aae55f31afec&tag=PerelikiNatsionalnikhStandartivPidTekhnichniReglamenti>).

- Order of the Ministry of Economy of Ukraine of 22.02.2019 №309 “List of National Standards for the Purposes of Application of the Technical Regulations on Low-Voltage Electrical Equipment Approved by the Resolution of the Cabinet of Ministers of Ukraine of 16.12.2015 №1067”;

- Order of the Ministry of Economy of Ukraine of 05.10.2021 № 688 “Amendment to the List Formed on the Basis of the Implementing Decision (EU) 2019/1956 of 26.11.2019”;

- Order of the Ministry of Economy of Ukraine of 18.12.2021 №1102 “Amendment to the List Formed on the Basis of the Implementing Decision (EU) 2020/1146 of 31.07.2020”;

- Order of the Ministry of Economy of Ukraine of 14.02.2022 №308 “Amendment to the List Formed on the Basis of the Implementing Decision (EU) 2020/1779 of 27.11.2020”;

- Order of the Ministry of Economy of Ukraine of 21.02.2022 №360 “Amendment to the List Formed on the Basis of the Implementing Decision (EU) 2021/1015 of 17.06.2021”.

If these national standards have not been developed and the list of them has not been made publicly available, electrical equipment is also considered to meet safety objectives if it complies with the safety regulations of international standards adopted by the International Electrotechnical Commission (IEC) and references to which are published in the Official Journal of the European Union.

In the case of publication of references to these provisions on the safety of international standards in the "Official Journal of the European Union", the Ministry of Economy for information publishes a list of references to them on its official website.

If the relevant national standards, and their list and the list of references to international standards have not been made publicly available, electrical equipment is also considered to meet safety objectives if it is manufactured by the safety provisions of national standards in force in Ukraine, and in the case of the production of this electrical equipment in a Member State of the European Union - the national standards in force in such a state, if it provides a level of safety equivalent to that required in Ukraine.

The technical regulation of low-voltage electrical equipment provides for mandatory conformity assessment of products to which it extends its effect, by means of conducting by manufacturer the conformity assessment procedure specified in Annex 3 to the Technical Regulations (internal production control) or ensuring its implementation.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016, № 1069 “On approval of the list of products for which the state market surveillance authorities carry out state market supervision” (Official Gazette of Ukraine, 2017, № 50, p. 1550) the State Service of Ukraine for Food Safety and Consumer Protection performs market supervision over compliance with the requirements of this Technical Regulation.

According to the results of the preliminary assessment by the experts of the European Union of the Concordance table of the Technical Regulation with the Directive 2014/35/EU the Cabinet of Ministers Resolution № 1067 was considered to transpose the Directive *nearly completely*.

Comments on Main Gaps and Shortcomings:

1. Article 19, paragraph 1 to 5 and Article 21, paragraphs 1 and 2 of the Low Voltage Directive (2014/35/EU) shall be transposed following an equivalent national procedure.

34. Radio Equipment (RED) (Dir. 2014/53/EU)

To fulfill the obligations of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, the Technical Regulations on Radio Equipment, which was developed on the basis of Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC was approved with Resolution of the Cabinet of Ministers of Ukraine No. 355 of 24 May 2017.

The Technical Regulation on Radio Equipment in terms of content is fully consistent with Directive 2014/53/EU and entered into force on April 1, 2018.

The Administration of the State Service of Special Communications and Information Protection of Ukraine submitted for the Cabinet of Ministers of Ukraine to consider a draft resolution "On Amendments to the Resolution of the Cabinet of Ministers of Ukraine No. 355 of 24 May 2017". The purpose of developing this draft is to align the Technical Regulations on Radio Equipment and the action plan for the implementation of the Technical Regulations on Radio Equipment with the Law of Ukraine "On Electronic Communications" and to take into account the changes made to Directive 2014/53/EU.

The Resolution adoption complies with the obligations of Ukraine in the field of European integration, including international legal ones, and the law of the European Union (EU acquis), namely the provisions of Directive 2014/53/EU, taking into account the provisions of the Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code.

35. Gas Appliances (GAR) (Reg. (EU) 2016/426)

a) Technical Regulation on appliances running on gaseous fuel approved by the Resolution of the Cabinet of Ministers of Ukraine from 04.07.2018 № 814 (Official Gazette of Ukraine, 2018, № 80, p. 2659) (hereinafter - the Technical Regulations), developed based on Regulation (EU) 2016/426 of the European Parliament and of the Council of 9 March 2016 on appliances burning gaseous fuels and repealing Directive 2009/142/EC, is valid in Ukraine from 06.01.2020.

This Technical Regulation lays down requirements for gaseous fuel appliances and fittings.

For the Technical Regulation, the device is considered to be "normally operated", subject to the following conditions:

- the appliance is properly installed and regularly serviced according to the manufacturer's instructions;
- the device is operated under the condition of normative changes of quality and normative fluctuations of gas supply pressure, determined by the legislation;
- the device is operated for its intended purpose or under other expected conditions.
- The Technical Regulation do not apply to appliances specially designed for:
 - for use in industrial processes carried out in industrial premises;
 - for use on aircraft and railways;
 - for temporary use in laboratories for research purposes.

A device is considered "specially designed" when the design is intended only to meet specific needs for a specific process or operation.

If for the relevant appliances or fittings the requirements established by the Technical Regulation are specified in more detail by other technical regulations, this Technical Regulation shall not apply or its application to such appliances or fittings shall be terminated in part of the specified requirements.

The established essential requirement for the rational use of energy does not apply to appliances covered by technical regulations for the installation of a system for determining the requirements for ecodesign of energy products, approved by the Resolution of the Cabinet of Ministers of Ukraine on October 3, 2018, № 804.

The appliances can be made available on the market and put into service if they meet the requirements of the Technical Regulation during normal operation.

Valves may be made available on the market only if they meet the requirements of the Technical Regulation.

Appliances and fittings must meet the essential requirements set out in the Technical Regulations.

The making available on the market and put into service on the territory of Ukraine of appliances that meet the requirements of the Technical Regulation shall not be prohibited or restricted or any other obstacles shall not be created in respect of those aspects covered by this Technical Regulation.

The making available on Ukraine's market of fittings that meet the requirements of the Technical Regulation shall not be prohibited or restricted or any other obstacles shall not be created about the risks covered by these Technical Regulation.

Display of appliances or fittings that do not meet the requirements of the Technical Regulation, during fairs, exhibitions, demonstrations, or other events is carried out in the presence of a visible marking that such appliances or fittings do not meet the requirements of the Technical Regulations and cannot be made available on the market as long as they aligned with the requirements of this Technical Regulation. Appropriate safety measures shall be taken during the demonstration of devices or fittings to protect persons, pets, and property.

The declaration of conformity shall indicate compliance with the essential requirements.

The declaration of conformity shall be drawn up by an indicative structure, shall contain the information specified in the relevant conformity assessment procedures, and shall be kept up to date. The declaration of conformity of the appliance or fittings is drawn up or translated in accordance with the requirements of the law on the use of languages.

To ensure that complete appliances conform to the applicable essential requirements, the declaration of conformity for fittings must contain the characteristics of the fittings and instructions for installation or assembly of the appliance.

If the appliance or fitting are subject to several technical regulations requiring a declaration of conformity, a single declaration of conformity shall be drawn up for all such technical regulations. Such declaration of conformity shall specify the relevant technical regulations, including information on their official publication.

The single declaration of conformity may take the form of a dossier consisting of the corresponding separate declarations of conformity.

By drawing up a declaration of conformity, the manufacturer assumes responsibility for the conformity of the appliance or fitting with the requirements set out in this Technical Regulation.

A copy of the declaration of conformity must be provided together with the fitting.

The mark of conformity with the technical regulations shall be affixed to the appliance and fitting or the technical data plate and shall be visible, legible, and resistant to abrasion. If this is impossible or unjustified due to the nature of the appliance or fitting, the mark of conformity with the technical regulations shall be affixed to the packaging and the document accompanying the appliance or fittings.

The mark of conformity with technical regulations is applied before putting the appliance or fitting into circulation.

The mark of conformity to technical regulations shall be accompanied by the identification number of the designated conformity assessment body if such body is involved in the stage of control of the production of the appliance or fitting, and the last two figures of the year of application of such mark. The identification number of the notified body shall be affixed by the body itself or on its instructions by the manufacturer or its authorized representative.

The mark of conformity with the technical regulations and the identification number of the designated conformity assessment body may be accompanied by any other marking indicating a special risk or specific use.

The Technical Regulation also defines the responsibilities of the manufacturer, authorized representative, importer, and distributor of the appliance or fitting, in order to put into circulation, make available on the market of Ukraine, and put into service products that meet the requirements of this Technical Regulation.

Given that Technical Regulation on appliances running on gaseous fuel is based on and **fully complies** with Regulation (EC) 2016/426, measures are being taken to monitor amendments to Regulation (EU) 2016/426 in order to bring prompt similar amendments to the Technical Regulation of Ukraine. With this aim, specialists from the Ministry of Economy of Ukraine check the website <https://eur-lex.europa.eu> on a weekly basis to obtain information on amendments to the Regulation (EU) 2016/426.

b) The Technical Regulation on appliances running on gaseous fuel provides that the conformity of appliances or fittings to standards included in a list of national standards or parts thereof implies a presumption of conformity of such appliances or fittings to the essential requirements covered by such standards or parts thereof.

The list of national standards for application of this Technical Regulation has been approved and published on the official website of the Ministry of Economy of Ukraine (<https://www.me.gov.ua/Documents/List?lang=uk-UA&id=fbe1ad1b-6d48-407e-a2bd-aae55f31afec&tag=PerelikNatsionalnikhStandartivPidTekhnichniReglamentni>).

The Technical Regulation provides for the mandatory conformity assessment of the products covered by it.

Before putting the appliance or fitting into circulation, the manufacturer shall perform the conformity assessment procedures in accordance with this Technical Regulation.

Conformity of serially manufactured appliances and fittings to the requirements of this Technical Regulation is assessed by applying the type-examination procedure (module B - type-examination - a combination of type examination and design examination) in combination with the manufacturer's choice with one of the following conformity assessment procedures:

- conformity of the type based on internal control of production with carrying out inspections of products under supervision at random intervals (module C2);
- conformity to type based on quality assurance of the production process (module D);
- conformity to type based on product quality assurance (module E);
- conformity to type based on product verification (module F).

If the appliance or fitting are manufactured in single or small quantities, the manufacturer may choose one of the above conformity assessment procedures or a conformity assessment procedure based on a check of product unit (module G).

All the conformity assessment procedures defined in the Technical Regulation are identical to those provided for in Directive 2014/34/EU.

As of December 31, 2021, 4 conformity assessment bodies have been appointed to perform conformity assessment of products to the requirements of the Technical Regulation, which are accredited by the National Accreditation Agency of Ukraine according to the Technical Regulation.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016, № 1069 “On approval of the list of products for which the state market surveillance authorities carry out state market supervision” (Official Gazette of Ukraine, 2017, № 50, p. 1550) the State Service of Ukraine for Food Safety and Consumer Protection performs supervision over compliance with the requirements of this Technical Regulation.

36. Explosive Atmospheres Equipment (ATEX) (Dir. 2014/34/EU)

a) The Technical Regulation on equipment and protective systems intended for use in potentially explosive atmospheres approved by the Resolution of the Cabinet of Ministers of Ukraine of 28.12.2016 № 1055 (Official Gazette of Ukraine, 2017, № 8, p. 236) (hereinafter referred to as the Technical Regulation) developed on the basis of the Directive 2014/34/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to equipment and protective systems intended for use in potentially explosive atmospheres, is valid in Ukraine since 27.07.2017.

This Technical Regulation establishes essential requirements for equipment and protective systems intended for use in potentially explosive atmospheres and requirements for the circulation of such products on the Ukrainian market.

The Technical Regulation applies to equipment and protective systems intended for use in potentially explosive atmospheres; protective, control and regulating devices intended for use outside potentially explosive atmospheres, which are necessary or contribute to the explosion-proof operation of equipment and protective systems; components intended for installation into equipment and protective systems intended for use in potentially explosive atmospheres.

The Technical Regulation does not apply to:

- medical devices covered by the Technical Regulation on Medical Devices approved by the Resolution of the Cabinet of Ministers of Ukraine of 02.10.2013 № 753 (Official Gazette of Ukraine, 2013, № 82, p. 3046), which are intended for use in the medical environment;
- equipment and protective systems, during the operation of which the risk of explosion arises only in the presence of explosives or chemically unstable substances;
- equipment intended for domestic or non-industrial use, when potentially explosive atmospheres may arise solely due to accidental leakage of combustible gas;
- personal protective equipment covered by Technical Regulation on Personal Protective Equipment approved by the Resolution of the Cabinet of Ministers of Ukraine of 21.08.2019 № 771 (Official Gazette of Ukraine, 2019, № 70, p. 2457);
- seagoing vessels and mobile marine installations together with equipment therefor;
- vehicles, in particular trailers, intended for the carriage of goods and / or passengers by road;
- vehicles intended for the carriage of goods and / or passengers by air, rail and water.

Vehicles intended for use in potentially explosive atmospheres shall not be excluded from the scope of this Technical Regulation.

Products may be made available on the market and put into service (subject to proper installation, maintenance and intended use) only if they meet the requirements of this Technical Regulation.

The requirements of normative legal acts on ensuring the protection of persons, in particular, employees during the operation of certain products, shall not provide for the modification of these products in a manner not established in this Technical Regulation.

Demonstration and / or demonstration of products that do not meet the requirements of this Technical Regulation during fairs, exhibitions, demonstrations or other similar events shall be carried out in the presence of a visible mark clearly stating that such products shall not be made available on the market and put into service until it is brought into compliance with the requirements of this Technical Regulation. Appropriate safety measures shall be taken during the demonstration of such products to ensure the protection of persons.

The products must, taking into account their intended use, meet the essential protection and safety requirements for the design and manufacture of equipment and protective systems intended for use in potentially explosive atmospheres, as set out in the Technical Regulation.

Given its intended use, the product must meet the essential protection and safety requirements for the design and manufacture of equipment and protective systems intended for use in potentially explosive atmospheres (hereinafter referred to as the essential requirements).

The making available market and put into service on the territory of Ukraine of products that meet the requirements of this Technical Regulation shall not be prohibited, restricted, or create any other obstacles.

The declaration of conformity states that compliance with the essential requirements has been demonstrated.

The declaration of conformity shall be drawn up in accordance with an indicative structure, shall contain the information specified in the relevant conformity assessment procedures and shall be kept up to date. The declaration of conformity shall be drawn up in the official language and, if it is drawn up in another language, shall be translated into the official language.

Where products are subject to several technical regulations requiring a declaration of conformity, a single declaration of conformity shall be drawn up for all such technical regulations. Such declaration of conformity shall specify the relevant technical regulations, including information on their official publication.

The single declaration of conformity may take the form of a dossier consisting of the corresponding separate declarations of conformity.

The manufacturer who draws up the declaration of conformity shall be responsible for the conformity of the product with the requirements set out in this Technical Regulations.

The mark of conformity to technical regulations is applied according to the general principles of marking with the specified mark, established by law.

The mark of conformity to technical regulations shall be affixed to the product or to the technical data plate and shall be visible, legible and resistant to abrasion. If this is impossible or unjustified due to the nature of the product, the mark of conformity with technical regulations shall be affixed to the packaging and to the document accompanying the product.

The mark of conformity to technical regulations is applied before putting the product into circulation.

The mark of conformity to technical regulations is accompanied by the identification number of the notified body, if such body was involved at the stage of production control.

The identification number of the notified body shall be affixed by the body itself or on its instructions by the manufacturer or its authorized representative.

The mark of conformity to technical regulations and the identification number of the designated body (in case of its application) are accompanied by a special explosion protection sign, designation of the group and category of equipment, other marks and information.

The mark of conformity to technical regulations and the identification number of the notified body (if any) shall be accompanied by any other marking indicating the special risk or peculiarities of the use of the product.

Products designed for a specific explosive atmosphere must be marked accordingly. In case of improper application of marking, measures shall be taken in accordance with the procedure established by law.

According to the results of the preliminary assessment by the European Union experts of the Concordance table of Technical Regulation on equipment and protective systems intended for use in potentially explosive atmospheres with Directive 2014/34/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to equipment and protective systems intended for use in potentially explosive atmospheres, the *nearly complete* transposition of the provisions of Directive 2014/34/EU was noted.

Comments on Main Gaps and Shortcomings:

1. A number of provisions of the Directive have not been transposed in the Technical regulation under the reference that these are not applicable as they refer to a specific procedure that applies only to the European Commission, to Member States or to the interaction between the European Commission and the Member States. This is considered acceptable for now. However, these topics shall be arranged in the text of the ACAA or be implemented otherwise before the ACAA can come into force.

2. The Technical Regulation includes provisions that are specific national requirements and procedures transposing equivalent EU requirements and procedures. For example, affixing of a (national) conformity marking, drawing up of a (national) Declaration of Conformity, language requirements for technical documentation, language requirements for instructions for use. It is noted that these national specific requirements will need to be aligned with EU requirements in the ACAA or before the ACAA enters into force.

b) Technical Regulation on equipment and protective systems intended for use in potentially explosive atmospheres stipulates that the conformity of products to standards included in a certain list of national standards or parts thereof gives the presumption of conformity of these products to essential health requirements and safety requirements for design and manufacture of equipment and protective systems intended for use in potentially explosive atmospheres covered by such national standards or parts thereof.

The list of national standards for the purposes of application of this Technical Regulation has been approved and published on the official website of the Ministry of Economy of Ukraine.

(<https://www.me.gov.ua/Documents/List?lang=uk-UA&id=fbe1ad1b-6d48-407e-a2bd-aae55f31afec&tag=PerelikiNatsionalnikhStandartivPidTekhnichniReglamentni>).

●Order of the Ministry of Economy of Ukraine of 30.01.2019 № 124 “List of National Standards for the Purposes of Application of the Technical Regulations on Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Approved by the Resolution of the Cabinet of Ministers of Ukraine of 28.12.2016 № 1055”;

● Order of the Ministry of Economy of Ukraine of 26.01.2021 № 136 119 “Amendment to the List Formed on the Basis of the Implementing Decision (EU) 2019/1202 of 12.07.2019”.

● The Technical Regulation provides for the mandatory conformity assessment of the products covered by it.

Conformity assessment of equipment and, if necessary, devices specified in paragraph 2 of this Technical Regulation shall be carried out by applying the following conformity assessment procedures:

1) for equipment of category M1 of group I and category 1 of group II module B (type examination) is used, in combination with one of the following modules:

- module D (conformity to type based on quality assurance of the production process);
- module F (conformity to type based on product inspection);

2) for equipment of category M2 of group I and category 2 of group II:

for internal combustion engines and electrical equipment, module B (type examination) is used in combination with one of the following modules:

● module C1 (conformity to type based on internal production control with product testing under supervision);

● module E (conformity to type based on product quality assurance);

● for other equipment, module A (internal production control) and submission of technical documentation to the designated conformity assessment body (hereinafter - the designated body) is applied, which is obliged to confirm its receipt as soon as possible and keep this documentation;

3) module A (internal production control) is used for equipment of category 3 of group II;

4) for equipment of groups I and II, in addition to the conformity assessment procedures referred to in above paragraphs 1, 2 and 3, module G (conformity based on unit verification) may also be used.

Conformity assessment of protection systems shall be carried out by applying the conformity assessment procedures set out in above paragraphs 1 or 4.

Conformity assessment procedures applied to the equipment shall also apply to components but without the affixing of a mark of conformity to technical regulations and the drawing up of a declaration of conformity. For components, the manufacturer shall provide a written declaration of conformity certifying compliance of these components with the applicable requirements of this Technical Regulation, indicating their characteristics and how they must be installed in the equipment or protective systems so as not to affect the conformity of completed equipment or protective systems to essential requirements.

For safety purposes, in addition to the conformity assessment procedures applied to equipment and protective systems, a module conformity assessment procedure (internal production control) may also be used.

All the conformity assessment procedures defined in the Technical Regulation on equipment and protective systems intended for use in potentially explosive atmospheres are identical to those provided for in Directive 2014/34/EU of the European Parliament and of the Council.

As of 31.12.2021, 5 conformity assessment bodies, which are accredited by the National Accreditation Agency of Ukraine according to the Technical Regulation, have been appointed to perform works on conformity assessment of products to the requirements of the Technical Regulation.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products, for which the state market surveillance authorities carry out state market supervision” (Official Gazette of Ukraine, 2017, № 50, p. 1550) the State Labor

Service of Ukraine is the market supervisor of compliance with the requirements of this Technical Regulation.

37. Pressure Equipment (PED) (Dir. 2014/68/EU)

a) Technical Regulation on Pressure Equipment approved by the Resolution of the Cabinet of Ministers of Ukraine of 16.01.2019 № 27 (Official Gazette of Ukraine, 2019, № 9, p. 325) and developed for the purpose of implementation of provisions of the Directive 2014/68/EU of the European Parliament and of the Council of 15 May 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of pressure equipment, is valid in Ukraine since 23.01.2020.

This Technical Regulation lays down requirements for the design, manufacture and conformity assessment of pressure equipment and assemblies with a maximum permissible pressure (PS) of greater than 0.5 bar.

Pressure equipment means vessels, pipelines, safety devices and pressure equipment, including, where applicable, elements attached to pressure parts such as flanges, nozzles, couplings, supports, lifting loops.

Pressure equipment and assemblies may be made available on the market and put into service when provided that they comply with the requirements of this Technical Regulation, proper installation, maintenance and intended use.

The requirements of normative legal acts and normative documents on ensuring the protection of workers during the operation of pressure equipment and assemblies shall not provide for the modification of such equipment in a manner not provided for in this Technical Regulation.

Demonstration of pressure equipment or assemblies that do not meet the requirements of this Technical Regulation during fairs, exhibitions or other similar events shall be carried out in the presence of a visible sign clearly stating that such equipment and assemblies shall not be introduced into circulation or made available on the market until they are brought into compliance with the requirements of this Technical Regulation. Demonstration of pressure equipment or assemblies may only be carried out when appropriate safety measures are provided.

Ukraine shall not, on grounds of the hazard due to pressure, prohibit, restrict or impede the making available on the market or the putting into service under the conditions specified by the manufacturer of pressure equipment or assemblies which comply with this Technical Regulation.

The placing on the market or putting into circulation on the territory of Ukraine shall not be prohibited, restricted, or impeded by reference to hazards related to pressure, pressure equipment, or assemblies that comply with this Technical Regulation.

In order to ensure the proper safe operation of pressure equipment and assemblies, relevant information must be provided in accordance with the law on the use of languages.

The Technical Regulation defines the responsibilities of manufacturers, authorized representatives, importers, and distributors who ensure putting into circulation, making available on the market, and putting into service only that equipment that meets the requirements of the Technical Regulation.

It is also determined that if an importer or distributor puts into circulation under its name or trademark or modifies entered into circulation pressure equipment or assemblies in such a way that it may affect their compliance with the requirements of the Technical Regulation, it is considered manufacturer and must perform certain duties of the manufacturer.

Economic operators shall provide the state market surveillance authorities, at their request, with information that enables to identify:

- the operator that supplied them with pressure equipment or assemblies;
- the operator to which they have supplied pressure equipment or assemblies.

Operators shall provide the information specified above for 10 years after they have been supplied with pressure equipment or assemblies, or after they have supplied pressure equipment or assemblies.

As the Technical Regulation is developed to implement the provisions and *fully complies* with Directive 2014/68/EU of the European Parliament and of the Council of 15 May 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of pressure equipment, monitoring measures are being taken on an ongoing basis regarding amendments to Directive 2014/68/EU in order to bring prompt similar amendments to the Technical Regulation of Ukraine. With this aim, specialists from the Ministry of Economy of Ukraine check the website <https://eur-lex.europa.eu> on a weekly basis to obtain information on amendments to the Directive 2014/68/EU.

b) Technical Regulations on Pressure Equipment stipulates that the conformity of pressure equipment to national standards included in a certain list of national standards, or parts thereof, presupposes the conformity of such pressure equipment to the essential safety and protection of health requirements of this Technical Regulation, covered by such standards or parts thereof.

The list of national standards for the purposes of application of this Technical Regulation has been approved and published on the official website of the Ministry of Economy of Ukraine.

(<https://www.me.gov.ua/Documents/List?lang=uk-UA&id=fbe1ad1b-6d48-407e-a2bd-aae55f31afec&tag=PerelikiNatsionalnikhStandartivPidTekhnichniReglamenti>).

Conformity assessment of pressure equipment is carried out by designated conformity assessment bodies to perform conformity assessment tasks as third parties in accordance with this Technical Regulation.

The conformity assessment procedures to be applied to pressure equipment shall be determined by the category, according to which the equipment is classified due to the requirements of this Technical Regulations.

The conformity assessment procedures to be applied to the different categories are:

- 1) category I - module A;
- 2) category II:
 - module A2;
 - module D1;
 - module E1;
- 3) category III:
 - modules B (project type) and D;
 - modules B (project type) and F;
 - modules B (production type) and E;
 - modules B (production type) and C2;
 - module H;
- 4) category IV:
 - modules B (production type) and D;
 - modules B (production type) and F;

module G;

module H1.

All the conformity assessment procedures defined in the Technical Regulation on Pressure Equipment are identical to those provided for in the Directive 2014/68/EU of the European Parliament and of the Council.

As of December 31, 2021, 13 conformity assessment bodies accredited by the National Accreditation Agency of Ukraine under the Technical Regulation have been appointed to perform conformity assessment of products to the requirements of the Technical Regulation.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products, for which the state market surveillance authorities carry out state market supervision” (Official Gazette of Ukraine, 2017, № 50, p. 1550) the State Labor Service of Ukraine is the market supervisor of compliance with the requirements of this Technical Regulation.

38. Simple Pressure Vessels (SPVD) (Dir. 2014/29/EU)

a) Technical Regulation of Simple High-Pressure Vessels approved by the Resolution of the Cabinet of Ministers of Ukraine of 28.12.2016 № 1025 (Official Gazette of Ukraine, 2017, № 4, p. 130) and developed on the basis of the Directive 2014/29/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of simple pressure vessels, is valid in Ukraine since 13.07.2017.

This Technical Regulation establishes requirements for simple high-pressure vessels (hereinafter - vessels) and their circulation on the market of Ukraine.

This Technical Regulation applies to vessels that are mass-produced and have the following characteristics:

1) the vessels are welded, subjected to an internal overpressure of greater than 0.5 bar and are intended for filling with air or nitrogen and are not intended for fire heating;

2) parts and assemblies that affect the strength of the pressure vessel must be made of quality non-alloy steel or non-alloy aluminium, or aluminium alloys not hardened by aging;

3) the vessel must consist of:

a cylindrical part with circular cross-sections closed by convex outwards and / or flat bottoms having the same axis of rotation as the cylindrical part;

two convex outward bottoms with one axis of rotation;

4) the maximum working pressure of the vessel should not exceed 30 bar, and the product of such pressure on the volume of the vessel ($PS \times V$) - 10 thousand bar per 1 liter;

5) the minimum operating temperature must not be lower than - 50 °C, and the maximum operating temperature - above + 300 °C for steel vessels and + 100 °C for vessels made of aluminium or its alloys.

The requirements of this Technical Regulation do not apply to:

- vessels specially designed for use in the field of nuclear technology, the damage of which may lead to leakage of radioactive substances;

- vessels specially designed for installation on or launching water or aircraft;

- fire extinguishers.

Vessels may be made available on the market and put into service when they comply with the requirements of this Technical Regulation, provided that they are properly installed, serviced and used for their intended purpose.

The requirements of normative legal acts and normative documents on ensuring the protection of workers during the operation of vessels shall not provide for the modification of vessels in a manner not established by this Technical Regulation.

Vessels, in which the product of the maximum working pressure by volume ($PS \times V$) exceeds 50 bar per liter, must comply with the essential safety requirements set out in Annex 1 to the Technical Regulation.

Vessels, in which the product of the maximum working pressure by volume ($PS \times V$) is equal to or less than 50 bar per 1 liter, must be designed and constructed according to the requirements of good engineering practice applicable in Ukraine.

The making available on the market and putting into service on the territory of Ukraine of vessels that meet the requirements of this Technical Regulation shall not be prohibited or restricted.

Manufacturers must ensure that vessels are designed and manufactured in accordance with the requirements of the Technical Regulation when they are put into circulation.

In case when vessels, in which the product of the maximum working pressure by volume ($PS \times V$) exceeds 50 bar per 1 liter, the manufacturers must draw up the relevant technical documentation and carry out or instruct an authorized representative to carry out the appropriate conformity assessment procedure according to this Technical Regulation.

If the conformity of the vessel, in which the product of the maximum working pressure per volume ($PS \times V$) exceeds 50 bar per 1 liter, with the requirements applicable to it is proved by the conformity assessment procedure, manufacturers must draw up a declaration of conformity and affix a mark of conformity to technical regulations and inscriptions established in the Technical Regulation.

Manufacturers must ensure that appropriate markings are applied to vessels, in which the product of the maximum working pressure by volume ($PS \times V$) is equal to or less than 50 bar per liter.

Manufacturers must:

- keep technical documentation and declaration of conformity for 10 years after putting the vessel into circulation;
- ensure the application of the procedures necessary to ensure compliance of mass production with the requirements of this Technical Regulation. Due account shall be taken of changes in the design or characteristics of the vessels and the national standards or other technical specifications by reference to which the conformity of the vessel is declared;
- in case that this is deemed appropriate in relation to the risks posed by the vessel, in order to protect the health and safety of consumers (users) to conduct selective tests of samples of vessels provided on the market, consider consumer (user) applications, examine vessels that do not meet the requirements of this Technical Regulation, and cases of recall of the vessel and, if necessary, keep records of such appeals, non-compliant vessels and cases of recall, as well as inform distributors about the results of such monitoring;
- provide indications on the vessels they have put into circulation, the type and number of the batch or serial number that facilitate their identification;
- indicate on the vessel the name, registered trade name or registered trademark (mark for goods and services) and contact postal address enabling to contact the manufacturer. Data are indicated in accordance with the requirements of the law on the use of languages;

- to ensure the maintenance of the vessel with appropriate instructions and safety information, compiled in accordance with the requirements of the law on the use of languages. These instructions and information, as well as any markings, must be clear, understandable and intelligible;

- take immediate corrective action to bring such a vessel into compliance with the requirements of this Technical Regulation, withdraw it and / or recall it (if necessary) if they believe or have reason to believe that the vessel they put into circulation does not meet the requirements of this Technical Regulation. If the specified vessel poses a risk, manufacturers are obliged to immediately notify the relevant state market surveillance authority and provide it with detailed information, including non-compliance of such vessel with the requirements of this Technical Regulation and corrective measures taken.

At the reasoned request of the state market surveillance authority, manufacturers must provide it with all information and documentation (in paper and / or electronic form) necessary to prove the vessel's compliance with the requirements of this Technical Regulation, drawn up in the state language. At the request of that authority, manufacturers must cooperate with that authority on any action taken to eliminate the risks posed by the vessels they put into circulation.

Also, the Technical Regulation defines the responsibilities of authorized representatives, importers and distributors who ensure making available on the market and putting into service of only those vessels that meet the requirements of the Technical Regulation.

If an importer or distributor puts a vessel into circulation under his name or trademark (mark for goods and services) or modifies a vessel already put into circulation, which may affect its compliance with the requirements of this Technical Regulation, he shall be considered a manufacturer and must perform the responsibilities of the manufacturer specified in this Technical Regulation.

It is established that economic operators must provide the state market surveillance authorities with information on their requests, which enables to identify:

- the operator who has supplied them with a vessel;
- the operator to whom they have supplied a vessel.

Operators shall be able to provide this information for 10 years after they have been supplied with the vessel and for 10 years after they have supplied the vessel.

Given that the Technical Regulation of Simple High-Pressure Vessels, approved by the Resolution of the Cabinet of Ministers of Ukraine dated 28.12.2016 № 1025 (Official Gazette of Ukraine, 2017, № 4, p. 130) developed on the basis and **fully complies** with Directive 2014/29/EU of the European Parliament and of the Council, and in full compliance therewith, the measures are being taken to monitor amendments to the Directive 2014/29/EU in order to bring similar prompt amendments to the Technical Regulation of Ukraine. With this aim, specialists from the Ministry of Economy of Ukraine check the website <https://eur-lex.europa.eu> on a weekly basis to obtain information on amendments to the Directive 2014/29/EU.

b) The Technical Regulation on Simple High-Pressure Vessels stipulates that the conformity of a vessel to national standards included in a list of national standards or parts thereof implies the presumption of conformity of such vessel with the essential safety and health requirements of this Technical Regulation covered by such standards or parts thereof.

The list of national standards for the purposes of application of this Technical Regulation has been approved and published on the official website of the Ministry of Economy of Ukraine.

(<https://www.me.gov.ua/Documents/List?lang=uk-UA&id=fbe1ad1b-6d48-407e-a2bd-aae55f31afec&tag=PerelikiNatsionalnikhStandativPidTekhnichniReglamenti>).

The Technical Regulation provides for the mandatory assessment of the conformity of the products covered by it.

Before the start of manufacturing vessels, in which the product of the maximum working pressure by volume (PS x V) exceeds 50 bar per 1 liter, must be undergone a type-examination procedure (module B) considering the following requirements:

1) assessment of the adequacy of the technical design of vessels manufactured in accordance with the standards included in the list of national standards, at the choice of the manufacturer is carried out by examination of technical documentation and supporting evidence without examining a sample of a complete vessel evidence with the study of such a sample (module B - examination of the manufactured standard sample);

2) the manufacturer is obliged to provide for examination of vessels manufactured without application or with partial application of standards included in the list of national standards, a sample of the completed vessel and technical documentation and supporting evidence and assessment of the adequacy of technical design of the vessel typical sample).

Before putting into circulation, the vessels are subject to the following conformity assessment procedures:

1) in case where the product of the maximum working pressure by volume (PS x V) exceeds 3000 bar per 1 liter, - the procedure of conformity to type based on internal production control with testing of vessels under supervision (module C1);

2) if the product of the maximum working pressure by volume (PS x V) exceeds 200 bar per 1 liter, but does not exceed 3000 bar per 1 liter, - at the choice of the manufacturer one of the following procedures:

- type compliance procedures based on internal production control with supervised vessel testing (module C1);

- type compliance procedures based on internal production control with control inspection of vessels at arbitrary time intervals (module C2);

3) when the product of the maximum working pressure per volume (PS x V) does not exceed 200 bar per 1 liter, but exceeds 50 bar x 1 liter, at the choice of the manufacturer one of the following procedures:

- type compliance procedure based on internal production control with supervised vessel testing (module C1);

- type compliance procedure based on internal production control (module C).

All conformity assessment procedures defined in the Technical Regulation on Simple High-Pressure Vessels are identical to those provided for in Directive 2014/29/EU of the European Parliament and of the Council.

As of 31.12.2021, 2 conformity assessment bodies accredited by the National Accreditation Agency of Ukraine under this Technical Regulations have been appointed to perform conformity assessment of products to the requirements of the Technical Regulation on Simple High-Pressure Vessels.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products, for which the state market surveillance authorities carry out state market supervision” (Official Gazette of Ukraine, 2017, № 50, p. 1550) the State Labor Service of Ukraine is the market supervisor of compliance with the requirements of this Technical Regulation.

39. Outdoor Equipment Noise Emissions (Dir. 2000/14/EC)

a) in Ukraine since 11.03.2021 is in force Technical regulation of noise emissions into the environment from the equipment used outside the premises, approved by the resolution of the Cabinet of Ministers of Ukraine from 04.12.2019 № 1186 (Official Gazette of Ukraine, 2020, № 23, p. 839) (hereinafter referred to as the Technical Regulation), developed on the basis of Directive 2000/14/EC of the European Parliament and of the Council of 8 May 2000 on the approximation of the laws of the Member States relating to environmental noise by using outdoor equipment.

This Technical Regulation establishes requirements for noise emission into the environment from equipment used outdoors in order to protect human health, the environment and the circulation of such equipment on the Ukrainian market.

This Technical Regulation applies to equipment used outdoors, which is specified in paragraphs 15 and 17 of this Technical Regulation and the definition of the types of which is given in Annex 1.

This Technical Regulation applies only to equipment put into circulation or service as a solid object suitable for its intended use. Additional devices that do not require connection to batteries and are put into circulation or service separately are not subject to this Technical Regulation, except for manual concrete breakers and downhole hammers, as well as hydraulic hammers.

This Technical Regulation does not apply to:

- equipment, the main purpose of which is the transportation of goods and people by road, rail, water, air;
- equipment specially designed and constructed for military purposes, for protection of public order, emergency rescue service of civil defence, as well as ambulance and emergency medical care.

The equipment must not be put into circulation or service until the manufacturer or his authorized representative has provided:

- compliance of the equipment with the requirements of this Technical Regulation on noise emission into the environment;
- conducting a conformity assessment procedure;
- affixing a mark of conformity to technical regulations on the equipment, marking the guaranteed sound power level, and accompanying the equipment with a declaration of conformity.

If the manufacturer is not a resident of Ukraine and in the absence of his authorized representative, the responsibilities of the manufacturer by this Technical Regulation are assigned to persons who put the equipment into circulation or service on the market of Ukraine.

The only equipment that meets the requirements of this Technical Regulation, which bears the mark of conformity to the technical regulations, the mark of the guaranteed sound power level, and which is accompanied by a declaration of conformity shall be put into circulation or service on the market.

The putting into circulation or service of equipment that meets the requirements of this Technical Regulation, which bears the mark of conformity to technical regulations, the mark of the guaranteed sound power level, and which is accompanied by a declaration of conformity shall not be prohibited, restricted or created by any other obstacles to this.

During fairs, exhibitions, presentations, etc., the display of equipment that does not meet the requirements of this Technical Regulation is carried out provided that it has a visible inscription, which clearly states that the equipment does not meet the requirements of this Technical Regulation and shall not be put into circulation or service until the equipment is brought in line this Technical Regulation by the manufacturer or his authorized representative. During the demonstration of equipment that does not meet the requirements of this Technical Regulation, adequate safety measures must be taken to protect people.

Equipment bearing the mark of conformity to technical regulations, the mark of guaranteed sound power level, and accompanied by a declaration of conformity shall be considered by the executive authorities as meeting the requirements of this Technical Regulation.

In order to confirm the conformity of a unit of equipment to the requirements of this Technical Regulation, the manufacturer or his authorized representative must draw up a declaration of conformity for each type of manufactured equipment.

The declaration of conformity must be drawn up in accordance with the established indicative structure. The declaration of conformity shall be drawn up in the official language and, if drawn up in another language, shall be translated into the official language.

The manufacturer of the equipment or his authorized representative shall keep the original of the declaration of conformity for at least 10 years from the date of manufacture of the last item of equipment together with the technical documentation.

The Technical Regulation defines the types of equipment that are subject to the limitation of the sound power level, the permissible sound power levels for such equipment, the objects of marking with the mark of the guaranteed sound power level, etc.

Technical regulation developed on the basis of Directive 2000/14/EC of the European Parliament and of the Council, entered into force on 11.03.2021. Currently, the Technical Regulation is *partially in line* with Directive 2000/14/EC.

According to the results of the preliminary assessment by the experts of the European Union of the Concordance table of the Technical Regulation with Directive 2000/14/EU it was considered to be partial transposed.

Comments on Main Gaps and Shortcomings:

1. Transpositions for the following provisions of the Directive are missing in the TR:

- a. Article 14 (3rd indent) on gathering CA information
- b. Article 15 (3rd indent) on notification/withdrawals of CABs from the list
- c. Article 16 Noise data collection (no register of issued DoCs foreseen!)
- d. Article 17 Regulation of use (link to OHS or environmental legislation)
- e. Article 18 - 22 (Scrutiny and transitions) this can be partly or even fully omitted as it is already taken into account during transposition (i.e Stage II, where for some categories lower values of LwAg have been required)

2. Article 5, Article 8, Article 11, Article 13 and Article 14 of the TR refers to “equipment” only, and not “equipment referred to in Article ...” as the EU Directive does. The formulation in the TR could lead to confusion. The text shall add “referred to in Article 2” after the word “equipment”.

3. To apply small correction to the text in Article 16 of the TR.

b) According to the Technical Regulation on Noise Emissions from Outdoor Equipment, before putting into circulation or service of any equipment subject to sound power limitation, the manufacturer or his authorized representative must carry out one of the following conformity assessment procedures for each type of equipment:

- the procedure of internal control of production with evaluation of technical documentation and periodic inspections;
- equipment unit inspection procedure;
- total quality assurance procedure.

Prior to putting into circulation or service of any equipment marked with a guaranteed sound power level mark, the manufacturer or his authorized representative must carry out an internal production control procedure for each type of equipment.

All the conformity assessment procedures defined in the Technical Regulation on Environmental Noise from Equipment Used Outside the Premises are identical to those provided for in Directive 2000/14/EC.

To determine the sound power level of equipment used outdoors, certain national standards are used, which are listed in Annex 3 to the Technical Regulation.

As of 31.12.2021, no conformity assessment body has been appointed to perform conformity assessment of products to the requirements of the Technical Regulation.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products for which the state market surveillance authorities carry out state market supervision” (Official Gazette of Ukraine, 2017, № 50, p. 1550) The State Labor Service of Ukraine is the market supervisor of compliance with the requirements of this Technical Regulation.

a. Have you taken the measures necessary to ensure that manufacturers send to the responsible authorities copies of the EC declarations of conformity for equipment placed on the market, according to Article 16 of the Directive on Outdoor Equipment Noise Emissions?

According to the preamble to Directive 2000/14/EC, the collection of noise data in accordance with Article 16 by sending a copy of the EU declaration of conformity to the Member State and the Commission by the manufacturer or his authorized representative is necessary as a basis for informed consumer choice, as well as for further evaluation by Member States and the Commission of new technological developments and the need for further legislative action.

During the development and adoption of the Ukrainian Technical Regulation on the basis of Directive 2000/14/EC, the provision referred to in Article 16 of Directive 2000/14 / EC was recognized as temporarily unavailable because:

- as of the date of adoption of the Technical Regulation, Ukraine is not an EU Member State and therefore has no legal basis to send the Commission its assessment of new technological developments in the relevant field to determine the need for further legislative action in EU legislation;

- establishing in the Technical Regulation the obligation of manufacturers and / or authorized representatives to send copies of declarations of conformity to a certain authority without being able to influence the development of EU legislation is an additional regulatory burden on economic entities;

- establishing in Ukraine other requirements for the guaranteed level of sound power of equipment used outdoors, in the case of the obligation to send copies of the declaration of conformity and assessment of new technological developments in this area, will be contrary to the Law of Ukraine 15.01.2015 № 124-VIII “On technical regulations and conformity assessment” (Vidomosti Verkhovnoi Rady Ukrainy, 2015, № 14, p. 96), which states that technical regulations developed on the basis of EU act must correspond in content, form, and structure to content, form, and structure of relevant EU act, and will create technical barriers to trade regarding the relevant products.

In addition, the conscious choice of consumers of equipment used outdoors is ensured by marking the equipment with a guaranteed sound power level and accompanied by a declaration of conformity, which states, in particular, the measured sound power level and guaranteed sound power level.

The implementation of Article 16 of Directive 2000/14/EU is seen as the subject of further agreements with the EU to deepen cooperation, in particular within the framework of the ACAA

Agreement. If the relevant agreements are reached, Ukraine will take prompt measures to amend the Technical Regulation in order to implement provisions of Article 16 of Directive 2000/14/EU.

40. Construction Products (CPR) (Reg. 305/2011)

a) the degree of consistency of the regulatory framework

Today in Ukraine the provision of construction products on the market is regulated by the Technical Regulations of Construction Products (products), approved by the Cabinet of Ministers of December 20, 2006 № 1764 (as amended by the Cabinet of Ministers of 22.03.2022 № 347, <https://zakon.rada.gov.ua/laws/show/347-2022-%D0%BF#n2>).

This Technical Regulation has been in force in Ukraine since 2006 and was developed taking into account the requirements of Council of Europe Directive 89/106 / EEC.

At the same time, on September 2, 2020, the Verkhovna Rada of Ukraine adopted the Law of Ukraine № 850 “On Provision of Construction Products on the Market” (<https://zakon.rada.gov.ua/laws/show/1458-2021-%D0%BF#Text>), which implements the provisions of Regulation (EU) 305/2011 into national law and enters into force in full on 1 January 2023.

This Law is a Technical Regulation and establishes the legal and organizational basis for putting into circulation or placing construction products on the market by establishing rules for expressing indicators related to the essential performance characteristics of such products, as well as applying the mark of compliance with technical regulations.

Due to the differences in the drafting of EU and Ukrainian legislation, some of the provisions of Regulation (EU) 305/2011 (including the provisions set out in the Annexes to Regulation (EU) 305/2011) have been implemented in national legislation at the level of by laws.

Thus, in pursuance of this Law during 2021, the Government of Ukraine approved a number of bylaws that address key issues of providing construction products on the market, namely the Cabinet of Ministers of Ukraine approved:

1) The list of categories of construction products, approved (Resolution of the Cabinet of Ministers of April 28, 2021 № 426, <https://zakon.rada.gov.ua/laws/show/426-2021-%D0%BF#Text>), corresponds to the table 1 of Annex IV of the Regulations;

2) Systems for assessing and verifying the stability of construction products (Resolution of the Cabinet of Ministers of April 28, 2021 № 426, <https://zakon.rada.gov.ua/laws/show/426-2021-%D0%BF#Text>), complies with Annex IV to Regulation (EU) 305/2011;

3) The form of the declaration of indicators of construction products (Resolution of the Cabinet of Ministers of December 23, 2021 № 1458, <https://zakon.rada.gov.ua/laws/show/1458-2021-%D0%BF#Text>), corresponds to Annex III Regulation (EU) 305/2011;

4) Instructions on drawing up the declaration of indicators of construction products (Resolution of the Cabinet of Ministers of December 23, 2021 № 1458, <https://zakon.rada.gov.ua/laws/show/1458-2021-%D0%BF#Text>);

5) Procedure for development and adoption of national documents of Ukraine on determining eligibility (Resolution of the Cabinet of Ministers of December 23, 2021 № 1458, <https://zakon.rada.gov.ua/laws/show/1458-2021-%D0%BF#Text>) - developed on the basis of Annex II of Regulation (EU) 305/2011;

6) Requirements on the competence of bodies for determining technical acceptability (Resolution of the Cabinet of Ministers of December 23, 2021 № 1458, <https://zakon.rada.gov.ua/laws/show/1458-2021-%D0%BF#Text>), corresponds to table 2 of Annex IV of the Regulations;

7) The list of cases of essential operational characteristics in which the reference to the corresponding regulatory technical specifications is optional 2021-% D0% BF # Text), corresponds to Annex IV of Regulation (EU) 305/2011;

8) Procedure for issuance, refusal to issue, cancellation of the certificate of appointment of the body for determining technical acceptability, expansion of the scope of appointment (Resolution of the Cabinet of Ministers of May 12, 2021 № 471, <https://zakon.rada.gov.ua/laws/show/471-2021-%D0%BF#Text>).

Also, the Law of Ukraine "On Provision of Construction Products on the Market" amended the Law of Ukraine "On Construction Standards", which was supplemented by a new Article 7-2 "Basic requirements for buildings and structures", which implements with the same degree of compliance Annex I 305/2011.

These basic requirements for buildings and structures in accordance with Ukrainian legislation are specified in the state building codes (regulations of a technical nature, establishing mandatory requirements for the object of standardization in construction) and regulations.

In pursuance of these laws, the order of the Ministry of Regional Development of December 30, 2021 № 366 approved new versions of the relevant state building codes (DBN) with effect from the first day of the month following 90 days from their registration and publication on the portal of the Unified State Electronic System construction, namely:

- DBN B.1.2-6: 2021 "Basic requirements for buildings and structures. Mechanical resistance and stability";

- DBN B.1.2-7: 2021 "Basic requirements for buildings and structures. Fire Security";

- DBN B.1.2-8: 2021 "Basic requirements for buildings and structures. Hygiene, health and environmental protection";

- DBN B.1.2-9: 2021 "Basic requirements for buildings and structures. Safety and availability during operation";

- DBN B.1.2-10: 2021 "Basic requirements for buildings and structures. Protection against noise and vibration";

- DBN B.1.2-11: 2021 "Basic requirements for buildings and structures. Energy saving and energy efficiency".

At present, these DBNs are being prepared for registration and publication on the portal of the Unified State Electronic System in the Field of Construction (EDEESB) - in accordance with the law.

Also, the order of the national standardization body (SE "UkrNDNC") from 24.12.2021 № 545 approved the national regulatory document DSTU 9171: 2021 "Guidelines for ensuring the balanced use of natural resources during the design of buildings", effective from 01.08.2022.

The state building codes take into account the principles described in the Interpretative Documents to the Council of Europe Directive 89/106/EC.

In general, the Law of Ukraine "On the provision of construction products on the market" together with bylaws fully implements the provisions of Regulation (EU) 305/2011.

At the moment, an official translation of these acts is being prepared. EU acquis.

In addition, the Resolution of the Cabinet of Ministers of 22.03.2022 № 347 (<https://zakon.rada.gov.ua/laws/show/347-2022-%D0%BF#n2>) amended the Technical Regulations for construction products, approved by the Cabinet of Ministers of December 20, 2006 № 1764 (hereinafter - the Technical Regulation of Construction Products), which, in particular, provides for the approximation of the current Technical Regulation to Regulation (EU) 305/2011 - in order to gradually adapt the national market to modern European procedures. Implementation of Regulation

(EU) 305/2011 will take place from January 1, 2023 - with the entry into force of the Law of Ukraine "On the provision of construction products on the market").

In addition, these amendments to the Technical Regulations for construction products for the period of martial law and for the next 90 calendar days allow the introduction and marketing of construction products imported into the customs territory of Ukraine from EU member states, based on the declaration of indicators construction products issued by a foreign business entity in the original language (together with a copy of such declaration, drawn up in the state language), confirming compliance of construction products with Regulation (EU) 305/2011 (CMU Resolution of 22.03.2022 № 347, which amended the Technical Regulations for construction products, approved by the Cabinet of Ministers of December 20, 2006 № 1764 (<https://zakon.rada.gov.ua/laws/show/347-2022-%D0%BF#n2>)).

b) quality infrastructure elements (standardization, conformity assessment, accreditation, metrology and market surveillance)

In order to implement EU Regulation 305/2011, the necessary changes were made to the Procedure for issuing or refusing to issue a certificate of appointment, extension or reduction of the scope, suspension or renewal or revocation of such certificate, approved by the Cabinet of Ministers of November 4, 2020 № 1071 introduced by the Cabinet of Ministers of May 12, 2021 № 471 and December 23, 2021 № 1458) and Special requirements for designated conformity assessment bodies approved by the Cabinet of Ministers of January 13, 2016 № 56 (amended by the Cabinet of Ministers of May 12, 2021 p. № 471).

Also in 2021, the Government (Resolution of the Cabinet of Ministers of June 2, 2021 № 570) determined the body of state market supervision of construction products - the State Inspectorate for Architecture and Urban Development of Ukraine (DIAM).

Order of the Ministry of Regional Development of 18.02.2022 № 54 "On approval of the list of national standards for the purposes of application of the Law of Ukraine" On the provision of construction products on the market " the list of national "sub-regulatory" (Regulation (EU) 305/2011) standards for the purposes of application of the Law of Ukraine" which are identical to harmonized European standards.

This list (533 standards) is based on a list of names and designations of harmonized European standards in the implementation of European Union legislation in the field of construction products, published in the Official Journal of the European Union.

The Ministry of Regional Development, as the customer of standardization works for 2021-2022, also ensures the development of 59 national "sub-regulatory" (Regulation (EU) 305/2011) standards with an identical degree of compliance with European harmonized standards for construction products.

According to Ukrainian legislation, the functions of the Contact Point for construction products are performed by the Ministry of Regional Development.

The Ministry of Regional Development, together with the Ministry of Economy, ensures the work on informing producers about the provisions of the legislation in the field of providing construction products on the market - in accordance with the new rules and procedures.

Thus, the Ministry of Regional Development, DIAM, the Office for Support of Reforms of the Ministry of Regional Development hold round tables (<https://www.youtube.com/watch?v=grvNJeZeTWA&t=2430s>) and other measures to inform stakeholders, in particular, developed a "Roadmap for construction manufacturers" , the purpose of which is to acquaint manufacturers of construction products with the changes that await them after the entry into force of the Law (<https://www.minregion.gov.ua/wp->

content/uploads/2022/02/dorogkartabuild.pdf). Also currently under development is a Practical Guide to providing construction products on the market.

However, today in Ukraine there are no notified bodies designed to conduct conformity assessments under Regulation (EU) 305/2011.

41. Recreational Craft (Dir. 2013/53/EU)

Resolution of the Cabinet of Ministers of Ukraine of 23.12.2021 № 1381 approved the Technical Regulation of pleasure craft and jet skis and developed on the basis of Directive 2013/53 / EU and implements into national law the provisions of this Directive.

42. Civil Explosives (Dir. 2014/28/EU)

In 2014, the European Commission adopted Directive 2014/28/EU of the European Parliament and of the Council of 26 February 2014 on the harmonization of the laws of the Member States relating to the placing on the market and supervision of industrial explosives, repealing Directive 93/15/EU.

In accordance with the provisions of Article 56 of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, Ukraine must implement the provisions of EU law into national law.

Resolution of the Cabinet of Ministers of Ukraine of 03.10.2018 № 802 approved the Technical Regulation of industrial explosives, which was developed on the basis of Directive 2014/28/EU.

In accordance with the order of the Ministry of Social Policy of Ukraine of 17.01.2019 № 66 approved List of national standards identical to harmonized European standards and compliance with which provides a presumption of conformity of industrial explosives to the Technical Regulations of industrial explosives approved by the Cabinet of Ministers of Ukraine from 03.10.201 № 802.

Also, in order to regulate the powers of central executive bodies in the formation and implementation of state policy in the field of explosives, the Ministry of Economy has developed a draft Law of Ukraine “On the handling of industrial Explosives” taking into account the provisions of Directive 2014/28 EU.

43. Pyrotechnic Articles (Dir. 2013/29/EU)

The Technical Regulation on Pyrotechnic Products was developed based on Directive 2013/29/EU of the European Parliament and of the Council of Europe on the 12th of June 2013 on the harmonization of member states' legislation on the provision of pyrotechnic products on the market. The technical regulations of pyrotechnic products were approved by the Resolution of the Cabinet of Ministers of Ukraine dated 05.01.2021 № 8 with the entry into force of 14.01.2022.

In addition, the List of national standards to apply the Technical Regulations on Pyrotechnic Products was formed and approved by the Order of the Ministry of Internal Affairs of Ukraine dated 12.01.2022 № 12, in accordance with the Law of Ukraine "On Technical Regulations and Conformity Assessment" and the Rules for the formation of lists of national standards to apply technical regulations approved by the Order of the Ministry of Economic Development and Trade of Ukraine dated 22.01.2021 № 125.

In accordance with Paragraph 3 of Article 10 of the Law of Ukraine "On Technical Regulations and Conformity Assessment" and the Resolution of the Cabinet of Ministers of Ukraine of the 18th of June 2012 № 708 "On Approval of the Rules for the Development of Draft Technical Regulations

Approved by the Cabinet of Ministers of Ukraine, based on acts of European Union legislation" if the technical regulations are developed based on an act of legislation of the European Union, the content, form, and structure of such technical regulations should correspond as fully and accurately as possible to the content, form, and structure of the relevant act of the legislation of the European Union, taking into account the possibility of regulating specific social relations with the norms of the legislation of Ukraine.

The technical regulations of pyrotechnic products have been developed in accordance with the above-mentioned legislation, its content, form, and structure are as fully and accurately as possible in accordance with the content, form, and structure of Directive 2013/29/EU of the European Parliament and of the Council of Europe of the 12th of June 2013 on the harmonization of the legislation of the Member States on the provision of pyrotechnic products on the market.

44. Toys (Dir. 2009/48/EC)

a) As of September 21, 2018, Technical Regulation on the Safety of Toys has been in force in Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine of February 28, 2018 № 151 (Official Gazette of Ukraine, 2018, № 23, p. 805), developed on the basis of Directive 2009/48 / EU of the European Parliament and of the Council of 18 June 2009 on the safety of toys.

This Technical Regulation establishes requirements for the safety of toys and their circulation on the territory of Ukraine.

This Technical Regulation applies to products designed or intended directly or indirectly for use in play by children under 14 years of age (hereinafter referred to as toys).

This Technical Regulation does not apply to:

- playground equipment intended for public use;
- slot machines intended for public use, whether or not they are powered by coins;
- toy vehicles equipped with internal combustion engines;
- toys with steam engines;
- slingshots and catapults.

Also, certain products, the list of which is defined in Annex 1 to the Technical Regulation, are not considered toys.

Manufacturers must, when putting a toy into circulation, ensure that the toy is designed and manufactured in accordance with the essential safety requirements set out in the Technical Regulation.

Manufacturers must draw up the necessary technical documentation and carry out the appropriate conformity assessment procedure.

If the conformity of a toy with the requirements applied to it has been proved as a result of the said conformity assessment procedure, manufacturers shall draw up a declaration of conformity and affix the mark of conformity to the technical regulations.

Manufacturers shall keep the technical documentation and the declaration of conformity for 10 years after the toy has been put into circulation.

Manufacturers shall ensure that the procedures necessary to ensure mass production comply with the requirements of this Technical Regulation, taking into account changes in the design or characteristics of the toy and changes in national standards by reference to which the toy is declared compliant.

Where deemed appropriate in relation to the risks posed by a toy, manufacturers must, in order to protect the health and safety of consumers, test samples of toys put into circulation, consider consumer appeals and, if necessary, keep records of such appeals concerning non-compliance and recalls of toys, and inform distributors of the results of such monitoring.

Manufacturers shall ensure that toys which they have put into circulation bear an indication of the type, batch number, serial number or model or other element enabling them to be identified and, where the size or nature of the toy precludes respective indication, the necessary information is indicated on its packaging or in the document accompanying such a toy.

Manufacturers shall indicate on the toy their name, registered trade name, or registered trademark (mark for goods and services) and contact postal address and, if this is not possible, on its packaging or in the document accompanying the toy.

The address should indicate one place at which the manufacturer can be contacted.

Manufacturers provide the toy with instructions and safety information according the requirements of the law on the use of languages.

Manufacturers who consider or have reason to believe that a toy they have placed on the market does not comply with all the technical regulations applicable to it shall immediately take the corrective measures necessary to bring the toy into conformity and withdraw it from circulation, and/or its revocation (depending on the circumstances). In addition, if a toy poses a risk, manufacturers shall immediately notify the relevant market surveillance authority, providing it with detailed information, in particular the non-compliance of such toy with the requirements of all technical regulations applicable to it and the corrective measures taken.

The Technical Regulation also defines the responsibilities of the authorized representative, importer, and distributor to ensure the toys that meet the requirements of the Technical Regulation putting into circulation and making available on the Ukrainian market.

If an importer or distributor puts a toy into circulation under its name or trademark (mark for goods and services) or modifies a toy already put into circulation in such a way that it may affect its conformity with certain requirements, it shall be considered a manufacturer for the purposes of this Technical Regulation and must perform the duties of the manufacturer specified in paragraphs 5-13 of the Technical Regulation.

Identification of economic operators:

Economic operators shall submit to the state market surveillance authorities upon their requests information that allows them to identify:

- the operator that has supplied them with the toy;
- the operator which they have supplied with the toy.

Manufacturers shall provide the information specified above for 10 years after the toy has been put into circulation, and other operators for 10 years after the toy has been supplied to them.

Given that Technical Regulation is based on Directive 2009/48/EC, measures are being taken to regularly monitor the amendments to Directive 2009/48/EU in order to bring similar prompt amendments to the Technical Regulation of Ukraine. A draft legal act is currently being drafted to amend Annex 2 to the Technical Regulation of Ukraine due to the need to bring it into line with the amendments made to Annex II of Directive 2009/48/EU to establish a higher level of safety for toys, in particular those that contain allergenic aromatic substances that may pose a danger to children's health. Approximately these changes will be adopted in the second quarter of 2022.

b) The Technical Regulation on the Safety of Toys stipulates that the conformity of a toy with standards from the list of national standards or parts thereof implies the presumption of conformity

of such a toy with the safety requirements set out in these Technical Regulations covered by those standards or parts thereof.

The list of national standards for the purposes of application of this Technical Regulation has been approved and published on the official website of the Ministry of Economy of Ukraine.

(<https://www.me.gov.ua/Documents/List?lang=uk-UA&id=fbe1ad1b-6d48-407e-a2bd-aae55f31afec&tag=PerelikiNatsionalnikhStandartivPidTekhnichniReglamenti>).

Order of the Ministry of Economy dated 20.06.2019 №1054 "List of national standards for the purposes of application of the Technical Regulation on Toy Safety, approved by the resolution of the Cabinet of Ministers of Ukraine dated 28.02.2018 № 151".

The Technical Regulation on the Safety of Toys provides for the mandatory assessment of the conformity of the products covered by it.

If the manufacturer applies national standards from the list of national standards that cover all relevant toy safety requirements, he shall apply the internal production control procedure provided for in module A of the conformity assessment modules.

The toy is subject to conformity assessment by applying the type examination procedure described in module B of the conformity assessment modules, together with the type conformity procedure based on internal production control provided by module C, in the case where:

- there are no national standards from the list of national standards that cover all relevant toy safety requirements;
- national standards from the list of national standards exist, but the manufacturer has not applied them or applied them in part;
- one or more national standards from the list of national standards are included with a restriction on the presumption of conformity;
- the manufacturer considers that, given the nature, design, construction or purpose of the toy, it needs to be verified by a third party.

All conformity assessment procedures set out in the Technical Regulation on the Safety of Toys are identical to those provided for in Directive 2009/48/EC.

As of December 31, 2021, 15 conformity assessment bodies accredited by the National Accreditation Agency of Ukraine under this Technical Regulation have been appointed to perform conformity assessment of products to the requirements of the Technical Regulation.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 "On approval of the list of products for which the state market surveillance authorities carry out state market supervision" (Official Gazette of Ukraine, 2017, № 50, p. 1550) the State Service of Ukraine for Food Safety and Consumer Protection performs market supervision over compliance with the requirements of this Technical Regulation.

45. Eco-design (Dir. 2009/125/EC)

In order to ensure full implementation of Ukraine's commitments under the Association Agreement between Ukraine and the European Union, as well as under the Treaty establishing the Energy Community, Ukraine is implementing a system for setting eco-design requirements for energy products in accordance with updated EU legislation.

In Ukraine, from April 6, 2019, the Technical Regulation on the establishment of a system for determining the requirements for eco-design of energy products, approved by the Cabinet of Ministers of Ukraine of October 3, 2018 № 804 (Official Gazette of Ukraine, 2018, № 80, p. 2678), developed on the basis of Directive 2009/125/EC of the European Parliament and of the Council of 21 October

2009 establishing a system for determining the eco-design requirements applicable to energy products has been in force.

This Technical Regulation establishes a system for determining the eco-design requirements for energy products in order to ensure the free movement of such goods on the Ukrainian market.

According to this Technical Regulation, energy-consuming products are any products that consume energy during their use, put into circulation and /or operation in Ukraine, as well as elements that may be part of the products covered by this Technical Regulation put into circulation and /or put into operation as separate parts of the product for consumers and environmental characteristics that can be independently assessed.

Products covered by technical regulations on eco-design requirements by product type may be put into circulation and / or put into operation only if they meet the requirements set out in the technical regulations on eco-design requirements by product types and if the sign of conformity to technical regulations is put on them.

The mark of compliance with technical regulations is applied to the product, and if this is not possible - on the packaging and accompanying documents.

The Technical Regulation defines the responsibilities of manufacturers, importers, authorized representatives for compliance of the product with the requirements of this Technical Regulation and the relevant technical regulations for establishing eco-design requirements for product types.

It is also established that if the manufacturer is not a resident of Ukraine and does not have an authorized representative, the importer ensures compliance of the product put into circulation and /or operation with the requirements of this Technical Regulation and technical regulations on eco-design requirements for product types, and keeps for 10 years after the introduction of the latest model of the product a copy of the declaration of conformity for its provision at the request of the state market surveillance authorities and provides the possibility of providing such bodies at their request an access to technical documentation.

Having in view that the Technical Regulation establishing a system for the setting of eco-design requirements for energy products is based on Directive 2009/125/ EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for determining eco-design requirements for energy products, measures are being taken on a regular basis to monitor the amendments to Directive 2009/125/EC of the European Parliament and of the Council in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible. There is currently no need to make such amendments.

The Technical Regulation on the Establishment of a System for Determining Eco-design Requirements for Energy Consumption Products stipulates that product compliance with standards included in a list of national standards identical to harmonized European standards and compliance with which presupposes product compliance with applicable technical regulations product types, provides a presumption of conformity of such products with the relevant requirements of the relevant technical regulation on the establishment of eco-design requirements for the product type.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

Lists of national standards that are identical to harmonized European standards and compliance with which provides a presumption of products conformity to the requirements of applicable technical regulations on the establishment of eco-design requirements for product types are approved by orders of the Ministry of Energy:

●Order of the Ministry of Energy dated 28.04.2020 № 285 "On approval of the List of national standards identical to harmonized European standards and compliance with which provides a presumption of conformity of household washing machines to the Technical Regulations on eco-design requirements for household washing machines and Technical Regulations";

●Order of the Ministry of Energy dated 24.04.2020 № 265 "On approval of the List of national standards identical to harmonized European standards and compliance with which provides a presumption of conformity of household refrigeration to the requirements of the Technical Regulation on eco-design requirements for household refrigeration appliances and household electric refrigeration appliances for electric refrigerators»;

●Order of the Ministry of Energy dated 28.04.2020 № 282 "On approval of the List of national standards identical to harmonized European standards and compliance with which provides a presumption of conformity of household tumble driers to the requirements of the Technical Regulation of energy labeling of household tumble driers and machines »;

●Order of the Ministry of Energy dated 28.04.2020 № 278 "On approval of the List of national standards identical to harmonized European standards and compliance with which provides a presumption of conformity of household ovens, hobs and kitchen hoods to the Technical Regulations for energy labeling of household ovens and ovens eco-design requirements for household ovens, hobs and range hoods»;

●Order of the Ministry of Energy dated 29.04.2020 № 288 "On approval of the List of national standards that are identical to harmonized European standards and compliance with which provides a presumption of conformity of glandless autonomous circulation pumps and glandless circulation pumps integrated in devices to the requirements of the Technical Regulation on the requirements for eco-design of oil-free autonomous circulating pumps and oil-free circulation pumps integrated in the device ";

●Order of the Ministry of Energy dated 28.04.2020 № 283 "On approval of the List of national standards identical to harmonized European standards and compliance with which provides a presumption of conformity of small, medium and large power transformers to the Technical Regulation on eco-design requirements for small, medium and large power transformers";

●Order of the Ministry of Energy dated 03.06.2020 № 369 "On approval of the List of national standards identical to harmonized European standards and compliance with which provides a presumption of compliance of external power sources with the requirements of the Technical Regulation on eco-design requirements for electricity consumption by external power sources in no-load mode and their average efficiency in active mode ";

●Order of the Ministry of Energy of 04.08.2020 № 485 "On approval of the List of national standards identical to harmonized European standards and compliance with which provides a presumption of conformity of electrical and electronic household and office equipment to the Technical Regulations on eco-design requirements for electricity and electricity consumption of electronic home and office equipment in standby mode, off mode and network standby mode;

●Order of the Ministry of Energy dated 03.09.2020 № 565 "On approval of the List of national standards identical to harmonized European standards and compliance with which provides a presumption of conformity of air conditioners and fans designed for personal comfort to the Technical Regulation of energy labeling for air conditioners and fans designed for personal comfort »;

●Order of the Ministry of Energy dated 03.09.2020 № 567 "On approval of the List of national standards identical to harmonized European standards and compliance with which provides a presumption of conformity of household dishwashers to the requirements of the Technical Regulation on eco-design requirements for household dishwashers and Technical regulations for energy labeling of household dishwashers ";

●Order of the Ministry of Energy of 04.09.2020 № 574 "On approval of the List of national standards that are identical to harmonized European standards and compliance with which provides a presumption of conformity of vacuum cleaners to the requirements of the Technical Regulation on eco-design requirements for vacuum cleaners".

In order to ensure the implementation of Directive 2009/125/EC in Ukraine, there have been adopted 26 technical regulations, which set minimum requirements for energy efficiency of energy – consuming products:

1. Technical regulation on eco-design requirements for fans with a motor with a nominal electric power from 125 W to 500 kW (Resolution of the Cabinet of Ministers of Ukraine of 27.02.2019 № 151; Official Gazette of Ukraine 2019, № 21, p. 131, Article 725).

This Technical Regulation is based on the Regulation (EU) № 327/2011 of 30 March 2011 implementing Directive 2009/125 / EU of the European Parliament and of the Council on eco-design requirements for fans with a motor of rated electrical power from 125 W to 500 kW.

The Technical Regulation establishes eco-design requirements for the commissioning or operation of fans with a motor with a rated electrical power of 125 W to 500 kW (including those installed in other energy products), which are covered by this Technical Regulation.

Given that the Technical Regulation is based on and fully complies with Commission Regulation (EU) №327/2011 of 30 March 2011, follow-up measures are being taken on a regular basis to monitor amendments to Commission Regulation (EU) №327/2011 with a view to amending the Ukrainian Technical Regulations. There is currently no need to make such amendments.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

2. Technical regulations for eco-design requirements for water pumps (Resolution of the Cabinet of Ministers of Ukraine of 27.02.2019 № 154; Official Gazette of Ukraine 2019, № 21, p. 162, Article 728).

This Technical Regulation is based on the Regulation (EU) № 547/2012 of 25 June 2012 supplementing Directive 2009/125/EC of the European Parliament and of the Council on eco-design requirements for water pumps.

The technical regulation establishes eco-design requirements for the introduction of dynamic water pumps for pumping clean water, including those installed in other products.

Given that the Technical Regulation was developed on the basis of and fully complies with Commission Regulation (EU) № 547/2012 of 25 June 2012, follow-up measures are being taken to monitor amendments to Commission Regulation (EU) № 547/2012 in order to make similar amendments to the Ukrainian Technical Regulations as soon as possible. There is currently no need to make such amendments.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

3. Technical regulation on eco-design requirements for glandless autonomous circulating pumps and glandless circulating pumps integrated in the device (Resolution of the Cabinet of Ministers of Ukraine of 27.02.2019 № 153; Official Gazette of Ukraine 2019, № 21, p. 154, Article 727).

The technical regulation establishes eco-design requirements for the commissioning of glandless autonomous circulation pumps and glandless circulation pumps integrated in the device.

Given that the Technical Regulation is based on Commission Regulation (EC) № 641/2009 of 22 July 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council on the eco-design of glandless autonomous circulation pumps and glandless circulation pumps integrated in the device, measures are being taken on a regular basis to monitor amendments to this Commission Regulation (EU) in order to make similar amendments to the Ukrainian Technical Regulation.

In accordance with Commission Regulation (EU) 2019/1781 of 1 October 2019 on eco-design requirements for electric motors and variable speed drives pursuant to Directive 2009/125/EC of the European Parliament and of the Council amending Regulation (EU) № 641/2009 on eco-design of glandless autonomous circulating pumps and glandless circulation pumps integrated in the device and repealing Commission Regulation (EC) № 640/2009 (2040) it is planned to develop till 2023 a new Technical Regulation on eco-design requirements for electric motors and variable speed drives.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

4. Technical regulation on eco-design requirements for small, medium and large power transformers (Resolution of the Cabinet of Ministers of Ukraine of 27.02.2019 № 152; Official Gazette of Ukraine 2019, (21, p. 143, Article 726).

This Technical Regulation establishes eco-design requirements for small, medium and large power transformers with a minimum rated power of 1 KVA, used in the transmission and distribution of electricity with a frequency of 50 Hz or in industry.

Given that the Technical Regulation is based on Commission Regulation (EC) № 548/2014 of 21 May 2014 supplementing Directive 2009/125/EC of the European Parliament and of the Council on eco-design requirements for small, medium and large power transformers, Measures are being taken on a regular basis to monitor the amendments to this Commission Regulation (EU) in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible.

In accordance with Commission Regulation (EU) 2019/1783 of 1 October 2019 amending Regulation (EU) № 548/2014 implementing Directive 2009/125/EC of the European Parliament and of the Council on eco-design requirements for small, medium and large power transformers it is planned amending the Technical Regulation on eco-design requirements for small, medium and large power transformers till 2023.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

5. Technical regulation on eco-design requirements for household refrigerating appliances (Resolution of the Cabinet of Ministers of Ukraine of 27.02.2019 № 158; Official Gazette of Ukraine 2019, (21, p. 194, Article 732).

This Technical Regulation establishes eco-design requirements for introduction into circulation household refrigeration appliances with mains power and storage capacity up to 1500 liters.

Given that this Technical Regulation is based on Commission Regulation (EC) No 643/2009 of 22 July 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to eco-design requirements for household refrigerating appliances, measures are being taken on regular basis to monitor the amendments to this Commission Regulation (EU) in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible.

In accordance with Commission Regulation (EU) 2019/2019 of 1 October 2019 on eco-design requirements for refrigeration appliances pursuant to Directive 2009/125/EC of the European Parliament and of the Council and repealing Commission Regulation (EU) № 643/2009 in 2023 it is scheduled the development of new Technical Regulations on eco-design requirements for refrigeration appliances.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

6. Technical regulation on eco-design requirements for electric motors (Resolution of the Cabinet of Ministers of Ukraine of 27.02.2019 № 157; Official Gazette of Ukraine 2019, № 21, p. 186, Article 731).

This Technical Regulation is based on the Regulation (EU) № 640/2009 of 22 July 2009 on the implementation of Directive 2005/32/ EC of the European Parliament and of the Council with regard to eco-design requirements for electric motors.

The technical regulation sets requirements for eco-design for the commissioning and operation of electric motors, including those installed in other products.

Given that the Technical Regulation is based on and fully complies with Commission Regulation (EU) №640/2009 of 22 July 2009, measures are being taken on a regular basis to monitor amendments to Commission Regulation (EU) №640/2009 in order to make similar amendments to the Ukrainian Technical Regulations. There is currently no need to make such amendments.

In accordance with Commission Regulation (EU) 2019/1781 of 1 October 2019 on eco-design requirements for electric motors and variable speed drives pursuant to Directive 2009/125/EC of the European Parliament and of the Council amending Regulation (EU) № 641/2009 on eco-design of glandless autonomous circulation pumps and glandless circulation pumps integrated in the device and repealing Commission Regulation (EU) 640/2009 it is planned to develop till 2023 a new Technical Regulation on eco-design requirements for electric motors and variable speed drives.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

7. Technical regulation on eco-design requirements for directional radiation lamps, LED lamps and related equipment (Resolution of the Cabinet of Ministers of Ukraine of March 27, 2019 № 264; Official Gazette of Ukraine 2019, № 28, p. 175, Article 997).

This Technical regulation establishes eco-design requirements for the introduction into circulation of such lighting products (including those incorporated in other products):

- directional radiation lamps;
- LED lamps;
- related equipment intended for installation between the mains and lamps, including lamp controllers, controls and luminaires.

This regulation also sets out product information requirements for special purpose products.

Given that the Technical Regulation is based on Commission Regulation (EC) № 1194/2012 of 12 December 2012 supplementing Directive 2009/125/EC of the European Parliament and of the Council on eco-design requirements for directional lamps, LED lamps and floor lamps; related equipment, measures are being taken on a regular basis to monitor the amendments to this Commission Regulation (EU) in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible.

In accordance with Commission Regulation (EU) 2019/2020 of 1 October 2019 on eco-design requirements for light sources and certain controls in accordance with Directive 2009/125/EC of the European Parliament and of the Council and repealing Commission Regulation (EU) (244/2009, (EU) № 245/2009 and (EU) № 1194/2012, it is planned to develop till 2023 a new Technical Regulation on eco-design requirements for light sources and individual control devices.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

8. Technical regulations on eco-design requirements for electricity consumption by external power supplies in the no-load mode and their average efficiency in the active mode (Resolution of the Cabinet of Ministers of Ukraine of 27.02.2019 № 150; Official Gazette of Ukraine 2019, № 21, p. 125, Article 724).

This Technical Regulation establishes eco-design requirements for the consumption of electricity by external power supplies in the no-load mode and their average efficiency in active mode.

Given that the Technical Regulation is based on Commission Regulation (EC) № 278/2009 of 6 April 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council on eco-design requirements for no-load and medium-active electricity consumption efficiency of external power sources, measures are being taken on regular basis to monitor the amendments to this Commission Regulation (EU) in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible.

In accordance with Commission Regulation (EU) 2019/1782 of 1 October 2019 on eco-design requirements for external power supplies under Directive 2009/125/EC of the European Parliament and of the Council and repealing Commission Regulation (EU) № 278/2009 it is planned to develop till 2023 a new Technical Regulation on eco-design requirements for external power supplies.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market

inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

9. Technical regulation on eco-design requirements for vacuum cleaners (Resolution of the Cabinet of Ministers of Ukraine of 27.02.2019 № 155; Official Gazette of Ukraine 2019, № 21, p. 170, Article 729).

This Technical Regulation is based on the Regulation (EU) №666/2013 of 8 July 2013 supplementing Directive 2009/125/EC of the European Parliament and of the Council on eco-design requirements for vacuum cleaners.

This technical regulation establishes eco-design requirements for the introduction of mains-operated vacuum cleaners, including hybrid vacuum cleaners.

Given that the Technical Regulation was developed on the basis of and fully complies with Commission Regulation (EU) № 666/2013 of 8 July 2013, measures are being taken on a regular basis to monitor amendments to Commission Regulation (EU) №666/2013 in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible. There is currently no need to make such amendments.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

10. Technical regulation on eco-design requirements for simple digital television receivers (Resolution of the Cabinet of Ministers of Ukraine of 27.02.2019 № 156; Official Gazette of Ukraine 2019, (21, p. 180, Article 730).

This technical Regulation is based on Commission Regulation (EC) No 107/2009 of 4 February 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council on eco-design requirements for simple digital television receivers.

The technical regulation establishes eco-design requirements for simple digital television receivers.

Given that the Technical Regulation is based on and fully complies with Commission Regulation (EU) №107 /2009 of 4 February 2009, measures are being taken on a regular basis to monitor amendments to Commission Regulation (EU) №107/2009 in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible. There is currently no need to make such amendments.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

11. Technical Regulation on eco-design requirements for household tumble driers (Resolution of the Cabinet of Ministers of Ukraine of 19.06.2019 № 534; Official Bulletin of Ukraine 2019, (51, p. 56, Article 1751).

This Technical Regulation establishes eco-design requirements for the introducing into circulation of electricity mains-operated household tumble driers, gas domestic tumble driers and built-in household tumble driers.

Given that the Technical Regulation is based on Commission Regulation (EU) № 1015/2010 of 10 November 2010 supplementing Directive 2009/125/EC of the European Parliament and of the Council with regard to eco-design requirements for household washing machines, measures are being taken on regular basis to monitor the amendments to this Commission Regulation (EU) in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible.

In accordance with Commission Regulation (EU) 2019/2023 of 1 October 2019 laying down eco-design requirements for household washing machines and household washer-dryers pursuant to Directive 2009/125/EC of the European Parliament and of the Council amending Commission Regulation (EC) № 1275/2008 and repealing Commission Regulation (EU) № 1015/2010 it is planned to develop a new Technical Regulation on eco-design requirements for household washing machines and household washer-dryers till 2023.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

12. Technical Regulation on Eco-design Requirements for Standby, Off Mode and Networked Standby Electric Power Consumption of Electrical and Electronic Household and Office Equipment (Cabinet of Ministers of Ukraine Resolution of 14.08.2019 № 733; Official Bulletin of Ukraine 2019., № 66, p. 137, Article 2293).

This Technical Regulation establishes eco-design requirements for standby, off mode, and networked standby electric power consumption. This Technical Regulation shall apply to electrical and electronic household and office equipment.

Given that the Technical Regulation is based on Commission Regulation (EC) No 1275/2008 of 17 December 2008 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to eco-design requirements for standby and off mode electric power consumption of electrical and electronic household and office equipment, measures are being taken on regular basis to monitor the amendments to this Commission Regulation (EC) in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible.

In accordance with Commission Regulation (EU) 2019/2021 of 1 October 2019 laying down eco-design requirements for electronic displays pursuant to Directive 2009/125/EC of the European Parliament and of the Council, amending Commission Regulation (EC) No 1275/2008 and repealing Commission Regulation (EC) No 642/2009 It is planned to develop a new Technical Regulation on eco-design requirements for electronic displays till 2023.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 №1069 “On Approval of the List of Types of Products in relation to which State Market Supervision Bodies carry out State Market Inspection” (Official Bulletin of Ukraine, 2017, № 50, p. 1550) state market supervision body over compliance with the requirements of this Technical Regulation is the State Service of Ukraine on Food Safety and Consumer Protection.

13. Technical Regulation on eco-design requirements for household washing machines (Resolution of the Cabinet of Ministers of Ukraine of 14.08.2019 № 738; Official Bulletin of Ukraine 2019, № 66, p. 142, Article 2298).

This Technical Regulation establishes eco-design requirements for the introducing into circulation of electric mains-operated household washing machines and electric mains-operated household washing machines that can also be powered by batteries, including those sold for non-household use and built-in household washing machines.

Given that the Technical Regulation is based on Commission Regulation (EU) No 1015/2010 of 10 November 2010 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to eco-design requirements for household washing machines, measures are being taken on regular basis to monitor the amendments to this Commission Regulation (EU) in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible.

In accordance with Commission Regulation (EU) 2019/2023 of 1 October 2019 laying down eco-design requirements for household washing machines and household washer-dryers pursuant to Directive 2009/125/EC of the European Parliament and of the Council, amending Commission Regulation (EC) No 1275/2008 and repealing Commission Regulation (EU) No 1015/2010 it is planned to develop a new Technical Regulation on eco-design requirements for household washing machines and household washer-dryers till 2023.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

14. Technical Regulation on eco-design requirements for household dishwashers (Resolution of the Cabinet of Ministers of Ukraine of 14.08.2019 № 736; Official Bulletin of Ukraine 2019, (66, p. 140, Article 2296).

This Technical Regulation establishes eco-design requirements for mains-operated household dishwashers, mains-operated dishwashers for professional use that are capable of using rechargeable batteries, and built-in household dishwashers.

Given that the Technical Regulation is based on Commission Regulation (EU) № 1016/2010 of 10 November 2010 supplementing Directive 2009/125 / EC of the European Parliament and of the Council on eco-design requirements for household dishwashers, measures are being taken on regular basis to monitor the amendments to this Commission Regulation (EU) in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible.

In accordance with Commission Regulation (EU) 2019/2022 of 1 October 2019 laying down eco-design requirements for household dishwashers in accordance with Directive 2009/125 / EC of the European Parliament and of the Council amending Commission Regulation (EU) № 1275/2008 and Repeal of Commission Regulation (EU) № 1016/2010 It is planned to develop a new Technical Regulation on eco-design requirements for household dishwashers till 2023.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

15. Technical Regulation on eco-design requirements for Domestic Ovens, Hobs and Range Hood (Resolution of the Cabinet of Ministers of Ukraine of 14.08.2019 № 742; Official Bulletin of Ukraine 2019, (66, p. 146, Article 2302).

This Technical Regulation is based on Commission Regulation (EU) No 66/2014 of 14 January 2014 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to eco-design requirements for domestic ovens, hobs and range hoods.

This Technical Regulation establishes eco-design requirements for the introducing into circulation of domestic ovens, including when incorporated in cookers, domestic hobs and domestic electric range hoods, including when sold for non-domestic purposes.

Given that the Technical Regulation was developed on the basis of and fully complies with Commission Regulation (EU) №66 / 2014 of 14 January 2014, measures are being taken on a regular basis to monitor amendments to Commission Regulation (EU) № 66/2014 in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible. There is currently no need to make such amendments.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

16. Technical Regulation on eco-design requirements for televisions (Resolution of the Cabinet of Ministers of Ukraine of 14.08.2019 № 735; Official Bulletin of Ukraine 2019, № 66, p. 139, Article 2295).

This Regulation establishes eco-design requirements for televisions, placed on the market.

Given that the Technical Regulation is based on Commission Regulation (EC) No 642/2009 of 22 July 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to eco-design requirements for televisions, measures are being taken on regular basis to monitor the amendments to this Commission Regulation (EC) in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible.

In accordance with Commission Regulation (EU) 2019/2021 of 1 October 2019 laying down eco-design requirements for electronic displays pursuant to Directive 2009/125/EC of the European Parliament and of the Council, amending Commission Regulation (EC) No 1275/2008 and repealing Commission Regulation (EC) No 642/2009 It is planned to develop a new Technical Regulation on eco-design requirements for electronic displays till 2023.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

17. Technical Regulation on eco-design requirements for computers and computer servers (Resolution of the Cabinet of Ministers of Ukraine of 14.08.2019 № 737; Official Bulletin of Ukraine 2019, (66, p. 141, Article 2297).

This Technical Regulation establishes eco-design requirements for the placing on market of computers and computer servers. This Technical Regulation shall apply to the following appliances that can be powered directly from the mains alternating current (AC) including via an external or internal power supply: desktop computers, integrated desktop computers, notebook computers (including tablet computers, slate computers and mobile thin clients), desktop thin clients, workstations, mobile workstations, small-scale servers, computer servers

Given that the Technical Regulation is based on Commission Regulation (EC) № 617/2013 of 26 June 2013 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to eco-design requirements for computers and computer servers, measures are being taken on regular basis to monitor the amendments to this Commission Regulation (EU) in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible.

In accordance with Commission Regulation (EU) 2019/424 of 15 March 2019 laying down eco-design requirements for servers and data storage products pursuant to Directive 2009/125/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No 617/2013, it is planned to develop a new Technical Regulation on eco-design requirements for servers and storage products till 2023.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

18. Technical Regulation on eco-design requirements for non-directional household lamps (Resolution of the Cabinet of Ministers of Ukraine of 14.08.2019 № 734; Official Bulletin of Ukraine 2019, (66, p. 138, Article 2294).

This Technical Regulation establishes eco-design requirements for introducing into circulation of non-directional household lamps, including when they are marketed for non-household use or when they are integrated into other products. This Technical Regulation also establishes product information requirements for special purpose lamps.

Given that the Technical Regulation is based on Commission Regulation (EC) № 244/2009 of 18 March 2009 implementing Directive 2005/32 / EC of the European Parliament and of the Council with regard to eco-design requirements for non-directional household lamps, measures are being taken on regular basis to monitor the amendments to this Commission Regulation (EC) in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible.

In accordance with Commission Regulation (EU) 2019/2020 of 1 October 2019 laying down eco-design requirements for light sources and separate control gears pursuant to Directive 2009/125/EC of the European Parliament and of the Council and repealing Commission Regulations (EC) No 244/2009, (EC) No 245/2009 and (EU) No 1194/2012, it is planned to develop a new Technical Regulation on eco-design requirements for light sources and separate control gears till 2023.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

19. Technical Regulation on eco-design requirements for fluorescent lamps without integrated ballast, for high intensity discharge lamps, and for ballasts and luminaires able to operate such lamps (Resolution of the Cabinet of Ministers of Ukraine from 14.08.2019 № 741; Official Bulletin of Ukraine 2019, № 66, p. 145, § 2301).

This Technical Regulation establishes eco-design requirements for the introducing into circulation of fluorescent lamps without integrated ballast, of high intensity discharge lamps, and of ballasts and luminaires able to operate such lamps, including those that are integrated into other

energy-using products. This Technical Regulation also provides indicative benchmarks for appliances intended for use in office lighting and public street lighting

Given that the Technical Regulation is based on Commission Regulation (EC) No 245/2009 of 18 March 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to eco-design requirements for fluorescent lamps without integrated ballast, for high intensity discharge lamps, and for ballasts and luminaires able to operate such lamps, and repealing Directive 2000/55/EC of the European Parliament and of the Council, measures are being taken on regular basis to monitor the amendments to this Commission Regulation (EC) in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible.

In accordance with Commission Regulation (EU) 2019/2020 of 1 October 2019 laying down eco-design requirements for light sources and separate control gears pursuant to Directive 2009/125/EC of the European Parliament and of the Council and repealing Commission Regulations (EC) No 244/2009, (EC) No 245/2009 and (EU) No 1194/2012, it is planned to develop a new Technical Regulation on eco-design requirements light sources and separate control gears till 2023.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

20. Technical Regulation on Eco-design Requirements for Air Conditioners and Comfort Fans (Resolution of the Cabinet of Ministers of Ukraine of 14.08.2019 № 739; Official Bulletin of Ukraine 2019, (66, p. 143, Article 2299).

The Technical Regulation is based on the Commission Regulation (EU) No 206/2012 of 6 March 2012 supplementing Directive 2009/125/EC of the European Parliament and of the Council regard to eco-design requirements for air conditioners and comfort fans.

This Technical Regulation establishes eco-design requirements for the introducing into circulation of electric mains-operated air conditioners with a rated capacity of ≤ 12 kW for cooling, or heating if the product has no cooling function, and comfort fans with an electric fan power input ≤ 125 W.

Given that the Technical Regulation is based on and fully complies with Commission Regulation (EU) № 206/2012 of 6 March 2012, measures are being taken on regular basis to monitor the amendments to Commission Regulation (EU) №206/2012 in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible. There is currently no need to make such amendments.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

21. Technical Regulation on eco-design requirements for water heaters and hot water storage tanks (Resolution of the Cabinet of Ministers of Ukraine of 14.08.2019 № 740; Official Bulletin of Ukraine 2019, (66, p. 144, Article 2300).

This Technical Regulation is based on the Commission Regulation (EU) No 814/2013 of 2 August 2013 supplementing Directive 2009/125/EC of the European Parliament and of the Council with regard to eco-design requirements for water heaters and hot water storage tanks.

This Technical Regulation establishes eco-design requirements for the introducing into circulation and/or putting into service of water heaters with a rated heat output ≤ 400 kW and hot water storage tanks with a storage volume $\leq 2\,000$ liters, including those integrated in packages of water heater and solar device.

Given that the Technical Regulation was developed on the basis of and fully complies with Commission Regulation (EU) № 814/2013 of 2 August 2013, measures are being taken on regular basis to monitor the amendments to Commission Regulation (EU) № 814/2013 in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible. There is currently no need to make such amendments.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

22. Technical Regulation on eco-design requirements for space heaters and combination heaters (Resolution of the Cabinet of Ministers of Ukraine of 27.12.2019 № 1184; Official Bulletin of Ukraine 2020, (19, p. 23, Article 740).

This Technical Regulation is based on Commission Regulation (EU) No 813/2013 of 2 August 2013 implementing Directive 2009/125 / EC of the European Parliament and of the Council on eco-design requirements for space heaters and combination heaters.

This Technical Regulation establishes eco-design requirements for the introducing into circulation and/or putting into service of space heaters and combined heaters with a nominal heat output ≤ 400 kW, including those included in the set of space heater, thermostat and equipment using solar energy, or kits from a combination heater, thermostat and equipment that uses solar energy.

Given that the Technical Regulation was developed on the basis of and fully complies with Commission Regulation (EU) №813/2013 of 2 August 2013, measures are being taken on regular basis to monitor the amendments to Commission Regulation (EU) № 813/2013 in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible. There is currently no need to make such amendments.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

23. Technical Regulation on eco-design requirements for local space heaters (Resolution of the Cabinet of Ministers of Ukraine of 10.11.2021 № 1177; Official Bulletin of Ukraine 2021, № 90, p. 56, Article 5832).

This Technical Regulation is based on Commission Regulation (EU) /2015 / 1188 of 28 April 2015 implementing Directive 2009/125 / EC of the European Parliament and of the Council on eco-design requirements for local space heaters.

This Technical Regulation establishes eco-design requirements for the introducing into circulation and/or putting into service of domestic local space heaters with a nominal heat output of 50 kW or less and commercial local space heaters with a nominal heat output of a product or of a single segment of 120 kW or less.

Given that the Technical Regulation was developed on the basis of and fully complies with Commission Regulation (EU)/2015/1188 of 28 April 2015, measures are being taken on regular basis to monitor the amendments to Commission Regulation (EU) № 2015/1188 in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible. There is currently no need to make such amendments.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

24. Technical Regulation on eco-design requirements for solid fuel boilers (Resolution of the Cabinet of Ministers of Ukraine of 23.12.2021 № 1375; Official Bulletin of Ukraine 2022, № 2, p. 110, Article 56).

This Technical Regulation is based on the Commission Regulation (EU) 2015/1189 of 28 April 2015 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to eco-design requirements for solid fuel boilers.

The Technical Regulation establishes eco-design requirements for introducing into circulation and putting into service solid fuel boilers with a rated heat output of 500 kilowatt (‘kW’) or less, including those integrated in packages of a solid fuel boiler, supplementary heaters, temperature controls and solar devices.

Given that the Technical Regulation was developed on the basis of and fully complies with Commission Regulation (EU) № 2015/1189 of 28 April 2015, measures are being taken on regular basis to monitor the amendments to Commission Regulation (EU) № 2015/1189 in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible. There is currently no need to make such amendments.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

25. Technical Regulation on eco-design requirements for ventilation units (Resolution of the Cabinet of Ministers of Ukraine of 23.12.2021 № 1379; Official Bulletin of Ukraine 2022, (2, p. 115, Article 60).

This Technical Regulation is based on Commission Regulation (EU) № 1253/2014 of 7 July 2014 implementing Directive 2009/125 / EC of the European Parliament and of the Council with regard to eco-design requirements for ventilation units.

This Technical Regulation applies to ventilation units and establishes eco-design requirements for their introducing into circulation or putting into service.

Given that the Technical Regulation was developed on the basis of and fully complies with Commission Regulation (EU) № 1253/2014 of 7 July 2014, measures are being taken on regular basis to monitor the amendments to Commission Regulation (EU) № 1253/2014 in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible. There is currently no need to make such amendments.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities

carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

26. Technical Regulation on eco-design requirements for professional refrigerated storage cabinets, intensive cooling and shock freezing chambers, condenser units and refrigeration units (Resolution of the Cabinet of Ministers of Ukraine of 23.12.2021 № 1376; Official Bulletin of Ukraine 2022, № 2, p. 111, Article 57).

This Technical Regulation is based on the Commission Delegated Regulation (EU) № 2015/1094 of 05 May 2015, supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to the energy labeling of professional refrigerated storage cabinets.

The Technical Regulation establishes eco-design requirements for the introducing into circulation of professional refrigeration cabinets for storage, intensive cooling and shock freezing chambers.

Given that the Technical Regulation was developed on the basis of and fully complies with Commission Regulation (EU) № 2015/1094 of 05 May 2015, measures are being taken on regular basis to monitor the amendments to Commission Regulation (EU) № 2015/1094 in order to make similar amendments to the Ukrainian Technical Regulation as soon as possible. There is currently no need to make such amendments.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

Currently, the Agency has developed and agreed with the relevant bodies the following draft Technical Regulations:

- Draft Technical Regulation on eco-design requirements for air heaters, coolers, high-temperature industrial coolers and fan coilers (developed on the basis of Commission Regulation (EU) № 2016/2281 of 30.11.2016 on the implementation of Directive 2009/125 / EC of the European Parliament and of the Council with regard to eco-design requirements for air heating products, cooling products, high temperature process chillers and fan coil units);

- Draft Technical Regulation on eco-design requirements for solid fuel local space heaters (developed on the basis of Commission Regulation (EU) № 2015/1185 of 24.04.2015 on the implementation of Directive 2009/125/ EC of the European Parliament and of the Council with regard to eco-design requirements for solid fuel local space heaters);

In addition, till 2023 it is planned to develop the following Technical Regulations:

Technical Regulation on eco-design requirements for welding equipment (based on Commission Regulation (EU) 2019/1784 of 1 October 2019 on eco-design requirements for welding equipment in accordance with Directive 2009/125/EC of the European Parliament and of the Council).

Technical Regulation on eco-design requirements for refrigeration appliances with direct sales function (based on Commission Regulation (EU) 2019/2024 of 1 October 2019 on eco-design requirements for refrigeration appliances with direct sales function in accordance with Directive 2009/125/EC of the European Parliament and Council).

46. Energy labelling (Dir. 2010/30/EU)

To ensure full implementation of Ukraine's commitments under the Association Agreement between Ukraine and the European Union, as well as under the Energy Community Treaty, Ukraine is implementing an energy labelling system for energy products in line with updated EU legislation.

In Ukraine, from April 9, 2014, **the Technical Regulation on Energy Labelling of Energy-Related Products**, approved by the Resolution of the Cabinet of Ministers of Ukraine of August 7, 2013 № 702; (Official Gazette of Ukraine, 2013, № 76, p. 177, p.2822), developed on the basis of Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on labelling and standard product information of the consumption of energy and other resources by energy-related products has been in force.

This Technical Regulation establishes the basic requirements for providing consumers with information on the level of the efficiency of energy consumption and other basic resources by energy-related products, as well as additional information that will allow consumers to choose the most energy efficient products.

The Technical Regulation applies to energy-related products that have a significant direct or indirect impact on energy consumption and, where appropriate, other essential resources during use.

This Technical Regulation does not apply to:

- products that have been used;
- any vehicles for passenger or freight transport;
- technical passports, which are attached to the product to ensure compliance with safety regulations.

- Abidance with the requirements of this Technical Regulation is mandatory for:

- central executive bodies, which are entrusted with the functions of technical regulation;
- state market surveillance authorities (hereinafter - market surveillance authorities);
- suppliers and distributors.

It should be noted that suppliers who put into circulation or operation the products covered by the technical regulations of energy labelling by product types, provides the distributor with an energy label and microfiche in accordance with the requirements of this Technical Regulation and technical regulations of energy labelling by product type.

However, suppliers must have Technical energy documentation that allows them to verify the accuracy of the information contained on the energy label and microfiche, and includes:

- general product description;
- results of project calculations (if necessary);
- test reports in case of their holding;
- data on a similar product model, if the information being verified is derived from data on such a model.

Suppliers keep the technical energy documentation for five years after the last product is manufactured and submit it for verification in the cases established by law.

The construction of the energy label form is based on the classification of energy characteristics of energy products, which uses the **designation** of energy efficiency levels in letters from A to G. In the case of creating a product with better energy **performance**, this classification **can be supplemented** by additional energy efficiency classes A +, A ++, A ++ +, **determined** by technical regulations of energy labelling by product types.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “**On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection**” (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

Given that the European Union has adopted the Regulation of the European Parliament and of the Council (EU) № 2017/1369 of 04 July 2017 establishing a framework for energy labelling and **repealing** Directive 2010/30/EU, in Ukraine, in 2022 it is planned to develop a new Technical Regulation on energy labelling of energy products, which will **comply** with the Regulation of the European Parliament and the Council (EU) № 2017/1369. **Currently**, the draft of Technical Regulation on Energy Labelling of Energy Consumer Products has been developed and agreed with all interested state executive bodies.

Lists of national standards that are identical to harmonized European standards and compliance with which provides a presumption of **conformity** of products to the requirements of **applicable** technical regulations for energy labelling by product type, approved by orders of the Ministry of Energy of Ukraine (hereinafter - Ministry of Energy):

- order of the Ministry of Energy dated 28.04.2020 № 285 "On approval of the List of national standards identical to harmonized European standards and compliance with which provides a presumption of **conformity** of household washing machines to the requirements of the Technical Regulation on eco-design requirements for household washing machines and Technical Regulation for energy labelling of household washing machines";

- order of the Ministry of Energy dated 24.04.2020 № 265 "On approval of the List of national standards identical to harmonized European standards and compliance with which provides a presumption of compliance of household refrigeration appliances with the requirements of the Technical Regulation on eco-design requirements for household refrigeration appliances and household electric refrigerators with the requirements of the Technical Regulation";

- order of the Ministry of Energy dated 28.04.2020 № 282 “On approval of the List of national standards that are identical to harmonized European standards and compliance with which provides a presumption of conformity of household tumble driers to the requirements of the Technical Regulation on energy labelling of household tumble driers and the Technical Regulation on eco-design requirements for household tumble driers”;

- order of the Ministry of Energy dated 28.04.2020 № 278 “On approval of the List of national standards identical to harmonized European standards and compliance with which provides a presumption of conformity of household ovens, **hobs and kitchen hoods** to the requirements of the Technical Regulation on energy labelling of household ovens and kitchen hoods and Technical regulations for household **surfaces** and kitchen hoods”;

- order of the Ministry of Energy dated 03.09.2020 № 565 “On approval of the List of national standards identical to harmonized European standards and compliance with which provides a presumption of conformity of air conditioners and fans for personal comfort, the requirements of the Technical Regulation on energy labelling of air conditioners and the Technical Regulation on eco-design requirements for air conditioners and fans comfort”;

- order of the Ministry of Energy dated 03.09.2020 № 567 "On approval of the List of national standards that are identical to harmonized European standards and compliance with which provides a presumption of conformity of household **dishwashers** to the requirements of the Technical Regulation on eco-design requirements for household dishwashers and Technical regulations for energy labelling of household dishwashers".

In order to ensure the implementation of Directive 2010/30/EU, Ukraine has adopted 14 technical regulations on energy labelling, which set requirements for energy products:

1. Technical Regulations for energy labelling of household electric refrigerators (Resolution of the Cabinet of Ministers of Ukraine of 07.08.2013 № 702; Official Gazette of Ukraine, 2013, (76, p. 177, Article 2822).

The Technical Regulation is based on the Commission Delegated Regulation (EU) of 28 September 2010 № 1060/2010 supplementing the Directive of the European Parliament and of the Council of 19 May 2010 № 2010/30/EU on the energy labelling of household electric refrigerators.

This Technical Regulation establishes the basic requirements for providing consumers with information on the level of energy efficiency of household electric refrigerators with a storage capacity of 10 to 1,500 liters, as well as additional information.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 **“On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection”** (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

Given that the European Union has adopted Commission Delegated Regulation (EU) 2019/2016 of 11 March 2019 supplementing Regulation (EU) 2017/1369 of the European Parliament and of the Council on energy labelling of refrigerators and repealing Commission Delegated Regulation (EU) № 1060/2010, Ukraine plans to develop a new Technical Regulation on energy labelling of refrigerators till 2023, which will comply with Commission Regulation (EU) 2019/2016.

2. Technical Regulations for energy labelling of household washing machines (Resolution of the Cabinet of Ministers of Ukraine of 07.08.2013 № 702; Official Gazette of Ukraine, 2013, № 76, p. 177, Article 2822).

The Technical Regulation is based on the Commission Delegated Regulation (EU) of 28 September 2010 № 1061/2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the energy labelling of household washing machines.

This Technical Regulation establishes the basic requirements for providing consumers with information on the level of efficiency of consumption of electricity and other resources by household washing machines, as well as additional information.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 **“On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection”** (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

Given that the European Union has adopted Commission Delegated Regulation (EU) 2019/2014 of 11 March 2019 supplementing Regulation (EU) 2017/1369 of the European Parliament and of the Council on energy labelling of household washing machines and household washer-dryers and repealing the Delegated Regulation Commission (EU) № 1061/2010 and Commission Directive 96/60/EC, in Ukraine it is planned to develop till 2023 a new Technical Regulation on energy labelling of household washing machines and household washer-dryers, which will comply with Commission Regulation (EU) 2019/2014.

3. Technical Regulations for energy labelling of electric lamps and luminaires (Resolution of the Cabinet of Ministers of Ukraine of 27.05.2015 № 340; Official Gazette of Ukraine 2015, № 44, p. 53, Article 1387).

The Technical Regulation is based on Commission Delegated Regulation (EU) № 874/2012 of 12 July 2012, supplementing Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on energy labelling of electric lamps and luminaires.

This Technical Regulation establishes the basic requirements for providing consumers with information on the level of electricity efficiency of electric lamps and luminaires, as well as additional information.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 **“On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection”** (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

Given that the European Union has adopted Commission Delegated Regulation (EU) 2019/2015 of 11 March 2019 supplementing Regulation (EU) 2017/1369 of the European Parliament and of the Council on energy labelling of light sources and repealing Commission Delegated Regulation (EU) № 874/2012, Ukraine plans to develop a new Technical Regulation on energy labelling of light sources till 2023, which will comply with Commission Regulation (EU) 2019/2015.

4. Technical Regulations for energy labelling of household dishwashers (Resolution of the Cabinet of Ministers of Ukraine of 17.07.2015 № 514, Official Gazette of Ukraine, 2015, (60, p. 52, Article 1968).

The Technical Regulation is based on Commission Delegated Regulation (EU) № 1059/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council on energy labelling of household dishwashers.

This Technical Regulation establishes the basic requirements for providing consumers with information on the level of energy efficiency and other resources of household dishwashers, as well as additional information.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 **“On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection”** (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

Given that the European Union has adopted Commission Delegated Regulation (EU) 2019/2017 of 11 March 2019 supplementing Regulation (EU) 2017/1369 of the European Parliament and of the Council on energy labelling of household dishwashers and repealing Commission Delegated Regulation (EU) № 1059/2010, Ukraine plans to develop a new Technical Regulation for energy labelling of household dishwashers till 2023, which will comply with Commission Regulation (EU) 2019/2017.

5. Technical Regulations for energy labelling of air conditioners (Resolution of the Cabinet of Ministers of Ukraine of 24.05.2017 № 360; Official Gazette of Ukraine 2017, (45, p. 62, Article 1401).

The Technical Regulation is based on Commission Delegated Regulation (EU) № 626/2011 of 4 May 2011 supplementing Directive 2010/30/EU of the European Parliament and of the Council on energy labelling of air conditioners.

This Technical Regulation establishes the basic requirements for the provision of information to final consumers on the level of energy efficiency and other resources of air conditioners, as well as additional information.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 **“On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection”** (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

Given that the Technical Regulation is developed on the basis of and fully complies with Commission Regulation (EU) № 626/2011 of 4 May 2011, measures are being taken on a regular basis to monitor amendments to Commission Regulation (EU) № 626/2011 in order to make similar amendments to the Ukrainian Technical Regulations as soon as possible. There is currently no need to make such amendments.

6. Technical Regulations for energy labelling of televisions (Resolution of the Cabinet of Ministers of Ukraine of 24.05.2017 № 359; Official Gazette of Ukraine, 2017, (45, p. 46, Article 1400).

The Technical Regulation is based on Commission Delegated Regulation (EU) № 1062/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council on energy labelling of televisions.

This Technical Regulation establishes the basic requirements for providing end-users with information on the level of energy efficiency and other resources of televisions, as well as additional information.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 **“On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection”** (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

Given that the European Union has adopted Commission Delegated Regulation (EU) 2019/2013 of 11 March 2019 supplementing Regulation (EU) 2017/1369 of the European Parliament and of the Council on energy labelling of electronic displays and repealing Commission Delegated Regulation (EU) № 1062/2010, Ukraine plans to develop a new Technical Regulation for energy labelling of electronic displays till 2023, which will comply with Commission Regulation (EU) 2019/2013.

7. Technical Regulations for energy labelling of household tumble dryers (Resolution of the Cabinet of Ministers of Ukraine of 31.05.2017 № 380; Official Gazette of Ukraine 2017, № 47, p. 49, Article 1463).

The Technical Regulation is based on Commission Delegated Regulation (EU) № 392/2012 of 1 March 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council on the energy labelling of household electric tumble driers.

This Technical Regulation establishes the basic requirements for providing end-users with information on the level of energy efficiency and other resources of household tumble driers, as well as additional information.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 **“On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection”** (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

Given that the Technical Regulation was developed on the basis of and fully complies with Commission Regulation (EU) № 392/2012 of 1 March 2012, measures are being taken to monitor amendments to Commission Regulation (EU) № 392/2012 in order to make similar amendments to the Ukrainian Technical Regulations as soon as possible. There is currently no need to make such amendments.

8. Technical Regulations for energy labelling of household ovens and kitchen hoods (order of the Ministry of Regional Development, Construction and Housing of 07.02.2018 № 28, registered in the Ministry of Justice on 07. 05. 2018 № 568/32020).

The Technical Regulation is based on Commission Delegated Regulation (EU) № 65/2014 of 1 October 2013, supplementing Directive 2010/30/EU of the European Parliament and of the Council on energy labelling of ovens and kitchen hoods.

This Technical Regulation establishes the basic requirements for energy labelling of household ovens and household kitchen hoods (taking into account cases where the equipment is not sold for household needs).

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 **“On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection”** (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

Given that the Technical Regulation is developed on the basis of and fully complies with Commission Regulation (EU) № 65/2014 of 1 October 2013, measures are being taken to monitor amendments to Commission Regulation (EU) № 65/2014 in order to make similar amendments to the Ukrainian Technical Regulations as soon as possible. There is currently no need to make such amendments.

9. Technical Regulations for energy labelling of water heaters, accumulator tanks and kits for water heaters and solar equipment (order of the Ministry of Regional Development, Construction and Housing of 19.04.2019 № 100, registered in the Ministry of Justice on 21.06.2019 № 647/33618).

The Technical Regulation is based on Commission Delegated Regulation (EU) № 812/2013 of 18 February 2013 supplementing Directive 2010/30/EU of the European Parliament and of the Council on energy labelling of water heaters, hot water storage tanks and water heater and solar installation kits.

This Technical Regulation establishes the basic requirements for the energy labelling of water heaters, storage tanks and kits for water heaters and solar equipment, as well as the provision of additional information to consumers on these energy products.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 **“On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection”** (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

Given that the Technical Regulation is based on and fully complies with Commission Regulation (EU) № 812/2013 of 18 February 2013, measures are being taken on a regular basis to monitor amendments to Commission Regulation (EU) № 812/2013 in order to as soon as possible to make similar amendments to the Ukrainian Technical Regulations. There is currently no need to make such amendments.

10. Technical Regulations for energy labelling of space heaters, combined heaters, sets of space heaters, temperature controller and solar installation and sets of combined heater, temperature controller and solar installation (order of the Ministry of Energy of Ukraine from 07.10.2020 № 646, registered in the Ministry of Justice 23.10. 2020 № 1048/35331).

The Technical Regulation is based on Commission Delegated Regulation (EU) № 811/2013 of 18 February 2013 supplementing Directive 2010/30/EU of the European Parliament and of the Council on energy labelling of space heaters, combi heaters, heater kits, temperature controllers and solar installation and sets of combined heater, temperature controller and solar installation.

This Technical Regulation defines the basic requirements for energy labelling of room heaters and combined heaters with a nominal heat output of ≤ 70 kW, sets of room heaters ≤ 70 kW, temperature controller and solar installation and sets of combined heaters ≤ 70 kW, temperature

controller and solar controller, also providing consumers with additional information on these energy products.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 **“On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection”** (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

Given that the Technical Regulation was developed on the basis of and fully complies with Commission Regulation (EU) № 811/2013 of 18 February 2013, measures are being taken to monitor amendments to Commission Regulation (EU) № 811/2013 in order to make similar amendments to the Ukrainian Technical Regulations as soon as possible. There is currently no need to make such amendments.

11. Technical Regulations for energy labelling of professional refrigerators for storage (order of the Ministry of Energy of Ukraine dated 26.10.2020 № 683, registered in the Ministry of Justice on 21.12.2020 № 1267/35550).

The Technical Regulation is based on Commission Delegated Regulation (EU) № 2015/1094 of 05 May 2015, supplementing Directive 2010/30/EU of the European Parliament and of the Council on the energy labelling of professional refrigerated storage cabinets.

This Technical Regulation defines the basic requirements for energy labelling of professional refrigerated storage cabinets.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 **“On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection”** (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

Given that the Technical Regulation was developed on the basis of and fully complies with Commission Regulation (EU) № 2015/1094 of 05 May 2015, measures to monitor amendments to Commission Regulation (EU) № 2015/1094 are being taken on an ongoing basis to make similar amendments to the Ukrainian Technical Regulations as soon as possible. There is currently no need to make such amendments.

12. Technical Regulations for energy labelling of local heaters (order of the Ministry of Energy of Ukraine dated 22.10.2020 № 676, registered in the Ministry of Justice on 17.12.2020 № 1256/35539).

The Technical Regulation is based on Commission Delegated Regulation (EU) № 2015/1186 of 24 April 2015, supplementing Directive 2010/30/EU of the European Parliament and of the Council on energy labelling of local heaters.

This Technical Regulation defines the basic requirements for energy labelling of local heaters with a nominal heat output ≤ 50 kW, as well as providing consumers with additional information about them.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 **“On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection”** (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

Given that the Technical Regulation was developed on the basis of and fully complies with Commission Regulation (EU) № 2015/1186 of 24 April 2015, measures are being taken to monitor amendments to Commission Regulation (EU) № 2015/1186 in order to make similar amendments to

the Ukrainian Technical Regulations as soon as possible. There is currently no need to make such amendments.

13. Technical Regulations for energy labelling of solid fuel boilers, solid fuel boiler kits, additional heaters, temperature controllers and solar installations (order of the Ministry of Energy of Ukraine dated 02.11.2020 № 705, registered in the Ministry of Justice on 05.01.2021 on № 16/35638).

The Technical Regulation is based on Commission Delegated Regulation (EU) № 2015/1187 of 27 April 2015 supplementing Directive 2010/30/EU of the European Parliament and of the Council on energy labelling of solid fuel boilers, solid fuel boiler kits, auxiliary heaters, temperature controllers and solar installations.

This Technical Regulation defines the basic requirements for energy labelling of solid fuel boilers with nominal heat output ≤ 70 kW and solid fuel boiler kits ≤ 70 kW, additional heaters, temperature controllers and solar installations, as well as providing consumers with additional information on these energy products.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 **“On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection”** (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

Given that the Technical Regulation was developed on the basis of and fully complies with Commission Regulation (EU) № 2015/1187 of 27 April 2015, measures are being taken on a regular basis to monitor amendments to Commission Regulation (EU) № 2015/1187 in order to make similar amendments to the Ukrainian Technical Regulations as soon as possible. There is currently no need to make such amendments.

14. Technical Regulations for energy labelling of ventilation systems for residential premises (order of the Ministry of Energy of Ukraine dated 26.10.2020 № 684, registered in the Ministry of Justice on 12.02.2021 for № 185/35807).

The Technical Regulation is based on Commission Delegated Regulation (EU) № 1254/2014 of 11 July 2014 supplementing Directive 2010/30/EU of the European Parliament and of the Council on the energy labelling of ventilation systems in residential areas.

This Technical Regulation defines the basic requirements for energy labelling of ventilation systems for residential premises.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 **“On approval of the list of products in relation to which the state market surveillance authorities carry out state market inspection”** (Official Gazette of Ukraine, 2017, № 50, p. 1550) market inspection over compliance with the requirements of this Technical Regulation is carried out by the State Service of Ukraine on Food Safety and Consumer Protection.

Given that the Technical Regulation was developed on the basis of and fully complies with Commission Regulation (EU) № 1254/2014 of 11 July 2014, measures are being taken on a regular basis to monitor amendments to Commission Regulation (EU) № 1254/2014 in order to as soon as possible to make similar amendments to the Ukrainian Technical Regulations. There is currently no need to make such amendments.

In addition, till 2023 it is planned to develop the following Technical Regulations:

- Technical Regulation on energy labelling of refrigeration appliances with direct sales function (based on Commission Delegated Regulation (EU) 2019/2018 of 11 March 2019 supplementing Regulation (EC) 2017/1369 of the European Parliament and of the Council on energy labelling of refrigeration appliances with direct sales function).

- Technical Regulation on tire labelling for fuel efficiency and other parameters (based on Regulation (EC) 2020/740 of the European Parliament and of the Council of 25 May 2020 on tire labelling for fuel efficiency and other parameters, amending Regulation (EU) 2017 / 1369 and repealing Regulation (EU) № 1222/2009).

47. Measuring Instruments (Dir. 2014/32/EU)

Technical Regulation on Measuring Instruments approved by the Resolution of the Cabinet of Ministers of Ukraine of 24.02.2016 № 163 (Official Gazette of Ukraine, 2016, № 21, p. 89, Article 830) and developed on the basis of the Directive 2014/32/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of measuring instruments (consolidated version of the Directive 2014/32/EU, as amended by the Directive 2015/13/EU), entered into force in Ukraine on 15.09.2016.

Technical Regulation on Measuring Instruments applies to measuring instruments specified in Annexes 3-12, namely to water meters (Annex 3), gas meters and volume conversion devices (Annex 4), active electricity meters (Annex 5), heat meters (Annex 6), measuring systems for continuous and dynamic measurement of liquids other than water (Annex 7), automatic weighing instruments (Annex 8), taximeters (Annex 9), material measures (Annex 10), instruments for measuring dimensions (Annex 11) and exhaust gas analyzers (Annex 12).

The essential requirements for measuring instruments are set out in Annex 1, and the procedures for assessing the conformity of such instruments are set out in Annex 2.

According to paragraph 45 of the Technical Regulation the conformity assessment of measuring instruments to the applicable essential requirements shall be carried out at the choice of the manufacturer by applying one of the conformity assessment procedures set out in Annexes 3-12.

The conformity assessment procedures set out in Annex 2 of the Technical Regulation (including Module B (Type Verification)) are identical to those set out in Annex II to the Directive 2014/32/EU.

The Technical Regulation on Measuring Instruments stipulates that the conformity of measuring instruments with standards from the list of national standards for the purposes of applying this Technical Regulation or parts thereof gives the presumption of conformity of such measuring instruments with the essential requirements set out in Annex 1 and Annexes 3- 12, which are covered by such standards or parts thereof.

The list of national standards, that are identical to harmonized European standards and compliance with which provides a presumption of conformity of measuring instruments to the essential and special requirements of the Technical Regulation, is approved by the Order of the Ministry of Economic Development of 13.09.2016 № 1512, which contains 19 national standards similar identical to ones published in the Official Journal of the European Union, and published on the official website of the Ministry of Economy of Ukraine

(<https://www.me.gov.ua/Documents/List?lang=uk-UA&tag=PerelikiNatsionalnikhStandartivPidTekhnichniReglamenti&pageNumber=4>).

Also, the Technical Regulation of Measuring Instruments provides that the Lists of references to normative documents of the International Organization of Legal Metrology (parts thereof) formed on the basis of relevant references and lists published in the Official Journal of the European Union, compliance with which provides a presumption of conformity of measuring instruments to essential requirements set out in Annex 1, and the requirements set out in the relevant Annexes 3-12, are published on the official website of the Ministry of Economy of Ukraine according to the law.

The Lists of references to normative documents of the International Organization of Legal Metrology (parts thereof) formed on the basis of relevant references and lists published in the Official

Journal of the European Union, compliance with which provides a presumption of conformity of measuring instruments to the requirements of the Technical Regulation of Measuring Instruments are published on the website of the Ministry of Economy of Ukraine (<https://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=d315ab41-f923-45f7-bb89-7808b1181b2e&title=PerelikiPosilanNaNormativniDokumentiMizhnarodnoiOrganizatsiiZakonodavchoiMetrologii-ikhChastini-SchoSformovaniNaOsnoviVidpovidnikhPosilanIPerelikiv-OpublikovanikhVOfitsinomuVisnikuvropeiskogoSoiuzu-VidpovidnistYakimNadaPrezumptsiuVidpovidnostiZasobivVimiriualnoiTekhnikiVimogamTekhnichnogoReglamentuZasobivVimiriualnoiTekhniki-ZatverdzenomuPostanovoiuKabinetuMinistrivUkrainiVid24-02-2016-163>).

9 bodies have been appointed in Ukraine to assess the conformity of measuring instruments with the requirements of the Technical Regulation.

State market surveillance over the conformity of measuring instruments with the requirements of the Technical Regulation is carried out by the State Service of Ukraine On Food Safety and Consumer Protection (according to the Resolution of the Cabinet of Ministers of Ukraine of 28.12.2016 № 1069).

Accreditation of conformity assessment bodies is carried out by the National Accreditation Agency of Ukraine in accordance to the Law of Ukraine "On Accreditation of Conformity Assessment Bodies" and their appointment is carried out by the Ministry of Economy of Ukraine in accordance with the Law of Ukraine "On Technical Regulations and Conformity Assessment".

48. Non-automatic Weighing Instruments (Dir. 2014/31/EU)

Technical Regulation on Non-Automatic Weighing Instruments approved by the Resolution of the Cabinet of Ministers of Ukraine of 16.12.2015 № 1062 (Official Gazette of Ukraine, 2015, № 102, p. 103, Article 3524) and developed on the basis of Directive 2014/31/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of non-automatic weighing instruments is valid in Ukraine. This Technical Regulation entered into force in Ukraine on 30.06.2016.

This Technical Regulation applies to the following categories of application of non-automatic weighing instruments, in particular:

- 1) determination of mass during commercial operations;
- 2) determination of the mass in order to calculate the duty, tariff, tax, discount, fine, reward, reimbursement or similar type of payment;
- 3) determination of the mass for the purpose of application of laws, other normative legal acts or expert opinion issued in the course of court proceedings;
- 4) determination of weight in medical practice for weighing patients during medical examination, diagnosis and treatment;
- 5) determination of mass for the manufacture of prescription drugs in pharmacies and determination of mass during analysis in medical and pharmaceutical laboratories;
- 6) determination of the price on the basis of weight for the purposes of direct sale of goods to the public and packaging of goods;
- 7) other categories of application, except those specified in subparagraphs 1-6 of this paragraph.

According to paragraph 37 of the Technical Regulation, the compliance of the instruments with the essential requirements of the manufacturer's choice may be confirmed by one of the following conformity assessment procedures:

1) module B, defined in paragraphs 1-10 of Annex 2, followed by module D, defined in paragraphs 11-26 of Annex 2, or module F, defined in paragraphs 45-53 of Annex 2.

The use of module B is optional for devices that do not use electronic devices and load measuring devices that do not use a spring to balance the load. For these devices, the module D1 defined in paragraphs 27-44 of Annex 2 or the module F1 defined in paragraphs 54-64 of Annex 2 shall be used;

2) module G, defined in paragraphs 65-72 of Annex 2.

The conformity assessment procedures, including module B (type examination), set out in Annex 2 of the Technical Regulation are identical to those set out in Annex II to Directive 2014/31/EC.

The Technical Regulation on Non-Automatic Weighing Instruments stipulates that the conformity of instruments to national standards included in the list of national standards for the purposes of applying this Technical Regulation or parts thereof gives the presumption of conformity of such instrument to the essential requirements covered by such standards or parts thereof.

Order of the Ministry of Economic Development of 10.05.2019 № 812 "On establishing a national standard that is identical to the harmonized European standard and provides a presumption of conformity of devices to the essential requirements of the Technical Regulations on Non-Automatic Weighing Instruments" contains national standard DSTU EN 45501:2017, identical to the harmonized European standard EN 45501:2015 under the Directive 2014/31/EU published in the Official Journal of the European Union, and is published on the official website of the Ministry of Economy of Ukraine (<https://www.me.gov.ua/Documents/List?lang=uk-UA&tag=PerelikiNatsionalnikhStandartivPidTekhnichniReglamenti&pageNumber=3>).

11 bodies have been appointed in Ukraine to assess the conformity of non-automatic weighing instruments with the requirements of the Technical Regulation.

State market surveillance over the compliance of non-automatic weighing instruments with the requirements of the Technical Regulation is carried out by the State Service of Ukraine On Food Safety and Consumer Protection (according to the Resolution of the Cabinet of Ministers of Ukraine of 28.12.2016 № 1069).

Accreditation of conformity assessment bodies is carried out by the National Accreditation Agency of Ukraine in accordance with the Law of Ukraine "On Accreditation of Conformity Assessment Bodies" and their appointment is carried out by the Ministry of Economy of Ukraine in accordance with the Law of Ukraine "On Technical Regulations and Conformity Assessment".

49. Medical devices (Dir. 93/42/EEC, Regulation (EU) 2017/745 and Regulation (EU) 2017/746)

Technical regulation on medical devices, approved by Resolution of the Cabinet of Ministers of Ukraine of 02.10.2013 № 753 (developed on the basis of the EU Council Directive № 93/42 / EEC of 14 June 1993 on in vitro diagnostic medical devices), Technical regulation on medical devices for in vitro diagnostics, approved by Resolution of the Cabinet of Ministers of Ukraine № 754 of 02.10.2013 (developed on the basis of the Directive № 98/79/EEC of the European Parliament and of the Council of 27 October 1998 on in vitro diagnostic medical devices) and Technical regulation on active implantable medical devices, approved by the Cabinet of Ministers of Ukraine № 755 of 02.10.2013 (developed on the basis of the EU Council Directive № 90/385/EEC of 20 June 1990 on the approximation of the laws of the Member States relating to active implantable medical devices). The draft Technical regulation on medical devices based on the Regulation 2017/745 of the European Parliament and of the Council "On Medical Devices" and the draft Technical regulation on in vitro diagnostic medical devices based on the Regulation of the European Parliament and of the Council 2017/746 "On in vitro diagnostic medical devices" have been developed.

B. Old Approach

50. Tractors (Agriculture, Forestry) (Reg. (EU) 167/2013)

In Ukraine, the harmonization of sectoral legislation on technical regulation in the field of engineering and technical support of agriculture with the EU acquis is being actively pursued. Currently, the laws of Ukraine “On the system of engineering and technical support of the agro-industrial complex of Ukraine”, “On stimulating the development of domestic engineering for the agro-industrial complex”, “On protection of the rights of buyers of agricultural machinery” and the Technical regulations on type-approval of agricultural or forestry tractors, their trailers and interchangeable towed machinery, together with their systems, components and separate technical units approved by the Resolution of the Cabinet of Ministers of Ukraine of 28.12.2011 № 1367, Technical regulations on components and characteristics of wheeled agricultural and forestry tractors, approved by the Resolution of the Cabinet of Ministers of Ukraine of 28.12.2011 №1368.

In order to approximate the legislation of Ukraine to European Union legislation in terms of conformity assessment of agricultural and forestry machinery, legalization of its admission to the market, commissioning and safety of its use, the Action Plan for the development of technical regulation system for the period up to 2025 is approved by the Resolution of the Cabinet of Ministers of Ukraine of 22.09.2021 № 1145. In particular, it provides for the development of the Ministry of Agrarian Policy and the adoption in the prescribed manner of technical regulations that comply with EU legislation on:

- the approval and market surveillance of agricultural and forestry vehicles (Regulation (EU) № 167/2013 of the European Parliament and of the Council of 5 February 2013 on the approval and market surveillance of agricultural and forestry vehicles (2022);

- vehicle brake system requirements for the approval of agricultural and forestry vehicles (Commission Delegated Regulation (EU) 2015/68 of 15 October 2014 supplementing Regulation (EU) № 167/2013 of the European Parliament and of the Council with regard to vehicle brake system requirements on approval of agricultural and forestry vehicles) (in 2023);

- functional safety requirements for the approval of agricultural and forestry vehicles (Commission Delegated Regulation (EU) 2015/208 of 8 December 2014 supplementing Regulation (EU) № 167/2013 of the European Parliament and of the Council with regard to vehicle functional safety requirements for the approval of agricultural and forestry vehicles (in 2023);

- vehicle construction requirements and general requirements for the approval of agricultural and forestry vehicles (Commission Delegated Regulation (EU) № 1322/2014 of 19 September 2014 supplementing and amending Regulation (EU) № 167/2013 of the European Parliament and of the Council with regard to vehicle construction and general requirements for the approval of agricultural and forestry vehicles (in 2023);

- administrative requirements for the approval and market surveillance of agricultural and forestry vehicles (Commission Implementing Regulation (EU) 2015/504 of 11 March 2015 implementing Regulation (EU) No 167/2013 of the European Parliament and of the Council with regard to the administrative requirements for the approval and market surveillance of agricultural and forestry vehicles (in 2023);

- requirements for the protection of the environment and propulsion unit performance requirements for agricultural and forestry vehicle engines (Commission Delegated Regulation (EU) 2018/985 of 12 February 2018 supplementing Regulation (EU) No 167/2013 of the European Parliament and of the Council as regards environmental and propulsion unit performance requirements for agricultural and forestry vehicles and their engines and repealing Commission Delegated Regulation (EU) 2015/96 (in 2023).

By letter of 21.01.2022 № 21-1820-02 / 394, the Ministry of Agrarian Policy requested the Government Office for Coordination of European and Euro-Atlantic Integration of the Secretariat of the Cabinet of Ministers of Ukraine to provide an official translation of the *acquis communautaire* (EU Regulations) required for the development of defined instruments.

A working group on technical regulation in the field of technical policy in the agro-industrial complex, the purpose of which is to consider and resolve issues of technical regulation in engineering and agricultural machinery, and approximation of Ukrainian legislation to European Union legislation in terms of conformity assessment of agricultural and forestry machinery was established by the Order of the Ministry of Agrarian Policy of 29.11.2021 № 389.

According to the order of the Ministry of Agrarian Policy of 13.12.2021 № 428 the function of approving the type of vehicle is entrusted to the state scientific institution “Ukrainian Research Institute for Forecasting and Testing of Machinery and Technologies for Agricultural Production named after Leonid Pogorily”.

Furthermore, together with the People's Deputies, a draft Law of Ukraine “On Amendments to Certain Laws of Ukraine Concerning the Implementation of Technical Regulation Functions in the Sphere of Agro-Industrial Complex and Mechanical Engineering for the Agro-Industrial Complex” (Reg. № 6070-1 of 05.10.2021) currently prepared for the second reading in parliament, has been developed.

51. Motor Vehicles (Reg. (EU) 2018/858)

Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EU) No 715/2007 and (EU) No 595/2009 and repealing Directive 2007/46/EU.

The requirements of the specified Regulation have been implemented in Ukraine in the following regulations:

- Law of Ukraine “On Road Traffic”;
- Resolution of the Cabinet of Ministers of Ukraine of 22.12.2010 № 1166 “On uniform design and technical prescriptions for wheeled vehicles in operation” (as amended);
- The procedure for approval of vehicle constructions, their parts and equipment, approved by the order of the Ministry of Infrastructure of Ukraine of 17.08.2012 № 521, registered in the Ministry of Justice of Ukraine of 14.09.2012 on № 1586/21898 (as amended).

Specified regulations contain requirements for mandatory testing and certification of vehicles and their components prior to serial production.

Conformity assessment of wheeled vehicles and their components is carried out by certification bodies having the appropriate accreditation (carried out by the national accreditation body) and meet the requirements established by the Procedure for designation, refusal to appoint and cancel the appointment of the certification body for individual approval of vehicles, parts and equipment approved by the Resolution of the Cabinet of Ministers of Ukraine of 01.07.2016 № 419.

Expert verification of measuring instruments used during conformity assessment is carried out in accordance with the Law of Ukraine “On Metrology and Metrological Activity”.

Wheeled vehicles, new parts and equipment that can be installed and / or used on wheeled vehicles are included in the list of products for which the state market surveillance authorities carry out state market supervision, approved by the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016. № 1069.

The body of state market supervision over specified products is the State Service of Ukraine for Transport Safety.

52. Motor vehicles (2/3 wheels) (Reg. (EU) 168/2013)

Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles

- Law of Ukraine “On Road Traffic”;
- Resolution of the Cabinet of Ministers of Ukraine of 22.12.2010 № 1166 “On uniform design and technical prescriptions for wheeled vehicles in operation” (as amended);
- The procedure for approval of vehicle constructions, their parts and equipment, approved by the order of the Ministry of Infrastructure of Ukraine of 17.08.2012 № 521, registered in the Ministry of Justice of Ukraine of 14.09.2012 on № 1586/21898 (as amended).

Specified regulations contain requirements for mandatory testing and certification of vehicles and their components prior to serial production.

Conformity assessment of wheeled vehicles and their components is carried out by certification bodies having the appropriate accreditation (carried out by the national accreditation body) and meet the requirements established by the Procedure for designation, refusal to appoint and cancel the appointment of the certification body for individual approval of vehicles, parts and equipment approved by the Resolution of the Cabinet of Ministers of Ukraine of 01.07.2016 № 419.

Expert verification of measuring instruments used during conformity assessment is carried out in accordance with the Law of Ukraine “On Metrology and Metrological Activity”.

Wheeled vehicles, new parts and equipment that can be installed and / or used on wheeled vehicles are included in the list of products for which the state market surveillance authorities carry out state market supervision, approved by the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016. № 1069.

The body of state market supervision over specified products is the State Service of Ukraine for Transport Safety.

53. Non-road Mobile Machinery Emissions (Reg. (EU) 2016/1628)

The Ministry of Environmental Protection and Natural Resources of Ukraine is not the main executor of the implementation of the regulations Regulation (EU) 2016/1628 of the European Parliament and of the council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, amending Regulations (EU) № 1024/2012 and (EU) № 167/2013, and amending and repealing Directive 97/68/EC.

Standardization of emissions from these facilities is carried out in accordance with the order of the Ministry of Environment of 27 June 2006 № 309 "On approval of Standards of maximum permissible emissions of pollutants into the atmosphere from stationary sources", registered in the Ministry of Justice of 01 August 2006 № 912/12786.

54. Chemicals (REACH) (Reg. 1907/2006)

The use of any dangerous factor of chemical and biological nature in the national economy and everyday life is allowed only in the presence of a certificate certifying its state registration (Article 9, Section III of the Law of Ukraine "On Sanitary and Epidemic Welfare").

According to Art. 21 of the Law of Ukraine "On labor protection" is not allowed to use in the production of harmful substances in the absence of their hygienic regulations and state registration.

The state registration of dangerous factors is carried out in accordance with Section II "Regulations on hygienic regulations and state registration of dangerous factors", approved by the Resolution of the Cabinet of Ministers of Ukraine of 13.06.95 № 420.

All individual chemical and biological substances (compounds) are registered, including polymers and materials on them basis, as well as those that are part of mixed products that are produced and (or) used in Ukraine or imported from abroad. State registration of hazardous factors is a prerequisite for issuing permits for import, use and organization of production, for the introduction of hazardous factors in regulatory and design documentation, as well as a condition for issuing a hygienic opinion.

Registration of chemical and biological substances (compounds) is carried out by the Committee at the request of ministries, departments, organizations, institutions, enterprises, regardless of their subordination and ownership, other legal entities responsible for the production or import of a particular substance (compound).

For state registration of dangerous factors, the Applicant provides a list of documents by the Order of the Ministry of Health of Ukraine dated 23.03.2010 № 250.

After the registration of the hazardous factor, the Committee issues to the applicant the relevant certificate (certificate) and the developed Hazard Factor Data Map; publishes information on state registration on the Committee's website.

For business entities that are not owners of the Certificate (certificate) of state registration, the official document confirming the fact (presence) of state registration of the hazardous factor is the "Hazardous Factor Data Map" (substance, material), it is mandatory document for individual chemical and biological substances (compounds), including polymers and materials based on them, as well as those that are part of mixed products that are produced and (or) used in Ukraine, as well as those imported from "Abroad" data of the dangerous factor (substance, material) is valid for the period of state registration of the dangerous factor.

However, the current system of state registration of hazardous chemicals does not comply with REGULATION (EC) No 1907/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45 / EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC.

55. Chemicals CLP (Reg. 1272/2008)

According to the orders of the State Enterprise "Ukrainian Research and Training Center for Standardization, Certification and Quality" from 14.12.2015 № 186 "On the abolition of interstate standards in Ukraine, developed before 1992" and from 10.07.2017 № 169 "On the transfer term of repeal of interstate normative documents in Ukraine" action of GOST 12.1.007-76 "System of labor safety standards. Hazardous substances. Classification and general safety requirements" was canceled on January 1, 2019.

In Ukraine, there is currently no standardization of requirements for the classification of hazards of chemicals.

56. Good Laboratory Practice (GLP) (Dirs. 2004/10/EC & 2004/9/EC)

Principles and rules (requirements) for conducting preclinical safety studies of medicinal products manufactured for the purpose of their registration or licensing are established by the Guidelines “Medicinal products. Good Manufacturing Practice” approved by the order of the Ministry of Health of Ukraine of 16.02.2009 № 95.

57. Fertilisers (Reg. 2019/1009)

The procedure for registration of fertilizers in Ukraine generally corresponds to the procedures provided by EU legislation.

To be admitted to the market, their biological efficiency, environmental safety and compliance with sanitary legislation must be confirmed.

There is a difference with the requirements (Reg. 2019/1009) for the classification of fertilizers by type.

58. Detergents (Reg. 648/2004)

a) in Ukraine is in force Technical Regulation for Detergents, approved by the Resolution of the Cabinet of Ministers of Ukraine dated 20.08.2008 № 717 (Official Gazette of Ukraine, 2008, № 63, p. 2128), which sets requirements for detergents and surfactants which are part of them.

The Technical Regulation for Detergents stipulates that the putting of detergents and surfactants into circulation is possible only if they do not endanger the safety of the environment and meet the requirements for:

- the level of biological decomposition of surfactants;
- marking of detergents;
- information provided at the request of executive authorities specified by law;
- restrictions on the content of phosphates and other phosphorus compounds in detergents.

The requirements of this Technical Regulation apply to:

- detergents intended for washing or cleaning and put into circulation on the territory of Ukraine for the needs of the consumer (user);
- detergents for soaking, rinsing, starching, finishing, softening or bleaching fabric products;
- detergents designed for cleaning surfaces, materials, products, mechanisms, mechanical devices, vehicles and auxiliary equipment, tools, apparatus, etc.;
- other detergents intended for use during washing and cleaning.

The requirements of this Technical Regulation do not apply to:

- soap solid;
- cosmetics;
- surfactants that have disinfectant properties;
- detergents containing no more than 0.2 percent of surfactants.

The identification feature of a detergent is its purpose. Information on the purpose is indicated in the labelling and instructions for use of detergent.

The level of complete biodegradability of surfactants in the detergent must be at least 60 percent (for carbon dioxide) or 70 percent (for total organic carbon) in 28 days.

If the level of complete biodegradability of surfactants in the detergent is less than 60 percent (for carbon dioxide) or 70 percent (for total organic carbon), the requirement for primary biodegradability should apply to industrial detergents and surfactants that are part of the detergent.

The level of primary biodegradation of surfactants that are part of the detergent must be at least 80 percent.

These requirements for the biodegradation of surfactants do not apply to ingredients that are not surfactants.

The following restrictions on the content of phosphates and other phosphorus compounds apply to certain detergents.

Name of detergent	Limitation	Date of application of the restriction
1. Detergent intended for washing	the total phosphorus content shall not exceed 0.5 grams in the recommended amount and / or dosage of detergent intended for washing for use in the main cycle of the washing process in hard water for standard loading of the washing machine	from 25.12.2014
2. Detergent for household dishwashers	the total phosphorus content shall not be more than 0.3 grams in a standard dose of detergent for use in the main wash cycle to load the dishwasher with a table set for 12 people	from 01.01.2017

Detergent shall be marked by applying to the outer surface of the package or label the inscription in clear letters that do not wash off during the shelf life of such agent, indicating:

- name and information on the purpose of the detergent;
- trademark (if any) or trademark, name, location and telephone number of the detergent manufacturer or his authorized representative;
- information on the composition of the detergent;
- addresses, including e-mail (if available), and telephone numbers where you can get a technical description of the ingredients;
- instructions for use, safety measures and special precautions in accordance with the law, and in their absence - the requirements of DSTU GOST 31340: 2009 "Preventive labeling of chemical products. General requirements";
- net or volume mass;
- dates of manufacture;
- expiration date;
- storage conditions (if necessary).

If the detergent is supplied in bulk, the information specified in the second, third and fifth paragraphs of this paragraph shall be included in the accompanying documentation.

The labelling of detergents intended for washing and detergents for household dishwashers must contain information on the dosage of the detergent.

Labelling of detergent is carried out in accordance with the law on languages.

The label of the liquid detergent packaging must not contain a graphic image of food, in particular fruit, if such an image may mislead the consumer (user) about its use, except in the case of images of food together with household items that directly indicate the purpose of the product.

The sign of compliance with technical regulations is applied to the outer surface of the package or on the label of the detergent. If the detergent is delivered in bulk, the mark of compliance with technical regulations is applied to the accompanying documents.

Currently, the Technical Regulation on Detergents *is not harmonized* with Regulation № 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents, while the Technical Regulation is generally in line with the requirements of Annex VIa to EU Regulation № 648/2004 (concerning its quantitative limit and duration).

Implementation in Ukraine of Regulation № 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents is planned simultaneously with the implementation of EU legislation in the field of chemical products, in particular Regulation of the European Parliament and of the Council 1907/2006 of 18 December 2006 on the Registration, Evaluation, Authorization and Restriction of Chemicals and Preparations (REACH) and Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures (CLP).

b) Technical Regulation for Detergents stipulates that testing of detergents and surfactants that are part of them are carried out in accordance with national standards. This list of respective standards was approved by the order of the Ministry of Economy of Ukraine of October 22, 2021 № 795-21 "On approval of the List of national standards for determining methods of testing detergents for compliance with the Technical Regulations of detergents, approved by the Cabinet of Ministers of Ukraine from 20.08.2008 № 717" and contains both national standards that are identical to international standards and purely national standards.

The technical regulation requires a conformity assessment of detergents to be carried out at the choice of the manufacturer or his authorized representative using module A1 (internal production control with supervised product testing) or module F1 (conformity based on product verification) as defined in the Conformity Assessment Modules, which are used to develop conformity assessment procedures approved by the resolution of the Cabinet of Ministers of Ukraine of January 13, 2016 № 95 (Official Gazette of Ukraine, 2016, (16, p. 625).

In order to verify the compliance of products with the requirements of this Technical Regulation using module A1 (internal production control with product testing under supervision) appropriate tests are carried out on standard representatives of the relevant range (model) of detergents or surfactants.

At the choice of the manufacturer, these tests are carried out by an accredited testing laboratory of the manufacturer or under the responsibility of a designated conformity assessment body selected by the manufacturer.

In case of receiving positive test results of typical representatives of the relevant assortment (model) series of detergents or surfactants, such assortment (model) series of detergents or surfactants is considered approved. In this case, the designated conformity assessment body issues a document on the compliance of the range (model) of detergents or surfactants to the requirements of this Technical Regulation (report, opinion, etc.).

Checking the compliance of the range (model) of detergents or surfactants to the requirements of this Technical Regulation is carried out every two years and in case of changes in the production process and / or raw materials for the manufacture of detergents.

As of December 31, 2021, 14 conformity assessment bodies accredited by the National Accreditation Agency of Ukraine under the Technical Regulation have been appointed to perform conformity assessment of products to the requirements of the Technical Regulation.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products for which the state market surveillance authorities carry out state market supervision” (Official Gazette of Ukraine, 2017, № 50, p. 1550) the State Service of Ukraine for Food Safety and Consumer Protection performs market supervision over compliance with the requirements of this Technical Regulation.

59. Drug Precursors (Reg. 273/2004)

The regulations have not been implemented in the legislation of Ukraine. The issue is being pursued towards implementation.

60. Aerosol Dispensers (ADD) (Directive 75/324/EEC)

The State Emergency Service of Ukraine developed in accordance with the action plan for the development of technical regulations for the period up to 2025, which was approved by the Cabinet of Ministers of Ukraine from 22.09.2021 № 1145-r draft Technical Regulations for aerosol sprays and the Cabinet of Ministers of Ukraine on its approval market surveillance and their areas of responsibility, analysis of the regulatory impact (hereinafter-the draft Resolution), which by letter dated 21.09.2021 № 4304/1 / 35-2021 approved by the Ministry of Internal Affairs of Ukraine and published on the SES website on September 29, 2021, for comments and proposals from individuals and legal entities.

By letter dated 01.10.2021 № 03-16677 / 261-2, the draft Resolution was sent to the Ministry of Digital Transformation, by letter dated 01.10.2021 № 03-16678 / 261-2 the draft Resolution was sent to the Ministry of Economy of Ukraine, the Ministry of Infrastructure of Ukraine and the Ministry of Finance of Ukraine.

In October 2021, the draft Resolution was approved by the relevant central executive bodies, in particular: the Ministry of Infrastructure, the Ministry of Finance, the Ministry of Finance, and the comments of the Ministry of Economy.

After processing the proposals and comments received by the SES, the draft Resolution was sent by letter dated 10.12.2021 № 01-21095 / 261-2 to the State Regulatory Service of Ukraine for approval. The State Regulatory Service of Ukraine Decision № 6 of 05.01.2022 notified the SES of the refusal to approve the draft regulatory act, with comments. Also by letter dated 12.01.2022 № 153/0 / 20-22 State Regulatory Service of Ukraine informed the SES about the receipt to their address of the application of LLC "Pairokul" dated 30.12.2021 № 204. SES by letter dated 09.02.2022 «261-1-2123 / 261-2 provided a thorough response to the issues raised by the applicant and the State Regulatory Service of Ukraine. The SES is currently adjusting the draft Resolution.

61. Pre-packaging (Dir. 75/107/EEC 76/211/EEC & 2007/45/EC)

1) Technical Regulations on Bottles used as Measuring Containers approved by the Cabinet of Ministers of Ukraine of 19.08.2015 № 607 (Official Gazette of Ukraine dated 08.09.2015, № 69, p. 93, Article 2268) and developed on the basis of the Council Directive of the European Communities № 75/107/EEC of 19 December 1974 on the approximation of the laws of the Member States relating to bottles used as measuring containers entered into force on 08.03.2016.

The Technical Regulation applies to containers made of glass or other substance that has the following characteristics of rigidity and stability that provide it with the same metrological properties as glass, as well as:

- sealed or designed to be sealed and intended for storage, transport or delivery of liquid;
- have a nominal capacity of between 0.05 to 5 liters inclusive;
- have metrological characteristics, characteristics related to the design and similarity of the manufacturing process, which allow them to be used as measuring containers (if they are filled to a set level or a certain percentage of their total capacity, their content can be measured with sufficient accuracy).

Such containers are means of measuring equipment and are called measuring bottles.

The Technical Regulation establishes: technical requirements for measuring bottles, the procedure for statistical control of measuring bottles (sampling, determining the capacity of measuring bottles in the sample), approved the mark of conformity of the measuring bottle.

The manufacturer shall, under his responsibility, affix the conformity mark to the measuring bottle, which indicates that it complies with the requirements of this Technical Regulation.

Application of the mark of conformity is voluntary.

Measuring bottles are subject to metrological supervision. The metrological supervision body (the State Service of Ukraine On Food Safety and Consumer Protection) during metrological supervision establishes compliance of measuring bottles with the requirements of this Technical Regulation by carrying out statistical control at the place of their production or at the premises of the importer or manufacturer's representative who are residents of Ukraine.

2) Technical Regulation on Some Goods that are Packaged by Weight and Volume in the Finished Package approved by the Cabinet of Ministers of Ukraine of 16.12.2015 № 1193 (Official Gazette of Ukraine dated 12.02.2016, № 10, p. 13, p. 13), developed on the basis of the Council Directive 76/211/EEC of 20 January 1976 on the approximation of the laws of the Member States relating to the making-up by weight or by volume of certain prepackaged products, and entered into force on 05.08.2016. The technical regulation does not take into account the provisions of the Directive 2007/45/EC, as the legislation in the field of viticulture and winemaking in Ukraine has different terminology.

The Technical Regulation sets requirements for certain goods packed by weight and volume in the finished package.

The Technical Regulation applies to certain goods packed by weight and volume in the finished package to packaged units with a constant nominal content, which contain goods intended for sale and:

- correspond to the values determined by the packer before packing;
- expressed in units of mass or volume;
- weighing or weighing not less than 5 grams or milliliters and not more than 10 kilograms or liters;
- marked with the mark of conformity to the requirements of this Technical Regulation.

The Technical Regulation sets requirements for packaged units (actual content, nominal content, negative deviation of content, liability of the packer or importer); the procedure for statistical control of batches of packed units (requirements for determining the actual content of packed units; requirements for checking batches of packed units; batches of packed units; minimum acceptable content of packed units; non-destructive testing); mark of conformity of the packed unit.

Application of the mark of conformity is voluntary.

Packed units with a constant nominal content, which contain goods intended for sale and: correspond to the values determined by the packer before the moment of packing; are expressed in units of mass or volume; have weight or volume not less than 5 grams or milliliters and not more than 10 kilograms or liters; are voluntarily marked with the mark of conformity to the requirements of this Technical Regulation, are the objects of metrological supervision.

The metrological supervision body (the State Service of Ukraine On Food Safety and Consumer Protection) in order to establish the compliance of packaged units with this Technical Regulation carries out selective statistical control in the premises of the packer or the representative of the packer or importer who are residents of Ukraine.

62. Units of Measurement (Dir. 80/181/EEC Dir. 2009/3/EC)

Order of the Ministry of Economic Development and Trade of Ukraine of 04.08.2015 № 914 "On approval of definitions of the basic SI units, names and definitions of the SI derived units, decimal multiples and partial of the SI units, allowed off-system units, as well as their designations and Rules of application of units and spelling of names and designations of units measurement and symbols of quantities", registered in the Ministry of Justice of Ukraine on 25.08.2015 № 1022/27467 (hereinafter - Order № 914) is developed on the basis of the Council Directive № 80/181/EEC of 20 December 1979 on the approximation of the laws of the Member States relating to units of measurement and on the repeal of Directive 71/354/EEC (consolidated version of Directive 80/181/EEC as amended by Directive 2009/3/EU), which provides for the indication of units of measurement by letters of the Latin or Greek alphabet.

Order № 914 entered into force in Ukraine on 01.01.2016.

Clause 1 of the Rules of Application of Units of Measurement and Writing of Names and Designations of Units of Measurement and Symbols of Values approved by Order № 914 stipulates those international designations of units of measurement shall be used on the labelling of products (including medicinal products) on the Ukrainian market using letters of the Latin or Greek alphabet). At the same time, Ukrainian symbols of units of measurement (using the letters of the Ukrainian alphabet) may be used on the label, unless otherwise provided by law.

The metrological supervision body (the State Service of Ukraine On Food Safety and Consumer Protection) checks the use of permitted units of measurement during the operation of measuring equipment.

It is planned to amend Order № 914, with consideration of Commission Directive (EU) № 2019/1258 of 23.07.2019 on amendments to the Annex to Directive № 80/181/EEC on the definition of the basic SI units.

(At the 26th meeting of the General Conference on Weights and Measures (CGPM) the Member States of the Metric Convention, including Ukraine, adopted a CGPM Resolution on the revision of the International System of Units (SI) and redefined the basic SI units, namely: kilogram, ampere, kelvin, candela, second, meter, and mole. The new definitions of basic units of measurement reflect the latest advances in the science of measurement.

All of the above units will be determined through fundamental constants, which will improve the stability and reliability of the basic SI units, as well as the accuracy and traceability of the measurement results).

C. Procedural Measures

63. Firearms (Dir. 91/477/EEC)

In general, the national legislation of Ukraine regulating the circulation of civilian firearms contains provisions that are more stringent than those provided for in EU Directive 91/477/EEC.

Changes in the classification of weapons by categories are provided for by the relevant draft law, which is at the stage of adoption (register number 5708). In accordance with the current regulations regulating the circulation of weapons in Ukraine, firearms are divided into combat, sports, and hunting. Combat firearms are prohibited for civilian circulation (with certain exceptions listed below).

In the property of citizens of Ukraine who have passed training on the rules of handling weapons, do not have criminal records and medical contraindications, there may be the following firearms:

- long smooth-barreled hunting firearms are available for citizens who have reached the age of 21 and can be stored at the place of residence of the owner;
- long rifled hunting firearms are available for citizens who have reached the age of 25 and can be stored at the place of residence of the owner;
- members of sports teams in bench shooting may be allowed to own and store at the place of residence of a long smooth-barreled sports firearm, which can be stored at the place of residence of the owner;
- sportsmen, which are assigned sports rifled firearms, have the right to use it only within shooting ranges and shooting ranges without the right to store them at the place of residence;
- certain categories of citizens (court and law enforcement officers, journalists, deputies, military personnel, etc.) may be allowed to own devices designed to shoot cartridges equipped with rubber or similar in their properties metal projectiles of non-fatal action (traumatic weapon);
- departmental normative documents regulate the procedure for the circulation of "Registered (award) firearms" (including combat), which is an encouraging state award and is issued for outstanding services to the state.

For the civilian population, it is allowed to grant permission for the purchase and possession of semi-automatic hunting weapons (including converted from automatic).

The following requirements are made for hunting firearms:

- hunting cartridges of the appropriate caliber are used for firing weapons;
- the total length with a decomposed and fixed example should be at least 800 mm;
- the capacity of the store (drum) (with the installed limiter in the presence) of rifled weapons should not exceed 10 rounds and smooth-barreled - 4 cartridges;
- have a fuse;
- the length of the barrel of rifled weapons should be more than 200 mm, smooth-barreled - at least 450 mm.

If the example is folded, the total length of the weapon is measured in a folding state, unless the weapon with the folding butt is unable to fire.

Sports weapons must meet the following requirements:

- comply with the rules of competitions in Olympic sports, or comply with the rules of competitions in non-Olympic sports and be included in the List sent by the international or national sports federation to the Ministry of Internal Affairs of Ukraine;
- sports cartridges of the appropriate caliber should be used for firing weapons of sports weapons;

- have adjustable sighting mechanisms (except for individual models of sports revolvers, the list of which is determined by the rules of the competition);
- have ergonomic control bodies (handle, butt, trigger);
- leave on the sleeves fired from its traces suitable for determining its model and manufacturer (forensic tags), which should differ from traces of similar weapons of another purpose.

In the design of bullets hunting and sports cartridges should not be:

- carbide elements designed to increase the punching ability of the ball;
- explosive, tracer, or ignition substances;
- poisoning or radioactive substances.

64. Crystal Glass (Dir. 69/493/EEC)

a) In Ukraine there are currently *no* special technical regulations establishing technical requirements for the composition and labeling of crystal glass products, as well as methods for determining the chemical and physical properties of crystal glass types for crystal glass products. So, market regulation of safety and labelling of such products is carried out by applying:

- Law of Ukraine of 02.12.2010 № 2736-VI “On General Safety of Non-Food Products” (Vidomosti of Verkhovna Rada of Ukraine, 2011, № 22, p.145);
- Law of Ukraine of 12.05.1991 № 1023-XII “On Consumer Protection” (Vidomosti of Verkhovna Rada of Ukraine, 1991, № 30, p. 379).

Crystal glass products are not subject to mandatory conformity assessment (certification), and manufacturers or importers are not obliged to issue any documents of conformity for these products, as there are no special technical regulations that provide for this obligation.

It is planned to develop by the end of 2022 a draft order of the Ministry of Economy approving the Technical Regulation on crystal glass products on the basis of Council Directive 69/493/EEC of 15 December 1969 on the approximation of the laws of the Member States relating to crystal glass.

b) Due to the lack of special technical regulations in Ukraine establishing technical requirements for the composition and labeling of crystal glass products, as well as methods for determining the chemical and physical properties of crystal glass types for crystal glass products, Ukraine does not have a mandatory conformity assessment, including certification of such products, there are no mandatory standards for such products.

However, the State Service of Ukraine for Food Safety and Consumer Protection in accordance with the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products subject to state market surveillance” (Official Gazette of Ukraine, 2011, № 39, art. 1599) is a body of state market supervision over compliance with the Law of Ukraine of 02.12.2010 № 2736-VI “On general safety of non-food products” “Vidomosti of Verkhovna Rada of Ukraine, 2011, № 22, art.145) and the body of state supervision (control) over compliance with the requirements of the Law of Ukraine of 12.05.1991 № 1023-XII "On Consumer Protection" (Vidomosti of Verkhovna Rada of the Republic of Ukraine, 1991, № 30, p.379).

65. Defence Products & Defence Procurement (Dir. 2009/43/EC & Dir. 2009/81/EC)

In order to harmonize Ukrainian legislation in the field of defence procurement with the provisions of Directive 2009/81/EC in accordance with the Association Agreement between the European Union and Ukraine, the Parliament adopted the Law of Ukraine "On Defence Procurement". At the same time, this Law does not fully implement the provisions of this Directive

(partly aligned).

The law does not cover the following provisions:

1) there is no definition of the term "related undertaking", which foresees certain restrictions under this directive (Art. 1, 50 of the Directive), as well as the concept of "abnormally low tenders" and the authorities (rights) of the public customer to reject or accept the relevant offers (Art. 49 of the Directive);

2) specific features of subcontracts' conclusion on the basis of a framework agreement (Art. 50-54 of the Directive), the Law instead regulates subcontracts only partially (Art. 33);

3) insufficiently detailed requirements for the technical and/or professional capabilities of economic operators, which are described in detail in the Directive (Art. 42).

In addition, there are some differences in the definition of the criteria to be applied by customers in awarding contracts. Thus, the Directive (Art. 47) states that such criteria shall be:

(a) when the award is made to the most economically advantageous tender from the point of view of the contracting authority/entity, various criteria linked to the subject-matter of the contract in question: for example, quality, price, technical merit, functional characteristics, environmental characteristics, running costs, lifecycle costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion, security of supply, interoperability and operational characteristics; or

(b) the lowest price only.

At the same time, the Law (Art. 17) defines the following criteria for evaluating proposals of procurement participants:

1) price;

2) price along with other evaluating criteria (the specific weight of the price as part of the criterion cannot be less than 60 percent), in particular:

terms of payment;

terms of execution;

level of lifecycle support (warranty and service, disposal, etc.);

localization of production (the share of this criterion cannot be less than 25 percent);

3) the cost of lifecycle.

That is, in the Law, the cost of the life cycle is highlighted as an independent criterion, although it is advisable to include it in the second group price along with other evaluation criteria.

Thus, it should be concluded that the current legislation of Ukraine in the field of defence procurement will require minor changes.

The requirements of Directive 2009/43/EC (hereinafter - the Directive) determine the procedure for export (transfer) of defence products within the EU.

The norms of the Law of Ukraine "On State Control over International Transfers of Military and Dual-Use Goods" (hereinafter - the Law) are related to the provisions of the Directive.

The provisions of the Law and other normative legal acts aimed at implementing the norms of this Law, in general, set the mechanisms of the Directive, but in the future will require the full implementation of the provisions of the aforementioned Directive in terms of making minor changes to the existing mechanisms of exports of defence-related goods.

66. Footwear (Dir. 94/11/EC)

a) in Ukraine, since 17.02.2020 is in force Technical Regulation labelling of materials used for the manufacture of the main components of footwear that comes for sale to the consumer, approved by the order of the Ministry of Economic Development and Trade of Ukraine from 06.03.2019 № 358, registered in the Ministry of Justice of Ukraine 02.04. 2019 under № 336/33307 (Official Gazette of Ukraine, 2019, № 30, p. 1092), developed on the basis and **fully complies** with Directive 94/11/EC of the European Parliament and of the Council of 23 March 1994 on the approximation of laws, regulations and administrative provisions of the Member States on the labeling of materials used in the manufacture of the main components of footwear for sale to the consumer. The Technical Regulation is in full compliance with Directive 94/11/EC.

This Technical Regulation lays down requirements for the labeling of materials used in the manufacture of the main components of footwear for sale to the consumer.

The label must contain information about the three main components of footwear, namely:

- top material;
- lining and insole;
- sole.

The components of shoes are marked in the form of icons or text symbols of specific materials.

Putting of footwear into circulation is subject to its marking in accordance with the requirements of this Technical Regulation and compliance with other legislation of Ukraine applicable to it.

In case of non-compliance of marking of footwear put into circulation with the requirements of this Technical Regulation, the state market surveillance authorities shall take restrictive (corrective) measures in accordance with the Law of Ukraine of 02.10.2010 №2735-VI “On state market supervision and control of non-food products” Council of Ukraine, 2011, № 21, p.144).

Footwear put into circulation that meets the requirements of this Technical Regulation on marking and the relevant provisions of the legislation of Ukraine applicable to it shall not be prohibited or restricted.

Marking in accordance with this Technical Regulation includes the application of the information provided on at least one half of a pair of shoes. Marking is done by embossing, gluing, crimping or attaching a label.

The marking must be visible, well fixed and accessible, and the size of the icons sufficient for easy understanding of the information indicated on the marking. The labeling must be clear to the consumer and not mislead him.

The manufacturer or his authorized representative shall ensure the marking of the footwear and the accuracy of the information indicated on it. If the manufacturer is not a resident of Ukraine (and in the absence of an authorized representative), this obligation is imposed on the person who places footwear on the Ukrainian market. The seller must make sure that the footwear he sells contains the markings provided for in this Technical Regulation.

Given the Technical Regulation was developed on the basis of Directive 94/11/EC and **fully compliant** with it, measures are being taken to monitor on a regular basis the amendments to Directive 94/11/EC in order to make similar prompt amendments to the Technical Regulation of Ukraine. With this aim, specialists from the Ministry of Economy of Ukraine check the website <https://eur-lex.europa.eu> on a weekly basis for information on amendments to the Directive 94/11/EC.

b) The Technical Regulation for the labelling of materials used for the manufacture of the main components of footwear for sale to the consumer does not provide for mandatory assessment of conformity, including certification, footwear or its components, conducting any tests by the manufacturer or importer alone or with a third party, as well as the mandatory application of any standards.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products for which the state market surveillance authorities carry out state market supervision” (Official Gazette of Ukraine, 2017, № 50, p. 1550) the State Service of Ukraine for Food Safety and Consumer Protection performs market supervision over compliance with the requirements of this Technical Regulation.

67. Textile Labelling & Mixtures (Reg. 1007/2011)

a) In Ukraine, since 10.05.2021 is in force Technical Regulation of textile fiber names and corresponding labeling and marking of the content of raw materials of textile products, approved by the order of the Ministry of Economy, Trade and Agriculture of Ukraine from 28.07.2020 № 1408, registered in the Ministry of Justice of Ukraine 25.09.2020 under № 935/35218 (Official Gazette of Ukraine, 2020, № 79, p. 2564). Technical Regulation is developed on the basis of Regulation (EC) 1007/2011 of the European Parliament and of the Council of 27 September 2011 on textile fiber names and related labelling and marking of the fiber composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EU of the European Parliament. The Technical Regulation is in full compliance with Regulation (EC) 1007/2011.

This Technical Regulation lays down rules on the use of textile fiber names and the corresponding labelling and marking of raw material components of textile products, rules on the labeling or marking of textile products containing non-textile parts of animal origin and rules on quantification of textile products by means of two-component and three-component analysis of mixtures of textile fibres, in order to improve the functioning of the internal market and provide reliable information to consumers.

Given that that Technical Regulation developed on the basis and *fully complies* with Regulation (EC) 1007/2011 measures are being taken to monitor on a regular basis amendment to it in order to bring similar prompt amendments to the Technical Regulation of Ukraine. With this aim, specialists from the Ministry of Economy of Ukraine check the website <https://eur-lex.europa.eu> on a weekly basis for information on amendments to the Regulation (EC) 1007/2011.

(b) Technical Regulation does not provide for mandatory conformity assessment, including certification of textiles and textile products, any testing by the manufacturer or importer, as well as the mandatory application of any standards.

According to the Resolution of the Cabinet of Ministers of Ukraine of December 28, 2016 № 1069 “On approval of the list of products for which the state market surveillance authorities carry out state market supervision” (Official Gazette of Ukraine, 2017, № 50, p. 1550) the State Service of Ukraine for Food Safety and Consumer Protection performs market supervision over compliance with the requirements of this Technical Regulation.

68. Medicinal Products Pricing (Dir. 89/105/EEC)

1. Regulation of wholesale and retail medical allowances. Pursuant to the Resolution of the Cabinet of Ministers of October 17, 2008 № 955 “On Measures to Stabilize Medicinal Products Prices”, for drugs purchased or subject to reimbursement from the budgetary funds or included in the National List of Essential Medicines, marginal supply and marketing allowances not higher than 10 percent, accrued to the wholesale price including taxes and fees, and marginal trade (retail) allowances not higher than 10 or 15 percent, accrued to the purchase price including taxes are established. For drugs included in the National List of Essential Medicines, marginal supply and marketing allowances not higher than 10 percent, accrued to the wholesale price including taxes and fees, and marginal trade (retail) allowances based on the purchase price, including taxes not exceeding the relevant levels (25% - up to 100 UAH; 20% - more than 100 UAH to 500 UAH; 15% - more than 500 UAH to 1,000 UAH; 10% - more than 1,000 UAH) are established.

2. Reference pricing. Reference pricing also applies to medicines subject to reimbursement under the State Medical Guarantees Program (Affordable Medicines Program) by setting a marginal reference price calculated based on data from such states (Republic of Poland, Slovak Republic, Czech Republic, Republic of Latvia, Hungary), and in addition 3 more states with respect to insulin preparations (Republic of Bulgaria, Greece, Romania). This procedure is regulated by the Resolution of the Cabinet of Ministers of Ukraine of July 28, 2021 № 854. As a result of calculating the price based on data from reference states, the Ministry of Health of Ukraine establishes a register of marginal prices for each international non-proprietary name of drugs subject to reimbursement. A manufacturer of a medicinal product interested in participating in a reimbursement program when applying for participation in the program of domestic production shall adhere to the level of calculated reference prices (i.e. the manufacturer's price for the claimed drug shall not exceed the maximum price calculated on the basis of the above-mentioned states). This approach of reference pricing based on data from such states (Republic of Poland, Slovak Republic, Czech Republic, Republic of Latvia, Hungary) is also to be used in hospital procurement of some drugs identified by the Ministry of Health and included in the National List of Essential Medicines. This procedure is regulated by the Resolution of the Cabinet of Ministers of Ukraine of April 3, 2019 № 426.

69. Cultural Goods (Dir. 2014/60/EU)

Ukrainian legislation on the return of unlawfully removed cultural property is partly aligned to the Directive 2014/60/EU of the European Parliament and the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast) (OB L 159, 28.05.2014, p. 1).

Ukraine is a State Party to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, ratified with a statement by the Presidium of the Verkhovna Rada of the Ukrainian SSR Decree dated 10 February 1988 No. 5396-XI, which form part of national legislation.

The special, basic legislative act, which provides for the export, import and return of cultural property, is the Law of Ukraine “On Export, Import, and Return of Cultural Property” dated 21 September 1999 No. 1068-XIV (hereinafter - the Law). The Law regulates the legal procedures of export (temporary export) of cultural property from the territory of Ukraine, the procedures of return of cultural property unlawfully removed from the territory of Ukraine (exported in violation of the provisions of the Law and other legal acts, including smuggled property or property not returned after temporary export, as well as previously stolen or unlawfully exported from other countries).

The provisions of the Constitution of Ukraine, the Law, international treaties to which Ukraine is a party, and other respective regulations constitutes the legal framework for the export, import, and return of cultural property. In case if an international treaty ratified by the Parliament of Ukraine establishes norms other than those in legal acts, the norms of such international treaty shall apply.

The degree of alignment to the EU acquis – “Partly aligned”.

Article 2 of Directive 2014/60/EU:

The national legislation in the field of export, import and return of cultural property provides for definitions of cultural property, unlawfully removed cultural property and return of cultural property. There is no definition of "public collections" in the Law of Ukraine “On Export, Import, and Return of Cultural Property”, but some other legal acts define categories of cultural property, which are the property of the State and are subject to protection.

The Article 14 of the Law of Ukraine "On Export, Import and Return of Cultural Property" provides for the categories of cultural property that are not subject to export from the territory of Ukraine, namely cultural property inscribed into the State Register of National Cultural Heritage; cultural property included in the National Archival Fund; cultural property included in the Museum

Fund of Ukraine, which are state property and protected by law. The mentioned above categories of cultural property are subject to temporary export only (for example, for exhibition purpose).

When preparing the draft law “On Ratification of the Council of Europe Convention on Offences relating to Cultural Property”, the Ministry of Culture and Information Policy suggests amendments to the Law “On Export, Import, and Return of Cultural Property” to specify the provisions of the Article 14 of the Law by adding provisions on stolen cultural property (except for those returned to the country from which they were stolen); cultural property declared wanted and internationally wanted (except for those returned to the country which they were unlawfully removed from). The suggested amendments to the Article 14 of the Law also include provisions for prohibiting the import of stolen cultural property to Ukraine (except for those returned to Ukraine as the country whose territory they were unlawfully removed from); cultural property declared wanted or internationally wanted (except for those returned to Ukraine as the country whose territory they were unlawfully removed from); cultural property exported in breach of the law of a foreign country that classified, identified or specifically defined such cultural property in accordance with its national law.

Article 5 of the Directive 2014/60/EU:

Paragraphs 1, 2, 3, 4 of the Article 5 of the Directive 2014/60/EU correspond to the provisions of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, which form part of Ukrainian legislation. Partial alignment to the paragraphs 5, 6 of the Article 5 of the Directive 2014/60/EU is in progress.

Article 8 of the Directive 2014/60/EU:

The cultural property return proceedings are not subject to a time-limit in Ukrainian legislation and can be brought in different ways, depending on the negotiation positions of the parties involved with regard to specific provisions of legislation in different countries, which can differ from Ukrainian legislation. In particular, such issues are resolved in accordance with the Article 7 of the 1970 UNESCO Convention in the diplomatic way, or in cooperation with law enforcement authorities, or by concluding international treaties, or purchasing (including the payment of compensation to the bona fide purchaser), or receiving as a gift, or in the framework of the judicial procedure.

The norms of time limits for return requests and for claims that are not subject to time limitation, if they relate to return of cultural property belonging to public collections and are subject to special protection mechanisms under national legislation, need to be implemented by making amendments to the Law “On Export, Import, and Return of Cultural Property” and with regard to obligations arising from international agreements, in particular, the 1970 UNESCO Convention and the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954).

Article 10 of the Directive 2014/60/EU:

The provisions of Article 32 of the Law “On Export, Import, and Return of Cultural Property” stipulates that individuals or legal entities in possession of cultural property, who did not know and should not have known that the property had been stolen or unlawfully removed, are recognized as bona fide purchasers of cultural property. In case of acquisition of cultural property stolen or unlawfully removed from other states, such property shall be returned to the legal possessor. A bona fide purchaser of a cultural property shall have the right to receive compensation after its return.

The Article 29 of the Law “On Export, Import, and Return of Cultural Property” stipulates that in order to prevent the acquisition of unlawfully removed from other states, stolen or dishonestly acquired cultural property, individuals and legal entities, regardless of the form of ownership, wishing to acquire ownership of cultural object, are obliged to take the necessary measures to obtain information about the origin of the cultural object. Legal entities and individuals engaged in trade of cultural objects are obliged to keep a register, which should contain information about the origin of each cultural object, name and address of the supplier, description of the cultural object and its value.

Article 11 of the Directive 2014/60/EU:

The Article 7 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property stipulates that, at the request of the State Party of origin to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.

The Article 31 of the Law “On Export, Import, and Return of Cultural Property” provides for return of illegally imported cultural property to Ukraine is carried out in accordance with the legislation of Ukraine or upon a court decision. Illegally imported cultural property returned to Ukraine are subject to exempt from customs duties, which. All costs associated with the return of cultural property are covered by the requesting Party. According to the Article 32 of the Law, individuals or legal entities in possession of cultural property, who did not know and should not have known that the property had been stolen or unlawfully removed, are recognized as bona fide purchasers of cultural property.

In case of acquisition of cultural property that were stolen or unlawfully removed from other states, the property shall be returned to the legal owner. A bona fide purchaser of cultural property has the right to receive compensation after their return. The State or the owner requesting the return of unlawfully removed cultural property shall compensate the costs of storage, restoration, expertise in case of return.

Article 12 of the Directive 2014/60/EU:

Partial alignment to the Article 12 of the Directive 2014/60/EU is in progress.

Article 13 of the Directive 2014/60/EU:

The Article 92 of the Constitution of Ukraine stipulates that the legal regime of property is determined exclusively by the laws of Ukraine. The Article 29 of the Law of Ukraine “On Export, Import, and Return of Cultural Property” provides for in order to prevent the acquisition of unlawfully removed from other states, stolen or dishonestly acquired cultural property, individuals and legal entities, regardless of the form of ownership, wishing to acquire ownership of cultural objects, are obliged to take the necessary measures to obtain information about the origin of these cultural property. Legal entities and individuals engaged in trade of cultural objects must keep a register, which shall contain information about the origin of each cultural property, name and address of the supplier, a description of the cultural property and its value.

Article 14 of the Directive 2014/60/EU:

Partial alignment to the Article 14 of the Directive 2014/60/EU is in progress.

Article 16 of the Directive 2014/60/EU:

The Article 31 of the Law of Ukraine “On Export, Import, and Return of Cultural Property” stipulates that return of illegally imported cultural objects to Ukraine is carried out in accordance with the legislation of Ukraine or based on a court decision.

The Ministry of Culture and Information Policy of Ukraine is elaborating a draft law to regulate the return of cultural property with regard to Ukraine’s national interests and obligations arising from international treaties, in particular the 1970 UNESCO Convention and the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict. The draft law will introduce responsibility (both administrative and criminal) for breaking the legal provisions in the field of the transfer and return of cultural property; the statute of limitations of claims for return (however, the

length of time for claims shall not be limited if they relate to the return of cultural property belonging to public collections and subject to special protection mechanisms under national legislation).

In 2017, Ukraine signed the Council of Europe Convention on Offences relating to Cultural Property dated 19 May 2017 (Nicosia). The issue of return of unlawfully removed cultural property will be additionally regulated when preparing the draft laws “On ratification of the Council of Europe Convention on Offences relating to Cultural Property” and “On amendments to some legislative acts of Ukraine in connection with the ratification of the Convention”. The Ministry of Justice, the Ministry of Culture and Information Policy, the Ministry of Foreign Affairs, the Ministry of Internal Affairs, the Security Service, the National Police, the Office of the Prosecutor General of Ukraine, the State Border Guard Service, the State Archive Service, the State Customs Service of Ukraine are among the responsible bodies to prepare the legal amendments necessary for the Council of Europe Convention on Offences relating to Cultural Property entering into force for Ukraine.

4. SECTORAL LEGISLATION & PRECEDURAL MEASURES

(SPECIFIC QUESTIONS)

A. Medical Products Pricing

70. Are the conditions for the refusal of products to be added to the reimbursement list fully aligned to the conditions laid down in the EU acquis?

Prices for medical products are not regulated by legislation. Issues concerning reimbursement of medicines under the state guarantee of medical care program are regulated by the Resolution of the Cabinet of Ministers of July 28, 2021 № 854. This resolution establishes the conditions for full or partial reimbursement of medicines.

B. Civil Explosives

71. Is there a specific licensing and registration system for economic operators in the civil explosive sector?

This area is regulated by the following regulatory documents:

Law of Ukraine of the 23rd of December 2004 № 2288-iv "On handling explosive materials for industrial purposes".

Resolution of the Cabinet of Ministers of the 22nd of July 2016 № 604 "About approval of licensing conditions of carrying out economic activity on the production of explosive materials of industrial purpose".

Resolution of the Cabinet of Ministers of the 2nd of December 2015 № 1000 "On approval of licensing conditions for conducting economic activities for the production and repair of non-military firearms and ammunition for it, cold weapons, air weapons of more than 4.5 millimeters caliber and the speed of flight of a bullet over 100 meters per second, trade in non-military firearms and ammunition for it, cold weapons, air weapons of more than 4.5 mm caliber and a bullet flight speed of more than 100 meters per second; production of special means charged with tear and irritating substances, individual protection, active defense, and their sale".

72. Are economic operators in the civil explosive sector required to keep track of explosives so they can be tracked at any time?

The Technical Regulation on Pyrotechnic Articles enacted in Ukraine was developed based on Directive 2013/29/EU of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles. The Cabinet of Ministers of Ukraine approved resolution No.8 on technical regulation of pyrotechnic articles on 05 January 2021 with the enactment from 14 January 2022.

According to Art.24 of the resolution, "to facilitate the traceability of pyrotechnic articles, manufacturers shall affix a registration number assigned by a designated conformity assessment body carrying out conformity assessment according to paragraph 50 of this Technical Regulation.

The registration number for product tracking must be given in the format: UA.TR.XXX-YY-ZZZZ ..., - where UA.TR.XXX is the notified body's identification number, UH is the abbreviated designation of the pyrotechnic article class, and ZZZZ ... - type certificate number.

Art. 25 of the resolution stipulates that "manufacturers and importers should keep records of the registration numbers of pyrotechnic articles they make available on the market and, on request, provide this information to public market surveillance authorities".

73. Are there specific controls on the transit of explosives and ammunition through the country?

Yes. In accordance with the order of the Ministry of Internal Affairs of Ukraine dated 21.08.98 № 622 "On approval of the Instruction on the procedure for manufacturing, acquisition, storage, accounting, transportation and use of firearms, pneumatic, cold and cooled weapons, devices of domestic production for shooting cartridges equipped with rubber or similar in their properties metal shells of non-lethal action, and cartridges to them, as well as ammunition for weapons, main parts of weapons and explosive materials".

74. Are there mechanisms in place to detect smuggled explosives?

Article 201 of the Criminal Code provides for criminal liability for smuggling, that is, movement across the customs border of Ukraine outside customs control or with concealment from customs control of cultural property, poisonous, potent, explosives, radioactive materials, weapons, or ammunition (except for smooth-bore hunting weapons or combat supplies to it), parts of firearms, as well as special technical means of secretly obtaining information. According to the CPC, this is the jurisdiction of the Security Service.

C. Drug Precursors

75. Is the national list of controlled substances compliant with the *EU acquis*, and are they grouped into exactly the same categories (e.g. category 1, 2, & 3) as the *EU acquis*?

The list of narcotic drugs, psychotropic substances and precursors was approved by the Resolution of the Cabinet of Ministers of Ukraine of May 6, 2000 № 770.

According to the Law of Ukraine "On Narcotic Drugs, Psychotropic Substances and Precursors", the List of Narcotic Drugs, Psychotropic Substances and Precursors is grouped in lists of narcotic drugs, psychotropic substances and precursors of narcotic drugs and psychotropic substances and included in Tables I-IV in accordance with Ukrainian legislation and international treaties of which Ukraine is a Party.

76. Are there mechanisms in place to detect smuggled Drug Precursors? If so, what are they?

The Customs Service of Ukraine is responsible for inspecting the loads on the basis of their characteristics, while the SSU is authorized to investigate smuggling crimes. They receive operative information from foreign law enforcement officers, prepare reports to customs officers, detect smuggling whereupon the SSU initiates a criminal case while the State Service of Ukraine for Medicines and Drug Control issues permits in accordance with the Permitting procedure for import to and from Ukraine, entry introduction into the territory of Ukraine or transit through the territory of Ukraine of narcotic drugs, psychotropic substances and precursors, approved on February 3, 1997 N 146.

According to the current legislation of Ukraine, the issue of combating illicit trafficking in precursors is subject to Art. 305 (“Smuggling of narcotic drugs, psychotropic substances, their analogues, precursors or falsified drugs”), Art. 306 (“Use of funds obtained from illicit trafficking in narcotic drugs, psychotropic substances, their analogues, precursors, poisonous or potent substances or potent medicines”), Art. 311 (“Illegal production, making, purchasing, storage, transportation or sending of precursors”), Art. 312 (“Stealing, appropriation, extortion of precursors, or acquisition of precursors by fraud or abuse of official position”), Art. 320 (“Violation of rules related to trafficking narcotics, psychotropic substances, their analogues or precursors”) of the Criminal Code of Ukraine.

The list of illegal precursors was approved by the Resolution of the Cabinet of Ministers of Ukraine of 06.05.2000 № 770 “On approval of the list of narcotic drugs, psychotropic substances and precursors”.

In case of availability of legally obtained information on the presence of smuggled precursors in Ukraine the relevant representative of the competent state body shall inform the law enforcement agency to initiate a pre-trial investigation to take the necessary measures to combat such smuggling.

In addition, the SSU is also responsible for obtaining up-to-date information on precursor smuggling and taking appropriate response measures inter alia within pre-trial investigations.

77. Is there an obligation for economic operators to report suspicious orders or transactions?

According to the Regulation on the State Service of Ukraine for Medicines and Drug Control, approved by the Regulation of the Cabinet of Ministers of Ukraine of 12.08.2015 № 647, the issue of detecting suspicious orders or transactions is not within the competence of the State Medical Service

If such operations are carried out by subjects of foreign economic activity, they fall within the competence of the State Customs Service.

If such operations are carried out within the state, they fall within the competence of the National Police of Ukraine.

At the same time, in accordance with the procedure for carrying out activities related to the circulation of narcotic drugs, psychotropic substances and precursors, and control over their circulation approved by the Resolution of the Cabinet of Ministers of Ukraine of 03.06.2009 № 589.

Business entities carrying out activities related to the circulation of precursors are obliged to conduct their inventory in accordance with legislation with inventory compilation in due form.

Information on discrepancies in the balance of inventory or inconsistency of balance sheet indicators with the results of the inventory within three calendar days after their detection shall be provided by the business entity:

To the National Police – with regard to operations conducted within the territory of Ukraine;

To the National Police and SSU - with regard to export-import operations.

D. Good Laboratory Practice (GLP)

78. Do national legislative/regulatory GLP requirements apply to all the following chemical groups (please answer for each group of chemicals): industrial chemicals; pharmaceuticals; veterinary medical products; pesticides; food additives; feed additives; cosmetics; biocides?

In accordance with the Law of Ukraine "On State Control over Compliance with the Legislation on Food, Feed, By-Products of Animal Origin, Health and Welfare of Animals" (hereinafter referred to as the Law No. 2042), laboratory tests (testing) by authorized accredited laboratories are carried out for the purposes of state control. The competent authority has been empowered to carry out laboratory tests (testing) of selected samples of foodstuffs, feed, hay, straw, animal by-products and substances (including those from the environment) related to the production and/or circulation of food or feed, animal welfare and indicators for food safety, feed, etc., as well as for the purpose of laboratory diagnosis of animal diseases.

In accordance with Law No. 2042, an accredited laboratory is a laboratory of any form of ownership located in Ukraine or another country **accredited for compliance with the requirements of ISO / IEC 17025** (DSTU ISO / IEC 17025) by the National Accreditation Body of Ukraine, a foreign accreditation body that is a full member of ILAC (International Organization for Cooperation in Laboratory Accreditation), or another foreign accreditation body, which activities meet the requirements of ISO/IEC 17011 (DSTU ISO/IEC 17011).

ISO/IEC 17025 is an international standard that establishes general requirements for testing and calibration laboratory that allow them to demonstrate that they are acting competently and are capable of obtaining reliable results.

Authorized accredited laboratories have an implemented quality system, which is confirmed by the relevant accreditation certificate issued by the National Accreditation Body of Ukraine and conduct laboratory tests (tests) in the field of food safety, that is, to identify the content of the maximum permissible level of residues (pollutants) in food products, including pesticides, veterinary drugs, feed additives, residues of excipient material for processing and other chemical or biological substance that is deliberately used and/or required by technology for growing, storing, transporting, producing food products and their residues, including derivatives of such substances, such as conversion products, metabolism, reactions of toxicological importance and dangerous to the human body in case of exceeding their maximum permissible content in food products consumed by people.

It should be noted that Directive 2004/9/EC of the European Parliament and of the Council of 11 February 2004 on the inspection and verification of good laboratory practice (GLP) relates to industrial chemicals; pharmaceuticals; veterinary medicinal products; pesticides; food additives; cosmetic additives; biocides in their production, where research is carried out by production laboratories.

In view of this, the issue of implementing good laboratory practice (GLP) does not belong to the State Food and Consumer Service.

Principles and rules (requirements) for conducting preclinical safety studies of medicinal products manufactured for the purpose of their registration or licensing are established by the Guidelines "Medicinal products. Good Manufacturing Practice" approved by the order of the Ministry of Health of Ukraine of 16.02.2009 № 95.

E. Chemicals Classification, Labelling and Packaging (CLP)

79. Is national legislation on CLP aligned with the United Nations Globally Harmonised System of Classification and Labelling of Chemicals?

The rules on hazard classification, packaging and labelling for chemicals (for both substances on their own, substances in articles and mixtures) are absent.

F. Fertilisers

80. Are any categories of fertiliser regulated outside the scope of Reg. (EC) 2019/1009? If so, please give details.

The Law of Ukraine “On Pesticides and Agrochemicals” provides for exceptions for certain categories of fertilizers for which there is no state regulation in the form of registration.

LIST

of agrochemicals allowed for import into the customs territory of Ukraine, production, trade, use and advertising without their state registration

№	Commodity subcategory according to the Ukrainian classifier of goods of foreign economic activity	Variety of products	Content of main components (mass fraction,%)
1.	2	3	4
2.	2814 10 00 00	Anhydrous ammonia	
3.	3102 10 10 00	Carbamide	Nitrogen (not more than 45%)
4.	3102 10 90 00	Carbamide	Nitrogen (not more than 45%)
5.	3102 21 00 00	Ammonium sulphate	
6.	3102 30 90 00	Ammonium nitrate	
7.	3102 40 10 00	Mixture of ammonium nitrate with calcium carbonate	Nitrogen (not more than 28%)
8.	3102 40 90 00	Mixture of ammonium nitrate with calcium carbonate	Nitrogen (more than 28%)
9.	3102 80 00 00	Mixture of urea and ammonium nitrate in aqueous or ammoniacal solution (CAS)	
10	3103 10 90 00	Superphosphate, concentrated superphosphate	Phosphorus oxide content (P ₂ O ₅) not more than 35%
11	3103 10 10 00	Triple superphosphate	Phosphorus oxide content (P ₂ O ₅) more than 35%
12	3103 90 00 00	Phosphorite flour	

13	3104 20 50 00	Potassium chloride	Potassium in terms of water-soluble K ₂ O (more than 40% but not more than 62%)
14	3104 20 90 00	Potassium chloride	Potassium in terms of water-soluble K ₂ O (more than 62%)
15	3104 30 00 00	Potassium sulphate	
16	2833 21 00 00	Magnesium sulphate	
17	2810 00 90 00	Boric acid	
18	3105 20 10 00	Mineral or chemical fertilizers containing three nutrients: nitrogen, phosphorus and potassium	Nitrogen content in terms of dry anhydrous product (not more than 10%)
19	3105 20 90 00	Mineral or chemical fertilizers containing three nutrients: nitrogen, phosphorus and potassium	Nitrogen content in terms of dry anhydrous product (not more than 10%)
20	3105 51 00 00	Mineral or chemical fertilizers containing two nutrients: nitrogen and phosphorus (containing nitrates and phosphates)	
21	3105 59 00 00	Mineral or chemical fertilizers containing two nutrients: nitrogen and phosphorus	
22	3105 60 00 00	Mineral or chemical fertilizers containing two nutrients: phosphorus and potassium	
23	2503 00 10 00	Raw or unrefined sulfur (excluding sublimated, precipitated and colloidal sulfur)	
24	2503 00 90 00	Other sulfur	
25	2802 00 00 00	Sulfur sublimated or precipitated, colloidal	

G. Medical Devices

81. Is there a national Agency for Drugs and Medical Devices? If so, does it have adequate resources to ensure the control of the relevant products and of economic operators?

The State Service of Ukraine for Medicinal Products and Drug Control has been designated as the market surveillance authority for Medical devices and their aids, Active implantable medical devices and In vitro diagnostic medical devices and their aids, in accordance with the Resolution of the Cabinet of Ministers of December 28, 2016. № 1069 "On Approval of the List of Types of Products in relation to which State Market Supervision Bodies carry out State Market Inspection". The body is institutionally capable and has the necessary resources to perform statutory duties.

H. Control of the acquisition and possession of weapons

82. Does national legislation regarding the acquisition and possession of weapons lay down the categories of firearms which are prohibited to be acquired or in the possession of private persons of that are subject to authorisation or declaration? If so, please provide details.

Yes.

Weapons and ammunition are limited in civil circulation on the territory of Ukraine based on the Resolution of the Verkhovna Rada of Ukraine of the 17th of June 1992 "On the ownership of certain types of property", which approved the "List of types of property, that cannot be owned by citizens, public associations, international organizations and legal entities of other states on the territory of Ukraine" and "Special procedure for acquiring ownership of this property." Annex № 2 to the Resolution of the Verkhovna Rada of Ukraine of the 17th of June № 2471-XII defines the Special Procedure for acquiring the right of ownership by citizens to certain types of property.

The Regulation on the licensing system, approved by the Resolution of the Cabinet of Ministers of Ukraine on the 12th of October 1992 № 576 established the types of permits for weapons, the terms of their validity, and the list of bodies of the National Police and the Ministry of Internal Affairs authorized to issue these permits.

The procedure for carrying out the permit system of the Ministry of Internal Affairs regarding the circulation of weapons and ammunition is regulated by the Instruction on the procedure for the manufacture, purchase, storage, accounting, transportation, and use of firearms, pneumatic and cold weapons, domestic devices for shooting cartridges equipped with rubber or similar in their properties metal projectiles of non-lethal action, and these cartridges, as well as ammunition for weapons and explosive materials," approved by the order of the Ministry of Internal Affairs of Ukraine of 21.08.1998 № 622 "About approval (Registered in the Ministry of Justice of Ukraine on the 7th of October 1998).

In particular, the Resolution of the Verkhovna Rada of Ukraine of the 17th of June 1992 № 2471-XII "On ownership of certain types of property" defines a list of types of property that cannot be owned by citizens, public associations, international organizations, and legal entities of other states on the territory of Ukraine, namely: weapons, ammunition (except hunting and air weapons, and ammunition for it, as well as sports weapons and ammunition purchased by public associations with the permission of the internal affairs bodies), combat and special military equipment, rocket and space complexes.

The right to purchase hunting smooth-barreled weapons and the main parts to it is used by citizens of Ukraine who have reached the age of 21, hunting rifled weapons and the main parts to it - 25 years of age, cold, cooled and pneumatic weapons and the main parts to it - 18 years of age. The number of weapons that a citizen of Ukraine can have is not limited, but the owner of the weapon must ensure its unconditional safety.

To obtain permission to purchase hunting firearms, in accordance with the requirements of the Instruction on the procedure for the manufacture, acquisition, storage, accounting, transportation, and use of firearms, pneumatic cold and cooled weapons, devices of domestic production for shooting cartridges equipped with rubber or similar in their properties metal projectiles of non-lethal action, and cartridges to them, as well as ammunition for weapons, basic parts of weapons and explosive

materials, approved by the Order of the Ministry of Internal Affairs of 21.09.1998 № 622, registered with the Ministry of Justice of Ukraine on 07.10.1998 under the № 637/3077, the units of the National Police, are submitted to:

- application for issuing a permit addressed to the head of the relevant unit of the National Police at the applicant's place of residence;
- medical report of the medical institution on the absence of contraindications that prevent the purchase of weapons;
- certificate of the passage of the study of the material part of the weapon, the rules for handling it and use;
- payment order (receipt) of the bank's institution on payment for services for issuing such a permit;
- the weapon owner also presents an insurance contract.

The police authorities have no right to give consent to the heads of enterprises, institutions, organizations, and business entities to conclude employment contracts for the performance of such works, as well as to issue permits for the purchase, storage, and carrying of firearms and combat supplies to it, pneumatic or cold weapons, devices and ammunition for them to citizens, as well as to re-register them if: the person has medical contraindications to the performance of these functional duties and possession of these functional duties and possession. weapons; the presence of data on the systematic (two or more times) violation by such a person of public order, non-removal of previously identified violations of the requirements of this Instruction on the storage, transportation, use of previously purchased weapons, devices, alcohol abuse, use of narcotic substances without a doctor's prescription, other intoxicants, committing domestic violence, which is documented; the presence of a motivated resolution of the state executor on the establishment of a temporary restriction of the debtor in the right to use firearms hunting, pneumatic and cooled weapons, devices of domestic production for shooting cartridges equipped with rubber or similar in their properties metal projectiles of non-lethal action; receipt from the authorized body to the authorized unit of the central body of the police department, the authorized unit of the Main Department the Office of the National Police of information on notification to such a person of suspicion or information about the preparation of a notice of suspicion against such a person, which was not handed over due to the failure to establish his location; the person has a criminal record for a crime that has not been repaid or withdrawn in accordance with the established procedure;

The application for issuing a permit addressed to the head of the relevant unit of the National Police at the applicant's place of residence indicates the surname, name, patronymic, and place of residence of the citizen and outlines the essence of the issue raised. A written request must be signed by the applicant with the date.

I. Cultural Goods

83. Is there legislation providing for the return of cultural objects unlawfully removed from the territory of an EU Member State?

The basic legislative act, which provides for the export, import and return of cultural property, is the Law of Ukraine “On Export, Import, and Return of Cultural Property” dated 21 September 1999 No. 1068-XIV. The procedure for export, import and return of cultural property established by this Law of Ukraine applies to all cultural property regardless of the form of ownership and is mandatory for all individuals and legal entities located or operating in Ukraine.

The Law defines the «return of cultural property» as a complex of actions related to import of cultural property into the territory of Ukraine or export of cultural property from the territory of

Ukraine to the territory of other countries upon claims and appeals of Ukraine, other states, their authorized bodies, decisions of courts in Ukraine or abroad.

Ukraine is a signatory of relevant international conventions, which inter alia, regulate this area and form part of national legislation. In particular, Ukraine is a State Party to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, ratified with a statement by Decree of the Presidium of the Supreme Council of the Ukrainian SSR of 10 February 1988 No. 5396- XI, the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954, ratified by Decree of the Presidium of the Supreme Council of the Ukrainian SSR of 09 January 1957, as well as two protocols to it.

In 2017, Ukraine has signed the Convention on Offences relating to Cultural Property of 19 May 2017 (Nicosia) and undertakes measures for its entering into force for Ukraine. The Ministry of Justice together with other responsible bodies (Ministry of Culture and Information Policy, the Ministry of Foreign Affairs, the Ministry of Internal Affairs, the Security Service, the National Police, the Office of the Prosecutor General of Ukraine, the State Border Guard Service, the State Archive Service, the State Customs Service of Ukraine) are elaborating the draft laws «On ratification of the Council of Europe Convention on Offences relating to Cultural Property» and «On amendments to some legal acts of Ukraine in connection with the ratification of the Council of Europe Convention on Offences relating to Cultural Property».

According to the Article 2 of the Law of Ukraine “On Export, Import, and Return of Cultural Property”, the legislation of Ukraine on export, import, and return of cultural property comprises the Constitution of Ukraine, this Law, treaties to which Ukraine is a party, and other regulations. If a treaty, to which Ukraine is a party and which is approved by the Verkhovna Rada of Ukraine, establishes rules other than those contained in the legislation of Ukraine on export, import, and return of cultural property, the rules that are enshrined in such a treaty shall apply.

In addition, Ukraine has 43 multilateral and bilateral international agreements on cooperation in the field of culture, including issues of the prevention of illegal export, import and return of cultural property.

84. If so, what are the legal provisions to ensure this, and what categories of cultural goods are covered?

According to the Article 31 of the Law of Ukraine, “On Export, Import, and Return of Cultural Property”, the return of cultural property that were illegally imported into Ukraine shall be carried out in accordance with the legislation of Ukraine or by court decision.

Cultural property that was illegally imported into Ukraine and is being returned shall be exempt from customs duties, which, in accordance with the law, are charged when importing goods into the customs territory of Ukraine. All costs associated with the return of cultural property shall be borne by the party that is requesting such return.

According to the definition contained in Article 1 of the Law of Ukraine “On Export, Import, and Return of Cultural Property”, the cultural property is an item of material or spiritual culture that has artistic, historical, ethnographic, and scientific value, and shall be subject to preservation, reproduction, and protection, as envisaged in Ukrainian legislation, namely:

- original paintings, graphics, sculptures, artistic compositions and installations made of any materials, decoration pieces, and traditional folk art properties;
- objects related to historical events, development of society and the state, history of science and culture, as well as those related to the life and work of prominent State figures, political parties, public and religious organizations, science, culture, or art;
- museum property found at archaeological sites;

- components and fragments of architectural, historical, artistic monuments and monumental art pieces;

- antique books and other publications of historical, artistic, scientific, or literary value, individually or in a collection;

- manuscripts and incunabula, old prints, archival documents, including film, photo- and sound documents, individually or in a collection;

- unique and rare musical instruments;

- various types of weapons of artistic, historical, ethnographic, and scientific value;

- rare postage stamps, other philatelic items, individually or in a collection;

- rare coins, orders, medals, seals, and other collectibles;

- zoological collections that are of scientific, cultural, educational, or aesthetic value;

- rare collections and samples of flora and fauna, mineralogy, anatomy, or paleontology;

- family values – cultural values that are of personal or family nature.

According to the Article 3 of the Law, cultural property of Ukraine are grouped as follows:

- cultural property created on the territory of Ukraine by citizens of Ukraine;

- cultural property created on the territory of Ukraine by foreigners or persons without citizenship who permanently reside or have lived on Ukraine's territory

- cultural property found on the territory of Ukraine;

- cultural treasures brought into the territory of Ukraine by archaeological, archeographic, ethnographic, natural science and other expeditions resulting from the agreement of the appropriate authorities of the country of origin of these valuables;

- cultural property brought into the territory of Ukraine as a result of voluntary exchange;

- cultural property imported into the territory of Ukraine which was received as a gift or legally purchased with the consent of the appropriate authorities of the country of origin of these valuables;

- unlawfully removed the cultural property of Ukraine which are beyond the borders of its territory;

- cultural property evacuated from the territory of Ukraine during the wars and military conflicts and not returned;

- cultural property that was temporarily exported from the territory of Ukraine and not returned to Ukraine;

- cultural property removed to the territory of Ukraine as a result of the Second World War as partial compensation for the damage caused by the invaders.

In accordance with the Article 29 of the Law, Ukraine takes measures to prevent the acquisition of cultural property illegally exported from other countries, stolen or unlawfully acquired.

To prevent the acquisition of illegally exported, stolen or unlawfully acquired cultural property, individuals and legal entities, regardless of ownership wishing to acquire ownership of cultural property, must take the necessary measures to obtain information about the origin of these cultural property. Legal entities and individuals engaged in the trade of cultural property are required to keep a register, which should contain information about the origin of each cultural property, the name and address of the supplier, description of cultural property and its value.

Cultural property, which is legally owned by individuals or legal entities of Ukraine, but whose origin is related to the history and culture of other countries, can be returned to these countries by

concluding sales and purchase agreements with the owner of cultural property, exchanging on a mutually beneficial basis, or receiving as a gift (the Article 5 of the Law).

85. Which authority, if any, is responsible for dealing with the return of cultural goods?

According to Article 8 of the Law of Ukraine, “On Export, Import, and Return of Cultural Property”, control over the export, import, and return of cultural property is exercised by the central executive body implementing the state policy in the field of export, import, and return of cultural property (the Ministry of Culture and Information Policy of Ukraine).

The Ministry of Culture and Information Policy of Ukraine performs its duties in cooperation with the central executive body implementing the state policy in the field of archives and record keeping (State Archives Service of Ukraine), the central executive body implementing the state customs policy (State Customs Service of Ukraine), and law enforcement agencies.

J. Firearms

86. Are there statistics about legal holders of firearms in Ukraine (hunters, marksmen, private persons or companies)? Are there records of illegally possessed arms, and are there any plans to seize them?

Yes. Information on the legal owners of weapons is stored in the information subsystems of the Unified Information System of the Ministry of Internal Affairs of Ukraine.

Information on the facts of illegal handling of weapons is contained in the Unified Register of Pre-trial Investigations and the databases of forensic records of the Expert Service of the Ministry of Internal Affairs.

Plans to seize weapons from illegal registration are drawn up and implemented by the National Police of Ukraine.

In addition, every month, by the 5th day of the month following the reporting month, reports on the results of work on control over the circulation of weapons shall be submitted to the authorized unit of the central police authority in the form of the permit system in the format specified in the Instruction on transportation and use of firearms, pneumatic cold steel and ammunition, domestic devices for firing cartridges equipped with rubber or similar non-lethal metal shells, and ammunition for them, as well as ammunition for weapons, major weapons and explosives, Ministry of Internal Affairs dated 21.09.1998 № 622, registered in the Ministry of Justice of Ukraine on 07.10.1998 for № 637/3077.

The account of owners of hunting firearms, smoothbore, pneumatic, and cold steel devices is carried out in the book of owners of hunting firearms, pneumatic weapons, and cold steel. Information on the availability of such weapons from citizens is entered into the databases of the unified information system of the Ministry of Internal Affairs by software and hardware of the information and communication system "Information Portal of the National Police of Ukraine".

The creation of a register of civilian firearms is provided for in draft law 5708, adopted by the Verkhovna Rada in the first reading on February 23, 2021. The draft law liberalizes the circulation of civilian firearms in Ukraine while increasing the responsibility for its illegal use. The draft law is designed to regulate the ownership of weapons, particularly to harmonize terminology, create a single state register of weapon owners, determine the legal basis for the activities of shooting sports organizations, and classify modern weapons.

The purpose of the draft law is to strengthen compliance with the rule of law in determining the legal regime of ownership of weapons, enshrining the fundamental rights and responsibilities of

citizens and legal entities for the production, acquisition, possession, disposal and use of weapons and ammunition, regulation of other public relations.

The draft law proposes:

- define the concept of ownership of civilian firearms;
- to determine the conditions and procedure for obtaining documents on the right of ownership of civilian firearms by citizens of Ukraine and legal entities;
- to classify civilian firearms;
- develop a procedure for issuing a medical certificate (opinion) on the absence of medical contraindications that prevent the receipt of a document on civilian firearms, which provides for the creation of a special information and reference system with a qualified electronic signature of the person who formed the opinion;
- to develop the procedure for creating and maintaining the Unified State Register of Civil Firearms;
- to determine the powers of the subjects of the unified state register of civilian firearms;
- to determine the general principles of civil circulation (turnover) of firearms and ammunition;
- to determine the general principles of exercising the right and performing the duties of the owners of civilian firearms;
- establish the procedure for obtaining the right to civilian firearms and ammunition;
- to determine the procedure for civil liability insurance of owners of civilian firearms;
- provide for restrictions on the right to civilian firearms and ammunition
- provide for the use of civilian firearms for self-defence;
- define the concept of weapon-free zones;
- prescribe the basics of economic activity in the field of circulation (turnover) of civilian firearms and ammunition;
- to determine the general principles of possession and use of civilian firearms and ammunition by foreigners and stateless persons on the territory of Ukraine;
- to regulate the temporary import of civilian firearms and ammunition into the territory of Ukraine, the temporary export of civilian weapons and ammunition from the territory of Ukraine;
- provide for state control in the field of civilian firearms.

87. Are there any special rules for collectors and bodies concerned with the cultural and historical aspects of weapons? If so, must these collectors and bodies be recognised by the local authorities?

The Order of the Ministry of Internal Affairs of Ukraine of the 21st of August 1998 № 622, registered with the Ministry of Justice of Ukraine on the 7th of October 1998 under № 637/3077 (as amended), approves the Instruction on the procedure for manufacture, purchase, storage, accounting, transportation and use of firearms, pneumatic, melee and melee weapons, devices of domestic production for firing cartridges equipped with rubber or similar properties of non-lethal metal shells and cartridges to them, and as well as ammunition for weapons, major weapons and explosives. It regulates, among other things, the collections of weapons, including weapons having cultural and historical value. In accordance with paragraph 17 of Chapter 3, Section 5 of the Instructions for the acceptance of firearms by the museum (including those containing precious metals and precious

stones), accounting, storage, protection, and transportation are carried out in accordance with the Instruction set by the Order No.622.

The Ministry of Defence of Ukraine issued the order No. 343, dated July 17, 2018, on Approval of the organization of activity of military museums and museums (rooms) of fighting traditions in the Armed Forces of Ukraine. This Order also addresses the responsibilities of museums dealing with weapons having cultural and historical value.

It is prohibited to use for exposure in museums and exhibitions weapons found in places of past battles, donated or transferred by individuals and legal entities without its registration with the police.

According to the mentioned Instruction, approved by the Order of the Ministry of Internal Affairs of Ukraine of the 21st of August 1998 № 622, the permit system carried out by the police applies to combat rifles or custom-made weapons, cooled, neutralized, obsolete, sports, hunting firearms, ammunition, main parts of weapons, pneumatic, melee weapons, to them, belonging to enterprises, institutions, organizations, business entities and citizens.

Combat firearms means firearms designed to destroy people and (or) equipment.

Combat weapons do not include ancient weapons and their modern copies.

Old firearms include firearms made no later than 1899 and not intended for firing cartridges with metal cartridges of central combat and ring ignition.

Non-modern weapons include:

- copies of ancient firearms;
- firearms that have been disarmed by the army and production and for which ammunition is not mass-produced;
- disarmed weapons and weapons that are available in single copies;
- weapons specially made for exhibitions (exhibits) in single copies.

Neutralized weapons mean small arms of any model, which in compliance with the requirements of relevant standards or specifications are specially brought to the factory or in specialized workshops for the repair of weapons in unfit condition for firing.

Each unit of neutralized weapon must have an appropriate conclusion that it is irreversible to make it unfit for firing and classify it as a certain type of neutralized weapon. Each unit of neutralized weapon is marked with the serial number and abbreviation of the type of neutralized weapon.

Neutralized weapons, depending on their purpose, are classified as follows:

- training weapons - weapons that are specially reduced to unfit for firing, designed to teach the rules of handling weapons (disassembly and assembly, loading and unloading, performing military techniques with weapons) (abbreviation - UCH);

- training and split weapons - weapons that are specially reduced to unfit for firing, the main details of which have specially made cutouts designed to provide clarity in studying the order of interaction of parts and components (abbreviation of the type - UCHR);

- museum weapons - weapons that have been specially made unfit for firing and intended exclusively for display in museums (abbreviation of the type - MUS);

- mass-size weapon models are structurally similar to firearms products intended for collection and display by individuals and legal entities, which are specially made of firearms by making its main parts and mechanisms of design changes that exclude the execution of a shot (abbreviation - MMG).

Components of weapons are basic and non-basic.

Basic components – the main parts are components or spare parts specially designed for firearms and necessary for its operation, namely: barrel, frame, receiver (its upper and lower parts, if any), shutter or other device for locking the barrel, drum.

Non-basic components are components or spare parts of firearms that are not necessary for its operation, as well as accessories (additional equipment) to it, which serve to improve the appearance of the weapon, its ergonomics, comfort in use, adaptation to the anatomical features of the owner, adaptation to perform certain tasks, in particular: means of reducing the volume of the shot, means of reducing recoil, flame arresters, lodge, examples, additional sighting and targeting means, optical (optical-electronic) sights and sighting devices, night vision sights, lighting devices, shops, etc.

The procedure for acquisition, storage, accounting, protection, transportation and use of weapons and ammunition in ministries, other central executive bodies, enterprises, institutions, organizations and business associations is regulated by relevant instructions agreed with the National Police of Ukraine.

Acquisition of weapons, main parts of weapons and ammunition for them by ministries and other central executive bodies, enterprises, institutions, organizations and business entities

Firearms, pneumatic and melee weapons and ammunition for them, devices and ammunition for them by ministries, other central executive bodies, the National Bank of Ukraine, enterprises, institutions, organizations may be purchased for:

- use in filming, stage productions, circus performances;
- exhibiting in museums and exhibitions;
- collecting.

Neutralized weapons or cooled firearms are used in stage productions and circus performances. Short-barreled firearms are used to protect artists from attack by predators during circus performances.

Mortars, artillery guns, tanks, and aircraft with training small arms are released for display in museums and exhibitions by the Ministry of Defense of Ukraine and the military district (operational command) without the permission of the police. Other weapons may be acquired only with a permit to acquire a weapon issued by a police authority.

It is prohibited to use for display in museums and exhibitions weapons found in places of past battles, donated or donated by individuals, legal entities, without its registration with the police.

To obtain a permit for the purchase of weapons donated by individuals, legal entities, museums simultaneously with a written request to the police provide a copy of the contract of donation of weapons, certified in the manner prescribed by law.

Acquisition of weapons and ammunition by museums from individuals or legal entities is carried out at the written request of the museum and with the permission of the police.

Firearms received by museums, in addition to ancient firearms and their modern copies, are presented before display to weapons repair shops, where they must be converted into emptied weapons or converted into neutralized, including museum, weapons.

Museum weapons must be redesigned (deactivated) to eliminate the possibility of firing without special repairs by:

- drilling a hole with a diameter of at least 5 mm in the breech of the weapon without damaging the inscriptions and brands;
- removal or sawing of a fight.

Ammunition for small arms is exhibited in museums only in a discharged state (without gunpowder).

The grounds for issuing a permit by the police body to purchase firearms, pneumatic, melee weapons, main parts of weapons, devices and ammunition for them and ammunition to enterprises, institutions, organizations are:

- statement of the head of the enterprise, institution, organization, which indicates the number of weapons, main parts of weapons and ammunition purchased, the number and validity of the permit for the right to open and operate the facility;
- certified by the head of the enterprise, institution, organization a copy of the act on the suitability of the premises where weapons and ammunition will be stored, the main parts of weapons, devices and ammunition, consisting of a commission consisting of representatives of police, state supervision (control) over compliance and compliance with the requirements of legislation in the fields of fire and man-made safety and enterprises, institutions, organizations;
- order of the head of the enterprise, institution, organization on the appointment of the person responsible for the purchase of weapons and ammunition;
- payment document (payment order, receipt) with the mark of the bank, post office or the code of the transaction on the deposit of funds for the provision of the relevant paid service.

88. Does the legislation, if any, exclude from its scope weapons and ammunition used for hunting or target shooting? If so, what rules are applied?

The requirements for weapons and ammunition used for hunting and sports purposes are regulated by the Laws of Ukraine "On Hunting Economy and Hunting" and "On Physical Culture and Sports", resolution of the Cabinet of Ministers of Ukraine on the 28th of December 2018 № 1207 "On Approval of the Procedure for the acquisition, storage, transportation and use of sports weapons, ammunition for it, maintenance of shooting ranges, shooting ranges and stands".

Sports weapons - firearms, pneumatic or cold weapons designed to hit targets during sports training and competitions, which complies with the rules of sports competitions in sports recognized in Ukraine, approved by the central executive body that ensures the formation of state policy in the field of physical culture and sports, taking into account the proposals of the relevant All-Ukrainian sports federations and the rules of sports competitions of the relevant international sports federation.

Each unit of sports weapons must be certified in accordance with the established procedure and meet the requirements of ISTC 78-41-002-97.

Hunting firearms are firearms that meet the requirements established for hunting weapons by the technical regulations and in its absence - by the national (industry) standard.

Hunting firearms include hunting rifles, carbines, and fittings, smoothbore shotguns, smoothbore shotguns with a well "paradox" with cuts of 100-140 mm at the beginning or end of the barrel, hunting rifles with a well "supra", combined shotguns, having along with smooth and rifled barrels.

Hunting weapons must meet the following requirements:

- hunting cartridges of the appropriate caliber are used for firing weapons;
- the total length with a decomposed and fixed example should be at least 800 mm;
- the capacity of the store (drum) (with the installed limiter in the presence) of rifled weapons should not exceed 10 rounds and smooth-barreled - 4 cartridges;
- have a fuse;
- the length of the barrel of rifled weapons should be more than 200 mm, smooth-barreled - at least 450 mm.

Ammunition - specially made disposable products that are designed to ensure the defeat of targets in the conditions of armed struggle, self-defence, hunting, and sports.

Combat supplies include cartridges for rifled firearms of various calibers, as well as loaded cartridges for smooth-bore hunting rifles, hunting gunpowder, and a capsule.

89. Is there an overall obligation to mark firearms at the time of manufacturing? What kind of marking is applied?

The time of manufacture of weapons does not apply in Ukraine to mandatory marking.

Mandatory marking of weapons must contain at least:

- Factory number (percussion method of application).
- Cartridge calibre
- Information about the manufacturer.

The presence and content of mandatory marking of weapons in Ukraine are determined by the following regulations:

1. Resolution of the Cabinet of Ministers of Ukraine of 02.12.2015 № 1000 "About approval of licensing conditions for carrying out economic activity on production and repair of firearms of non-military purpose and ammunition to it..."

2. Instruction on the procedure for manufacturing, purchasing, storing, accounting, transportation, and use of firearms, pneumatic and cold weapons, devices of domestic production for shooting cartridges, equipped with rubber or similar in its properties metal shells of non-lethal action, and these cartridges, as well as ammunition for weapons and explosive materials, approved by the Order of the Ministry of Internal Affairs of 21.09.1998 № 622 (registered with the Ministry of Justice of Ukraine on 07.10.1998 under the № 637/3077)

3. Standard of the Ministry of Internal Affairs of Ukraine ISTC 78-41-002-97 "Hunting and sports weapons. Safety requirements. Methods of safety tests".

Economic activity on the production of weapons, ammunition for it, special means is carried out in compliance with the following requirements:

- all manufactured weapons, special means must have the manufacturer's number and stamp (stamp) and certificate of conformity;

- numbering of manufactured weapons, special means should be carried out in agreement with the Ministry of Internal Affairs in accordance with the indices established for the city of Kyiv and the regions. Numbers for each region begin with 000001 numbers;

- an entity that produces weapons, ammunition, special means must have instructions on the throughput and intra-object regime, taking into account the characteristics of the protected object, the regime of working time, permanent and temporary passes, the procedure for entering and exiting citizens, the introduction and removal (export) of weapons, ammunition to it, special means;

- for accounting for manufactured weapons, ammunition for them, special means (gas pistols, revolvers, devices, canisters, and personal protective equipment), cartridges for special means are kept in ledgers, which must be numbered, drilled, and sealed by the territorial body of the National Police.

90. Are there record-keeping obligations to trace transfers of firearms when manufactured or sold by dealers? Who has this obligation (the State, the dealers)? For how many years?

Yes.

Information on weapons is created in the information subsystems of the Unified Information System of the Ministry of Internal Affairs of Ukraine at the stage of its manufacture in Ukraine, import to Ukraine, seizure or discovery on the territory of Ukraine, and is stored for 50 years after the destruction of weapons or the export of weapons from the territory of Ukraine.

Also, such information on weapons is stored in the databases of forensic accounting of the Expert Service of the Ministry of Internal Affairs without limiting the shelf life.

Resolution of the Cabinet of Ministers of Ukraine of the 2nd of December 2015 № 1000 "About approval of licensing conditions of carrying out economic activity on production and repair of firearms of non-military purpose and ammunition for it, cold weapons, pneumatic weapons of a caliber more than 4.5 millimeters and speed of flight of bullets over 100 meters per second, trade in firearms of non-military purpose and ammunition to it, cold weapons, air weapons of more than 4.5 mm caliber and a bullet flight speed of more than 100 meters per second; production of special means charged with tear and irritating substances, individual protection, active defense, and their sale."

Economic activity on the trade in weapons, ammunition, special means is carried out in compliance with the following requirements: an entity engaged in the trade in weapons, ammunition to it, special means, keeps a book of accounting for weapons, ammunition for it of special means, which must be numbered, stamped and sealed by the territorial body of the National Police.

91. How are the firearms tested at the time of manufacturing? Are there state proof-houses?

Testing is carried out in 2 stages:

1. In the manufacturer's laboratory.
2. In the laboratory of the conformity assessment body

Testing and certification of weapons are carried out by the laboratory and certification body of the State Commission of the Ministry of Internal Affairs in accordance with the requirements of the Law of Ukraine of 15.01.2015 № 124-VIII "On Technical Regulations and Conformity Assessment".

The State Research Forensic Center testing laboratory is accredited for compliance with ISO/IEC 17025 Standard General requirements for the competence of testing and calibration laboratories.

The State Research Forensic Center certification body is accredited for compliance with ISO/IEC 17065 Conformity Assessment. Requirements for certification bodies of products, processes, and services.

92. What are the main requirements to "deactivate/neutralise" a firearm? Which techniques are used?

Requirements for deactivation methods and the list of weapon parts subject to mandatory deactivation in Ukraine are approved in the standard SOU (STANDARD OF ORGANISATION OF UKRAINE) 78-19-006:2011 "Firearms Neutralised. General technical requirements. Control methods".

The following main parts of the weapon must be deactivated:

Barrel, locking mechanism (bolt), frame, receiver, drum, firing mechanism.

Metal cutting equipment, gas welding and electric welding are used to deactivate gun parts.

CHAPTER 2: FREEDOM OF MOVEMENT FOR WORKERS

I. ACCESS TO LABOUR MARKET (GENERAL PRINCIPLES)

Freedom of movement for workers is one of the fundamental freedoms guaranteed by European Union (EU) law. Pursuant to Article 45 TFEU, every EU citizen has the right to move freely, to stay and to work, with some exceptions in the public sector, in another Member State without being discriminated against on grounds of nationality. EU rules on free movement of workers also apply to the European Economic Area (Iceland, Liechtenstein and Norway). As regards the **general principles related to access to labour market**, the *acquis* under this chapter provides for non-discriminatory treatment (on the basis of nationality, residence and language) of workers who are legally employed in a country other than their country of origin. This includes in particular equal treatment as regards employment-related aspects such as conditions of employment and work, remuneration and dismissal but also the receipt of tax advantages and social advantages (all advantages whether linked to a contract of employment or not that are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory).

Furthermore, certain rights are also extended to family members of the worker. The concept and implications of the freedom of movement for workers have been interpreted and developed by the case-law of the ECJ, including the notion of worker itself. In addition, the general principles of freedom of movement for workers include provisions related to supplementary pension rights of employed and self-employed persons moving within the EU. Candidate countries also need to prepare to participate in the **EURES** system (European Employment Services) aimed at promoting the freedom of movement for workers within the EU notably by close cooperation between national employment services to exchange information on employment opportunities. At the operational level, relevant databases of job vacancies, job applications and CVs need to be integrated with the EURES exchange mechanism, and general information on the labour market and on living and working conditions needs to be exchanged.

The right to free movement of workers is complemented by a system for the **co-ordination of social security systems**, i.e. the right for mobile EU workers and their family members to acquire, cumulate or export social security benefits as well as to obtain payment of these benefits without discrimination. This is based on Regulations that do not harmonise but co-ordinate the social security systems of Member States, and thus requires administrative cooperation between Member States. In the health care field, medical expenses will need to be reimbursed for healthcare expenses of insured persons outside of the Member State where they are insured. This includes necessary treatment of nationals falling ill or having an accident during a temporary stay in another Member State, e.g. as tourists. To this end, a **European Health Insurance Card** has to be issued to all nationals. Moreover, the social security coordination Regulation calls on the Member States to make progressively use of digital technologies for the exchange of information. Since April 2019, social security information has been exchanged electronically between national social security institutions of different Member States via the EESSI system, which implies that all Member States connect their national institutions to the EESSI IT platform and use structured electronic documents for this exchange. Member States

are progressively deploying the EESSI Business Use Cases and 91% of them are now in production. Current planning shows that Member States will be fully EESSI Ready by June 2023.

The Association Agreement already lays down specific obligations in the areas covered by this Chapter. When answering the questions below, please make reference to the state of implementation of such obligations.

A. General

1. Do work permit requirements or similar restrictions for EU migrant workers exist, and if so, what are they? Please explain how many types of different work permits there are.

According to Article 42 of the Law of Ukraine “On Employment” (hereinafter - the Law), employers have the right to employ foreigners and stateless persons in Ukraine on the basis of a permit issued by the territorial bodies of the central executive body implementing state employment policy and labour migration (*regional employment centers*). Without the permit identified by this article, employment is available for:

- foreigners and stateless persons permanently residing in Ukraine;
- foreigners and stateless persons who have acquired refugee status in accordance with the legislation of Ukraine or have received an immigration permit in Ukraine;
- foreigners and stateless persons who have been recognised as persons in need of additional protection or who have been granted temporary protection in Ukraine;
- representatives of the foreign naval (river) fleet and airlines that serve such companies in Ukraine;
- persons recognised as stateless persons as the central executive body that implements state policy in the field of migration (immigration and emigration), including combating illegal (illegal) migration, citizenship, registration of individuals, refugees and other defined categories of migrants;
- employees of foreign mass media accredited to work in Ukraine;
- Sports athletes who have acquired professional status, artists to work in Ukraine by profession;
- employees of emergency and rescue services to perform urgent work;
- employees of foreign missions who are registered on the territory of Ukraine in the manner prescribed by law;
- clergymen who are foreigners and temporarily stay in Ukraine at the invitation of religious organisations to conduct canonical activities only in such organisations with the official consent of the body that registered the statute (regulations) of the relevant religious organisation;
- foreigners and stateless persons who arrived in Ukraine to participate in the implementation of international technical assistance projects;
- foreigners and stateless persons who came to Ukraine to conduct teaching and / or research activities in institutions of professional higher and higher education at their invitation;

- other foreigners and stateless persons in cases provided by laws and international treaties of Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine.

Work permits for foreigners and stateless persons differ depending on the period of validity.

Thus, in accordance with Article 42-3 of the Law of Ukraine “On Employment”, the permit is issued for a period of:

1) employment contract (contract) or a zero-hour contract (a gig contract), but not more than three years - for special categories of foreigners and stateless persons (*According to the second part of Article 42¹ of the Law, a special category of foreigners and stateless persons includes: foreign highly paid professionals, founders and / or participants and / or beneficiaries (controllers) of a legal entity established in Ukraine, university graduates in the top 100 in the world rankings of universities, according to the list determined by the Cabinet of Ministers of Ukraine, foreign workers of creative professions, foreign IT professionals, gig specialists*²);

2) validity of an agreement (contract) concluded between Ukrainian and foreign business entities, but not more than for three years - for posted foreign workers;

3) actions of the decision of a foreign business entity on transfer of a foreigner or stateless person to work in Ukraine and a contract concluded between a foreigner or stateless person and a foreign business entity on transfer to work in Ukraine - for intra-corporate assignees;

4) the effect of the employment agreement (contract), but not more than one year - for all other foreign employees.

If there are applicable grounds, the permit may be extended indefinitely.

The employer may specify in the application for a permit a shorter period than established by this Law.

It is not allowed to issue a permit for a shorter period than specified in the relevant application and within the time limits established by this Law.

According to Article 42² of the Law, the employer submits the following documents to the regional employment center for a permit:

1) an application in the form established by the Cabinet of Ministers of Ukraine, in which the employer confirms that the position services) that will be performed (provided) by a gig specialist, in accordance with the laws of Ukraine is not related to belonging to the citizenship of Ukraine and does not require access to state secrets;

² According to the Law of Ukraine “On Stimulating the Development of the Digital Economy in Ukraine”, a gig specialist is a natural person who is a contractor and / or executor under a gig contract. In this case, the gig contract is a civil law contract under which the gig specialist undertakes to perform work and / or provide services in accordance with the tasks of a resident of Diia City as a customer, and a resident of Diia City undertakes to pay for work performed and / or provided services and provide the gig specialist with appropriate conditions for the performance of works and / or provision of services, as well as social guarantees provided for in Section V of this Law.

For reference: Diia City is a unique legal and tax space for IT business in Ukraine. Diia City aims to provide companies and startups with effective tools for intensive development, scaling and capitalization.

2) copies of the pages of the passport document of a foreigner or stateless person with personal data together with a translation into Ukrainian, certified in the prescribed manner;

3) colour photograph measuring 3.5 x 4.5 centimeters of a foreigner or stateless person;

4) a copy of the draft employment agreement (contract) or a zero-hour contract (a gig contract) with a foreigner or a stateless person, certified by the employer.

To employ certain categories of foreigners and stateless persons, the employer shall additionally submit the following documents regarding:

1) university graduates in the top 100 in the world rankings of universities - a copy of a diploma of higher education of the university recognised in Ukraine;

2) foreign workers of creative professions - notarised copies of documents identifying the object of copyright and / or related rights of the author and certifying authorship (copyright);

3) seconded foreign workers - a copy of the agreement (contract) concluded between Ukrainian and foreign economic entities, which provides for the use of labour of foreigners and stateless persons sent by a foreign employer to Ukraine to perform certain tasks (services);

4) intra-corporate assignees - the decision of a foreign entity to transfer a foreigner or stateless person to work in Ukraine and a copy of the contract concluded between a foreigner or stateless person and a foreign entity to transfer to work in Ukraine with a fixed term in Ukraine;

5) persons in respect of whom a decision has been made to draw up documents for resolving the issue of recognition as a refugee or a person in need of additional protection - copies of the decision on registration of documents for resolving the issue of recognition as a refugee or a person in need of additional protection, and a certificate of application for protection in Ukraine;

6) persons who have submitted an application for recognition as a stateless person, and persons who are appealing against the decision to refuse recognition as a stateless person - a copy of the certificate of application for recognition as a stateless person.

For employment of founders and / or participants and / or beneficiaries (controllers) of a legal entity, the regional employment center independently receives information on the completion of the formation of the authorised capital of the company at the time of application for a permit.

For the employment of foreign IT professionals, the regional employment center independently receives information about the employer's registered activity - computer programming.

The regional employment center independently receives information about whether the employer has the status of a resident of Diia City (Diia City is a special legal and tax regime that creates favourable conditions for the development of IT business, as well as it introduces a set of incentives for Ukraine to become a high-tech digital state).

To extend the permit, the employer submits the following documents:

1) application in the form specified by the Cabinet of Ministers of Ukraine;

2) a photograph measuring 3.5 x 4.5 centimeters of a foreigner or a stateless person;

3) documents according to the list for obtaining a permit, if they have changed.

The Regional Employment Center independently receives in electronic form from the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations information on the status of the employer as a legal entity or a natural person - entrepreneur.

Documents identified by this article that have been issued abroad must be recognised in the prescribed manner, unless otherwise provided by international treaties of Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine.

Officials of the regional employment center are prohibited from requiring from employers documents not established by this Law.

According to Article 42⁴, the fee for issuing or renewing a permit is:

1) for permits issued for a period of one to three years or their validity is extended for such a period - 6 subsistence minimums for able-bodied persons established by law on 1 January (*UAH 14,886 or EUR 481 as of 1 January 2022 at the official exchange rate of the NBU*);

2) for permits issued for a period of six months to one year inclusive or their validity is extended for such a period - 4 subsistence minimums for able-bodied persons established by law on 1 January of the calendar year in which the employer submitted documents (*UAH 9,924 or 321 euros as of 1 January 2022 at the official exchange rate of the NBU*);

3) for permits issued for a period of up to six months or their validity is extended for such a period - 2 subsistence minimums for able-bodied persons established by law on 1 January of the calendar year in which the employer submitted documents (*UAH 4,962 or EUR 161 as of 1 January 2022 at the official rate of the NBU*).

In accordance with Article 42⁶ of the Law, the deadline for consideration of applications for the issuance or renewal of a work permit for foreigners and stateless persons is set. Thus, the regional employment center makes decisions within the following deadlines from the date of receipt of the application:

- 1) seven working days - on the issuance of a permit;
- 2) three working days - on the extension of the permit or on changes to it.

According to the State Employment Center, in 2021, 21,780 foreigners and stateless persons worked on the basis of issued permits, of which 16,275 were issued and 5,505 were extended.

The following is information on the number of work permits for EU citizens.

		<i>Total number</i>	<i>permits issued</i>	<i>renewed</i>
	Total	21 780	16 275	5 505
of them for employment of EU citizens:				
	Austria	113	81	32
	Belgium	36	22	14
	Bulgaria	78	48	30

	Greece	36	15	21
	Denmark	97	56	41
	Estonia	28	13	15
	Ireland	36	18	18
	Spain	110	87	23
	Italy	209	107	102
	Cyprus	15	8	7
	Latvia	109	70	39
	Lithuania	162	80	82
	Luxembourg	2	1	1
	Malta	1	0	1
	Netherlands	111	69	42
	Germany	396	220	176
	Poland	601	393	208
	Portugal	60	45	15
	Romania	236	142	94
	Slovakia	104	63	41
	Slovenia	16	7	9
	Hungary	47	15	32
	Finland	9	5	4
	France	282	132	150
	Croatia	26	10	16
	Czech Republic	108	74	34
	Sweden	27	17	10

At the same time, it should be noted that the Verkhovna Rada of Ukraine registered the draft Law of Ukraine “On Amendments to Certain Laws of Ukraine on Employment of Foreigners and Stateless Persons in Ukraine” (Reg. № 5795) dated 16 July 2021), which provides for improvements along issuing work permits to foreigners and stateless persons.

According to Part 4 of Article 4 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons”, the legal basis for the stay of foreigners and stateless persons who arrived in Ukraine for employment is to obtain a temporary residence permit. The basis for obtaining a temporary residence permit is a work permit or employment contract (if employment is carried out without such a permit).

2. Do provisions exist to prevent discrimination on grounds of nationality (direct or indirect) against EU migrant workers as well as their family members (regardless of nationality) in employment, pay and working conditions and if so, what are they?

Article 26 of the Constitution of Ukraine and Article 3 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons” stipulate that foreigners and stateless persons legally staying in Ukraine using the same rights, freedoms and have the same obligations as citizens of Ukraine - with the exceptions established by the Constitution, laws or international treaties concluded by Ukraine.

According to Article 2¹ of the Labour Code of Ukraine, any discrimination in the field of labour is prohibited, including violation of the principle of equal rights and opportunities, direct or indirect restriction of workers' rights depending on race, colour, political, religious and other beliefs, sex, gender identity, sexual orientation, ethnic, social and foreign origin, age, state of health, disability, suspicion or presence of HIV / AIDS, marital and property status, family responsibilities, place of residence, membership in a trade union or other association citizens' participation, participation in a strike, appeal or intention to appeal to a court or other bodies to protect their rights or provide support to other employees in defending their rights, notification of possible facts of corruption or corruption-related offenses, other violations of the Law of Ukraine “On Prevention of Corruption”, as well as assisting a person in making such a report, on linguistic or other grounds, related to the nature of the work or the conditions of its implementation.

According to parts three and four of Article 42¹ of the Law of Ukraine “On Employment” the employer may obtain a work permit for foreigners and stateless persons subject to payment of wages of at least:

1) five minimum wages - to foreigners and persons stateless - to employees in public associations, charitable organisations and educational institutions, defined in Articles 34, 36, 37, 39, 41, 43, 48 of the Law of Ukraine “On Education” (*32,500 UAH or 1,051 euros as of 1 January 2022 at the official exchange rate of the NBU*);

2) ten minimum wages - for all other categories of employees (*65,000 UAH or 2,102 euros as of 1 January 2022 at the official exchange rate of the NBU*).

Minimum wage requirements do not apply in the case of obtaining a work permit for persons belonging to a special category of foreigners and stateless persons.

At the same time, it should be noted that the Verkhovna Rada of Ukraine registered the draft Law of Ukraine “On Amendments to Certain Laws of Ukraine Concerning the Application of Labour of Foreigners and Stateless Persons in Ukraine” (Reg. № 5795 of 16 July 2021), facilitating abolition of special categories of foreigners and stateless persons and wage requirements, as well as improvement of the procedure for issuing work permits to foreigners and stateless persons, which will facilitate access to the Ukrainian labour market and reduce the burden on the employer.

According to Article 14 of the Law of Ukraine “On Principles of Preventing and Combating Discrimination in Ukraine”, a person who believes that discrimination has arisen against him has the right to file a complaint to state bodies, authorities of the Autonomous Republic of Crimea, local governments and their officials. Commissioner of the Verkhovna Rada of Ukraine for Human Rights and / or to a court in the manner prescribed by law.

The exercise of this right cannot be a ground for prejudice, nor can it have any negative consequences for the person who has exercised this right and others.

3. What nationality conditions (if any) apply to employment in the public sector?

Article 26 of the Constitution of Ukraine and Article 3 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons” stipulate that foreigners and stateless persons legally staying in Ukraine enjoy the same rights and freedoms and have the same obligations as citizens of Ukraine - with the exceptions established by the Constitution, laws or international treaties of Ukraine.

According to Article 42 of the Law of Ukraine “On Employment”, foreigners and stateless persons may not be appointed or engaged in employment if, in accordance with the law, appointment to a relevant position or activity is related to Ukrainian citizenship, unless otherwise provided by international treaties concluded by Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine.

According to the second part of Article 1 of the Law of Ukraine “On Civil Service”(hereinafter - the Law), a civil servant is a citizen of Ukraine who holds a civil service position in a governmental entity, other state authority, its staff (secretariat), receives a salary funds from the state budget and exercises the powers established for this position, directly related to the performance of tasks and functions of such state authority, as well as adheres to the principles of civil service.

The provisions of Article 19 of the Law stipulate that adult citizens of Ukraine who have proficiency in speaking the official state language to a standard determined by the National Commission for State Language Standards, and who have been awarded a higher education degree not lower than a masters degree for positions of categories “A” and “B” and bachelor, junior bachelor for positions of category “C”.

A person who, in particular, has the citizenship of another state may not enter the civil service of Ukraine.

The legislation on civil service defines a clear list of information required for participation in the competition, in particular, the applicant must indicate the details of the identity document and confirm that they have the citizenship of Ukraine.

Article 52 of the Law of Ukraine “On the Judiciary and the Status of Judges” stipulates that a judge is a citizen of Ukraine who, in accordance with the Constitution of Ukraine and this Law, is appointed a judge, holds a full-time judicial position in one of Ukraine's courts and administers justice professionally.

Article 61 of the Law of Ukraine “On the National Police of Ukraine” establishes restrictions related to police service, in particular, a person who has lost Ukrainian citizenship and / or has citizenship of a foreign state or a stateless person may not be a police officer.

4. How are the authorities of Ukraine ensuring that full freedom of movement for workers is in place throughout the country? Are there still any legal, technical or administrative barriers to the free movement of workers within the country?

The Law of Ukraine “On Freedom of Movement and Free Choice of Residence in Ukraine” stipulates that citizens of Ukraine, as well as foreigners and stateless persons legally staying in Ukraine, are guaranteed freedom of movement and free choice of residence in its territory, except restrictions established by this Law.

Thus, according to Article 3 of this Law, freedom of movement is the right of a citizen of Ukraine, as well as a foreigner and stateless persons legally staying in Ukraine, to move freely and unhindered in Ukraine in any direction, in any which method, at any time, except as provided by law.

According to Article 5 of this Law, the legal grounds for the stay of foreigners and stateless persons in Ukraine to exercise their rights to freedom of movement and free choice of residence in Ukraine are the grounds established by the Law of Ukraine “On Legal Status of Foreigners and Stateless Persons” or the Law of Ukraine “On Refugees and Persons in Need of Additional or Temporary Protection”.

Foreigners and stateless persons lawfully staying on the territory of Ukraine have the right to move freely and unhindered at their own discretion within the territory of Ukraine in any direction, in any way, at any time, except for the restrictions established by Article 12 of this Law.

Foreigners and stateless persons legally staying in the territory of Ukraine have the right to choose the housing, in which they wish to live, except for the restrictions established by Article 13 of this Law.

Thus, in accordance with Article 12 of the Law, freedom of movement under the law may be restricted:

- in the border strip;
- on the territories of military facilities;
- in zones which according to the law belong to zones with limited access;
- on private land plots;
- in the territories in respect of which martial law or state of emergency has been imposed;
- in certain territories and in settlements, where in case of danger of spreading infectious diseases and poisoning of people special conditions and a mode of residence of the population and economic activity are entered;
- in the temporarily occupied territories.

Freedom of movement is limited for:

- persons to whom, in accordance with procedural legislation, precautionary measures related to restriction or imprisonment have been applied;
- persons serving a sentence of imprisonment or restriction of liberty according to a court sentence;
- persons released from serving a probation sentence who are prohibited from leaving Ukraine without the consent of a probation authority;
- persons who, in accordance with the law, are under administrative supervision;
- persons who, in accordance with the legislation on infectious diseases and psychiatric care, are subject to involuntary hospitalisation and treatment;

- persons who have applied for refugee status or subsidiary protection and in respect of whom a decision has been made to draw up documents to resolve the issue of recognition as a refugee or a person in need of subsidiary protection;

- foreigners and stateless persons who do not have legal grounds to stay in the territory of Ukraine;

- persons called up for active military service in the Armed Forces of Ukraine and other military formations formed in accordance with the laws of Ukraine;

- foreigners who are part of foreign military units and who have military status.

Freedom of movement may be restricted in other cases provided by law.

According to Article 13 of this Law, the free choice of place of residence is limited to administrative-territorial units, which are:

- in the border strip;

- in the territories of military facilities;

- in zones which according to the law belong are zones with limited access;

- in the territory where in case of danger of spreading infectious diseases and poisonings of people special conditions and a mode of residence of the population and economic activity are entered;

- in the territories in respect of which martial law or state of emergency has been imposed;

- in the temporarily occupied territories.

Free choice of residence is limited for:

- persons under 14 years of age;

- persons to whom, in accordance with procedural law, precautionary measures related to restriction or imprisonment have been applied;

- persons serving a sentence of imprisonment or restriction of liberty according to a court sentence;

- persons who, in accordance with the law, are under administrative supervision;

- persons who, in accordance with the legislation on infectious diseases and psychiatric care, are subject to involuntary hospitalisation and treatment;

- foreigners and stateless persons who do not have legal grounds to stay in the territory of Ukraine.

Article 14 of the Law stipulates that decisions, actions or omissions of public authorities, officials and officials on freedom of movement, free choice of residence may be appealed in the manner prescribed by law.

Foreigners who work in the territory of Ukraine receive a temporary residence permit and register/declare their place of residence, and their address in Ukraine, where they permanently or temporarily reside.

At the same time, the temporary residence permit and registration/declaration of place of residence are valid throughout the territory of Ukraine.

There are no legal, technical or administrative barriers to the freedom of movement for foreign workers within the territory of Ukraine. This is provided by the Civil Code of Ukraine (Article 29), Laws of Ukraine “On Legal Status of Foreigners and Stateless Persons”, “On Freedom of Movement and Free Choice of Residence in Ukraine”, “On Provision of Public (Electronic) Public Services for Declaration and Registration of Residence in Ukraine”.

5. Please describe which domestic institutions are competent to ensure the free movement of workers within the country.

There are no legal, technical or administrative barriers to the freedom of movement for foreign workers within the territory of Ukraine, so there are no national institutions to regulate this issue.

In this case, if necessary to change registered/declared place of residence of a working foreigner in Ukraine, he/she applies to the registration authority (the executive body of the village, town or city council, which is located in the territorial community covered by the relevant council, ensures the formation and maintenance of the register of the territorial community, registration of the declared place of residence/change of residence of the person).

These issues are regulated by the Law of Ukraine “On Provision of Public (Electronic) Public Services for Declaration and Registration of Residence in Ukraine” and by the Resolution of the Cabinet of Ministers of Ukraine dated 7 February 2022 № 265 “Some issues of declaring and registering the place of residence and maintaining registers of territorial communities”.

B. Freedom of movement for workers within the EU (Regulation (EU) 492/2011)

6. Do EU migrant workers/jobseekers have access to available employment under the same conditions as nationals of Ukraine?

Article 26 of the Constitution of Ukraine and Article 3 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons” stipulate that foreigners and stateless persons legally staying in Ukraine using the same rights and freedoms and have the same obligations as citizens of Ukraine - with the exceptions established by the Constitution, laws or international treaties concluded by Ukraine.

According to Article 42 of the Law of Ukraine “On Employment” (hereinafter - the Law), employers have the right to employ foreigners and stateless persons in Ukraine on the basis of a permit issued by the territorial bodies of the central executive body implementing state employment policy population and labour migration (*regional employment center*). Without a permit identified by this article, employment can be carried out by:

- foreigners and stateless persons permanently residing in Ukraine;
- foreigners and stateless persons who have acquired refugee status in accordance with the legislation of Ukraine or have received an immigration permit in Ukraine;
- foreigners and stateless persons who have been recognised as persons in need of additional protection or who have been granted temporary protection in Ukraine;

- representatives of the foreign naval (river) fleet and airlines that serve such companies in Ukraine;

- persons recognised as stateless persons by the central executive body that implements state policy in the field of migration (immigration and emigration), including combating illegal (illegal) migration, citizenship, registration of individuals, refugees and other statutory categories of migrants;

- employees of foreign mass media accredited to work in Ukraine;

- athletes who have acquired professional status, artists to work in Ukraine in the field of their specialism;

- employees of emergency and rescue services to perform urgent work;

- employees of foreign missions who are registered in the territory of Ukraine in the manner prescribed by law;

- clergymen who are foreigners and temporarily stay in Ukraine at the invitation of religious organisations to conduct canonical activities only in such organisations with the official consent of the body that registered the statute (regulations) of the relevant religious organisation;

- foreigners and stateless persons who arrived in Ukraine to participate in the implementation of international technical assistance projects;

- foreigners and stateless persons who came to Ukraine to conduct teaching and / or research activities in institutions of professional higher education at their invitation;

- other foreigners and stateless persons in cases provided by laws and international treaties concluded by Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine.

Work permits for foreigners and stateless persons differ depending on their period of validity.

Thus, in accordance with Article 42-3 of the Law of Ukraine “On Employment”, the permit is issued for a period of:

1) employment contract (contract) or a zero-hour contract (a gig contract), but not more than three years - for special categories of foreigners and stateless persons, *(according to the second part of Article 421 of the Law to a special category of foreigners and stateless persons include: foreign highly paid professionals, founders and / or participants and / or beneficiaries (controllers) of a legal entity established in Ukraine, university graduates in the top 100 in the world rankings of universities, according to the list established by the Cabinet of Ministers of Ukraine, foreign creative workers, foreign IT professionals; gig specialists³);*

2) validity of an agreement (contract) concluded between Ukrainian and foreign business entities, but not more than for three years - for posted foreign workers;

3) actions of the decision of a foreign business entity on transfer of a foreigner or stateless person to work in Ukraine and a contract concluded between a foreigner or stateless person and a foreign business entity on transfer to work in Ukraine - for intra-corporate assignees;

³ see footnote # 1 of this Chapter

4) validity of the employment agreement (contract), but not more than for one year - for all other foreign employees.

If there are grounds, the permit may be extended indefinitely.

The employer may specify in the application for a permit a shorter period than established by this Law.

It is not allowed to issue a permit for a shorter period than specified in the relevant application and within the time limits established by this Law.

According to Article 42-2 of the Law, in order to obtain a permit, the employer submits the following documents to a regional employment center:

1) a statement in the form established by the Cabinet of Ministers of Ukraine, in which the employer confirms that the position in which the work of a foreigner or stateless person will be used, or work (services) performed (provided) by a gig specialist in accordance with the laws of Ukraine is related to belonging to the citizenship of Ukraine and does not require access to state secrets;

2) copies of the pages of the passport document of a foreigner or stateless person with personal data together with a translation into Ukrainian, certified in the prescribed manner;

3) colour photograph measuring 3.5 x 4.5 centimeters of a foreigner or stateless person;

4) a copy of a draft employment agreement (contract) or a zero-hour contract (a gig contract) with a foreigner or stateless person, certified by the employer.

In order to employ certain categories of foreigners and stateless persons, the employer shall additionally submit the following documents regarding:

1) graduates of universities included in the top 100 in the world rankings of universities - a copy of the diploma of higher education of the relevant university, recognised in Ukraine in the prescribed manner;

2) foreign workers of creative professions - notarised copies of documents identifying the object of copyright and / or related rights of the author and certifying authorship (copyright);

3) seconded foreign workers - a copy of the agreement (contract) concluded between Ukrainian and foreign economic entities, which provides for the use of labour of foreigners and stateless persons sent by a foreign employer to Ukraine to perform a certain amount of work (services);

4) intra-corporate assignees - a decision of a foreign business entity to transfer a foreigner or stateless person to work in Ukraine and a copy of the contract concluded between a foreigner or stateless person and a foreign business entity to transfer to work in Ukraine with a fixed term in Ukraine;

5) persons in respect of whom a decision has been made to draw up documents for resolving the issue of recognition as a refugee or a person in need of additional protection; protection in Ukraine;

6) persons who have submitted an application for recognition as a stateless person, and persons who are appealing against the decision to refuse recognition as a stateless person - a copy of the certificate of application for recognition as a stateless person.

For employment of founders and / or participants and / or beneficiaries (controllers) of a legal entity, the regional employment center independently receives information on the completion of the formation of the authorised capital of the company at the time of application for a permit.

For the employment of foreign IT professionals, the regional employment center independently receives information about the employer's registered activity - computer programming.

The regional employment center obtains information on whether the employer has the status of a resident of Diia City.

To extend the permit, the employer submits the following documents:

- 1) application in the form determined by the Cabinet of Ministers of Ukraine;
- 2) a photograph measuring 3.5 x 4.5 centimeters of a foreigner or a stateless person;
- 3) documents according to the list for obtaining a permit, if they have changed.

The Regional Employment Center independently receives in electronic form from the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations information on the status of the employer as a legal entity or a natural person - entrepreneur.

Documents provided for in this article that have been issued abroad must be recognised in the prescribed manner, unless otherwise provided by international treaties concluded by Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine.

Officials of the regional employment center are prohibited from requiring from employers documents not established by this Law.

According to Article 42-4, the amount of the fee for the issuance or renewal of a permit is:

1) for permits issued for a period of one to three years or their validity is extended for such a period - 6 subsistence minimums for able-bodied persons established by law on 1 January (*UAH 14,886 or EUR 481 as of 1 January 2022 at the official exchange rate NBU*);

2) for permits issued for a period of six months to one year inclusive or their validity is extended for such a period - 4 subsistence minimums for able-bodied persons established by law on 1 January of the calendar year in which the employer submitted documents (*UAH 9,924 or 321 euros as of 1 January 2022 at the official exchange rate of the NBU*);

3) for permits issued for a period of up to six months or their validity is extended for such a period - 2 subsistence minimums for able-bodied persons established by law on 1 January of the calendar year in which the employer submitted documents (*UAH 4,962 or EUR 161 as of 1 January 2022 at the official rate of the NBU*).

In accordance with Article 42-6 of the Law, the deadline for consideration of applications for the issuance or renewal of a work permit for foreigners and stateless persons is set. Thus, the regional employment center makes decisions within the following deadlines from the date of receipt of the application:

- 1) seven working days - on the issuance of a permit;
- 2) three working days - on the extension of the permit or on changes to it.

According to the State Employment Center, in 2021, 21,780 foreigners and stateless persons worked on the basis of issued permits, of which 16,275 received permits, and 5,505 permits were extended.

According to Article 42 of the Law of Ukraine “On Employment”, foreigners and stateless persons may not be appointed or engaged in employment if, in accordance with the law, appointment to a relevant position or activity is restricted to Ukrainian citizens, unless otherwise provided by international treaties concluded by Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine.

Thus, in accordance with Article 19 of the Law of Ukraine “On Civil Service”, a person who has the citizenship of another state may not enter the civil service.

Article 52 of the Law of Ukraine “On the Judiciary and the Status of Judges” stipulates that a judge is a citizen of Ukraine who, in accordance with the Constitution of Ukraine and this Law, is appointed a judge, holds a full-time judicial position in one of Ukraine's courts and administers justice professionally.

Article 61 of the Law of Ukraine “On the National Police of Ukraine” establishes restrictions related to police service, in particular, a person who has lost Ukrainian citizenship and / or has citizenship of a foreign state or a stateless person may not be a police officer.

7. Are EU migrant workers protected against discrimination on the basis of nationality as regards conditions of employment and work, dismissal and pay?

Article 26 of the Constitution of Ukraine and Article 3 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons” stipulate that foreigners and stateless persons legally staying in Ukraine enjoy the same rights and freedoms and have the same obligations as citizens of Ukraine - with the exceptions established by the Constitution, laws or international treaties concluded by Ukraine.

According to Article 21 of the Labour Code of Ukraine, any discrimination in the field of labour is prohibited, including violation of the principle of equal rights and opportunities, direct or indirect restriction of workers' rights depending on race, colour, political, religious and other beliefs, gender, gender identity, sexual orientation, ethnic, social and foreign origin, age, state of health, disability, suspicion or presence of HIV / AIDS, marital and property status, family responsibilities, place of residence, membership in a trade union or other association of citizens, participation in a strike, appeal or intention to appeal to the court or other bodies to protect their rights or provide support to other employees in defending their rights, reporting on possible facts of corruption or corruption-related offenses, other violations of the Law of Ukraine “On Prevention corruption”, as well as assisting a person in making such a message, on linguistic or other grounds, not related to the nature of the work or the conditions of its implementation.

According to parts three and four of Article 421 of the Law of Ukraine “On Employment”, an employer may obtain a work permit for foreigners and stateless persons subject to the payment of wages in the amount of not less than:

1) five minimum wages - to foreigners and stateless persons - employees in public associations, charitable organisations and educational institutions, defined in Articles 34, 36, 37, 39, 41, 43, 48 of

the Law of Ukraine "On Education" (*UAH 32,500 or EUR 1,051 as of 1 January 2022 at the official exchange rate of the NBU*);

2) ten minimum wages - for all other categories of employees (*UAH 65,000 or EUR 2,102 as of 1 January 2022 at the official exchange rate of the NBU*).

Minimum wage requirements do not apply in the case of obtaining a work permit for persons belonging to a special category of foreigners and stateless persons.

At the same time, it should be noted that the Verkhovna Rada of Ukraine registered the draft Law of Ukraine "On Amendments to Certain Laws of Ukraine Concerning the Application of Labour of Foreigners and Stateless Persons in Ukraine" (Reg. № 5795 of 16 July 2021) facilitating abolition of special categories of foreigners and stateless persons and wage requirements, as well as improvement of the procedure for issuing work permits to foreigners and stateless persons, which will facilitate access to the Ukrainian labour market and reduce the burden on the employer.

According to Article 14 of the Law of Ukraine "On Principles of Preventing and Combating Discrimination in Ukraine", a person who believes that discrimination has arisen against him has the right to file a complaint to state bodies, authorities of the Autonomous Republic of Crimea, local governments and their officials. Commissioner of the Verkhovna Rada of Ukraine for Human Rights and / or to the court in the manner prescribed by law.

The exercise of this right cannot be a ground for prejudice, nor can it have any negative consequences for the person who has exercised this right and others.

8. Are there any language requirements for specific jobs and, if yes, which ones?

According to Article 21 of the Labour Code of Ukraine, any discrimination in the field of labour is prohibited, including violation of the principle of equal rights and opportunities, direct or indirect restriction of workers' rights depending on race, colour, political, religious and other beliefs, gender, gender identity, sexual orientation, ethnic, social and foreign origin, age, state of health, disability, suspicion or presence of HIV / AIDS, marital and property status, family responsibilities, place of residence, membership in a trade union or other association of citizens, participation in a strike, appeal or intention to appeal to the court or other bodies to protect their rights or provide support to other employees in defending their rights, reporting on possible facts of corruption or corruption-related offenses, other violations of the Law of Ukraine "On Prevention corruption", as well as assisting a person in making such a message, on linguistic or other grounds, not related to the nature of the work or the conditions of its implementation.

Article 24-1 of the Law of Ukraine "On Advertising" sets requirements for advertisers - customers of advertising for vacancies (employment) for its production and / or distribution. In particular, it is prohibited to indicate the age of candidates in vacancy advertisements, to offer jobs only to women or only men, except for specific work that can be performed exclusively by persons of a certain sex, to make demands that favour women or men, representatives of a certain race, skin colour (except in cases specified by law, and cases of specific work that may be performed exclusively by persons of a certain sex), political, religious and other beliefs, membership in trade unions or other associations of citizens, ethnic and social origin, property condition, place of residence, language or other grounds.

For violating the requirements of this article, the advertiser pays to the State Budget of Ukraine a fine of 10 times the minimum wage established by law at the time of the violation, in the manner prescribed by the Government (65,000 UAH or 2,102 euros as of 1 January 2022 at the official NBU rate).

According to Article 14 of the Law of Ukraine “On Principles of Preventing and Combating Discrimination in Ukraine”, a person who believes that discrimination has arisen against him has the right to file a complaint to state bodies, authorities of the Autonomous Republic of Crimea, local governments and their officials. Commissioner of the Verkhovna Rada of Ukraine for Human Rights and / or to the court in the manner prescribed by law.

The exercise of this right cannot be a ground for prejudice, nor can it have any negative consequences for the person who has exercised this right and others.

9. Do EU migrant workers/jobseekers receive assistance (other than financial assistance) from employment offices?

According to Article 43 of the Constitution of Ukraine, everyone has the right to work, which includes the opportunity to earn a living by work which he freely chooses or freely agrees to. The state creates conditions for the full exercise of citizens' right to work, guarantees equal opportunities in choosing a profession and type of employment, implements programmes of vocational training, training and retraining in accordance with social needs.

Article 26 of the Constitution of Ukraine and Article 3 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons” stipulate that foreigners and stateless persons legally staying in Ukraine enjoy the same rights and freedoms and have the same obligations as citizens of Ukraine - with the exceptions established by the Constitution, laws or international treaties of Ukraine.

In accordance with the legislation in the field of employment and unemployment insurance through the basic employment centers and branches, the State Employment Service ensures the implementation of the constitutional right of unemployed citizens, including migrant workers to social protection against unemployment through social services and material benefits.

Citizens who apply to the state employment service:

- assistance is provided in the selection of suitable work, including public works and temporary work;
- assistance is provided in the organisation of entrepreneurial activity;
- professional information and professional consulting services are offered on the choice of profession taking into account the needs of the regional labour market;
- Citizens' participation in vacancy fairs, various information and consultation and career guidance events, seminars and trainings organised by the state employment service (in particular, on mastering the technique of job search, self-presentation, resume writing, vocational training, online interviews, etc.).

Migrant workers working abroad can find information on services provided by the state employment service in accordance with the law and available vacancies in all regions of Ukraine by

visiting the website of the state employment service www.dcz.gov.ua, the database of which is updated daily with new vacancies and job offers.

10. What rights to “tax and social advantages” and vocational training do EU migrant workers have?

According to the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons”, foreigners and stateless persons staying in Ukraine on legal grounds shall enjoy the same rights and freedoms and bear the same responsibilities as the nationals of Ukraine, except for the cases determined by the Constitution, laws or international treaties of Ukraine. Foreigners and stateless persons who are under the jurisdiction of Ukraine, irrespective of whether or not they are staying on legal grounds, shall have the right to recognition as a person before the law and fundamental human rights and freedoms.

In Ukraine, the state policy in the field of professional development of employees is formed on the principles of accessibility of professional development for employees, observance of the interests of the employer and the employee, continuity of the process of professional development of employees.

Article 4 of the Law of Ukraine “On Professional Development of Employees” stipulates that the main activities of employers in the field of professional development of employees are, in particular, organisation of professional training, promotion of professional growth of employees, training of employees directly at the employer or educational institutions, at least once every five years.

According to Article 6 of the Law of Ukraine “On Professional Development of Employees”, the organisation of professional training of employees is carried out by employers taking into account the needs of their own economic or other activities in accordance with the law.

The employer, as a rule, at least once every five years organises training for employees directly at the employer or in educational institutions.

The professional development of employees is financed by the employer at its own expense and by other sources not prohibited by law.

Professional training of the employee may be carried out at his own expense or at the expense of own funds or funds of other individuals or legal entities.

The component of vocational education is vocational training, which involves the formation and development of professional competencies of a person necessary for professional activity in a particular profession in the field, ensuring its competitiveness in the labour market and mobility, its prospects. lifelong growth.

According to Article 3 of the Law of Ukraine “On Employment”, foreigners and stateless persons permanently residing in Ukraine, recognised as refugees in Ukraine, granted asylum in Ukraine, recognized as persons in need of additional protection, granted temporary protection, and also those who have received a permit for immigration to Ukraine have the right to employment on the grounds and in the manner prescribed for citizens of Ukraine.

Article 5 of the Law of Ukraine “On Employment” defines state guarantees in the field of employment, in particular for vocational training in accordance with abilities and taking into account the needs of the labour market.

According to Article 8 of the Law of Ukraine “On Employment”, everyone has the right to vocational training, which is implemented through primary vocational training, retraining, specialisation and advanced training, internships in vocational (technical), professional higher, higher education and postgraduate institutions. education, directly in the workplace or in the field of services in order to obtain the appropriate qualification or bring its level in line with the requirements of modern production and services.

According to Article 3 of the Law of Ukraine “On Education”, equal conditions for access to education are created in Ukraine. No one may be restricted in their right to education. The right to education is guaranteed regardless of age, sex, race, state of health, disability, citizenship, nationality, political, religious or other beliefs, skin colour, place of residence, language, origin, social and property status, criminal record, and as well as other circumstances and signs.

A person's right to education can be realized by obtaining it at different levels of education, in different forms and different types, including by obtaining preschool, complete general secondary, extracurricular, vocational (vocational), professional higher, higher education and adult education.

According to Article 5 of the Law of Ukraine “On Vocational (Technical) Education”, foreigners and stateless persons legally staying in Ukraine enjoy the right to receive professional (vocational) education on an equal footing with citizens of Ukraine.

Other foreigners pay for their education, unless otherwise provided by the legislation or international treaties concluded by Ukraine.

11. What trade union rights do EU migrant workers have?

According to Article 6 of the Law of Ukraine “On Trade Unions, Their Rights and Guarantees of Activity”, foreign citizens and stateless persons may not form trade unions, but may join trade unions if their statutes so provide.

At the same time, in accordance with Article 19 of this Law, in matters of collective interests of trade union workers, their associations represent and protect the interests of workers regardless of their membership in trade unions. In matters of individual rights and interests of their members, trade unions are represented and protected in the manner prescribed by law and their statutes.

12. What housing rights do EU migrant workers have?

The legislation of Ukraine does not contain norms that would provide foreign citizens, including labour migrants from the EU, with any special conditions. They can buy or rent any housing on the same terms as Ukrainian citizens.

Citizens of Ukraine, foreigners and stateless persons legally staying on the territory of Ukraine (received a certificate of permanent or temporary residence, recognized as refugees in Ukraine) living in dwelling premises (houses) have the right to receive a housing subsidy.

As a general rule, the subsidy is granted to one of the persons registered in the dwelling, ie at the place of registration of the person, and is calculated for all registered persons.

The household includes persons registered in the dwelling (house). Social norms of housing and social norms of housing and communal services are calculated for such persons and their incomes are taken into account when assigning a housing subsidy.

According to the decision of the commission, the subsidy may be granted to persons who are not only registered in a dwelling (house), but actually live in it:

- rent housing on the basis of a lease agreement;
- individual real estate developers, whose houses are not taken into operation in the case when they are charged for housing and communal services;
- internally displaced persons.

13. What rights to education do the children of EU migrant workers have?

General secondary education

According to Article 3 of the Law on Education every person has a right to high-quality and affordable education. Ukraine creates equal opportunities for access to education. No one can be restricted in their right to get education. The right to education is guaranteed regardless of the age, sex, race, health status, disability, nationality, ethnic origin, political, religious or other views, colour, place of residence, language, origin, social and material position, criminal record, as well as other circumstances and characteristics.

Every person has a right to access to public educational, scientific and information resources, including Internet resources, e-textbooks and other multimedia educational resources, according to the procedure established by the legislation.

There are no special provisions for education of children for EU migrants working in Ukraine.

They can choose either one of the public schools or private schools or schools with international accreditation. Currently, no statistical data on children of EU migrant workers is available.

Vocational Education and Training

According to Article 5 of the Law of Ukraine “On Vocational Education and Training”, foreigners and stateless persons legally staying in Ukraine enjoy the right to receive vocational education, benefitting from equal rights with citizens of Ukraine.

Other foreigners pay for their education, unless otherwise provided by the legislation or international agreements concluded by Ukraine.

Higher Education

According to Article 4 of the Law on Higher Education, citizens of Ukraine have the right to receive higher education free of charge in state and municipal institutions of higher education on a competitive basis if a citizen first obtains a certain degree of higher education at the expense of state or local budget.

Foreigners (including children of EU migrant workers) and stateless persons and also foreign Ukrainians, permanently residing in Ukraine, persons recognised as refugees, and persons in need of additional protection, have the equal rights to higher education as citizens of Ukraine, including studying at the expense of state or local budget.

Other foreigners and stateless persons may obtain higher education at the expense of individuals (legal entities). All those who receive higher education in higher education institutions have equal rights and responsibilities.

Foreigners referred to in the second paragraph have to pass External Independent Assessment the same as Ukrainian citizens. Other foreigners have to pass internal exams in HEIs.

Ukrainian HEIs have a lot of educational programmes, including programmes for English-speaking students.

C. Right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (Directive 2004/38/EC)

(N.B.: these questions only relate to the specific provisions for EU citizens exercising an economic activity as salaried workers; please note that all other provisions of the Directive are dealt with under Chapter 23)

14. What documents do EU migrant workers and their family members (including those who are not EU citizens) need in order to enter Ukraine?

The legal status of foreigners staying in Ukraine, legal requirements for their entry into Ukraine and departure from Ukraine are set out by the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons” of 22.09.2011 № 3773-VI. According to the provisions of art. 9(1) of the mentioned Law, the foreigners enter Ukraine with a passport as specified by this Law or the international treaty of Ukraine and a visa obtained in the prescribed manner, unless otherwise provided by the law or the international treaties of Ukraine.

The legal rules governing crossing of Ukraine’s border are determined in the Law of Ukraine “On Border Control” № 1710-VI of 05.11.2009. The art. 9 of the mentioned Law provides the conditions for crossing the state border by foreigners in case of entry into Ukraine. In particular, there are following conditions:

- 1) the person has a valid passport document;
- 2) there is no a decision of the authorized state body of Ukraine on the ban on entry into Ukraine;
- 3) he / she has an entry visa, unless otherwise provided by the legislation of Ukraine;
- 4) the person is able to confirm of the purpose of the planned stay;
- 5) the person has sufficient financial security for the period of planned stay and return to the country of origin or transit to a third country or the possibility to obtain sufficient financial security legally in Ukraine - for a citizen of a state included in the list of states approved by the Cabinet of Ministers (the confirmation of sufficient financial security of foreigners for entry into Ukraine, stay on the territory of Ukraine, transit through the territory of Ukraine and departure abroad and determination of the amount of such security is determined in the Resolution of Cabinet of Ministries of Ukraine № 884 of 04.12.2013).

Foreigners, stateless persons who do not meet one or more conditions of entry into Ukraine are denied crossing the state border.

The list of documents for entry to Ukraine for foreigners is determined in art. 15 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons”:

<i>Categories of foreigners and stateless persons</i>	<i>Necessary documents</i>
the citizens of countries that can enter Ukraine without a visa under the legislation of Ukraine or the international treaty of Ukraine	a passport document (for travelling abroad) or another document if it is provided by international agreements of Ukraine
for foreigners	a passport document (for travelling abroad) with valid visa (unless another procedure for entering is established by the legislation or international agreement of Ukraine)
permanently residing on the territory of Ukraine	a passport document (for travelling abroad) a permanent residence permit
who are married to citizens of Ukraine	a passport document (for travelling abroad) a temporary residence permit
staying in Ukraine for employment	a passport document (for travelling abroad) a temporary residence permit
staying in Ukraine for participation in the implementation of international technical assistance projects	a passport document (for travelling abroad) a temporary residence permit
staying in Ukraine for participation in the activities of religious organizations	a passport document (for travelling abroad) a temporary residence permit
who are in Ukraine for participation in the activities of branches, offices, representative offices and other structural units of public (non-governmental) organizations of foreign countries	a passport document (for travelling abroad) temporary residence permit
working in representative offices of foreign economic entities in Ukraine	a passport document (for travelling abroad) a temporary residence permit

working in branches or representative offices of foreign banks on the territory of Ukraine	a passport document (for travelling abroad) a temporary residence permit
who are in Ukraine to provide cultural, scientific, educational activities, as well as foreigners who are in Ukraine to participate in international and regional volunteer programs or to participate in the activities of organizations and institutions that involve volunteers	a passport document (for travelling abroad) the certificate of temporary residence

15. What are the residence formalities for EU citizens exercising an economic activity as salaried workers?

According to Article 42 of the Law of Ukraine “On Employment of population”, employers have the right to employ foreigners and stateless persons (regardless of their country of citizenship) in Ukraine on the basis of a work permit.

According to part 4 of Article 4 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons”, the legal basis for the stay of foreigners and stateless persons who arrived in Ukraine for employment is to obtain a temporary residence permit. The basis for obtaining a temporary residence permit is a work permit. Temporary residence permit is issued for the entire period of validity of the work permit.

16. Do EU migrant workers in Ukraine have the right to bring their family members with them?

According to Part 15 of Article 4 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons” family members of a foreigner or stateless person (regardless of country of citizenship, including EU citizens) who works in Ukraine and has a temporary residence permit, have the right to obtain a temporary residence permit in regard to family reunification. According to Ukrainian law, family members of a foreigner or stateless person – husband (wife), minor children, including minor children of husband (wife), disabled parents and other persons who are considered family members under the law of the country of origin (Article 1 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons”).

17. Are non-EU national family members of an EU migrant worker in Ukraine granted a residence permit of the same length of validity as the EU citizen?

A migrant worker (including an EU citizen) receives a temporary residence permit for the entire period of the work permit.

Family members of a migrant worker (regardless of their country of citizenship) receive a temporary residence permit for 1 year with the possibility of extending for another year (the certificate can be extended an unlimited number of times as long as the migrant worker has a work permit).

18. What are the conditions of eligibility of non-EU national family members of an EU migrant worker in Ukraine for receiving a residence permit?

According to Part 15 of Article 4 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons”, family members of a foreigner or stateless person (regardless of country of citizenship), who works in Ukraine and has a temporary residence permit, have the right to obtain a temporary residence permit in regard to family reunification. According to Ukrainian law, family members of a foreigner or stateless person – husband (wife), minor children, including minor children of husband (wife), disabled parents and other persons who are considered family members under the law of the country of origin (Article 1 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons”).

19. Are non-EU national family members of an EU migrant worker in Ukraine granted the permission to work? If so, under what conditions and what are the procedures for granting the work permits?

Employment of foreigners and stateless persons is carried out on the basis of a work permit for foreigners and stateless persons in accordance with the Law of Ukraine “On Employment” (hereinafter - the Law). There are no exceptions for family members of migrant workers.

According to Article 42 of the Law, employers have the right to employ foreigners and stateless persons in Ukraine on the basis of a permit issued by the territorial bodies of the central executive body implementing state policy in the field of employment and labour migration (regional employment centers). Without the permission provided by this article employment is carried out:

- foreigners and stateless persons permanently residing in Ukraine;
- foreigners and stateless persons who have acquired refugee status in accordance with the legislation of Ukraine or have received an immigration permit in Ukraine;
- foreigners and stateless persons who have been recognised as persons in need of additional protection or who have been granted temporary protection in Ukraine;
- representatives of the foreign naval (river) fleet and airlines that serve such companies in Ukraine;
- persons recognised as stateless persons as the central executive body that implements state policy in the field of migration (immigration and emigration), including combating illegal (illegal) migration, citizenship, registration of individuals, refugees and other statutory categories of migrants;
- employees of foreign mass media accredited to work in Ukraine;
- athletes who have acquired professional status, artists to work in Ukraine in the specialty;
- employees of emergency and rescue services to perform urgent work;
- employees of foreign missions who are registered on the territory of Ukraine in the manner prescribed by law;
- clergymen who are foreigners and temporarily stay in Ukraine at the invitation of religious organisations to conduct canonical activities only in such organisations with the official consent of the body that registered the statute (regulations) of the relevant religious organisation;

- foreigners and stateless persons who arrived in Ukraine to participate in the implementation of international technical assistance projects;

- foreigners and stateless persons who came to Ukraine to conduct teaching and / or research activities in institutions of professional higher and higher education at their invitation;

- other foreigners and stateless persons in cases provided by laws and international treaties concluded by Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine.

Work permits for foreigners and stateless persons differ depending on the period of validity.

Thus, in accordance with Article 42(3) of the Law of Ukraine “On Employment”, the permit is issued for a period of:

1) employment contract (contract) or a zero-hour contract (a gig contract), but not more than three years - for special categories of foreigners and stateless persons, *(according to the second part of Article 42-1 of the Law to a special category of foreigners and stateless persons include: foreign highly paid professionals, founders and / or participants and / or beneficiaries (controllers) of a legal entity established in Ukraine, university graduates in the top 100 in the world rankings of universities, according to the list established by the Cabinet of Ministers of Ukraine, foreign creative workers, foreign IT professionals; gig specialists);*

2) validity of an agreement (contract) concluded between Ukrainian and foreign business entities, but not more than for three years - for posted foreign workers;

3) actions of the decision of a foreign business entity on transfer of a foreigner or stateless person to work in Ukraine and a contract concluded between a foreigner or stateless person and a foreign business entity on transfer to work in Ukraine - for intra-corporate assignees;

4) validity of the employment agreement (contract), but not more than for one year - for all other foreign employees.

If there are grounds, the permit may be extended indefinitely.

The employer may specify in the application for a permit a shorter period than established by this Law.

It is not allowed to issue a permit for a shorter period than specified in the relevant application and within the time limits established by this Law.

According to Article 42(2) of the Law, the employer submits the following documents to the regional employment center in order to obtain a permit:

1) a statement in the form established by the Cabinet of Ministers of Ukraine, in which the employer confirms that the position in which the work of a foreigner or stateless person will be used, or work (services) performed (provided) by a gig specialist in accordance with the laws of Ukraine is related to belonging to the citizenship of Ukraine and does not require access to state secrets;

2) copies of the pages of the passport document of a foreigner or stateless person with personal data together with a translation into Ukrainian, certified in the prescribed manner;

3) colour photograph measuring 3.5 x 4.5 centimeters of a foreigner or stateless person;

4) a copy of the draft employment agreement (contract) or a zero-hour contract (a gig contract) with a foreigner or stateless person, certified by the employer.

In order to employ certain categories of foreigners and stateless persons, the employer shall additionally submit the following documents regarding:

1) graduates of universities included in the top 100 in the world rankings of universities - a copy of the diploma of higher education of the relevant university, recognised in Ukraine in the prescribed manner;

2) foreign workers of creative professions - notarised copies of documents identifying the object of copyright and / or related rights of the author and certifying authorship (copyright);

3) seconded foreign workers - a copy of the agreement (contract) concluded between Ukrainian and foreign economic entities, which provides for the use of labour of foreigners and stateless persons sent by a foreign employer to Ukraine to perform a certain amount of work (services);

4) intra-corporate assignees - a decision of a foreign business entity to transfer a foreigner or stateless person to work in Ukraine and a copy of the contract concluded between a foreigner or stateless person and a foreign business entity to transfer to work in Ukraine with a fixed term in Ukraine;

5) persons in respect of whom a decision has been made to draw up documents for resolving the issue of recognition as a refugee or a person in need of additional protection; protection in Ukraine;

6) persons who have submitted an application for recognition as a stateless person, and persons who are appealing against the decision to refuse recognition as a stateless person - a copy of the certificate of application for recognition as a stateless person.

For employment of founders and / or participants and / or beneficiaries (controllers) of a legal entity, the regional employment center independently receives information on the completion of the formation of the authorised capital of the company at the time of application for a permit.

For the employment of foreign IT professionals, the regional employment center independently receives information about the employer's registered activity - computer programming.

The regional employment center obtains information on whether the employer has the status of a resident of Diia City.

To extend the permit, the employer submits the following documents:

1) application in the form determined by the Cabinet of Ministers of Ukraine;

2) a photograph measuring 3.5 x 4.5 centimeters of a foreigner or a stateless person;

3) documents according to the list for obtaining a permit, if they have changed.

The Regional Employment Center independently receives in electronic form from the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations information on the status of the employer as a legal entity or a natural person - entrepreneur.

Documents provided for in this article that have been issued abroad must be recognised in the prescribed manner, unless otherwise provided by international treaties concluded by Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine.

Officials of the regional employment center are prohibited from requiring from employers documents not established by this Law.

According to Article 42-4, the amount of the fee for the issuance or renewal of a permit is:

1) for permits issued for a period of one to three years or their validity is extended for such a period - 6 subsistence minimums for able-bodied persons established by law on 1 January (*UAH 14,886 or EUR 481 as of 1 January 2022 at the official exchange rate NBU*);

2) for permits issued for a period of six months to one year inclusive or their validity is extended for such a period - 4 subsistence minimums for able-bodied persons established by law on 1 January of the calendar year in which the employer submitted documents (*UAH 9,924 or 321 euros as of 1 January 2022 at the official exchange rate of the NBU*);

3) for permits issued for a period of up to six months or their validity is extended for such a period - 2 subsistence minimums for able-bodied persons established by law on 1 January of the calendar year in which the employer submitted documents (*UAH 4,962 or EUR 161 as of 1 January 2022 at the official rate of the NBU*).

In accordance with Article 42-6 of the Law, the deadline for consideration of applications for the issuance or renewal of a work permit for foreigners and stateless persons is set. Thus, the regional employment center makes decisions within the following deadlines from the date of receipt of the application:

- 1) seven working days - on the issuance of a permit;
- 2) three working days - on the extension of the permit or on changes to it.

20. Do work permit requirements or similar restrictions exist for the family members (including those who are not EU nationals) of an EU migrant worker in Ukraine, and if so what are they?

Employment of foreigners and stateless persons is carried out on the basis of a work permit for foreigners and stateless persons in accordance with the Law of Ukraine “On Employment”. There are no exceptions for family members of migrant workers.

According to Article 42 of the Law of Ukraine “On Employment” (hereinafter - the Law), employers have the right to employ foreigners and stateless persons in Ukraine on the basis of a permit issued by the territorial bodies of the central executive body implementing state employment policy and labour migration (*regional employment centers*). Without a permission identified by this article, employment is provided to:

- foreigners and stateless persons permanently residing in Ukraine;
- foreigners and stateless persons who have acquired refugee status in accordance with the legislation of Ukraine or have received an immigration permit to Ukraine;
- foreigners and stateless persons who have been recognised as persons in need of additional protection or who have been granted temporary protection in Ukraine;

- representatives of the foreign naval (river) fleet and airlines that serve such companies in Ukraine;

- persons recognised as stateless persons as the central executive body that implements state policy in the field of migration (immigration and emigration), including combating illegal (illegal) migration, citizenship, registration of individuals, refugees and other defined categories of migrants;

- employees of foreign mass media accredited to work in Ukraine;

- athletes who have acquired professional status, artists to work in Ukraine in their professional capacity;

- employees of emergency and rescue services to perform urgent work;

- employees of foreign missions who are registered on the territory of Ukraine in the manner prescribed by law;

- clergymen who are foreigners and temporarily stay in Ukraine at the invitation of religious organisations to conduct canonical activities only in such organisations with the official consent of the body that registered the statute (regulations) of the relevant religious organisation;

- foreigners and stateless persons who arrived in Ukraine to participate in the implementation of international technical assistance projects;

- foreigners and stateless persons who came to Ukraine to conduct teaching and / or research activities in institutions of professional higher and higher education at their invitation;

- other foreigners and stateless persons in cases provided by laws and international treaties concluded by Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine.

Work permits for foreigners and stateless persons differ depending on the period of validity.

Thus, in accordance with Article 42³ of the Law of Ukraine “On Employment”, the permit is issued for a period of:

1) employment contract (contract) or a zero-hour contract (a gig contract), but not more than three years - for special categories of foreigners and stateless persons (*According to the second part of Article 42¹ of the Law, a special category of foreigners and stateless persons includes: foreign highly paid professionals, founders and / or participants and / or beneficiaries (controllers) of a legal entity established in Ukraine, university graduates in the top 100 in the world rankings of universities, according to the list determined by the Cabinet of Ministers of Ukraine, foreign workers of creative professions, foreign IT professionals, gig specialists*);

2) validity of an agreement (contract) concluded between Ukrainian and foreign business entities, but not more than for three years - for posted foreign workers;

3) actions of the decision of a foreign business entity on transfer of a foreigner or stateless person to work in Ukraine and a contract concluded between a foreigner or stateless person and a foreign business entity on transfer to work in Ukraine - for intra-corporate assignees;

4) the effect of the employment agreement (contract), but not more than one year - for all other foreign employees.

If there are basis, the permit may be extended indefinitely.

The employer may specify in the application for a permit a shorter period than established by this Law.

It is not allowed to issue a permit for a shorter period than specified in the relevant application and within the time limits established by this Law.

According to Article 42² of the Law, the employer submits the following documents to the regional employment center for a permit:

1) an application in the form established by the Cabinet of Ministers of Ukraine, in which the employer confirms that the position services will be performed (provided) by a specialist, in accordance with the laws of Ukraine, and does not require the citizenship of Ukraine nor access to state secrets;

2) copies of the pages of the passport document of a foreigner or stateless person with personal data together with a translation into Ukrainian, certified in the prescribed manner;

3) colour photograph measuring 3.5 x 4.5 centimeters of a foreigner or stateless person;

4) a copy of the draft employment agreement (contract) or a zero-hour contract (a gig contract) with a foreigner or a stateless person, certified by the employer.

To employ certain categories of foreigners and stateless persons, the employer shall additionally submit the following documents regarding:

1) university graduates in the top 100 in the world rankings of universities - a copy of a diploma of higher education of the university recognised in Ukraine;

2) foreign workers of creative professions - notarised copies of documents identifying the object of copyright and / or related rights of the author and certifying authorship (copyright);

3) seconded foreign workers - a copy of the agreement (contract) concluded between Ukrainian and foreign economic entities, which provides for the use of labour of foreigners and stateless persons sent by a foreign employer to Ukraine to perform certain tasks (services);

4) intra-corporate assignees - the decision of a foreign entity to transfer a foreigner or stateless person to work in Ukraine and a copy of the contract concluded between a foreigner or stateless person and a foreign entity to transfer to work in Ukraine with a fixed term in Ukraine;

5) persons in respect of whom a decision has been made to draw up documents for resolving the issue of recognition as a refugee or a person in need of additional protection - copies of the decision on registration of documents for resolving the issue of recognition as a refugee or a person in need of additional protection, and a certificate of application for protection in Ukraine;

6) persons who have submitted an application for recognition as a stateless person, and persons who are appealing against the decision to refuse recognition as a stateless person - a copy of the certificate of application for recognition as a stateless person.

For employment of founders and / or participants and / or beneficiaries (controllers) of a legal entity, the regional employment center independently receives information on the completion of the formation of the authorised capital of the company at the time of application for a permit.

For the employment of foreign IT professionals, the regional employment center independently receives information about the employer's registered activity - computer programming.

The regional employment center independently receives information about whether the employer has the status of a resident of Diia City.

To extend the permit, the employer submits the following documents:

- 1) application in the form specified by the Cabinet of Ministers of Ukraine;
- 2) a photograph measuring 3.5 x 4.5 centimeters of a foreigner or a stateless person;
- 3) documents according to the list for obtaining a permit, if they have changed.

The Regional Employment Center independently receives in electronic form from the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations information on the status of the employer as a legal entity or a natural person - entrepreneur.

Documents provided for in this article that have been issued abroad must be recognised in the prescribed manner, unless otherwise provided by international treaties concluded by Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine.

Officials of the regional employment center are prohibited from requiring from employers documents not established by this Law.

According to Article 42⁴, the fee for issuing or renewing a permit is:

- 1) for permits issued for a period of one to three years or their validity is extended for such a period - 6 subsistence minimums for able-bodied persons established by law on 1 January (*UAH 14,886 or EUR 481 as of 1 January 2022 at the official exchange rate of the NBU*);
- 2) for permits issued for a period of six months to one year inclusive or their validity is extended for such a period - 4 subsistence minimums for able-bodied persons established by law on 1 January of the calendar year in which the employer submitted documents (*UAH 9,924 or 321 euros as of 1 January 2022 at the official exchange rate of the NBU*);
- 3) for permits issued for a period of up to six months or their validity is extended for such a period - 2 subsistence minimums for able-bodied persons established by law on 1 January of the calendar year in which the employer submitted documents (*UAH 4,962 or EUR 161 as of 1 January 2022 at the official rate of the NBU*).

In accordance with Article 42⁶ of the Law, the deadline for consideration of applications for the issuance or renewal of a work permit for foreigners and stateless persons is set. Thus, the regional employment center makes decisions within the following deadlines from the date of receipt of the application:

- 1) seven working days - on the issuance of a permit;
- 2) three working days - on the extension of the permit or on changes to it.

According to Article 42 of the Law of Ukraine “On Employment”, foreigners and stateless persons may not be appointed or engaged in employment if, in accordance with the law, appointment to a relevant position or activity is related to the Ukrainian citizenship, unless otherwise provided by international treaties concluded by Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine.

Thus, in accordance with Article 19 of the Law of Ukraine “On Civil Service”, a person who has the citizenship of another state may not enter the civil service of Ukraine.

Article 52 of the Law of Ukraine “On the Judiciary and the Status of Judges” stipulates that a judge is a citizen of Ukraine who, in accordance with the Constitution of Ukraine and this Law, is appointed a judge, holds a full-time judicial position in one of Ukraine's courts and administers justice professionally.

Article 61 of the Law of Ukraine “On the National Police of Ukraine” establishes restrictions related to police service, in particular, a person who has lost Ukrainian citizenship and / or has citizenship (citizenship) of a foreign state or a stateless person may not be a police officer.

21. Can an EU migrant worker's right to reside be revoked on grounds of involuntary unemployment, illness or accident?

According to Part 4 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons”, foreigners and stateless persons who arrived in Ukraine in accordance with the law for employment or a zero-hour contract (a gig contract) and received a temporary residence permit are considered to lawfully in the territory of Ukraine for the period of work in Ukraine.

Part 4 of Article 5 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons” provides that the basis for issuing a temporary residence permit is an application of a foreigner or stateless person, a valid health insurance policy, work permit for foreigners and stateless persons (except foreigners and stateless persons who, according to Ukrainian law, have the right to employment without such a permit) and the obligation of the employer or resident of Diia City to notify the central executive body implementing state policy in the field of migration (immigration and emigration), including combating illegal migration, citizenship, registration of individuals, refugees and other statutory categories of migrants, and the central executive body that ensures the formation and implementation of state policy in the field of labour, employment, labour migration, labour relations, social dialogue, about the early horn termination or termination of an employment contract (contract), a zero-hour contract (a gig contract) with such a foreigner or stateless person.

For foreigners and stateless persons whose employment in accordance with the legislation of Ukraine is carried out without a work permit for foreigners and stateless persons, an employment contract (contract), a zero-hour contract (a gig contract) is submitted instead of such a permit, and for persons with foreign Ukrainian status - employment contract (contract), gig contract and certificate of a foreign Ukrainian.

According to Article 51 of Ukraine “On the Legal Status of Foreigners and Stateless Persons”, the validity of a temporary residence permit for foreigners and stateless persons who arrived in Ukraine in accordance with the law for employment or signing a zero-hour contract (a gig contract) is the validity of the work permit.

According to Article 42-10 of the Law of Ukraine “On Employment” (hereinafter - the Law), the employer is obliged to apply to the territorial body of the central executive body implementing state policy in the field of employment and labour migration (regional employment center) to revoke the permit for such circumstances:

1) the employment agreement (contract) or a zero-hour contract (a gig contract) with a foreigner or a stateless person is terminated;

2) the execution of an agreement (contract) concluded between Ukrainian and foreign business entities, which would require a foreigner or a stateless person to be sent to Ukraine, is terminated;

3) the central executive body implementing state policy in the field of migration (immigration and emigration), including combating illegal migration, citizenship, registration of individuals, refugees and other statutory categories of migrants, has decided to recognise a foreigner or a stateless person as a refugee or a person in need of additional protection, or a stateless person.

The regional employment center revokes the issued permit in case of:

1) failure of the employer to pay for the issuance or extension of the permit within the period specified in part two of Article 42-4 of this Law;

2) failure of the employer to submit to the regional employment center a copy of the employment agreement (contract) concluded with a foreigner or a stateless person within the period established by this Law, if the submission of such a copy is mandatory in accordance with this Law;

3) submission by the employer of a written application for revocation of the permit in the circumstances provided for in paragraphs 1-3 of part one of this article, or detection of such circumstances by the regional employment center;

4) detection of inaccuracy of data in the documents submitted by the employer, which could not be identified during the consideration of the application;

5) the existence of a decision on the forced return or forced expulsion of a foreigner or stateless person, adopted in accordance with Articles 26 and 30 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons”;

6) establishing the fact of employment of a foreigner or a stateless person on conditions other than those specified by the permit or another employer (except part-time work in accordance with the second paragraph of the second part of Article 42 of this Law and combining positions in accordance with the third part of Article 42 of this Law);

7) non-use by a foreigner or a stateless person of the right to appeal against the decision of the central executive body implementing state policy in the field of migration (immigration and emigration), including combating illegal migration, citizenship, registration of individuals, refugees and others legislation on the categories of migrants, refusal to recognise a refugee or a person in need of subsidiary protection or a stateless person, or in the case of a final decision on refusal to recognise a refugee or a person in need of subsidiary protection, refusal to recognise a stateless person;

8) entry into force of a court conviction under which a foreigner or a stateless person has been convicted of a criminal offense.

With regard to illness or accident, this is not a reason to revoke the EU migrant worker's right to reside.

In such cases, the labour migrant who is employed on the basis of a work permit for foreigners and stateless persons is subject to the legislation of Ukraine on compulsory state social insurance and guarantees for working citizens on their social protection in connection with temporary disability from the unfortunate case at work and occupational disease. Such persons are paid material support, insurance payments and social services are provided in accordance with the Law of Ukraine “On Compulsory State Social Insurance”.

22. Do the spouse and children under 21 (regardless of nationality) of an EU migrant worker have the right to employment in Ukraine without a work permit?

Employment of foreigners and stateless persons is carried out on the basis of a work permit for foreigners and stateless persons in accordance with the Law of Ukraine “On Employment”. Exceptions for spouses and children under 21 (regardless of nationality) of migrant workers are not provided.

According to Article 42 of the Law of Ukraine “On Employment” (hereinafter - the Law), employers have the right to employ foreigners and stateless persons in Ukraine on the basis of a permit issued by the territorial bodies of the central executive body implementing state employment policy and labour migration (*regional employment centers*). Without a permission identified by this article, employment can be offered to:

- foreigners and stateless persons permanently residing in Ukraine;
- foreigners and stateless persons who have acquired refugee status in accordance with the legislation of Ukraine or have received an immigration permit to Ukraine;
- foreigners and stateless persons who have been recognised as persons in need of additional protection or who have been granted temporary protection in Ukraine;
- representatives of the foreign naval (river) fleet and airlines that serve such companies in Ukraine;
- persons recognised as stateless persons as the central executive body that implements state policy in the field of migration (immigration and emigration), including combating illegal (illegal) migration, citizenship, registration of individuals, refugees and other defined categories of migrants;
- employees of foreign mass media accredited to work in Ukraine;
- sports athletes who have acquired professional status, artists to work in Ukraine by profession;
- employees of emergency and rescue services to perform urgent work;
- employees of foreign missions who are registered in the territory of Ukraine in the manner prescribed by law;
- clergymen who are foreigners and temporarily stay in Ukraine at the invitation of religious organisations to conduct canonical activities only in such organisations with the official consent of the body that registered the statute (regulations) of the relevant religious organisation;
- foreigners and stateless persons who arrived in Ukraine to participate in the implementation of international technical assistance projects;
- foreigners and stateless persons who came to Ukraine to conduct teaching and / or research activities in institutions of professional higher and higher education at their invitation;
- other foreigners and stateless persons in cases provided by laws and international treaties of Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine.

Work permits for foreigners and stateless persons differ depending on the period of validity.

Thus, in accordance with Article 42³ of the Law of Ukraine "On Employment", the permit is issued for a period of:

1) employment contract (contract) or gig contract, but not more than three years - for special categories of foreigners and stateless persons (*According to the second part of Article 42¹ of the Law, a special category of foreigners and stateless persons includes: foreign highly paid professionals, founders and / or participants and / or beneficiaries (controllers) of a legal entity established in Ukraine, university graduates in the top 100 in the world rankings of universities, according to the list determined by the Cabinet of Ministers of Ukraine, foreign workers of creative professions, foreign IT professionals, gig specialists⁴*);

2) validity of an agreement (contract) concluded between Ukrainian and foreign business entities, but not more than for three years - for posted foreign workers;

3) actions of the decision of a foreign business entity on transfer of a foreigner or stateless person to work in Ukraine and a contract concluded between a foreigner or stateless person and a foreign business entity on transfer to work in Ukraine - for intra-corporate assignees;

4) the effect of the employment agreement (contract), but not more than one year - for all other foreign employees.

If there are basis, the permit may be extended indefinitely.

The employer may specify in the application for a permit a shorter period than established by this Law.

It is not allowed to issue a permit for a shorter period than specified in the relevant application and within the time limits established by this Law.

According to Article 42² of the Law, the employer submits the following documents to the regional employment center for a permit:

1) an application in the form established by the Cabinet of Ministers of Ukraine, in which the employer confirms that the position services that will be performed (provided) by a gig specialist, in accordance with the laws of Ukraine does not require the citizenship of Ukraine nor access to state secrets;

2) copies of the pages of the passport document of a foreigner or stateless person with personal data together with a translation into Ukrainian, certified in the prescribed manner;

3) colour photograph measuring 3.5 x 4.5 centimeters of a foreigner or stateless person;

4) a copy of the draft employment agreement (contract) or a zero-hour contract (a gig contract) with a foreigner or a stateless person, certified by the employer.

To employ certain categories of foreigners and stateless persons, the employer shall additionally submit the following documents regarding:

1) university graduates in the top 100 in the world rankings of universities - a copy of a diploma of higher education of the university recognized in Ukraine

2) foreign workers of creative professions - notarised copies of documents identifying the object of copyright and / or related rights of the author and certifying authorship (copyright);

⁴ see footnote # 1 of this Chapter

3) seconded foreign workers - a copy of the agreement (contract) concluded between Ukrainian and foreign economic entities, which provides for the use of labour of foreigners and stateless persons sent by a foreign employer to Ukraine to perform a certain amount of work (services);

4) intra-corporate assignees - the decision of a foreign entity to transfer a foreigner or stateless person to work in Ukraine and a copy of the contract concluded between a foreigner or stateless person and a foreign entity to transfer to work in Ukraine with a fixed term in Ukraine;

5) persons in respect of whom a decision has been made to draw up documents for resolving the issue of recognition as a refugee or a person in need of additional protection - copies of the decision on registration of documents for resolving the issue of recognition as a refugee or a person in need of additional protection, and a certificate of application for protection in Ukraine;

6) persons who have submitted an application for recognition as a stateless person, and persons who are appealing against the decision to refuse recognition as a stateless person - a copy of the certificate of application for recognition as a stateless person.

For employment of founders and / or participants and / or beneficiaries (controllers) of a legal entity, the regional employment center independently receives information on the completion of the formation of the authorised capital of the company at the time of application for a permit.

For the employment of foreign IT professionals, the regional employment center independently receives information about the employer's registered activity - computer programming.

The regional employment center independently receives information about whether the employer has the status of a resident of Diia City.

To extend the permit, the employer submits the following documents:

- 1) application in the form specified by the Cabinet of Ministers of Ukraine;
- 2) a photograph measuring 3.5 x 4.5 centimeters of a foreigner or a stateless person;
- 3) documents according to the list for obtaining a permit, if they have changed.

The Regional Employment Center independently receives in electronic form from the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations information on the status of the employer as a legal entity or a natural person - entrepreneur.

Documents provided for in this article that have been issued abroad must be recognised in the prescribed manner, unless otherwise provided by international treaties concluded by Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine.

Officials of the regional employment center are prohibited from requiring from employers documents not established by this Law.

According to Article 42⁴, the amount of the fee for issuing or renewing a permit is:

- 1) for permits issued for a period of one to three years or their validity is extended for such a period - 6 subsistence minimums for able-bodied persons established by law on 1 January (*UAH 14,886 or EUR 481 as of 1 January 2022 at the official exchange rate of the NBU*);
- 2) for permits issued for a period of six months to one year inclusive or their validity is extended for such a period - 4 subsistence minimums for able-bodied persons established by law on 1 January

of the calendar year in which the employer submitted documents (*UAH 9,924 or 321 euros as of 1 January 2022 at the official exchange rate of the NBU*);

3) for permits issued for a period of up to six months or their validity is extended for such a period - 2 subsistence minimums for able-bodied persons established by law on 1 January of the calendar year in which the employer submitted documents (*UAH 4,962 or EUR 161 as of 1 January 2022 at the official rate of the NBU*).

In accordance with Article 42⁶ of the Law, the deadline for consideration of applications for the issuance or renewal of a work permit for foreigners and stateless persons is set. Thus, the regional employment center makes decisions within the following deadlines from the date of receipt of the application:

- 1) seven working days - on the issuance of a permit;
- 2) three working days - on the extension of the permit or on changes to it.

D. Facilitating free movement of workers (Directive 2015/54/EU)

23. Are judicial procedures available to EU migrant workers who consider themselves discriminated?

Article 26 of the Constitution of Ukraine and Article 3 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons” stipulate that foreigners and stateless persons legally staying in Ukraine enjoy the same rights and freedoms and have the same obligations as citizens of Ukraine - with the exceptions established by the Constitution, laws or international treaties of Ukraine.

According to Article 21 of the Labour Code of Ukraine, any discrimination in the field of labour is prohibited, including violation of the principle of equal rights and opportunities, direct or indirect restriction of workers' rights depending on race, colour, political, religious and other beliefs, gender, gender identity, sexual orientation, ethnic, social and foreign origin, age, health, disability, suspicion or presence of HIV / AIDS, marital and property status, family responsibilities, place of residence, membership in a trade union or other association. association of citizens, participation in a strike, appeal or intention to appeal to a court or other bodies to protect their rights or provide support to other employees in defending their rights, reporting on possible facts of corruption or corruption-related offenses, other violations of the Law of Ukraine “On Prevention corruption”, as well as assisting a person in making such a report, on linguistic or other grounds, related to the nature of the work or the conditions of its implementation.

Article 24(1) of the Law of Ukraine “On Advertising” sets requirements for advertisers - customers of advertising for vacancies (employment) for its production and / or distribution. In particular, it is prohibited to indicate the age of candidates in vacancy advertisements, to offer jobs only to women or only men, except for specific work that can be performed exclusively by persons of a certain sex, to make demands that favour women or men, representatives of a certain race, skin colour (except in cases specified by law, and cases of specific work that may be performed exclusively by persons of a certain sex), political, religious and other beliefs, membership in trade unions or other

associations of citizens, ethnic and social origin, property condition, place of residence, language or other grounds.

According to Article 14 of the Law of Ukraine “On Principles of Preventing and Combating Discrimination in Ukraine”, a person who believes that discrimination has arisen against him has the right to file a complaint to state bodies, authorities of the Autonomous Republic of Crimea, local governments and their officials. Commissioner of the Verkhovna Rada of Ukraine for Human Rights and / or to the court in the manner prescribed by law.

The exercise of this right cannot be a ground for prejudice, nor can it have any negative consequences for the person who has exercised this right and others.

Under Article 6(1) of the Civil Procedure Code of Ukraine (hereinafter – CPC of Ukraine), a court must respect the honour and dignity of all participants to the proceedings and administer justice predicated upon the fact that they are equal before the law and the court regardless of race, colour, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other status.

According to Article 496 of the CPC of Ukraine, foreigners, stateless persons, foreign legal entities, foreign states (their authorities and officials) and international organisations (hereinafter – foreign persons) have the right to file claims with courts of Ukraine to protect their rights, freedoms or interests.

Foreign persons have the same procedural rights and obligations as Ukrainian citizens and legal entities, except as provided by the Constitution and laws of Ukraine, as well as treaties ratified by the Parliament of Ukraine.

The Law of Ukraine “On Principles of Preventing and Combating Discrimination in Ukraine” (No. 5207-VI of 6 September 2012) (hereinafter – Law No. 5207-VI) defines institutional and legal principles of preventing and combating discrimination in order to ensure equal opportunities for exercising rights and freedoms of a person and citizen.

The provisions of Article 4 of Law No. 5207-VI stipulate that this Law applies to relations between legal entities of public and private law, the location of which is registered in Ukraine, as well as individuals who are residing in Ukraine.

Article 3(2) of this Law stipulates that foreigners and stateless persons under the jurisdiction of Ukraine, regardless of the legality of their residence, are entitled to recognition of their legal personality and fundamental human rights and freedoms.

According to Article 73 of the Law of Ukraine “On Private International Law”, foreigners, stateless persons, foreign legal entities, foreign states (their authorities and officials) and international organisations (hereinafter – foreign persons) have the right to go to Ukrainian courts to protect their rights, freedoms or interests.

Peculiarities of how diplomatic agents, personnel of international organisations and other persons participate in the proceedings may be established by treaties of Ukraine and laws of Ukraine.

Moreover, under Article 22 of the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men”, a person who believes that he/she has been discriminated against on the grounds of gender or has been sexually harassed or has suffered from gender-based violence has the right to bring the matter to authorities of the Autonomous Republic of Crimea, local

governments and their officials, the Commissioner for Human Rights of the Parliament of Ukraine and/or to court in the manner prescribed by law.

Individuals or groups of persons have the right to report violations of the rights guaranteed by the UN Convention on the Elimination of All Forms of Discrimination against Women to the UN Committee on the Elimination of Discrimination against Women if domestic remedies are exhausted or unduly delayed.

At the same time, it should be noted that the main authority in the system of central executive bodies that ensures shaping and implementing state policy in the fields of labour, labour migration, labour relations is the Ministry of Economy of Ukraine (paragraph 1, subparagraph 5 of the Regulation on the Ministry of Economy of Ukraine of 20 August 2014 No. 459).

Under Article 8 of the Labour Code of Ukraine, labour relations of Ukrainian citizens working abroad, as well as labour relations of foreign citizens working for Ukrainian enterprises, institutions, organisations are governed in accordance with the Law of Ukraine “On Private International Law”.

Peculiarities of governing labour relations of foreigners and stateless persons working in Ukraine are defined by Article 54 of the Law of Ukraine “On Private International Law” according to which labour relations of foreigners and stateless persons working in Ukraine are not governed by Ukrainian law if:

1) foreigners and stateless persons work as part of diplomatic missions of foreign states or missions of international organisations in Ukraine, unless otherwise provided by treaties binding Ukraine;

2) foreigners and stateless persons outside Ukraine have concluded employment contracts with foreign employers – individuals or legal entities – to work in Ukraine, unless otherwise provided by agreements or treaties binding Ukraine.

24. Can association organisations including social partners or other legal entities either on behalf of or in support of, EU migrant workers in judicial and/ or administrative procedures?

According to the Law of Ukraine “On Trade Unions, Their Rights and Guarantees of Trade Union Activity”, their associations have the right to represent and protect the rights and interests of trade union members. This applies to migrant workers from the EU who work in Ukraine on the basis of a work permit issued to foreigners and stateless persons, issued in the manner prescribed by law, and are members of trade unions.

Thus, trade unions and their associations represent and protect the labour, socio-economic rights and interests of trade union members in state and local governments, in relations with employers, as well as with other associations of citizens.

In matters of collective interests of trade union workers, their associations represent and protect the interests of workers, regardless of their membership in trade unions.

In matters of individual rights and interests of their members, trade unions are represented and protected in the manner prescribed by law and their statutes.

Trade unions and their associations have the right to represent the interests of their members in exercising their constitutional right to appeal for protection of their rights to the judiciary, the Verkhovna Rada Commissioner for Human Rights, and international judicial institutions.

Representation of the interests of trade union members in relations with employers, state bodies and local governments is carried out on the basis of a system of collective agreements and contracts, as well as in accordance with the law.

According to Article 6 of the Law of Ukraine “On Trade Unions, Their Rights and Guarantees of Activity”, foreign citizens and stateless persons may not form trade unions, but may join trade unions if their statutes so provide.

Article 19 of this Law stipulates that trade unions and their associations have the right to represent the interests of their members in exercising their constitutional right to appeal to the courts, the Verkhovna Rada Commissioner for Human Rights, and international judicial institutions.

Article 56(1) of the Civil Procedure Code of Ukraine (hereinafter – CPC) provide that in instances established by law, individuals and legal entities may go to the court to protect the rights, freedoms and interests of other persons or state or public interests and may participate in these cases.

Article 53 of the CPC of Ukraine provides that third parties who do not submit independent claims on the subject matter of the dispute may join the case on the side of the plaintiff or defendant before the preparatory proceedings are over or before the first hearing if the case is considered via summary proceedings if the decision in the case may affect their rights or obligations as to one of the parties. They may also be involved in the case at the request of the parties.

Moreover, we draw attention to the fact that Article 25 of the Constitution of Ukraine, Article 3(1) of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons” provides that foreigners and stateless persons legally residing in Ukraine enjoy the same rights and freedoms and have the same obligations as citizens of Ukraine except as provided by the Constitution, laws or treaties binding Ukraine.

The Law of Ukraine “On Principles of Preventing and Combating Discrimination in Ukraine” stipulates that under the Constitution of Ukraine, universally recognised principles and rules of international law and treaties binding Ukraine, all persons, regardless of their status and certain features have equal rights and freedoms and equal opportunities to exercise them.

Citizens have the right to participate in trade unions in order to protect their labour and social and economic rights and interests. Trade unions are civic organisations that unite citizens with common interests as to their professional activities. Trade unions are established upon free choice of their members, without prior authorisation. All trade unions have equal rights. Restrictions on membership in trade unions are established exclusively by this Constitution and laws of Ukraine (Article 36(1), 36(3), 36(5) of the Constitution of Ukraine).

For protecting their rights, trade unions and their associations have the right to represent the interests of their members in exercising their constitutional right to go to court, to bring the matter to the Parliamentary Commissioner for Human Rights and international judicial institutions.

Under the Law of Ukraine “On Civic Associations”, a civic association is a voluntary association of individuals and/or legal entities of private law established to exercise and protect rights and freedoms, meet community, including economic, social, cultural, environmental, and other interests.

To achieve its purpose (goals), the civic association has the right, in particular, to submit proposals (comments), statements (petitions), complaints to authorities, authorities of the Autonomous Republic of Crimea, local governments, their officials in the manner prescribed by law

(Article 1, Article 21 of the Law of Ukraine “On Civic Associations”). The appeal can be submitted by an individual (individual appeal) or a group of persons (collective appeal).

A complaint against the actions or decisions of an authority, local government, enterprise, institution, organisation, association of citizens, mass media, official is filed through the principle of subordination to a higher authority or official that does not deprive a citizen of the right to go to court under legislation in force, and if there is no such a body or if the citizen disagrees with the decision taken upon considering the complaint, the citizen can go directly to the court (Articles 3, 5, 16 of the Law).

At the same time, it should be taken into account that the Law of Ukraine “On Citizens' Appeals” does not cover the procedure for considering applications and complaints of citizens, established, in particular, by labour legislation. Persons who are not citizens of Ukraine and who legally reside in its territory have the same right to submit appeals as citizens of Ukraine, unless otherwise provided by treaties binding Ukraine (Article 1(3), Article 12 of the Law).

The Law of Ukraine “On Administrative Services” provides that administrative service is the outcome upon exercise of powers by the subject of administrative services at the request of an individual or legal person aimed at acquiring, changing or terminating the rights and/or obligations of such person in accordance with law; the subject submitting such an appeal is an individual, a legal entity that applies for getting administrative services (Article 1(1,2) of the Law of Ukraine “On Administrative Services”). Actions or omissions by officials authorised by law to provide administrative services and administrators may be challenged in court in the manner prescribed by law. Damage caused to individuals or legal entities by officials authorized by law to provide administrative services and by administrators because of their illegal actions shall be compensated in accordance with the procedure established by law (Article 19(2,3) of the Law of Ukraine “On Administrative Services”).

As it can be concluded from the comprehensive analysis of the legislation of Ukraine, in practice, administrative procedures are defined not only by legislation. Numerous procedures and regulations are determined at the level of bylaws not only by acts of the Cabinet of Ministers of Ukraine, but sometimes by orders of ministries. As a result, they all contain their own, field-specific procedures, features, exceptions in a given area of public relations.

As part of the task to streamline the rules of general administrative procedure, the Ministry of Justice together with representatives of the Secretariat of the Cabinet of Ministers of Ukraine, ministries, other central executive authorities, the judiciary, including the Supreme Court of Ukraine and with the participation and active support of experts and staff of the EU Delegation to Ukraine, the German Foundation for International Legal Cooperation, experts of the Project “Support to Comprehensive Reform of Public Administration in Ukraine (EU4PAR)”, SIGMA Programme have drafted a Law of Ukraine “On Administrative Procedure”, which was approved by the Parliament on 17 February 2022 and was on 13 March 2022 sent to be signed by the President of Ukraine

The Law of Ukraine “On Administrative Procedure” (hereinafter – the Law of Ukraine) governs the relations of executive authorities, authorities of the Autonomous Republic of Crimea, local governments, their officials and other entities authorised by law to perform public administration functions in respect of individuals and legal entities as to considering and resolving administrative cases in the spirit of the democratic and legal state defined by the Constitution of Ukraine and to

ensure law and order, as well as the obligation of the state to ensure and protect the rights, freedoms or legitimate interests of a person and citizen.

Under Article 31 of the Law of Ukraine, a person may participate in administrative proceedings in person and/or through a representative. A person does not have the right to participate in administrative proceedings or in to perform certain procedural actions through his/her representative if the law requires that the individual be present in person.

Thus, the law stipulates that a person is an individual (a citizen of Ukraine, foreigner or stateless person who legally resides in Ukraine), including a private entrepreneur, civic association that does not have the status of a legal entity, legal entity established pursuant to law, legislation of a foreign state or on the basis of international agreements of Ukraine (Article 2(1)(8) of the Law of Ukraine).

The ground for a representative of a person to participate in administrative proceedings is a power of attorney, contract, law, act of the management body of the legal entity and other grounds established by law. If provided by law, the power of attorney must be notarised.

The mandate of a representative of a legal entity, civic association that does not have the status of a legal entity established pursuant to law, a representative of a private entrepreneur may be confirmed by information contained in the Unified State Register of Legal Entities, Private Entrepreneurs and Civic Associations.

The interests of a legal entity are represented by its chair or another person acting within the mandate granted to him/her as per the constituent documents of such a person or the law.

Upon the written request of an individual (principal), including those submitted in electronically, authorisation to represent such a person may be exercised by the administrative body making an appropriate entry in the case file.

The same person may not represent several participants in administrative proceedings (except for persons having the same interest) and may not participate in administrative proceedings as a person who facilitates the consideration of the case. The procedure for engaging a joint representative of such persons in administrative proceedings to resolve a case involving a large number of persons is determined by this Law.

Representatives of such persons and, if provided by law, representatives of civic associations may be involved in the administrative proceedings to consider and resolve a case involving a large number of persons (usually more than ten persons). If there is a case with a large number of persons having the same interests, the authority may request such persons to appoint a joint representative. If such a requirement is not met within the period established by the authority, the authority has the right to appoint a joint representative from among such persons at its own discretion (Article 59(1) of the Law of Ukraine).

Thus, after the entry into force of this Law, the State of Ukraine will guarantee the right to involve foreigners (migrant workers from the EU) in administrative procedures at the legislative level.

25. Are there structures or bodies established which promote, analyse, monitor and support EU migrant workers?

Ministry of Economy of Ukraine in accordance with the Regulations approved by the Resolution of the Cabinet of Ministers of Ukraine of 20 August 2014 № 459 (as amended):

- ensures the formation and implementation of state policy in the field of labour, employment, labour migration;

- participates in the analysis of the economic component of the state migration policy;

- develops and submits in the prescribed manner proposals for employment, including providing citizens with additional guarantees in promoting employment, labour supply and demand in the labour market, social protection against unemployment, vocational training, regulation of labour migration of Ukrainian citizens.

In addition, in accordance with the resolution of the Cabinet of Ministers of Ukraine “On approval of the Procedure for forming an immigration quota, the Procedure for proceedings on applications for immigration permits and applications for its abolition and implementation of decisions” dated 26 December 2002 № 1983 (as amended), the Ministry of Economy:

- makes proposals to establish an immigration quota for the next calendar year for persons who have made foreign investment in the economy of Ukraine in the amount of not less than 100 (one hundred) thousand US dollars, highly qualified specialists and workers in dire need of the Ukrainian economy;

- checks within a month the documents confirming the compliance of the level of their qualification with the requirements for workers, the urgent need for which is felt for the economy of Ukraine, and in case of a positive conclusion them a document in support of such a request.

Resolution of the Cabinet of Ministers of Ukraine “On approval of the list of licensing bodies and repeal of some resolutions of the Cabinet of Ministers of Ukraine” dated 5 August 2015 № 609 (as amended).

The State Employment Service in accordance with the Regulations approved by the Order of the Ministry of Economy of 16 December 2020 № 2663, registered in the Ministry of Justice of Ukraine on 28 December 2020 on № 1305/35588:

- ensures the implementation of state policy in the field of employment and labour migration, social protection against unemployment;

- participates in the implementation of international cooperation to solve problems of employment, social protection of citizens from unemployment and labour migration;

The regional employment centers:

- inform labour market entities about the implementation of state targeted programmes, investment, infrastructure projects, projects of united territorial communities, international technical assistance related to job creation, promotion of self-employment, start-up and development of entrepreneurial activity, reintegration migrant workers;

- ensure the issuance of work permits to employers of foreigners and stateless persons, keeping records of such permits;

The Order of the Cabinet of Ministers of Ukraine adopted in 2017 № 257 (as amended) approved the Action Plan to ensure the reintegration into society of migrant workers and their families.

This Action Plan provides, in particular:

- involvement of migrant children in the educational process by providing additional classes with them (primarily on the Ukrainian language, Ukrainian literature and history), in particular with the use of Internet resources (provided by the Ministry of Education and Science);

- carrying out explanatory work in order to inform migrant workers and members of their families about the use of international payment systems for the transfer of funds to the territory of Ukraine (provided by the NBU);

- elaboration of the issue of providing psychological support to labour migrants and members of their families who have become victims of labour or other types of exploitation (provided by the Ministry of Foreign Affairs, MES, Ministry of Social Policy), etc., taking into account international experience.

It is also worth noting that as a result of the initiated medical reform, the right to medical care is equal to the citizens of Ukraine under Article 11 of the Law of Ukraine “Fundamentals of the Legislation of Ukraine on Health Care” remained only for foreigners and stateless persons permanently residing in Ukraine, as well as for persons recognised as refugees or persons in need of additional protection. Thus, according to Part 1 of Art. 4 of the Law of Ukraine "On State Financial Guarantees of Medical Care" within the programme of medical guarantees the state guarantees citizens, foreigners, stateless persons permanently residing in Ukraine and persons recognised as refugees or persons in need of additional protection, full payment at the expense of the State Budget of Ukraine they need medical services and medicines related to the provision of:

- 1) emergency medical care;
- 2) primary care;
- 3) secondary (specialised) medical care;
- 4) tertiary (highly specialised) medical care;
- 5) palliative care;
- 6) medical rehabilitation;
- 7) medical care for children under 16;
- 8) medical care in connection with pregnancy and childbirth.

E. Safeguarding the supplementary pension rights of employed and self-employed persons moving within the EU (Directive 98/49/EC)

26. Does Ukraine have any supplementary (professional) pension schemes?

The non-state pension system is the third level of the pension system. It has been developed since 2004 after the entry into force of the Law of Ukraine “On Private Pension Provision”. The basis of such a system are Non-state pension funds (hereinafter – NPF). At the beginning of 2022, the State Register of Financial Institutions contained information on 63 NPFs and 19 NPF administrators. The total number of NPF participants was about 0.9 million persons.

At the same time, non-state pension provision, as a rule, means individual pension schemes of certain contributions. The practice of applying supplementary pensions within the meaning of Directive 98/49/EC is practically not applied in Ukraine.

27. What happens if a member of a supplementary pension scheme moves to an EU Member State?

The participant's pension funds continue to be accounted for in his individual pension account. Upon reaching the retirement age established by the legislation on Non-state pension provision, and in other cases provided by law, the participant has the right to receive benefits.

28. Can payments from a supplementary pension scheme be made to a scheme member residing in an EU Member State?

Payments to the participant are made to the current account opened for him in the selected bank operating in Ukraine. The participant can use the funds in any EU Member State using a bank card.

29. Can workers who are temporarily posted from Ukraine to an EU Member State continue to make contributions to their supplementary pension scheme?

The participant can continue to pay contributions to the NPF by making a bank transfer in accordance with the relevant pension scheme.

30. Do supplementary pension schemes provide adequate information to members about their pension rights if they move to an EU Member State?

Information on the status of his individual pension account can be obtained through the personal account online from any place where there is access to the Internet.

F. Minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights (Directive 2014/50/EU)

31. Are there any specific (waiting and/or vesting periods) on acquisition of supplementary pension rights?

The practice of supplementary pensions in the sense of Directive 2014/50/EU in Ukraine has not gained practical application.

Since 2004, Ukraine has had the third level of a funded pension provision – the system of a private pension provision, based on the principles of a voluntary participation of the citizens, employers and their associations in the formation of the pension savings in order to receive the pension benefits under the conditions and in accordance with a private pension provision.

32. Do the rules for supplementary pension schemes permit the preservation of dormant rights for scheme leavers and the pro-rata equal treatment of dormant members with active members? Are there any preservation standards (eg indexation, capital returns...)?

The practice of supplementary pensions in the sense of Directive 2014/50/EU in Ukraine has not gained practical application.

Since 2004, Ukraine has had the third level of a funded pension provision – the system of a private pension provision, based on the principles of a voluntary participation of the citizens, employers and their associations in the formation of the pension savings in order to receive the pension benefits under the conditions and in accordance with a private pension provision.

33. What is the legal basis for establishing supplementary (professional) pension schemes and how many members (workers) are enrolled?

Introduction of supplementary pension schemes in general is possible on the basis of the Law of Ukraine “On Non-State Pension Provision”, which regulates only the basic requirements for such pension schemes.

The practice of supplementary pensions in the sense of Directive 2014/50/EU in Ukraine has not gained practical application.

Since 2004, Ukraine has had the third level of a funded pension provision – the system of a private pension provision, based on the principles of a voluntary participation of the citizens, employers and their associations in the formation of the pension savings in order to receive the pension benefits under the conditions and in accordance with a private pension provision.

II. EURES (Regulation 2016/589)

34. What is the legal and administrative framework to facilitate mobility of workers within and beyond the territory of Ukraine? Are public or private employment agencies, social partners and other concerned organisations involved and how?

According to Article 22 of the Law of Ukraine “On Employment” (hereinafter - the Law), the State Employment Service:

- assists citizens in the selection of suitable work, including taking into account mobility with their consent;
- provides employers with employee selection services;
- participates in the implementation of measures aimed at preventing mass layoffs, prevention of insured events, promoting labour mobility and employment in regions with the highest unemployment rates, monofunctional cities and towns dependent on city-forming enterprises;
- Participates in the implementation of international cooperation to address employment, social protection of citizens from unemployment and labour migration.

In addition, in the system of measures of the state employment service on the mobility of the unemployed, an important role is played by measures defined by the second part of Article 24 of the Law:

- 1) vocational guidance and vocational training;
- 2) stimulating the activities of employers aimed at creating new jobs and employment of the unemployed;
- 3) creating conditions for self-employment and supporting entrepreneurial initiative;
- 4) assistance in providing young people with the first job and introduction of incentives for internships at enterprises, institutions and organisations, regardless of ownership, type of activity and management, individuals who use hired labour, young students;
- 5) promoting the employment of persons with disabilities;
- 6) ensuring the participation of the unemployed in public works and other temporary work;
- 7) creation of incentives for integration into the labour market of unemployed able-bodied persons from among members of low-income families.

Also, the second part of Article 43 of the Law stipulates that the status of the unemployed is granted to persons, regardless of the registered place of residence or stay, which promotes the mobility of the population.

The same Law regulates the activities of business entities that provide employment mediation services and other business entities that hire employees to continue their work in Ukraine from other employers.

According to Article 36 of the Law, employment mediation services include job search and employment assistance, selection of employees in accordance with the orders of employers (including foreign ones) within the agreements (contracts) concluded with employers.

The list of economic entities that provide employment mediation services and economic entities that hire employees for further work in Ukraine from other employers is formed and maintained by the State Employment Center in accordance with the Procedure approved by the Cabinet of Ministers of Ukraine dated 5 June 2013 № 400.

Business entities that provide employment support services and business entities that hire employees to continue their work in Ukraine from other employers are obliged to:

- 1) provide citizens with complete and reliable information on the employer's demand for labour (vacancies), its requirements for qualifications, work experience, conditions, nature and remuneration;
- 2) cooperate with the relevant territorial body of the central executive body that implements state policy in the field of employment and labour migration, enterprises, institutions and organisations, trade unions and their associations, employers' organisations and their associations;
- 3) ensure the protection of information received from citizens applying for employment, and compliance with the rules of use and dissemination of such information established by the laws of Ukraine "On Information" and "On Personal Data Protection", as well as the confidentiality of commercial information of employers ;

4) submit to regional employment centers information on the number of persons employed by them in the manner prescribed by the central executive body, which ensures the formation of state policy in the field of employment and labour migration, in coordination with the central executive body to implement state policy in statistics.

Business entities that provide employment mediation services are not entitled to:

1) knowingly recruit, employ or hire workers for work involving unacceptable hazards and risks, as well as for work in which these workers may be victims of abuse or discrimination of any kind;

2) prevent the hiring of an employee directly by the employer, restrict the professional mobility of the employee, impose sanctions on an employee who has agreed to work for another employer;

3) make employees at the disposal of the employer to replace its employees who are on strike or other collective action.

According to Article 37 of the Law, business entities that provide employment mediation services in Ukraine cooperate with regional employment centers by:

1) concluding agreements on cooperation in certain areas of activity, including for the exchange of data on vacancies;

2) conducting joint activities (projects);

3) counseling in order to improve professional practice and provide services to employers and jobseekers, including those who have additional guarantees in promoting employment.

Business entities that provide employment mediation services in Ukraine are prohibited from receiving fees, commissions and other rewards from citizens who have been provided with these services. Payment for employment services is made exclusively by the employer to whom such services are provided.

The activities of economic entities that provide employment mediation services abroad are subject to licensing and regulated by the laws of Ukraine “On Licensing of Economic Activities”, “On Foreign Economic Activity”, this Law and other legislative acts of Ukraine.

According to Article 38 of the Law, employment support services are provided in accordance with the applications of the foreign employer (his contractor) for vacancies and only within the framework of foreign economic agreements (contracts) on the provision of mediation services concluded by foreign entities in the field of employment in order to facilitate the signing of an employment contract. The obligatory appendix to the foreign trade agreement (contract) on the provision of intermediary services in the field of employment abroad is a draft employment contract certified by a foreign employer.

An economic entity that provides employment mediation services abroad shall be liable in accordance with the law for the deterioration of the terms of the employment contract concluded between the person and the foreign employer, a copy of which is kept by such entity for three years.

The provision of employment mediation services abroad is carried out after the conclusion of an agreement on the provision of employment mediation services abroad between a person and an economic entity. An economic entity that provides mediation services in employment abroad shall not have the right to receive payment from the persons to whom such services are provided until the signing of the act of performed works.

An economic entity that provides mediation services in employment abroad assists citizens who have been provided with such services in resolving legal and social protection issues and informs them about the mechanism of voluntary participation in compulsory state social insurance.

Citizens during the period of employment abroad have the right to participate in compulsory state social insurance, including pension, in accordance with the legislation of Ukraine, which gives them the right to social protection in the event of relevant insurance cases.

Article 39 of the Law regulates the activities of business entities that hire employees for further work in Ukraine from another employer.

Thus, business entities - employers who hire employees to continue their work in Ukraine to another employer, send employees if it is provided by the collective agreement of such an employer, and with the consent of the primary trade union organisation and are obliged to:

- 1) enter into an agreement with the employer on the use of the employee's work;
- 2) pay the employee a salary in the amount not lower than the amount of the minimum wage established by law and the salary received by the employee from the employer for the performance of the same work;
- 3) provide the employee with time of work and rest on the terms specified for the employees of the employer, which is provided by the terms of the collective agreement and the rules of internal labour regulations;
- 4) accrue and pay a single contribution to the obligatory state social insurance in favor of the employee;
- 5) not to interfere with the conclusion of an employment contract between the employee and the employer in which he performed work.

An economic entity may hire employees for further performance of their work in Ukraine from individuals on the basis of an agreement concluded between the economic entity and the individual for the provision of services.

An entity is prohibited from sending employees to jobs with an employer that:

- 1) during the year the number (staff) of employees was reduced;
- 2) the norm of the number of employees of the main professions involved in the technological processes of the main production has not been complied with;
- 3) workers are involved to perform work in harmful, dangerous and difficult working conditions, as well as work in the main professions of the technological process of basic production.

According to Article 41 of the Law, state regulation of the activities of economic entities that provide employment mediation services is carried out, in particular, by:

- 1) maintaining a list of such entities;
- 2) legal support for the activities of business entities that provide employment mediation services, provide services to persons in search of work and assistance in employment, as well as the selection of personnel for employers;

3) supervision and control over compliance with the legislation on labour and employment of the population, carried out by the authorised body for the implementation of state policy on state supervision and control over compliance with the legislation on employment and employment.

According to the State Employment Center, based on the submission of business entities that provide employment support services, in 2021 the total number of citizens employed by such business entities was 168.6 thousand people, which is 18% more than in 2020. In particular, 15.4 thousand people (9%) were employed in Ukraine, which is 9% more than in 2020, 40.6 thousand people (24%) were sent to work for another employer, which is 5% less than in 2020, 112.7 thousand people (67%) were employed abroad, which is 31% more than in 2020.

Employment in Ukraine for vacancies.

By gender: in the total number of people employed in Ukraine on vacancies, women accounted for 65%, men - 35%.

By age groups: 55% of employees were under the age of 35,

26% - aged 35-45 years, 19% - over 45 years.

By level of education: 43% had higher education, 36% - vocational education; 21% - complete general education.

The most common professions in which citizens were employed were: marker (1.3 thousand people); pharmacist (910 people); stacker-packer (618 people); cooker (614 people); pharmacist (500 people); gas station operator (476 people); administrator (422 people); specialist (403 people); kitchen worker (395 people); driver of motor vehicles (373 persons); auxiliary worker (341 people), sales consultant (311 people); food seller (223 people); cashier of the trading hall (270 people).

By salaries: 30% - received a minimum wage (6.5 thousand UAH), 56% - from 6.5 thousand UAH. up to UAH 19.5 thousand, 7% - from UAH 19.5 thousand to UAH 32.5 thousand, and 7% - over UAH 32.5 thousand.

By regions: 38% of those sent to work for other employers - to Kyiv.

Sent to work in Ukraine to other employers.

Of the total number of other employers sent to work in Ukraine, 71% were urban residents and 29% were rural residents.

By duration of work: 34% of those sent to work for another employer carried out their activities for up to 6 months, 18% - from 6 months to 1 year and 48% - more than 1 year.

According to the level of wages: 17% received a minimum wage (UAH 6.5 thousand), 75% - from UAH 6.5 thousand to UAH 19.5 thousand, 5% - from UAH 19.5 thousand up to UAH 32.5 thousand, 3% - over UAH 32.5 thousand.

By regions: 38% of those sent to work for other employers - in Kyiv.

Employment of Ukrainian citizens abroad.

The vast majority of citizens - 76.8 thousand people (68%) were employed by agencies of Odesa region (maritime transport), which is a quarter (or 15 thousand people) more than in 2020. In addition, a significant increase in the number of employed abroad was observed in Poltava, Kherson, Zakarpattia, Mykolaiv, Lviv regions and the city of Kyiv (by 1.1 - 3.5 thousand people).

The largest flows of labour migration - to Cyprus (22.8 thousand people, or one in five), to Poland (18.6 thousand); Great Britain (9.5 thousand); Germany (9.2 thousand); Greece (7.1 thousand); Marshall Islands (3.9 thousand); Czech Republic (3.5 thousand people); Hungary (3.2 thousand people); Panama (3.0 thousand people); Belgium (2.9 thousand people); The Netherlands (2.8 thousand people); Liberia (2.6 thousand people), Singapore (2.6 thousand people), the United States (2.5 thousand people), Latvia (1.7 thousand people), Lithuania (1.6 thousand people). An increase in the number of migrant workers was observed in most countries, mostly in Cyprus (an increase of 5.6 thousand people), Poland (by 3.2 thousand), the Czech Republic (by 2.8 thousand), the United Kingdom (by 2.5 thousand), Hungary (by 2.4 thousand).

Of the total number of people working abroad, 88% were men. Urban residents accounted for 78%.

By age groups: half of migrant workers are under 35 years of age; 28% - aged 36 to 45 years; 24% are over 45 years old.

By level of education: 48% had higher education, 39% - vocational education; 13% - complete general education.

By duration of work: 71% of migrant workers signed contracts for up to 6 months, 26% - from 6 months to 1 year, and 3% - more than 1 year.

In the country of destination, migrant workers were employed: by type of economic activity: 75% - in the field of transport (maritime), 7% - in the processing industry; 3% - in agriculture; 2% - on the construction site; 2% - in trade. by professional groups: almost half - took the place of specialists and professionals; 18% - were employed in unskilled jobs, 14% - workers in maintenance, operation of equipment and machinery.

The increase in the number of employed abroad occurred in almost all types of economic activity and in all occupational groups. In particular, the largest growth was observed: among economic activities: in the field of transport (by 15.3 thousand people), as well as in the processing industry (by 2.8 thousand people), trade and repair (by 1.7 thousand people). By professional groups: among specialists (by 7.8 thousand people), among the representatives of the simplest professions (by 5.9 thousand people), professionals (by 4.4 thousand people), skilled workers (by 2.8 thousand people) persons), equipment maintenance workers (for 2.5 thousand people).

A comparative analysis of indicators on employment of citizens with the assistance of the state employment service with data from private employment agencies (according to Form 1-PA) for 2021 showed the following: the number of people employed by the state employment service (503.8 thousand people) was 9 times higher than the number of people employed by private employment agencies in Ukraine (both for vacancies and those sent to work for other employers).

Some characteristics of citizens employed by the state employment service and private employment agencies:

By sex: half of those employed with the assistance of the state employment service were women. At the same time, women (65%) predominated among those employed by private employment agencies in Ukraine, while mostly men (88%) officially worked abroad.

By place of residence: among the employed, both with the assistance of the state employment service and private employment agencies, the majority were urban residents (57% - 78%).

By age: private employment agencies, both in Ukraine and abroad, employ people of different ages (in particular, 55% of employees in Ukraine under the age of 35 have vacancies in Ukraine). At the same time, among the unemployed employed with the assistance of the state employment service, 74% are over 35 years old.

By education: the structure of employees with the assistance of both the state employment service and private employment agencies (in Ukraine and abroad) does not differ significantly: one in five - had a general secondary education, 36% -40% - vocational education, from 40% to 48% of employees had higher education.

By type of economic activity: 53% of employees in the state employment service got a job in agriculture, processing industry and the state employment service. At the same time, 75% of those employed by private employment agencies abroad worked in the transport sector.

In addition, the State Employment Service supports current trends in the development of e-government and actively implements e-services using Internet technologies, which is currently one of the innovative forms of providing social services to citizens and employers.

The service is constantly modernised and developed, cares about improving the social protection of Ukrainian citizens from unemployment, has clear structural and logical models of service to the population and employers.

Simplification of procedures for obtaining employment services through electronic services promotes the mobility of job seekers, intensifying their efforts in today's labour market.

The Resolution of the Cabinet of Ministers of Ukraine of 19 March 2022 № 334 "Some issues of registration, re-registration, termination of registration of unemployed and keeping records of job seekers, accrual and payment of unemployment benefits for the period of martial law" defines features of registration, re-registration, termination of registration of unemployed and keeping records of jobseekers, accrual and payment of unemployment benefits, as well as service of citizens by the state employment service during martial law in Ukraine. Therefore, the registration of the unemployed is carried out on the day of submitting the application for unemployment status to the chosen employment center in person, during a direct visit, in electronic form using the Unified State Web Portal of electronic services (hereinafter - Portal Diia), including number of the mobile application of the Diia Portal, or by means of telecommunication means.

The State Employment Service has created a unified operational base of vacancies, job seekers and vocational training opportunities throughout the country. This allows to expand the area of job search for the unemployed not only within the district or region, but also the state as a whole.

Based on the concluded agreements, the State Employment Service systematically cooperates with territorial communities, promoting the development of settlements and the implementation of employment programmes. An important issue of cooperation of employment centers / branches with communities is to solve employment problems, bring social services closer to residents, motivate them to productive employment and economic development of communities; the efficiency of the provision of services offered by the employment service and the territorial accessibility of the population to such services, especially in rural areas.

Residents of communities are offered a wide range of information and consulting services on job search, conditions and procedures for registration, unemployment benefits, organisation and conduct of business activities, etc.

The state employment service plays an important role in organising measures to attract the registered unemployed and job seekers in the implementation of infrastructure projects, road construction programs and projects for the improvement of cities and towns, prompt provision of labour to perform certain types of work.

In March 2022, the Telegram-channel “State Employment Service” was launched, through which customers can get comprehensive information on all areas of employment and social insurance in case of unemployment.

Employers and jobseekers receive the necessary information online on the official Internet resources of the State Employment Service www.dcz.gov.ua, verified Facebook pages of both the State Employment Service and regional employment centers.

35. Is there a country-wide database and website for job vacancies, job applications and CVs? How are vacancies displayed on this website? Does the website also contain information on apprenticeships and traineeships?

According to Article 22 of the Law of Ukraine “On Employment”, the formation of a database of vacancies (positions) is based on information received from employers and businesses that provide employment mediation services.

The vacancy database of the State Employment Service is filled both at the expense of vacancies submitted by employers in the reporting form № 3-PN “Information on labour demand (vacancies)” and obtained from other sources during personal meetings with employers, by phone, by e-mail, from the official websites of institutions, job search sites, from ads, etc.

The mechanism for submitting reports on labour demand is defined by the Procedure for submitting the reporting form № 3-PN “Information on labour demand (vacancies)” (hereinafter - reporting on the form № 3-PN), approved by the order of the Ministry of Social Policy dated 31 May 2013 № 316 (as amended by the order of the Ministry of Social Policy of Ukraine of 5 December 2016 № 1476).

To promptly address the issue of recruiting and speeding up vacancies, the reporting form № 3-PN can be submitted by the employer to any employment center, regardless of its location, in particular: on paper, electronic means (scanned copy), and also in electronic form through the “Electronic Cabinet of the Employer”.

Based on the reporting form № 3-PN, information on vacancies (vacancies) is entered into the database of the Unified Information and Analytical System of the State Employment Service (hereinafter - EIAS), which is displayed online on the website of the State Employment Service www.dcz.gov.ua, whose vacancy database is freely available and updated daily with new job offers from employers.

Currently, the State Employment Service has the largest nationwide database of real vacancies (job propositions) received from employers throughout the country, unparalleled by recruitment companies and employment agencies.

The website of the State Employment Service has a section “Training”, which displays information on educational institutions for vocational training of registered unemployed, legislation

and regulations, opportunities for vocational training in the field of public employment service, training directly with employers, modern and relevant forms vocational training, their benefits.

Since December 2019, the State Employment Service has introduced a digital service - Educational Portal of the State Employment Service (<http://skills.dcz.gov.ua/>), through which you can develop your own skills necessary for successful employment (to compile a summary of the modern format, preparation for an interview with the employer, etc.). Those interested can gain new competencies, choose educational courses and webinars, including those conducted by vocational education centers of the state employment service.

36. According to the law what are the obligations regarding the publication of vacancies? Are employers obliged to publish all vacancies with the public employment services? Is it compulsory to display all vacancies on a central website?

In accordance with the order of the State Employment Center dated 28 January 2020 № 5 “On Amendments to the List of Data Sets to be Disclosed in the Form of Open Data Managed by the State Employment Service” in order to ensure timely publication of data sets, daily unloading from the Unified Information-analytical system of the state employment service information on current vacancies of the employment service as of Starting from 29 January 2020, work began on the daily formation of an archive file entitled “List of current vacancies to date” in .xml format, followed by sending it by electronic means of the Communications Department for posting on the website of the State Employment Service www.dcz.gov.ua and the Unified State Open Data Web Portal www.data.gov.ua.

Pursuant to Clause 4 of Part 3 of Article 50 of the Law of Ukraine “On Employment” (hereinafter - the Law), employers are obliged to provide timely and full information to the territorial bodies of the central executive body implementing state policy in the field of employment and labour migration on labour demand (vacancies).

The EIAS vacancy database is updated daily with new job offers submitted by employers to employment centers / branches according to the reporting form.

№ 3-PN “Information on labour demand (vacancies)” or posted by them independently using the service “Employer's e-office”, and is posted online on the website of the State Employment Service www.dcz.gov.ua.

The database of vacancies is freely available to all Internet users.

Currently, the State Employment Service has the largest nationwide database of real vacancies (job offers) received from employers throughout the country, unparalleled by recruitment companies and employment agencies.

37. What are the support services provided to workers (and jobseekers) and employers and by whom? Are they free of charge?

Providing recruitment services

In order to meet the needs of clients of the employment service - to assist citizens in finding suitable work and providing employers with recruitment services, a new form of recruitment has been introduced in all employment centers.

Employment specialists work on the latest trends in effective recruitment: create job profiles and portraits of candidates, pre-select applicants according to individual requirements of the employer, including by conducting online interviews with employers, present the employer and his need for a wide range of job seekers. Employers' questionnaires, seminars, trainings, etc.

The introduction of a recruitment approach allows us to focus on ensuring the quality of recruitment for employers, meeting customer needs for employment and professional development.

Implementation of a set of special measures in the situation of planned dismissal of employees

One of the main tasks of the State Employment Service, defined by the Law of Ukraine "On Employment", is to participate in measures aimed at preventing mass layoffs, prevention of insured events, promoting labour mobility and employment in regions with highest unemployment, monofunctional cities and towns.

The State Employment Service, in order to preserve the labour potential of enterprises, conducts appropriate preventive work aimed at:

- involvement of executive bodies and local self-government, parties of social dialogue in the development of a set of measures to ensure the employment of employees subject to dismissal;
- informing employees, including in the format of field seminars, about the services of the public employment service, work in the same area by their professions, specialties, qualifications, and in their absence - the selection of other work based on individual wishes and societal needs ;
- use of mechanisms of financial support of enterprises in the period of temporary difficulties, such as partial unemployment benefits, preventive measures aimed at preventing the occurrence of insured events;
- holding meetings of special commissions to take measures to prevent a sharp rise in unemployment in a particular area during the mass layoffs.

In case of workers' appeals, the state employment service promotes the development and implementation of joint measures with local authorities to respond quickly to the situation of possible mass layoffs and search for alternatives to ensure their stable employment.

Providing advice to individuals on the organisation and conduct of business activities

In order to improve the system of information and consulting services on the basis of the State Employment Service, free individual and group consultations on the organisation and conduct of business activities with the involvement of public officials: the State Labour Service of Ukraine, the State Regulatory Service of Ukraine, Ministry of Justice of Ukraine, State Tax Service of Ukraine, Pension Fund of Ukraine, Ministry of Health of Ukraine, etc.

Information and consulting services related to the implementation of certain norms of labour and employment legislation

Specialists of the state employment service provide advice on compliance with labour and employment legislation, state social insurance in case of unemployment, including in the case of dismissal or dismissal of employees; employment of citizens in need of social protection and unable to compete on an equal footing in the labour market, the use of foreign labour, etc.

The full range of services offered by the public employment service is provided exclusively on a gratuitous basis.

38. Are there any special rules and administrative structures regarding cross-border mobility?

According to Article 16 of the Law of Ukraine “On External Labour Migration”, employment of a migrant worker in the host country may be carried out:

- 1) executive bodies in accordance with concluded international agreements, the binding nature of which has been approved by the Verkhovna Rada of Ukraine;
- 2) an economic entity that provides services for mediation in employment abroad on the basis of a license issued in accordance with the law;
- 3) a migrant worker independently.

At the same time, the activities of economic entities that provide employment mediation services abroad are subject to licensing and regulated by the laws of Ukraine “On Licensing of Economic Activities”, “On Foreign Economic Activity”, “On Employment” and other legislative acts of Ukraine.

According to Article 38 “On Employment”, employment mediation services abroad are provided in accordance with the applications of a foreign employer (its contractor) for vacancies and only within the framework of foreign economic agreements (contracts) concluded by foreign entities on the provision of mediation services in the field of employment in order to facilitate the signing of an employment contract (employment contract). The obligatory appendix to the foreign trade agreement (contract) on the provision of mediation services in the field of employment abroad is a draft employment contract certified by a foreign employer.

An entity that provides employment mediation services abroad is liable in accordance with the law for the deterioration of the terms of the employment contract concluded between the person and the foreign employer, a copy of which is kept by such entity for three years.

The provision of employment mediation services abroad is carried out after the conclusion of an agreement on the provision of employment mediation services abroad between a person and an economic entity. An economic entity that provides employment mediation services abroad is not entitled to receive payment from the persons to whom such services are provided until the signing of the certificate of work performed.

An economic entity that provides employment mediation services abroad assists citizens who have been provided with such services in resolving legal and social protection issues and informs them about the mechanism of voluntary participation in compulsory state social insurance.

Citizens during their employment abroad have the right to participate in compulsory state social insurance, including pension insurance, in accordance with the legislation of Ukraine, which gives them the right to social protection in the event of relevant insurance cases.

Licensing conditions for conducting business mediation abroad, which establishes an exhaustive list of documents attached to the application for a license to conduct business mediation abroad, as well as an exhaustive list of requirements to be met during the proceedings specified activities, approved by the resolution of the Cabinet of Ministers of Ukraine dated 16 December 2015 № 1060 (as amended by the resolution of the Cabinet of Ministers of Ukraine dated 28 February 2018 № 140).

The licensing body of this type of economic activity is the central executive body that formulates and implements state policy in the field of labour, employment, labour migration, labour relations, social dialogue (Ministry of Economy of Ukraine).

39. Is data on labour shortages and labour surpluses on national and sectoral markets collected, analysed and used to improve the functioning of the labour market?

The State Employment Service monitors supply and demand in the registered labour market. Monitoring involves obtaining information in terms of professional qualifications, by type of economic activity and by region. The analysis of vacancies is carried out according to the size of the proposed salary (in terms of occupations, types of economic activity, in general in Ukraine and by region). The structure of labour supply provides for the distribution by sex, age, education, place of residence, in relation to special categories (persons with disabilities, members of the ATO / OOS, IDPs, etc.). The results of the monitoring are supplemented by data from the state statistics bodies on the labour force and the results of surveys of enterprises.

In order to obtain information on supply and demand in the labour market from alternative sources, a review and analysis of Internet resources for job search (work.ua., rabota.ua., Grc (hh.ua). Jobs.ua), as well as private recruitment agencies.

The results of the monitoring are provided to all interested users, are regularly covered in the media, published in the form of information and analytical materials on the official website of the State Employment Service in the section “Analytics and Statistics”. Relevant data in the regional context are posted on the official websites of regional employment centers.

In 2021, the State Employment Service implemented a pilot project to develop methodological approaches to the analysis of regional labour markets and the development of forecast indicators of staffing needs in the regional labour market, which are used to form and place regional orders for training specialists and workers with the support of European aid. EU4Skills: best skills for modern Ukraine ”in 10 regions of Ukraine (Vinnytsia, Dnipropetrovsk, Zaporizhia, Kirovohrad, Lviv, Mykolaiv, Odesa, Poltava, Rivne and Chernivtsi). During 2021, representatives of the State Employment Center, project managers and experts conducted 10 training webinars and trainings for members of analytical groups created on the basis of 10 regional employment centers. The analytical groups of regional employment centers included heads and specialists of the regional employment center and their branches, representatives of the Departments of Education, Economics of regional state administrations, heads of educational and methodological centers of vocational education, regional statistical offices, regional associations of employers, representatives employers, industry associations, trade unions, etc.

Specialists of employment centers conducted a survey of about 13 thousand employers and analysed the results of a survey of more than 11 thousand graduates of vocational education institutions. During August-September 2021, 27 focus groups were held in 13 sectors and subsectors of the economy, which were attended by 196 experts from leading companies in the region. During the discussions, the prospects for the development of industries by regions, trends in the demand for professions, skills, qualifications and the main discrepancies between training and the needs of employers were identified. In December, reporting materials were prepared for each region and in general, the results of the pilot project were presented in 10 regions.

According to the results of the project in 2021, proposals for common approaches to the development of forecast indicators for the formation of regional orders for training and workers and agreed on the main stages of implementation of the analysis of 25 regional labour markets in 2022 (Order of the State Employment Center from 23 December 2021 № 104) , including the introduction of a short-term forecast of the labour market (occupational barometer).

The results of the survey of employers in 10 regions are posted on the website of the State Employment Service in the format of a dashboard: <https://www.dcz.gov.ua/storinka/eu4skills>. The system provides an opportunity to sample the general occupational structure within a given region as a whole and by selected filters (for example, by NACE groups, enterprise sizes, divisions and occupational classes).

40. Is data on the performance of employment services collected, in particular for mobility services (information and guidance given to jobseekers and employers, number of placements, customer satisfaction)?

The State Employment Service assesses the effectiveness of the implementation of active employment promotion programmes, in particular, assesses the retention of citizens employed with the assistance of employment centers:

- after undergoing vocational training (among those employed in 2020, as of 1 January 2022, 65% of citizens continued to work);

- by a one-time payment of unemployment benefits for the organisation of their own business (among those employed in 2020, as of 1 January 2022, 57% of citizens continued their business activities);

- employed with compensation to employers of SSC (among those employed in 2020, as of 1 January 2022, 71% of citizens continued to work);

- employed internally displaced persons with compensation to employers for wages (among those employed in 2020, as of 1 January 2022, 65% of citizens continued to work).

When assessing the effectiveness of the organisation of vocational training of the unemployed, the indicator “The level of employment of the unemployed after graduation” is also used. In 2021, this figure was 95%.

In accordance with paragraph 4 of the fourth part of Article 36 of the Law of Ukraine “On Employment” and the order of the Ministry of Social Policy of Ukraine dated 3 June 2019 № 851, registered in the Ministry of Justice of Ukraine on 2 July 2019 717/33688 “On approval of reporting form №1-PA Information on the number of employed citizens by business entities that provide employment mediation services” and the Procedure for its submission by business entities that provide employment mediation services and business entities that hire employees for further implementation they employ other employers in Ukraine and are obliged to submit quarterly no later than the 15th day of the month following the reporting quarter to the city, district and city-district employment centers information on the number of persons employed by them.

During 2021, business entities that provide employment mediation services employed 15,364 citizens in Ukraine, 112,716 abroad, and 40,557 from other employers.

The issue of introducing customer satisfaction assessment with employment services is currently being considered.

III. CO-ORDINATION OF SOCIAL SECURITY SYSTEMS

A. Scope of co-ordination

41. Material scope:

- a) Regulation 883/2004 will apply to the social security branches mentioned in Article 3: are all these branches covered by the legislation?**
- b) As regards Article 9, please list the legislation and social security schemes covered by the Regulation.**
- c) Please explain the distinction in the legislation between social security benefits and social assistance as provided for by the Regulation.**
- d) Are there special schemes for war victims? Please explain.**
- e) Please provide a list of bilateral social security conventions.**

a) Depending on the insured event, there are the following types of compulsory state social insurance:

- pension insurance;
- insurance in connection with temporary disability;
- insurance against accidents at work and occupational diseases that have caused disability;
- unemployment insurance.

The Law of Ukraine “On Compulsory State Social Insurance” regulates such types of social insurance as:

- due to temporary disability;
- from an accident at work and an occupational disease that caused disability (hereinafter – accident insurance).

The following types of material support and social services shall be provided for insurance in connection with temporary incapacity for work:

- 1) temporary disability benefits (including care for a sick child);
- 2) maternity benefits;
- 3) funeral allowance (except for the burial of pensioners, the unemployed and persons who died in an accident at work);

4) payment for treatment and / or rehabilitation care in the departments of the sanatorium after the illness and injury.

According to the accident insurance, insurance payments consist of:

1) insurance payment of lost earnings (or its corresponding part) depending on the degree of loss of professional capacity for victims (hereinafter – the monthly insurance payment);

2) insurance payment in the established cases of one-time assistance to the victim (members of his family and persons who were dependent on the deceased);

3) insurance benefits for a child born with a disability due to an injury at work or an occupational disease of her mother during pregnancy;

4) insurance costs for medical and social assistance.

According to the Law of Ukraine “On Compulsory State Pension Insurance” such pensions are assigned:

1) old-age pension;

2) disability pension;

3) pension in connection with the loss of a breadwinner.

Social services are provided at the expense of the Pension Fund of Ukraine. The social services provided by this Law include assistance for the burial of a pensioner.

For persons who are not entitled to insurance pensions in accordance with the Law of Ukraine “On Compulsory State Pension Insurance” is assigned state social assistance and state social care assistance in accordance with the Law of Ukraine “On State Social Assistance to Persons Not Eligible for Pensions”, and persons with disabilities”.

Legal, financial and organisational principles of compulsory state social insurance in case of unemployment are defined by the Law of Ukraine “On compulsory state social insurance in case of unemployment”.

According to Article 7 of this Law, the types of social security and types of social services are:

- unemployment benefits, including one-time payment for the organisation of the unemployed business;

- funeral allowance in the event of the death of an unemployed person or a dependent;

- professional training or retraining, advanced training in institutions of professional (vocational), professional higher and higher education, including educational institutions of the state employment service, enterprises, institutions, organisations;

- career guidance;

- search for suitable work and assistance in employment, including by organising public works for the unemployed in the manner prescribed by the Cabinet of Ministers of Ukraine;

- providing employers who employ citizens referred to in part one of Article 14 of the Law of Ukraine “On Employment” with compensation in accordance with Article 26 of the Law of Ukraine “On Employment”;

- providing compensation to employers - small businesses that employ the unemployed, in accordance with Article 27 of the Law of Ukraine “On Employment”;
- providing vouchers to maintain the competitiveness of certain categories of citizens through retraining, specialisation, training in professions and specialties for priority economic activities in accordance with Article 30 of the Law of Ukraine “On Employment”;
- implementation of measures to promote the employment of internally displaced persons in accordance with Article 24-1 of the Law of Ukraine “On Employment”;
- information and consulting services related to employment.

In addition, Article 3 of the Law of Ukraine “On Compulsory State Social Insurance in the Event of Unemployment” stipulates that if an international agreement of Ukraine, approved by the Verkhovna Rada of Ukraine, establishes other norms than those provided by the legislation of Ukraine on unemployment insurance, the rules of the international agreement are applied.

b) Legislation on pension security is based on the Constitution of Ukraine, consists of the Fundamentals of Legislation of Ukraine on Compulsory State Social Insurance, the Law of Ukraine “On Compulsory State Pension Insurance”, the Laws of Ukraine “On Non-State Pension Provision”, “On Status and Social Protection affected by the Chernobyl disaster”, “On Pensions of Persons Discharged from Military Service and Certain Other Persons”, international pension agreements, the binding nature of which was approved by the Verkhovna Rada of Ukraine (hereinafter – the laws on pensions), as well as other laws and regulations adopted in accordance with the laws on pension security, which regulate relations in the field of pension security in Ukraine.

If an international agreement of Ukraine, approved by the Verkhovna Rada of Ukraine, establishes other norms than those provided by the legislation of Ukraine on pension security, the norms of the international agreement shall apply.

For persons who are not entitled to pensions insurance, support is provided in accordance with the Law of Ukraine “On State Social Assistance to Persons Not Eligible for Pensions and Persons with Disabilities”.

State social assistance in Ukraine is regulated by a number of laws, including the Family Code of Ukraine, “On State Assistance to Families with Children”; “On State Social Assistance to Low-Income Families”; “On State Social Assistance to Persons with Disabilities from Childhood and Children with Disabilities”, “On psychiatric assistance”.

According to these laws, social support is provided by providing different types of assistance, including:

- maternity and childbirth benefits;
- childbirth assistance;
- child adoption assistance;
- assistance for children under guardianship or custody;
- assistance for children of single mothers;
- care for children with severe perinatal lesions of the nervous system, severe congenital malformations, rare orphan diseases, cancer, oncohematological diseases, cerebral palsy, severe mental disorders, type I diabetes mellitus (insulin-dependent), acute or chronic kidney disease IV

degree, for a child who has suffered a serious injury, needs an organ transplant, needs palliative care, who are not disabled;

- state social assistance to low-income families;
- assistance for children brought up in large families;
- state social assistance to persons with disabilities from childhood and children with disabilities;
- monthly financial assistance to a person living with a person with a disability of the I or II group due to a mental disorder, who, according to the medical commission conclusion, needs constant third-party care;
- temporary state assistance to children whose parents evade the payment of alimony, do not have the opportunity to maintain the child or their place of residence is unknown;
- assistance for the economic independence of low-income families.

According to the legislation of Ukraine, all these types of state assistance are financed from the State Budget.

c) The right to receive pensions and social services in accordance with the Law of Ukraine “On Compulsory State Pension Insurance” have: citizens of Ukraine who are insured under this Law and have reached the retirement age or recognised as persons with disabilities in the manner prescribed by law and have the insurance period required for the appointment of the relevant type of pension, and in case of death of these persons – members of their families, specified in Article 36 of this Law, and other persons provided by this Law.

Compulsory state social insurance is a system of rights, responsibilities and guarantees, which provides social protection, including material support in case of illness, complete, partial or temporary disability, unemployment due to circumstances beyond their control, survivor’s pension as well as in old age and in other cases provided by law, at the expense of funds formed by paying insurance premiums by the owner or his authorized body (hereinafter – the employer), citizens, as well as budget and other sources provided by law.

Contributions are paid in the form of a single payment for all types of insurance in accordance with the Law of Ukraine “On the Collection and Accounting of a Single Contribution to the Obligatory State Social Insurance”. The collection is carried out by the tax service. Distribution between types of insurance provides the Cabinet of Ministers of Ukraine.

Social assistance is granted to both insured and uninsured persons (it does not depend on the person's insurance contributions).

d) For certain categories of citizens, the laws of Ukraine may establish the conditions, norms and procedure for their pension security, different from the mandatory state pension insurance and non-state pension security.

For “victims of war” state guarantees are provided in the form of additional pension payments at the expense of the State Budget of Ukraine.

There is a benefit for insurance due to temporary disability in the form of temporary disability benefits in the amount of 100 % of the average salary (income) regardless of length of service (on a general basis, this benefit is 50-100% depending on length of service).

The Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons” defines the definition of internally displaced person, as well as internal displacement that confirmed by certificate of registration.

The Procedure of Registration and Issuance of Registration of an Internally Displaced Person approved by the Resolution of the Cabinet of Ministers of Ukraine “On the Registration of Internally Displaced Persons”. This Procedure defines the mechanism of for obtaining a certificate of an internally displaced person and procedure for registration of internally displaced persons and putting them into the Unified Information Database on Internally Displaced Person.

The Procedure on Providing of Payment of Living Allowance Assistance for Internally Displaced Persons was approved by the Resolution of the Cabinet of Ministers of Ukraine as of 20 March 2022 № 332 “On Some Issues of Payment of Living Allowance Assistance for Internally Displaced Persons”.

This assistance is monthly provided from the month of application for the period of martial law and one month after its termination of cancellation for each internally displaced person which is registered in the Unified Information Database on Internally Displaced Person in amount: for persons with disabilities and children – 3 000 UAH; for other persons – 2 000 UAH.

e) Issues of pension provision in Ukraine are regulated by international agreements.

These agreements are divided into two types:

- agreements based on the territorial principle, under their provisions the costs for paying pensions are borne by the state where the recipient resides;

- agreements based on the proportional principle, under their provisions each contracting party assigns and pays a pension for the relevant insurance (work) experience acquired in the territory of the state of this party.

According to the territorial principle concluded:

- Agreement on Guarantees of the Rights of Citizens of the Member States of the Commonwealth of Independent States in the Field of Pension Provision, signed on 13 March 1992;

- Agreement between the Government of Ukraine and the Government of the Republic of Georgia on Cooperation in the Field of Pension Provision, signed on 14 December 1995;

- Agreement between the Government of Ukraine and the Government of the Republic of Azerbaijan on cooperation in the field of pensions, signed on 28 July 1995;

- Agreement between the Government of Ukraine and the Government of the Republic of Moldova on guarantees of citizens' rights in the field of pension provision, signed on 29 August 1995;

- Agreement between the Government of Ukraine and the Government of the Republic of Belarus on guarantees of citizens' rights in the field of pension provision, signed on 29 August 1995.

Ukraine is also fulfilling its obligations under international treaties and agreements of the former Soviet Union concluded with Mongolia, Romania and Hungary.

Proportional agreements in the field of social security were concluded with the Republic of Bulgaria, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Kingdom of Spain, the Czech Republic, the Slovak Republic, the Portuguese Republic, the Republic of Poland and the Republic of Israel.

The Interim Agreement between the Government of Ukraine and the Government of the Russian Federation on Guarantees of the Rights of Citizens Working in the Far North and Areas Equated to the Far North has been concluded in the Far North to address pension issues.

The following agreements are also in force: the Agreement on the Procedure for Pension Provision of Servicemen and Members of Their Families and State Insurance of Servicemen of the Member States of the Commonwealth of Independent States;

Agreement on the Procedure for Pension Provision and State Insurance of Officers of the Internal Affairs Bodies of the Member States of the Commonwealth of Independent States.

At the same time, the Ministry of Social Policy is constantly working to improve and expand the international legal framework in the field of social security, including pension provision. Now we are actively working on the possibility of ratifying the Agreement between Ukraine and the Federal Republic of Germany on Social Security, the Agreement between Ukraine and the State of Israel on Social Security. The texts of draft agreements with such countries as the Republic of Turkey, the Republic of Croatia, the Republic of Serbia, the Republic of Estonia, the Kingdom of Spain are being worked on.

B. The main principles of co-ordination

42. Equal treatment: Are there any examples in the social security legislation where non-nationals are treated less favourable than nationals?

There are no examples in the legislation on social security when non-citizens have less favorable conditions than citizens of Ukraine.

Issues of participation of foreigners and stateless persons in the pension system in Ukraine and participation of Ukrainian citizens in foreign pension systems are regulated in accordance with the Law of Ukraine “On Compulsory State Pension Insurance”, other laws on pensions and international treaties provided by the Verkhovna Rada of Ukraine.

Foreigners and stateless persons legally staying in Ukraine have the right to receive pension benefits and social services from the system of compulsory state pension insurance on an equal footing with citizens of Ukraine under the conditions and in the manner prescribed by the Law of Ukraine “On Compulsory State Pension Insurance”, unless otherwise provided by international agreements, the binding nature of which has been approved by the Verkhovna Rada of Ukraine.

For foreigners and stateless persons staying in Ukraine on legal grounds who are not entitled to insurance pensions, support is provided according to the Law of Ukraine “On State Social Assistance to Persons Not Eligible for Pensions and Persons with Disabilities”.

According to the current legislation, foreigners and stateless persons permanently residing in Ukraine, as well as persons recognised as refugees in Ukraine or persons in need of additional protection, are entitled to state assistance on an equal rights with citizens of Ukraine under the current legislation, other laws or international agreements of Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine.

43. Determination of the applicable legislation:

a) Are the social security schemes based on the principle of *lex loci laboris* or are they based on residence?

b) Are there rules and administrative structures applicable in the case of posting of workers?

a) The pension is paid at the place of actual residence of the pensioner within the specified in the application, regardless of the declared or registered place of residence of the pensioner.

Depending on the category of benefit and the conditions that must be met in order to obtain it, it can be based both on the principle of the *lex loci laboris* and on the place of residence.

For insurance due to temporary disability and accident at work based on the principle *lex loci laboris*.

Housing subsidies and benefits for housing and communal services are provided at the place of registration or actual residence of the recipient of these types of payments.

According to paragraph 22 of the Regulation on the Procedure for Allocating Housing Subsidies, approved by the Resolution of the Cabinet of Ministers of Ukraine “On Simplification of the Procedure for Providing Subsidies to the Population to Reimburse the Costs of Housing and Communal Services, Purchase of Liquefied Gas, Solid and Liquid Household Fuel” dated 21 October 1995 № 848 (as amended) (hereinafter – Regulation № 848), housing subsidy is assigned to one of the members of the household:

- which are registered in the dwelling (house);

- who are not registered in a dwelling (house), but actually live in it on the basis of a lease (rental) agreement, by court decision, or individual developers whose houses are not commissioned, if they are charged for housing and communal services;

- who are not registered in a dwelling (house), but actually live in it without a lease (rental) agreement, if they are internally displaced persons.

According to the Regulation on the Unified State Automated Register of Persons Eligible for Benefits, approved by the Resolution of the Cabinet of Ministers of Ukraine “On Unified State Automated Register of Persons Eligible for Benefits” dated 29 January 2003 № 117 (as amended), beneficiaries are registered in the Register at the place of registration or actual residence.

b) As part of the implementation of international bilateral agreements on social protection, posted workers are issued certificates confirming that the worker continues to be subject to the legislation of the relevant state on social security. On the basis of this certificate, the other party’s social security legislation does not apply to this employee and the social security contributions related to the employment of the party of temporary residence are not paid.

The competent authority is the Pension Fund of Ukraine.

According to Article 42-1 of the Law of Ukraine “On Employment”, the employer is obliged to obtain a work permit for foreigners and stateless persons for a posted foreign worker, unless otherwise provided by international treaties of Ukraine approved by the Verkhovna Rada of Ukraine.

44. Aggregation of periods:

a) Do the social security services of Ukraine have any experience with applying the principle of aggregation of periods in the relations with other countries?

b) Which administrative structures are responsible for this?

c) What are the waiting periods for entitlement to benefits equivalent to those covered by the scope of the EU Regulation?

a) The Pension Fund of Ukraine and its territorial authorities have experience in calculating periods of service, provided that these rules are provided for in bilateral agreements on social security.

According to the Law of Ukraine “On Compulsory State Pension Insurance”, the calculation of the coverage period of insurance is not provided.

International agreements in the field of social security on a proportional principle provide for the whole of the coverage periods of insurance acquired in the territory of both parties, if they do not coincide in time.

b) The Pension Fund of Ukraine and its territorial authorities carry out the appointment and payment of pensions.

The competent institutions designated by agreements in the field of social security are responsible for this.

c) There is no waiting period for insurance against temporary incapacity for work and accidents at work. However, if the insurance period is less than 6 months in the last 12 months, the insurance benefits will be limited to the minimum wage. After gaining 6 months of experience – from the actual average earnings.

45. Export of benefits:

a) Do the social security services of Ukraine have any experience in applying the principle of export of benefits in the relations with other countries?

b) Which administrative structures are responsible for this?

c) Does the legislation include residence clauses?

Today Ukrainian legislation does not provide for the preservation of benefits to a person in the case of his permanent residence outside Ukraine for more than 6 months. The issue is still being worked out by public authorities.

If a person travels abroad to a state with which Ukraine has concluded an international agreement in the field of social (pension) security, the payment of pensions to such a person shall continue in accordance with the provisions of such an agreement.

C. Co-ordination of different categories of benefits

46. Are any difficulties expected in applying the provisions of various chapters of the Regulation (sickness and maternity, invalidity, old age and death, unemployment, family benefits, etc.)?

Persons entitled to payments receive it under the conditions provided by the current legislation of Ukraine, other laws or international agreements of Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine.

D. Administrative capacity

47. Which administrative structures will be responsible for applying the co-ordination rules for the various chapters of the Regulation (sickness and maternity, invalidity, old-age and death, unemployment, family benefits, etc.)? Please provide an estimation of the number of these structures.

In Ukraine, the Ministry of Social Policy acts as the central executive authority that ensures the development and implementation of state policy, in particular, in the sphere of social policy, social protection, volunteering, family and children, health and recreation of children, adoption and protecting the rights of children, preventing and combating domestic violence, gender-based violence, trafficking in human beings, ensuring equal rights and opportunities for women and men, providing social services and conducting social work.

In Ukraine also operate:

- Pension Fund of Ukraine;
- Social Insurance Fund;

- The National Social Service of Ukraine – a central executive body that implements state policy in the sphere of social protection, protection of children's rights, state control over compliance with legislation during the provision of social support and respect for children's rights. Within the structure of the National Social Service, 25 territorial bodies have been formed (operate in each region of Ukraine).

In addition, in the structure of oblast and Kyiv city state administrations, structural subdivisions on social protection issues have been established, which, in particular, ensure the implementation of social policy, including social protection (children, the elderly, people with disabilities, persons / families who are in difficult life circumstances, etc.).

There are also structural subdivisions in the executive bodies of village, settlement, and city councils (1469) that ensure the implementation of social policy, including social protection.

There are administrative structures throughout Ukraine that can be responsible for applying the rules of coordination for different sections of the Regulations (sickness and maternity, disability, old age and death, unemployment, family benefits, etc.).

48. How do the social security institutions of Ukraine exchange the information internally?

According to the legal acts and internal regulations, the information exchange provides within the electronic document flow, and with final approval in the form of paper document flow.

In order to improve the availability of social support for the population and the use of electronic document management for the organisation of social administrative services, the program complex “Integrated Information System Social Community” (hereinafter – the Complex Programme) is being implemented.

The program complex provides reception of primary documents from citizens for social assistance, housing subsidies, benefits to officials of the executive authority of the village, town, city council of the territorial community or the center of administrative services at their place of residence or stay and transmit these documents electronically to social protection authority.

This algorithm provides convenience for residents of territorial communities, internally displaced persons, simplifies the mechanism of interaction between local governments and structural units for social protection authority at the district level.

As of 15 April 2022, the subjects of implementation of the Complex Programme in Ukraine are 1435 territorial communities, in 21 regions of Ukraine the implementation of the Complex Programme is provided in 100 % of the formed territorial communities.

During 2021, officials of executive authorities of village, settlement, city councils of territorial communities and officials of administrative service centers with the use of the Software complex formed and transferred to the social protection authority of the district level 1.612 million electronic cases, which helped increase efficiency in decision-making territorial communities on assign of social assistance, benefits, subsidies.

In accordance with the Regulation on the Procedure for Allocating Housing Subsidies, approved by the resolution of the Cabinet of Ministers of Ukraine “On Simplification of the Procedure for Providing Subsidies to the Population to Reimburse the Costs of Housing and Communal Services, Purchase of Liquefied Gas, Solid and Liquid Household Fuel” of 21 October 1995 № 848 (amended) (hereinafter – Regulation № 848), a citizen submits to the social protection authority an application for the appointment and provision of a housing subsidy (hereinafter – the Application for subsidies) and a declaration of income and expenses of persons who have applied for a housing subsidy (hereinafter – the Declaration for subsidies), according to the forms established by the Ministry of Social Policy of Ukraine.

In the Application for Subsidies and Declaration for Subsidies, the applicant shall provide information about him/ herself and members of the household, as well as information about family members who are members of the household, necessary to establish the right to receive a housing subsidy for this household.

According to paragraph 50 of the Regulation № 848, other information necessary for housing subsidies allocating is received by social protection authorities upon requests from the State Tax Service of Ukraine – on person's income; from the Pension Fund of Ukraine – on person's income and payment of a single contribution to the general obligatory state social insurance; from local self-government authorities or their authorised bodies – on the composition of persons registered in dwellings (houses); from multi-apartment house administrators, associations of multi-apartment house co-owners, utility service providers – on the amount of contributions / payments, prices and tariffs for housing and communal services and payments for such services.

In accordance with paragraph 50¹ of the Regulation № 848, verification of information received from applicants for housing subsidies is carried out on the basis of data, in particular obtained by automated access, from the State Register of Real Estate Rights, the State Register of Civil Status of Citizens, Unified State Register of Legal Entities, Individuals – Entrepreneurs and Public Associations.

Following paragraph 4 of the Regulation on the Unified State Automated Register of Persons Eligible for Benefits, approved by the Resolution of the Cabinet of Ministers of Ukraine “On Unified State Automated Register of Persons Eligible for Benefits” of 29 January 2003 № 117 (amended), social protection authorities may receive information from beneficiaries, as well as from the state authorities where beneficiaries are registered, enterprises and organisations providing services, housing and maintenance organisations.

The social protection authorities organize the collection, systematisation and preservation of information on recipients of housing subsidies and benefits for housing and communal services in the relevant databases of the district level, and monthly transfer current databases on housing subsidies recipients to the Central Data Repository of the Ministry of Social Policy of Ukraine.

49. How do the social security institutions of Ukraine exchange information with the institutions of the countries with which Ukraine has signed social security agreements?

The exchange of information and statistics is carried out through the competent institutions and liaison bodies identified in agreements in the field of social security.

50. Is there any electronic case handling system(s) in place for internal or external files related to the benefits covered by the Social Security Coordination Regulations?

According to the existing legal acts, the Ministry of Social Policy of Ukraine is the holder of such informational systems:

- Unified State Automated Register of Persons Eligible for Benefits;
- State Register of Property Objects of Recovery and Recreation of Children;
- Unified State Register of Recipients of Housing Subsidies;
- Unified Information Database on Internally Displaced Persons;
- Unified Information and Analytical System “Children”;
- Central Databank on Issues of Disability;

Besides, the state enterprise “Information and Computing Center of the Ministry of Social Policy of Ukraine” develops, implements and maintains:

- Automated System for Processing Documentation of Recipients of Pensions and Benefits Based on Computer Technology. District-oriented software package;

- System of Information Services for the Activities of the United Territorial Communities in the Sphere of Social Security of the Population (Software complex “Integrated Information System “Social Community”). It is aims to automate the process of receiving applications and primary

documents by specialists in united territorial communities to get social benefits and services and the formation of reports on the results of processing citizens' applications;

- Central Data Repository of the Ministry of Social Policy of Ukraine;
- Humanitarian Aid Accounting System;
- Central Data Exchange System with the Ministry of Finance of Ukraine to ensure verification of social payments, benefits, subsidies, assistances and other types of benefits;
- System of Annual and Operational Data Exchange with the Pension Fund of Ukraine at the Central level for the assignment of subsidies;
- System of Operational Data Exchange with JSC "State Savings Bank of Ukraine" (Oschadbank) at the central level for assignment of social benefits;
- Centralized system of Data Exchange with the Pension Fund of Ukraine (reverse migration of pension case data using the Internet technologies of access and exchange of information for the assignment of certain types of state assistances and supervision of compliance with legislation during the appointment (recalculation) and payment of pensions);
- Registration of recipients of state assistances to victims of mass public protests and students (cadets) of higher education institutions receiving social scholarships.

The Ministry of Social Policy of Ukraine provides electronic services for citizens:

- Electronic service for submitting an application for childbirth assistance;
- Electronic service for submitting applications and declarations for housing subsidies;
- Electronic social service to reimburse the cost of childcare service for children under three years of age "Municipal nanny";
- Electronic services within the competence of the Ministry of Social Policy of Ukraine in the complex electronic service eBaby: "Integration of e-services "Childbirth assistance" and "Assistance for children raised in large families" to the Unified State Web Portal of Electronic Services (for the implementation of eBaby)".

The decision on establishment of the Unified Information System of the Social Sphere was made in 2021 (the resolution of the Cabinet of Ministers of Ukraine as of 14 April 2021 № 404 "On Approval of the Regulation on the Unified Information System of the Social Sphere"). This Unified Information System of the Social Sphere aims to create a unified information environment, particularly a common register of recipients of social assistance, and their verification system; a unified system of management of social protection expenditures, their allocation and control over their targeted use; the necessity to automate the procedure for applying for social assistances; effective monitoring and control system.

At present, the within the framework of the Unified Information System of the Social Sphere are implemented:

1) Applied functions of the general subsystem Unified Social Register:

- formation in electronic form of certificates of salary, paid insurance contributions, an amount of pension;
- display of electronic pension certificate, according to the Register of Insured Persons;

- display of electronic certificate of social insurance, according to the Register of Insured Persons;
- display of electronic pension case, according to the Register of Insured Persons;
- display in electronic form the information about the social status of the citizen;
- display in electronic form the information about a person's disability (group, subgroup, cause of disability and term for which it is assigned).

2) Administrative subsystem that provides user authentication, putting in and control of users of the Unified Information System of the Social Sphere and their rights, as well as putting in and updating the necessary directories (within the applied functions of the developed software).

3) Applied software of the general subsystem “Unified Social Processing” to automate the following functions:

- appointment, accrual and payment of state social assistance to persons with disabilities from childhood and children with disabilities;

- appointment, accrual and payment of benefits for children under guardianship or custody; child benefits for single mothers; child adoption assistance;

- appointment, accrual and payment of benefits for children with severe perinatal lesions of the nervous system, severe congenital malformations, rare orphan diseases, cancer, oncohematological diseases, cerebral palsy, severe mental disorders, type I diabetes mellitus (insulin-dependent), acute or chronic kidney disease of IV degree; a child who has suffered a serious injury needs an organ transplant, needs palliative care, which is not disabled.

During the period of Russian invasion to Ukraine, the Unified Information System of the Social Sphere is being improved taking into account the current needs of the citizens of Ukraine.

At present, applied functions are being developed by means of the General Social Processing subsystem to apply for a Certificate on available information on persons with disabilities of groups I and II according to the Central Data Repository of the Ministry of Social Policy of Ukraine and information resources of the Pension Fund of Ukraine on person's disability, on the base of Unified Social Register data; verification of documents and information provided during a personal reception by citizens of Ukraine, as well as electronic submission of the Certificate on the Diia Portal (if the relevant electronic service is been provided on the Diia Portal).

As well, the modernisation of information interaction on data on internally displaced persons is also being provided between the Diia Portal, the Unified Information System of the Social Sphere, the “Social Community” and the Unified Information Database on Internally Displaced Persons. Particularly:

- uploading into the Unified Information System of the Social Sphere applications for registration of internally displaced persons registered in the Diia Portal and in the “Social Community”;

- transfer of uploaded applications for registration of internally displaced persons from the Unified Information System of the Social Sphere from the Diia Portal for processing to the “Social Community”;

- uploading to the Unified Information System of the Social Sphere the results of processing applications for registration of internally displaced persons from the “Social Community”;
- providing information from the Unified Information System of the Social Sphere to the Unified Information Database on Internally Displaced Persons on the registration of internally displaced persons (sources of registration of appeals – Diia Portal and the “Social Community”);
- providing information on the status of processing the application from the Unified Information System of the Social Sphere to the Diia Portal;
- uploading information from the Unified Information Database on Internally Displaced Persons to the Unified Social Register.

51. Is there an estimation/statistics of social security coordination cases involving communication with EU countries as well as with Norway, Iceland, Lichtenstein and Switzerland?

Ukraine coordinates social security with a number of the European Union countries. Agreements in the sphere of social security based on the proportional principle have been concluded with the Republic of Bulgaria, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Kingdom of Spain, the Czech Republic, the Slovak Republic, the Portuguese Republic and the Republic of Poland. Coordination of social security with countries such as Norway, Iceland, Liechtenstein, Switzerland is not provided.

52. Is there a national health insurance card? If yes, please explain how it is used in practice. If not, are there any plans to introduce it and what is the timeframe?

Ukraine has chosen to rely primarily on general tax revenues with a single pool to finance the benefits package provided by the National Health Service of Ukraine. There is no national medical insurance card. All residents have the right to access PHC services within the PMG. Moreover, they have a right to choose a physician regardless of their registered place of residence. Residents are required to confirm their choice by formal registration by signing the “Declaration on the choice of a physician who provides primary health care”. According to the Order of the Ministry of Health № 503 in 2018, an individual has a right to change a PHC physician at any time but is required to sign a new declaration and terminate the initial one. Patients who have not chosen a doctor and are in an urgent situation are entitled to receive PHC free of charge in public health care facilities.

CHAPTER 3: RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

I. RIGHT OF ESTABLISHMENT

II. FREEDOM TO PROVIDE CROSS BORDER SERVICES

A. General

1. Are there any barriers to the free movement of services within the country? If yes, please describe them and indicate their exact nature (legal, technical or administrative).

The Constitution of Ukraine guarantees any person (individual or legal entity) the right to engage in any entrepreneurial (business) activity in Ukraine which is not prohibited by a law (the act of the highest legal hierarchy) of Ukraine. This principle of freedom of entrepreneurship includes the freedom to render services and encompasses the principle of free movement of services within Ukraine.

The Commercial Code of Ukraine sets out the fundamental principles of state regulation of entrepreneurship, which include ensuring the economic diversity, promotion of competition, equal protection by the state of all forms of businesses, freedom of entrepreneurial activity within the limits established by the laws of Ukraine; free movement of capital, goods and services on the territory of Ukraine, etc. In particular, the Commercial Code stipulates the following principles:

- freedom to choose the type and organizational form of entrepreneurial activity;
- freedom to plan entrepreneurial activity, to choose suppliers and consumers, to attract material, technical, financial and other resources except as may be restricted by the laws of Ukraine, to set prices for products and services in accordance with the law;
- freedom to employ employees for the business;
- freedom to use the profits after the payment of taxes, fees and other mandatory payments required by law; and
- freedom to engage in foreign economic activity and to use the resulting foreign exchange earnings.

Ukrainian legislation provides non-discriminatory regime for foreign individuals and legal entities that engage in business activities in Ukraine, including the rendering of services. The treatment of foreign participants of business activity in Ukraine does not depend on the jurisdiction of the participant, except for the restrictions imposed (a) on the Russian Federation, persons controlled by it and, to a certain extent, its residents as a result of its military intervention in Ukraine, and (b) certain other states and persons that are subject to the international and domestic sanctions regime, including that applicable in the EU.

Subject to the above specified limitations, individuals - foreign residents that engage in entrepreneurial activity in Ukraine (including the rendering of services) enjoy the same rights and have the same obligations as citizens of Ukraine, with narrow exceptions prescribed for and stemming from the specifics of regulation of certain industries, as discussed below. Similarly, foreign legal

entities have the same status as legal entities of Ukraine but, depending on the industry of their operation, may be subject to certain special rules provided for in the legislation.

In order to conduct entrepreneurial activities in Ukraine, a resident of Ukraine, as well as a foreign person, would need to undergo certain mandatory registration procedures, which include registration in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations, as well as registration with Ukrainian tax authorities. Such registration procedures are clearly defined by the legislation, are transparent, non-discriminatory and not burdensome. More detail on such procedures are provided in the following sections of this Chapter.

Certain specific types of entrepreneurial activity are subject to licensing and permits in Ukraine. Such activities include, among other things, banking and other financial services, electricity generation and distribution, oil and gas supply, transportation services. More detail is provided in the following sections of this Chapter.

Ukraine's reservations on the establishment as of 2014 are set out in the Annex XVI-D to Chapter 6, Section IV of the Association Agreement.

2. Please analyse the differences and provide the findings of the comparisons between:

a) The treatment offered to third countries in terms of establishment of subsidiaries of companies and the rights of establishment within the EU

Generally, the treatment Ukraine provides for non-resident service providers in terms of general guarantees of freedom of establishment and freedom to provide services is consistent with the EU regime. Non-resident legal entities and individuals are not subject to any discriminatory provisions, and the existing restrictions and limitations are generally justified, but may be revised should there be such need in future.

As a part of the Association Agreement, Ukraine has committed to grant the treatment as regards the establishment of subsidiaries, branches and representative offices of legal persons of the EU which is no less favourable than that accorded to its own legal persons, branches and representative offices or to any third-country legal persons, whichever is better.

Foreign legal entities and individuals are not restricted from establishing a legal presence in Ukraine. The Ukrainian legal system ensures national treatment for non-residents and the application of relevant non-discriminatory provisions. As mentioned above, the Constitution of Ukraine stipulates that everyone has the right to engage in entrepreneurial activity that is not prohibited by law. The Commercial Code of Ukraine also enshrines general principles in the field of entrepreneurship: ensuring economic diversity and equal protection by the state of all business entities; freedom of entrepreneurial activity within the limits established by law; free movement of capital, goods and services on the territory of Ukraine, etc.

Ukraine does not have a single unified act governing the establishment and activities of all types of companies or businesses. Instead, there is a number of laws which are devoted to specific organizational and legal forms. The main laws in this area are:

- The Law of Ukraine "On Limited and Additional Liability Companies";
- The Law of Ukraine "On Joint Stock Companies";

- The Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations" (the "**Law on State Registration**");
- The Civil Code of Ukraine; and
- The Commercial Code of Ukraine.

The businesses wishing to operate in Ukraine as resident legal entities (companies) are required to register with the State Register of Legal Entities, Individual Entrepreneurs and Public Organisations. The companies gain legal personality following the registration and assignment of a unique identification number, which also serves as a tax identification number. State registration with the tax authorities, State Pension Fund and State Statistics Service are carried out automatically following the state registration of the company and, thus, no separate registration actions have to be undertaken in this regard.

The Law on State Registration stipulates the scope of documents required to be submitted for the establishment of a company. Such documents include a registration application form, resolution on the establishment, articles of association, proof of payment of registration fee, notarized copies of passports of ultimate beneficial owners (UBOs) and description of the ownership structure. In case the company is founded by a non-resident legal entity, an excerpt from the commercial, trade or court register confirming the due registration of the founder in its jurisdiction and documents confirming ownership and/or control chain between the founder and the UBO(s), including all intermediary entities in the structure, need to be submitted.

Businesses of certain organisational forms are required to pursue additional registrations with regulatory authorities as a pre-requisite to commencing their activity. Thus, a joint-stock company would be required to register with the National Securities and Stock Market Commission, while a commercial bank will need to undergo the registration and licensing procedure with the National Bank of Ukraine. Furthermore, certain activities may be carried out by companies only following the obtaining of respective licenses and/or permits.

Resident and non-resident individuals are subject to the same requirements as regards the establishment of companies in Ukraine. Resident legal entities having foreign companies in their ownership structure and non-resident legal entities are required to submit additional documents as specified above. At present, online registration is not available to foreign legal entities that wish to establish a company in Ukraine, since foreign legal entities cannot obtain electronic signatures required for the execution of a resolution on the company's establishment and articles of association. Furthermore, online registration is not available if the company has foreign UBOs, due to the necessity to provide notarized and legalized passport copies for UBOs - non-resident individuals.

Branches of foreign companies most often have the form of representative offices (ROs), with some exceptions. Depending on the scope of its activities, an RO may be commercial or non-commercial. A commercial RO is allowed to conduct any type of commercial activities, except those that can be conducted by legal entities only (the latter include, e.g., participation in state tenders, activities subject to licensing and requiring other regulatory permits). A non-commercial RO may conduct only the activities auxiliary to the business of its parent company, such as marketing, research and development.

The processes of registration of commercial and non-commercial ROs are identical. ROs are registered with the Ministry of Economy. If the parent company establishing an RO is a resident of

the aggressor state (e.g., the Russian Federation), the registration fee is 30 times higher and the registration process is three times longer (up to 60 business days) as compared to the registration of ROs of parent companies from any other jurisdiction.

For the purposes of opening an RO in Ukraine, it is necessary to submit an application form, corporate resolution on establishment of the RO, letter of good standing from the parent company's servicing bank, power of attorney to the Head of the RO, regulations of the RO and certificate of incorporation of the founder. Upon completion of the registration process, a Certificate of Registration is issued. The RO is also required to register with the tax authorities, the State Statistics Service and the State Pension Fund.

An individual may obtain the status of an individual entrepreneur. The registration of individual entrepreneurs is carried out by a state registrar and requires the submission of the individual's passport, tax ID and application form. The individual entrepreneur status is available for both resident and non-resident individuals, however, non-residents should, in addition, submit a notarized translation of their passport.

As may be seen from the foregoing, subsidiaries of foreign companies, including the companies established in the EU, enjoy the same treatment under Ukrainian law as accorded to subsidiaries of Ukrainian companies. Differences concern the filing of additional documents by foreign applicants, are reasonable or customary in nature and are not burdensome.

Ukraine's reservations on the establishment as of 2014 are set out in the Annex XVI-D to Chapter 6, Section IV of the Association Agreement.

b) The treatment offered to subsidiaries of foreign companies established in Ukraine and the treatment the EU offers to subsidiaries of foreign companies established on its territory

There are no significant differences in terms of the treatment of subsidiaries of foreign companies in Ukraine as compared to the relevant EU regime.

As a part of the Association Agreement, Ukraine has committed to grant treatment as regards the establishment of subsidiaries, branches and representative offices of legal persons of the EU no less favourable than that accorded to its own legal persons, branches and representative offices or to any third-country legal persons, whichever is better.

Similar commitments were undertaken in the context of operation of subsidiaries, branches and representative offices of legal persons of the EU in Ukraine, once established. Ukraine has committed to offering treatment no less favourable than that accorded to its own legal persons, branches and representative offices, or to any third-country legal persons, branches and representative offices, whichever is better.

The discussed commitments were implemented by Ukraine, as may be seen from the review provided in this section 2 above. Overall, the subsidiaries of foreign companies enjoy the same treatment as accorded to own legal persons regarding their establishment and operation in Ukraine.

3. Is the exercise or access to a service activity subject to any of the following requirements (be it through an authorisation procedure (see below) or separately)?

a) Requirements based directly or indirectly on nationality or, in the case of companies, the location of the registered office, including in particular: (a) nationality requirements for the provider, his staff, persons holding the share capital or members of the provider's management

or supervisory bodies; (b) a requirement that the provider, his staff, persons holding the share capital or members of the provider's management or supervisory bodies be resident within the territory

Subject to certain reservations discussed below, Ukrainian legislation does not contain requirements or differences in treatment relating to the nationality of the provider, his staff, persons holding the share capital or members of the provider's management or supervisory bodies.

Under the Law of Ukraine "On Electronic Communications", only legal entities or individual entrepreneurs registered in Ukraine may render telecommunication services in Ukraine. Telecommunication operators at all levels of the chain of ownership may not: (i) be registered in offshore zones; (ii) be residents of an aggressor state or an occupier state (i.e., the Russian Federation) or have such residents as their shareholders; (iii) be founded by political parties, trade unions, religious organizations; and/or (iv) be founded by citizens who are serving sentences in correction facilities or have limited legal capacity.

The Law "On State Regulation of Activities Related to the Organization and Conduct of Gambling" allows only legal entities registered in Ukraine to act as gambling organizers, which means that non-residents willing to provide gambling services have to establish legal presence in Ukraine. Similar rules apply to travel agencies, which may also operate only as legal entities established in Ukraine under the Law of Ukraine "On Tourism". The provision of security services also requires establishing a legal presence in Ukraine under the Law of Ukraine "On Security Services".

Additionally, there are some restrictions established for Russian individuals and legal entities due to the military aggression against Ukraine. The recently introduced laws preclude Russian individuals and legal entities from establishing or operating a company in Ukraine. The limitations include prohibition for the Ukrainian notaries to perform any notarial acts in relation to Russian individuals, legal entities and Ukrainian legal entities where Russian individuals or legal entities have more than 10% ownership. Russian residents also face longer terms and higher fees when registering ROs. The recently adopted legislation also prohibits any payments, in favour of individuals or companies which are the residents of the Russian Federation or Belarus, as well as provision of any services, and performance of any works to the Russian Federation or Ukrainian companies with Russian UBOs or where 10% or more of the company's shareholding is owned by the Russian Federation or by a citizen or a company from the Russian Federation.

Foreign participation in or foreign ownership of a Ukrainian commercial bank is allowed. Regardless of nationality or residence of the founder or shareholder, establishment of a commercial bank and/or direct or indirect acquisition of shares therein amounting to or exceeding 10, 25, 50 or 75 percent of the bank's charter capital would require a prior approval of the National Bank of Ukraine.

b) A prohibition on having an establishment in a state different than Ukraine or on being entered in the registers or enrolled with professional bodies or associations of other States

Ukrainian laws do not establish any specific requirements or restrictions on having an establishment in a state different from Ukraine or on being entered in the registers or enrolled with professional bodies or associations of the other states. Furthermore, the legislation does not prohibit the possession of an interest in companies in the other countries, or entries in the registers or membership in professional bodies or associations of the other countries, save for certain restrictions and limitations in relation to the residents of the Russian Federation (see answer 3(a) above).

There are exceptions which apply to the foreign attorneys who intend to practice law in Ukraine and to become a founder or a member of an attorneys (advocate) association. The Law of Ukraine "On the Bar and Advocacy" requires non-resident attorneys to obtain a special authorization from the Qualification and Disciplinary Commission of the Ukrainian Bar Association prior to practising law in Ukraine or becoming a founder or member of an attorney association.

The Law on State Registration, which regulates the establishment of business entities in Ukraine, contains no provisions that prohibit the establishment of a company if the founder has already registered a company in the territory of another country other than Ukraine. Also, the membership or absence of membership in foreign professional bodies or associations does not affect the establishment of legal presence in Ukraine.

The same rule applies to individual entrepreneurs: obtaining equivalent status in any other jurisdiction shall in no way affect the possibility of registration as an individual entrepreneur in Ukraine, and no legislative restrictions or special procedures are imposed in this regard.

c) Restrictions on the freedom of a provider to choose between a principal or a secondary establishment, in particular an obligation on the provider to have its principal establishment in Ukraine, or restrictions on the freedom to choose between establishment in the form of an agency, branch or subsidiary

As a general rule, Ukrainian legislation does not impose regulatory distinctions between a principal or a secondary establishment. However, the freedom of a service provider to choose between a principal (i.e., parent company) or a secondary establishment (i.e., subsidiaries, branches and affiliates) to provide services in Ukraine may be restricted in certain specific industry sectors.

Thus, the Law of Ukraine "On Banks and Banking Activity" (the "Law on Banks") stipulates that the provision of banking services in Ukraine may be carried out either by a legal entity established in Ukraine in the form of a joint-stock company or cooperative bank (this may be a Ukrainian subsidiary of foreign parent bank) or by an accredited Ukrainian branch of a foreign bank. A foreign bank may also establish its representative office in Ukraine, however, such an office cannot conduct banking activities in Ukraine.

Similarly, under the Law of Ukraine "On Insurance", an insurance company may carry out insurance services in Ukraine through a duly licensed Ukrainian legal entity or a duly licensed Ukrainian branch of the foreign insurance company.

Under the Law of Ukraine "On Capital Markets and Organised Commodities Markets", professional capital markets activity (which includes, among other things, trading in financial instruments, clearing activity, custodial activity, asset management) may be carried out in Ukraine by joint-stock companies, limited liability companies or additional liability companies registered in Ukraine.

Certain construction works involving complex or dangerous elements require a license, which may only be granted to a Ukrainian resident legal entity.

Likewise, selected telecommunication services (the use of radio frequencies) and activities of travel agents may be provided only by a company established/registered in Ukraine.

An RO would not be able to participate in public procurement tenders on its own – the deemed participant in such case would be the RO's foreign parent company.

Additionally, certain areas of services require providers to take specific local organizational forms and, thus, require principal establishment (for more detail, see answer 4(b) below).

Therefore, a specific form of incorporation of a company is prescribed only in certain specific cases. Otherwise, a service provider is free to choose any legal form for its business operations and to conduct a particular activity through either the parent company or a subsidiary.

d) The case-by-case application of an economic test making the granting of authorisation subject to proof of the existence of an economic need or market demand, an assessment of the potential or current economic effects of the activity or an assessment of the appropriateness of the activity in relation to the economic planning objectives set by the competent authority

As a general rule, when granting authorizations to provide services in Ukraine, it is not required to apply the economic test relating to the existence of an economic need or market demand, assess the potential or current economic effects of the activity or assess the appropriateness of the activity in relation to the economic planning objectives.

At the same time, when making a decision as to whether to issue a banking or other financial services license to a legal entity wishing to render banking or other financial services in Ukraine, the National Bank of Ukraine requires that applicants provide their business plans and business models together with other relevant documents, based on which the National Bank of Ukraine assesses the viability of such plans and models.

e) The direct or indirect involvement of competing operators, including within consultative bodies, in the granting of authorisations or in the adoption of other decisions of the competent authorities, with the exception of professional bodies and associations or other organisations acting as the competent authority; this prohibition shall not concern the consultation of organisations, such as chambers of commerce or social partners, on matters other than individual applications for authorisation, or a consultation of the public at large

The direct or indirect involvement of competing operators in the process of granting authorisations is not prescribed under Ukrainian legislation.

f) An obligation to provide or participate in a financial guarantee or to take out insurance from a provider or body established in Ukraine (meaning that financial guarantees or insurances subscribed in a body established in another country - but offering coverage for activities in Ukraine - would not be accepted)

Ukrainian banking regulations provide that, in order to be eligible to provide banking services in the country, an applying Ukrainian branch of a foreign bank should submit to the National Bank of Ukraine, among other things, a written undertaking (guarantee) of the foreign bank where the latter unconditionally guarantees to fulfil all of the obligations arising in connection with the activities of the branch in Ukraine.

Further, the Law of Ukraine "On Tourism" requires that, as a prerequisite for the rendering of tourist services in Ukraine, both the tour operator and the travel agency should obtain a guarantee from a bank or other credit institution to ensure that the rights and interests of tourists - their customers - are secured in the event of such operator's or agency's bankruptcy.

g) An obligation to have been pre-registered, for a given period, in the registers held in their territory or to have previously exercised the activity for a given period in Ukraine.

There are no legal requirements in Ukraine for the submission of evidence of pre-registration of foreign legal persons in the relevant register or for the performance of activities for a certain period of time in Ukraine in order to provide services.

4. Please identify whether the legal system makes access to a service activity or the exercise of it subject to compliance with any of the following non-discriminatory requirements and explain the justification behind each of the requirements:

a) Quantitative or territorial restrictions, in particular in the form of limits fixed according to population or of a minimum geographical distance between providers

Generally, Ukrainian legislation does not provide for such quantitative or territorial restrictions.

b) An obligation on a provider to take a specific legal form – if so, please indicate the specific legal forms required and their main characteristics

The Ukrainian legal system allows registration of the following principal legal forms for resident business entities providing services in the territory of Ukraine: limited liability company, additional liability company, joint-stock company (public and private), private enterprise, partnership (full and limited) and individual entrepreneurship.

The Commercial Code of Ukraine prescribes that entrepreneurs may carry out any business activity that is not prohibited by law freely and without limitations. Certain types of activities, however, require that legal entities take a specific form. This includes, for example:

- banking activity, where the Law on Banks stipulates that Ukrainian banks may operate only as joint-stock companies or cooperative banks;
- insurance activity, where the Law of Ukraine "On Insurance" provides that insurance activities are allowed to be carried out by those Ukrainian entities that are in the form of joint-stock companies, partnerships or additional liability companies;
- investment activity, where the Law of Ukraine "On Joint Investment Institutions" stipulates that corporate investment funds may only operate as joint-stock companies, while asset management companies may operate only as joint-stock companies or limited liability companies.

Additionally, according to the Law of Ukraine "On the Bar and Advocacy", advocacy (attorney-at-law) services may be provided by a qualified and admitted attorney solely as individual or within an attorney bureau or attorney company. An attorney bureau is a legal entity founded by one attorney, and an attorney company (advocate association) is a legal entity founded through association of at least two attorneys. Both the attorney bureau and attorney company may be incorporated only by qualified and admitted attorneys. After registration of the attorney bureau/company with the State Register of Legal Entities, Individual Entrepreneurs and Public Organizations, the attorney or the attorney company itself should notify the regional bar council within three business days. The attorney-at-law activity may not be performed by a legal entity other than an attorney bureau or attorney company.

c) Requirements which relate to the shareholding of a company or voting rights – if so, please indicate the sectors in which this is the case

With several exceptions, the Ukrainian law does not contain special requirements for the shareholding of a company or voting rights.

The current regulations require insurance companies to be established in a specific legal form (joint-stock company, general or limited partnership or additional liability company) and to have at least three shareholders (participants).

There is also a direct prohibition on a Russian shareholding for certain types of financial services, gambling activities, education services, employment intermediary services, etc. Currently, Ukrainian legislation is being developed and amended to close the door for Russian business in essentially all fields of the economy. This process is, however, aimed at the aggressor state only and in no way discriminates against the businesses from any other jurisdictions (including the EU member states).

There are minimum charter capital requirements for certain legal forms and types of activities. The minimum charter capital of a joint-stock company is UAH8,125,000 (approximately EUR250,000), whereas no such requirement is established for the other types of companies. Charter capital thresholds are also established for banks – UAH200,000,000 (approximately EUR 6,182,000), insurance companies – an UAH equivalent of EUR1,000,000-1,500,000, gambling organizers – UAH30,000,000 (approximately EUR956,000), asset management companies – UAH7,000,000 (approximately EUR223,000).

d) Requirements, other than those concerning matters covered by Directive 2005/36/EC or provided for in other EU instruments, which reserve access to the service activity in question to particular providers by virtue of the specific nature of the activity

As mentioned above, the applicable legislation on advocacy (attorney-at-law) services requires non-resident attorneys to obtain special authorization from the Qualification and Disciplinary Commission of the Ukrainian Bar Association prior to practising law in Ukraine or becoming a participant (founder) of an attorney bureau or an attorney company (association).

Also, an individual may provide auditor services if he/she, among other things, confirms a high level of theoretical knowledge and professional competence by successfully passing the relevant exams in Ukraine. Auditors admitted to conducting a statutory audit in any EU member state who intend to work in Ukraine must pass exams to confirm theoretical knowledge of Ukrainian legislation in the following areas: auditing and accounting, tax legislation and legislation on a unified social contribution, labour, civil, commercial legislation, including corporate, and insolvency legislation.

Furthermore, in the area of anti-money laundering (AML), Ukrainian legislation requires that designated AML officer(s) of a company undergo training and passing exams in the field of AML, and to further improve their qualification regularly in specialised educational institutions in Ukraine.

e) A ban on having more than one establishment in the territory of Ukraine

There are no limitations on the number of a business's establishments in the territory of Ukraine. A non-resident individual or legal entity is free to set up any number of companies or branches or subdivisions thereof. At the same time, certain limitations are established for members of the executive body or supervisory board of a limited liability company, and there is a requirement of a prior approval of the highest corporate governance body of such a company for such persons to undertake activities (as individual entrepreneurs or shareholders) in competitive fields.

A natural person may apply for only one individual entrepreneur status.

f) Requirements fixing a minimum number of employees

Generally, there are no requirements applicable to the minimum number of employees in a Ukrainian company. At the same time, the market practice suggests that usually at least one person – head of the executive body, i.e., chief executive officer or director – must be employed by a company in Ukraine.

Also, depending on the nature of the activity, some industries may require that a service provider employs a certain minimum number of specialists responsible for carrying out specific duties. For example, the medical practice and pharmaceutical industry are subject to specific licensing terms obliging relevant service providers to employ specific qualified professionals.

g) Fixed minimum and/or maximum tariffs with which the provider must comply – if so, please indicate the sectors in which this is the case

Ukrainian legislation defines the list of goods of significant social importance, which include, among other things: bread and milk products, poultry, natural gas, electric energy, gasoline and diesel fuel, refined sunflower oil etc. Depending on the social and economic situation in Ukraine, the government of Ukraine may introduce minimum or maximum prices and tariffs with which the service provider must comply.

In addition, Ukrainian regulatory authorities establish maximum tariffs on water supply to consumers, traffic transmission of mobile communications and universal postal services.

h) An obligation on the provider to supply other specific services jointly with his service.

When offering tourist products to customers, tourist operators are mandatorily required to provide at least two tourist services, which may include transportation service, accommodation service and/or other tourist services not related to transportation and accommodation. Tourist operators are also required to ensure that their customers are insured under the tourist operators' agreement with insurance companies (unless such customers obtain relevant insurance policies themselves).

5. Please indicate whether the legal system restricts the exercise of service activities jointly or in a partnership and eventually explain the justification for such restriction.

The general legal basis governing legal relations in the field of entrepreneurial activity introduce a horizontal framework for both goods and services.

The legislation of Ukraine establishes general guarantees of freedom of establishment, including provision of services, free movement of capital, goods and services in Ukraine.

The legislation of Ukraine provides for means of state regulation, such as licensing, patenting, issuing permits, quoting, state intrusion in the activities of monopolies, price regulation. In general, with regard to the application of the above means, the legislation of Ukraine establishes guarantees of restrictions on state regulation of economic processes. State regulation or intrusion is justified only in order to ensure the social orientation of the economy, fair competition in entrepreneurial activity, ecological protection of the public, protection of consumer rights and safety of the society and state. Unlawful intrusion of state authorities, local self-governing bodies and their officials into economic relationships is prohibited.

Foreigners and stateless persons while performing economic activity in Ukraine enjoy the same rights and suffer the same obligations as Ukrainian citizens, unless otherwise provided by the present Code and other laws. Foreign legal entities while performing economic activity in Ukraine have the

same status as legal entities of Ukraine, with peculiarities envisaged by this Code, other laws, and international treaties, approved by the Verkhovna Rada of Ukraine.

Provisions of the legislation of Ukraine

According to Article 42 of the Constitution of Ukraine, everyone has the right to entrepreneurial activity that is not prohibited by law.

Article 6 of the Economic Code of Ukraine establishes the following general principles of business activity: securing economic diversity and equal protection by the state of all business entities; freedom of establishment with the limits, established by the law; free flow of capital, products and services throughout the territory of Ukraine; restriction of state regulation of economic processes in view of the necessity to ensure the social orientation of economy, fair competition in entrepreneurial activity, ecological protection of the public, protection of consumer rights and safety of the society and state; ban on illegal intrusion of state authorities and local self-governing bodies and their officials into economic relationships.

According to Article 14 of the Economic Code of Ukraine, licensing and patenting of certain types of business activity, as well as quoting are means of state regulation in the sphere of business activity, aimed at securing the unified state policy in this sphere, and protection of economic and social interests of the state, society and individual consumers. Legal basis for licensing and patenting of certain types of business activity, as well as quoting are determined on the assumption of the constitutional right of everybody to carry out entrepreneurial activity, not banned by the law, as well as principles of business activities, provided by Article 6 hereof.

Relationships associated with licensing of certain types of business activity are regulated by the Law of Ukraine “On Licensing of Economic Activities”. Article 7 of the Law defines the list of economic activities being subject to licensing, which include services.

Such business activities, which include but not limited to those types that may involve the provision of services, are banking activities, financial services and collection services for banks; television and radio broadcasting activities licensed in accordance with the Law of Ukraine “On Television and Radio Broadcasting”; activities in the field of electricity licensed with due regard to certain peculiarities envisaged by the Law of Ukraine “On Electricity Market”, and activities in the field of nuclear energy licensed in accordance with the Law of Ukraine “On Licensing Activities in the Field of Nuclear Energy Use”; educational activities licensed with due regard to certain peculiarities envisaged by special laws in the field of education; services in the field of cryptographic protection of information (except for electronic digital signature services) and technical protection of information in accordance with the list defined by the Cabinet of Ministers of Ukraine; medical practice; banking of cord blood, other human tissues and cells in accordance with the list approved by the Ministry of Health of Ukraine; veterinary practice; lotteries issue and conduction with due regard to certain peculiarities envisaged by the Law of Ukraine “On State Lotteries in Ukraine”; activities in the gambling market licensed in accordance with the Law of Ukraine “On State Regulation of Activities Related to the Organization and Conduct of Gambling”; tour operator activities; mediation in employment abroad; activities related to development, production and supply of special technical equipment to withdraw information from communications channels and other technical means for surreptitious obtaining of information; transportation of passengers, dangerous goods and hazardous waste by river, sea, road, rail and air transport, international transportation of passengers and goods by road vehicles; foreign economic activity in accordance with Article 16 of

the Law of Ukraine “On Foreign Economic Activity”; transportation of petroleum, oil products via main pipelines; activities in the natural gas market with due regard to certain peculiarities envisaged by the Law of Ukraine “On the Natural Gas Market”; centralized water supply and disposal; production of thermal energy, transportation of thermal energy via and supply of thermal energy production of thermal energy, transportation of thermal energy via main and local (distribution) heat networks and supply of thermal energy; security guard activities; household waste recycling; household waste disposal; banking and testing of donor blood and blood components regardless of their end use, processing, storage, distribution and sale of donor blood and blood components intended for transfusion).

The law enshrines the principles of state policy in the field of licensing, which justify the licensing of economic activities given the priority of protection of rights, legitimate interests, human life and health, environment, protection of limited stated resources and state security. Application of licensing only to an economic activity constituting a threat of a violation of human rights, people’s lawful interests, life and health, environment and/or national security, provided that the instruments of state regulation are insufficient (Art. 3(1)(4)).

The Law “On the Permit System in the Sphere of Economic Activity” is in force in Ukraine. The Law may apply to individual operations, economic activities of a certain type, works and services. The Law does not apply to the relations in the field of licensing of economic activities (except for relations related to the issuance of permit documents required to obtain a license to conduct a certain type of economic activity). Peculiarities of issuance, re-issuance, extension and revocation of permits are determined by the sectoral laws of Ukraine.

According to the principles established by the Law, permitting activities are justified given the need to protect the rights, legitimate interests of society, local communities and citizens, life of citizens, environmental protection and state security (the second indent of Article 3(1)).

According to Article 14(4) of the Economic Code of Ukraine, patenting of entrepreneurial activity of business entities may take place in the spheres associated with trade for monetary notes (cash, checks, as well as other forms of settlement and payment cards throughout the territory of Ukraine), exchange of international currency cash valuables (including transactions with cash circulation media in international currency, and payment cards), in the sphere of gambling business and domestic personal services, other spheres provided by the law.

According to Article 14(5) of the Economic Code of Ukraine, whenever necessary the state applies quoting, establishing limits of volume (quotas) of production or turnover of certain products and/or services. The procedure of quoting of production and/or turnover (including export and import), as well as distribution of quotas is established by the Cabinet of Ministers of Ukraine in compliance with the law.

Article 27(4) of the Economic Code of Ukraine, provides for the possibility of state intrusion in the activities of monopolies. In the event of social need, and in order to eliminate negative influence on competition state authorities conduct — with regard to existing monopolistic formations — measures of antimonopoly regulation as determined by the law, and demonopolisation measures, provided by relevant state programs, except for natural monopolies.

According to Articles 191, 192 of the Economic Code of Ukraine, free prices are set for any types of products (works/services) except those, for which state regulated prices are set. Free prices are set by the business entities independently, by consent of the parties, and for internal business

relations — according to the decisions made by the business entities. Prices are regulated by the state in accordance with the Law of Ukraine “On Prices and Pricing” and other laws. Pricing policy, procedure for setting and applying prices, powers of public authorities and local self-governing bodies to set and regulate prices, as well as control over prices and pricing are determined by the law on prices and pricing, other legislative acts.

Article 4 of the Law of Ukraine “On Prices and Pricing” establishes principles of the state price policy aimed at providing developments of national economy and business activity; counteractions to abuse of the monopoly (dominating) position in the field of pricing; expansions of scope of free prices; social guarantees to the population in case of increase in prices; necessary economic guarantees for producers; orientations of the prices of the domestic market of goods to the price level of the world market.

According to Article 12 of the Law of Ukraine “On Prices and Pricing”, state regulated prices are imposed on goods that have a decisive influence on the overall level and dynamics of prices, have significant social significance, as well as on goods produced by entities occupying monopolistic (dominant) market position. State regulated prices may be imposed on goods of business entities that infringe the requirements laid down in the law on protection of economic competition. State regulated prices have to be economically justified to ensure that the price for the goods corresponds to the costs of their production, sale (realisation) and profit from their sale (realisation).

Article 13 of the Law of Ukraine stipulates that state regulation of prices is carried out by determining mandatory fixed prices; marginal prices; threshold levels of trade markup and margin; supply and sales markup (procurement remuneration); marginal profitability rates; procurement remuneration amount; amounts of surcharges, discounts (reduction factors); introduction of the procedure for price change declaration and/or price registration.

According to Article 129 of the Economic Code of Ukraine, foreigners and stateless persons while performing economic activity in Ukraine enjoy the same rights and suffer the same obligations as Ukrainian citizens, unless otherwise provided by the present Code and other laws. Foreign legal entities while performing economic activity in Ukraine have the same status as legal entities of Ukraine, with peculiarities envisaged by this Code, other laws, and international treaties, approved by the Verkhovna Rada of Ukraine.

According Article 23(4) of the Economic Code of Ukraine, unlawful intrusion of bodies and officials of local governments in economic activity of business entities is prohibited. Enactment of legislative acts of local self-governing bodies that establish restrictions as to the turnover of certain products/services within corresponding administrative and territorial units, which is not stipulated by the law, is prohibited.

6. Please indicate whether the provisions establishing an obligation for service providers to subscribe to professional liability insurance recognise the equivalent insurance or guarantee requirements from the home country of the provider.

Certain service providers (compliance assessment entities, audit firms, court-appointed insolvency administrators and others) are required to subscribe to professional liability insurance.

Notably, a new version of the Law of Ukraine "On Insurance" will become effective in 2024. Under the Law, professional liability insurance agreements executed by non-resident insurance and

reinsurance brokers outside of Ukraine will be recognised in Ukraine provided that the liability limit under such agreement is not less than a certain amount set forth in the Law and that the insurance coverage extends to the entire territory of Ukraine.

7. What comparisons has Ukraine drawn between its laws governing the entry and employment of third country nationals as "key personnel" and the laws in force in the EU? Please provide an overview of differences between domestic and EU law governing this issue in tabular form.

No relevant comparisons were not made.

At the same time, the following regime is operated in Ukraine.

Citizens from the EU entry Ukraine pursuant to the rules of the simplified visa regime between the EU and Ukraine, effective from June 11, 2017.

According to Article 26 of the Constitution of Ukraine, foreigners who legally stay in Ukraine enjoy the same rights and freedoms and have the same obligations as citizens of Ukraine, except as otherwise provided by the Constitution, laws or international treaties of Ukraine. This guarantee also applies to the right of foreigners and stateless persons to work.

Pursuant to paragraph 17 of Article 86, Chapter 6, Section IV of the Association Agreement, "key personnel" means natural persons employed by a legal entity of one Party (other than non-profit organizations) who are responsible for establishing, proper control, management and operation of the enterprise. In other words, key personnel means personnel employed pursuant to the rules of the national law.

According to Article 2-1 of the Labour Code of Ukraine, any discrimination in labour field is prohibited, including violation of the principle of equality of rights and opportunities, direct or indirect limitation of workers' rights due to race, colour, ethnic, social and foreign origin.

According to Article 4(4) of the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons", foreigners and stateless persons who pursuant to the Law enter Ukraine for the purpose of employment or based on zero-hour contracts and received a temporary residence permit are considered to stay legally on the territory of Ukraine for the period of their work in Ukraine.

Article 5 of the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" defines that a temporary residence permit in cases provided by Article 4(4) of the Law shall be issued on the basis of an application submitted by a foreigner or stateless person, a valid health insurance policy, work permit for foreigners and stateless persons (except for foreigners and stateless persons who have the right to employment without such work permit under Ukrainian law) and on the obligation of the employer or resident of Dia City to notify the central executive body implementing the state policy in the field of migration (immigration and emigration), including combating illegal (unlawful) migration, citizenship, registration of individuals, refugees and other categories of migrants stipulated by the law, and the central executive body that ensures the formation and implementation of the state policy in the field of labour, employment, labour migration, employment relations, social dialogue, about early termination or termination of an employment agreement (contract), zero-hour contract with such foreigner or stateless person. For foreigners and stateless persons whose employment pursuant to the laws of Ukraine is carried out without a work permit required for foreigners and stateless persons, an employment agreement (contract), zero-hour contract

is submitted instead of such work permit, and persons holding a status of a foreigner of Ukrainian origin shall submit an employment agreement (contract), zero-hour contract and the certificate of foreigner of Ukrainian origin. According to paragraph 1 of Article 5-1(1) of the Law, the validity of a temporary residence permit issued in connection with employment is equal to the validity of a work permit for foreigners and stateless persons. According to the second part of Article 5-1 of the Law, the validity of a temporary residence permit may not exceed the validity of a passport document of a foreigner or stateless person.

The Law of Ukraine "On Employment" defines the peculiarities of the employment of foreigners and stateless persons. Thus, Article 8 of the Law stipulates that employers have the right to use the work of foreigners and stateless persons under an employment contract if they have a work permit for foreigners or stateless persons issued to the employer by the State Employment Service, unless otherwise provided by this Law and international treaties of Ukraine, the binding nature of which was approved by the Verkhovna Rada of Ukraine.

Article 42-9 of the Law "On Employment" defines the grounds for refusal to issue a permit, in particular:

1) failure to eliminate the grounds for suspension of consideration of the application within the established period of time or recognition by the territorial body of the central executive authority implementing the state policy in the field of employment and labour migration, that a motivation letter submitted by the employer lacks justification;

2) submission of an application and documents for the extension of the permit in violation of the established deadline;

3) the absence in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations of information about the employer or the availability of information on the state registration of termination of a legal entity as a result of its liquidation, or the availability of information on the state registration of termination of entrepreneurial activity of an individual entrepreneur as the employer.

The decision on refusal to issue, extend the validity of the permit, to introduce amendments to the permit must contain a list and description of the grounds (justifications) for the refusal. Refusal to issue, extend or amend the permit on the grounds not provided for by this Article is not be allowed. Once the grounds for refusal to issue, renew or amend the permit have been eliminated, the employer may resubmit the documents.

Pursuant to Article 42(6), the following persons can be employed without a permit: 1) foreigners and stateless persons permanently residing in Ukraine; 2) foreigners and stateless persons who have obtained the refugee status pursuant to the laws of Ukraine or have received a permit for immigration to Ukraine; 3) foreigners and stateless persons who have been recognized as persons in need of additional protection or who have been granted temporary protection in Ukraine; 4) representatives of the foreign navy (river) fleet and airlines that provide services to such companies in Ukraine; 4-1) persons recognized as stateless persons by the central executive body implementing the state policy in the field of migration (immigration and emigration), including combating illegal (unlawful) migration, citizenship, registration of individuals, refugees and others specified by law categories of migrants; 5) employees of foreign mass media accredited to work in Ukraine; 6) athletes who have obtained the professional status, artists and cultural workers to work in Ukraine according to their profession; 7) employees of emergency rescue services to perform urgent work; 8) employees

of foreign missions who are registered on the territory of Ukraine following the procedure prescribed by the law; 9) clergymen who are foreigners and temporarily stay in Ukraine upon the invitation of religious organizations to conduct canonical activities only in such organizations upon the official consent of the authority that registered the charter (regulations) of the respective religious organization; 10) foreigners and stateless persons who arrived to Ukraine to take part in the implementation of international technical assistance projects; 11) foreigners and stateless persons who arrived to Ukraine to conduct teaching and/or research activities in the institutions of professional pre-higher and higher education upon invitation of such institutions; 12) other foreigners and stateless persons in cases provided by laws and international treaties of Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine.

Highly qualified foreign specialists and workers, the need for whom is significant for the national economy, are engaged on the grounds specified by the Law of Ukraine "On Immigration" (Article 42(7) of the Law "On Employment").

8. On the regime applicable to cross-border service providers: Is it possible for an individual or company established in an EU Member State to provide services on the territory of Ukrainewithout establishing a subsidiary there? Does the legislation distinguish between the requirements applicable to EU companies wishing to provide services from an establishment in Ukraine and those who wish to provide cross-border services there from an establishment in an EU Member State? If it does, what is the distinction? Please provide examples by sectors.

Generally, an individual or a company established in an EU Member State may provide services on the territory of Ukraine (e.g., under a cross-border contract) without establishing a subsidiary in Ukraine. The exemptions discussed in section 3(c) above regarding licensed businesses, where a license may be granted to domestic legal entity only, participation in public procurements and other regulated activities, apply.

Registration requirements might arise depending on the nature and duration of the services performed. Non-residents are required to register with the tax authorities in Ukraine if:

- their business gives rise to a permanent establishment in Ukraine (regardless of the fact whether a branch is formally registered);
- they have a certain nexus in Ukraine, such as acquire real property/rights to such property in Ukraine; and/or
- open bank accounts in Ukraine.

The domestic definition of a permanent establishment includes:

- maintaining a fixed place of business in Ukraine, through which a business of a foreign company/ self-employed individual is carried on;
- carrying on business in Ukraine through a dependent agent;
- a building site or construction/ installation project if it lasts more than twelve months; and
- the provision of services, including consultancy services, by a foreign entity working in Ukraine for a period exceeding 183 days in any 12-months period.

Non-residents who commenced their business through a permanent establishment prior to the tax registration are deemed to commit tax evasion. The income received is considered to be hidden from taxation. Failure to register with the tax authorities may result in penalties and liabilities, including criminal, as a result of non-compliance with the tax reporting and/or payment requirements.

In terms of specific sectors where a local establishment may or may not be necessary, as observed above, certain services, which include telecommunications, gambling, travel agency, security and certain construction services, may only be provided through legal entities (subsidiaries) established in Ukraine. Banking and insurance services may be provided by foreign institutions through respective Ukrainian branches, registered and licensed in accordance with the applicable legislation.

The ability of service providers from EU Member States to provide services in Ukraine without establishing a subsidiary will also depend on the provisions of the applicable legislation in a particular area. More specifically, unless the relevant laws and regulations expressly provide that a certain service may only be provided by an entity established in Ukraine, foreign service providers will be able to provide services without establishing a local subsidiary (subject to the above observation regarding registration with tax authorities). In this regard, the applicable legislation of Ukraine is currently undergoing substantial changes.

For example, under the existing legislation, in order to be eligible to provide financial services in Ukraine (other than banking and insurance services), a foreign service provider needs to establish a subsidiary in Ukraine and to register it with the National Bank of Ukraine. At the same time, the recently adopted Law of Ukraine "On Financial Services and Financial Companies" – which was adopted as part of Ukraine's commitment towards harmonization of Ukraine's financial sector regulation with that of the EU and which will come into force in 2024 – provides that foreign financial institutions that are authorised to provide financial services in accordance with the legislation of their country of incorporation will be able to provide financial services in Ukraine through their branches opened in Ukraine for such purposes. Similarly to the procedure applicable to Ukraine-based financial institutions (subsidiaries), Ukrainian branches of foreign financial institutions will need to apply for a license of the National Bank of Ukraine for the provision of financial services in Ukraine. The new law expressly provides that Ukrainian branches of foreign financial institutions will be subject to the same rules and regulations that are applicable to the financial institutions registered under Ukrainian laws.

In addition, under Ukrainian audit rules, a foreign audit firm that is admitted to carrying out audit services under the legislation of its country of incorporation may carry out audit activity in Ukraine provided that the key partner of such foreign audit firm meets the requirements established by Ukrainian law for auditors, and that such foreign audit firm complies with the Ukrainian law requirements and is registered in the Register of Auditors. Ukrainian legislation does not distinguish between the requirements for carrying out audit activities in Ukraine by a Ukrainian subsidiary of a foreign firm or the foreign firm itself.

Further, the legislation governing capital markets in Ukraine provides that foreign investment firms may apply for a license to carry out professional capital markets activity in Ukraine (which includes, among other things, trading in financial instruments, clearing activity, custodial activity, asset management), however the specific requirements for such foreign investment firms are yet to be adopted in Ukraine.

9. PSCs: Is there a point of single contact (PSC), where the information on requirements applicable to companies who wish to provide services is available electronically? If yes, does information on requirements applicable which is available in the PSC make a difference between requirements applicable to service providers established in Ukraine and those providing cross-border services from an establishment in a different State (see question above)

Generally, there is no point of single contact in Ukraine where the information on requirements applicable to companies that wish to provide services would be centralised and available electronically.

For certain services that require licensing or permits, the Law of Ukraine "On Licensing of Economic Activities" (the "Law on Licensing") and separate instructions on obtaining specific licenses and permits allow submitting the applications for obtaining licenses and permits via an electronic portal. These services include transportation, construction, trade in alcoholic beverages, pharmaceuticals, water resources management, etc.

For the other services, there is a centralised Guide of Administrative Services (<https://guide.diia.gov.ua/>) which provides information on the requirements for obtaining licenses or permits, timing and cost for issuing the licenses or permits, frequently asked questions etc.

At the same time, any service providers that wish to provide financial services in Ukraine will need to familiarize themselves with the relevant Ukrainian laws and regulations. Regulations of the National Bank of Ukraine and the National Securities and Stock Market Commission are available (inter alia) on the websites of these agencies.

Typically, the aforementioned portals and guides provide general information on requirements applicable to all applicants, irrespective of their country of incorporation.

10. Are service providers able to complete by electronic means any procedures that may be deemed necessary for the provision of a service?

The Law on State Registration provides for the possibility to register a limited liability company or individual entrepreneur online via the state portal of administrative services. At present, online registration is not available for non-resident individuals or legal entities due to certain technical requirements, as discussed above.

The Law of Ukraine "On Licensing of Economic Activities" and separate instructions on obtaining specific licenses and permits allow submitting the applications for obtaining licenses and permits in the field of transport, construction, trade in alcoholic beverages, pharmaceuticals, water resources management, etc. via an electronic portal. Financial and tax reporting is also carried out through electronic means in accordance with the Tax Code of Ukraine.

Since 2020 is operating Diia.Business project — national project for the entrepreneurship and exports development, which was initiated by the Ministry of Digital Transformation of Ukraine. Project has two components — online portal Diia.Business in one stop shop format, which can find all the necessary information for the establishment and development of own business and the network of offline business support centers Diia.Business, before the war which operate already in 11 regions and cities of Ukraine. Business project is implemented by the State institution Entrepreneurship and Export Promotion Office (EEPO) together with the Ministry of Digital Transformation of Ukraine. During 2020 — end of 2021 the online portal was visited by 1.9 million users. The offline support

centers for entrepreneurs before the war were visited by 40+ thousand entrepreneurs and business beginners.

- For beginners, on Diia.Business portal are available 100+ business ideas to start own business in various areas of activities: beauty and health, agriculture, tourism, education, medicine, retail, workshops, gastronomy, IT and telecom, sports, photo-video services, architecture and construction, energy. The section provides an online test for the future entrepreneur, who after testing receives step-by-step instructions with detailed information about the permits required to register a business in a particular region of Ukraine. In addition, each business idea has a list of useful templates of documents for starting a business, such as: business plan, marketing and sales strategy, financial plan, etc. During 2020 — end of 2021 this section has 80+ thousand views, more than 21 thousand business beginners use the section.

- Diia.Business project since 2020 till now provides free education for business beginners in the format of free online courses on: how to start own business, starting a business in creative sphere, textile manufacturing, pottery manufacturing, technology sphere, food industry, financial literacy for beginners, marketing issues, etc. The total number of users who started studying in the free online school — 13,600+ people

- In addition, the project Diia.Business since 2020 provides free consultations from experienced experts for entrepreneurs, business beginners and start-ups. During the two years (2020 — end of 2021) of providing consultations, were available 70+ topics of consultations on taxation, legal support, search for financing, accounting issues, marketing, sales, certification issues, electronic auctions, psychological support, etc. Under state of war in Ukraine, entrepreneurs and business beginners have access to 25+ topics of consultations on business planning, systematization of business processes, taxation, financial issues, legal support and marketing, etc. Topics are constantly expanding. The total number of consultations provided — 6,500+ free consultations.

B. Authorisation schemes

11. "Authorisation scheme" means any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof. What are the main horizontal or sector-specific authorisation schemes which apply to all businesses wishing to trade in, or with, Ukraine?

Ukraine implements authorisation schemes that can be divided into the following categories::

1. **State registration of legal entities.** As observed in section 2(a) above, businesses wishing to operate in Ukraine as resident legal entities (companies) are required to register with the State Register of Legal Entities, Individual Entrepreneurs and Public Organisations. The companies obtain the legal personality following the registration and assignment of a unique identification number, which also serves as a tax identification number. The primary legal act governing the registration of legal entities in Ukraine is the Law on State Registration.

2. **General licensing regime.** This regime, primarily governed by the Law on Licensing, determines an exhaustive list of types of activities that are subject to licensing in Ukraine and

establishes a unified procedure for their licensing, supervision and control, and liability for violation of the licensing legislation.

The economic activities that are subject to the general licensing regime in Ukraine include, among others, educational activity; cryptographic and technical information security activity; construction of certain facilities; production of medicinal products, wholesale and retail trade in medicinal products, import of medicinal products; production, repair and trade in non-military firearms and ammunition for them, edged weapons, pneumatic weapons; production of explosive materials for industrial use; fire-fighting works and services; production of highly hazardous chemicals and hazardous waste management; medicine practice; veterinary practice; lotteries; tour operator activities; transportation of passengers, dangerous goods and hazardous waste by river, sea, motor transport, rail and air transport, international transportation of passengers and goods by motor transport; transportation of oil, oil products by main pipeline; security activities; household waste recycling; burial of household waste; production of veterinary medicines.

When carrying out its licensed activity under the general licensing regime, the licensee is obliged to comply with the requirements of the licensing terms of the relevant type of economic activity. The licensing terms are a special regulatory act of the Cabinet of Ministers of Ukraine or other authorized government bodies which establishes an exhaustive list of requirements for the implementation of economic activities subject to licensing and an exhaustive list of application documents for obtaining a license. The license applicant must comply with the licensing terms in order to obtain the license.

As discussed in more detail below, certain activities that are subject to licensing are exempt from the general licensing regime under the Law on Licensing but instead are subject to special licensing rules.

3. **Special licensing regime.** Under this regime, certain licensed activities are governed by special laws of Ukraine in the relevant areas and are not subject to the general licensing regime under the Law on Licensing.

The following are the licensed activities that are subject to the special licensing rules:

- banking activities, provision of other financial services and provision of collection services to banks – licensed by the National Bank of Ukraine and are subject to the relevant laws of Ukraine on banking and financial services;
- professional activities in the capital markets and organised commodities markets – licensed by the National Securities and Stock Market Commission;
- gambling activities – licensed under the Law of Ukraine "On State Regulation of Activities Related to the Organization and Conduct of Gambling";
- activities in the field of electric power, in the natural gas market, centralized water supply and centralized drainage, production of heat energy, transportation of heat energy by main and local (distribution) heat networks, supply of heat energy etc. – licensed by the National Commission for State Regulation of Energy and Public Utilities;
- activity in the field of nuclear energy use – licensed under the Law of Ukraine "On Permit Activity in the Field of Nuclear Energy Utilization";

- production and trade of ethyl alcohol, cognac and fruit and grain distillate, bioethanol, alcoholic beverages and tobacco products and fuel, storage of fuel – licensed in accordance with the Law of Ukraine "On State Regulation of the Production and Turnover of Ethyl Alcohol, Cognac and Fruit, Alcoholic Beverages, Tobacco Products and Fuel"; and

- activities in the field of television and radio broadcasting – licensed in accordance with the Law of Ukraine "On Television and Radio Broadcasting".

4. **Regulatory permit system.** In order to carry out certain actions within their economic activity, legal entities operating in Ukraine (both residents and non-residents) may be required to obtain a "permit document". The permit document is defined as a permit, conclusion, decision, approval, certificate or other documents in electronic form which the licensing authority issues to a business entity to grant it the right to carry out certain actions or types of economic activities and/or without which the business entity is not allowed to perform certain actions necessary for the carrying out of their economic activities in Ukraine.

The principal legal acts governing the issuance of permit documents are the Law of Ukraine "On the Permit System in the Field of Economic Activity" (the "**Law on Permit System**") and the Law of Ukraine "On the List of Permit Documents in the Economic Sector". The latter Law establishes an exhaustive list of all permit documents that may be issued in Ukraine.

The examples of permit documents are a conclusion on the environmental impact assessment; conclusion of the state expertise of land engineering documentation regarding objects subject to mandatory state expertise; conclusion of the state sanitary and epidemiological expertise of operating facilities; permission for dredging, laying of cables, pipelines and other communications on water fund lands; permission for emissions of pollutants into the atmosphere by stationary sources; permission to carry out construction work; permission to carry out operations in the field of waste treatment; permission to place outdoor advertising; permission to participate in the traffic of vehicles whose weight or dimensions exceed the normative; operational permit; certificate of commissioning of the completed facility; certificate of the appraiser; special permission for use of oil and gas-bearing subsoil resources etc.

For each of the authorisation schemes please specify the following:

a) What is the justification in policy terms for each of the authorisation schemes?

For any business wishing to operate in Ukraine as a resident legal entity, the **state registration** with the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organisations is mandatory in accordance with the Law on State Registration.

In terms of **licensing**, the Law on Licensing stipulates that licensing regime is based on certain principles, among which is the principle of priority of protecting the rights, legitimate interests, human life and health, the environment, protecting the limited resources of the state and ensuring its security. To that end, the law provides that licensing is to be applied only to such type of economic activity the implementation of which poses a threat of violation of the rights and legitimate interests of citizens, human life or health, environment and/or state security, and only if the other means of state regulation are insufficient. In addition, special legislation establishing the special licensing regime in the particular area or sector may provide additional justifications for licensing such activity.

As regards the **permit documents**, the Law on Permit Documents sets out the general rule that only laws (highest hierarchy legislation) of Ukraine may establish the need to obtain any permit

documents. Accordingly, the legislation on permit documents is based on the principles of protecting the rights and legitimate interests of society, territorial communities and citizens, the life of citizens, protecting the environment and ensuring the security of the state, promoting competition and establishing transparency in the procedure for issuing permit documents.

b) For these authorisation schemes, describe in detail the procedure for obtaining the authorisations in question. How long does it take to obtain each of the identified authorisations?

The procedure for **state registration** of legal entities includes the following main steps:

- 1) filling out an application for state registration and submission of necessary documents by the applicant;
- 2) checking the documents for grounds for suspension of examination of the documents or refusal of state registration and adopting a decision on state registration by the competent authority – within 24 hours after receipt of the applicant's documents; and
- 3) carrying out the state registration in the absence of grounds for suspension of examination of the documents and refusal of state registration by making an entry in the United State Register of Legal Entities, Individual Entrepreneurs and Public Organisations.

The **licensing procedure under the general licensing regime**, established by the Law on Licensing, consists of the following main steps:

- 1) filling out an application for licence in the form specified by the relevant licencing terms and submission of necessary documents to the licensing authority;
- 2) within five working days from the date of receipt of the application for licence, the licensing authority establishes the availability or absence of grounds for leaving it without consideration;
- 3) within ten business days from the date of receipt of the licence application, and after establishing the absence of grounds for leaving the application for licence without consideration, the licensing authority considers it in order to establish the absence or availability of grounds for refusing the issuance of the licence by analysing supporting documents and obtaining information from the state information resources;
- 4) if the licensing authority establishes that there are no grounds for refusing the issuance of the licence, it makes the decision on licence issuance; and
- 5) the decision on license issuance becomes effective and is published on the official website of the licensing authority, and information about such decision is entered in the licence register, on the next business day after the adoption of such decision.

The procedure for **licensing the activities that are subject to the special licensing regime** is established in the laws governing such specific activities. For instance, the following procedure applies to the licensing of entities intending to provide financial services in Ukraine:

- 1) the applicant files with the National Bank of Ukraine an application for the license accompanied with supporting documents the exhaustive list and requirements for the content of which are established by the laws governing the relevant financial services markets and by the regulatory legal acts of the National Bank of Ukraine;

2) within ten business days upon receipt of the application for the licence, the National Bank of Ukraine reviews the documents for establishing the availability or absence of grounds for leaving it without consideration;

3) within 30 business days from the date of receipt of the application for the licence and a full package of documents attached to the application, and after establishing the absence of grounds for leaving the application for the licence without consideration, the National Bank of Ukraine adopts a decision to issue the licence or to refuse to issue it;

4) within three working days from the date of the relevant decision, the National Bank of Ukraine notifies the applicant of the decision on the issuance of the licence or on the refusal to issue the licence in writing. The decision to refuse to issue the licence must indicate the grounds for the refusal;

5) if the decision to issue the licence is made, then, no later than on the next business day from the date of such decision, the National Bank of Ukraine makes the respective entry in the State Register of Financial Institutions and provides the applicant with an excerpt from the relevant register on the issuance of the licence. The licence becomes effective on the day when the National Bank of Ukraine makes an entry in the relevant register.

The procedure for the issuance of various **permit documents** is determined by the Cabinet of Ministers of Ukraine in its regulations. The Law on Permit Documents provides that permit documents must be issued within ten working days unless otherwise provided by law.

c) Is there a fee for the authorisations? If so, please provide information on its amount. In case of different fees applicable by sector/type of activity, please provide a full list of fees.

No administrative fee is charged for the **state registration of legal entities**.

Under the **general licensing regime**, a one-time licensing fee is charged in the amount of one statutory subsistence minimum, based on the amount of subsistence minimum for non-disabled persons effective on the day when the licensing authority decides to issue the license (currently UAH2,481, which is approximately EUR81), unless any other amount of charge is established by law.

Specific licensing fees for issuing licenses under the **special licensing regime** are established in the relevant laws and regulations governing the specific activity. Depending on the industry or area of activity, licensing fees may vary. Below are some examples of the fees charged by different licensing authorities:

Financial services (licensed by the National Bank of Ukraine)	
Review of documents submitted for a banking license	UAH55,170 (approximately EUR1,815)
Review of documents for the issuance to a non-banking financial institution of license for transfer of funds without opening bank accounts	UAH37,460 (approximately EUR1,220)

Financial services (licensed by the National Bank of Ukraine)	
Review of documents for the issuance to a non-banking financial institution of license for carrying out currency transactions	UAH30,290 (approximately EUR986)
Review of documents for the issuance to a legal entity of license for the provision of collection services to banks	UAH39,820 (approximately EUR1,297)
Capital markets (licensed by the National Securities and Stock Market Commission)	
Issuance of license to conduct professional activities in the capital markets (asset management activities, administration of non-state pension funds,)	UAH3,000 (approximately EUR97)
Issuance of license to conduct professional activities in the capital markets and organized commodity markets (trading in financial instruments, organizing trading in financial instruments, depositary activities, clearing activities, managing mortgage coverage, activities in organized commodity markets)	UAH3,000 ,(approximatelyEUR 97)
Electric power, natural gas market, centralized water supply and centralized drainage, production of heat energy, transportation of heat energy by main and local (distribution) heat networks, supply of heat energy (licensed by the National Commission for State Regulation of Energy and Public Utilities)	
Issuance of license	Subsistence minimum for able-bodied persons effective on the day that licensing body decides to issue a license (currently UAH2,481, which is approximately EUR81)
Gambling (licensed by the Regulatory Commission on Gambling and Lotteries)	
License for casino hall within Kyiv	60,000 minimum wages (UAH390 million, approximatelyEUR 12,7 million)
License for casino hall outside Kyiv	30,000 minimum wages (UAH450 million, approximately EUR6,3 million)
License for online casino	6500 minimum wages (UAH42 million, approximately EUR1,3 million)

Financial services (licensed by the National Bank of Ukraine)	
License for Internet betting business	30,000 minimum wages (UAH450 million, approximately EUR6,3 million)
License for slot machine hall	7500 minimum wages (UAH48,7 million, approximately EUR1,5 million)
License for virtual poker room	5000 minimum wages (UAH32,5 million, approximately EUR1 million)

As regards **permit documents**, under the general rule established by the Law on Permit Documents, such documents are issued free of charge and for an unlimited period, unless otherwise provided by law.

d) Is the licensing requirement combined with mandatory membership of a chamber of commerce, trade association or other body? If this membership involves a fee, please provide information on its amount.

Generally, the licensing requirement is not combined with mandatory membership in a chamber of commerce, trade association or other body.

e) What are the requirements which have to be met to obtain a licence or authorisation? To what extent are requirements which the business has already fulfilled in its state of establishment taken into account?

The general rule is that, in order to obtain a license or permit, the applicant is required to provide the licensing authority with an application for the license accompanied by the necessary supporting documents. The specific list of such supporting documents is usually provided in the laws governing the relevant area (e.g., the Law on State Registration, the Law on Licensing, the Law on Banks etc.) or in the applicable licensing terms of the licensing authority.

For certain specific entities, the applicable legislation establishes additional requirements. For instance, a joint-stock company's statutory capital may not be lesser than UAH8,125,000 (approximately EUR250,000). The minimal charter capital thresholds are also established for banks – UAH200,000,000 (approximately EUR6,182,000), insurance companies – UAH equivalent of EUR1,000,000-1,500,000, gambling organizers – UAH30,000,000 (approximately EUR956,000), asset management companies – UAH7,000,000 (approximately EUR223,000).

The licensing authorities may take into account the requirements which the business has already fulfilled in its state of establishment except as otherwise provided in the applicable legislation.

III. POSTAL SERVICES

A. General legal framework

12. Is the legal framework regarding postal services (fully/partly/not at all) aligned with the relevant EU *acquis* (Postal Services Directive 97/67/EC amended by Directive 2002/39/EC and Directive 2008/06/EC, and Regulation (EU) 2018/644 on cross-border parcel delivery services)?

Currently the legislation of Ukraine on postal service complies with requirements of Directive 97/67/EU (as amended) partially.

13. Are there any plans and timetable for the approximation of the existing legislation to the EU postal *acquis*? Do you foresee any specific issues/problems?

Yes. To fulfill obligations under articles 109-114 of the Association Agreement between Ukraine and EU and for the harmonization of Ukrainian and the EU legislation in the area of postal services, there was developed and registered at the Verkhovna Rada of Ukraine a Draft Law of Ukraine *On Postal Service* (registration No. 4353 of 10.11.2020) which on 17.11.2021 was approved by the Verkhovna Rada of Ukraine in the first hearing and is currently being prepared for the second hearing.

As of today, the Law of Ukraine *On Postal Service* (No. 2759-III of 04.10.2001) as amended on 13.02.2022 with amends introduced by the Law of Ukraine *On the National Commission for State Regulation in the Areas of Electronic Communications, Radio Frequency Spectrum and Provision of Postal Services* as concerns the competencies of the national regulatory authority - NCEC, tariff regulation in the area of postal service provision, etc.

B. Universal Service Obligations (USO)

14. What is the scope of universal postal service in Ukraine:

a) Please describe the categories of products (letters, parcels, newspapers, etc.), the weight limits and if bulk items are included?

According to the Decree of the Cabinet of Ministers of Ukraine of 05 March 2009 No. 270 *On the Approval of the Rules of Postal Service Provision* (as amended on 01.02.2022) the sending services of the following belong to the universal postal services: postal cards, letters, small packages, post for the blind - all of which may be regular or registered; packages without declared value weighing up to 10 kilograms.

b) Is there a reserved area? If so, what postal products are reserved (particularly as regards weight, tariff and speed of delivery)?

According to the Law of Ukraine *On Postal Service*, the national operator has the exclusive right to the following:

sending regular letters weighing up to 50 grams and regular postcards.

c) How often are postal items required to be delivered under the universal service obligation? Are there any exemptions from the required delivery frequency?

According to the *Standards and Normative Terms of Sending Postal Items* approved by the Order of the Ministry of Infrastructure of Ukraine of 28.11.2013 No. 958, the following standard terms of sending regular written correspondence by postal service operators have been established (excluding days-off of postal facilities):

- local: D+2, priority: D+1;
- within one region or between regional centers of Ukraine (including for the cities of Kyiv, Simferopol, Sevastopol): D+3, priority: D+2;
- between district centers of different regions of Ukraine (including for the regional subordination towns): D+4, priority: D+3;
- between other populated settlements of different regions of Ukraine: D+5, priority: D+4,
- where D - is the day of submission of the postal item for sending at the postal facility or day of dropping of a regular letter or postal card into the postal box prior to the beginning of the latest collection;
- 1, 2, 3, 4, 5 - number of days for the sending of the postal item.

d) Are there specific rules that require a certain number/density of access points and points of contact (post boxes and post offices)?

Yes. The Order of the Ministry of Infrastructure of Ukraine of 28.11.2013 No. 959 registered at the Ministry of Justice of Ukraine on 28.01.2014 under No. 174/24951 approves the standards for the development and placement of the network of postal facilities and post boxes of the national operators of postal service within cities and in rural regions.

e) How is the universal service for postal services financed in Ukraine? Is there a net cost of the universal service and how has it been established?

According to the Law of Ukraine On Postal Service (article 15), the state shall provide financial support for the national operator in its provision of the universal postal services.

The tariffs for the universal services are approved by the national regulatory authority - the National Commission for State Regulation in the Areas of Electronic Communications, Radio Frequency Spectrum and Provision of Postal Services (NCEC is the successor of the National Commission Exercising State Regulation in the Area of Communications and Informatization - NCRCI).

The mechanism for the formation and establishment of the tariffs for the universal postal services is established under the Provision on the Regulation of Tariffs for the Universal Postal Services approved by the Decision of the NCRCI of 23.05.2017 No. 260 (registered at the Ministry of Justice of Ukraine on 16.06.2017 under No. 759/30627). According to the Procedure, the formation of the tariffs for the universal services is carried out according to the calculation of the forecast cost of the universal postal services - economically justified planned costs that are included in the production costs, the administrative costs, sales costs pertaining to the provision of the universal postal services.

f) Are there general exceptions to the USO (due to circumstances or geographical conditions deemed exceptional by the national regulatory authorities)?

No.

C. Licensing and authorisations regime

15. How is the licensing and authorisations regime applied, in particular the granting, supervision and withdrawal of general authorisations and individual licenses (please refer to Article 9 “Conditions governing the provision of postal services and access to the network” of the Postal Services Directive)?

Postal service provision activity is not licensed in Ukraine. The national regulatory authority (NCEC) keeps a unified state register of the postal service operators, where entities are included on the basis of submission of a notification on inclusion of information into the registers (notification principle).

16. How many postal operators are active? If possible, please indicate the type of services they provide (letter, parcel in the scope of universal service or non-universal service)?

The national regulatory authority - NCEC keeps a unified state register of postal service operators. As of 31.12.2021, there are 166 economic entities included into the unified state register of postal service operators recorded on the basis of notifications submitted to the NCEC. The universal postal services currently are provided only by the national postal service operator.

D. Universal Service Provider (USP)

17. How is the USP designated in the Ukraine? Is there a tendering procedure or is it designated by law?

According to the Law of Ukraine *On Postal Service*, a legal entity entrusted with the functions of the national operator is established by the Cabinet of Ministers of Ukraine. According to the Decree of the Cabinet of Ministers of Ukraine of 10.01.2022 No. 10-r *On the National Postal Service Operator*, the functions of the national postal service operator are entrusted to Ukrposhta Joint Stock Company. Currently the tender procedure for the selection of the national postal service operator is not envisioned.

18. How is the provision of the universal service by USP supervised, in particular regarding the granting of any exceptions or derogations from the universal service requirements? Is this supervision exerted by an NRA (National Regulatory Authority) or other supervising authorities (e.g. competition authority)?

The national regulatory authority (NCEC) carries out state oversight (control) of postal service operators in the part of their observance of the legislation in the area of postal service provision by means of scheduled and extraordinary inspections. As of today, the postal service legislation of Ukraine does not distinguish procedures for exercising of oversight of USP's provision of the universal services.

The state regulation in the area of provision of postal services is carried out by NCEC by means of, among other things, the following:

- price policy formation and tariff regulation for the universal postal services;
- monitoring of quality of provision of the postal services in compliance with the established quality standards.

Apart from that, the NCEC:

- issues for the postal service operator binding orders on elimination of violations of legislation on the postal service;
- applies, within the limits of its powers in the manner prescribed by law, administrative and economic sanctions for violations of the legislation on postal service;
- appeals to the court with claims in case of violation by postal operators of the legislation on postal service.

19. Is the USP state-owned, in full or in part? Is partial or full privatisation of the USP envisaged?

Ukrposhta national postal service operator is a joint stock company. 100% of its shares belongs to the state represented by the Ministry of Infrastructure of Ukraine (MIU), which manages corporate rights of the state with regard to the Company. In view of the strategic nature of this enterprise, privatization of Ukrposhta is not envisioned.

E. Tariffs for Universal Service

20. Describe the tariff structure for the services forming part of the Universal Service, and the way in which this is defined in relevant legal provisions?

The tariff calculation includes determination of the rate of the economically justified planned costs of the postal service operator per cost unit calculation with regard to the planned scope of services in kind.

Apart from that, the tariff calculation also includes planned profit that is directed towards capital investment and achievement of other objectives in compliance with the legislation.

The above-mentioned is established in the Procedure for the Regulation of Tariffs for the Universal Postal Services approved by the decision of the NCRCI of 23 May 2017 No. 260.

21. What principles apply to universal service tariffs?

According to the Procedure of Regulation of Tariffs for Universal Postal Services approved by the decision of the NCRCI of 23 May 2017 No. 260, the tariff formation is carried out on the basis of tariff calculations performed by the postal service operators on the basis of planned cost that is determined according to the planned scope of service provision and economically justified costs for their provision including the planned profit.

Cost planning to determine the expected cost is carried out by use of the normative method on the basis of the state and industry-specific standards for the use of material and fuel and energy resources, norms and pricing for labor remuneration. The amount of costs is calculated with observance of standards set according to the established procedure as well as normative terms for the sending of postal items, standards for the development of postal service facility network of the national postal service operator, which are approved according to the legislatively established procedure.

The costs that are impossible to determine by means of the standards are planned with regard to the actual costs for the previous period, the forecast of industrial product price index, inflation index, minimum wage change.

F. Accounting

22. Does the universal service provider(s) keep separate accounts within their internal accounting systems in order to clearly distinguish between the services and products, which are part of the universal service and those which are not (systems for cost accounting and accounting separation)? If not, are there plans and a time schedule for their implementation?

No. The current legislation does not provide for the obligation for the universal postal service provider on separate accounting of costs for the provision of the universal postal services.

G. Quality of Service

23. Have quality of service standards (target objectives for national and cross-border transit time performance) been set for universal service provision? In case of non-compliance with quality standards, is corrective action taken by the National Regulatory Authority when necessary?

Yes. Ministry of Infrastructure establishes quality standards for the postal items sent by the national operator.

The national regulatory authority (NCEC) facilitates harmonization of technical standards for the provision of the universal postal services and carries out state oversight (control) over the observance of the legislation in the area of postal service provision.

24. Is independent performance monitoring obligatory for the universal service providers (measuring quality of service against the standards set for domestic and cross-border mail)? who carries out such monitoring?

According to the Law of Ukraine *On Postal Service*, the national operator (NCEC) has the exclusive right to:

- monitor the quality of provision of the postal services;
- carry out state oversight (control) over the observance of the legislation in the area of postal service provision;

- issue for the postal service operator binding orders on elimination of violations of legislation on the postal service;
- apply, within the limits of its powers in the manner prescribed by law, administrative and economic sanctions for violations of the legislation on postal service;
- appeal to the court with claims in case of violation by postal operators of the legislation on postal service.

The Law of Ukraine *On the National Commission for State Regulation in the Areas of Electronic Communications, Radio Frequency Spectrum and Provision of Postal Services* also provides for the NCEC's monitoring of the quality of postal services. Currently measures are being taken for the development and implementation of the normative legal acts on the implementation of the postal service quality monitoring system.

H. Complaints procedures

25. What measures have been taken to establish complaints procedures for users of postal services (for example in case of non-compliance with service quality standards)? Who has to establish a complaint procedure scheme (e.g. only USP, USP and other postal services providers, etc.)?

According to the Law of Ukraine *On Postal Service*, the national regulatory authority (NCEC) considers applications from the postal service users and makes decisions on the matters within its competence.

According to the Rules for the provision of postal services, the user of postal services has the right to appeal against illegal actions of postal workers in the manner prescribed by law.

According to the Law of Ukraine "On the Appeal of Citizens", citizens of Ukraine have the right to apply to state authorities, local self-government, associations of citizens, enterprises, institutions, organizations (regardless of ownership), mass media, officials (in accordance with their functional duties) with comments, complaints and suggestions regarding their statutory activities, statements or petitions for the implementation of their socio-economic, political and personal rights and legitimate interests as well as complaints regarding violation of such rights.

In practice, a scheme where a customer first applies with a complaint to the operator to solve the issue, and if that fails applies to the NCEC, is preferred.

I. National Regulatory Authority

26. Has any National Regulatory Authority for the postal sector been established? If yes, please answer the following questions for any NRA established in the country and provide an overview of the legal acts that establish them and regulate their functioning.

Yes. The Law of Ukraine *On the National Commission for State Regulation in the Areas of Electronic Communications, Radio Frequency Spectrum and Provision of Postal Services* determines the national authority in the area of postal service provision. The national regulatory authority (NCEC) carries out state regulation as well as state oversight (control) for discovery and prevention of violations of the law by economic entities and ensuring public interests, including in the area of postal service provision.

27. Is the NRA an autonomous body? To what extent is it legally separate and operationally independent from the postal services providers and the ministry in charge of postal policy? How and to what extent is its operational independence ensured (e.g. financing)?

Yes. According to the Law of Ukraine *On the National Commission for State Regulation in the Areas of Electronic Communications, Radio Frequency Spectrum and Provision of Postal Services*, the national regulatory authority (NCEC) constitutes a central authority of executive power with a special status.

NCEC is a public legal entity, it has its separated property that constitutes state property; it has accounts in the institutions that carry out treasury services for the budget funds.

In the course of fulfillment of its powers, the NCEC acts independently within the boundaries established by law. Unlawful interference on the part of state power authorities, authorities of the Autonomous Republic of Crimea, authorities of local self-governance, their officials and public servants, political parties, citizen unions, enterprises, institutions, organizations, and establishments into the NCEC activity is forbidden.

The activity of the NCEC is independent from any activity pertaining to the property right or control of the state as to economic entities that provide electronic communication services or postal services.

NCEC is funded from the state budget, at the same time it independently distributes the budget funds allocated to it for the respective year, and administers the funds.

Members of the NCEC, other officials of the NCEC are not entitled, directly or indirectly, to own any corporate rights of any economic entities carrying out activity - including in the area of postal service provision - in compliance with the Law *On Prevention of Corruption*.

28. Please provide information on the organisation and administrative capacity of the Authority, including the number of its staff, dedicated to postal services? Is the NRA sufficiently staffed to carry out its tasks?

According to the Law of Ukraine *On the National Commission for State Regulation in the Areas of Electronic Communications, Radio Frequency Spectrum and Provision of Postal Services*, the national regulatory authority (NCEC) is established consisting of seven members, including the Head of the regulatory authority. It comes into power at the time of appointment of more than a half of its total number of members. As of today, the NCEC has seven appointed members, including its Head. Within the funds allocated for its establishment, the NCEC may adopt a decision on the establishment of its territorial offices as its structural subdivisions without the status of a legal entity. At the same time, in order to carry out the administrative and technical functions, technical, technological provision, performance and support for works in the area of electronic communication, radio frequency spectrum and provision of postal services, it has a state unitary commercial enterprise within its subordination.

NCEC carries out its functions by means of, among other things, normative and legal regulation, develops and approves normative legal acts. NCEC adopts normative legal acts formulated as decrees subject to state registration at the Ministry of Justice of Ukraine. However, only incompliance of the acts with the Constitutions and laws of Ukraine, normative legal acts of higher legal power, or with international treaties ratified by the Verkhovna Rada of Ukraine as mandatory may serve as grounds for refusal of their state registration.

NCEC also includes the NCEC Staff, which is an organizationally unified complex of subdivisions, territorial offices, and positions that ensure the activity of the regulatory authority, as well as fulfillment of powers entrusted to the regulatory authority. The ultimate number of the NCEC staff employees is approved by the Cabinet of Ministers of Ukraine, and the staff list of the Staff is approved by the Head of the NCEC. The NCEC structure is approved by the Head of the NCEC on the basis of the NCEC decision within the expenditures provided under the State Budget of Ukraine.

Currently the NCEC Staff has 240 persons. Prior to the enactment of the Law of Ukraine *On Electronic Communication* (01.01.2022) and *On the National Commission for State Regulation in the Areas of Electronic Communications, Radio Frequency Spectrum and Provision of Postal Services* (13.02.2022), 5 people were directly engaged in the fulfillment of functions connected with the regulation of the area of postal service provision; in general individual aspects of postal service regulation, such as state oversight, economic regulation, etc. were delegated to the competency of at least three departments. Nevertheless, considering the new powers of the NCEC provided for under the laws mentioned, there is a plan to increase the number of staff responsible for the postal service provision.

29. Has the NRA been assigned responsibilities similar to those defined in the postal *acquis* in respect to European NRAs? In particular, does the NRA ensure compliance with postal law and establish monitoring and regulatory procedures to ensure the provision of the universal service? Does the NRA also have other competences (e.g. related to competition law)?

Yes. According to the Law of Ukraine *On the National Commission for State Regulation in the Areas of Electronic Communications, Radio Frequency Spectrum and Provision of Postal Services*, the national regulatory authority (NCEC) has the following obligations:

- establishment of the procedure and form of administering and the keeping of the state register of postal service operators;

- monitoring of the quality of provision of the postal services;

- price policy formation and tariff regulation for the universal postal services;

- transfer to the Antimonopoly Committee of Ukraine materials that contain data on signs of violation of legislation on protection of economic competition, as well as transfer to the law enforcement authorities of materials that contain data on signs of criminal violations;

- cooperation with respective authorities exercising regulation in the area of provision of postal services of other states;

- state oversight over the observance of the legislation in the area of postal service provision;

application, within the limits of its powers in the manner prescribed by law, administrative and economic sanctions for violations of the legislation on postal service;

facilitation of harmonization of technical standards for the provision of universal postal services;

and other.

30. What are the nomination and selection procedures and terms of office of the head of the NRA?

According to the Law of *Ukraine On the National Commission for State Regulation in the Areas of Electronic Communications, Radio Frequency Spectrum and Provision of Postal Services* (hereinafter - the “Law”), a regulatory authority member candidate is appointed to his/her position as a result of an open competition.

The Head of the regulatory authority (NCEC) is elected by the members of the regulatory authority from among its members by means of secret vote within 10 days upon the enactment of the decree of the Cabinet of Ministers of Ukraine on their appointment. Information on the election of the Head of the regulatory authority is published on the official websites of the regulatory authority and the Cabinet of Ministers of Ukraine.

The Head of the regulatory authority is re-elected every three years upon the approval of the first composition of the regulatory authority in compliance with the Law (the term of powers of the members of the regulatory authority is six years; one and the same person may not be a member of the regulatory authority for longer than two terms in a row). In the event of premature termination of powers of the Head of the regulatory authority (the list of grounds for the premature termination of powers for the member of the regulatory authority is determined by the Law) and upon the expiry of the three years upon the election of the Head of the regulatory authority, members of the regulatory authority, within 10 days, elect the member of the regulatory authority who shall carry out the responsibilities of the Head until the time of appointment of the new member of the national regulatory authority, or until the election of the Head of the regulatory authority.

IV. MUTUAL RECOGNITION OF PROFESSIONAL QUALIFICATIONS

A. Training

31. What is the duration and the content (curricula) of the training leading to access to the profession and/or the professional activities of doctor, nurse responsible for general care, dentist, midwife, veterinary surgeon, pharmacist and architect, given the requirements set out for the mentioned professions in Title III Chapter 3 (articles 24, 25, 28, 31, 34, 35, 38, 40, 44 and 46) of Directive 2005/36/EC on the recognition of professional qualifications?

Training for specialists in health care based on complete general secondary education lasts 6 years (360 ECTS credits) for medical doctor (Master of Medicine), 5 years (300 ECTS credits) for dentist (Master in Dentistry), 5 years (300 ECTS credits) for pharmacist (Master in Pharmacy), 4 years (240 ECTS credits) for sick nurse (Bachelor of Nursing), 3 years (180 ECTS credits) for paramedic, sick nurse, midwife (Professional Junior Bachelor), 2 years (120 ECTS credits) for assistant pharmacist (Professional Junior Bachelor), and 2 years (120 ECTS credits) for dental

technician. After graduating with a master's degree, specialists in health care have to complete internship (primary specialization), the period of training in which lasts from 1 to 3 years for medical specialties, 1 year for dentistry, and 1 year for pharmacy. The total number of specialties in the internship is 23. The system for training specialists in health care also provides for courses of secondary specialization to obtain a subspecialty. The training in specialization cycles lasts from 1 to 9 months. The total number of medical and pharmaceutical subspecialties is 135.

Vocational Education and Training. In vocational education and training according to the VET standard in the profession 5132 "Junior Nurse" training of skilled workers includes primary vocational training, retraining and professional development. Training for each professional qualification is based on a competency-based approach and is structured on a modular basis. 18 VET institutions have licenses for this profession.

It is possible to enroll in training for the occupation 5132 "Junior Nurse" after the 9th and the 11th grades. After the 9th grade, VET students study on the basis of Basic Secondary Education for 3 years. Acquisition of Vocational Education and Training on the ground of Basic Secondary Education is carried out with the simultaneous acquisition of Complete Secondary Education and obtaining the relevant document on Complete Secondary Education. After the 11th grade, VET students study based on Complete Secondary Education for 1 year.

VET schools may also train specialists without ensuring acquisition of Complete Secondary Education.

When organizing professional development (upskilling), retraining or in-service training, the term of professional training is determined by the results of incoming control.

A VET student, who has mastered the educational programme and successfully passed the qualification attestation for one professional qualification, is awarded the educational qualification level "skilled worker" from the acquired occupation and receives a state certificate of professional qualification (improvement of professional qualification).

A VET student, who has mastered the educational programme and successfully passed the qualification certification for two or more professional qualifications, is awarded the educational qualification level "skilled worker" from the acquired occupation and receives a state diploma.

Higher and Professional Pre-higher Education. University and college educational programs for most professions in the healthcare area have been deliberately harmonized with Directive 2005/36/EC since 2002. Curriculum duration and content were established through standardized national curriculum for particular educational programs.

Other professions (veterinary medicine and architect) also satisfy the minimum duration requirements expressed in Directive 2005/36/EC.

After approval in 2014 of the Law of Ukraine "On Higher Education" the standardized national curricula were abolished. But qualification may be awarded only to the person who has achieved competencies (learning outcomes) specified in the Standard of higher education for particular educational program (articles 1, 6 of the Law of Ukraine "On Higher Education"). The Standard of higher education is a set of requirements for educational programs of higher education, which are common to all educational programs within a certain level of higher education and specialty. The standard of higher education establishes the following requirements for the educational program:

- 1) the number of ECTS credits required to obtain the appropriate degree of higher education (duration of program);
- 2) prerequisite level of education and learning outcomes;
- 3) a list of required graduate competencies;
- 4) standard content of studies, formulated as learning outcomes;
- 5) forms of final assessment of higher education students;
- 6) requirements for integrated educational training programs;
- 7) requirements of professional standards (if any).

Standards of higher education for specialties required for access to regulated professions may contain additional requirements in terms of admission rules, structure of educational program, content of education, organization of educational process and assessment of graduates.

In 2019, the similar provisions regarding Standards of professional pre-higher education were approved by the Law of Ukraine “On Professional Pre-higher Education”.

Article 8 of this Law specifies that the standard of professional pre-higher education defines the following requirements for the educational-professional program:

- 1) a list of required graduate competencies and learning outcomes;
- 2) prerequisite level of education;
- 3) the number of ECTS credits required to obtain the appropriate degree of professional pre-higher education (duration of program);
- 4) forms of final assessment of students;
- 5) requirements to the system of internal quality assurance;
- 6) requirements of professional standards (if any).

Standards of professional pre-higher education for specialties required for access to regulated professions may contain additional requirements in terms of admission rules, structure of educational and professional program, content of education, organization of educational process and assessment of graduates.

Curricula

Educational curricula are now developed by universities and colleges based on relevant Standard as part of their academic autonomy (article 32 of the Law of Ukraine “On Higher Education”). Curricula should assure achievement of relevant standard of higher education or standard of professional pre-higher education.

The content (curricula) of the training leading to access to the profession and/or the professional activities of doctor, nurse responsible for general care, dentist, midwife, veterinary surgeon, pharmacist and architect is being regulated by the relevant authority.

The Order of the Ministry of Education and Science of Ukraine of June 16, 2020 № 808 approve the standard of higher education in specialty 191 "Architecture and Urban Planning" in the field of knowledge 19 "Architecture and Construction" for the first (bachelor's) level of higher education.

Bachelor's degree education based on complete general secondary education is 240 ECTS credits in full-time study.

In addition, the scientific and methodological subcommittee specializing in "Architecture and Urban Planning" of the General Scientific and Methodological Commission of the Ministry of Education and Science of Ukraine developed a draft standard of higher education in specialty 191 "Architecture and Urban Planning") level of higher education, which is currently being approved by the National Agency for Quality Assurance in Higher Education. According to this draft standard, for obtaining a master's degree in an educational-scientific program based on the first (bachelor's) level of higher education is 120 ECTS credits in full-time study, and for a master's degree in educational-professional program - 90 credits ECTS.

The duration of study for a bachelor's degree is 4 years, a master's degree in an educational-scientific program is 2 years and a master's degree in an educational-professional program is 1.5 years.

It should be noted that higher education standards are approved by the Ministry of Education and Science of Ukraine and determine the competencies of graduates and which correspond to the descriptors of the National Qualifications Framework, and higher education institutions independently determine the list of disciplines, practices and other educational components competency standards.

32. Are the dental profession and the medical profession two legally distinct professions? Please provide details.

Individual "Medicine" and "Dentistry" specialties are available in Ukraine. These specialties provide for different professional competencies and qualifications, as well as various training standards and programs at the stages of higher education and internship (primary specialization) and secondary specialization. Handbook of Qualification Characteristics of Employees' Professions approved by the Order of the Ministry of Health of Ukraine No. 117 (as amended) dated 29 March 2002 stipulates the qualification requirements for these professions.

33. Does the profession of midwife exist as a specific profession, legally distinct from nurses and doctors? Please provide details.

"Midwife" and "Sick Nurse" professions have different professional competencies and qualifications. Midwives and sick nurses are trained in the specialty "Nursing" but according to different educational and professional programs. The midwives are trained according to the educational and professional program "Midwifery", while sick nurses according to the educational and professional "Nursing". Handbook of Qualification Characteristics of Employees' Professions approved by the Order of the Ministry of Health of Ukraine No. 117 (as amended) dated 29 March 2002 stipulates the qualification requirements for these professions.

B. Practice of the profession/professional activity

34. Which professions/professional activities are regulated by the legislation (see definition of regulated professions in Article 3(1)(a) of Directive 2005/36/EC)? What is the scope of the professional field of activities?

Vocational Education and Training. In VET, in addition to obtaining a person's educational and qualification level "skilled worker", there are professions for which additional regulation has been introduced.

According to Article 18. "Training on labor protection" of the Law of Ukraine "On Labor Protection" employees engaged in high-risk work or where there is a need for professional selection, must annually undergo special training at the expense of the employer and test the knowledge of relevant regulations on labor protection.

The list of high-risk works was approved by the order of the State Labor Inspectorate of Ukraine dated on January 26, 2005 No. 15, registered in the Ministry of Justice of Ukraine on February 15, 2005 under No. 232/10512.

Based on the List and taking into account the specifics of production at the enterprise, , the employer develops and approves a corresponding list of high-risk work, which requires special training and annual testing of knowledge on health and safety.

Regulations on the procedure for qualification attestation and qualification of persons receiving vocational education, approved by the order of the Ministry of Labor and Social Policy of Ukraine and the Ministry of Education of Ukraine dated on December 31, 1998 No. 201/469, established:

When conducting qualification certification of persons in professions, specialties and specializations related to work at facilities with increased occupational hazards, which are under the supervision of specially authorized state bodies, the state qualification commissions shall include representatives of these bodies (paragraph 6).

Persons who received education in professions, specialties and specializations related to work at facilities with increased risk of work, which are under the supervision of specially authorized state bodies, together with documents on vocational education are issued certificates of admission to work on these facilities (paragraph 21).

Persons who received education in professions, specializations related to driving vehicles, tractors and self-propelled machines, educational institutions are issued certificates of the established standard, which are the basis for passing qualifying examinations and obtaining in the prescribed manner driving licenses vehicles, tractors and self-propelled machines (paragraph 22).

These norms are also provided by the Regulation on the organization of educational and production process in vocational schools, approved by the order of the Ministry of Education and Science of Ukraine dated on May 30 2006 No. 419, registered in the Ministry of Justice of Ukraine on June 15, 2006 under No. 711/12585 (paragraph 9.2).

Higher and Professional Pre-higher Education. Most professions/professional activities for which qualification characteristics are developed may be considered regulated according to the definition of regulated professions in Article 3(1)(a) of Directive 2005/36/EC because access to and pursuit of such professions/professional activities are directly subject to the possession of specific professional qualification.

Detailed explanation of the role of qualification characteristics in regulation is given under question 35.

In addition to regulation by means of qualification characteristics some professions are regulated through specific laws and regulations. The term “regulated profession” appeared in the Ukrainian legislation in 2019.

Examples of specific laws, regulations and professions under these laws are presented in qualification 35 and may be complemented by relevant authority.

In 2020, the educational specialties that give access to some regulated professions were defined.

List of educational specialties at higher and/or professional pre-higher education that correspond with regulated professions, approved by the order of the Ministry of Education and Sciences dated on May 22, 2020 No. 673 “On approval of the List of educational specialties required for access to professions for which additional regulation has been introduced”

Field of knowledge	Specialty
Law	Law
Electrical engineering	Nuclear energy Heat energy Hydropower
Architecture and construction	Architecture and urban planning
Veterinary medicine	Veterinary medicine Veterinary hygiene, sanitation and examination
Health care	Dentistry Medicine Nursing Technologies of medical diagnostics and treatment Medical psychology Pharmacy, industrial pharmacy Physical therapy, occupational therapy Pediatrics
Military sciences, national security, state border security	State security State border security Military Administration (by type of armed forces) Provision of troops (forces) Weapons and military equipment
Civil security	Fire safety

	Law enforcement activities
	Civic safety
Transport	Marine and inland water transport
	Aviation transport
	Railway transport
	Transport technologies
International relations	International law

The list of individual regulated professions and scope of professional activities of an individual profession may be presented by the relevant authority.

According to the legislation of Ukraine private notaries, bankruptcy trustees and private bailiffs are subjects of independent professional activity (part 1 article 3 of the Law of Ukraine "On Notaries", part 1 article 10 of the Code of Ukraine on Bankruptcy Proceedings, part 2 article 16 of the Law of Ukraine "On Bodies and Persons Enforcing Court Decisions and Decisions of Other Bodies", respectively).

Subclause 14.1.226 of the Tax Code of Ukraine defines that independent professional activity is the participation of an individual in scientific, literary, artistic, educational or teaching activities, activities of doctors, private notaries, private bailiffs, lawyers, bankruptcy trustees (asset managers, sanitation managers, liquidators), auditors, accountants, appraisers, engineers or architects, a person engaged in religious (missionary) activities, other similar activities, provided that such person is not an employee or natural person - entrepreneur (except as provided in paragraph 65.9 of article 65 of the Tax Code of Ukraine) and uses the hired labor of not more than four individuals.

As to notaries

The profession of "notary" according to article 92 of the Constitution of Ukraine is regulated by the Law of Ukraine "On Notaries". The specified normative legal act defines the procedure for legal regulation of the activities of a notary in Ukraine, in particular the requirements for persons who intend to engage in notarial activities, and the specifics of admission to the qualification exam. Also, the activity, that a notary as a person cannot engage in, is defined.

As to bankruptcy trustees

Pursuant to article 1 of the Code of Ukraine on Bankruptcy Proceedings (hereinafter – the Code), a bankruptcy trustee is a natural person who has received the relevant certificate and information about which is included in the Unified Register of Bankruptcy Trustees of Ukraine.

The bankruptcy trustee shall be independent in the exercise of his or her powers.

Withdrawal of documents from the bankruptcy trustee is allowed only by court decision in the manner prescribed by law (parts 1 and 3 article 13 of the Code).

As to bailiffs

The Law of Ukraine «On Bodies and Persons Enforcing Court Decisions and Decisions of Other Bodies» defines the basis of organization and activities concerning enforcement of court decisions and decisions of other bodies (officials) by state executive service bodies and private bailiffs, their tasks and legal status.

According to article 1 of the above Law, enforcement of court decisions and decisions of other bodies (officials) is entrusted to the state executive service and in cases specified by the Law of Ukraine "On Enforcement Proceedings" - to private bailiffs.

The task of the state executive service and private bailiffs is timely, complete and impartial execution of decisions, the enforcement of which is provided by law (article 3 of the Law of Ukraine "On Bodies and Persons Enforcing Court Decisions and Decisions of Other Bodies").

Legal protection and guarantees of the activity of state bailiffs, private bailiffs concerning enforcement of decisions are defined by article 5 of the Law of Ukraine "On Bodies and Persons Enforcing Court Decisions and Decisions of Other Bodies".

Thus, a state bailiff, a private bailiff, when carrying out professional activities, are independent, guided by the principle of the rule of law and act exclusively in accordance with the law.

Interference of state bodies, authorities of the Autonomous Republic of Crimea, local self-government bodies, their officials, political parties, public associations, other persons in the activities of the state bailiff, private bailiff for enforcement of court decisions is prohibited.

Resistance to a state bailiff or a private bailiff, infliction of bodily harm, violence or threat of violence against them, their close relatives, as well as deliberate destruction or damage to their property in connection with the enforcement of decisions by a state bailiff or a private bailiff, shall entail responsibility established by law. The same responsibility arises in the event of these offenses being committed against a person after his dismissal from the position of a state bailiff or the termination of the activities of a private bailiff and their close relatives in connection with the enforcement of decisions by him in the past.

It is prohibited to conduct an inspection, disclosure, demand or seizure of documents of enforcement proceedings, except as otherwise provided by law.

Architectural and urban planning activities are regulated by law in Ukraine. Legislation on architectural activity consists of the Constitution of Ukraine, laws of Ukraine "On Architectural Activity" dated May 20, 1999 № 687-XIV, "On Fundamentals of Urban Development" of November 16, 1992 № 2780-XII, "On Regulation of Urban Development" dated February 17, 2011 № 3038-VI, "On Liability for Offenses in the Field of Urban Development" on October 14, 1994 № 208/94-VR and other legal acts. Peculiarities of regulation of architectural activity within the exclusion zone and the zone of unconditional (mandatory) resettlement of the territory affected by the Chernobyl disaster are determined by the Law of Ukraine "On the legal regime of the territory affected by the Chernobyl disaster".

Legal and organizational principles of architectural activity are determined by the Law of Ukraine "On Architectural Activity", according to which:

architectural activity - activity on creation of objects of architecture which includes creative process of search of the architectural decision and its realization, coordination of actions of participants of development of all components of projects on planning, building and improvement of territories, construction (new construction, reconstruction, restoration, capital repairs) buildings and

architectural structures, the implementation of architectural and construction control and author's supervision of their construction, as well as research and teaching in this area;

objects of architectural activity (objects of architecture) - buildings and structures of housing and civil, communal, industrial and other purposes, their complexes, objects of improvement, garden and park and landscape architecture, monumental and monumental-decorative art, territory (parts of territories) of administrative-territorial units and settlements;

in architectural activities engaged architects, other persons involved in the preparation and development of urban planning documentation, design documentation for construction, reconstruction, restoration, overhaul of buildings and structures, landscaping, landscape and garden facilities, research and teaching, customers of projects and construction of architectural objects, contractors for design and construction works, manufacturers of building materials, products and structures, owners and users of architectural objects, as well as authorities exercising their powers in the field of urban planning;

an architect (engineer) who has a qualification certificate - a specialist who has received such a certificate based on the results of the certification, which gives him the authority to conduct his own activities in the field of architectural activities, and who is responsible for the results of work.

Legislation of Ukraine on urban planning consists of the Constitution of Ukraine, laws of Ukraine "On regulation of urban planning", "On the basics of urban planning", "On architectural activities" and other legal acts issued for their implementation.

Legal, economic, social and organizational principles of urban planning in Ukraine are determined by the Law of Ukraine "On Fundamentals of Urban Development".

The above Law stipulates that urban planning (urban planning activities) is a purposeful activity of state bodies, local governments, enterprises, institutions, organizations, citizens, associations of citizens to create and maintain a full living environment, which includes forecasting the development of settlements and territories, planning, construction and other use of territories, design, construction of urban planning facilities, construction of other facilities, reconstruction of historic settlements while preserving the traditional nature of the environment, restoration and rehabilitation of cultural heritage sites, creation of engineering and transport infrastructure.

The main areas of urban planning are: planning, construction and other land use; development and implementation of urban planning documentation and investment programs for the development of settlements and territories; determination of the territory, selection, withdrawal (purchase) and provision of land for urban needs; implementation of architectural activities; placement of construction of housing and civil and other objects, formation of town-planning ensembles and landscape complexes, zones of rest and improvement of the population; creation of social, engineering and transport infrastructure of the territory and settlements; creation and maintenance of town-planning cadastres of settlements; protection of living and natural environment from the harmful effects of man-made and social factors, dangerous natural phenomena; preservation of cultural heritage monuments; development of national and cultural traditions in architecture and urban planning; ensuring high architectural and planning, functional and constructive qualities of urban planning objects, formation and reconstruction of urban ensembles, neighbourhoods, districts and landscape complexes, recreation areas and natural medical resources; development of legal acts, national standards, norms and rules related to urban planning; control over observance of town-planning legislation; training for urban planning, improving skills; licensing of types of economic

activity from construction objects, which according to the class of problems (responsibilities) belong to objects with medium and significant consequences, according to the list of types of work and in the order determined by the Cabinet of Ministers of Ukraine.

35. How are these professions regulated? Does the regulation reserve specific activities to qualified persons? Is the title of the profession protected as well?

Most professions/professional activities for which qualification characteristics are developed may be considered regulated according to the definition of regulated professions in Article 3(1)(a) of Directive 2005/36/EC because access to and pursuit of such professions/professional activities are directly subject to the possession of specific professional qualifications.

Professions, professional activities and jobs that officially exist in Ukraine are presented in the Classifier of Occupations ДК 003:2010. The Classifier of Occupations (hereinafter referred to as the CO) is an integral part of the state system of classification and coding of technical, economic and social information. The CO was first developed in 1995 based on the International Standard Classification of Occupations of 1988 (ISCO-88: International Standard Classification of Occupations / ILO, Geneva), which was recommended by the International Labor Statistics Conference of the International Labor Office to translate national data into a system that facilitates international exchange of professional information. Next editions of the CO were developed in 2005 and 2010. A new edition of the CO to harmonize national classifier with ISCO-08 has been being developed during recent years.

The CO is used in automated control systems to solve the following tasks:

- calculations of a number of workers, accounting for the composition and distribution of personnel by professional groups of different levels of classification, planning additional staffing needs, etc.;
- systematization of statistical data on labor on professional grounds;
- analysis and preparation for the publication of statistical data, as well as the development of appropriate forecasts for employment, income, labor protection, education, retraining of dismissed personnel, etc.;
- preparation of statistical data for periodic reviews of labor statistics developed by the International Labor Organization (ILO);
- addressing issues of control and analysis of international migration, international recruitment and employment of workers.

The classification is based on ISCO job and qualification concepts.

Job - certain tasks and responsibilities that should be performed by one person.

Qualification - ability to perform tasks and carry responsibilities of relevant work. In a Specialist diploma (Junior Specialist) or other document on professional training, the qualification is determined by the title of the profession (mechanical engineer, economist, turner, secretary-stenographer, etc.).

Profession - ability to perform such work that requires a person to have certain qualifications.

Professions are the objects of classification in the CO. A job is a statistical unit that is classified according to the qualifications required to perform it. Qualification is determined by the level of education and specialization.

So, the CO establishes a minimum level of education that is necessary to get access to certain professions, professional activities or jobs.

The CO is complemented by the Handbook of Qualification Characteristics of Workers' Occupations (HQCWO). HQCWO is a collection of descriptions of occupations systematized by types of economic activity, which are given in the Classifier of Occupations.

HQCWO is a component of the national system of professional classifiers of Ukraine. Qualification characteristics for occupation defines tasks and responsibilities, minimum knowledge, qualification requirements set for profession or job. It also contains necessary specialization and examples of work. HQCWO is designed for various areas of economic activity. Altogether, there are 87 field-specific issues. Each HQCWO enters into force by orders of ministries and is mandatory for public and private employers.

Nowadays, qualification characteristics and professional standards are used interchangeably.

In addition to regulation by means of qualification characteristics, some professions are regulated by specific laws and regulations, many of which reserve specific activities to qualified persons.

Example of laws that regulate certain professions. The list is not exhaustive and may be complemented by relevant authorities.

Laws or international agreements that determine the requirements for access to professional activities	Professions/groups of professions
Articles 69, 73-75 of the Law of Ukraine “On the Judiciary and the Status of Judges”	Judge
Articles 27, 31-33 of the Law of Ukraine “On the Prosecutor's Office”	Prosecution attorney
Articles 6 and 9 of the Law of Ukraine “On Attorneyship and Attorney Activity”	Attorney
Articles 3 and 13 of the Law of Ukraine “On Notaries”	Notary
Articles 10, 18, 21 of the Law of Ukraine “ On Bodies and Persons Enforcing Judgments and Decisions of Other Bodies”	Court enforcement officer, private executor
Articles 32, 35-36 of the Law of Ukraine “On the Use of Nuclear Energy and Radiation Safety”	Personnel of nuclear facilities

Article 12 of the Law of Ukraine “On the Electricity Market”	Personnel of electrical energy industry (specified list of professions and positions is approved by relevant Ministry)
Articles 1, 17 of the Law of Ukraine “On Architectural Activity”	Architect Architect-engineer Proof engineer Professional expert
Articles 100 and 101 of the Law of Ukraine “On Veterinary Medicine”	Professionals in veterinary medicine
Article 74 of the Law of Ukraine “Fundamentals of the Legislation of Ukraine on Health Care”	Medical, pharmaceutical, rehabilitation professionals
Article 19 of the Law of Ukraine “On the Security Service of Ukraine”	Personnel of correspondent forces
Article 14 of the Law of Ukraine “On the State Border Guard Service of Ukraine”	Personnel of correspondent forces
Articles 20, 25 of the Law of Ukraine “On Military Duty and Military Service”	Personnel of correspondent forces
Articles 48, 90-91 of the Code of Civil Protection of Ukraine	Emergency response personnel Civic safety personnel
Articles 49, 72-75 of the Law of Ukraine “On the National Police”	Police personnel
International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978 Articles 51, 52 of the Code of Merchant Shipping of Ukraine	Seafarers
Articles 32, 33, 39-40 of the Convention on International Civil Aviation of 1944 Articles 49-56 of the Air Code of Ukraine	Aviation personnel (specified in Convention)
Article 58 of the Law of Ukraine “On Education” Article 22 of the Law of Ukraine “On Complete General Secondary Education”	Teaching personnel

The titles of the professions are not used and not protected in Ukraine.

Additionally, according to Article 18. "Training on labor protection" of the Law of Ukraine "On labor protection" employees engaged in high-risk work or where there is a need for professional selection, must annually undergo special training at the expense of the employer and test the knowledge of relevant regulations on labor protection.

As to notaries

According to the Law of Ukraine "On Notaries" a notary is a natural person authorized by the state who carries out notarial activities in a state notary office, state notarial archive or independent professional notarial activity, certifies rights and facts of legal significance and performs other notarial acts provided by law, in order to give them legal reliability.

The notary can be the citizen of Ukraine to whom degree of the higher legal education not below the master is awarded, knows state language according to the level determined by the Law of Ukraine "On ensuring the functioning of Ukrainian language as the state language", has length of service in the sphere of law at least six years, at least three years of them as the assistant notary or the consultant of state notary office, passed qualification examination and received the certificate of the right to practice notarial activity.

Notary cannot be person: having criminal record if such criminal record is not extinguished or is not removed in the procedure established by the law (except the rehabilitee); whose capacity to act is limited, or person recognized incapable.

The notary cannot be engaged in business, lawyer activity, be founder of lawyer associations, be in public service or service in local government bodies, in staff of other legal entities, and to perform other paid work, except accomplishment of function of mediator, teaching, scientific and creative activities, and activities in professional self-government of notaries.

Taking into account that a notary is a person who performs functions delegated by the state, the state, in turn, carries out state regulation of notarial activities, which consists in establishing the conditions for the admission of citizens to carry out notarial activities, the procedure for suspending and terminating private notarial activities, and revoking a certificate of the right to practice notarial activity; exercising control over the organization of the notary, conducting inspections of the organization of notarial activities of notaries, their compliance with the procedure for performing notarial actions and the implementation of the rules of notarial office work; determining the rates of the state fee charged by public notaries; establishing a list of additional services of a legal and technical nature, not related to the performed notarial acts, and establishing the amount of fees for their provision by public notaries; establishing the rules of professional ethics of notaries.

Control of the organization of notaries, inspections of the organization of notarial activities of notaries, their compliance with the procedure for performing notarial actions and the implementation of the rules of notarial office work are performed by the Ministry of Justice of Ukraine and its territorial authorities.

The rights and obligations of a notary are defined in articles 4 and 5 of the Law of Ukraine "On Notaries".

The legislation defines a clear list of notarial acts performed by a notary, and provides that a notary may be entrusted with the performance of acts, other than notarial, in order to give them legal reliability.

As of today in accordance with the Laws of Ukraine "On State Registration of Rights to Real Estate and Their Encumbrances", "On State Registration of Legal Entities, Individuals - Entrepreneurs and Public Formations" a notary is a state registrar; in accordance with the Law of Ukraine "On Preventing and Counteracting to Legalization (Laundering) of the Proceeds from Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction" a notary is the subject of primary financial monitoring. In addition, a notary may conduct mediation in the manner prescribed by law.

Article 8-1 of the Law of Ukraine "On Notaries" enshrines guarantees of notarial activity. Thus, the state guarantees and ensures equal conditions of access for citizens to engage in notarial activities and equal opportunities for notaries in the organization and implementation of notarial activities. In this case, any interference in the activities of the notary, in particular to prevent him from performing his duties or inciting him to commit illegal acts, including demanding from him, his assistant, other employees who are in employment with the notary, information, constituting a notarial secret, is prohibited and entails liability in accordance with the law.

A notary is a procedurally independent person who, within the law, independently decides on notarial activities, provides a legal assessment of the documents submitted for notarial acts and decides on the commission of a notarial act or refusal to perform it.

As to bankruptcy trustees

The organization of the bankruptcy trustee's activities, requirements to him, rights and obligations, independence of the bankruptcy trustee are determined by Section I of Book Two of the Code.

Part 3 article 10 of the Code defines that the right to carry out the activities of a bankruptcy trustee is granted to a person who has received a relevant certificate in the manner prescribed by this Code and included in the Unified Register of Bankruptcy Trustees of Ukraine.

A bankruptcy trustee can be a citizen of Ukraine who has a higher legal or economic education of the second (master's) level, total work experience of at least three years or at least a year after receiving the relevant higher education in management positions, completed six months of training and internship in accordance with the procedure established by the state bankruptcy authority, speaks the state language and passed the qualifying examination.

A bankruptcy trustee cannot be a person:

- 1) recognized by a court as limited in civil capacity or incapable;
- 2) having a criminal record that has not been extinguished or removed in the procedure established by law;
- 3) unable to perform the duties of a bankruptcy trustee due to health;
- 4) who is prohibited from holding managerial positions.

The bankruptcy trustee shall have an identity and a seal, the description and procedure for use for which shall be established by the state bankruptcy authority.

The bankruptcy trustee must improve his qualifications once every two years in the manner prescribed by the state bankruptcy authority (article 11 of the Code).

The rights and obligations of a bankruptcy trustee are defined in article 12 of the Code.

The regulation of the profession of a bankruptcy trustee is performed by the state bankruptcy authority (Ministry of Justice of Ukraine) and the self-regulatory organization of bankruptcy trustees (National Association of Bankruptcy Trustees of Ukraine).

State Bankruptcy Authority:

- contributes to the creation of organizational, economic, and other conditions necessary for the implementation of procedures for restoring the solvency of the debtor or declaring it bankrupt, including bankruptcy procedures for state enterprises, enterprises in the authorized capital of which the share of state property exceeds 50 percent;

- organizes a system of training, retraining and advanced training of bankruptcy trustees;

- establishes requirements for obtaining a certificate of the right to carry out the activities of an bankruptcy trustee;

- forms the Unified Register of Bankruptcy Trustees of Ukraine, which is an integral part of the Unified State Register of Legal Entities, Individuals - Entrepreneurs and Public Formations;

- establishes the procedure for the submission by the bankruptcy trustee to the state registrar of information about legal entities and individuals - entrepreneurs in respect of which bankruptcy proceedings have been opened, necessary for maintaining the Unified State Register of Legal Entities, Individuals - Entrepreneurs and Public Formations;

- establishes the procedure for exercising control over the activities of bankruptcy trustees, inspections of the organization of their work, their compliance with the requirements of the legislation on bankruptcy issues;

- establishes the procedure for conducting an analysis of the financial and economic condition of business entities regarding indicators of fictitious bankruptcy, bringing to bankruptcy, hiding stable financial insolvency, illegal actions in case of bankruptcy and organizes such an analysis when opening bankruptcy proceedings for state enterprises and enterprises in the authorized capital of which the share of state property exceeds 50 percent;

- determines and approves the approximate form of the sanation plan, restructuring plan;

- draws up conclusions on indicators of fictitious bankruptcy, bringing to bankruptcy, hiding stable financial insolvency, illegal actions in case of bankruptcy, at the request of the court, prosecutor's office or other authorized body;

- drafts and approves standard documents on the conduct of bankruptcy proceedings, methodological recommendations;

- determines the requirements for the form and procedure for maintaining the register of creditors' claims;

- exercises other powers prescribed by law (Article 3 of the Code).

Self-regulatory organization of bankruptcy trustees:

- controls in the manner prescribed by this Code the activities of bankruptcy trustees to comply with this Code, the Code of Professional Ethics of a bankruptcy trustee and other regulatory legal acts;

- participates in the drafting of regulatory legal acts and measures to restore the solvency of the debtor or declare him bankrupt;

- represents bankruptcy trustees in relations with state authorities, local self-governments, their officials, enterprises, institutions, organizations, regardless of the form of ownership, public associations and international organizations;

- protects the professional rights of bankruptcy trustees;

- ensures a high professional level and development of the profession of bankruptcy trustees;

- ensures the prestige of the profession of bankruptcy trustees;

- organizes verification of published information degrading the honor and dignity, business reputation of bankruptcy trustees, in case of its unreliability, takes measures to refute it;

- provides advice and also prepares methodological recommendations on the professional ethics of bankruptcy trustees and the application of progressive practices;

- informs the public about the practice and problematic issues in the procedures for restoring solvency;

- exercises other powers according to the Code (Article 33 of the Code).

Control over the activities of a bankruptcy trustee is performed by the state bankruptcy authority and a self-regulatory organization of bankruptcy trustees.

The name of the profession "bankruptcy trustee" is enshrined in the National Classifier of Ukraine DK 003:2010 "Classifier of Professions" (profession code 1210.1).

As to bailiffs

The state bailiff is a representative of the government, acts on behalf of the state and is under its protection and is authorized by the state to carry out enforcement activities in the manner prescribed by law.

According to article 10 of the Law of Ukraine «On Bodies and Persons Enforcing Court Decisions and Decisions of Other Bodies» can be a citizen of Ukraine with higher legal education (for heads of state executive service bodies and their deputies - not lower than the second level), speaks the state language and is able to exercise the powers of a state bailiff according to his personal and business qualities.

Special requirements for the professional competence of state bailiffs and heads of state executive service bodies are determined by the Ministry of Justice of Ukraine.

Pursuant to Articles 11 and 12 of the Law, state bailiffs and other staff of the state executive service bodies who are civil servants are appointed and dismissed in accordance with the procedure established by the Law of Ukraine "On Civil Service" taking into account features specified by law.

Control over the activities of state bailiffs and other staff of state executive service bodies is carried out by bodies enforcing court decisions in the manner established by the Ministry of Justice of Ukraine.

The private bailiff can be a citizen of Ukraine who has reached the age of 25, has a higher legal education of at least the second level, speaks the state language, has work experience in the field of law after receiving the appropriate diploma for at least two years and has passed the qualifying exam.

The private bailiff cannot be a person:

- 1) who does not meet the requirements mentioned above;
- 2) recognized by a court as limited in civil capacity or incapable;
- 3) having a criminal record that has not been extinguished or removed in the procedure established by law;
- 4) who has committed a corruption offense or violation related to corruption - within three years from the date of commission;
- 5) whose certificate of the right to engage in notarial or lawyer activities or the activities of an bankruptcy trustee (asset manager, sanation manager, liquidator) has been revoked for violation of the law - within three years from the date of relevant decision;
- 6) dismissed from the position of a judge, prosecutor, law enforcement officer, civil servant or service in local self-government bodies due to the disciplinary action - within three years from the date of dismissal.

A private bailiff can not engage in other paid activities (except for teaching, research and creative activities, activities of a bankruptcy trustee (asset manager, sanation manager, liquidator), instructor and referee practice in sports and work in the Association of Private Bailiffs of Ukraine) or entrepreneurial activity (Article 18 of the Law of Ukraine "On Bodies and Persons Enforcing Courts Decisions and Decisions of Other Bodies").

The rights and obligations of bailiffs are defined in Article 18 of the Law of Ukraine "On Enforcement Proceedings".

State regulation of the activities of a private bailiff is defined by the Ministry of Justice of Ukraine.

According to Article 17 of the Law of Ukraine «On Bodies and Persons Enforcing Court Decisions and Decisions of Other Bodies» the Ministry of Justice of Ukraine:

- 1) formulates and implements state legal policy in the field of organization of enforcement of decisions;
- 2) provides training of private bailiffs and their professional development, for which it determines:

the procedure for training and internships of persons who have expressed their intention to perform the activities of a private bailiff;

a list of documents submitted to the Qualification Commission of Private Bailiffs by a person who has expressed an intention to perform the activities of a private bailiff to confirm compliance of this person with the requirements established by parts 1 and 2 of Article 18 of the Law;

the procedure for admission of such persons to the qualifying examination;

the procedure for passing the qualifying examination;

the procedure for professional development of private bailiffs;

- 3) issues a certificate of private bailiff;

- 4) determines the requirements for the office of a private bailiff;

5) ensure the activities of the Qualification Commission of Private Bailiffs and the Disciplinary Commission of Private Bailiffs;

6) forms the Unified Register of Private Bailiffs of Ukraine, determines the procedure for its maintenance;

7) establishes the form and procedure for submission by private bailiffs of information on their activities;

8) exercises control over the activities of private bailiffs and determine the procedure for monitoring the activities of private bailiffs;

9) submits to the Cabinet of Ministers of Ukraine a proposal to establish the amount of the basic remuneration of a private bailiff;

10) enforces the decision of the Disciplinary Commission of Private Bailiffs on the request of disciplinary sanctions to a private bailiff;

11) suspends and terminates the right to perform the activities of a private bailiff;

12) exercises other powers provided by this and other laws.

Article 17 of the Law of Ukraine “On Architectural Activity” stipulates that contractors of the particular types of works (services) concerned with the creation of the objects of architecture, go through professional attestation. The list of such types of works (services) and the procedure for professional attestation are established by the Cabinet of Ministers of Ukraine. Citizens who have higher education of the bachelor, specialist or master qualification in the field of professional attestation in accordance with the qualification requirements and have at least three years of work experience are admitted to the professional attestation.

The Procedure for Professional Attestation of Contractors of the Particular Types of Works (Services) Concerned with the Creation of the Objects of Architecture No. 554 dated 23.05.2011 approved by the Cabinet of Ministers of Ukraine determines the procedure for professional attestation of contractors of the particular types of works (services) concerned with the creation of the objects of architecture.

According to Article 100 of the Law of Ukraine “On Veterinary Medicine”, legal or natural persons (Ukrainian citizens, foreigners and stateless persons residing/staying in Ukraine) may conduct veterinary practice based on license issued in accordance with the law.

According to Article 74 of the Law of Ukraine “Fundamentals of the Legislation of Ukraine on Health Care”, persons who have appropriate special education and meet the uniform qualification requirements may conduct medical and pharmaceutical activities and provide rehabilitation assistance.

Central executive body, which ensures the formation of state policy in health care, establishes the uniform qualification requirements for persons who conduct certain types of medical and pharmaceutical activities, provide rehabilitation assistance. Heads of health care establishments, rehabilitation facilities, departments, units, as well as bodies authorized to issue a license to conduct relevant business activities are responsible for compliance with these qualification requirements.

Persons who have received medical, pharmaceutical or rehabilitation training in foreign educational institutions are admitted to professional activities after verification of their qualifications in the manner prescribed by the central executive body, which ensures the formation of state policy in health care, unless otherwise provided by law or international treaties to which Ukraine is party.

According to Article 19 of the Law of Ukraine “On Auditing Financial Statements and Auditing Activities”, an auditor may be a natural person who:

- 1) has a higher education;
- 2) has confirmed a high level of theoretical knowledge and professional competence by successfully passing the relevant exams;
- 3) has undergone practical training in auditing.

Professional competence is confirmed by passing qualification examination, which certifies a person’s ability to apply theoretical knowledge in practice.

Qualification and theoretical knowledge examinations are conducted by independent knowledge assessment centres accredited by the attestation commission.

Auditors admitted to conduct a statutory audit in any European Union country who intend to work in Ukraine have to pass examinations in order to confirm theoretical knowledge of Ukrainian legislation in the fields of auditing and accounting, tax and single social contribution, labour, civil, economic laws, including corporate, and law on re-establishing debtor solvency or declaring its bankruptcy.

The Law of Ukraine “On Seeds and Planting Material” stipulates that a certification auditor (agricultural inspector) may be a natural person who has obtained auditor’s (agricultural inspector) certificate and is included in the Register of Certificated Auditors (Agricultural Inspectors).

According to Article 182 of the Law of Ukraine “On Seeds and Planting Material”, in order to obtain an auditor’s (agricultural inspector) certificate a person is bound:

- to have a complete higher agronomic education and work experience in the specialty for at least one year;
- to pass the attestation by passing the qualification examination.

While passing the qualification examination the level of theoretical and practical knowledge and skills of a person in the field of seed production and nursery is checked and confirmed.

A person who has successfully passed the qualification examination is issued a auditor’s (agricultural inspector) certificate. The certificate indicates the type of work that the certification auditor (agricultural inspector) has the right to perform.

The Law of Ukraine “On Education” provides for performance appraisal of educational workers.

According to Article 50 of the Law of Ukraine “On Education”, performance appraisal of educational workers may be regular or unscheduled. The educational worker undergoes the performance appraisal at least once every five years, except for cases envisaged by the legislation. Based on the performance appraisal outcomes, job relevance of the educational worker is established, and qualification categories and pedagogical titles are awarded.

According to Article 51 of the Law of Ukraine “On Education”, certification of the educational worker is performed on a voluntary basis and may be initiated by this worker only. The certification procedure of educational workers is performed by establishments specially authorized by the State; regulations about such establishments is approved by the Cabinet of Ministers of Ukraine. Based on successful outcomes of the certification of an educational worker, the individual is issued a certificate which is valid for three years. Successful certification is counted as successful performance appraisal of the educational worker.

36. What are the activities that are reserved to each one of the professions that are regulated?

As to notaries

According to Article 34 of the Law of Ukraine «On Notaries», notaries perform the following notarial acts:

- 1) certify transactions (agreements, wills, warranties of authority, requests for notarial certification of transactions);
- 2) take measures to protect inherited property;
- 3) issue certificates of the right to inheritance;
- 4) issue certificates of ownership of a share in the joint property of the spouses (former spouses) on the basis of a joint request or in case of the death of one of the spouses;
- 5) issue certificates of acquisition of property from public auctions;
- 6) issue certificates of acquisition of property from public auctions, if public auctions have not taken place;
- 7) perform a description of the property of a natural person who has been declared missing or whose whereabouts are unknown;
- 8) issue duplicates of notarial documents stored in the notary's files;
- 9) impose and lift the ban on the alienation of immovable property (property rights to immovable property) subject to state registration;
- 9-1) impose a ban on the alienation of monetary amounts that will be credited to the applicant claims determined in accordance with part 4 article 65-2 of the Law of Ukraine "On Joint Stock Companies", on escrow account opened in accordance with this law;
- 10) certify the authenticity of copies (photocopies) of documents and extracts from them;
- 11) certify the authenticity of the signature on the documents;
- 12) certify the accuracy of the translation of documents from one language to another;
- 13) certify the fact that a natural or legal person is the testamentary executor;
- 14) certify the fact that the individual is alive;
- 15) certify the fact that the individual is in a certain place;
- 16) certify the time of presentation of documents;

- 17) transfer requests of natural and legal persons to other natural and legal persons;
- 18) accept deposits of money and securities;
- 19) commit notarial writ of execution;
- 20) commit protests of promissory notes;
- 21) commit maritime protests;
- 22) accept documents for storage.

At the same time, according to articles 1, 37, 38 of the Law of Ukraine "On Notaries", in rural settlements, the commission of certain notarial acts is assigned to authorized officials of local self-governments; abroad - to the consular offices of Ukraine, diplomatic missions of Ukraine.

As to bankruptcy trustees

The bankruptcy trustee has the right to start performing activities from the date of inclusion information about him to the Unified Register of Bankruptcy Trustees of Ukraine (part 4 article 17 of the Code).

Pursuant to the Code, a bankruptcy trustee is appointed by the commercial court in a bankruptcy (insolvency) case to exercise the powers of asset manager, sanation manager, liquidator, restructuring manager or sales manager in accordance with article 28 of the Code.

The same person can exercise the powers of a bankruptcy trustee at all stages of bankruptcy proceedings in accordance with part 2 article 10 of the Code.

In addition to the rights and obligations enshrined in article 12 of the Code, the bankruptcy trustee enjoys all the rights of an asset manager (article 44 of the Code), sanation manager (article 50 of the Code), liquidator (article 61 of the Code), restructuring manager and sales manager (article 114 of the Code).

As to bailiffs

According to article 1 of the Law of Ukraine "On Bodies and Persons Enforcing Court Decisions and Decisions of Other Bodies", article 5 of the Law of Ukraine "On Enforcement Proceedings" enforcement of court decisions and decisions of other bodies (officials) relies on the bodies of the state executive service and in cases specified by the Law of Ukraine "On Enforcement Proceedings" - on private bailiffs.

The main activity of the state executive service bodies and private bailiffs is timely, complete and impartial execution of decisions, the enforcement of which is provided by law.

Pursuant to article 5 of the Law of Ukraine "On Enforcement Proceedings", the private bailiff does not commit enforcement of:

- 1) decisions on the removal and transfer of the child, establishing a visit with him or removing obstacles in visiting the child;
- 2) decisions according to which the debtor is the state, state bodies, the National Bank of Ukraine, local self-governments, their officials, state and communal enterprises, institutions, organizations, legal entities, the state's share in the authorized capital of which exceeds 25 percent, and/or which are financed exclusively from the state or local budget;

3) decisions, according to which the debtor is a legal entity, the forced sale of whose property is prohibited by law;

4) decisions on which the claimants are the state, state bodies (except for decisions of the National Bank of Ukraine);

5) decisions of administrative courts and decisions of the European Court of Human Rights;

6) decisions of the commitment of actions on state or communal property;

7) decisions on eviction and settlement of natural persons;

8) decisions, according to which the debtors are children or natural persons recognized as incapable or whose civil capacity is limited;

9) decisions on confiscation of property;

10) decisions, the execution of which is referred by the Law directly to the powers of other bodies that are not enforcement bodies;

11) other cases provided for by the Law and the Law of Ukraine "On Bodies and Persons Enforcing Court Decisions and Decisions of Other Bodies";

12) decisions according to which the debtor is an authorized subject of management or a business entity in the military-industrial complex, defined by part 1 article 1 of the Law of Ukraine "On the Peculiarities of Reforming Enterprises of the Military-Industrial Complex of the State Form of Ownership", and decisions that involve taking action on their property.

Article 17 of the Law of Ukraine "On Architectural Activity" dated May 20, 1999 № 687-XIV stipulates that individuals related to the creation of architectural objects undergo professional certification.

Individuals related to certain types of work (services) related to the creation of objects creation of architectural objects (an architect, design engineer, technical supervision engineer and expert) are persons who have received higher education in the field of professional certification in accordance with qualification requirements and have work experience in the specialty for at least three years.

Professional certification is a procedure during which the professional specialization, level of qualification and knowledge of such individuals are confirmed.

The list of types of works (services) related to the creation of architectural objects, which requires the professional certification, was approved by the resolution of the Cabinet of Ministers of Ukraine of May 23, 2011 № 554.

The types of works (services) related to the creation of architectural objects, which requires the professional certification include:

1. Development of urban planning documentation.

2. Architectural and civil engineering design.

3. Examination and inspection in construction.

4. Technical supervision.

5. Engineering activities in the field of construction in terms of coordination of actions of all participants in construction.

Professional competencies of specialists in the discipline “Public Health Services” are defined in the higher education standards approved by the Ministry of Education and Science of Ukraine, and in the qualification characteristics of professions in public health services approved by the Ministry of Health of Ukraine No. 117 (as amended) dated 29 March 2002.

The above regulatory enactment clearly establishes functions and obligations, necessary scope of knowledge, and qualification requirements.

Thus, 13 professions have been established for healthcare managers, 100 professions have been established in the field of medical business (except dentistry), 7 professions have been established in the field of dentistry, 5 professions have been established in the field of pharmacy, 14 professions have been established in the field of medical and preventative care, other 25 professions have been established in the field of medicine. 49 professions have been established for the middle level of medical workers (complete lists of professions (types of activity)).

Specialists in the discipline “Public Health Services”, who have passed the internship (primary specialization), can acquire new and improve previously acquired professional competencies by:

passing secondary specialization and obtaining a new specialty (subspecialty);

ensuring continuous professional development — training in courses of thematic advanced training, professional medical internship, training in other activities of continuous professional development (master classes, workshops, trainings, thematic schools, scientific and practical conferences);

obtaining degree of Doctor of Philosophy and Doctor of Science in the discipline “Public Health Services”.

The procedure for internship doctors and pharmacy interns is regulated by the Regulation on Internships approved by the Order of the Ministry of Health No. 1254 dated 22.06.2021 (as amended by the Order of the Ministry of Health No. 493 dated 16.03.2022).

The list of courses of secondary specialization and thematic advanced training for medical doctors and pharmacists is determined by the Order of the Ministry of Health No. 346 dated 07.12.1998 (as amended).

Regulation on the System of Continuous Professional Development of Medical and Pharmaceutical Workers has been approved by the Resolution of the Cabinet of Ministers of Ukraine No. 725 dated 14.07.2021.

37. For which professions is access reserved only to nationals of Ukraine and for what reasons is such reservation introduced?

Article 26 of the Constitution of Ukraine and Article 3 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons” stipulate that foreigners and stateless persons staying in Ukraine on legal grounds enjoy the same rights and freedoms and bear the same obligations as Ukrainian citizens, subject to exceptions laid down in the Constitution, laws or international treaties of Ukraine.

According to Article 42 of the Law of Ukraine “On Employment of Population”, foreigners and stateless persons may not be appointed or engaged in employment if, in accordance with the law, appointment to a relevant position or a relevant type of activity is related to Ukrainian citizenship,

unless otherwise provided by international treaties of Ukraine, agreed to be binding by the Verkhovna Rada of Ukraine.

Thus, according to Article 19 of the Law of Ukraine “On Civil Service”, a person who has the citizenship of another state may not enter the civil service.

According to Article 52 of the Law of Ukraine “On the Judiciary and the Status of Judges”, a judge is a citizen of Ukraine who, according to the Constitution of Ukraine and this Law, has been appointed as a judge, holds a full-time judicial position in one of the courts of Ukraine and administers justice on the professional basis.

Article 61 of the Law of Ukraine “On the National Police of Ukraine” establishes restrictions related to the police service, in particular, a person who has lost Ukrainian citizenship and/or has citizenship (nationality) of a foreign state or a stateless person may not be a police officer.

According to Article 11 of the Law of Ukraine “On Security Activities”, security personnel may be legally capable Ukrainian citizens who have attained the age of 18 years, completed relevant training or professional training, concluded an employment contract with an economic entity and submitted documents.

As to notaries

According to the Law of Ukraine "On Notaries», one of the essential conditions for a person wishing to engage in notarial activities is the requirement to be a citizen of Ukraine. However, the law defines that in case of loss of Ukrainian citizenship or departure of a notary from Ukraine for permanent residence, the certificate of the right to practice notarial activity shall be annulled.

This is due to the fact that today the Constitution of Ukraine enshrines the provisions that foreigners and stateless persons legally staying in Ukraine enjoy the same rights and freedoms, as well as have the same responsibilities as citizens of Ukraine - with the exceptions established by the Constitution, laws or international treaties of Ukraine.

Moreover, the Law of Ukraine "On Notaries" obliges notaries who are citizens of Ukraine to certify rights and facts of legal significance and perform other notarial acts provided by law, in order to give them legal reliability.

Also notaries perform not only notarial acts, but also many other functions, in particular they are state registrars of the State Register of Real Property Rights, state registrars of legal entities, individuals - entrepreneurs and public formations and are subjects of primary financial monitoring.

Due to the assigned powers, notaries have direct access to many state registers of Ukraine containing not only open data and information, but also restricted information.

The issue of access by foreigners and stateless persons who are legally in Ukraine to the profession of "notary" needs a radical reform of the notary system of Ukraine.

As to bankruptcy trustees

According to part 1 of Article 11 of the Code, a bankruptcy trustee can be exclusively a citizen of Ukraine.

The reason for establishing such a reservation regarding access to the profession of a bankruptcy trustee exclusively for citizens of Ukraine can be called the fact that part 4 article 10 of the Code establishes that at enterprises engaged in activities related to state secrets, a bankruptcy trustee must

have access to state secrets, and in case of his absence - to obtain such a permit in the manner prescribed by law.

The bankruptcy trustee is obliged to take measures to ensure the protection of state secrets in accordance with paragraph 7 part 2 Article 12 of the Code.

Article 22 of the Law of Ukraine "On State Secrets" prescribes that access to state secrets is granted by the bodies of the Security Service of Ukraine after their inspection to capable citizens of Ukraine over 18 years of age who need it under the conditions of their official, industrial, scientific or technical activities or training. The procedure for granting access to state secrets is determined by the Cabinet of Ministers of Ukraine.

Admission to state secrets when judicial bankruptcy procedures are applied to the debtor in accordance with the procedure established by law is provided by the bodies of the Security Service of Ukraine to the bankruptcy trustee (asset manager, sanation manager, liquidator) after conducting an audit on the proposal of a state body, local self-government body, enterprise, institution, organization to the sphere of management of which the debtor belongs or which is the customer of works related to state secrets.

Foreigners and stateless persons are granted access to state secrets in exceptional cases on the basis of international treaties of Ukraine, the consent to be bound by which is provided by the Verkhovna Rada of Ukraine, or a written decree of the President of Ukraine, taking into account the need to ensure the national security of Ukraine on the basis of proposals from the National Security and Defense Council of Ukraine (part 7 article 27 of the above Law).

As to bailiffs

According to the Law of Ukraine "On Bodies and Persons Enforcing Court Decisions and Decisions of Other Bodies", only a citizen of Ukraine can be a public and private bailiff. This reservation is due to the fact that ensuring the enforcement of decisions is an extremely important task of the state, with the help of which the ultimate goal of justice is achieved, and the restoration of violated rights and interests acquires real content.

In addition, public/private bailiffs act on behalf of the state and authorized by the state to carry out activities for the enforcement of decisions aimed at the implementation of the constitutional principle of mandatory execution of decisions, enshrined in Article 129-1 of the Constitution of Ukraine, is important for the economy and the State budget of Ukraine.

Carrying out architectural activities by foreigners and stateless persons is established by Article 20 of the Law of Ukraine "On Architectural Activities" dated May 20, 1999 № 687-XIV.

Foreigners and stateless persons who are in Ukraine legally, in carrying out architectural activities have the same rights and bear the same responsibilities as citizens of Ukraine.

On the territory of Ukraine, foreigners and stateless persons who have not received the relevant qualification certificate may perform the work specified in Article 19 of this Law and participate in the development of urban planning documentation, design architectural objects, develop working documentation for construction only on the basis of contracts with specialists who have a qualification certificate.

According to Article 19 of the above-mentioned Law, project works that do not require a relevant qualification certificate include:

implementation of project work by specialists under the guidance of an architect or other specialist who has a qualification certificate for the performance of work of the relevant profile;

development of project materials not provided for implementation (sketch, search, conceptual, etc.), proposals for the possibility and conditions of construction of any land;

performance of works related to participation in town-planning and architectural competitions, unless their conditions provide otherwise;

design of facilities that, in accordance with the law, do not require obtaining documents entitling to construction work.

38. Is there a specific regime for recognition of foreign professional qualifications?

Recognition of foreign professional qualifications is carried out in accordance with the Procedure for Recognition in Ukraine of Professional Qualifications Acquired in Other Countries, approved by the Resolution of the Cabinet of Ministers of Ukraine dated on June 2, 2021 No. 576.

Recognition of foreign professional qualifications by a competent body (qualification center, educational institution, other entity authorized by law) is provided according to the documents specified in this Procedure, without assessment procedures. So, a professional qualification obtained in another country may be recognized in Ukraine if the applicant has:

a document on assignment of professional qualification issued by an authorized entity of another country;

a document on relevant education (for a foreign document - together with a certificate of recognition in Ukraine), if such education is foreseen by a professional standard approved in Ukraine, in case of its absence - the qualification characteristics.

In the absence of such documents, the applicant may go through the general procedure of assignment and / or confirmation of professional qualifications in the way prescribed by the legislation. Educational qualifications are not confirmed in this way.

If qualification obtained by the applicant in another country is not equivalent to qualification defined by a professional standard approved in Ukraine (in case of its absence - the qualification characteristics), the competent authority identifies the differences in competencies (learning outcomes) valid to make a decision on recognition of professional qualification.

In case of recognition of professional qualification, the applicant is granted with a certificate of recognition of professional qualification in the prescribed form. The certificate is recognized by all public authorities, local governments and businesses in Ukraine.

Representatives of vulnerable groups, in particular refugees and persons in need of protection, may apply for recognition without a complete package of documents specified in the Procedure. Recognition of foreign professional qualifications for regulated professions may be based on other requirements and procedures.

Professional qualifications obtained in the countries with which international agreements have been concluded on behalf of Ukraine or the Government of Ukraine are recognized in Ukraine in accordance with the provisions of such agreements.

If an international agreement concluded on behalf of Ukraine or the Government of Ukraine establishes rules other than those provided in this Procedure, the rules of the international agreement shall apply.

Specifics of recognition of foreign professional qualifications for individual regulated professions could be developed and used by relevant sectoral authorities.

Recognition of foreign educational formal qualifications, including those for the purpose of getting access to the labor market, is carried out on the principles of the Convention on the Recognition of Qualifications concerning Higher Education in the European Region (Lisbon, 11.04.1997), ratified by the Law of Ukraine of December 3, 1999 No. 1273-XIV, as well as on the basis of the international agreements on mutual recognition and equivalence of documents on education and scientific degrees, and relevant national legislation, namely: Regulation of the Recognition Procedure for Recognition of Higher Education Degrees Obtained in Foreign Higher Education Institutions; and Regulation of the Recognition Procedure in Ukraine of Documents on Secondary, Secondary Vocational, Professional Education issued by Educational Institutions of other Countries (approved by the order of the Ministry of Education and Science of Ukraine dated on May 5, 2015 No. 504, registered by the Ministry of Justice of Ukraine on May 27, 2015 No. 614/27059 and No. 615/27060).

The abovementioned recognition legislation covers recognition of formal qualifications both for the professional and academic purposes. The recognition procedure is provided by the Ministry of Education and Science of Ukraine and higher education institutions by involvement of the National Information Centre of Academic Mobility (ENIC Ukraine).

Within the framework of the national legislation, the recognition of foreign education qualifications, including those for the purpose of getting access to the labor market, has following main stages:

- verification of the authenticity of the document on education and its supplement/transcript;

- confirmation of the status of the educational institution that issued the document (for the date of issuance);

- assessment of the elements of qualification and academic/professional rights granted to the holder of the document in the country of origin to the relevant education in Ukraine. The assessment is based on the elements of qualification: level, workload, quality, profile (depends on the purpose) and learning outcomes (like contents, grades, final examinations or thesis, etc.), taking into account the rights granted by a qualification.

Additionally, in Ukraine there is a separate procedure for admission to professional activity for applicants with foreign medical or pharmaceutical qualifications (regulated by Order of the Ministry of Health of Ukraine dated on August 19, 1994 No. 118-C).

39. Is there any differentiation in the legislation between recognition of professional qualifications and recognition for academic purposes, i.e., recognition with a view to pursuing additional studies in Ukraine?

The content of professional and educational qualifications, the procedure for their assignment / award, recognition, confirmation and certification are determined by the Laws of Ukraine "On

Education", "On VET", resolutions of the Cabinet of Ministers of Ukraine dated on November 23, 2011 No. 1341 "On approval of the National Qualifications System" (amendments in 2020), on September 15, 2021 No. 956 "On approval of the Procedure for awarding and confirming professional qualifications by qualification centers".

Article 34 of the Law of Ukraine "On Education" stipulates that:

- educational (academic) qualification is awarded, recognized by an educational institution or another authorized subject of educational activity, and certified by the relevant document on education;
- professional qualification is assigned/confirmed, recognized by the qualification center, subject of educational activity, other authorized subject, and certified by the relevant document, which allows performing a certain type of work or professional activity.

Following the renewal of the National Qualifications Framework in 2020, its levels correspond to the number of levels of the European Qualifications Framework. Each of the 8 qualification levels of the NQF is described by special descriptors, which are generalized learning outcomes. The NQF for the national education system and labor market is already a benchmark in the development, identification, comparison, recognition, planning, and development of both educational (academic) and professional qualifications. Since 2019, the process of developing new professional and state educational standards for specific professions, taking into account the requirements of the NQF to a certain level of qualification, is actively underway.

The Ministry of Education and Science and the National Agency for Qualifications are actively conducting a thorough self-analysis of the NQF and its certification, with the prospect of including the NQF in the European system (the process is expected to be completed by the end of 2022). This will create transparent and clear procedures for recognition of foreign documents on education or professional qualifications in Ukraine, as well as recognition of our qualifications abroad. In addition, the NQF needs an additional mechanism for reconciling educational and professional qualifications in the description of descriptors.

Ukrainian national recognition legislation of formal qualifications (Regulation of the Recognition Procedure for Recognition of Higher Education Degrees Obtained in Foreign Higher Education Institutions; and Regulation of the Recognition Procedure in Ukraine of Documents on Secondary, Secondary Vocational, Professional Education issued by Educational Institutions of other Countries) covers both the recognition of foreign qualifications for the professional purposes and recognition for academic purposes. The recognition procedure is provided by the Ministry of Education and Science of Ukraine and Higher Education Institutions with the involvement of the National Information Centre of Academic Mobility (ENIC Ukraine).

The recognition procedure for both purposes (professional and academic) involves qualification assessment which is based on the elements of the awarded foreign qualification: level, workload, quality, profile and learning outcomes (contents, grades, final examinations or thesis, etc.), including professional and academic rights granted to its holder, as well as the purpose of recognition (employment or continuing education). Verification of the authenticity of the document on education and its supplement/transcript, and the confirmation of the status of the educational institution that issued the document (for the date of issuance) are also obligatory stages of the recognition procedure.

There is no fundamental difference between recognition of professional and academic qualification. The decision on the recognition of both professional and academic qualifications is based on evaluation of the evidence of formal qualifications.

Some difference between recognition of professional qualifications to pursue professional activity in Ukraine and recognition for academic purposes to pursue additional studies in Ukraine is that in the first case the evidence of both professional and academic qualification is sometimes needed, while in the second case only evidence of academic qualification is required.

Another difference is the authority of institutions that are empowered to recognize qualifications. Academic qualifications in higher education are recognized by the Ministry of Education and Science of Ukraine (Article 13 of the Law of Ukraine "On Higher Education"), which has further authorized the state enterprise "Information and Image Center" (Resolution of the Cabinet of Ministers of Ukraine dated on August 31, 2011 No. 924), and higher education institutions (Article 32 of the Law of Ukraine "On Higher Education").

A few regulations have been approved in 2021 to set a legislative framework for recognition of professional qualifications. Legal documents that regulate the procedures for assigning / confirming full and / or partial professional qualifications by qualification centers, and recognize assessed learning outcomes include:

Resolution of the Cabinet of Ministers of Ukraine dated on September 22, 2021 No. 986 "Some issues of accreditation of qualification centers";

Resolution of the Cabinet of Ministers of Ukraine dated on September 15, 2021 No. 956 "On approval of the Procedure for assignment and confirmation of professional qualifications by qualification centers". The latter defines the requirements for the procedure of assignment /confirmation of full and /or partial professional qualifications by qualification centers. Assessment is one of the stages of such a procedure. Assessment is a procedure for establishing compliance with the scope of competencies of the applicant to the relevant professional standard.

The applicant is issued a certificate of the established sample according to the results of the assessment and the conclusion about:

recognition of the applicant's learning outcomes, assignment/ confirmation of his / her full professional qualification;

recognition of the applicant's learning outcomes, assignment/ confirmation of his / her partial professional qualification.

It should be noted that prior to the adoption of the Resolution of the Cabinet of Ministers of Ukraine dated on June 2, 2021 No. 576 "On approval of the Procedure for Recognition in Ukraine of Professional Qualifications Acquired in Other Countries" both professional and academic qualifications were recognized based on evidence of academic qualification. Recognition of the evidence of academic qualification has given and still gives the right to pursue the corresponding professional activity (exceptions are certain regulated professions in particular in the field of health care, where special recognition mechanisms exist). According to this newly approved Resolution professional qualifications are recognized by qualification centers which are not authorized to recognize academic qualifications.

So, currently, Ukraine has mixed approaches to recognition of professional qualifications due to novelty and short duration of recognition based on evaluation of compliance with professional standards, underdeveloped network of qualification centers (that started in late 2021) and so on.

Additionally, in Ukraine there is a separate procedure for applicants with foreign medical or pharmaceutical qualifications for admission to professional activity provided by the Ministry of Health of Ukraine.

Recognition of professional, educational and scientific qualifications provides a person with an opportunity to carry out professional activities and obtain the next level of education in Ukraine. The main difference of recognizing a scientific qualification is that the quality of scientific work (dissertation) is monitored, while for educational qualification it is the content of the educational program is compared to the educational program approved in Ukraine, and for professional qualification, its compliance with the professional standard approved in Ukraine is checked.

According to the law, when enrolling entrants to study at the third level of higher education for the purpose of awarding the degree of Doctor of Philosophy or scientific level for the purpose of awarding the degree of Doctor of Science, final decisions on recognition of foreign documents are made by the Academic Council of a higher education or scientific institution.

40. What are the plans for the alignment of the legislation with the EU Directives on lawyers (Directives 77/249/EEC and 98/5/EC)?

Ukrainian legislation fully complies with the standards of Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services and Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate the practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained.

In 2012, the Law of Ukraine “On the Bar and Practice of Law” (hereinafter - the Law) was adopted. This Law defines the legal principles of organization and activities of the Bar and the exercise of advocacy in Ukraine and is fully consistent with the practice of European countries.

On 02 December 2016, the Ukrainian National Bar Association became a member of the Council of Bars and Law Societies of Europe (CCBE) and received the status of a CCBE observer (representation of the legal profession of its country with the right to participate in the plenary sessions of the CCBE without voting rights and to participate in the PECO committee).

Also, the Ukrainian National Bar Association, which is the only professional organization of advocacy in Ukraine, unites 63 thousand advocates of Ukraine, contributes to the protection of rights and legitimate interests of members of the UNBA, and represents them in relations with state authorities, through the activities of advocate’s self-government bodies, in particular the Bar Council of Ukraine, constantly addressing issues that may arise for advocates of foreign countries in the exercise of their legal profession on the territory of Ukraine.

- No. 155 of 01.06.2013 “On Approval of the Regulation on the List of Documents and Procedure for Inclusion of Foreign State Advocates in the Unified Register of Advocates of Ukraine”;

- No.156 of 01.06.2013 “On Establishment of the Fee for Organizational and Technical Support for Advocates of Foreign States”;

- No.157 of 01.06.2013 “On the establishment of an annual fee for advocate's self-administration for an advocate of a foreign state”;

- No. 119 of 23.04.2016 “On approval of the Regulation on the samples of blanks and technical descriptions of the certificate of an advocate of Ukraine, the service certificate of an advocate of Ukraine - member of the body of advocates' self-government of Ukraine, member of the Committee formed under the UNBA, the certificate of an advocate of a foreign state”;

- No. 143 of 15.11.2019 “On the submission in electronic form by a lawyer of a foreign state of the application and relevant documents for its inclusion in the ERAU”;

- No. 112 of 27.10.2021 “On the results of consideration of the electronic letter dated 22 October 2021, of the advocate of the Republic of Belarus I. Salei”.

As of today, 32 foreign advocates, including those from such countries as Georgia, the USA, Italy, Azerbaijan, Great Britain, Israel, Canada, Austria, etc., have been entered into the Unified Register of Advocates of Ukraine.

The qualification of advocates from Ukraine is recognized in many European countries, and their data are entered into the registers of foreign countries upon their request. Such a procedure is possible, for example, in Germany, Poland, Spain, etc.

1) Regarding the requirements of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate the practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (hereinafter “Directive 98/5/EC”).

Pursuant to Article 1 of Directive 98/5/EC, its purpose is to facilitate the exercise of the legal profession on a permanent basis as a self-employed or salaried employee in a Member State other than the one in which the professional qualification was obtained.

According to part 4 of Article 4 of the Law advocate of a foreign state carries out advocacy in Ukraine in accordance with the Law, unless otherwise provided by international treaty, consent to which is given by the Verkhovna Rada of Ukraine.

In particular, Section VIII of the Law regulates the practice of advocacy in Ukraine by an advocate of a foreign state and the peculiarities of the status of an advocate of a foreign state in Ukraine.

According to Article 59 of this Law, an advocate of a foreign state may practice in Ukraine subject to the peculiarities determined by this Law.

Article 3 of Directive 98/5/EC regulates the process of registration with the competent authority of the receiving state.

This issue is regulated in Ukraine by Article 59 of the Law: an advocate of a foreign state, who intends to practice law in Ukraine, shall apply to the qualification and disciplinary commission of the Bar at his/her place of residence or stay in Ukraine with an application for inclusion into the Unified Register of Advocates of Ukraine. The application shall be accompanied by the documents

confirming the advocate's right to practice law in the relevant foreign state. The list of such documents shall be approved by the Bar Council of Ukraine. The Qualification and Disciplinary Commission of the Bar examines the application and the documents submitted by the advocate within ten days from the date of their receipt and, in the absence of the grounds foreseen by part four of this Article, takes a decision on including such advocate in the Unified Register of Advocates of Ukraine, about which the advocate of the foreign state and the regional bar council shall be informed in writing within three days. The regional bar council ensures the inclusion of such advocates in the Unified Register of Advocates of Ukraine.

Grounds for refusal to include an advocate of a foreign state in the Unified Register of Advocates of Ukraine:

1) the existence of a decision of the relevant qualification and disciplinary commission of the Bar to exclude such advocate from the Unified Register of Advocates of Ukraine - within two years from the date of such decision;

2) the existence of the decision of the relevant qualification and disciplinary commission of the Bar on the termination of the right to practice as an advocate of Ukraine - within two years from the date of adoption of such decision;

3) non-submission of the documents envisaged by paragraph two of this Article or their non-conformity with the established requirements.

A decision to refuse the inclusion of an advocate of a foreign state in the Unified Register of Advocates of Ukraine shall be sent to the advocate within three days from the date of its adoption and may be appealed within thirty days from the date of its receipt to the High Qualification and Disciplinary Commission of the Bar or to the court.

Article 5 of Directive 98/5/EC sets out the requirements for the scope of practice of an advocate in the receiving Member State.

This issue is regulated in the Regulation on the List of Documents and Procedure of Inclusion of Foreign State Advocates in the Unified Register of Advocates of Ukraine, approved by the Decision of the BCU No. 155 of 01.06.2013 (hereinafter referred to as the “Regulation”). According to this Regulation, advocates of a foreign state on the territory of Ukraine may provide legal services only on issues of international law and legislation of the country in which they obtained the right to practice law.

Article 6 of Directive 98/5/EC enshrines provisions on the application of the rules of professional conduct of the receiving Member State to the advocate. It also establishes the right of an advocate to participate in the activities of professional associations of the receiving Member State.

Article 59 of the Law provides that when an advocate of a foreign state carries out advocate's activities on the territory of Ukraine, the professional rights and obligations, guarantees of advocacy, and organizational forms of advocacy defined by this Law shall extend to him. Also, according to Article 61 of the Law, an advocate of a foreign state may seek the protection of his/her professional rights and duties through advocates' self-governing bodies, participate in training and methodological activities conducted by qualification and disciplinary commissions of the Bar, the Higher

Qualification and Disciplinary Commission of the Bar of the regions, the Bar Council of Ukraine and the Ukrainian National Bar Association.

Article 7 of Directive 98/5/EC sets out the procedure for disciplinary proceedings against an advocate in a receiving Member State.

Article 60 of the Law provides that if an advocate of a foreign state included in the Unified Register of Advocates of Ukraine commits a disciplinary offense, he/she shall be subject to disciplinary liability in accordance with the procedure prescribed by this Law for advocates of Ukraine taking into account the peculiarities set out in paragraph two of this Article. Disciplinary sanctions may be imposed on an advocate of a foreign state who is included in the Unified Register of Advocates of Ukraine exclusively through a warning or exclusion from the Unified Register of Advocates of Ukraine. The qualification and disciplinary commission of the Bar informs the relevant state body or advocates' self-governing body of the foreign state in which the advocate obtained the advocate's status or obtained the right to practice law about the imposition of disciplinary sanctions on an advocate of a foreign state.

2) Concerning the requirements of Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (hereinafter “Directive 77/249/EEC”).

Article 1 of Directive 77/249/EEC stipulates that the Directive applies to the activities of advocates engaged in the provision of services. Also, Article 4 of the Directive specifies that an advocate must comply with the rules of professional conduct of the receiving Member State without prejudice to his obligations in the Member State from which he comes.

In particular, on 09 June 2017, the Foundation Congress of Advocates of Ukraine approved “Rules of professional conduct” (hereinafter - the Rules), establishing that advocates of foreign countries practicing law in Ukraine in accordance with the Law of Ukraine “On the Bar and Practice of Law” are subject to the requirements of the Rules and the requirements of moral and deontological standards that guide advocates in their country of origin.

Foreign advocates, if they are members of the European Union and/or the Council of Europe (European Community) when practicing law or exercising any professional contacts in Ukraine (regardless of their physical presence in Ukraine), are also subject to the CCBE Code of Conduct for European Lawyers. The correlation and correlation of different sources of deontological standards should be made based on the principles set out in these Rules. In case of violation of the requirements of these Rules or the Code of Conduct for European Lawyers, a foreign advocate practicing in Ukraine may be subject to disciplinary liability in accordance with the Law of Ukraine on the Bar and Practice of Law (Article 3 of these Rules).

Furthermore, when Ukrainian advocates practice in other countries, which are members of the European Union and/or European Community, the requirements of the European Code of Conduct for Lawyers also apply to them. Violation of the requirements of the Code of Conduct for European Lawyers is a disciplinary offense. An advocate in Ukraine must also comply with the provisions of these Rules. In such a case, the correlation between these different sources of deontological standards should be made according to the principles enshrined in the Code of Conduct for European Lawyers (Article 4 of the Rules).

In particular, Article 5 of Directive 77/249/EEC stipulates the requirement that in order to carry out activities related to client representation in court proceedings, a Member State may

require advocates covered by this Article to work together with a lawyer practicing in a particular judicial body.

In Ukrainian legislation, this question is regulated in the Regulations on the List of Documents and Procedure of Inclusion of Foreign State Advocates in the Unified Register of Advocates of Ukraine, approved by the Decision of the BCU No. 155 of 01.06.2013 - representation of clients in Ukrainian courts of all levels may be performed by an advocate of a foreign state only together with an advocate of Ukraine on the basis of a concluded respective agreement.

Article 7 of Directive 77/249/EEC also states that the competent authority of the receiving Member State may require the service provider to prove its qualification as an advocate.

This issue is regulated in Ukraine under Article 59 of the Law: a foreign advocate, who intends to practice law in Ukraine, shall apply to the qualification and disciplinary commission of the Bar at his/her place of residence or stay in Ukraine with an application for inclusion into the Unified Register of Advocates of Ukraine. The application shall be accompanied by the documents confirming the advocate's right to practice law in the relevant foreign state (a detailed list of documents is specified in the Regulation).

The legislation of Ukraine complies with the provisions of Directive 77/249/EEC of the Council of the European Economic Community of 22.03.1977 on promoting the effective exercise by lawyers of the freedom to provide services and Directive 98/5/EC of the European Parliament and of the Council of February 16, 1998 to a member state other than the state obtaining a professional qualification.

At the same time, it should be noted that the Decree of the President of Ukraine dated June 11, 2021 No. 231/2021 approved the Strategy for the Development of the Justice System and Constitutional Proceedings for 2021-2023, which defines the tasks for improving the institution of the bar, in particular, the bar system, the access procedure, the mechanism protection of the rights of lawyers

41. What are the plans for the alignment of the legislation with the EU Directives on toxic products 74/556/EEC and 74/557/EEC?

The national legislation does not provide for special, i.e. different conditions for foreign citizens compared to the resident citizens referring to the right of performing activities of production, trade and use of chemicals, as defined in Article 2 of Directive 74/557/EU.

Currently, the Resolution of the Cabinet of Ministers of Ukraine of July 13, 2016 № 445 approved the Licensing Conditions for Economic Activity for the Production of Particularly Hazardous Chemicals, the list of which is determined by the Cabinet of Ministers of Ukraine. Licensing requirements set personnel requirements for conducting business activities for the production of particularly hazardous chemicals, which include the need for:

staffing of specialists (contractors depending on the type of work and the level of material and technical base) of the appropriate level of training and educational and qualification level,

appointment to the positions of head of production, head of department, head of change of persons with higher education in the relevant field of training in chemistry,

the person who is responsible for the production of the business entity for its compliance with the requirements of environmental legislation, must have a higher education in the relevant field of training.

The drafting of the Law On chemical safety and management of chemicals defines the legal, organizational and economic principles in the field of chemical safety, establishes requirements for the activities of chemical entities, taking into account Ukraine's international obligations.

The main purpose of the draft act is to create a legal basis for the implementation into national law of the requirements of Regulation (EU) 901907/2006 of the European Parliament and of the Council of 18 December 2006 on the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), substances, amending Directive 1999/45/EC and repealing Council Regulation (EU) № 793/93 and Commission Regulation (EU) № 1488/94, as well as Council Directive 76/769/EU and Commission Directive 91/15 /EU , 93/67/EU, 93/105/ EU and 2000/21/EU and Regulation (EU) № 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labeling and packaging of substances and mixtures, amendments and repeals Directives 67/548/EU and 1999/45/EU and amending Regulation (EU) № 1907/2006.

A draft law will determine the conditions for the supply of chemical products on the market by both national entities and foreign companies and does not contain discriminatory norms.

A draft Law provides for the introduction of a permit for the handling of particularly hazardous chemicals removed from the market and toxic chemicals, as well as a register of notifications on the use of alternative chemical names.

A draft Law is to be approved by the Government of Ukraine. The provisions of the Directives 74/556/EU and 74/557/EU have been taken into account while drafting this Law. In particular, the conditions to the rights to establish an activity is the same for Ukrainian and foreign nationals.

Ukraine will ensure alignment of its legislation in the field with the provisions of the Directives 74/556/EU and 74/557/EU.

42. Does the national legislation allow to gain partial access to a profession (given that Directive 2005/36/EC was amended in 2013 by Directive 2013/55/EU and foresees this option)?

In Ukraine, partial access to the profession is realized by means of a separate type of qualifications – partial professional (occupational) qualifications. This type of qualification was first introduced in 2017 by the Law of Ukraine "On Education". Partial qualification means that a person possesses a part of the competencies defined by the relevant professional standard and is able to perform one or more job functions that include the profession. Partial qualifications as well as full ones are assigned by qualification centers accredited by the National Qualifications Agency, an educational institution or another entity authorized by law.

On April 1, 2022 Verkhovna Rada of Ukraine passed the Law of Ukraine which has implemented changes to Labor codes of Ukraine (as of April 19, 2022 this Law is not yet signed by President of Ukraine).

The Labor codes of Ukraine were supplemented with the article “4-1, Profession (type of occupation), qualification, Register of qualifications” which is relevant to partial access to profession:

“Profession (type of occupation) is a set of types of work activities that have close job functions that may require a certain professional and / or educational qualifications of the employee.

Job function is an integrated, mostly autonomous set of work actions, which is determined by its typical technological process and foresees the presence of certain competencies necessary for its implementation.

Professional qualification (full professional qualification) is a standardized set of acquired competencies and / or learning outcomes recognized or assigned / confirmed by a subject authorized by law, and certified by a relevant document, which allows to perform all job functions defined by the relevant professional standard .

The list of jobs that do not require a person to have a professional or partial professional qualification is approved by the Cabinet of Ministers of Ukraine at the request of the National Qualifications Agency.

The Register of Qualifications is an automated system for collecting, verifying, processing, storing and protecting qualification information.

The Register of Qualifications contains information on the profession (type of occupation), professional and partial professional qualifications, educational qualifications, professional standards, taking into account the levels of the National Qualifications Framework.

The National Qualifications Agency provides open access to the Register of Qualifications to all interested parties.

The procedure for maintaining the Register of Qualifications shall be approved by the Cabinet of Ministers of Ukraine upon submission by the National Qualifications Agency.”

After signing of this Law of Ukraine national legislation will allow to gain partial access to a profession in accordance with Directive 2005/36/EC amended by Directive 2013/55/EU.

C. Administrative structures

43. Please describe the administrative structures and procedures for granting recognition of foreign professional qualifications in Ukraine.

In June 2021, the Cabinet of Ministers of Ukraine adopted the Resolution No. 576 “On approval of the Procedure for recognition in Ukraine of professional qualifications, acquired in other countries”.

Following the norms of the Law of Ukraine "On Education" (2017), the Resolution stipulates that these procedures could be undertaken by the qualification centres accredited by the National Qualifications Agency, an educational institution or another entity authorized by law. The results of such recognition should be reflected in the Register of Qualifications that is operated by the National Qualifications Agency.

Thus, the National Qualifications Agency plays a key organizational and nodality role in the system of recognition of foreign professional qualifications in Ukraine. This Agency was established in 2019 according to the Law of Ukraine "On Education” and is a collegial public body.

The Resolution No. 576 establishes the criteria and procedure for the recognition in Ukraine of professional qualifications acquired in other countries in order to promote the rights of Ukrainian

citizens, foreigners and stateless persons, including refugees and persons in need of additional or temporary protection, to employment and professional activity. The Resolution is intended to create a mechanism to recognize first of all professional qualifications outside formal education.

The procedure envisioned the comparison of the competences reflected in the certificate that a person obtained outside Ukraine with the relevant occupational national standards (in case of absence of standards – with so-called qualification characteristics). Awarding of a partial professional qualification is permitted by this regulation.

44. To what extent is it possible to complete administrative procedures electronically?

The recognition of foreign professional qualifications could be undertaken by the qualification centres accredited by the National Qualifications Agency. The procedure of accreditation of qualification centres is based on the electronic cabinets designed by the National Qualification Agency. The online Register of Qualifications contains information on professional standards, accredited qualification centres, and documents issued by qualification centres with results of validation of professional qualifications or recognition of foreign professional qualifications.

The activity of the National Qualifications Agency is based on government regulations that introduce electronic document management. The Registry of Qualifications is a national information system designed to deliver administrative services in qualifications in electronic form.

The following services should be available in electronic form:

- access to professional/occupational standards database;

- access to the registry of qualification centres and professional qualifications which the centre is in charge to award;

- application for awarding professional qualification by qualification centre;

- application for recognition of foreign professional qualification;

- access to records on profession qualification awarding/recognition.

All qualification centres are required to have a website with uploaded procedures of validation of professional qualifications and recognition of foreign professional qualifications. The legislation does not specify how exactly applicants have to submit their documents to the centres, it is up to the centre to define the mode of submission of documents and the verification/validation procedures. So, it means that all administrative procedures could be completed electronically.

CHAPTER 4: FREE MOVEMENT OF CAPITAL

I. CAPITAL MOVEMENTS AND PAYMENTS

1. Please indicate key features of the legislation concerning free movement of capital and payments as well as the institutions that are competent on the issue.

According to the Chapter 7 “Current payments and movement of capital” of Title IV “Trade and trade-relations matters” of the Association Agreement between Ukraine, of the one part, and the EU, and the European Atomic Energy Community and the member-states, on the other part (EU-Ukraine Association Agreement), Ukraine takes steps to gradually liberalize capital movement to its full liberalization. To facilitate the achievement of capital movement liberalization goals, Law of Ukraine *On Currency and Currency Operations* No. 2473-VIII dated 21 June 2018 (hereinafter – Currency Law) was enacted.

Relations in the area of foreign exchange transactions, currency regulation and currency supervision are regulated by the Constitution of Ukraine, the Currency Law, other laws (other laws’ provisions covering foreign exchange transactions cannot contradict the provisions of the Currency Law), as well as regulations adopted in accordance with the Currency Law. Since 7 February 2019 the legal framework for currency regulation consists of the Currency Law and 8 key regulations approved by the NBU to implement the Currency Law provisions.

The Currency Law has introduced a new liberal, transparent and up-to-date model for FX transactions providing for the free movement of capital, if financial stability is ensured. The Currency Law guarantees the freedom of currency operations (in compliance with the currency regulation principles established by this law) meaning that currency operations are conducted without limitation except where the Ukrainian AML/CFT laws and Ukraine’s commitments under international agreements approved by the Verkhovna Rada apply, as well as except where the NBU applies remedies, as set forth in the Currency Law.

In the case of any indications of unsustainable financial situation in the financial system, deteriorating balance of payments of Ukraine, events that compromise stability of the banking system and/or financial system of the country, the NBU may temporarily introduce remedy measures. Article 12 of the Currency Law lists the remedy measures that the NBU may apply exclusively on the grounds and according to the procedure defined by the law.

According to the Currency Law, currency regulation means operations of the NBU and, to an extent prescribed in the Currency Law, the Cabinet of Ministers of Ukraine. Currency supervision in Ukraine is conducted by currency supervision authorities: the NBU supervises authorized institutions (banks, nonbank financial institutions, and postal operators licensed by the NBU according to the Currency Law) and the central executive authority assigned to implement the state tax policy (the State Tax Service of Ukraine) supervises all the other residents (except for the authorized institutions) and nonresidents. Authorized institutions are currency supervision agents reporting to the National Bank of Ukraine.

Law of Ukraine No. 1591-IX *On Payment Services* dated 30 June 2021 (hereinafter – Law *On Payment Services*) was adopted on 1 August 2021 and will come into effect on 1 August 2022. The Payment Services Law defines objectives and forms of payment market regulation by the state and the NBU as the payment market regulator.

The Law *On Payment Services* will implement the provisions of PSD2 and E-Money Directive into Ukrainian legislation and will provide an impetus for the active development of payment market in Ukraine. Compared to existing legislation, the Law *On Payment Services* will introduce the following novelties:

- the list of payment services will expand. Now nonbank institutions may only engage in one type of service - transfer of funds. The new law names nine types of services (in addition to the ones mentioned in PSD2, the e-money issue will be defined as a type of payment service);

- payment service providers will include:

- 1) banks
- 2) payment institution (this includes small payment institutions)
- 3) branches of foreign payment institutions
- 4) electronic money institutions
- 5) financial institutions entitled to provide payment services
- 6) postal operators
- 7) nonfinancial payment service providers
- 8) the National Bank of Ukraine
- 9) state authorities and local self-governments

- nonbank payment service providers will additionally have a right to open payment accounts (now only banks can do that)

- payment institutions, e-money institutions, postal operators, and some other payment services providers will be able to issue payment cards and electronic money if they have necessary authorization

- Open Banking concept is introduced

- the NBU will be responsible for creating a regulatory platform and issue e-money

- terminology that is used in Ukrainian laws and regulations governing payments will be harmonized with the EU *acquis* terminology.

Introduction of ISO 20022 standard is yet another change that payment market of Ukraine should expect in the nearest future. This standard will be in particular introduced in the NBU's System of Electronic Payments (SEP) used to settle the majority of transactions in domestic currency in Ukraine.

2. Please indicate

- **if there are capital transactions that are not yet fully liberalized and their types;**
- **if relevant, which are the conditions attached to their liberalization; and**
- **indicative plans for their complete liberalisation**

A series of anticrisis remedial measures (temporary restrictions/limits on certain FX transactions, including cross-border transfer of capital) that was introduced by the NBU in 2014-2015

in line with the EFF program with IMF, stayed in place after 7 February 2019. These measures stayed in place after the Currency Law came into effect as was provided by the parameters of the Stand-By Arrangement with IMF and according to the Road Map Road Map for Cancelling FX Restrictions⁵ that defines the conditions necessary for further liberalization.

The road map was developed by the NBU together with the IMF experts. It provides for the gradual cancellation of all currency restrictions and transition to the regime of free capital flow, taking into account the pace of the macroeconomic conditions improvement in Ukraine (without any specific deadlines for the currency restriction removal).

Since the Currency Law came into force and during the period from February 2019 to February 2022, the NBU has not applied new remedial measures in the FX market and gradually (as the macroeconomic situation improved and considering the effects from the already lifted limitations in the Ukrainian foreign exchange market) continued to lift and gradually remove the remedial measures introduced earlier. This law envisages that all existing restrictions will be gradually removed (if the financial stability is ensured), and eventually FX transactions in Ukraine will be conducted on the principle that “everything that is not expressly forbidden by law, is allowed.”

By 23 February 2022, the NBU liberalized direct investments by nonresidents to Ukraine, financial borrowing, loans granted by nonresidents to residents. Settlements in investment transactions and transactions to return to foreign investors the profits, income (including dividends), and other funds obtained as a result of foreign investment are conducted in hryvnias and/or freely convertible foreign currency. Ukraine applies the national investment treatment to foreign investors. The purchase by nonresidents of real estate in Ukraine and securities issued by Ukrainian residents is a form of foreign investment. Currency assets are purchased and/or transferred for the purposes of repayment of a foreign investment to a foreign investor/of a financial borrowing/loan to a foreign lender based on documents confirming the amount of financial liabilities to be paid to a foreign investor as a result of their investment activities in Ukraine/to a foreign lender under a credit agreement with a resident borrower.

The NBU has partially liberalized: investments of residents abroad (including direct investment abroad, investments of residents in real estate abroad, investments of residents in securities issued by foreign issuer etc.), cross-border transfer of foreign currency from Ukraine by residents for the purpose of crediting their own accounts abroad, cross-border transfer of foreign currency from Ukraine by residents for the purpose of granting loans/credits to nonresidents, fulfilling by resident individual of their own obligations to a nonresident under a life insurance contract. Transfers from Ukraine abroad for these purposes may be performed by residents within the annual limit (the limit introduced for certain FX transactions per calendar year) of EUR 2 million for a legal entity/sole proprietor and EUR 200,000 for transactions of a resident individual. The limit introduced for certain FX transactions during a calendar year does not apply to the banks' transactions.

Residents (including banks) are prohibited to grant loans (borrowings, financial aid) in hryvnia to nonresidents and their representative offices in Ukraine, except for the following cases: 1) when a bank/nonbank financial institution issues consumer loan in hryvnia to nonresident individual 2) when a resident bank issues hryvnia loan to nonresidents for the purposes of purchasing Ukrainian domestic government bonds by the nonresident with the loan maturity not later than 14 business days from the day of granting the hryvnia loan 3) when a credit (loan, financial aid) is transferred to an account of

⁵It is published on the *Currency Liberalization* page of the NBU's official website.

a foreign investor representative office under a production sharing agreement in the territory of Ukraine for the purposes of the production sharing agreement. Consumer FX loans in the territory of Ukraine are prohibited under the law.

At the same time, a resident other than a bank (legal entity/sole proprietor) is allowed to purchase cashless foreign currency daily without specifying the purpose of use of purchased foreign currency for a total amount not exceeding EUR 100,000 euro (equivalent to this amount in another foreign currency) per day. The residents may use the purchased foreign currency at their own discretion (including for transfers from Ukraine to their own accounts abroad). Purchase of cash foreign currency by individuals is not limited.

Transfers by residents (legal entities/sole proprietors) from Ukraine/to the accounts of nonresidents in the banks of Ukraine for the purposes of their economic activities may not exceed EUR 2 million per year (a limit imposed on certain currency transactions). The limit does not apply to the transactions listed below: banks' own transactions; current currency transactions (save for transactions under donation agreements, payments of premiums, bonuses, prizes, and pecuniary aid); transactions on execution of liabilities under guarantees, sureties, pledges, as well as transactions on refunds by a resident borrower of funds to a nonresident guarantor (warrantor) who has executed the secured guaranty/ warranty of the resident borrower to nonresident creditor (this exemption may be applied, provided the limit does not apply to the discharge of the principal commitment under the relevant agreement secured by a guaranty, surety or a pledge); transactions to refund by a resident borrower of funds to nonresident guarantor (guarantee provider) who has executed the secured guaranty/ warranty of the resident borrower to a nonresident creditor; transactions on discharging liabilities under financial crop receipts, leasing, factoring, insurance/reinsurance transactions, and rent or labor agreements; transactions on discharging debt liabilities to nonresidents under loans (reimbursable financial aid) received by residents; transactions of a resident borrower related to payment of income and repayment of debt securities placed abroad according to the terms of debt securities placement; transactions related to return of foreign investment to a foreign investor, as well as payment of profit, income and other funds received by a foreign investor from their investment activity in Ukraine; sale by nonresidents of their property in Ukraine, as well as receiving profit, income and other proceeds from this property; transfers of guarantee deposits to participate in trading (tenders, auctions) implying delivery of goods (commodities, works, services, intellectual property rights and other nonproperty rights for sale/paid transfer); transfers of funds by resident legal entities to the accounts of their own branches, representative offices, and other standalone units without creating a legal entity, opened abroad.

Residents may grant commercial loans to nonresidents for the period of 365 days (since 5 April 2022 for the duration of martial law in Ukraine the period is limited to 90 days). The limiting of this period is related to the requirement to receive exports proceeds and imported goods in compliance with settlement deadlines set for export and import transactions by the NBU (365 days/90 days) after the delivery date or payment date respectively.

Transactions related to execution of liabilities under guarantees, sureties, pledges, as well as transactions on refunds by a resident borrower of funds to a nonresident guarantor (warrantor) who has executed the secured guaranty/ warranty of the resident borrower to nonresident creditor were liberalized regarding provision of guarantee/surety for transactions that are not subject to EUR 2 million limit imposed on certain currency transaction executed by residents (legal entity/sole proprietor) during the calendar year.

Transactions related to refunds by a resident borrower (legal entity/sole proprietor) of funds to a nonresident guarantor (warrantor) who has executed the secured guaranty/ warranty of the resident borrower to the residents creditor were liberalized.

Since 24 February 2022 in response to introduction of martial law in Ukraine and in line with Article 7 paragraph 20 of the Law of Ukraine No. 679–XIV *On the National Bank of Ukraine* dated 20 May 1999, the NBU temporarily prohibited FX trading and cross-border transfers (except for some special cases) for the duration of martial law in Ukraine.

3. Please describe the key features of the legislation on foreign exchange operations.

The principal and basic law in Ukraine in the area of currency regulation and currency transactions is the Currency Law. This Law prescribes the legal framework for currency operations, currency regulation and currency supervision, rights and obligations of the parties to currency operations and authorized institutions and sets out liabilities for violation of currency laws by said parties.

Key purposes of the Law are to ensure:

- a uniform state policy on currency operations
- easy, transparent, and consistent currency regulation as a step toward improving the investment climate
- a possibility to speed up the currency liberalization (a number of limitations have been cancelled)
- freedom in conducting FX transactions
- fulfilment of commitments on free capital movements under the EU-Ukraine Association Agreement
- secured financial stability
- protection of Ukraine's financial system.

Relations that result from currency operations, currency regulation and currency supervision shall be governed by the Constitution of Ukraine, the Currency Law, other laws of Ukraine, as well as regulations adopted in line with this Law.

Effective 7 February 2019, the NBU has eight key regulations in the field of currency regulation:

(1) Regulation *On the Structure of the Foreign Exchange Market of Ukraine, Conditions and Procedure for Trading in Foreign Currency and Investment Metals in the Foreign Exchange Market of Ukraine*, approved by NBU Board Resolution No. 1 dated 2 January 2019

(2) Regulation *On Transactions with Currency Valuables*, approved by NBU Board Resolution No. 2 dated 2 January 2019

(3) Regulation *On Cross-border Movement of Currency Valuables*, approved by NBU Board Resolution No. 3 dated 2 January 2019

(4) Regulation *On the List of Safeguards, the Procedure and Criteria for their Implementation, Extension, and Early Termination*, approved by NBU Board Resolution No. 4 dated 2 January 2019

(5) Regulation *On Safeguards and Procedures for Certain Transactions in Foreign Currency*, approved by NBU Board Resolution No. 5 dated 2 January 2019 (temporary)

(6) Regulation *On the Procedure for Provision of Information by Banks to the National Bank of Ukraine Regarding Agreements under Which Residents Meet Liabilities to Nonresident Creditors under Loans Taken Out by Residents*, approved by NBU Board Resolution No. 6 dated 2 January 2019

(7) Instruction *On the Procedure for Currency Supervision of Banks over Compliance by Residents with the Deadlines for Settlements on Export and Import of Goods*, approved by NBU Board Resolution No. 7 dated 2 January 2019

(8) Regulation *On the Procedure for the Conduct by Authorized Institutions of the Analysis and Verification of Documents (Information) Related to FX Operations*, approved by NBU Board resolution No. 8 dated 2 January 2019.

These NBU regulations govern the order and procedures for the conduct of trading in currency valuables by residents and nonresidents, legal entities and individuals, foreign and domestic investors, the introduction and cancellation of corrective actions, and more. They include both permanent and temporary regulations and those identifying specific, currency transactions-related corrective actions that the NBU is entitled to implement only if there are signs that the financial standing of the banking system is unstable, the balance of payments of Ukraine is worsening, or if events that threaten the stability of the banking system and/or the country's financial system occur.

In a separate action, effective 24 February 2022, in connection with the imposition of martial law in Ukraine, the NBU has introduced temporary restrictions on the banking system and the FX market while under martial law, in accordance with NBU Board Resolution No. 18 *On Operation of Banking System Under Martial Law*, dated 24 February 2022 (hereinafter – Resolution No. 18). Specifically, under Resolution No. 18, the NBU has temporarily prohibited FX trading and cross-border transfers (except for some special cases) for the duration of martial law in Ukraine. While martial law is in effect, other NBU regulations apply to the extent that they do not contradict Resolution No. 18.

The NBU regulations that currently regulate the issues of the currency transactions licensing in the nonbank financial market are:

1) NBU Board Resolution No. 26 *On Approval of the Regulation on Procedure of Licensing Currency Valuables Trade* dated 26 March 2021, which established the procedure for issue, suspension, renewal, cancellation of licenses for currency valuables trading to nonbank financial institutions, and postal operators

2) NBU Board Resolution No. 297 *On Approval of Regulation on the Rules for Granting Licenses to Perform Currency Transactions to Nonbank Financial Institutions and Postal Operators* (as amended) dated 9 August 2002, which establishes the procedure for issue, suspension, renewal, cancellation of licenses to nonbank institutions (except for the licenses for currency valuables trading in cash). At the same time, the NBU has been developing a new regulation on licensing of currency transactions (except for the licensing of currency valuables trading) and amendments to current

Regulation *On Licensing and Registration of Financial Services Providers and Requirements for Providing Financial Services* approved by NBU Board Resolution No. 153 dated 24 December 2021 regarding licensing of transactions on currency valuables trading, in order to improve and unify the procedure of licensing the financial services providers to perform currency operations. Please note that due to the martial law no temporary restrictions were imposed regarding licensing of currency transactions. However, temporary restrictions were imposed regarding general regime of currency transactions.

4. Please elaborate on the strategy for liberalisation of short-term capital movements.

On 7 July 2018, the Currency Law was enacted and on 7 February 2019 it came into effect.

The Currency Law sets the legal framework for new rules of currency regulation and defines the peculiarities of currency supervision, exchange of information between the currency transaction parties, including currency supervision authorities, and implementation of corrective measures in case of the currency laws violation.

The Currency Law has introduced a new liberal, transparent and up-to-date model for FX transactions providing for the free movement of capital, if financial stability is ensured.

At the same time, the Currency Law stipulates that the NBU is empowered to apply remedial measures to currency transactions (restrictions/prohibitions to perform certain currency transactions, including cross-border transfers on capital movement) with the sole aim of ensuring the sustainability of the financial system and the equilibrium of the balance of payments of Ukraine, and that these remedial measures are temporary. Article 12 of the Currency Law lists the remedy measures that the NBU may apply exclusively on the grounds and according to the procedure defined by the law.

Since 7 February 2019 the legal framework for currency regulation consists of the Currency Law and 8 key regulations approved by the NBU to implement the Currency Law provisions.

These NBU regulations regulate the order and procedures for performing currency valuables trading for residents and nonresidents, legal entities and individuals, foreign and domestic investors, introducing and cancelling remedial measures, etc. They include both permanent regulations and ones that are temporary and that identify specific, currency transactions-related remedial measures that the NBU is entitled to implement only if there are signs that the financial standing of the banking system is unstable, the balance of payments of Ukraine is worsening, or if events that threaten the stability of the banking system and/or the country's financial system occur.

After new currency laws and regulations came into force on 7 February 2019, the following provisions were cancelled: (i) regime of individual licensing of cross-border payments in foreign currency (it was replaced with a more flexible system of electronic limits), and (ii) registration at the NBU of agreements on loans granted to residents by nonresidents. Besides, the NBU has eased a number of earlier established temporary restrictions (before 7 February 2019) and made further steps towards general liberalization of FX transactions.

At the present stage, the NBU continues to apply the remedial measures set in a separate regulation of a temporary nature – Regulation *On Remedial Measures and Procedures for Certain Transactions in Foreign Currency* approved by NBU Board Resolution No. 5 dated 2 January 2019 (hereinafter referred to as Regulation No. 5).

In fact, the provisions of Regulation No.5 extended the effect of a number of anti-crisis temporary measures that were introduced by the NBU in 2014-2015 as part of implementation of economic and financial policies within the framework of the Extended Fund Facility (EFF) with the International Monetary Fund after 7 February 2019. These measures stayed in place after Law of Ukraine *On Currency and Currency Operations* came into effect as was provided by the parameters of the Stand-By Arrangement with IMF and according to the Road Map Road Map for Cancelling FX Restrictions⁶ that defines the conditions necessary for further liberalization.

The road map was developed by the NBU together with the IMF experts. It provides for the gradual cancellation of all currency restrictions and transition to the regime of free capital flow, taking into account the pace of the macroeconomic conditions improvement in Ukraine (without any specific deadlines for the currency restriction removal).

Since the Currency Law came into force and during the period from February 2019 to February 2022, the NBU has not applied new remedial measures in the FX market and gradually (as the macroeconomic situation improved and considering the effects from the already lifted limitations in the Ukrainian foreign exchange market) continued to lift and gradually remove the remedial measures introduced earlier.

This law envisages that all existing restrictions will be gradually removed (if the financial stability is ensured), and eventually FX transactions in Ukraine will be conducted on the principle that “everything that is not expressly forbidden by law, is allowed.”

The existing temporary remedial measures that are still in force after 7 February 2019 and the Road Map are applied to certain types of capital movement transactions, irrespective of their terms.

5. On current account convertibility, has Ukraine accepted IMF Article VIII status? If not, can Ukraine provide information on what are the remaining technical issues?

Under the Currency Law, hryvnia is a sole legal tender in Ukraine, and shall be accepted for settlements throughout the territory of Ukraine without any restrictions. Article 5 part two of the Currency Law comprises the list of transactions that can be settled in foreign or domestic currency or investment metals.

The Currency Law states that while conducting currency transactions, nonresidents have the same rights that have been granted to residents.

Banks may open current, deposit, and escrow accounts in foreign and domestic currency for residents and nonresidents (legal entities, representative offices of legal entities in Ukraine, investment funds and asset management companies acting on behalf of such investment funds, individuals). Regulation *On Remedial Measures and Procedures for Certain Transactions in Foreign Currency*, approved by NBU Board Resolution No.5 dated 2 January 2019 (hereinafter referred to as Regulation 5) establishes specifics of using accounts of residents and nonresidents (provides a list of transactions that can be performed through such accounts).

Residents are entitled to open accounts with the foreign financial institutions and perform transactions through their accounts. A correspondent account of the bank in foreign currency opened

⁶It is published on the *Currency Liberalization* page of the NBU's official website.

with a nonresident bank may be used to do transactions in compliance with laws of Ukraine (including requirements of Regulation 5).

Currency valuables are traded solely through authorized institutions that received appropriate licenses. Currency valuables trading is allowed taking into account specifics determined by NBU's regulations, including requirements of Regulation 5.

Residents other than banks (legal entities, sole proprietors) cannot buy cashless foreign currency for hryvnias with the purposes of the funds placement on deposit account in a bank and/or on account abroad in a foreign financial institution, with the exception of the cases when the foreign currency is bought for placement on own accounts abroad due to the necessity to maintain own separated divisions abroad and/or fulfilment of liabilities under foreign trade contracts (except for the liabilities on transfer of deposit amounts to the accounts in foreign financial institutions).

At the same time, a resident other than a bank (legal entity/sole proprietor) is given the opportunity to purchase cashless foreign currency daily without specifying the purpose of use of purchased foreign currency for a total amount not exceeding EUR 100,000 euro (equivalent to this amount in another foreign currency) per day. The residents may use the purchased foreign currency at their own discretion (including for transfers from Ukraine to their own accounts abroad).

Residents (legal entities/sole proprietors) have the right to transfer foreign currency to their own accounts abroad within the annual maximum amount (the cap imposed on certain foreign exchange transactions during the calendar year) of EUR 2,000,000 (or its equivalent, if in a different currency). This limit on certain foreign exchange transactions does not apply to banks' own transactions, as well as transfers of funds by resident legal entities to the accounts of their own branches, representative offices, and other stand-alone units without creating a legal entity, opened abroad (except for the accounts opened in the state (jurisdiction) that is included by the Cabinet of Ministers of Ukraine into the list of offshore jurisdictions and/or declared by the Verkhovna Rada of Ukraine an aggressor state/occupying power, and/or does not implement or implements improperly the recommendations of international, intergovernmental organizations involved in counteraction to legalization (laundering) of the proceeds from crime and terrorism financing or financing of the proliferation of weapons of mass destruction.

Individuals have the right to purchase and/or transfer foreign currency to their own accounts abroad within the annual maximum amount (the limits imposed on certain foreign exchange transactions during the calendar year) of EUR 200,000 (or its equivalent, if in a different currency). The above limits do not apply to placement by residents on own accounts abroad of the foreign currency having the source of origin beyond Ukraine (namely, funds received by residents abroad as salary, pension, scholarship, dividend, cash input to replenish the account).

Since 24 February 2022, the authorized institutions have been prohibited to perform any FX transactions with russian rubles or belarusian rubles in Ukraine, due to russia's full-scale military aggression against Ukraine.

6. Are there any restrictions applied to foreign direct investment (FDI)?

The Law of Ukraine *On the Regime of Foreign Investments* No. 93/96-BP dated 19 March 1996 does not provide for restrictions on foreign direct investment.

According to the Law of Ukraine No. 1560-XII *On Investment Activity* dated 18 September 1991, all investment entities, including foreign investors, regardless of ownership and management have equal rights to engage in investment activities, unless otherwise provided by the legislation of Ukraine; placement of investments in any objects, except those in which investment is prohibited or limited by this Law, other acts of the legislation of Ukraine, is recognized as an inalienable right of the investor and is protected by law; the investor independently determines the goals, directions, types and volumes of investments, attracts for their realization on a contractual basis any participants of investment activity, including by organizing competitions and auctions. According to the abovementioned Law, it is prohibited to invest in facilities, the creation and use of which does not meet the requirements of sanitary, radiation, environmental, architectural and other norms established by the legislation of Ukraine, and violates the rights and interests of citizens, legal entities and states which is protected by the law.

Ukraine applies the national investment treatment to foreign investors.

Settlements in transactions to make foreign investment and to return to foreign investors the profits, revenue (including dividends), and other funds obtained as a result of foreign investment shall be conducted in hryvnias and/or freely convertible foreign currency.

Foreign investors make cash settlements for investment objects in Ukraine in cashless form only through bank accounts or accounts opened abroad if settlements are effected between foreign investors.

To make foreign investments in Ukraine, a foreign investor may transfer at their discretion:

- 1) foreign currency/hryvnia from abroad to their own bank accounts (current, investment, escrow, correspondent accounts), including through correspondent accounts of nonresident banks
- 2) foreign currency/hryvnia from abroad directly to the current account/correspondent account of a resident in Ukraine.

Purchase and/or transfer of foreign currency in order to return a foreign investment to a foreign investor is made, in particular, on the basis of an investment agreement and other documents confirming the amount of monetary obligations to be paid to a foreign investor based on their investment performance in Ukraine.

7. Please elaborate on privatisations of state-owned enterprises (SOEs) in the past and those envisaged in the future⁷. Do public authorities maintain any special rights (e.g. 'special shares', representation on the board of directors, veto rights on important decisions) in privatised companies? How and by whom are public authorities represented in companies where they own shares?

The privatization results of the privatization of large public sector enterprises are published on the official website of the State Property Fund of Ukraine.

⁷ Please refer to the Organisation for Economic Co-operation and Development (OECD) definition of SOEs, i.e. enterprises where the state has significant control through full, majority, or significant minority ownership. Please Include both SOEs, which are owned by the central government, as well as SOEs owed by regional and local governments.

Since 2016, shares accounting for 100.00% of authorized capital of the First Kyiv Machine-Building Plant have been sold through the conditional auction.

Quantitative privatization indicators are given below.

Year	Number of privatized objects	Revenues from privatization, UAH millions
2000	1,733	2,076
2001	1,658	2,132
2002	1,594	576
2003	1,569	2,175
2004	1,236	9,599
2005	890	20,710
2006	672	575
2007	475	2,460
2008	282	482
2009	250	807
2010	189	1,093
2011	173	11,480
2012	169	6,765
2013	166	1,484
2014	100	467
2015	117	151
2016	147	331
2017	145	3,380
2018	249	276
2019	394	549
2020	444	2,253
2021	341	5,098
Total	12,993	74,919

According to the Law of Ukraine No. 1928-IX *On the State Budget of Ukraine for the year 2022* dated 2 December 2021, revenues from privatization of state property are planned at UAH 8 billion (EUR 257.120 million).

According to the State Property Fund of Ukraine, out of 748 enterprises managed by the State Property Fund of Ukraine and its regional branches, only 87 can be privatized. All other enterprises have the following problems: seized property, lack of property on the balance sheet, debts exceeding assets, being in liquidation or bankruptcy, absence of top managers.

Thus, according to the optimistic scenario, in 2022 it is possible to ensure revenues from privatization at the level of about UAH 5 billion (EUR 160.7 million): UAH 1.9 billion (EUR 61.066 million) from small-scale privatization and UAH 3.2 billion (EUR 102.848 million) from large-scale privatization.

Corporate governance is regulated by the legislation of Ukraine (Constitution of Ukraine, Decrees of the President of Ukraine, Laws, other regulations, and statutory documents of companies). Bodies of executive power authorized to manage the state's corporate rights in the authorized capital of companies exercise their powers within and in the manner prescribed by legislation. Representation of the state in the supervisory boards of such companies is carried out in proportion to the state share in the authorized capital of privatized companies. The procedure for the establishment, operation, termination, separation of joint stock companies, their legal status, rights and obligations of shareholders are determined by the Law of Ukraine No. 514-VI *On Joint Stock Companies* dated 17 September 2008.

In accordance with paragraph 3 subparagraph 1 of the Regulation on the National Commission on Securities and Stock Market (hereinafter – NSSMC), approved by Presidential Decree No. 1063 dated 23 November 2011 (hereinafter – the Regulation), drafting and implementing a single state policy on development and functioning of the securities and derivatives market in Ukraine, promoting the adaptation of the national securities market to international standards is the main task of the NSSMC.

Paragraph 4 subparagraph 18 of the Regulation stipulates that the NSSMC, in accordance with its tasks, clarifies the procedure for applying the legislation on securities and joint-stock companies, provides official interpretation of its own regulations.

Regarding the banking sector

Until 2017 the state was the sole owner of 100% of shares of Ukrainian Bank for Reconstruction and Development PJSC. On 30 November 2016, the State Property Fund of Ukraine held an auction to sell 99.9% block of shares of Ukrainian Bank for Reconstruction and Development PJSC. The winner of this auction was BOSE Co., Limited from Hong Kong. On 7 November 2017, the NBU approved the acquiring of qualifying holding in Ukrainian Bank for Reconstruction and Development PJSC by BOSE (Hong Kong) Co., Limited.

At present, the state holds shares in the capital of 4 banks: As of 1 January 2022, the Ukrainian state represented by the Cabinet of Ministers of Ukraine held 100% of the authorized capital of the following bank institutions:

- Ukreximbank JSC
- Oschadbank JSC
- CB Privatbank JSC.

The Ukrainian state represented by the Cabinet of Ministers of Ukraine owned 94.940948% share in the capital of Ukrgasbank JSB.

The representation of state is performed through the supervisory boards of banks, which in Ukreximbank, Oschadbank, and Privatbank are formed in accordance with Article 7 of the Law of Ukraine No. 2121-III *On Banks and Banking* dated 7 December 2000 (as 100% of banks' shares belong to state) and according to Article 39 of said Law in Ukrgasbank.

In first case, the supervisory boards comprise of 9 members, including 6 independent directors. The Verkhovna Rada of Ukraine, President of Ukraine, and the Cabinet of Ministers of Ukraine each assign one representative.

In Ukrgasbank the supervisory board is comprised of 7 representatives, including 2 representatives of the shareholder and five independent directors.

According to the Principles of Strategic Reform of the Public Banking Sector (approved by the Cabinet of Ministers of Ukraine on 2 September 2020), the state aims to reduce its share in banking sector to 25% until 2025. Escalation of Russia's aggression and full-scale war of 2022 will expectedly require the review of this strategy. The state intends to withdraw from the banks' capital even if it recovers only a part of the investments made. The state will also refrain from the strategic initiatives that in long term could increase the state's share in the financial sector, including establishment of new state-owned banks or joint institutions with the state's participation, which could increase the public expenditures.

For each bank the state has defined the steps to withdraw from their capital:

1. Ukrgasbank JSB. In March 2021, the bank received a loan from the International Finance Corporation (IFC) in the amount of EUR 30 million with an option for IFC to convert the loan into the common shares. In June 2021, the Supervisory Board approved a road map on privatization to be implemented within 24 months. It includes the following measures:

- establishing a work group and selecting a financial adviser
- assessing and selecting the best sale option
- approving the sale by the Cabinet of Ministers of Ukraine
- preparing the transaction
- holding a contest
- entering into an agreement.

At present, the bank is at the first stage: selection of a financial adviser.

2. Oschadbank JSC. All necessary prerequisites are being created to encourage investment by the international financial institutions (IFIs) in the bank's capital. These prerequisites are withdrawal of state guarantee for Oschadbank's deposits and the bank's accession to the Deposit Guarantee Fund. The participation of IFIs in the bank's capital is expected to result in majority or full privatization of Oschadbank until the end of 2025.

The bank in cooperation with the EBRD has developed a road map that provides for:

- the EBRD acting as an anchor investor and providing the bank a debt instrument with the conversion option
- inviting an advisor and development of further strategy of state's withdrawal from the bank's capital until mid-2024
- approving necessary amendments to the laws – until the end of 2024
- finalizing a full or majority privatization – until the end of 2025.

Oschadbank has developed a road map on privatization and submitted it for the consideration of the Cabinet of Ministers of Ukraine.

3. CB Privatbank JSC. The state intends to withdraw from the bank's capital. To attain this goal the bank plans to reduce significantly the legal risks of this financial institution. These risks are related to the court proceedings initiated by the previous owners and hinder the search for potential investors. The bank plans to separate a "good bank" in a form of a separate legal entity until the end of 2023, which will be then privatized until mid-2024.

Privatbank has developed a road map on privatization and submitted it for the consideration of the Cabinet of Ministers of Ukraine.

4. Ukreximbank JSC. The state intends to find a minority investor for Ukreximbank over 5-year horizon with a potential for privatization in a long-term run.

Upon termination of the martial law, the road maps and state's strategies will most likely require updating in accordance with the current market conditions.

8. Is the financial system sufficiently developed to cope with the greater freedom of capital movements? What would be the implications for financial supervision?

As of the beginning of 2022 the situation with regulation and development of the banking system in Ukraine was similar to the one in the new EU members. Ukraine was preparing to apply for recognition of the banking regulatory regime being equivalent to the corresponding EU framework. The regulation in nonbank financial sector is gradually approaching this status. The share of this segment is relatively small.

At the legislative level the mechanism of temporary special regulatory measures in case of unstable situation is defined, including for the regulation of capital flows. These remedial measures are listed in Article 12 of the Currency Law. Part 1 of the mentioned Article of the Currency Law contains an exhaustive list of those remedial measures, including "setting special requirements for operations associated with capital movements". The precondition for introduction of these measures is the confirmation by the Financial Stability Council of the presence of indications of the financial sector instability. The remedial measures may be imposed for the limited term.

During the several recent years the NBU has not applied new remedial measures in the FX market and gradually (as the macroeconomic situation improved and considering the effects from the already lifted limitations in the Ukrainian foreign exchange market) continued to lift and gradually remove the remedial measures introduced earlier, in the period of acute financial crisis phase. During this period several dozens of different restrictions on the currency operations were eased or lifted. Please see answer to the question 2 of this Chapter for detailed information about the restrictions on the capital movement currently in force.

It should be noted that the currency liberalization is under way in Ukraine in compliance with the road map on cancellation of currency restrictions and according to the existing conditions. Liberalization has not led to the higher risks for the financial sector in terms of the existing regulatory and supervisory system, which is in line with the liberalization road map.

The road map was developed by the NBU together with the IMF experts. It provides for the gradual cancellation of all currency restrictions and transition to the regime of free capital flow, taking into account the pace of the macroeconomic conditions improvement in Ukraine (without any specific deadlines for the currency restriction removal). The cancellation of currency restrictions shall be preceded, first of all, by the NBU's assessment of such macroeconomic indicators as rates of the gross

domestic product increase, dynamics of inflation rates, FX market conditions, financial stability, attainment of the international reserves targets, situation in external markets, etc.

Please see infographics on the Road Map for Cancelling FX Restrictions at <https://bank.gov.ua/en/markets/liberalization>.

The measures on the FX market liberalization combined with the boom of global prices for raw materials prices facilitated active development of the Ukrainian FX market. For two years before the war, the trading volume in the interbank market was growing at 14% per year. Before the war, the volume of transactions between banks (incl. transactions with the NBU) was USD 500-600 million per day. The U.S. dollar continually prevailed in the interbank trading structure (about 85%). On the contrary, the share of euro was substantially higher in the FX transactions of the customers: over 20% of FX sales and almost 40% of purchase transactions. Since the second half of 2020 (following the administrative easing) the market of FX derivatives started to develop actively (primarily the forward contracts, including those without delivery of underlying asset).

The NBU is constantly present in the FX market within the limits established by the strategy of FX interventions developed with the support of international experts. It stipulates that the NBU may resort to FX interventions in order to smooth out the excessive fluctuations and replenish the international reserves. It allowed, along with the ensuring of a free floating exchange rate, to protect simultaneously the FX market from the effects of shocks both on demand (for example, during the acute phase of COVID crisis in 2020) and supply side (for example, during the raw materials prices boom in H2 2021).

9. Are there any restrictions for residents to invest abroad (including to open a capital account)?

The foreign currency purchase/transfer for investments abroad is performed by residents (except for banks) within the annual thresholds (EUR 200,000 for individuals and EUR 2 million for legal entities).

The transfer of funds by banks for own investments abroad into securities of foreign issuer is allowed only for acquiring of: 1) securities issued by foreign issuers having the official rating score not less than the investment class, which is confirmed in the bulletin of at least two leading world rating agencies (Fitch Ratings, Standard&Poor's, Moody's) as of the date of the bank's acquiring of those securities; 2) debt securities issued abroad to finance a loan (credit) granted by a nonresident to such bank; 3) shares of Limited Liability Cooperative Company S.W.I.F.T. SC (Society for Worldwide Interbank Financial Telecommunication).

Residents are prohibited from investing abroad through funds transfer in foreign currency/hryvnia to the nonresident account opened in Ukraine and/or abroad if the object of investment and/or nonresident seller of this object has registration/location/place of residence in the state (jurisdiction) of registration/location of which is included by the Cabinet of Ministers of Ukraine to the list of offshore areas, and/or is declared by the Verkhovna Rada of Ukraine an aggressor state/occupying state, and/or does not implement or implements improperly the recommendations of international, intergovernmental organizations involved in the sphere of counteraction to legalization

(laundering) of the proceeds from crime and terrorism financing or financing of the proliferation of weapons of mass destruction.

Residents are entitled to open accounts with the foreign financial institutions and perform transactions through their accounts. The placement by residents on own accounts abroad of the foreign currency having the source of origin beyond Ukraine (namely, funds received by residents abroad as salary, pension, scholarship, dividend, cash input to replenish the account) and use of such funds from the account is not restricted.

Cross-border transfers by residents of foreign currency from Ukraine with the purposes of its placement in own accounts abroad may be performed by residents within the annual threshold (the limit introduced for certain FX transactions per calendar year) of EUR 2 million for a legal entity/sole proprietor and EUR 200,000 for transactions of a resident individual. The limit introduced for certain FX transactions during a calendar year does not apply to the banks' transactions.

Resident legal entities (except for banks), sole proprietors cannot buy cashless foreign currency for hryvnias with the purposes of the funds placement on deposit account in a bank and/or on account abroad in a foreign financial institution, with the exception of the cases when the foreign currency is bought for placement on own accounts abroad due to the necessity to maintain own separated divisions abroad and/or fulfilment of liabilities under foreign trade contracts (except for the liabilities on transfer of deposit amounts to the accounts in foreign financial institutions).

Residents (except for banks) are prohibited from transfers of foreign currency/hryvnia to the own accounts opened abroad in foreign financial institutions, the state (jurisdiction) of registration/location of which is included by the Cabinet of Ministers of Ukraine into the list of offshore areas and/or is declared by the Verkhovna Rada of Ukraine an aggressor state/occupying state, and/or does not implement or implements improperly the recommendations of international, intergovernmental organizations involved into the sphere of counteraction to legalization (laundering) of the proceeds from crime and terrorism financing or financing of the proliferation of weapons of mass destruction.

Taking into account the provisions of the Currency Law, the NBU will take further steps in currency liberalization in accordance with the Roadmap for the abolition of currency restrictions, which was developed by the NBU together with the IMF experts. It provides for the gradual cancellation of all currency restrictions and transition to the regime of a free capital flow, taking into account the pace of the macroeconomic conditions' improvement in Ukraine.

10. Please describe the key features of the legislation governing the acquisition of real estate by foreigners (i.e. natural and legal persons from the EU and third countries) in Ukraine. If relevant, please indicate any plans for legislative changes in this area and the tentative timeline.

In general, there are no restrictions for foreigners and stateless persons in Ukraine to own real estate (the only exception is land plots for agriculture purpose, restrictions and certain conditions for the acquisition of which are contained in Article 130 of the Land Code of Ukraine).

According to Article 41 of the Constitution of Ukraine, everyone has the right to own, use and dispose of their property, the results of their intellectual and creative activities. The right of private property is acquired in the manner prescribed by law.

According to Article 26 of the Constitution of Ukraine, foreigners and stateless persons legally staying in Ukraine enjoy the same rights and freedoms and have the same responsibilities as citizens of Ukraine, but with certain exceptions established by the Constitution, laws or international treaties of Ukraine.

According to Article 13 of the Law of Ukraine No. 3773-VI *On the Legal Status of Foreigners and Stateless Persons* dated 22 September 2011, foreigners may, in accordance with the legislation of Ukraine, own, inherit and bequeath any property, as well as have personal non-property rights. According to Article 22 of the same Law of Ukraine, foreigners have the right to apply to the court and other state bodies to protect their personal, property and other rights. In court proceedings, foreigners as participants in the process enjoy the same procedural rights as citizens of Ukraine.

According to Article 81 of the Land Code of Ukraine, foreigners and stateless persons may acquire ownership rights to non-agricultural land plots within settlements, as well as to non-agricultural land plots outside settlements where real estate owned by them on the right of private property. Foreigners and stateless persons may acquire ownership of the following non-agricultural land plots in the following cases:

- (a) acquisition under a contract of sale, rent, gift, mine, or other civil law agreements
- (b) the redemption of land on which immovable property belonging to them is located
- (c) acceptance of inheritance.

Inheritance is the only basis on which foreign nationals (no difference between EU and non EU residents) and stateless persons can acquire the right of private ownership of agricultural land. The rule applies to both the physical persons and the juridical persons. However, even in this case, by virtue of Article 81 of the Land Code of Ukraine, foreigners and stateless persons are obliged to alienate such land plots within a year. According to Article 93 of the Land Code of Ukraine the foreigners can rent the land plots.

The procedure for terminating the right of ownership of a land plot of a person to whom the land plot cannot belong on the right of ownership is determined by Article 145 of the Land Code of Ukraine.

If, in accordance with the law, the owner of a land plot is obliged to alienate it within a certain period and the land plot has not been alienated by him within such a period, such plot shall be subject to confiscation by court decision.

A claim for confiscation of a land plot shall be filed with a court by a body exercising state control over the use and protection of land. Confiscated land by court decision is subject to sale at land auction. The price of the land plot sold at the land auction, less the costs associated with its sale, is paid to its former owner.

The purchase by nonresidents of real estate in Ukraine is one of the forms of foreign investment.

In order to make investments in Ukraine, a foreign investor may:

1) transfer foreign currency/hryvnia from abroad to own accounts (current, investment, escrow, correspondent accounts) opened with the banks, including through correspondent accounts of nonresident banks opened with the banks

2) transfer foreign currency/hryvnia from abroad directly to the resident current account/correspondent account in Ukraine.

The purchase and/or transfer of foreign currency for the purposes of recovery by a foreign investor of a foreign investment is performed based on an investment agreement and other documents confirming the amount of financial liabilities to be paid to a foreign investor as a result of their investment activities in Ukraine.

11. Please describe the key features of land registration.

According to Article 1 of the Law of Ukraine No. 3613-VI *On State Land Cadastre* dated 7 July 2011 (hereinafter – Law *On the State Land Cadastre*), state registration of land consists in entering into the State Land Cadastre information provided by law on the formation of land plot and assigning it a cadastral number. The State Land Cadastre is the only state geographic information system of information about lands located within the state border of Ukraine, their purpose, restrictions on their use, as well as data on quantitative and qualitative characteristics of lands, their evaluation, distribution of land between owners and users. Maintenance and administration of the State Land Cadastre is provided by the central executive body that implements the state policy in the field of land relations (the State Service of Ukraine for Geodesy, Cartography and Cadastre).

According to Article 24 of the Law *On the State Land Cadastre*, the state registration of land is carried out during its formation by opening the Land Book for such land plot. The state registration of land plots is carried out by the state cadastral registrar of the central body of executive power, which implements the state policy in the field of land relations.

State registration of land plots can be carried out on the application of:

- a person who, by decision of the executive body, local self-government body, has been granted permission to develop land surveying documentation, which is the basis for forming a land plot when transferring it to ownership or use from state or communal land, or a person authorized by him
- the owner of the land plot, the user of the land plot of state or communal property (in case of division or association of previously formed land plots) or the person authorized by them;
- executive body, local self-government body (in case of formation of land plots according to state or communal property)
- customer of technical documentation on land surveying for land inventory (in case of entering in the State Land Cadastre based on the results of land inventory of agricultural land information about the land included in such land)
- the customer of the land surveying documentation, according to which the formation of the land plot of state, communal property is carried out, in cases when the development of such documentation takes place without the permission of the executive body, local self-government body
- the owner of the land share (unit) or his successor in the case of formation of a land plot in the order of allocation of land plots to the owners of land shares (units)
- a person interested in the privatization of a land plot, within the limits of the free privatization norms, which is in his use, including the owner of real estate (residential house, utility building) located on a land plot provided (transferred) from state or municipal land or his heir.

For the state registration of a land plot, the following shall be submitted to the state cadastral registrar, which carries out such registration:

- application in the form established by the central executive body, which ensures the formation of state policy in the field of land relations

- land surveying documentation, which is the basis for the formation of land, in electronic form and electronic document form.

If, in accordance with the law, the division, association of land is carried out in coordination with the executive authorities, local governments, individuals or legal entities, before the application for state registration of land formed as a result of division or association of land, also documents confirming such consent are attached.

The application with the attached documents is sent by the applicant by means of telecommunication through the portal of electronic services of the State Land Cadastre (<https://e.land.gov.ua>) or the Unified State Portal of Administrative Services integrated with it.

The state cadastral registrar, which carries out the state registration of land plots, within fourteen days from the date of registration of the application:

- checks the compliance of documents with the requirements of the legislation
- based on the results of the inspection, carries out the state registration of the land plot or provides the applicant with a motivated refusal in the state registration.

The grounds for refusal to carry out state registration of land are:

- submission of incomplete documents by the applicant
- non-compliance of the submitted documents with the requirements of the legislation
- overlay of the land plot to be registered on another land plot or its part.

Refusal of state registration of land for other reasons is prohibited.

The state cadastral registrar shall indicate an exhaustive list of grounds for refusal of state registration of a land plot.

To confirm the state registration of the land plot, the applicant is provided with an extract from the State Land Cadastre on the land plot free of charge. The extract contains all the information about the land plot entered in the Land Book. The cadastral plan of the land plot is an integral part of the extract. When carrying out the state registration of a land plot, it is assigned a cadastral number.

The state registration of a land plot is revoked by the State Cadastral Registrar, which carries out such registration, in the case of:

- division or consolidation of land plots
- if within one year from the date of state registration of the land plot the real right to it is not registered due to the fault of the applicant
- the court's decision to cancel the state registration of land.

The court's decision to cancel the state registration of land is allowed only with the simultaneous termination of such a decision of all property rights, their encumbrances registered in relation to the land (in the presence of such rights, encumbrances). The court's decision to invalidate the decision of the executive body, local government to grant permission to develop land surveying documentation with which the land was formed, in respect of which property rights arose, as well as to cancel the state registration of such land, which is allowed provided invalidation of the decision on approval of such documentation (if any) and termination of such rights (if any).

In case of cancellation of the state registration of the land plot, the state cadastral registrar within ten days shall notify the person on whose application the land plot was registered, and in case of registered real rights to it - the subjects of such rights.

As part of the State Land Cadastre for each registered land plot in paper and electronic (digital) form is the Land Book, which is a document that contains the following information about the land plot:

- cadastral number
- square
- location (administrative-territorial unit)
- composition of lands
- purpose (category of land, type of land use within a certain category of land)
- normative monetary valuation
- information on restrictions on land use
- information on the boundaries of the part of the land plot covered by the easement, land sublease agreement
- cadastral plan of the land plot
- date of state registration of the land plot
- information on land surveying documentation on the basis of which the state registration of the land plot was carried out, as well as changes to this information
- information on the owners (users) of the land plot in accordance with the data on the registered real rights in the State Register of Real Rights to Immovable Property
- data on soil grading.

The Land Book is opened simultaneously with the state registration of the land plot. The land register is closed in case of cancellation of the state registration of the land plot. All documents that became the basis for entering information into it are attached to the Land Book in paper form.

12. With which countries have investment liberalisation and investment protection agreements been concluded? Please provide relevant information on dates of ratification, basic terms of agreements, automatic renewal procedures, and any sunset clauses that may exist. Do such agreements include a regional economic integration organisation clause? Which sectors are normally excluded (e.g. aviation, maritime transport, fishing, audiovisual, etc.) from such agreements? (c.f. chapter 30 - external relations)

See annex 1 to the Chapter 4.

II. PAYMENT SYSTEMS

13. What are the general rules governing non-cash payments?

Noncash payments are governed by the following laws of Ukraine:

- the Civil Code of Ukraine

- the Law of Ukraine *On Payment Systems and Money Transfer in Ukraine* (the law ceases to have effect on 1 August 2022, i.e. as of the effective date of the Law of Ukraine *On Payment Services*) defines the general framework for payment and settlement systems operation in Ukraine, the definition and a general procedure for money transfers within Ukraine

- Law of Ukraine No. 1591-IX *On Payment Services* dated 30 June 2021 (hereinafter – Law *On Payment Services*) that goes into effect on 1 August 2022 and defines the concepts and the general procedure for payment transactions in Ukraine

- Law of Ukraine No. 2664-III *On Financial Services and State Regulation of Financial Services Markets* dated 12 July 2001 specifies the general legal framework in the area of financial services provision, regulatory and supervisory functions regarding activities on provision of financial services (which categorizes money transfer as a financial service and defines that the Law prescribes the general legal framework in the area of financial services provision, performance of regulatory and supervisory functions regarding activities on provision of financial services)

- Law of Ukraine No. 1953-IX *On Financial Services and Financial Companies* dated 14 December 2021 (which goes into effect on 1 January 2024 and declares void the Law of Ukraine *On Financial Services and State Regulation of Financial Services Markets*) (which categorizes financial payment services as financial services and prescribes that the Law defines the general framework for the operation of the financial services market, providers of financial and/or auxiliary services, the state regulation and supervision over such operation, and protection of the rights of clients)

- Law of Ukraine No. 361-IX *On the Prevention and Counteraction to Legalizing (Laundering) the Proceeds from Crime, Terrorism Financing, and Financing the Proliferation of Weapons of Mass Destruction* dated 6 December 2019

- Instruction No. 22 *On Cashless Payments in Domestic Currency in Ukraine* approved by NBU Board Resolution dated 21 January 2004.

The information regarding the payment systems provided below is in line with the requirements of the Law of Ukraine *On Payment Services*, which goes into effect on 1 August 2022. The Law was developed to transpose PSD2 into the laws of Ukraine.

14. What are the general conditions applicable for cross-border payments between Ukraine and other countries, in particular EU Member States? Are they different from those concerning national payments? If yes, describe main differences.

Under the Constitution of Ukraine and Article 5 of Law of Ukraine No. 2473-VIII *On Currency and Currency Operations* dated 21 June 2018 (hereinafter the Currency Law), hryvnia is a sole tender in Ukraine, and shall be accepted for payment throughout the territory of Ukraine without any restrictions.

Payment in foreign currency between residents, and between residents and nonresidents in Ukraine may be conducted only in special cases, which include:

- transactions to make foreign investment and to return to foreign investors the profits, revenues and other funds obtained as a result of foreign investment

- bank transactions to deliver banking and other financial services on the basis of a banking license (including taking deposits of residents and nonresidents)

- transactions to deliver financial services by nonbank financial institutions and postal operators licensed by the NBU to conduct FX transactions under the Currency Law

- transactions related to the placement, payment of monetary income on, and repayment of bonds, treasury obligations of Ukraine that are denominated in foreign currency if this is envisaged in a securities prospectus or a resolution on the issue of securities (terms of placement for government securities)

- transactions to sell and purchase government securities that are denominated in foreign currency if the initiator or the recipient in such FX transaction is a bank

- transactions to sell Ukrainian domestic government bonds denominated in foreign currency to residents by nonbank investment companies

- transactions to purchase Ukrainian domestic government bonds denominated in foreign currency from residents (banks, investment companies and individuals) by nonbank investment companies nonbank financial institutions. Banks shall not purchase foreign currency on behalf of investment companies that are nonbank financial institutions to settle transactions to purchase Ukrainian domestic government bonds denominated in foreign currency from residents (other than banks) by said investment companies

- transactions in cases envisaged by international agreements of Ukraine

- transactions conducted by international financial organizations or in their favor if Ukraine is a member of such international financial organization

- transactions conducted between a financial institution and the Cabinet of Ministers of Ukraine as part of the implementation of an international agreement of Ukraine on credits/grants/loans

- production sharing agreements in favor of the state, foreign investors under production sharing agreements (including payments using accounts of foreign investors' representative offices under production sharing agreements in Ukraine)

- other transactions specified in the Customs Code of Ukraine and/or NBU regulations.

Nonresidents can make payments in foreign currency and/or hryvnias in transactions with other nonresidents using their own accounts opened in Ukraine, as well as making transfers between their own accounts.

Residents can make transfers in foreign currency between their own accounts opened in Ukraine.

Foreign currency and the hryvnia are used as a means of payment in settlements between residents and nonresidents in current trading transactions and transactions related to the movement of capital [except for foreign investment transactions and transactions to return to a foreign investor the profits, income (including dividends), and other funds obtained legally as a result of foreign investment].

Payments in transactions to make foreign investment and to return to foreign investors the profits, revenues (including dividends), and other funds obtained as a result of foreign investment shall be conducted in hryvnias and/or freely convertible foreign currency.

The currency laws and regulations stipulate specifics of the use of nonresident accounts (determine the list of transactions that can be made through such accounts). Cross-border hryvnia transfers from/to Ukraine between residents and nonresidents are carried out in line with the list of transactions, authorized to be made in hryvnia through nonresident banks' correspondent accounts opened in Ukrainian banks.

Resident banks are allowed to issue hryvnia loans to foreign banks on an exceptional basis, only for the purposes of purchasing Ukrainian domestic government bonds by the nonresident within a maturity of not later than 14 business days from the day of granting the hryvnia loan. Hryvnia payments between residents of Ukraine through correspondent accounts of nonresident banks are prohibited.

15. Are banks the only authorised institutions to execute payment transactions? If not, what other institutions are authorised to perform them? Explain the process and requirements to be fulfilled to grant an authorisation to a non-bank institution, if applicable.

Banks are not the only authorized institutions to execute payment transactions in Ukraine. The Law *On Payment Services* stipulates that in addition to banks, financial payment services/payment transactions can be provided in Ukraine by the following payment service providers:

- payment institutions (including small payment institutions) if they were licensed by the NBU and registered with the Register of payment infrastructure
- electronic money institutions if they were licensed by the NBU and registered with the Register of payment infrastructure
- branches of foreign payment institutions/electronic money institutions if they were licensed by the NBU and registered with the Register of payment infrastructure
- other financial institutions that are authorized to provide payment services if they were licensed by the NBU and registered with the Register of payment infrastructure
- postal operators if they were licensed by the NBU and registered with the Register of payment infrastructure
- the National Bank of Ukraine, without obtaining a license and being registered with the Register of payment infrastructure
- state authorities, local self-governments within their remit set out in applicable law, without obtaining a license but only after being registered with the Register of payment infrastructure.

The licensing and/or the registration with the Register of payment infrastructure is conducted by the NBU.

The list of documents submitted to the NBU for being licensed and/or registered with the Register is stipulated by the Law *On Payment Services* and/or NBU regulations. The NBU has the right to return the submitted documents to the applicant for revision if they do not comply with the

requirements of the laws of Ukraine and/or request additional information or documents in order to make an informed decision on the submitted documents.

The NBU makes a decision whether to license and register the applicant in the Register of payment infrastructure or refuse the application within 60 business days from the day of submitting the full package of documents by the applicant, and if the applicant takes into account the comments provided by the NBU.

The Law *On Payment Services* stipulates that in order to obtain a license, the applicant shall comply with the requirements to:

- capital
- corporate governance and risk management systems
- owners of a qualifying holding
- accounting and reporting
- audit
- ensuring the safety of payment service users' funds
- disclosure of information.

In addition, the Law *On Payment Services* sets the requirement to conducting due diligence of users in line with the laws on prevention of and counteraction to legalization (laundering) of the proceeds from crime, terrorism financing, and financing of proliferation of weapons of mass destruction.

It should be noted that after the Law *On Payment Services* enters into force on 1 August 2022, only the following entities will be authorized to issue the e-money:

- 1) banks
- 2) electronic money institutions
- 3) branches of foreign payment institutions
- 4) postal operators
- 5) the National Bank of Ukraine
- 6) state authorities and local self-governments.

16. Is the information on the conditions governing the use of payment services fully transparent and easily available for payment service users? Are financial institutions required to inform their customers on these conditions? If yes, describe in detail the information that needs to be provided by financial institutions.

Article 21 of the Law *On Payment Services* sets the following requirements to disclosure of information:

payment service providers are required to disclose by posting to the extent and in the manner determined by the NBU on their websites (web pages) the following information:

1) full name, identification code, registered and actual address of a payment service provider, contact phone/mobile number or any other means of communication for immediate response to customer requests

2) list of payment services provided by a postal operator, information about participation in payment systems, performing functions of the payment system operator, technical service provider (if any)

3) information on the owners of a qualifying holding (including entities that exercise control over a payment service provider)

4) information on the number of members of the supervisory board and the executive body of a payment service provider

5) information on the standalone units of a payment service provider

6) information on licenses and permits granted to a payment service provider

7) annual financial statements and consolidated financial statements

8) information on the initiated bankruptcy or resolution proceedings against the payment service provider

9) decision to liquidate the payment service provider

10) information on all trademarks used by the payment service provider when providing payment services

11) other information about the payment service provider that is subject to disclosure in line with the laws.

Article 29 parts 1 and 2 of the Law *On Payment Services* prescribe that payment services (including some or one-off payment transactions, opening and maintaining accounts, etc.) are provided based on the agreement concluded between a payment service provider and a user in line with the laws on terms agreed by the parties.

The agreement on provision of payment services is concluded in writing (in paper or electronic form). The agreement on provision of payment services can be concluded by the user's accession to the agreement published by a payment service provider in place accessible to a customer and on the official website. All current versions of the public offer to conclude the agreement and the documents with the information on commission fees, interest rates, foreign exchange rate applied to the payment service chosen by the user and provided to the user in line with Article 30 part one of the Law *On Payment Services*, are published on the website of the payment service provider together with their expiration date. Users have the right at any time to get access to all versions of the public offer to conclude the agreement and other documents that are listed in the Article published on the website of a payment service provider.

17. Are financial institutions required to supply their customers with information (a) prior, (b) subsequent to a payment transaction (either single transaction or a transaction covered by a framework contract)? If yes, describe the information that needs to be provided.

Articles 30 and 31 of the Law *On Payment Services* sets the requirements to the information provided to users prior to conclusion of the agreement on provision of payment services:

1. Prior to conclusion of the agreement on provision of payment services, payment service provider (including the e-money issuer) shall provide to the user free access to the information on terms of payment services provision under the agreement, including:

1) information on payment service provider:

a) full name of payment service provider, registered address, actual address, where the payment services are provided (branch address of payment service provider or commercial agent), contact information, including mobile number, e-mail address or any other means of communication to immediately contact the payment service provider (branch, commercial agent)

b) registration number in the Register and other information that helps identify the payment service provider (commercial agent) in the Register

2) contact details (address, phone number, etc.) of the NBU and consumer rights protection agencies

3) information on the payment service

a) description of the main characteristics of the payment service and terms of its provision

b) terms of providing auxiliary services

c) form and procedure for granting and recalling the consent of the payer for making the payment transaction

d) procedure for accepting the execution of payment order by the payment service provider and reaching the irrevocability of the payment order

e) link to the business and operating hours of the payment service provider and the maximum execution time for the payment transactions

f) link to the limits (restrictions) for the use of payment instruments.

4) information on commission fees, interest rates, applicable foreign exchange rate applied to the payment service chosen by the user

a) list of all tariffs, commission fees that the user must pay to the payment service provider for the chosen payment service

b) information on interest rates applied to the payment service chosen by the user and the methodology for their calculation

c) information on foreign exchange rate applied to the payment service chosen by the user and the methodology for its calculation

d) information on fines, penalties applied to the payment service chosen by the user and the methodology for their calculation

5) information on the means of communication

a) means of communication to send the information or message under the agreement, including the technical requirements for the payment service user's equipment and software (if required)

b) amount, procedure and period of time for providing the information according to the payment service chosen by the user

6) information on security measures:

a) information on the obligations of the payment service user in relation to storage of payment instruments and individual account information

b) information on procedures for taking measures to avoid failures and improper payment transactions, and the liability of the payment service provider if they fail to conduct the payment transactions or conduct them improperly

c) procedure for interaction between the payment service provider and the user in cases of fraud (suspected fraud) or a threat to security of the payment transaction

d) procedure for interaction between the payment service provider and the user in cases of rejected, erroneous, improper payment transactions and procedure for requesting compensatory damages inflicted on the user as a result of payment transactions made by the payment service provider

7) information on the agreement term, procedure for amending the agreement, termination of the agreement

8) information on the mechanism for protecting user's rights and resolving disputes arising during the provision of financial services.

Information provided by *the payment service provider to the user* **prior to making a payment transaction:**

Prior to initiating a payment transaction, the payment service provider is required to provide at the payer's request the available information on:

1) the maximum execution time for the payment transaction

2) commission fees and other fees that the payer must pay during the payment transaction (if the technical means are available, every commission fee is indicated separately) and the total amount of funds required to make a payment transaction

3) estimated foreign currency exchange rate applied to the payment transaction

4) other necessary information at payment service provider's own discretion.

After initiating the payment order, the payment service provider is required to provide the initiator, as set out in the agreement, with the following information:

1) date and time of receipt of the payment order

2) date and time of acceptance of the execution of payment order by the payment service provider

3) information on the refusal of the payment service provider of the payer to accept the execution of the payment order (in the event of refusal)

If the payment transaction is initiated through the payment initiation service provider, the payment initiation service provider is required immediately after initiation of the payment transaction to provide (if required) the payer and the payee the following information:

1) confirmation of successful initiation of the payment order by the account servicing payment services provider

2) information (link to it) that allows the payer and the payee to identify the payment transaction, and allows the payee to identify the payer, as well as any information that supplements the payment order

3) the amount of payment transaction

4) the total amount of all commission fees of the payment initiation service provider that will be charged from the user during the payment transaction (if the technical means are available, the amount of each commission fee is indicated separately).

Payment initiation service provider is also required to provide information (link to it) on the payment transaction to the account servicing payment services provider.

Information provided by *the payment service provider of the payer* **subsequent to making a payment transaction** in a manner and in line with the procedure set out in the agreement:

1) information that allows the payer identify the payment transaction made and information about the payee (if the technical means are available)

2) the amount of payment transaction in the currency of the payer's account and in the currency of the payment transaction

3) the total amount of all commission fees charged from the payer for the payment transaction (if the technical means are available, the amount of each commission fee is indicated separately)

4) foreign currency exchange rate (if the payer was provided currency exchange rate service)

5) date and time of accepting the execution of the payment order, value date.

Payment service provider of the payer is required to provide the payer with free information set out hereby, on every payment transaction made on the payer's account at least once during the calendar month in a manner specified in the agreement on provision of payment services.

Information provided by *the payment service provider of the payee* **subsequent to making a payment transaction** in a manner set out in the agreement:

1) information that allows the payee to identify the payment transaction made, information on the payer and other data that supplement the payment order

2) the amount of payment transaction in the currency of the payee's account and in the currency of the payment transaction

3) the total amount of all commission fees charged from the payee for the payment transaction (if the technical means are available, the amount of each commission fee is indicated separately)

4) foreign currency exchange rate (if the payer was provided currency exchange rate service)

5) date and time of crediting funds to the payee's account, value date.

Payment service provider of the payee is required to provide the payee with free information set out hereby, on every payment transaction made on the payer's account at least once during the calendar month in a manner specified in the agreement on provision of payment services.

The payment service provider and the user can envisage in the agreement charging of fees from the user for providing the information more often than prescribed by the Law *On Payment Services*, or for providing additional information, which is not set out in the Law. The amount of such fee is determined according to tariffs established by the payment service provider. It should take into account the actual expenses of the payment service provider on processing and providing the information.

18. Are there any specific rules concerning charges for payment services? Are they regulated in any way? If yes, please describe.

In line with Article 47 of the Law of Ukraine No. 2121-III *On Banks and Banking* dated 7 December 2000, banks independently set interest rates and commission fees for the provided services.

Also, pursuant to Article 1076¹⁰ of the Civil Code of Ukraine (which enters into force on 1 August 2022), the payment service user is required to pay fees for transactions made by nonbank payment service provider on the payment account of the payment service user if it is set out in the agreement.

Pursuant to Article 37 of the Law *On Payment Services*:

- acquirer and/or issuer shall have a right directly and indirectly (through third parties) to pay commission fees for every payment transaction with a payment card between them (hereinafter – the interchange fee)
- merchant pays a commission fee and/or other fees for acquiring under the agreement concluded between them (hereinafter – acquiring fee)
- if the interchange fee changes (increases or decreases), the acquirer is required to make the respective adjustment of the acquiring fee in line with terms and procedure set out in the agreement between the acquirer and the merchant.

19. What are the rules concerning the authorisation of the payment transaction? Are there specific rules concerning liability for an unauthorised payment transaction? Are there rules concerning the revocability of a payment order? Please describe them.

Under Article 86 of Law *On Payment Services*, payment service providers (including e-money issuers) shall be exposed to liability when executing payment transactions.

Payment services providers are liable to users for erroneous payment transactions, including for execution of the following:

- 1) erroneous payment transaction to the account of a wrong recipient
- 2) erroneous payment transaction from the account of a wrong initiator
- 3) payment transactions from payer without legal grounds or caused by other errors made by payment services provider.

Revocation of payment orders is described in Article 45 of the Law *On Payment Services*.

1. Payment order can be revoked:

1) payer – during debit or credit transfer until the funds are written off the payer's account, subject to approval by the payment services provider, and in the case of a debit transfer it is subject to approval by the payee

2) payee – during debit transfer until the funds are written off the payer's account, subject to approval by the payment services provider

3) party seeking enforcement or encumbrancer – until the funds are written off the payer's account

4) payer – before value date, subject to providing the order on revoking the payment order until the end of operation time preceding the value date.

2. After the funds are written off the payer's account or when the value date of the payment order comes, the payment order becomes irrevocable for the initiator.

3. The payment order can be revoked in full amount only.

4. Payment service provider of the payer is not allowed to execute the payment transaction if the payment transaction is revoked in accordance with this article.

5. To revoke a payment order, the person eligible to do so under part one of this article gives a respective order to the payment services provider in the form and under the procedure set forth in the agreement with said payment services provider.

6. Payment services provider must record the date and time of their receiving the order on revoking the payment order in the record-keeping system.

7. When the payment order is revoked the payer's approval (if any) for execution of the payment transaction is concurrently revoked, and when the payer's approval for execution of the payment transaction is revoked, the respective payment order is revoked too.

8. Rules of the respective payment system can set the moment of irrevocability for payment orders in the payment system.

9. If the payment transaction is initiated through the payment initiation service provider, the payer is not allowed to revoke the payment order after giving the approval for initiating such payment transaction to the payment initiation service provider.

Pursuant to the Law *On Payment Services*, payment services providers are obliged to apply the strong customer authentication for the following:

1) obtaining remote access to an account

2) initiating remote payment transactions

3) any other actions in the case of suspicion of committing fraud (or risk of fraud) or other illegal actions (or risk of other illegal actions).

Procedure for application of the strong customer authentication by payment services providers is established by the NBU regulations.

Employees of payment services providers are obliged to comply with the legal requirements for protection of information during execution of payment transactions, to protect secrecy of nonbank payment service providers (or other restricted information), and to ensure confidentiality of information used in the information protection systems.

Employees of payment services providers are liable for improper use and storing of means of information protection, which are used when conducting payment transactions, and for disclosure of personally identifiable information and other user information that can be classified as bank secrecy or payment services provider's secrecy under the laws of Ukraine.

20. What are the rules in the case of non-execution of a payment or an execution differing from the instructions given by the customer? Are there different rules for national and cross-border payments? Is there any compensation foreseen for the customer?

Payment service providers shall be liable to users for failure to conduct or improper conducting of payment transactions under Law *On Payment Services* and for breach of agreements signed with them unless they prove that said payment transactions have been properly conducted (see Article 86 of the Law *On Payment Services*).

The Law *On Payment Services* defines terms and the general procedure for payment transactions in Ukraine, the general framework of the payment systems operations in Ukraine, and authorities, obligations, and liabilities of the Ukrainian payment market participants, which include payment service users, payment service providers, and payment system (payment system operators).

Payment services providers shall be liable under the Law *On Payment Services* for erroneous, rejected payment transactions or conducting payment transactions failing to meet the deadlines set for payment services by the Law *On Payment Services*.

Users have the right to be reimbursed in a court of law for damages inflicted by payment services providers as a result of erroneous, improper, rejected payment transactions or conducting payment transactions failing to meet the deadlines set for payment services by the Law *On Payment Services*.

Payment services provider in the event of executing erroneous, improper, rejected payment transactions or conducting payment transactions failing to meet the deadlines set for payment services by the Law *On Payment Services* shall be obliged at the respective user's request to take promptly measures to obtain all the information available to the payment services provider concerning the payment transaction and to provide it to the user free of charge.

Payment services providers are liable to customers for payment transaction if the providers fail to meet the deadlines set by the Law *On Payment Services* for the transactions they execute if:

1) a payer's payment services provider fails to meet the deadline for executing a payment transaction

2) a payee's payment services provider fails to meet the deadline for crediting a payment transaction amount to the payee's account, fails to pay the amount in cash and/or provide the payee with access to the transaction amount

3) a payee's payment services provider fails to meet the deadline for returning a transaction amount if it fails to establish who the rightful payees is, or if the payee fails to come to collect their cash transfer.

A payment services provider that fails to meet the deadline for executing payment transactions set in the Law *On Payment Services* or in a payment services agreement is required to pay a penalty of 0.1% of the past due payment amount for each day of the delay, which may not exceed 10% of the

payment transaction amount, unless another penalty amount was specified in the payment transaction agreement.

A payee's payment services provider that, when initiating a debit transfer, fails to meet the deadline for giving a payment order (or fails to give a payment order) to the payer's payment services provider is required to pay to the payee a fine of 1% of the amount specified in the payment order and, without further delay, resend the payment order to the payer's payment services provider.

Payment services providers are liable to users for erroneous payment transactions, including for execution of the following:

- 1) erroneous payment transaction to the account of a wrong recipient
- 2) erroneous payment transaction from the account of a wrong payer
- 3) payment transactions from payer without legal grounds or caused by other errors made by payment services provider.

In the case when an erroneous payment transaction is credited to the account of a wrong recipient, immediately after detection of the error the payment services provider is obliged to transfer the amount of the payment transaction at the expense of own funds to the payee, and also to pay them a penalty of 0.1% of the past due payment amount for each day of the delay from the day of the erroneous transaction till the day of the money transfer to the payee's account, but it may not exceed 10% of the payment transaction amount.

In the case when an erroneous payment transaction is transferred from the account of incorrect payer, immediately after detection of the error or after receiving a notification from the incorrect payer (upon the earlier thereof), the payment services provider is obliged to transfer the amount of the payment transaction at the expense of own funds to the incorrect payer's account and also to pay them a penalty in the amount of the double key policy rate of the National Bank of Ukraine for each day from the day of the erroneous transaction till the day of the money transfer to the incorrect payer's account. Payment services provider shall be obliged to reimburse to the incorrect payer the amount of commission fees charged or paid by incorrect payer for the executed erroneous payment transaction (if such commission fees are accrued).

Payer whose account was erroneously debited due to the incorrect party seeking enforcement without any legal grounds has the right to be reimbursed the amount of such payment transaction by incorrect party seeking enforcement in a court of law.

Payment services providers that provide services to payers are liable to them for rejected payment transactions. In the case of a rejected payment transaction, immediately after detection of the fact of such rejected payment transaction or after receiving a notification from the payer (upon the earlier thereof), the payment services provider is obliged to repay the amount of the rejected payment transaction at the expense of own funds to the payer's account and also to pay them a penalty in the amount of the double key policy rate of the National Bank of Ukraine for each day from the day of the rejected transaction till the day of the money transfer to the payer's account. Payment services provider shall be obliged to reimburse to the payer the amount of commission fees charged or paid by incorrect payer for the executed rejected payment transaction (if such commission fees are accrued).

If against the initiator's order on revoking the payment order the amount of payment transaction is written off the payer's account and transferred to the payee, immediately after detection of the error

or after receiving a notification from the payer (upon the earlier thereof), the payer's payment services provider is obliged to transfer the amount of the payment transaction at the expense of own funds to the payer's account and also to pay them a penalty in the amount of the double key policy rate of the National Bank of Ukraine for each day from the day of the writing-off funds from the payer's account under said payment transaction till the day of the money transfer to the payer's account.

At the same time, payment services provider after detection of the error is obliged to immediately notify the wrong recipient about the erroneous payment transaction and the need for them to initiate a payment transaction for the equivalent amount to such payment services provider within three business days from the day of receiving such notification.

Payment services provider upon receiving the funds from the incorrect payee keeps them at their disposal, subject to fulfilling their obligations on reimbursement under the Payment Services Law. If the incorrect payee exceeds the prescribed three-day term, the payment services provider shall have the right to require from the incorrect payee to pay a penalty of 0.1% of the amount of the past due payment for each day of the delay, starting from the date of completion of the erroneous payment transaction through the date the funds are transferred to the payer's account, but it may not exceed 10% of the payment transaction amount.

If the funds have not been refunded to the payment services provider by the incorrect payee, the payment services provider has the right to claim the refund in court.

Payment services provider shall assist the payer in recovering funds from an improper payment transaction by providing information available to them about the transaction, including information received at their request from the payment service provider servicing the incorrect payee.

The payment service provider servicing the incorrect payee is obliged to block the amount of the improper payment on the account of the incorrect payee for up to 30 calendar days, in order to establish the legality of the payment transaction, if it is challenged by the payer or upon the request of the payment service provider.

If the payment transaction fails or is not performed properly due to the fault of the payment initiation service provider (PISP), the PISP is obliged to refund to the account servicing payment services provider, upon their request, all incurred losses and the amounts recovered to customers. According to the Payment Services Law, the account servicing payment services provider shall be liable to customers for the failure to perform or improper performance of payment transactions initiated through the PISP.

Payment services providers shall be liable to the customers for the actions or omissions of their employees, engaged commercial agents and intermediary payment service providers, including for the failure to perform or improper performance of payment transactions and/or for the damage caused.

Regarding liabilities within payment systems.

In line with Article 73 of the Law *On Payment Services*, both national and international payment systems can operate in Ukraine.

In line with Article 1 part one paragraph 13 of the Currency Law, cross-border transfer of currency valuables is a movement of a certain amount of funds in Ukraine or abroad to the payee's account or a payout in cash.

In line with Article 73 part four of the Law *On Payment Services*, financial payment service providers also should enter into agreements on participation in international payment systems, where the payment system operator is a nonresident in line with rules of such payment systems, if such systems were recorded in the Register.

Thus, the international payment system rules can set out liability for the breach of rules of international payment systems, including regarding transactions executed by participants of said payment systems (both national and cross-border)

So, the Law *On Payment Services* does not prescribe the specifics of liability of payment service providers when performing national and cross-border transactions. At the same time, if such transactions are executed by international payment systems listed in the NBU Register, the liability of payment service providers for inadequate provision of payment transactions is defined by the rules of said payment systems. However, it should be noted, that the liabilities provisions set out in the rules of international payment systems cannot contradict provisions of the Law *On Payment Services*.

21. Are there time limits and value dates for executing payment transactions? If yes, please describe them (for national and cross-border transactions). Is there compensation to the payment service user if the deadline limit, value date or the deadline agreed is not complied with?

Law *On Payment Services* sets forth that:

1. After accepting a payer's payment order, a payment services provider is required to execute that payment order in one operational day.

2. If a payer specifies a value date in their payment order, on the specified value date, the payment services provider of the payer is required to credit the payment transaction amount to the account of the payee's payment services provider in one operational day.

Before the value date, the payment transaction amount is accounted for on the account of the payer's payment services provider.

The NBU establishes the procedure for the application of the value date by payment services providers. The procedure for value date application in a payment system is established by the rules of that payment system, as set forth in the Law *On Payment Services*.

3. The payment services provider of a payee is required to credit the payment transaction amount to the payee's account or to pay the payment transaction amount in cash on the operational day the amount was credited to the payee's payment services provider.

Regarding compensation: the Law *On Payment Services* stipulates that payment services providers (including e-money issuers) are liable for damages inflicted on payment transaction users if the providers fail to meet the statutory deadlines for the transactions they execute if:

1) a payer's payment services provider fails to meet the deadline for executing a payment transaction

2) a payee's payment services provider fails to meet the deadline for crediting a payment transaction amount to the payee's account, fails to pay the amount in cash and/or provide the payee with access to the transaction amount

3) a payee's payment services provider fails to meet the deadline for returning a transaction amount if it fails to establish who the rightful payee is, or if the payee fails to come to collect their cash transfer.

A payment services provider that fails to meet the deadline for executing payment transactions set in the Law *On Payment Services* or in a payment services agreement is required to pay a penalty of 0.1% of the past due payment amount for each day of the delay, which may not exceed 10% of the payment transaction amount, unless another penalty amount was specified in the payment transaction agreement.

A payee's payment services provider that, when initiating a debit transfer, fails to meet the deadline for giving a payment order (or fails to give a payment order) to the payer's payment services provider is required to pay to the payee a fine of 1% of the amount specified in the payment order and, without further delay, resend the payment order to the payer's payment services provider.

Law *On Payment Services* does not set any variability in liability to customers for the failure to perform or improper performance of payment transactions and/or damages caused while performing domestic or cross-border payments.

22. Is there a complaint system in place for the settlement of disputes between the customers and the payment service providers? If yes, explain the system. Are the competent authorities appointed to ensure the compliance with the payments law and to deal with complaints? If yes, explain their competences.

Article 7 of the Law of Ukraine *On the National Bank of Ukraine* No. 679-XIV, dated 20 May 1999, sets forth that the NBU, among other things, performs the following functions:

supervises (oversees) payment systems and settlement systems

protects the rights of consumers of the financial services that are provided by banks, other financial institutions, and entities other than financial institutions that have the right to provide certain financial services and that are regulated and supervised by the NBU

supervises how banks, other financial institutions, entities other than financial institutions that have been licensed to provide certain financial services and collection agencies are complying with the laws that govern the protection of the rights of financial services consumers, including the provisions that require them to interact with consumers when resolving past due debts (ethical conduct requirements).

Article 71, parts 1 and 10, of Law *On Payment Services*, stipulates that payment transactions in Ukraine can be executed through payment systems.

Among other things, the rules of a payment system establish the procedure for settling disputes between participants and between participants and users. These same rules also establish an information protection system (including cybersecurity).

Article 85 of the Law *On Payment Services* establishes the procedure for dealing with complaints filed by payment service users.

If a dispute arises between a payment services user and a payment services provider, the user may bring a complaint against the provider with the NBU. The NBU handles the complaints filed by payment service users who are private individuals.

This, however, does not limit the rights of a consumer to go to court to defend their violated, unrecognized or contested rights, freedoms or interests, as set forth in the applicable Ukrainian laws, regardless of whether or not this user has filed a complaint with the NBU, and regardless of the decision the NBU has taken with regard to this complaint.

23. Is there an out-of-court redress procedure available? If yes, explain it. Please also refer to legislation governing out-of-court redress in payment system-related settlement of disputes.

Article 52 of Law *On Payment Services*, stipulates that a payer, within 60 calendar days of the day that a payment transaction amount is debited from their account, may file a written request to their payment services provider that they be compensated for that amount, as set forth in the above article. The form and procedure for submitting a request that a payment transaction amount be compensated for are established in the relevant agreement entered into between the payer and the payment services provider. Payment services providers are required to enter into their record-keeping system the date and the time they received a request that a payment transaction amount be compensated for.

A payer's payment services provider is required to compensate the payer for the payment transaction amount or provide reasonable grounds for their refusal to do so within 10 business days of the day it receives a request to that effect. Payment transaction amounts are repaid in full.

III. FIGHT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING

24. Regarding alignment with Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018, please respond to the following questions:

a) How has money laundering/financing of terrorism been criminalised, which criminal activities are covered by the law and how is money laundering/financing of terrorism defined? What are the penalties? Is self-laundering criminalised?

b) Which institutions and professions are covered by the legislation and with regard to which activities?

c) How and by which competent authority are these institutions and professions mentioned under b) supervised from an AML/CFT perspective?

d) When/in which situations do customers and beneficial owners have to be identified and verified and which means of identification are accepted? Is there a beneficial ownership register in place? Specify any special measures for non face-to-face account opening or transactions;

e) Specify if bearer passbooks or other bearer instruments are allowed;

f) Are the institutions and professions mentioned under b) required to keep records? Specify the contents of that requirement (which documents, retention period etc.);

g) Are the institutions and professions mentioned under b) required to apply internal procedures and training of employees with regard to money laundering/financing of terrorism?

Specify these measures including non-regulatory ones (such as guidance) to raise the awareness of these stakeholders on ML/TF risks and their duties to prevent them on a risk-based approach;

h) Specify if the institutions and professions mentioned under b) are supervised with regard to the requirements mentioned under c) to h) and to what extent?

i) In what way do the financial intelligence unit and other competent authorities have to give a feedback to the institutions and professions mentioned under b) on the result of the suspicious transactions they report to them (specific/case-by-case feedback, general feedback, other)?

j) What penalties exist with regard to infringements of the anti-money laundering/financing of terrorism legislation? Apart from administrative sanctions for breaches of anti-money laundering and counter terrorism financing (AML/CTF) law, are there other sanctions in place for AML/CTF breaches, such as criminal prosecution, removal of licence etc.?

k) Are there publicly available registers for companies, trusts and other legal arrangements?

l) What are the rules on anonymity on virtual currencies, wallet providers and pre-paid cards; is the FATF travel rule (requiring to collect and hold information on originator and beneficiaries of transfer of virtual assets) implemented in your jurisdiction?

m) Is there a central bank account registry?

a) How has money laundering/financing of terrorism been criminalised, which criminal activities are covered by the law and how is money laundering/financing of terrorism defined? What are the penalties? Is self-laundering criminalised?

Money laundering is a criminal offence in Ukraine. The Criminal Code of Ukraine (hereinafter – the Criminal Code) contains Article 209 “Legalization (Laundering) of Property Obtained by Criminal Means”.

Ukraine has adopted the Law No. 361-IX *On Prevention and Counteraction to Legalizing (Laundering) the Proceeds from Crime, Terrorism Financing, and Financing the Proliferation of Weapons of Mass Destruction* dated 6 December 2019 (hereinafter – the AML/CFT Law), which was implemented into the Criminal Code the following new definition of money laundering:

“Acquisition, possession, use, disposal of property in respect of which the facts indicate it has been obtained by criminal means, including financial transactions, deals on such property, or relocation, change of form (transformation) of such property, or actions aimed as to conceal, disguise the origin of or possession of such property, the right to such property, its sources of origin, location, if these acts were committed by a person who knew or should have known that such property was obtained directly or indirectly, in whole or in part by criminal means.”

Article 209 of the Criminal Code establishes three levels of severity, the constituent elements and punishment for money laundering.

The first level is committing money laundering for the first time.

Then, paragraph 2 of Article 209 of the Criminal Code contains constituent elements: repeated laundering or by a group of persons by prior conspiracy, or in large amounts (laundered property for UAH 7,443,000 or about EUR 200,000).

Paragraph 3 of Article 209 of the Criminal Code lists characterized elements: money laundering committed by an organized group or in a particularly large amount (laundered property for UAH 22,329,000 or about EUR 600,000).

Accordingly, Article 209 of the Criminal Code implies various punishments: para 1 provides for imprisonment for a term of 3 to 6 years, para 2 provides for imprisonment for a term of 5 to 8 years, para 3 provides for imprisonment for a term of 6 to 12 years.

All three paragraphs of Article 209 of the Criminal Code provide for the seizure of property and imposition of restrictions on the right to hold certain positions or engage in certain activities.

In September 2021, as part of the joint program of the European Union and the Council of Europe Partnership for Good Governance, the Council of Europe expert Robin Sellers analysed and commented on Article 209 of the Criminal Code. The expert concluded that Article 209 of the Criminal Code complies with international and European standards in the field of prevention and counteraction to legalization (laundering) of proceeds from crime (AML), terrorist financing (CFT) and financing of proliferation of weapons of mass destruction (WMD). The financing of terrorism in Ukraine is criminalized by Article 258-5 of the Criminal Code.

The AML/CFT Law also provides a new definition of the financing of terrorism, namely: *“Provision or collection of any assets directly or indirectly for their use or awareness of the possibility that they will be used in whole or in part for any purpose by an individual terrorist or terrorist group (organisation), or organising, preparing or committing a terrorist act, engaging in a terrorist act, public appeals to commit a terrorist act, creating a terrorist group (organisation), facilitating a terrorist act, carrying out any other terrorist activity, and attempting to commit such acts.”*

Article 258-5 of the Criminal Code establishes three levels of severity, the constituent elements and punishment for terrorist financing.

The first level is committing terrorist financing by a person for the first time.

Then, para 2 of Article 258-5 of the Criminal Code contains qualified elements: financing of terrorism is re-committed either for selfish motives, or by prior conspiracy by a group of persons, or on a large scale, or if they have caused significant property damage.

Para 3 of Article 258-5 of the Criminal Code contains qualified elements: financing of terrorism is committed by an organized group or on a particularly large scale, or if it has led to grave consequences.

Accordingly, Article 258-5 of the Criminal Code contains various punishments in the following paragraphs: para 1 provides for imprisonment for a term of 5 to 8 years, para 2 provides for imprisonment for a term of 8 to 10 years, para 3 provides for imprisonment for a term of 10 to 12 years.

All three paras of Article 258-5 of the Criminal Code provide for the seizure of property and restrictions on the right to hold certain positions or engage in certain activities.

Answers

b) Which institutions and professions are covered by the legislation and with regard to which activities?

According to the second paragraph of Article 6 of the AML/CFT Law, the primary financial monitoring subjects (hereinafter – PFMS, reporting entities) are:

1) Banks, insurers (reinsurers), insurance (reinsurance) brokers, credit unions, pawnshops, and other financial institutions

2) Payment organizations, participants, or members of payment systems

3) Professional participants in organized commodity markets

4) Professional participants in the capital markets, except for persons engaged in the organization of trade in financial instruments

5) Postal operators, other institutions that provide services for the transfer of funds (postal transfer) and foreign currency transactions

6) Branches or representative offices of foreign business entities that provide financial services in Ukraine

7) Specially defined PFMS (except for persons providing services within the framework of labour relations):

a) persons conducting an audit activity

b) accountants, business entities that provide accounting services

c) business entities that provide tax consulting

d) attorney-at-law's bureaus, attorney-at-law associations and attorneys who practice law individually

e) notaries

f) business entities that provide legal services

g) persons who provide services related to the establishment, operation, or management of legal entities

h) business entities that provide intermediary services during the sale and purchase of the real estate, as well as business entities that provide consulting services related to the purchase and sale of real estate for remuneration

i) business entities that trade-in cash for precious metals and precious stones and articles thereof

j) business entities that conduct lotteries and/or gambling

k) virtual asset service provider

l) other legal entities that do not qualify as financial institutions but provide separate financial services.

c) How and by which competent authority are these institutions and professions mentioned under b) supervised from an AML/CFT perspective?

According to the first paragraph of Article 18 of the AML/CFT Law, state regulation and oversight in the field of prevention and counteraction are conducted by:

1) The National Bank of Ukraine concerning banks and foreign bank branches; insurers (reinsurers), insurance (reinsurance) brokers, credit unions, pawnshops, and other financial institutions (save for financial institutions and other legal entities subject to AML/CFT state regulation and supervision performed by other state financial monitoring entities); payment system operators, participants or members of payment systems providing financial services according to respective licenses or registration documents; postal operators, other institutions providing money transfer services and currency transactions; branches or representative offices of foreign business entities providing financial services in Ukraine, other nonfinancial legal entities providing individual financial services.

2) The National Securities and Stock Market Commission concerning commodity and other stocks that conduct financial transactions with goods; institutions of accumulative pension provision; managers of construction financing funds / real estate funds; professional stock market participants (except banks), including the Central Securities Depository.

3) The central executive body that ensures the formation and implementation of state policy in the field of prevention and response (Ministry of Finance of Ukraine) concerning persons performing audit activity; accountants; business entities that provide accounting services; business entities that provide tax advice; business entities that provide intermediary services in the implementation of transactions for the sale of real estate, business entities that provide consulting services related to the purchase and sale of real estate for remuneration; business entities trading in cash for precious metals and precious stones and articles thereof; business entities that conduct lotteries and/or gambling.

4) The Ministry of Justice of Ukraine concerning attorney-at law bureaus, attorney-at-law associations and attorneys-at-law who practice advocacy individually; notaries; business entities that provide legal services; persons who provide services for the establishment, operation, or management of legal entities.

5) The Ministry of Digital Transformation of Ukraine concerning virtual asset service providers.

Powers, responsibilities, and rights of the state financial monitoring subjects (hereinafter – SFMS) are provided by paras 2-15 of Article 18 of the AML/CFT Law. In particular, SFMS shall:

- Supervise the measures of prevention and counteraction to the activities of the relevant SFMS by conducting scheduled and unscheduled audits, including off-site audits.

- Take measures of influence provided by law and/or require the SFMS to comply with the requirements of the legislation in the field of prevention and counteraction in case of violations of the law.

- Verify the availability of professional training of responsible employees and the organization of professional training of other SFMS employees involved in the primary financial monitoring and others.

The SFMS provides methodological, methodical, and other assistance to the primary financial monitoring subject in prevention and counteraction (including providing recommendations and clarifications on the application of legislation in this area).

d) When/in which situations do customers and beneficial owners have to be identified and verified and which means of identification are accepted? Is there a beneficial ownership register in place? Specify any special measures for non face-to-face account opening or transactions;

According to subsection 34 of paragraph 1 of Article 1 of the AML/CFT Law, due diligence is a measure that covers:

- identification and verification of the client (or its representative);
- identification of the client's ultimate beneficial owner or an absence of such owner, including identification of the ownership structure for the purpose to research it, and obtain any relevant data that would allow to identifying the ultimate beneficial owner, and measures to verify his identity (if any);
- establishing (finding out) the purpose and nature of future business relationships or financial transactions;
- monitoring business relations and financial transactions of the client on a regular basis that are carried out in the process of existence of such relations for the compliance of such financial transactions with the primary financial monitoring subject's information about the client, his activities and associated risks (including, if applicable, the source of funds related to financial transactions);
- ensuring the relevance of received and existing documents, data, and information about the client.

Requirements for due diligence are set out in Article 11 of the AML/CFT Law. Specifically, in line with part three, due diligence is performed in the case of:

- establishing business relations (save for business relations established based on insurance agreements for insurance types that do not provide for insurance payment in case of a principal's survival before the expiry of the insurance agreement and/or a principal's reaching a certain age set out in the agreement, where the customer is an individual and the total insurance payment does not exceed UAH 27,000 or the equivalent of the amount in foreign currency; and save for business relations based on lottery agreements, if the bet of the player does not exceed UAH 5,000)

- suspicion

- transfers (including international ones) that equal to or exceed UAH 30,000 or an equivalent amount in foreign currency, investment metals, other assets or units of value, but do not exceed the amount mentioned in Article 20 part one of the AML/CFT Law

- executing a financial transaction with virtual assets equal to or exceeding UAH 30,000

- doubts regarding validity or completeness of customer identification data received previously

- conducting a one-off financial transaction without establishing business relations with a customer, if the total amount of financial transaction equals or exceeds the amount specified in Article 20 part one of the AML/CFT Law (UAH 400,000 the equivalent).

According to the paragraph 4 of Article 11 of the AML/CFT Law, identification and verification of the client shall be conducted before: establishing a business relationship, making transactions (except in cases specifically provided by the AML/CFT Law), conducting a financial transaction, or opening an account.

Identification and verification may be conducted on the basis of information received from the client (or client's representative) or upon information obtained from official and/or reliable sources (unless otherwise provided by this Law). Identification and verification may also be performed using agents (paragraph 17 of Article 11 of the AML/CFT Law).

According to the paragraph 7 of Article 11 of the AML/CFT Law, in order to establish the ultimate beneficial owner, the PFMS shall:

- request and receive from the legal entity client its ownership structure;
- identify information regarding a trust or other similar legal entity about its founders, trustees, defenders (if any), a beneficiary or a group of beneficiaries, as well as any other natural persons who exercise decision-making functions over the activities of a trust or other similar legal entity (including through the chain of control/ownership). Concerning trusts and other similar legal entities, the beneficiaries of which may be identified by certain characteristics or classification, information on such beneficiaries needs to be defined, which would allow establishing their identity at the time of execution of payment or them exercising of their rights;
- have the right to use the data contained in official documents, official and/or other sources;
- act appropriately to verify the authenticity of the information on the ultimate beneficial owner and ensure that the ultimate beneficial owner (if any) is identified by taking reasonable steps to examine ownership (control) rights and ownership structure.

PFMS shall not rely solely on the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations while establishing the ultimate beneficial owner of the client. PFMS shall fulfil the requirements for establishing the ultimate beneficial owner by applying a risk-oriented approach.

Depending on the level of risk of the financial transaction, the client shall be thoroughly inspected if executing several financial operations that may be linked to each other, provided the total sum of operations is equal to or exceeds the amount specified in paragraph 1 of Article 20 of the AML/CFT Law.

Paragraph 12 of Annex 2 to the Regulation *On Financial Monitoring by Banks* approved by the Resolution of the Board of the National Bank of Ukraine dated 19 May 2020 No. 65 (hereinafter – Regulation No. 65), and paragraph 12 of Annex 2 to the Regulation *On Financial Monitoring Institutions* approved by the Board of the NBU dated 28 July 2020 No. 107 (hereinafter – Regulation No. 107), determine that the bank/institution shall obtain an identification document during the verification procedure of the client - a natural person (including a minor) / natural person - entrepreneur or a natural person - representative of the client by the way of:

1) presenting the original document by the owner himself being personally present (personal presence should be considered as the physical presence of the person being verified in the same premise in the presence of the authorized employee of the bank/institution during the verification procedure of the owner's identity);

2) presenting the original document by the owner during the verification procedure conducted by the bank/institution in the mode of video broadcasting in compliance with the requirements specified in Annexes 3 to Regulation No. 65 and Regulation No. 107 (hereinafter – video verification).

The bank/institution may apply other methods to identify and verify representatives of the legal entity that are considered as its signatories (i.e. those included in the list of persons entitled to manage the account and sign settlement documents on behalf of the client), in particular, by obtaining the required identification data of signatories from the client through a questionnaire signed by a qualified electronic signature (hereinafter – QES) of the head of this legal entity.

The evidence of the personal presence of a natural person during the verification procedure shall be documented by the bank/institution by using the methods provided for in paragraph 13 of Annex 2 to Regulation No. 65 and Regulation No. 107.

Paragraphs 30-35 of Annex 2 to Regulation No. 65 and paragraphs 30-33 of Annex 2 to Regulation No. 107 define methods and conditions provided for a remote verification procedure of individual clients. Such methods are divided into “full-fledged”, which do not impose restrictions on customer service, and “simplified” which set limits on transactions, provided that the business relations with the client bear low risks.

In particular, remote verification methods include:

- 1) video verification
- 2) verification of the client's identification data using the NBU BankID System and obtaining copies of identification documents signed by the client's QES
- 3) using the NBU BankID System
- 4) obtaining an electronic copy of the identification document
- 5) obtaining a copy of the identification document and a certificate of assignment of national identification number (in case the identification document contains no required information), signed by the QES of the owner of the identification document
- 6) making the first transfer of an insignificant amount of funds from an individual's own account opened in another Ukrainian bank to a bank account, provided that such transfer is accompanied by the payer's data (at least surname and initials), and taking photos of the person using recognition method of the person's identity and the person with their own identification document displaying the page/pages of the document containing the owner's photo, followed by QES inserted by an authorized representative of the bank and qualified electronic time stamp on the obtained electronic document containing photo
- 7) scanning an identification data from the contactless electronic medium implanted in the ID card and saving the authentication protocol during the scanning procedure (at least passive authentication under subsection 5.1, paragraph 11 of IKA0 Doc 9303) and further preservation of the protocol to testify the fact of entering a person's correct personal identification number, intended for identification and authorization of access to contactless electronic media (PIN), or making a photo of a person using the method of recognizing the identity of a person and a photo person with their own identification document displaying the page / pages of the document containing the owner's photo, followed by QES inserted by an authorized representative of the bank and qualified electronic time stamp on the obtained electronic document containing photo
- 9) taking a photo of a person with his/her own identification document displaying the page/pages of the document containing the owner's photo.

The procedure for video verification (procedure for verification of a person via video broadcasting) is defined in Annexes 3 to Regulation No. 65 and Regulation No. 107 and is equivalent to verification conducted in the personal presence of a person.

At the same time, similar provisions on video verification of clients are provided for PFMS, state regulation and supervision of which is conducted by the National Commission on Securities and Stock Market.

e) Specify if bearer passbooks or other bearer instruments are allowed;

Under Article 26 of the Law of Ukraine On Capital Markets and Regulated Commodity Markets (in the wording of Law No. 738-IX dated 19 June 2020), savings certificates of banks can only be in registered and physical form. The person specified in the bank's savings certificate may transfer the title of ownership on the certificate to another person only by making a full (special) endorsement.

In line with Article 27 of the Law, the certificates of deposit of banks are registered securities and exist only in electronic form.

There are no legal entities in Ukraine that are entitled to issue bearer shares. According to the abovementioned Law of Ukraine *On Capital Markets and Regulated Commodity Markets*, the shares can only have a registration form. According to the Decision of the National Commission on Securities and Stock Market dated 24.06.2014 No. 804 *On approval of the Procedure for transfer of issued by the issuer in documentary form bearer shares in registered shares* joint-stock companies were required to convert issued certified shares into registered book-entry shares.

Bearer shares have been banned in Ukraine since 2006.

f) Are the institutions and professions mentioned under b) required to keep records? Specify the contents of that requirement (which documents, retention period etc.);

Under subsection 7, paragraph 2 of Article 8 of the AML/CFT Law, PFMSs are obliged to ensure the registration of financial transactions subject to financial monitoring by the means of automation tools.

Also, under subsection 17, paragraph 2 of Article 8 of the AML/CFT Law PFMSs are obliged to document the measures taken to comply with the legislation in the area of prevention and counteraction by creating (maintaining) relevant documents (including electronic), records, in such a way as to help the PFMS staff involved in the initial financial monitoring to perform their duties most rationally and efficiently and to be able to prove the SFMS that decisions taken to comply with the requirements of legislation on prevention and counteraction, in particular on risk assessment, due diligence, monitoring and notification of financial transactions that are subject to financial monitoring are based on substantive facts and the results of a comprehensive and proper analysis.

Subsection 18, paragraph 2 of Article 8 of the AML/CFT Law requires the PFMS (in such a way as to promptly provide, upon request of the respective SFMS, and to the extent sufficient to recover information on specific financial transactions, including, if necessary, the provision of evidence in criminal proceedings) to provide documents (including their electronic versions), their copies, records, data, information on measures taken to comply with the requirements in the field of prevention and counteraction, in particular, on the implementation of proper customer due diligence

(including identification and verification of customer representatives and establishment of extent of their powers), as well as persons who have been refused to establish business relations and / or conduct financial transactions by PFMS, as well as all documents related to business relations (i.e. while conducting a financial transaction) with the client (including formal, and particularly, internal and any other correspondence, reports, inquiries, the results of any analysis during the client's due diligence procedure), not less than five years after the termination of the business relationship with the client or upon the completion of a one-time financial transaction without establishing a business relationship with the client.

g) Are the institutions and professions mentioned under b) required to apply internal procedures and training of employees with regard to money laundering/financing of terrorism? Specify these measures including non-regulatory ones (such as guidance) to raise the awareness of these stakeholders on ML/TF risks and their duties to prevent them on a risk-based approach;

In line with Article 8 part 1 of the AML/CFT Law, a reporting institution (save for designated reporting institutions engaging in business as sole proprietors without incorporating a legal entity) considering legal requirements, findings of the national risk assessment, and assessment of inherent risks, shall draft, implement, and revise financial monitoring rules, programs for primary financial monitoring, and other internal documents on financial monitoring (hereinafter referred to as "the internal financial monitoring documents") and appoint an employee responsible for financial monitoring.

Internal financial monitoring documents should set out adequate procedures for ensuring effective risk management, as well as prevent the use of services and products of the reporting institution for legalization (laundering) of the proceeds from crime, terrorism financing, and financing of weapons of mass destruction.

Under Article 8 part two paragraphs 23–24 of the AML/CFT Law, a reporting institution commits to:

- take all measures in line with the law to ensure the responsible employee takes AML/CFT training within three months after their appointment and takes advance training at least every three years at a respective educational institution subordinated to a specially authorized body and other educational institutions upon approval of the specially authorized body
- take regular measures to train staff to comply with the Law, including by holding training and workshops

Requirements for the contents of internal financial monitoring documents and the procedure for holding training events are set out in Regulation 65/Regulation 107.

For example, Regulation 65 stipulates that the responsible employees of the bank must constantly maintain their level of knowledge on AML/CFT at the appropriate level by attending training in counteraction and prevention, as well as upgrading their qualifications in the order and within the deadlines set out by the AML/CFT Law; outlines the procedure for conducting training activities for the banking institutions, such as procedures for internal training activities, conducting assessments, documentation of the completion of training, etc.

h) Specify if the institutions and professions mentioned under b) are supervised with regard to the requirements mentioned under c) to h) and to what extent?

According to paragraph 2 of Article 18 of the AML/CFT Law, the SFMSs are obliged, within their authorities, to supervise the activities of the relevant PFMSs in the field of prevention and counteraction by conducting scheduled and unscheduled audits.

Additionally, SFMSs are entitled to:

- Take measures of influence, as provided by law, and/or require the PFMSs to comply with the requirements of the legislation in prevention and counteraction in case of violations of the law.

- Conduct audits on the availability of professional training of responsible employees and other employees of PFMS involved in the primary financial monitoring.

- Conduct regulatory activities and supervision in the area of prevention and counteraction, taking into account the risk-oriented approach, to determine the compliance of measures taken by PFMSs in minimization of risks during the conduct of their activities, including identification of signs of the inadequate risk management system.

- Ensure the safekeeping of information received from the SFMSs and PFMSs, specially authorized authorities and law enforcement agencies, in the manner defined by the relevant SFMSs.

i) In what way do the financial intelligence unit and other competent authorities have to give a feedback to the institutions and professions mentioned under b) on the result of the suspicious transactions they report to them (specific/case-by-case feedback, general feedback, other)?

The issue of the provision of feedback from reporting agencies and competent authorities is regulated by the relevant legislation.

The AML/CFT Law stipulates the Financial Intelligence Unit (hereinafter – FIU) an obligation to notify the reporting entity upon the receipt of information from courts or law enforcement agencies, in the following cases:

- If the person receives a written notice of suspicion of committing a criminal offence
- Upon the closure of criminal proceeding
- Upon adoption of a decision by the court in such criminal proceedings.

The procedure for providing such information by law enforcement agencies is approved by joint orders⁸ at the level of the FIU and each law enforcement agency individually. The format for providing information from the law enforcement agency to the FIU has a stable structure.

⁸ Order of the Ministry of Finance of Ukraine and the Security Service of Ukraine dated 14 July 2021 No.394 / 237 *On Approval of the Procedure for Provision by the State Financial Monitoring Service of Ukraine to the Security Service of Ukraine Generalized (Additional Generalized) Materials and Receiving Information from the State Financial Monitoring Service of Ukraine on Their Review*

Order of the Ministry of Finance of Ukraine and the State Bureau of Investigation of 31 December 2020 36836/888 *On Approval of the Procedure for Provision by the State Financial Monitoring Service of Ukraine to the State Bureau of Investigation Generalized (Additional Generalized) Materials and Receiving the State Financial Monitoring Service of Ukraine Information on Their Review*

Order of the Ministry of Finance of Ukraine and the National Anti-Corruption Bureau of Ukraine dated 3 March 2021 No.144 / 33 *On Approval of the Procedure for Provision by the State Financial Monitoring Service of Ukraine to the*

Additionally, the Order of the Ministry of Finance of Ukraine dated 16 November 2017 No. 944 *On Approval of the Procedure for Notification of PFMS on Issuing to an Individual a Written Notice on Suspicion of Committing a Criminal Offence, Closing Criminal Proceedings and Informing Financial Monitoring Entities About Court Decisions* implies the procedure and terms (within a month) for providing such information to the reporting entities and the body that regulates such activities.

j) What penalties exist with regard to infringements of the anti-money laundering/financing of terrorism legislation? Apart from administrative sanctions for breaches of anti-money laundering and counter terrorism financing (AML/CTF) law, are there other sanctions in place for AML/CTF breaches, such as criminal prosecution, removal of licence etc.?

There is administrative and criminal liability in Ukraine for violations of the legislation in AML/CTF.

Administrative liability is provided by the Code of Ukraine on Administrative Offence (in Art. 166-9, 188-4, hereinafter – CUAO), the AML/CFT Law (Art. 32), the Law of Ukraine *On Banks And Banking Activity* No. 2121-III (Art. 73) dated 7 December 2000.

In particular, Article 166-9 of CUAO provides the administrative liability for individuals – the officers of PFMS in case of the following violations:

“Failure to comply with requirements on the due diligence, identification, and verification of the politically exposed persons, their family members, and close associates; non-submission, late submission, violation of the submission procedure or submission of invalid data to the central executive authority that implements the state policy in the area of preventing and counteracting to legalization (laundering) of the proceeds of crime, terrorist financing and financing proliferation weapons of mass destruction; non-compliance with the requirements for the creation (maintenance) and storage of documents (including electronic), records, data, information; non-compliance with the requirements on supporting the transactions with information on the information on the transfer initiator and the recipient; non-compliance with the requirements on refusal to establish (maintain) business relationships (carrying out a financial transaction); non-compliance with the requirements on termination of a financial transaction (financial transactions), as well as the procedure of freezing or unfreezing the assets associated with terrorism and terrorist financing or the proliferation of weapons of mass destruction and financing; non-compliance with the requirements on identification and registration of financial transactions subject to financial monitoring.”

Article 32 of the AML/CFT Law envisages the liability of the legal entities and individuals as PFMSs for violations in AML/CTF. This includes the measures such as

- 1) written warning

National Anti-Corruption Bureau of Ukraine Generalized (Additional Generalized) Materials and Receiving the State Financial Monitoring Service of Ukraine Information on Their Review

Order of the Ministry of Finance of Ukraine and the Ministry of Internal Affairs of Ukraine dated 14 July 2021 No.395 / 535 *On Approval of the Procedure for Provision by the State Financial Monitoring Service of Ukraine to the National Police of Ukraine Generalized (Additional Generalized) Materials and Receiving the State Financial Monitoring Service of Ukraine Information on Their Review*

- 2) withdrawal of the license and/or other documents granting the permission to conduct the activity, which leads to the occurrence of the status of PFMS
- 3) removal of the PFMS's officer responsible for financial monitoring
- 4) fine
- 5) conclusion of an agreement with PFMS, that undertakes the PFMS to pay a certain monetary obligation and to take actions on ensuring the increase of efficiency of functioning and/or adequacy of the risk management system, etc.

Paragraph 5 of Article 32 of the AML/CFT Law specifies the amounts of fines for violations of legislation in AML/CTF. The maximum fine provided by the AML/CFT Law for financial institutions is 10 per cent of the total annual turnover, but not more than 7950 thousand non-taxable minimum of personal incomes (approximately EUR 4,000,000); for other institutions, the fine equals the amount of the double amount of the benefit received by PFMS as a result of the violation, and if the amount such a benefit cannot be determined - 1590 thousand of a non-taxable minimum of personal incomes (approximately EUR 800,000).

If banks and foreign bank branches violate requirements of AML/CFT laws and regulations, the NBU shall impose corrective measures proportionate to the committed violation as prescribed in Law of Ukraine *On Banks and Banking* No. 2121-III dated 7 December 2000 and Regulation *On the Application of Corrective Measures by the National Bank of Ukraine* approved by NBU Board Resolution No. 346 dated 17 August 2012 (hereinafter – Regulation 346).

In line with Regulation 346 the following corrective measures for violating the AML/CFT laws could be applied to banks:

- a written warning
- entering into a written agreement with the bank
- limiting, terminating, or suspending some transactions performed by the bank, including limiting transactions with the bank's related parties
- a penalty
- suspending a bank official from their office
- revoking the banking license and liquidation of the bank (in case of repeated violation of financial monitoring law).

The criminal liability for the violation of the legislation in the field of AML/CTF is provided by Article 209-1 of the Criminal Code of Ukraine, namely:

“Article 209-1. Intentional violation of legislative requirements regarding legalization (laundering) of the proceeds of crime, terrorist financing, and financing proliferation of weapons of mass destruction.

1. Intentional non-submission, late submission or submission of invalid information on the financial transaction that is subject to the financial monitoring according to the law to the central executive body for implementing the state policy in the field of preventing and counteracting to legalization (laundering) of the proceeds of crime, terrorist financing and financing proliferation weapons of mass destruction, if such actions have significantly damaged the protected by law rights, freedoms, or interests of individuals, state or public interests, or the interests of certain legal entities

– shall be punishable by a fine in the amount of one thousand to three thousand of non-taxable minimum personal incomes and deprivation of the right to hold certain positions or engage in certain activities for up to three years.

2. *Disclosure of any kind of secrecy of financial monitoring or the fact of sharing the information on financial transaction and its` participants between the subject of primary financial monitoring, the State Financial Monitoring Service of Ukraine and other governmental agencies as well as information on the fact of submitting (receiving) a request, decision or an order of the central executive body for implementing the state policy in the area of preventing and counteracting to legalization (laundering) of the proceeds of crime, terrorist financing and financing proliferation weapons of mass destruction, or providing (receiving) a response to such a request, decision or assignment by a person who became aware of this information in connection with the professional or official activities, if such actions have significantly damaged the protected by law rights, freedoms, or interests of individuals, state or public interests, or the interests of certain legal entities – shall be punishable by a fine in the amount of three to five thousand of non-taxable minimum personal incomes and deprivation of the right to hold certain positions or engage in certain activities for up to three years”.*

k) Are there publicly available registers for companies, trusts and other legal arrangements?

According to the Law of Ukraine *On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations* No. 755-IV dated 15 May 2003 (hereinafter – the Law on Unified State Registry), information on legal entities, individual entrepreneurs, and public organizations that are not legal entities is collected, accumulated, processed, and protected in the information system of the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations (hereinafter – USR).

The list of information on each type of legal entity, individual entrepreneur, or public organization to be entered into the USR is provided by Article 9 of the Law on Unified State Registry.

According to Article 11 of the Law on Unified State Registry, the information contained in the USR are open and available to the general public (except for tax identification number and passport details).

The Law *On Amendments to Certain Legislative Acts of Ukraine regarding the definition of final BOs of legal persons and public figures*, which came into force on 25 November 2014 and amended, inter alia, the Law on Unified State Registry, introduced an obligation for legal persons to declare beneficial ownership information to the USR. The USR contains information on the BOs of legal persons.

l) What are the rules on anonymity on virtual currencies, wallet providers and pre-paid cards; is the FATF travel rule (requiring to collect and hold information on originator and beneficiaries of transfer of virtual assets) implemented in your jurisdiction?

These rules are provided by Article 14 of the AML/CFT Law, which covers the requirements for the simple transfer of funds, as well as the transfers using the electronic payment instruments, transfer of electronic money and virtual assets.

Paragraph 4 of Article 14 of the AML/CFT Law defines the following:

- in case of transaction of transfer of funds outside Ukraine, including using virtual assets, that equal to or exceed UAH 30 000 or its equivalent, including in foreign currency, provided that such transaction does not associate with other financial transactions that may exceed UAH 30,000 if taken together, such transfer must be accompanied by at least information about the payer (initiator of the transfer) and information about the recipient of the transfer.

In line with Article 11, part 3, of the AML/CFT Law, due diligence shall be performed when business relations are established, including of e-wallet holders.

According to paragraph 6.7 of the Regulation *On the Electronic Money in Ukraine*, approved by NBU Board Resolution No. 481 November 2010 (hereinafter – Regulation 481), the e-money issuer is obliged to ensure:

1) due diligence of the customer before creating an electronic wallet, in the manner prescribed by AML/CFT law

2) supplementing the e-money transactions with information about the payer (transfer originator) and the recipient in line with AML/CFT law.

In line with paragraph 1.3 of Regulation 481, the multi-purpose prepaid card (hereinafter referred to as the prepaid card) is a physical or virtual means of providing access to electronic money stored in an electronic wallet. So, due diligence of a prepaid cardholder is carried out when opening an electronic wallet.

In addition, Article 14 “Information accompanying the transfer of funds or virtual assets” of the AML/CFT Law as amended by the Law of Ukraine *On Virtual Assets* No. 2074-IX dated 17 February 2022 requires the PFMS that provide the services for the transfer of funds and/or virtual assets to the payer (transfer initiator) to supplement all transactions with information on payer (transfer initiator) and the recipient of funds. Requirements of FATF Recommendation 16 and Regulation (EU) 2015/847 On Information Accompanying Transfers of Funds related to information accompanying the transfer of funds or virtual assets have been implemented with Article 14 of the AML/CFT Law.

m) Is there a central bank account registry?

To implement the requirements of Directive (EU) 2018/843, the Action Plan for Implementing the Strategy for Prevention and Counteraction to Legalization (Laundering) of Proceeds from Crime, Terrorist Financing and Financing the Proliferation of Weapons of Mass Destruction in Ukraine until 2023, approved by the Cabinet of Ministers Ordinance No. 435 dated 12 May 2021, provides for the establishment of the Unified Register of Accounts of Individuals and Legal Entities and Individual Lockboxes (hereinafter – the Unified Register) as a single state information system. The Ministry of Finance of Ukraine has been assigned as the authority responsible for it.

The Ministry of Finance of Ukraine has prepared and sent for approval to the relevant authorities, such as, to other SFMSs, the draft law *On Amendments to Certain Laws of Ukraine on*

the Creation of a Single Register of Accounts of Individuals and Legal Entities and Individual Lockboxes on 15 April 2022 that envisages the creation of the Unified Register.

In addition, to implement the requirements of Article 69 of the Tax Code of Ukraine, the State Tax Service of Ukraine maintains a database of bank accounts of legal entities and sole proprietors. Banks and other financial institutions are obliged to report an opening of the accounts by the specified persons to the tax authorities on the day of opening accounts for such persons.

25. Please elaborate on the functioning of the FIU, the supervisory authorities and the law enforcement authorities with regard to, *inter alia*: available resources (staff and budget), operational powers, independence, (inter-)national co-operation between competent authorities and the results achieved in terms of suspicious transactions reports received, supervisory investigations (including detected infringements, sanctions imposed), freezing/ seizing orders, financial investigations, confiscations and prosecutions/ indictments/convictions.

On State Financial Monitoring Service

The State Financial Monitoring Service of Ukraine (hereinafter – the SFMS) was established by the Cabinet of Ministers of Ukraine in January 2002 as a national unit of financial intelligence with the main task of implementing state policy in the area of prevention and counteraction.

SFMS is an authority authorized by Ukraine to perform the functions of the Financial Intelligence Unit (FIU) and is the national center for receiving and analyzing: suspicious transaction reports, other information related to money laundering, related predicate offenses, terrorist financing and financing of the proliferation of weapons of mass destruction.

The SFMS is a financial intelligence unit of an administrative nature.

Responsibilities, rights, functions and powers of the SFMS are defined by the AML/CFT Law and the Regulation *On the State Financial Monitoring Service of Ukraine*, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 537 dated 29 July 2015 (hereinafter – Regulation No. 537).

The SFMS's activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Finance of Ukraine.

The SFMS organizes its work according to long-term (annual), semi-annual and current (quarterly) plans. The SFMS prepares and submits its work plan to the Minister of Finance of Ukraine for approval.

The report on the implementation of the SFMS's work plan and the tasks assigned to it is submitted to the Ministry of Finance for approval under a prescribed procedure.

According to para. 3 of Article 45 of the Law of Ukraine *On State Service* No. 889-VIII dated 10 December 2015, the Head of the SFMS conducts public reporting annually.

Public reports of the SFMS are published on the official website of the SFMS.

Functionality and directions of activity

Responsibilities, rights, functions, and powers of the SFMS are defined by the AML/CFT Law and Regulation No. 537.

Activities of the SFMS are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Finance of Ukraine. The SFMS is financed from the state budget of Ukraine.

The approved staff of the SFMS is 237 people. As of 1 January 2022, the SFMS employs 205 people.

The main tasks and functions of the SFMS include:

- Implementation of state policy in the area of prevention and counteraction.
- Submission to the Minister of Finance of proposals to ensure the formation of state policy in the area of prevention and counteraction.
- Collection, processing and analysis (operational and strategic) of information on financial transactions subject to financial monitoring, other financial transactions or information that may be related to suspicion of money laundering or terrorist financing or financing the proliferation of weapons of mass destruction.
- Ensuring the functioning and development of a single information system in the area of prevention and counteraction.
- Conducting a national risk assessment.
- Establishment of cooperation, interaction and information exchange with state bodies, the National Bank, competent authorities of foreign states and international organizations in the area of prevention and counteraction.
- Ensuring in the prescribed manner the representation of Ukraine in international organizations on prevention and counteraction.

The key role of the SFMS is to process reports received from the PFME on suspicious financial transactions and to provide generalized materials to law enforcement and intelligence agencies of Ukraine in case of suspicion of money laundering or terrorist financing.

The SFMS actively cooperates with leading international organizations and institutions involved in combating money laundering and terrorist financing, such as the FATF, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), the European Union, the World Bank, the International Monetary Fund, the Egmont Group of Financial Intelligence Units, the United Nations, etc.

In cooperation with the Council of Europe, the SFMS experts have been regularly participating in the Plenary Sessions of the MONEYVAL Committee since 2002.

Today, the SFMS cooperates with more than 150 financial intelligence units in other countries and receives information from foreign partners that may be related to money laundering and terrorist financing.

The State Institution of Postgraduate Education “Academy of Financial Monitoring” functions in the area of the SFMS's management. This educational institution provides continuous training for specialists in regulatory, law enforcement, intelligence agencies, judges and private sector specialists.

Practical activities of the FIU

According to the results of analysing information within the practical activities during 2014 - 2021, the SFMS generated 6,194 generalized materials and additional generalized materials that contain information on suspicious financial transactions totalling UAH 6.6 trillion.

The materials were handed over to law enforcement and intelligence agencies for investigation.

The SFMS annually summarizes information on identified schemes of money laundering, considering the experience of competent authorities of foreign states, financial, regulatory and law enforcement agencies of Ukraine to prevent these crimes and to bring them to the notice of the PFME by publishing it on the official SFMS's website. So far, 17 typological studies have been prepared since 2004.

On cooperation with financial and non-financial structures

To cooperate and provide methodological support to the subjects of financial monitoring and as means of feedback with them, the SFMS ensures the following:

- Conducting educational methodological activities for system participants at the relevant educational institutions.
- Training PFME representatives and representatives of state bodies at the Academy of Financial Monitoring.
- Providing PFME with consultations via the hotline.
- Sending letters of the methodological nature to the PFME.
- Informing PFME on the National Risk Assessment and Typological Research Reports.
- Providing PFME with information on court decisions adopted regarding the notifications submitted to the FIU.
- Preparing methodological recommendations, and guidelines on financial monitoring for system participants, which contain recommendations that help financial monitoring entities to better understand the risks inherent in their activities, and effectively fulfil their obligations under the law.

Example of feedback:

The Order of the Ministry of Finance No. 322 dated 4 June 2021 approved the Procedure of Creating a personal cabinet Personal Account of the Subject of Primary Financial Monitoring and Access to the E-cabinet of the Financial Monitoring System and the Procedure of Informational Interaction of Subjects of Primary Financial Monitoring and the State Financial Monitoring Service of Ukraine. The e-cabinet is an electronic system of interaction between the SFMS and PFME.

Test measures are currently being taken to connect PFME to the e-cabinet. Video guidance on filling in the relevant new forms of accounting and submission of information were prepared and brought to the attention of PFME through SFMS's YouTube channel (<https://www.youtube.com/channel/UCTIPcGbqAYPX3feN9UyexNA>).

On the activities of state regulators

The AML/CFT Law identified the NBU, the NSSMC, the Ministry of Finance of Ukraine, the Ministry of Justice of Ukraine, and the Ministry of Digital Transformation of Ukraine as subjects of state financial monitoring.

The SSFM's supervisory activities in AML/CFT include:

- Conduction of scheduled and unscheduled audits, including on-site audits.

- Regulation and supervision are subject to policies, procedures and control systems, and risk assessment to determine the adequacy of measures taken by the PFME and reduce risks in the activities of such entities in financial monitoring.

The right to require the PFME to comply with the law and take measures provided by the law in case of violations.

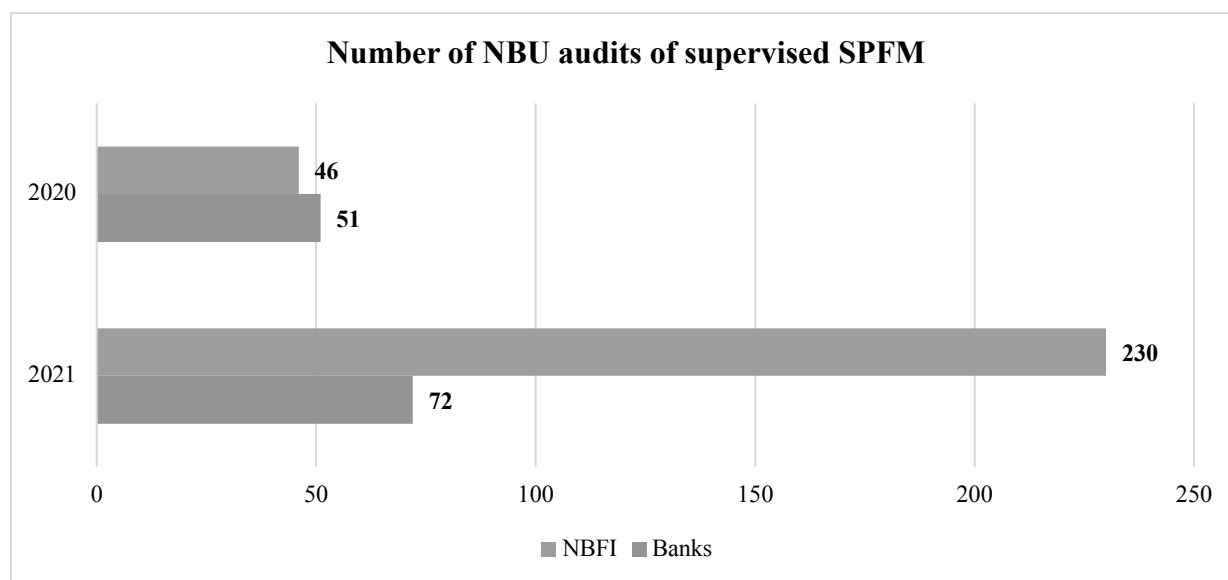
National Bank of Ukraine (NBU)

The NBU performs state regulation and supervision in the area of prevention of and counteraction to legalization (laundering) of proceeds from crime, terrorism financing and financing proliferation of weapons of mass destruction, of banks and foreign banks' branches; insurers (reinsurers), insurance (reinsurance) brokers, credit unions, pawnshops, and other financial institutions (except for the financial institutions and other legal entities regarding which the state regulation and supervision in the area of prevention and counteraction is carried out by other regulators responsible for state financial monitoring); payment system operators, participants or members of payment systems that provide financial services based on respective licenses or registration documents; postal operators; other institutions that provide services on transferring funds and conducting currency transactions; branches or representative offices of foreign business entities that provide financial services in Ukraine, and legal entities other than financial institutions that provide certain financial services.

The Financial Monitoring Department/Service was established in the NBU in 2003 to ensure that the NBU fulfils its responsibilities as a state financial monitoring entity (Article 18 of the AML/CFT Law). As of 31 December 2021, the actual number of employees of the Department was 132 persons.

To ensure proper supervision over banks' and non-bank financial institutions' compliance with the AML/CFT legislation, in 2021 the National Bank of Ukraine's specialists conducted 72 audits of banks (51 audits in 2020) and 230 audits of non-banking financial institutions (46 audits in 2020) (NBFI).

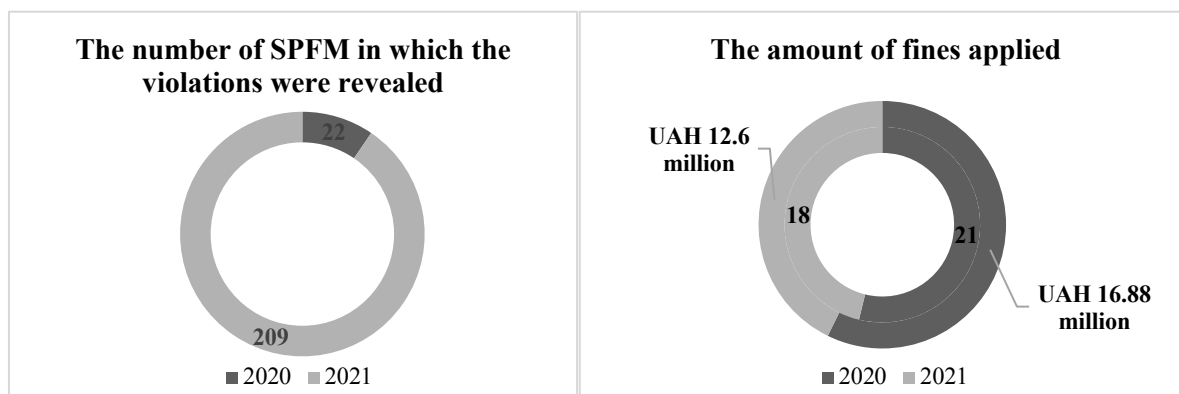
Among the banks audited in the reporting period, violations of AML/CFT legislation were detected in the activity of 14 banks (in 2020 - 16 banks), and 195 NBFIs (in 2020 – 6 NBFIs).



In 2021, the amount of fines applied for violations of the AML/CFT legislation was UAH 11.35 million (in 2020 – UAH 16.67 million) applied to banks and UAH 1.24 million (in 2020 - UAH 0.21 million) applied to the NBFI.

According to the results of the audits conducted by the NBU in 2021, violations were identified in the activities of 209 PFME (in 2020 – 22 PFME).

There were 18 decisions in the total amount of UAH 12.6 million (in 2020 - 21 decisions in the total amount of UAH 16.88 million) for violations in the area of AML/CFT detected during the audits.



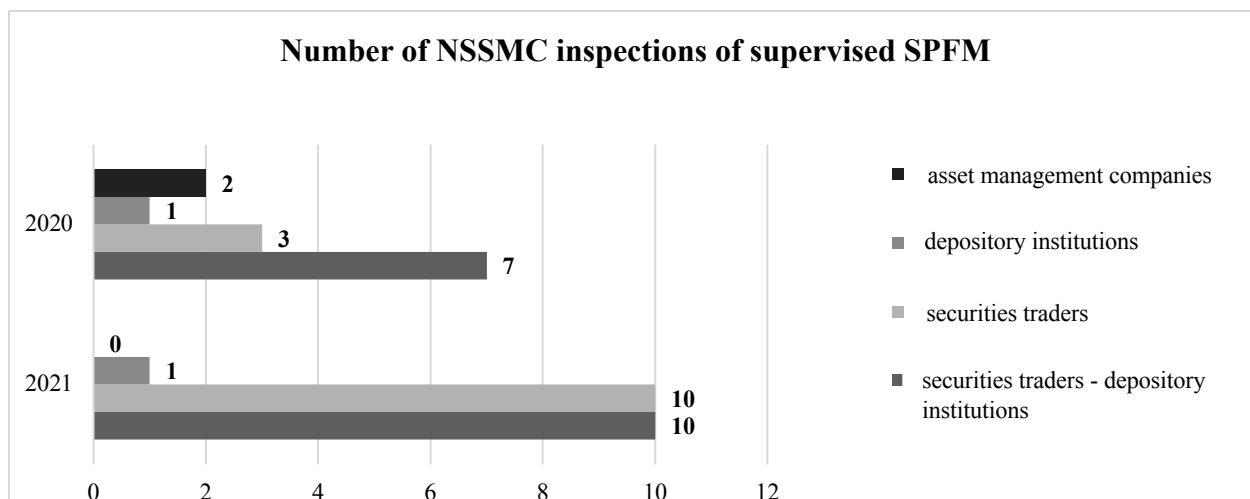
Also, 11 written reservations and 1 written request to eliminate (prevent going forward) violations were applied to banks, while 49 written reservations and 1 written request were applied to NBFI. Moreover, 1 license was cancelled and 1 official was fired for violations of the AML/CFT legislation in 2021.

National Commission on Securities and Stock Market (NSSMC)

NSSMC carries out state regulation and supervision in the area of AML/CFT on commodity and other exchanges conducting financial transactions with goods; institutions of accumulative pension coverage; managers of construction financing funds/real estate funds; professional stock market participants (except banks), including the Central Securities Depository.

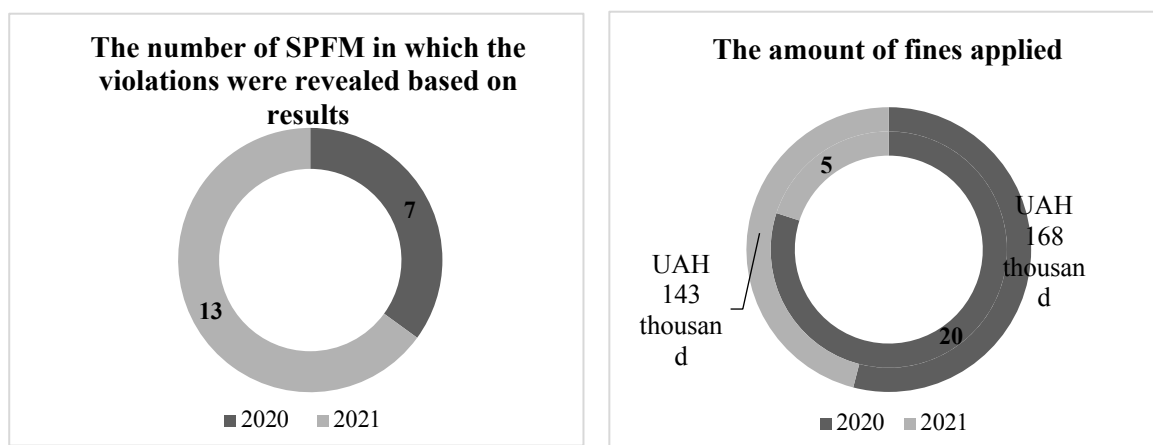
The NSSMC has a subdivision called the Department of Financial Monitoring and Audits with a total of 47 staff members.

In 2021, the NSSMC conducted 21 audits (in 2020 – 13 audits) of PFME acting as professional participants of the stock market (securities market).



According to the results of the audits conducted by the NCSSM in 2021, violations were identified in the activities of 13 PFME (in 2020 – 7 PFME).

Five penalties in the total amount of UAH 143 thousand (in 2020 - 20 penalties in the amount of UAH 168 thousand) were applied for violations of AML/CFT detected during the audits.



In addition, according to the results of the audits in 2021, 1 request to eliminate violations of AML/CFT legislation was made (in 2020 – 9 requests). In the current year, no written warnings were issued to PFME (in 2020 – 1 written warning was issued to PFME acting as a professional stock market participant).

In 2021, licenses for professional activities in the capital markets and organized commodity markets of 2 PFME were revoked. In 2020, no revocations of licenses took place.

In 2021 and 2020, no protocols on administrative offence were prepared.

The Ministry of Justice of Ukraine

The Ministry of Justice of Ukraine carries out state regulation and supervision in the area of AML/CFT concerning lawyers' offices, law associations and attorneys who practice law individually; notaries; business entities that provide legal services; persons who provide services on the establishment, operation or management of legal entities.

The Notary Department and the Department of Private Law of the Ministry of Justice of Ukraine are responsible for state regulation and supervision in the area of AML/CFT and financing the proliferation of weapons of mass destruction.

In particular, the Notary Department of the Ministry of Justice of Ukraine is responsible for supervising activities of the relevant PFME in the area of AML/CFT. According to the staff schedule, there are four employees in the structural unit dealing with financial monitoring.

In turn, the Department of Private Law of the Ministry of Justice of Ukraine carries out state regulation in the area of AML/CFT regarding the PFME defined by the AML/CFT Law. According to the staff schedule, there are five employees in the relevant structural unit of the Department.

Ministry of Finance of Ukraine

The Ministry of Finance is the central state executive body that ensures the formation and implementation of state policy in AML/CFT.

The Ministry of Finance of Ukraine carries out state regulation and supervision in the area of AML/CFT regarding audit entities; accountants; business entities that provide accounting services,

tax consulting services, intermediary services in the sale and purchase of the real estate, business entities that provide consulting services related to the sale and purchase of real estate; business entities trading in cash for precious metals, precious stones and products thereof; businesses providing lottery and/or gambling services.

Within the Department for Ensuring Coordination and Monitoring, there is a Department of Financial Monitoring with 10 staff members.

The Ministry of Finance of Ukraine developed a draft resolution of the Cabinet of Ministers of Ukraine *On Approval of the Procedure for Organizing and Conducting Audits in the Area of Combating Money Laundering, Terrorist Financing and Financing Proliferation Weapons of Mass Destruction*, which is currently under the approval procedure in the structural units of the Ministry of Finance of Ukraine.

This draft resolution is expected to approve the procedure for conducting audits of PFME, govern the mechanism of state supervision and control over compliance of PFME with the laws in AML/CFT by the Ministry of Finance of Ukraine, the Ministry of Justice of Ukraine and the Ministry of Digital Transformation of Ukraine. Also, it defines the procedures for organizing, preparing, and conducting audits, as well as formalizing audits' results.

Ministry of Digital transformation of Ukraine

According to the AML/CFT Law, the Ministry of Digital Transformation of Ukraine conducts state regulation and supervision in the area of AML/CFT regarding providers of services related to the circulation of virtual assets.

In 2021, the Ministry of Digital Transformation of Ukraine together with the Deputies of the Ukrainian Parliament and stakeholders in virtual assets continued to improve the draft law *On Virtual Assets* (the Draft Law No. 3637) and contributed to the adoption of the Draft Law No. 3637 on 8 September 2021 in full.

The President of Ukraine submitted proposals on the subordination of the virtual assets market to the already existing regulator in financial monitoring – the NCSSM. At the same time, other mechanisms of functioning of the virtual assets market proposed in the Draft Law No. 3637 remain unchanged.

Given the above, the Parliament supported the proposed amendments of the President of Ukraine to the Law *On Virtual Assets*. The law will launch a lawful virtual assets market in Ukraine. According to the changes, the NCSSM will regulate the virtual assets market.

According to the above Law, the NCSSM will ensure:

- Formation and implementation of policy in the area of virtual assets.
- Establishment of the procedure for turnover of virtual assets.
- Issuance of permits to virtual assets service providers.

Supervision and financial monitoring in this area.

Activities of the law enforcement system

Law enforcement agencies (National Police of Ukraine, National Anti-Corruption Bureau of Ukraine (NABU), Bureau of Economic Security of Ukraine, Security Service of Ukraine, State Bureau of Investigation of Ukraine, prosecution authorities (for procedural guidance)) are responsible

for conducting criminal proceedings in cases related to AML/CFT and sending investigation materials with the prosecutor's conclusion to court.

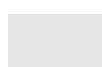
ML/TF crimes are detected based on guidelines of the SFMS, information from law enforcement agencies identified during operational and investigative measures, including criminal proceedings for predicate offences, or information received on request for mutual legal assistance and information from other sources.

Key elements of the measures taken by the law enforcement and judicial system are indicators that include:

- Initiated and completed criminal proceedings on money laundering and terrorist financing.
- Convictions and number of convicted persons.
- Amounts of seized and confiscated assets obtained by criminal means.

According to the Office of the Prosecutor General, generalized data on the progress of criminal proceedings under Articles 209, 209-1, 258-5, 306 of the Criminal Code for 2020 - 2021 is as follows:

Indicator	Articles of the Criminal Code			
	209	209-1	258-5	306
Number of initiated criminal proceedings, (units)	180	1	32	15
	211	3	48	13
Number of criminal proceedings for which the investigation has been completed (units)	136	1	8	56
	216	2	21	43
Number of criminal proceedings sent to courts with indictments, (units)	93	1	7	48
	114	1	4	31
Amount of laundered funds and property under indictments revealed, (thousand UAH)	120 240	0	0	378
	779 872	0	0	1 655
The total amount of seizures imposed on funds and other property as a result of the investigation of criminal proceedings, (thousand UAH)	529	247 379	630	0
	10 237	0	0	4 534



in 2020



in 2021

Article 209 of the Criminal Code establishes the liability for legalization (laundering) of the proceeds from crime.

Under the paragraphs 1 and 2 of part five of Article 216 of the Criminal Procedure Code of Ukraine, detectives of the National Anti-Corruption Bureau of Ukraine conduct the pre-trial investigation of criminal offence under the Article 209 of the Criminal Code if at least one of the following conditions:

A criminal offence committed:

President of Ukraine, whose term of office has been terminated, People's Deputy of Ukraine, the Prime Minister of Ukraine, the Member of the Cabinet of Ministers of Ukraine, the First Deputy and Deputy Ministers, the Member of the National Council of Ukraine on Television and Radio Broadcasting, the National Commission for State Regulation of Financial Services Markets, the National Commission on Securities and Stock Market, the Antimonopoly Committee of Ukraine, the Chairman of the State Committee for Television and Radio-broadcasting, the Chairman of the State Property Fund of Ukraine, his first deputy and deputy, the member of the Central Election Commission, the first deputy and deputy, Chairman of the National Agency on Corruption Prevention, his Deputy, the Director of the Bureau of Economic Security of Ukraine, his Deputy, the Member of the Board of the National Bank of Ukraine, Secretary of the National Security and Defense Council of Ukraine, his First Deputy and Deputy, the Permanent Representative of the President of Ukraine to the Autonomous Republic of Crimea, his First Deputy and Deputy, Adviser or Assistant of the President of Ukraine, Chairman of the Verkhovna Rada of Ukraine, Prime Minister of Ukraine;

The civil servant whose position belongs to the category “A”;

deputy of the Verkhovna Rada of the Autonomous Republic of Crimea, deputy of the regional council, the city council of Kyiv and Sevastopol, official of local self-government, whose position is assigned to the first and second categories of positions;

judge (except judges of the High Anti-Corruption Court), judge of the Constitutional Court of Ukraine, Jury (in the performance of his duties in the court), Chairman, Deputy Chairman, member, inspector of the High Council of Justice, Chairman, Deputy Chairman, member, inspector of the High Qualifications Commission judges of Ukraine;

prosecutors of the prosecutor's offices specified in paragraphs 1-4, 5-11 of the first part of Article 15 of the Law of Ukraine “On the Prosecutor's Office”;

person of the senior management of the State Penitentiary Service, authorities and subdivisions of the civil protection, the senior member of the National Police, a customs official who has been awarded a special title of state adviser of the Customs Service III rank and above, an official of the State Tax Service who has been awarded a special title state adviser of the Tax Service of the III rank and above;

the servicepersons of the senior management of the Armed Forces of Ukraine, the Security Service of Ukraine, the State Border Guard Service of Ukraine, the State Special Transport Service, the National Guard of Ukraine and other military formations formed under the laws of Ukraine;

head of a large business entity, in the authorized capital of which the share of state or municipal property exceeds 50 per cent;

2) the subject of the criminal offence or the amount of damage in criminal offence under, in particular, the Article 209 of the Criminal Code, two thousand times more than the subsistence level for employable persons established by law at the time of the offence (if the crime was committed by the public official of authorities, law enforcement agency, military formation, local self-government

authority, business entity, in the authorized capital of which the share of state or municipal property exceeds 50 per cent).

Court system

In 2021, the number of cases pending in the courts of the first instance was as follows: 561 cases under Article 209 of the Criminal Code, and 54 cases under Article 258-5 of the Criminal Code.

The number of cases considered by the courts that resulted in a verdict was: 38 cases under Article 209 of the Criminal Code and 5 cases under Article 258-5 of the Criminal Code.

The number of cases that resulted in the confiscation of property was: 5 under Article 209 of the Criminal Code in the amount of UAH 7,156,000 (see the table below).

Consideration of cases (proceedings) on AML/CFT

Name of the indicator		number of row	Article of the Criminal Code	
			209	258-5
Information on the progress of criminal cases (proceedings) pending in the courts of the first instance				
Number of cases (proceedings) that were pending in the reporting period		1	561	54
Received cases (proceedings) in the reporting period (from row 1)		2	167	12
<i>In which the pre-trial investigation was conducted by:</i>	Investigators of the prosecutor's office	3	24	-
	Investigators of the National Police (internal affairs)	4	131	3
	Investigators of the State Security Service of Ukraine	5	9	9
	NABU detectives	6	1	-
Cases (proceedings) considered, total		7	94	13
<i>Among them</i>	Cases that resulted in a verdict	8	38	5
	Cases that resulted in closure of the proceedings	9	20	2
	Cases returned to pre-trial investigation	10	2	1
	Cases returned to the prosecutor under Article 314 of the Criminal Procedure Code of Ukraine	11	14	2
	Cases redirected to determine the	12	20	3

	jurisdiction			
Number of verdicts where the decision on confiscation of property (special confiscation) was made		13	5	-
Amount, UAH (from row 13)		14	7 156	-
The amount of legalized proceeds (funds and property) obtained by criminal means established by court decisions, (thousand, UAH)		15	818 356	-
Number of unresolved cases (proceedings) at the end of the reporting period		16	467	41
Information on persons				
Number of persons in respect of whom a court made a decision on confiscation of property obtained by criminal means		17	903	66
Number of convicted persons that received punishment		18	31	4
<i>Imprisonment for a specified period</i>	Total	19	5	-
	<i>from 1 to 5 years</i>	20	1	-
	<i>from 5 to 10 years</i>	21	4	-
	<i>from 10 to 15 years</i>	22	-	-
Other measures not related to imprisonment (quantity)		23	-	1
Number of persons released from punishment		24	2 4	4
<i>Released with probation</i>		25	2 4	4

Confiscated assets and assets under arrest

From 2003 to 2021, the SFMS received information from the Executive Service authorities on the amount of funds (property) that is subject to recovery to the State Budget of Ukraine as established by the court, of UAH 39,626.3 million, including funds for 2021 - UAH 3,97 million.

The total amount of funds received from the sale of confiscated property and transferred to the State Budget of Ukraine amounts to the equivalent of UAH 40,974.8 m.

26. Does Ukraine demonstrate a high-level political commitment to implement Financial Action Task Force (FATF) Recommendations? Has an Action Plan been produced in that regard and if yes:

- a) Which measures are planned, and over what time-line?**
- b) How has the FATF Action Plan been implemented?**
- c) Are there bodies in charge to supervise implementation?**

Within the agenda of the 55th Plenary Meeting of MONEYVAL, which was held in December 2017 in Strasbourg (French Republic), the Report of the results of the 5th round of mutual evaluation of Ukraine was approved by the Committee of Experts of the Council of Europe.

Based on the results of the assessment of the national AML/CFT system of Ukraine, MONEYVAL has defined the areas for further improvement.

Also, following the results of the assessment, to eliminate the deficiencies identified by MONEYVAL, the State Financial Monitoring Service and government agencies concerned have developed an Action Plan to improve the national financial monitoring system. The Action Plan was supported by instructions of the Government dated 29.05.2018 No. 16465/1/1-18 (for 2018-2019) and dated 10.07.2020 No. 28615/1/1-20 (for 2020 - 2021).

The Action Plan consists of 6 sections, including:

- investigation of crimes associated with money laundering and terrorist financing;
- international cooperation;
- transparency of beneficial ownership of legal entities;
- the regulatory and supervisory activity of the State Financial Monitoring Service and methodological and explanatory support;
- contracting terrorist financing and proliferation of weapons of mass destruction, targeted financial sanctions;
- other activities in the field of AML/CFT.

The Action Plan also defines a responsible governmental agency and the timeline of its implementation for each activity.

During 2018-2021, the participants of the AML/CFT system have taken action to implement the Action Plan and, as a result, by the end of 2021, the implementation has been completed by 75%.

While implementing the Action Plan, the State Financial Monitoring Service has coordinated the activity of governmental agencies and informed the Government about the progress.

27. Is there a regulation preventing the use of the financial system for the purpose of money laundering/financing of terrorism? Describe the main elements of it.

The legal mechanism for the prevention of money laundering and terrorist financing is defined by the AML/CFT Law.

The AML/CFT Law implements the international standards for anti-money laundering (AML), combatting the financing of terrorism (CFT), and proliferation of weapons of mass destruction (WMD) (FATF Recommendations) and Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

In particular, the AML/CFT Law governs the main issues related to AML/CFT compliance such as a risk-based approach to the prevention of AML/CFT/WMD; the responsibilities of the reporting entities and the supervisory authorities; the fundamentals of activity of Ukraine's FIU and its` cooperation and exchange of information with reporting entities, supervisory agencies and law-

enforcement agencies; conducting the National Money Laundering Risk Assessment; AML/CFT reporting obligations and compliance; the conditions of enforcement of targeted sanctions; international cooperation.

Ukraine has a comprehensive legal framework addressed to AML/CFT, which includes, inter alia, the following:

The AML/CFT Law

The Criminal Code of Ukraine

The Criminal Procedure Code of Ukraine

The Civil Code of Ukraine

Special laws on the functioning of law enforcement and intelligence agencies

Secondary legislation, such as the resolutions passed by the Cabinet of Ministers of Ukraine, the National Bank of Ukraine, the decisions of the National Commission On Securities And Stock Market, the orders of the Ministry of Finance of Ukraine, the Ministry of Digital Affairs and other governmental bodies.

The guidelines, best practices, instructions, etc. are issued by the government regulators.

The AML/CFT Law establishes the key components of AML/CFT procedures, such as:

- participants in financial monitoring, their status, the rights, and obligations
- financial transactions subject to financial monitoring
- National Money Laundering Risk Assessment
- freezing the assets and cessation of the transactions
- international cooperation
- liability for violating anti-money laundering and terrorist financing legislation (administrative, civil, criminal)
- control and supervision over observance of legislation.

Thus, the legislation of Ukraine provides a set of preventive measures aimed at the effective functioning of AML/CFT procedures.

Also, the Government of Ukraine has adopted the National Strategy for the development of the AML/CFT system until 2023.

Every 3 years the State Financial Monitoring Service of Ukraine (SFMS) provides the National Money Laundering Risk Assessment.

Based on the results of that Assessment, which should be publicized by the SFMS, the National Strategy could be modified. The regulatory bodies, including SFMS, are obligated to follow the National Strategy for the development of the AML/CFT system.

The English texts of main legislative acts in the field of AML and CFT are available by the following links:

<https://fiu.gov.ua/assets/userfiles/200/Acts%20of%20the%20Parliament%20of%20Ukraine/LAW%20OF%20UKRAINE.pdf>;

<https://fiu.gov.ua/en/pages/zakonodavstvo/akti-visczih-organiv-vladi/akti-kabinetu-ministriv-ukrajini/akti-kabinetu-ministriv-ukrajini.html>

Annex to this Chapter can be found under the link: <https://bit.ly/3PexNDF>.

CHAPTER 5: PUBLIC PROCUREMENT

SUPPLEMENTARY INFORMATION

Taking into account the fact of Russian military actions against Ukraine, the Cabinet of Ministers of Ukraine has approved the Resolution of 28 February 2022 № 169 "Some Aspects of Defence and Public Procurement of Goods, Works and Service in Conditions of Martial Law". The Resolution states that defence and public procurement of goods, works and services is carried out without the application of procurement procedures and simplified procurement as defined by the Laws of Ukraine "On Public Procurement" and "On Defence Procurement". The Resolution was adopted in accordance with Article 64 of the Constitution of Ukraine, Article 12-1 of the Law of Ukraine "On Martial Law", paragraph 3 of the first part of Article 4 of the Law of Ukraine "On Defense Procurement" and Decree of the President of Ukraine "On the imposition of martial law in Ukraine", and will be valid exclusively throughout the martial law period. Among other information, the Resolution specifies decision-makers on lists and volumes of goods, principles of procurement, terms of payment, etc. On other hand, this Resolution is not applied for procurement procedures commenced before the Martial Law period (before 24/02/2022) thus such procedures have been finished (and some are still ongoing) in accordance with Law "On Public Procurement" and can be accessed in e-procurement system PROZORRO (www.prozorro.gov.ua).

However, it should be underlined that the Resolution is a temporary and emergency measure adopted in order to enable the supply of necessary goods and services during the Russian aggression against Ukraine. The application of such measures, being a departure from the basic principles of public procurement is justified by the current exceptional and tragic circumstances. As such the Resolution does not represent the actual state of development of the Ukrainian public procurement system, based on principles of transparency, equal treatment and fair competition presented below, stemming from the Law of Ukraine "On Public Procurement", presented in more detail below, directly in answers to specific questions. All of the answers to questions and data provided represent the state of development of the Ukrainian public procurement sector by the end of 2021 or the beginning of 2022.

I. REGULATORY FRAMEWORK FOR PUBLIC PROCUREMENT

1. Please describe the legislative framework in the field of public procurement. Please provide an explanation about its compliance with the relevant EU legislation. Please provide the definitions used in the public procurement legislation, among others the definitions of public contract, contracting authority and contracting entity as understood under the EU public procurement rules.

The legislative framework in the field of public procurement in Ukraine includes the Law of Ukraine "On public procurement", the Resolution of the Cabinet of Ministers of Ukraine of February 24, 2016 № 166 "On approval of the Procedure for the functioning of the electronic procurement system and authorization of electronic platforms", the "Strategy for reforming the public procurement system" ("road map"), approved by the Resolution of the Cabinet of Ministers of Ukraine of 26-th of February № 175-r, the Resolution of the Cabinet of Ministers of Ukraine of December 27, 2019 №

1216 “On Peculiarities of the Establishment and Activity of Centralized Procurement Organizations” and Orders of the Ministry of Economy of Ukraine that concern various aspects of public procurement.

The Law of Ukraine “On public procurement” (hereinafter – The Law) establishes legal and economic principles of the procurement of goods, works and services to meet the needs of the State, the local communities and the associated local communities.

The Law in its Preamble also aims to harmonise Ukrainian public procurement rules with the EU acquis required by the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand. In particular, the Law regulates both the general public procurement sector and the utilities sector by implementing provisions of the Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors (hereinafter - Directive 2014/24/EU and Directive 2014/25/EU) as required by relevant provisions of the Association Agreement. It also provides measures and procedures enabling protection of rights of economic operators against potential arbitrary and illegal decisions of contracting authorities as required by the EU Procurement Remedies Directive 89/665 and 92/13 (see below for more details). It is also worth noting, that the main document regulating the state contracting in the field of defence and security is the Law of Ukraine “On Defence Procurement” that was developed on basis of Directive 2009/81/EC On defence and sensitive security procurement (hereinafter - Directive 2009/81/EC).

Pursuant to Article 152 of the Association Agreement, Ukraine was obliged to develop a comprehensive road map for the implementation of the provisions of Chapter 8 of Section IV of the Association Agreement, which would include several stages of reform. Compliance with the relevant EU legislation is achieved through step-by-step reforms and amendments to The Law in accordance with the “Strategy for reforming the public procurement system” (“road map”), approved by the Resolution of the Cabinet of Ministers of Ukraine on 26-th of February № 175-r. Expanded information about the road map is given in the answer to question 14.

The Law is considered to have high compliance with the indicated EU Public Procurement Directives which has been confirmed during the last 2 years within annual reviews of AA implementation progress. Additional proof of legal compliance is Ukrainian membership in the Government Procurement Agreement (hereinafter - GPA) of WTO together with all EU members and active cooperation with EU representatives in the supervision under the WTO GPA Committee.

Basic terms and notions of The Law are defined in Article 1.

The Law applies with regard to public procurement defined as the acquisition of works, supplies or services by contracting authority in accordance with the procedure established by the Law. The Law also defines the concept of “public contracts” understood as contracts for pecuniary interest concluded between contracting authority and tenderer based on the results of the procurement procedure/simplified procurement and having as its object the paid providing of services, execution of works or supply of goods.

The Law covers public supply, service and works contracts. “Services” are defined as any procurement item, other than goods and works, in particular transportation services, introduction of new technologies, scientific research, research and development activities, medical and public

amenity services, rental, leasing, as well as financial and consultancy services, minor repair, minor repair with development of design documentation”.

“Works” in turn cover the development of design documentation for construction facilities, scientific and design documentation for restoration of monuments of architecture and town planning, construction of new facilities, expansion, rehabilitation, major repairs, and restoration of existing facilities as well as industrial and non-industrial facilities, construction works with the development of design documentation, standard setting activities in construction, geological survey, technical re-equipment of existing enterprises, as well as services related to works, including geodetic survey, drilling, seismic survey, aerial photography and satellite imagery and other services that are included in the estimated cost of the works, if the cost of such services does not exceed the cost of the relevant works.

Finally, the concept of **“supplies”** refers to goods, objects of any kind and purpose, including raw materials, products, equipment, technologies, items in solid, liquid and gaseous state, as well as services related to the supply of such goods, if the cost of such services does not exceed the value of the goods themselves.

The concept of **“contracting authority”** is defined in Article 2 of The Law. Provisions of The Law cover all categories of bodies required by the Directive. Categories of contracting authorities according to Article 2 of The Law are described in the table below.

Category of contracting authority	Category detalisation as stipulated in Article 2 of The Law
public authorities and local self-governing authorities	public authorities (legislative body, executive, judicial authorities), and law enforcement agencies, government authorities of the Autonomous Republic of Crimea, local governments, associations of territorial communities
social insurance bodies	the Pension Fund of Ukraine, special-purpose insurance funds for temporary disability insurance, occupational accidents and diseases, health insurance and unemployment insurance
enterprises, institutions, organizations	legal entities - enterprises, institutions, organizations (except for those mentioned in row 1 and 2 of this table) and their associations, which meet the needs of the state or a territorial community (communities), if such activities are not carried out on an industrial or commercial basis, and if they have any of the following characteristics: <ul style="list-style-type: none"> - the legal entity is an administrator, recipient of budget funds; - public authorities or local self-governing

	<p>authorities, or other contracting authorities have the majority of votes in the supreme governing body of the legal entity;</p> <p>- more than 50 % of shares (interests, participatory interests) in the legal entity's authorized capital belong to the State or a local community.</p>
legal entities and/or economic operators operating in certain areas of economic activity	<p>legal entities and/or economic operators operating in certain areas of economic activity that meet at least one of the following criteria:</p> <p>- public authorities, authorities of the Autonomous Republic of Crimea, local self-governing authorities or other contracting authorities own a share of more than 50 per cent in the authorized capital of the legal entity and/or economic operator, or such authorities have the majority of votes in the supreme governing body of the legal entity and/or economic operator or the right to appoint more than a half of the members of the legal entity and/economic operator's executive or supervisory board</p> <p>- enjoying special or exclusive rights - the rights granted by a public authority or local self-governing authority within the scope of their powers pursuant to any regulation and/or individual legal act, which limit the number of operators in the areas referred in this Law to one or more entities, significantly affecting the ability of other entities to carry out activities in these areas. The rights granted as a result of contests (tenders, procurement procedures) announced in advance with public access, provided that possibilities to participate in such contests (tenders, procurement procedures) have not been limited and these rights have been granted based on objective criteria, shall not be deemed special or exclusive rights.</p> <p><u>Certain areas of economic activity</u> mean activities carried out in one or several of the following areas:</p> <p>1) provision of transportation, distribution, storage (uploading, bailing) and supply of natural gas to third parties (consumers), natural gas production and provision of LNG facilities;</p>

	<p>2) provision of heat generation, transportation and supply;</p> <p>3) provision of production, transmission, distribution, sale and purchase, supply of electricity to consumers, centralised dispatcher control and provision of electric energy supply to / from the transmission / distribution system and ensuring the functioning of the day-ahead electricity market and the internal daily market and the organization of purchase and sale of electric energy in these markets;</p> <p>4) provision of the production, transportation and supply of potable water to consumers, as well as district sewage system operation;</p> <p>5) carrying out irrigation, drainage or drainage-dampening melioration measures if the volume of water used for supplying portable water is more than 20% of the total volume of water provided by irrigation or drainage systems;</p> <p>6) provision of services for the use of public railway transport infrastructure, ensuring the functioning of the city electric transport, including underground, and the operation of its facilities for the provision of transportation services, as well as urban bus services, subject to conditions determined by the relevant executive authorities and local self-government bodies at served routes, required traffic capacity and frequency of transportation services;</p> <p>7) provision of services of bus stations, ports, airports, air navigation services for aircraft flights;</p> <p>8) provision of postal services;</p> <p>9) exploring for oil, gas, coal or other solid fuels, production of oil, coal and other types of solid fuels.</p>
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Thus, the scope of The Law complies with the requirements of the Directive 2014/24/EU.

As compared with the Utilities Procurement Directive (2014/25/EU) the Law covers (Article 2 part 1 and 2) under the concept of “contracting entities” legal entities and/or economic operators operating in one or several certain areas of economic activity (that were described in the table above).

In addition, The Law also states that the following activities are not considered to be activities in certain areas of economic activity:

1) the generation and supply of gas and heat to public networks where its generation comes as an unavoidable result of the contracting authority’s other production activities, which are not activities in certain areas of economic activity, provided that the gas or heat is supplied only for the

purposes of economic exploitation of this production, and the income from these activities does not exceed 20 % of the contracting authority's average annual income for the previous three years, including the current-year income;

2) electricity generation, transmission and supply to public networks where generation is necessary for satisfying the contracting authority's own needs for the purposes of carrying out other activities, which are not activities in certain areas of economic activity, and the volume of electricity supplied by the contracting authority to public networks depends on its own consumption, provided that such own consumption amounts to at least 70 % of the total volume of electricity generated by the contracting entity and calculated using the average annual output indicators for the previous three years, including the current-year indicators;

3) production, transportation and supply of potable water to public networks where such production is necessary for satisfying the contracting authority's own needs for the purposes of carrying out other activities, which are not activities in certain areas of economic activity, and the volume of drinking water supplied by the contracting authority for public purposes depends on its own consumption, provided that such own consumption amounts to at least 70 % of the total volume of drinking water produced by the contracting authority and calculated using the average annual output indicators for the previous three years, including the current-year indicators;

It should be noted, that The Law does not have provisions that restrict the participation of contracting authorities in the tenders of other contracting authorities as suppliers.

2. Does the legislation cover concessions and private public partnerships (the latter not defined in the EU public procurement rules)?

The Law of Ukraine "On Public-Private Partnership" defines the organizational and legal framework for the interaction of public partners with private partners and the basic principles of public-private partnership on a contractual basis.

According to Article 5 of the Law of Ukraine "On Public-Private Partnership" concession is one of the forms of public-private partnership (PPP).

Part 3 of Article 5 of the Law of Ukraine "On Public-Private Partnership" stipulates that relations related to the initiation of public-private partnership, selection of private partner, preparation for conclusion and determination of the contract, conclusion and execution of PPP contracts in accordance with part one of this article, are governed by the provisions of this law, unless another procedure for selecting a private partner, preparing for concluding and determination the content of the contract, concluding and executing such agreements is not defined by law governing proper form of public-private partnerships. If the agreement to be concluded within the framework of a public-private partnership is a mixed agreement, the relations on initiating a public-private partnership, preparation for concluding a contract and choosing a private partner shall be regulated by the norms of this law.

Also, it is important to mention that the selection of advisors for the provision of project preparation services carried out on a concession basis is carried out using public procurement procedures through the use of electronic procurement system or negotiated procedure in cases specified by the Law of Ukraine "On Public Procurement".

Separate Law “On Concession” in latest and current edition adopted in October 2019 regulates concession contracts as most applied form of PPP, including special competitive procedures for selection of concessionaires. The Law “On Concession” was developed on the basis of the EU Concession Directive 2014/23/EU.

3. Please explain the reasons for eventual exclusion of other types of public contracts from the scope of the public procurement legislation of Ukraine and how such provisions are in compliance with the relevant EU legislation. Please explain the different procedures foreseen in the legislation and rules governing the choice of these procedures.

The Law applies, in principle, to any public procurement contracts concluded by contracting authorities as defined in The Law, provided that the estimated value of the works, goods or services to be procured equals to or exceeds specific monetary thresholds (much lower than provided in the EU procurement directives) with the exception of specific contracts explicitly mentioned in Article 3 of the Law. **Reasons for exemption of certain categories of goods or services are the same as in the case of the EU public procurement directives: sensitive character of purchase or inappropriateness or impracticability of public procurement rules in specific situations. In general, the list of exceptions is based on provisions of the EU *acquis* and WTO GPA, although not all exemptions provided in the EU public procurement directives are provided in the Law that is natural at this stage.**

According to part 5 of article 3 of The Law, the following procurement items are excluded from the scope of the procurement legislation:

- 1) goods, works and services the procurement of which is classified as a state secret in accordance with the Law of Ukraine “On State Secrets” or which pursuant to the laws of Ukraine must be accompanied by special security measures;
- 2) goods, works and services procured abroad by Ukrainian diplomatic missions;
- 3) financial services related to the issue, sale, procurement or transfer of securities or other financial instruments;
- 4) the acquisition, lease of land, buildings, other immovable property or title to land, buildings and other immovable property;
- 5) services of international arbitration courts, international commercial arbitrations related to consideration and settlement of disputes involving the contracting authority;
- 6) goods, works and services procured according to agreements between the central executive body in charge of the development and implementation of the state national security, military, defence and military construction policies, and specialised purchasing organisations. The procurement of such goods, works and services shall be made in accordance with the rules and procedures established by relevant specialised purchasing organisations.
- 7) services related to scientific and scientific and technical activities and financed on a competitive basis according to the procedure established by Articles 58 and 59 of the Law of Ukraine “On Scientific and Scientific and Technical Activities”;
- 8) employment contracts;

9) services on production and dissemination of audio-visual productions and advertising in the context of a political election campaign;

10) goods and services related to design, production of security paper, banknotes, coins and state awards of Ukraine, their storage, transportation and record-keeping;

11) services necessary for government borrowing, attraction of borrowings under state guarantees, servicing and repayment of the public debt, borrowings attracted against state guarantees;

12) goods and services associated with transactions performed by the National Bank of Ukraine for the purpose of management of gold and foreign exchange reserves, their placement, procurement and sale in the secondary securities market, as well as for the purpose of making foreign exchange market interventions through procurement and sale of currency assets in foreign exchange markets;

13) services of financial institutions for granting credits, guarantees, as well as services necessary for preparation and implementation of investment projects, public-private partnership projects, including projects being implemented on the terms of a concession granted by international financial organizations.

For the purposes of The Law, “international financial organizations” shall mean the International Bank for Reconstruction and Development, the International Finance Corporation, the Multilateral Investment Guarantee Agency, the International Development Association, the European Bank for Reconstruction and Development, the European Investment Bank, the Nordic Investment Bank, the Nordic Environment Finance Corporation, other international financial organizations to which Ukraine is a member.

For the purposes of The Law, the term “financial institution” shall be used in the meaning of the Law of Ukraine “On Financial Services and State Regulation of Financial Services Markets”, if a service provider is a resident. If a service provider is a non-resident, a “financial institution” shall be understood as a legal entity authorized to provide financial services under the legislation of the country of its registration, of which the contracting authority shall be provided with documented proof”;

14) services procured by banks for the purpose of rendering banking services and performing banking transactions in accordance with the Laws of Ukraine “On Banks and Banking” and “On the National Bank of Ukraine”;

15) services provided by the National Bank of Ukraine in accordance with the law;

16) blank forms of documents certifying identity and Ukrainian citizenship, passports, blank forms of documents confirming identity and special status of a person, blank forms of other documents which must carry special protection elements in accordance with the legislation of Ukraine, election ballots for the election of the President of Ukraine and/or People’s Deputies of Ukraine, excise stamps, manufactured by enterprises belonging to the sphere of management of the central executive body implementing state policy in the field of organization and control over the production of blank forms of securities, documents of strict reporting, as well as goods and services required for their production.

17) goods and services needed by the Deposit Guarantee Fund to provide for the performance of its functions and exercise of its powers specified in the Law of Ukraine “On Deposit Guarantee System” and related to withdrawal of insolvent banks from the market;

18) service contracts on medical services for population in accordance with law;

19) goods and services procured according to agreements between the central executive body in charge of the development and implementation of the state healthcare policy, and specialised purchasing organisations. Upon results of these procurements, the central executive body in charge of the development and implementation of the state healthcare policy publishes in electronic procurement system the report with information according to the procedure defined by the Authorised Body. The procurement of such goods and services shall be made in accordance with the rules and procedures established by relevant specialised purchasing organisations with respect to procedure, the list of such goods and services and the list of specialised purchasing organisations determined by Cabinet of Ministers of Ukraine;

20) goods, works and services, goods, goods provided by a supplier with experience in Europe and/or Asia and/or North America and/or South America and/or the Middle East and for at least five years (including related parties within the meaning of the Tax Code of Ukraine) required for scientific and technical and/or engineering services for exploration (geological exploration, exploration), drilling, development, extraction, intensification (reservoir fracturing, overhaul of wells, colt) Bing) wells and hydrocarbon deposits, their training ground to transportation pipelines and oil pipelines, and processing;

21) hematopoietic stem cells, works and services associated with their acquisition. Upon result of such procurement, the contracting entity shall publish in the electronic procurement system a report on the procurement contract concluded without the use of the electronic procurement system;

22) natural gas, which is procured by authorities of natural gas market defined by the Law of Ukraine "On Natural Gas Market" on commodity exchanges, regulated by the law, that determines the legal conditions for the establishment and operation (activities) of commodity exchanges, and which meet the requirements of the Code of the gas transmission system;

23) construction works (including services related to such works) under the Great Ring Road around Kyiv (Kyiv oblast) project;

Most of the exemptions provided in The Law are compliant with the Directive 2014/24/EU. However, The Law does not implement all exemptions (exclusions) provided under the Directive.

In particular, the Law does not contain the following exemptions:

- the acquisition, development, production or co-production of programme material intended for audiovisual media services or radio media services, that are awarded by audiovisual or radio media service providers, or contracts for broadcasting time or programme provision that are awarded to audiovisual or radio media service providers.

- any of the following legal services: (i) legal representation of a client by a lawyer within the meaning of Article 1 of Council Directive 77/249/EEC in an arbitration or conciliation held in a Member State, a third country or before an international arbitration or conciliation instance; or judicial proceedings before the courts, tribunals or public authorities of a Member State or a third country or before international courts, tribunals or institutions; (ii) legal advice given in preparation of any of the proceedings referred to in point (i) of this point or where there is a tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings, provided that the advice is given by a lawyer within the meaning of Article 1 of Directive 77/249/EEC; (iii) document certification and authentication services which must be provided by

notaries; (iv) legal services provided by trustees or appointed guardians or other legal services the providers of which are designated by a court or tribunal in the Member State concerned or are designated by law to carry out specific tasks under the supervision of such tribunals or courts; (v) other legal services which in the Member State concerned are connected, even occasionally, with the exercise of official authority;

- civil defence, civil protection, and danger prevention services that are provided by non-profit organisations or associations, and which are covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3 except patient transport ambulance services;

- public passenger transport services by rail or metro;
- service contracts awarded on the basis of an exclusive right;
- public contracts between entities within the public sector.

Some of the exemptions in the Law go, however, beyond what is allowed by the EU provisions.

It is the case of exemptions related to:

- 1) goods, works and services purchased abroad by Ukrainian diplomatic missions;

There is no similar exemption in the EU law. Some EU MS, though, provide for similar exclusion or simplified public procurement provisions **below** thresholds of application of the Directive.

- 2) services related to scientific and scientific and technical activities and financed on a competitive basis according to the procedure established by Articles 58 and 59 of the Law of Ukraine “On Scientific and Scientific and Technical Activities”;

The exemption in The Law is wider than in the Directive as it covers all scientific and scientific and technical activities while in the case of the Directive R&D services are indeed exempted but some of them are covered by the Directive if at the same time two conditions are cumulatively fulfilled: a) the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, and (b) the service provided is wholly remunerated by the contracting authority. In the order ME on the subject of procurement (№708 15.04.20) there is a separate procedure for determination of scientific and technical work. This area is also regulated by the resolution of the Cabinet of Ministers №739 12.09.2018. This exception is included in the Law due to the fact that the selection of research projects has already gone through a competitive procedure in accordance with a special law of Ukraine. However, the exclusion needs to be brought into line with the Directive or the possibility of holding tenders with limited participation without prior notice should be excluded.

- 3) goods and services related to design, production of security paper, banknotes, coins and state awards of Ukraine, their storage, transportation and record-keeping; and

- 4) blank forms of documents certifying identity and citizenship of Ukraine (passports), blank forms of documents certifying identity and special status, blank forms of other documents which, pursuant to the laws of Ukraine, must contain special security features, and excise labels, manufactured by companies managed by the National Bank of Ukraine, as well as goods, works and services required for their manufacture;

Some exemptions in The Law implement EU exemptions but fall short of full compliance:

- political campaign services covered by CPV codes 79341400-0, 92111230-3 and 92111240-6, when awarded by a political party in the context of an election campaign. Equivalent exemption is wider in the Ukrainian context – there is no reference in The Law that this kind of contract must be awarded by a political party;

- the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon - The exemption is probably wider in the Ukrainian PPL because it does not **explicitly** state that, as in the EU law, that it covers “existing” buildings (i.e. building which are ready at the moment of launching of procurement provisions) buildings – in order to ensure the full compliance expression “existing” should be added.

Another list of exemptions is provided with regard to contracting authorities operating in fields covered by utilities sectors (defined in the EU directive 2014/25/EU). The Law does not apply in case the contracting authorities described in point 4 of part 1 of article 2 of The Law procure the following:

1) goods, works and services produced, performed or rendered to the contracting authority or a group of contracting authorities by an affiliated undertaking when its only purpose is to support the activities of the contracting authority or one of the group of contracting authorities in certain areas of economic activity.

In meaning of The Law an “affiliated undertakings” are the contracting authority’s divisions, whose property and operations are registered in the contracting authority’s consolidated balance sheet, or economic operators over which the contracting authority can exercise a dominant influence, or economic operators which together with the contracting authority are subjects to such dominant influence by another contracting authority.

A dominant influence shall be presumed in any of the following cases:

- the contracting authority holds more than 50 % of the undertaking's subscribed capital;
- the contracting authority controls the majority of the votes in the supreme body of the undertaking or can appoint more than half of the undertaking's administrative, management or supervisory body;

2) goods intended for resale to third parties, provided that the contracting authority does not occupy a monopolistic (dominant) position in the market of such goods, and other economic operators are free to sell them under the same conditions as the contracting authority;

3) fuel and energy resources for electricity and heat generation and for geological survey of mineral deposits (including non-irradiated fuel elements (fuel pins) for nuclear reactors);

4) raw hydrocarbons, oil products for further processing and sale as well as related and required ancillary services, such as processing, production, transportation, freight, insurance, movement, cargo transportation, storage, loading/offloading, quality and quantity inspection, customs brokerage services, information and analysis services in respect of market prices and stock exchange quotations, financial services, services of stock exchanges, auctions and electronic tendering systems;

5) goods, works and services if their prices (tariffs) are approved by collegial public authorities or other authorities within the scope of their powers or are determined in accordance with the procedure established by the aforementioned authorities, including where such prices are determined through auctions;

6) goods, works and services specified in production sharing agreements executed in accordance with the Law of Ukraine “On Production Sharing Agreements”;

7) goods and services in the day-ahead market, balancing market and ancillary services market in accordance with the Law of Ukraine “On the Principles of Functioning of the Electricity Market of Ukraine”;

8) electricity procured and sold in the electricity market by the guaranteed buyer, market operator, system operator, balance responsible party within the balancing group in accordance with Law of Ukraine “On the Electricity Market of Ukraine”;

9) services of the accounting administrator, commercial accounting administrator, market operator, guaranteed buyer in accordance with the Law of Ukraine “On the Electricity Market of Ukraine”;

10) general interest services in process of functioning of the electricity market in accordance with the Law of Ukraine “On the Electricity Market of Ukraine”;

11) natural gas, the procurement of which is carried out by the gas transmission system operator from the contracting authority of transportation services in the amount of the positive daily imbalance allowed by such contracting authority;

12) natural gas, the procurement of which is carried out by the contracting authority of transportation services from gas transmission system operator in the amount of negative daily imbalance allowed by such contracting authority;

13) natural gas, the procurement of which is carried out by gas storage operator and gas distribution system operators to ensure their own economic activities (including for their own production and technical needs, to cover production costs and technological costs, to perform balancing actions) in accordance with the Law of Ukraine "On Natural Gas Market", Code of the gas transmission system, Code of the gas storage facilities and the Code of gas distribution systems, provided that such procurement is done on commodity exchanges, the activities of which are regulated by the law that determines the legal conditions for the establishment and operation (activities) of commodity exchanges, and which meet the requirements of the Code of the gas transmission system.

4. Please provide a table with the relevant thresholds stated in the legislation and a description of the procedure that shall be followed for each of them.

Table with information about relevant thresholds stated in Ukrainian public procurement legislation is given below. For information purposes only the equivalent in EUR according to the official exchange rate set by the National Bank of Ukraine on 20.04.2022 is given in parenthesis with an asterisk (*) mark.

Thresholds in Ukrainian public procurement legislation	
Thresholds	Applicable procedures
Less than 50,000 UAH (EUR 1583*)	Procurement procedures defined by The Law are not required but the contracting authority must follow public procurement principles and may use the electronic

	procurement system including e-catalogues for the procurement of goods. In the case of procurement without the use of an e-procurement system, the contracting authority shall publish in accordance with Article 10 of The Law the report on awarded contract in the e-procurement system.
More than 50,000 UAH but less than 200,000 UAH for goods/services (EUR 6333*) or 1,500,000 UAH (EUR 47 499*) for works. Applied to contracting authorities stipulated in points 1-3 of part 1 of article 2 of The Law	Simplified procurement as an accelerated competitive process with the use of e-auction described in article 14 of The Law is applied
More than or equal to 50,000 UAH but less than 1,000,000 UAH (EUR 31 666*) for goods/services or 5,000,000 UAH (EUR 158 332*) for works. Applied to contracting authorities stipulated in point 4 of part 1 of article 2 of The Law	Simplified procurement as an accelerated competitive process with the use of e-auction described in article 14 of The Law is applied
More than or equal to 200,000 UAH for goods/services or 1,500,000 UAH for works. Applied to contracting authorities stipulated in points 1-3 of part 1 of article 2 of The Law	All 4 procurement procedures described by The Law are applied; contracting authorities are not allowed to use simplified procurement
More than or equal to 1,000,000 UAH for goods/services or 5,000,000 UAH for works. Applied to contracting authorities stipulated in points 4 of part 1 of Article 2 of The Law	All 4 procurement procedures described by The Law are applied; contracting authorities are not allowed to use simplified procurement
More than or equal to 133,000 EUR equivalent (this is an official provision stated in The Law) for goods/services or 5,150,000 EUR equivalent for works	All 4 procurement procedures described by The Law are applied; in addition, contracting authorities are obliged to publish procurement notices in English

It is important to point out that Article 4 of The Law explicitly states that the contracting authorities don't have the right to divide the procurement item into parts with the view to avoid an open procedure/simplified procurement or the application of this Law, in particular provisions of part 3 of article 10 of The Law.

Procurement procedures

For procurements above the value thresholds indicated above, the Law requires the use of four different specific procurement procedures:

The Law provides for four types of procurement procedures:

- open tender/bidding (the equivalent of the EU open procedure), defined by the article 20 of The Law as the main procurement procedure;
- restricted tender/bidding (the equivalent of the EU restricted procedure),
- competitive dialogue (the equivalent of the EU competitive dialogue) and
- negotiated procedure (the equivalent of the EU negotiated procedure without publication of a procurement notice).

The Law does not provide for an equivalent of the competitive procedure with negotiations as regulated in Directive 2014/24/EU or negotiated procedure with publication of a procurement notice as provided with Directive 2004/18 or 2014/25/EU. The Law does not (yet) regulate the Innovation Partnership procedure as provided in 2014/24/EU Directive.

Competitive dialogue may be applied if the procuring entity if it is not possible to specify the required technical and qualitative characteristics (specifications) of works or the type of services, and negotiations with tenderers are needed in order to take an optimal decision concerning the procurement.

The Law stipulates that the competitive dialogue procedure can be applied by procuring entity if one of the following conditions exists:

- 1) the procuring entity cannot specify requirements to the procurement item due to its nature or complexity requires negotiations, in particular in the case of procurement of legal services, the development and implementation of information systems, software, R&D services, experiments or developments;
- 2) performance of the procurement contract provides for the development of a project/design for the execution of works (provision of services) or the use of new innovative solutions;
- 3) procuring entity cannot determine the exact technical specification using existing technical standards.

On the other hand, the procedure of competitive dialogue cannot be applied in the case of the purchase of works and services with a ready-made project/design for their implementation or provision.

The negotiated procedures may be applied only exceptionally, in strictly defined circumstances. The Law provides for only one type of the negotiated procedure which is launched without publication of a procurement notice. Procuring entities contact directly economic operators of their choice. The exhaustive list of situations is provided in Article 40 of the Law:

- 1) the procuring entity has cancelled the open bidding (also in regard lot if any) twice due to the insufficient number of tenderers. Therewith the procurement item, its technical and qualitative characteristics, and the requirements to the tenderers shall not differ from the requirements established by the procuring entity in tender documents;

2) where the works, goods or services can be supplied only by a particular economic operator for any of the following reasons:

- the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance,
- entering into a procurement contract with the winner of an architectural or artistic contest;
- lack of competition for technical reasons, which the procuring entity shall prove with documents;
- there is necessity for the protection of intellectual property rights;
- signing a contract with the supplier of "last hope" for the supply of electric energy or natural gas;

3) the urgent need for procurement in connection with:

- the occurrence of special economic or social circumstances that make it impossible for the procuring entity to comply with the time limits for competitive procurement procedures and related to the immediate elimination of the consequences of emergencies
- the provision by Ukraine of humanitarian assistance to other countries, in accordance with the established procedure,
- the termination of the procurement contract due to the participant's fault and for a period sufficient for a new procurement procedure in the amount not exceeding 20 percent of the amount set in a suspended contract. The use of negotiated procurement procedures in such cases is carried out by procuring entity in respect of each procedure;
- complaining on decisions, actions or inactions of the procuring entity in relation to the ongoing tender after consideration/evaluation of the tenderers' offers, in the amount not exceeding 20 percent of the estimated value of the contested tender;
- procurement of goods, works and services to meet the needs of defense during the legal regime of martial law in Ukraine or in certain localities by procuring entities specified in the Law of Ukraine "On Defense Procurement"

4) for supply contracts only, for additional deliveries by the original supplier which are intended either as a partial replacement or extension of goods or installations where a change of supplier would oblige the procuring entity to acquire goods having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance. The duration of such contracts shall not exceed three years and the total value of additional deliveries should not exceed 50 percent of the original contract concluded as result of bidding;

5) for additional works or services consisting in the repetition of similar works or services entrusted to the same economic operator to which the procuring entity awarded an original contract. The possible use of this procedure shall be stipulated in the original tender documents. This procedure may be used only during the three years following the conclusion of the original contract and the total value of additional works and services should not exceed 50 percent of the original contract;

6) for the purchase of goods under procedure for restoring solvency in accordance with the legislation;

7) procurement of legal services related to the protection of the rights and interests of Ukraine, including legal protection of national security and defence, in a dispute settlement procedure, representation in proceedings in foreign jurisdictions that involve a foreign entity and Ukraine based on the relevant decision of the Cabinet of Ministers of Ukraine or decisions of the National Security and Defence Council of Ukraine enforced pursuant to the law as well as procurement of goods, works and services in case of participation of the procuring entity in international exhibition events on the basis of the decision of the Cabinet of Ministers of Ukraine.

The Table below summarizes the rules, which apply to all procedures.

Types of procedures	UNDER EU THRESHOLD (Open tender or Competitive Dialogue)	EU OPEN or TENDER COMPETITIVE DIALOGUE	EU RESTRICTED TENDER	NEGOTIATED PROCEDURE
Features				
<i>Way of publication</i>	Notice in Ukrainian only on PROZORRO (www.prozorro.gov.ua) and on own web-page of procuring entity.	Notice in Ukrainian and in English on PROZORRO (www.prozorro.gov.ua) and in Ukrainian on own web-page of procuring entity.	Notice in Ukrainian and in English on PROZORRO (www.prozorro.gov.ua) and in Ukrainian on own web-page of procuring entity.	Only contract award notice in Ukrainian on PROZORRO (www.prozorro.gov.ua)
<i>Deadlines for submission of tender</i>	In case of open tender – not less than 15 days for submission of bids from publication of tender notice; In case of competitive dialogue – not less than 30 days (from publication of tender notice) for submission of initial bids, and not less than 15 days for submission of final bids.	In case of open tender – not less than 30 days for submission of bids from publication of tender notice; In case of competitive dialogue – not less than 30 days (from publication of tender notice) for submission of initial bids, and not less than 15 days for submission of final bids.	Not less than 30 days (from publication of tender notice) for submission of request to participate in qualification selection, and not less than 25 days for submission of final bids.	N/A

<i>Amendments to Tender Documents</i>	If made –time limit for bid submission must be extended for not less than 7 days.	If made – time limit for bid submission must be extended for not less than 7 days	If made – time limit for bid submission must be extended for not less than 7 days	N/A
<i>Answers to requests of Bidders</i>	A contracting authority is obliged to answer requests (publicised as anonymous) through the e-system. All answers are published and available for public access.	A contracting authority is obliged to answer requests (publicised as anonymous) through the e-system. All answers are published and available for public access.	A contracting authority is obliged to answer requests (publicised as anonymous) through the e-system. All answers are published and available for public access.	N/A
<i>Evaluation Criteria</i>	Lowest price only or Lowest price and other criteria (minimum weight of price is 70%, except for competitive dialogue)	Lowest price only or Lowest price and other criteria (minimum weight of price is 70%, except for competitive dialogue)	Lowest price only or Lowest price and other criteria (minimum weight of price is 70%)	N/A
<i>Possibility of negotiations</i>	NO for open tender and YES for 1st stage of competitive dialogue	NO for open tender and YES for 1st stage of competitive dialogue	No	Yes
<i>Digital signature for e-submission</i>	Required	Required	Required	N/A

5. What are the types of information that the legislation requires to be included in notices of invitation to tender?

The Law requires that, in principle, all public procurement procedures (except for negotiated procedure) are launched with the publication of a call for competition (procurement notice).

The minimum content of different types of procurement notices (announcements) is defined in the Law with regard to: 1. Open bidding 2. Restricted bidding and 3. Competitive dialogue procedures. The Law determines the minimum content of those notices in a way equivalent to requirements set in the Annex V of the 2014/24 Directive. Like in the EU law, in Ukraine content of

standard notices is defined by the Law and practically procurement notices' information is mostly being filled in by procuring entities by using predesigned electronic forms at the Authorised e-platforms and then all being centralized at Prozorro website.

The table below lists the minimum content of public procurement notices for open bidding, restricted bidding and competitive dialogue procedures.

Procurement procedure	Minimum content of public procurement notices
Open bidding	<ol style="list-style-type: none"> 1) name, location and identification code under USREOU of contracting authority, its category; 2) the title of the procurement item and lots (if any) indicating the CPV, the codes and names of other relevant classifiers of procurement item (if any); 3) the quantity and place of delivery of goods, or volume and place of the performance of works or the provision of services; 4) the estimated value of the procurement item; 5) time frame for the delivery of goods, the performance of works, the provision of services; 6) the deadline for submitting tender proposals; 7) contract payment conditions; 8) the language(s) to be used for preparing tender proposals; 9) the amount, type and conditions of tender security (if requested by the contracting authority); 10) the date and time of reveal of the tender proposals if the announcement of open bidding is published according to the provisions of part 3 of Article 10 of The Law; 11) the size of the minimum step of lowering the price during the electronic auction in the range from 0.5 % to 3 % of the estimated value of the procurement or in UAH; 12) the mathematical formula to be used during the e-auction to calculate discounted price with use of other evaluation criteria (if applied). <p>The announcement of open bidding procurement procedure may contain other information.</p>
Restricted bidding	<ol style="list-style-type: none"> 1) name, location and identification code under USREOU of contracting authority, its category; 2) the title of the procurement item and lots (if any) indicating the

	<p>CPV, the codes and names of other relevant classifiers of procurement item (if any);</p> <p>3) the quantity and place of delivery of goods, or volume and place of the performance of works or the provision of services;</p> <p>4) the estimated value of the procurement item;</p> <p>5) time frame for the delivery of goods, the performance of works, the provision of services;</p> <p>6) all qualification criteria in accordance with Article 16 of The Law and information on the method of documentary confirmation of the compliance of the tenderers with the established criteria, as well as the minimum allowable parameters for each established qualification criterion, the weight of each criterion and the method for evaluating of parameters exceeding the minimum allowable level for selection of tenderers in the qualification selection to be invited to submit their tenders at second stage;</p> <p>7) the number of tenderers that will be invited to participate in the second stage based on the results of the qualification selection;</p> <p>8) deadline for submission of proposals for participation in qualification selection;</p> <p>9) date and time of disclosure of proposals for participation in qualification selection;</p> <p>10) terms of payment;</p> <p>11) language (s) in which proposals should be prepared;</p> <p>12) amount, type and conditions for the provision of tender security (if contracting authority requires it);</p> <p>13) the size of the minimum step of lowering the price during the electronic auction in percent or monetary units and the mathematical formula that will be used when conducting the electronic auction at the second stage of restricted bidding to determine the indicators of other evaluation criteria.</p> <p>Other information relevant to the participation in restricted bidding is indicated by contracting authority in the tender documents, which are made public together with the public procurement notice</p>
Competitive dialogue	<p>1) name, location and identification code under USREOU of contracting authority, its category;</p> <p>2) the title of the procurement item and lots (if any) indicating the</p>

	<p>CPV, the codes and names of other relevant classifiers of procurement item (if any);</p> <p>3) ground for application of competitive dialogue in accordance with article 34 of The Law;</p> <p>4) the estimated value of the procurement item;</p> <p>5) the deadline for submitting tender proposals for first stage;</p> <p>6) the language(s) to be used for preparing tender proposals;</p> <p>7) the amount, type and conditions of tender security (if requested by the contracting authority);</p> <p>8) the date and time of disclosure of tender proposals for first stage of the competitive dialogue</p>
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6. Please list the selection criteria, which may be deployed in tender procedures.

The Law requires that each tender documentation for each concrete tender procedure (covering open tender, restricted tender and competitive dialogue) must include **one or several** or all of 4 possible qualification criteria as determined by Article 16 of the PPL, together with mandatory exclusion grounds (the grounds for refusal in tender participation) listed in Article 17 of the Law. Thirteen (13) **exclusion grounds** (related to legal restrictions and some capacities of tenderers including criminal records, bankruptcy, debts on tax and social security contributions etc.) are listed in Article 17 of the PPL. All of them must be applied in each tender process (or even in the case of negotiated procedure). If a tenderer is not compliant with the qualification criteria or the exclusion grounds apply, its bid must be rejected.

The Law requires also that those contracting authorities apply qualification criteria from the following list of article 16:

- 1) availability of equipment, resources and technology;
- 2) availability of staff with the relevant qualification and necessary knowledge and experience at the economic operator's disposal;
- 3) demonstrated experience in the performance of contract(s) that were similar in regard to procurement item;
- 4) financial standing as demonstrated by financial reporting.

7. What are the rules for defining the technical specifications?

The Law defines technical specifications (Article 1 item 33) as the set of technical conditions established by the procuring entity which defines characteristics of the goods (goods), services (services) or necessary for the performance of works. Accordingly, they may include environmental and climate impact indicators, design features (including fitness for the disabled), conformity, productivity, resource efficiency, safety, quality assurance procedures, product name requirements, terminology, symbols, methods of testing and testing, requirements for packaging, marking and

labelling, instructions for users, technological processes and production technologies at any stage of the life cycle of works, goods or services. According to the special dedicated Article 23, based on provisions of Directive 2014/24/EU, technical specifications must include the information about all the required characteristics of the works, services or goods being procured, including their technical, functional and qualitative characteristics. These characteristics may include the description of the specific technological process, manufacturing technology, goods supply sequence, performing of necessary works and providing a service / services. Technical specifications may include information on the transfer of intellectual property rights on the item.

Technical specifications may be in the form of a list of operational or functional requirements, including environmental characteristics, provided that such requirements are sufficiently precise so that the procurement item is clearly understood by contracting authority and by tenderers.

In the event that it is not possible to complete the description of the characteristics, the technical specifications may contain references to the standard characteristics, requirements, symbols and terminology associated with the goods, works or services that are procured, provided by existing international, European standards, other common technical European norms, other technical reference systems recognized by the European standardization bodies or national standards, norms and rules. The phrase "or equivalent" must be added to each reference.

8. What are the award criteria used in tender procedures, and are they dependent on the type of procedure used? Please provide us with data about them. Please provide an overview table with the award criteria for each type of procedure.

According to Article 29 of The Law tenders/offers shall be evaluated based on the criteria and methods of evaluation specified by the contracting authority in the tender documents/announcement of simplified procurement and by way of applying an e-auction. The evaluation (award) criteria shall be the following:

- 1) price; or
- 2) life-cycle cost; or
- 3) price with other evaluation criteria, for example: terms of payment, completion period, warranty maintenance, technology transfer and experience of managerial, scientific and production personnel, application of environmental and/or social protection measures related to the procurement item.

If the contracting authority, along with the price, applies other evaluation criteria for selection of the most economically advantageous tender, their value equivalent or relative weights in the total score of tender/offer evaluation shall be indicated in the tender documents/ announcement of simplified procurement. The relative weight of the price/life-cycle cost criterion shall not be less than 70 per cent except for the application of a competitive dialogue procedure where the weight of price remains under the discretion of the contracting authority.

The criteria listed above can be applied in any public procurement procedure.

From April 2020 it is possible to use life-cycle cost evaluation criteria/approach reflecting the purchase price plus other costs that will be directly incurred by the contracting entity in the use, maintenance or disposal of the procurement item. As with the lowest price criterion, the life-cycle

costs can be used solely or in combination with other criteria and in the latter case (combination with other criteria) life-cycle costs cannot be less than 70% of weight (except for competitive dialogue).

According to art.29 of The Law in case of application of life-cycle cost evaluation criteria it can include in addition to price one or several cost elements to be incurred by contracting authority during the life cycle of the product (goods), work (works) and service (services), namely:

- 1) related to the use of supplies, work (works) or service (services), in particular, energy consumption and other resources;
- 2) related to maintenance;
- 3) related to the collection and utilization of supplies;
- 4) related to the influence of external environmental factors during the life cycle of supplies, work (works) or service (services), if their monetary value can be determined, in particular, the impact of greenhouse gas emissions, other pollutants and other costs, related to the reduction of the environmental impact (environment).

9. Does the legislation allow awarding public contracts considering criteria other than price? If so, which are the other criteria that can be used? Does the legislation foresee the possibility that contracting authorities and/or contracting entities (as understood under the EU public procurement rules) base their decisions on the most economically advantageous tender?

Yes, The Law envisages the possibility to use the criterion of evaluation based solely on price or a multi-criteria evaluation. In case the multi-criteria evaluation is used, the price component cannot be less than 70 % of weight except for application of competitive dialogue procedure where the weight of price remains under the discretion of contracting authority. The Law lists a **non-exhaustive list** of other criteria, which may be applied, for example terms of payment, completion period, warranty maintenance, technology transfer of and training of managerial, scientific and production personnel, application of environmental and/or social protection measures related to the procurement item etc.

The Law operates the “most economically advantageous tender/offer” which means a tender/offer recognised to be the best one as a result of tender/offer evaluation in accordance with Article 29 of The Law.

Please also see the answer to question 8.

10. Does the legislation require a clear distinction between the exclusion, selection and award criteria?

The Law closely follows the approach present in the EU public procurement directives and clearly distinguishes, on the one hand, exclusion (article 17) and qualification (selection) criteria (article 16) and on the other award criteria (article 29). Those criteria are governed by separate rules. Exclusion and qualification (selection) criteria are related to the personal situation of economic operators, their capacities, experience and qualifications and their role is to ensure that the contract will be awarded to a reliable bidder, able to perform the contract in question. Contract award (tender evaluation) criteria are strictly related to the object of procurement and their role is to enable the selection of the most advantageous tender from the perspective of the contracting authority.

It is important to mention that the award criteria are taken into consideration when the decision on contract conclusion is made.

11. Are there any local, regional or national preferences schemes? If yes, what do they consist of?

The Law is based on principles of non – discrimination and equal treatment of economic operators applying for public contracts. More specifically, Article 5 of the PPL strictly forbids discrimination on national or related grounds, stating that “Domestic and foreign tenderers, regardless of their form of ownership and business legal structure, shall participate in procurement procedures on equal terms”.

However, a recently adopted modification of Article 6¹ of the PPL (Title X “Final and Transitional Provisions”) provides for a requirement that offers submitted in public procurement procedures contain (within a period of 10 years after the entry into force of that law) certain minimum “domestic” content. The degree of this content should increase every year up to a minimum of 40 % as of 2028). The new provisions were supposed to become applicable in July 2022.

At the moment of writing, it is too early to state how they will be applied in practice – they require the adoption of sub-law implementing regulations to be effective.

Compliance with the international commitments of Ukraine is ensured, though, by inclusion in the final and transitional provisions of the PPL of the following provision (which seems to apply with regard to GPA but also Association Agreement Ukraine - EU):

"This paragraph (envisaging domestic content provisions) does not apply to procurements that fall under the provisions of the Law of Ukraine "On Ukraine's Accession to the Agreement on Public Procurement", as well as provisions on public procurement of other international treaties of Ukraine approved by the Verkhovna Rada of Ukraine".

12. How are corruption/conflict of interest aspects and related questions taken into consideration by existing legislation? Please list the exclusion criteria in this respect in the tender procedures and state whether they are mandatory or their deployment depends on the contracting authority.

According to part 5 of Article 11 of The Law the determination or appointment of an authorized person (person being responsible for the organization and conduct of procurement procedures) should not create a conflict between the interests of the contracting authority and tenderer, or between the interests of the tenderers in the procurement procedure/simplified procurement, the presence of which may affect the objectivity and impartiality of the decision to choose the winner of the procurement procedure / simplified procurement.

For goals of this Law “conflict of interest” is clarified in article 11 of the Law and means any situation where a staff member of the procuring entity or any person or body acting on behalf of the procuring entity who is involved in the conduct of the procurement procedure/simplified procurement or may influence the outcome of that procedure/procurement, has a private interest, which may affect the objectivity or impartiality of its decisions or the commission or non-execution of actions during the procurement procedure / procurement and/or the contradiction between the private interest of the

procuring entity's employee or any person or body acting on behalf of the procuring entity and participating in conduction of procurement procedure / procurement, and its official or representative powers that affects the objectivity or impartiality of decisions or committing or non-committing actions during the procurement procedure / procedure.

According to Article 17 Contracting authority shall mandatory reject any tender or refuse in participation in the negotiated procedure (except for cases specified in points 2, 4, 5 of part 2 of Article 40 of The Law) if:

- information on legal entity that is a tenderer is included in the Unified State Register of Perpetrators of Corruption or Corruption-related Offences;
- an officer (official) of tenderer authorized by the tenderer to represent its interests during a procurement procedure, or an individual who is a tenderer has been hold liable by law for the commitment of a corruption offence or corruption related offence;
- a legal entity that is a tenderer (except for non-residents) has no anti-corruption program in place or has no authorized officer in charge of the implementation of the anti-corruption program appointed, where the value of the contract for the procurement of goods, services or works equals to or exceeds UAH 20,000,000 (incl. lots if any);
- there is indisputable evidence that the tenderer offers, gives or agreed to give a reward, directly or indirectly, to any officer of the procuring entity, of another public authority in any form (proposal of employment, valuables, a service, etc.) with the view to influence the decision on selecting the successful tenderer or on choosing a certain procurement procedure by the procuring entity.

13. How does Ukraine regulate the award of public contracts in the area of defence and security?

The main document regulating the state contracting in the field of defence and security is the Law of Ukraine “On Defence Procurement”, which was adopted by the Verkhovna Rada on July 17, 2020. The law came into force on January 1, 2021 and provides a clear mechanism for public defence and security contracting. The Law of Ukraine “On Defence Procurement” was developed on basis of EU Defence Procurement Directive 2009/81/EC.

This law defines the general legal framework for planning, the procedure for forming the scope and specifics of the procurement of defence goods, works and services to meet the needs of the security and defense sector, as well as other goods, works and services to guarantee the security and defence needs, as well as the procedure for state and democratic civil control in the field of defence procurement.

The purpose of this law is to define the legal framework to ensure the material, technical and scientific needs of the security and defence sector of the state through the effective and transparent implementation of defence procurement in compliance with measures to protect national interests, create a competitive environment, prevent corruption in defence procurement, develop fair competition, as well as effective and transparent planning, implementation and monitoring of defence procurement.

To implement the Law, the Government has adopted more than 20 legal acts regulating the process of defence procurement.

The key changes that took place after the adoption of the Law intend to transfer defence procurement to a tender procedure. One of the components of this process is creation of an electronic register of selection participants and executors of the state defence order. Creating a registry is a key component of defence procurement reform. It is needed both to monitor the implementation of defence contracts and to ensure transparency in this area.

Like the generally accepted Prozorro public procurement system, the new register changes the very nature of the formation and execution of the state defence order. The approach is a consistent step in the fight against corruption in the defence sector.

The implementation of the Law on Defence Procurement has created a 3-year procurement plan and it will increase parliamentary control over the implementation of the state defence order.

The law stipulates the following:

- ordering weapons, military equipment (and everything else that the army and combat units need) at open electronic auctions;
- most purchases for the army and law enforcement agencies follow the rules of the Public Procurement Law;
- an electronic procurement system can be dispensed with only during martial law period;
- arms manufacturers will compete with each other wherever possible, except the case of unique weapons or equipment being produced by a single enterprise (this provision is in line with the Article 28(1) point (e) of the Directive 2009/81/EC);
- most information on defence procurement is declassified, especially on dual-use goods (those that can be purchased by both military and civilians). Only critical data on weapons and equipment, which should not reach the aggressor country, will remain secret.

The Law on Defence Procurement defines new types of procurement.

According to Article 16 of the Law, the purchase of goods, works and services by public customers may be carried out by applying one of the following purchases:

- 1) restricted tendering:
 - negotiations;
 - phased (step-by-step) negotiations.
- 2) tendering with limited participation;
- 3) simplified bidding using an electronic procurement system;
- 4) simplified selection without the use of electronic procurement system.

The procedure for conducting these types of procurement is regulated by the relevant regulations of the Government.

In order to conduct defence procurement under martial law period, the Government has adopted regulations establishing simplified mechanisms / procedures for conducting these procurements to promptly meet the urgent needs of the Armed Forces in wartime.

At the same time, the Government had determined that under conditions of martial law procurement, the customers must adhere to the principles of public procurement. In accordance with

the Law of Ukraine “On Defence Procurement”, state customers in the field of defence must adhere to the following principles of defence procurement:

- timeliness and compliance with the decisions taken to protect the national interests of Ukraine, ensure the needs of security and defence;
- efficient use of means, productivity.

14. Is there a public procurement strategy and action plan in place? If yes, please explain the scope and the timeframe of the strategy and the mechanisms for monitoring its implementation.

One of the most important strategic documents that outline the development path is the “Strategy for reforming the public procurement system” (“road map”), approved by the Resolution of the Cabinet of Ministers of Ukraine of 26-th of February № 175-r. The purpose of the “road map” is to create a modern and effective public procurement system aimed at creating a competitive environment and further development of fair competition in the sector of procurement in Ukraine, as well as ensuring Ukraine's international obligations in the sector of public procurement by consistently adapting Ukrainian legislation to EU standards in 2015-2022.

The “road map” is split up into five stages.

The first stage must be completed within six months from the date of entry into force of the Association Agreement. Implementation of the reform objectives at this stage through the implementation of Article 150 of Chapter 8 of Section IV of the Association Agreement will provide the most essential principles and legal concepts, the basis of the institutional structure according to EU standards and the possibility of mutual access of public entities to the markets of EU and Ukraine. Pursuant to Articles 150 and 151 of the Association Agreement, six months after the entry into force of the Association Agreement, the parties are obliged to ensure compliance with standards, including the publication of information on conditions, procedures and criteria for selecting contractors and standards of judicial protection of those whose interests have been harmed by illegal decisions of contracting authority.

The second stage must be completed within three years from the date of entry into force of the Association Agreement. At this stage, it is necessary to make some changes in the legislation of Ukraine to the terminology, standard procedures and bring the legislation of Ukraine into conceptual compliance with the requirements of EU directives in the field of public procurement. It is expected that the implementation of tasks at this stage will contribute to the opening of markets for government contracts for the purchase of goods for contracting authorities of all levels of government and local government;

The third stage must be completed within four years from the date of entry into force of the Association Agreement, and its result should mainly be the harmonization of rules for concluding contracts for goods, works or services by economic entities granted special or exclusive rights to provide economic infrastructure, utilities services to the population and which usually have a monopoly position in the market. As a result of the reform tasks at this stage, mutual access to the markets of state contracts for the supply of goods of contracting authority enterprises operating in certain industries (gas, electricity, water, postal services and transport) will be opened;

The fourth stage must be completed within six years from the date of entry into force of the Association Agreement and as a result of the implementation of its obligations, including the introduction of modern institutional mechanisms, this stage will provide an opportunity for a centralized procurement model. This will provide possibilities to open mutual access to the markets of state contracts for the purchase of works and services, as well as ensure the participation of economic entities in the procedures for concluding concession agreements at all levels of government in the EU and Ukraine;

The fifth stage (current stage, completion expected by the end of 2022) is scheduled to be completed within eight years of the entry into force of the Association Agreement. The main result of the reform stage will be providing access to markets for goods, works and services purchased not only for public contracting authorities, but also enterprises that ensure the functioning of economic infrastructure on the basis of special and exclusive rights in energy, water, transport, postal services, etc.

Concerning the monitoring for implementation of the road map, ministries and other central executive bodies must submit to the Ministry of Economy of Ukraine two times per year by January 15 and July 15 information on the implementation of the action plan for its generalization and submission to the Cabinet of Ministers of Ukraine by January 30 and July 30.

Another important Strategic document in given context is the Strategy of reforming of public finance management system for 2022-2025 approved by Resolution of Cabinet of Ministers #1805-r of 29/12/2021 which includes relevant provisions on public procurement strategical developments synchronized with dedicated “road map” described above.

II. INSTITUTIONAL SET-UP (ADMINISTRATIVE CAPACITY)

15. Please describe which domestic institutions are competent on public procurement policy, and their institutional set-up.

The main institution responsible for public procurement policy is “the Authorised Body” mentioned in Article 7 of the Law. The Authorised Body is responsible for the regulation and implementation of the state procurement policy within the scope of its powers established by the Law. Currently, the role of the Authorised Body is played by the Ministry of Economy. More detailed information about the roles and tasks of the Authorised Body is provided in answer to Question 16.

Other stakeholders in the field of public procurement are:

- The State Audit Service/SAS (<https://dasu.gov.ua/en>) as a key governmental control body carrying out planned and ad-hoc audits of compliance by contracting authorities with the rules for the disbursement of budgetary funds and the regulations for the use of state-owned and municipal assets including control/oversight over public procurement operations conducted through PROZORRO;

- The Anti-Monopoly Committee of Ukraine/AMCU (www.amcu.gov.ua) as the Complaints Review Body in the context of ongoing public procurement procedures and also the enforcement agency in regard to bid-rigging;

- The Accounting Chamber/AC (<https://rp.gov.ua/>), exercising parliamentary control over the execution of the state budget, the efficiency of public institutions in the implementation of budgetary programs and the effectiveness of public procurement as a component of public finance management;
- The State Treasury Service (www.treasury.gov.ua) carrying out operational control over payments to be made under public contracts resulting from public procurement procedures;
- State Enterprise/SE PROZORRO (www.prozorro.gov.ua) is the IT operator and administrator of the e-procurement system subordinated to the Ministry of Economy;
- Civil Society Organizations, exercising an increasing and important oversight role by monitoring public procurement and anti-corruption activities. In Ukraine, civil society organizations and their associations are entitled to free and full access to information about public procurement and can monitor these activities. A specific important role is played by NGO Transparency International Ukraine which was first initial formal owner of PROZORRO IT-system (further transferred to Ministry of Economy on a free-of-charge basis) and now is the owner of analytical tool BI.PROZORRO (www.bi.prozorro.org) and NGOs monitoring online portal Dozorro (www.dozorro.org).

16. What are the tasks and powers of these bodies? Do they have the necessary institutional capacity to carry out their tasks? Please provide their organisation chart and the number of staff employed.

The Authorised Body (currently it is Ministry of Economy of Ukraine) mentioned in the answer to Question 15 performs, in particular, the following functions:

- develops and approves legal acts necessary for the regulation of public policy in the sector of public procurement;
- analyzes the functioning of the public procurement system;
- annually prepares and submits to the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the Accounting Chamber a report containing an analysis of the functioning of the public procurement system (on quantitative and cost indicators of public procurement in terms of procedures and subjects of public procurement, level of competition, number of complaints) and summary information on the results of control in the field of public procurement;
- summarizes the best practices in public procurement, in particular international, studies and shares international expertise in public procurement;
- ensures the functioning of the web portal on public procurement and information resources, as well as adding content to such resources;
- interacts with the public on improving the public procurement system and organizes meetings and seminars on public procurement;
- carries out international cooperation in the field of public procurement;
- provides generalized answers of a recommendatory nature on the application of legislation in the field of public procurement;
- provides free consultations on public procurement on the information resource;

- cooperates with public authorities and public organizations to prevent corruption in the sector of public procurement;
- informs the public about public procurement policies and rules;
- together with other bodies develops methodologies on the peculiarities of public procurement in various fields and publishes them on the information resource.

All of the above-mentioned tasks are performed by the Public Procurement Department, which is an independent structural unit of the Ministry of Economy of Ukraine. Detailed structure, responsibilities and tasks of the Public Procurement Department are described in the Regulations on the Department of Public Procurement approved by the Decree of the Ministry of Economy of Ukraine of 18-th of December 2019 № 722.

According to these Regulations the Public Procurement Department consists of the following structural units:

- public procurement policy division;
- public procurement regulatory division;
- international activities division;
- public procurement professionalization division;
- analytics and methodological coordination division;
- public procurement consulting division.

As of December 31, 2021, the official staff list of the Public Procurement Department sets the number of employees to 30.

17. Please inform about the responsibilities and activities related to monitoring of procurement procedures.

According to the Law of Ukraine “On the Main Principles of the Public Financial Control in Ukraine” the SAS and its interregional territorial bodies exercise control over compliance with the legislation in the sphere of procurement, in particular via procurement monitoring.

The procedures for monitoring the procurement procedures and the specifics of implementing the results of procurement monitoring are defined in Article 8 of the Law of Ukraine "On Public Procurement".

Procurement monitoring means the analysis of a contracting authority’s compliance with the public procurement legislation during the conduction of a procurement procedure, the conclusion of a contract and its performance aimed to prevent violations of the public procurement legislation.

The main difference between procurement monitoring and other types of control activities of the public financial control (inspection, financial audit, procurement check) is its implementation at the location of the public financial control body.

Procurement monitoring is conducted during the procurement procedure, the conclusion of a procurement contract and the validity term thereof.

The decision to start monitoring of the procurement procedure is taken by the head/deputy head (or a person authorized by the head) of the public financial control body if there are one or several of the following grounds:

- 1) data of automated risk indicators;
- 2) information on the signs of the violation (violations) of the public procurement legislation received from the public bodies, people's deputies of Ukraine, local authorities;
- 3) publications in the mass media that contain information on the signs of the violation (violations) of the public procurement legislation;
- 4) signs of the violation (violations) of the public procurement legislation found by the public financial control body in the information published in the electronic procurement system;
- 5) information received from the public associations on the signs of the violation (violations) of the public procurement legislation found following the public control in the field of public procurement under Article 7 of the Law "On Public Procurement".

The following information may be used to analyze the data indicating signs of the violation (violations) of the public procurement legislation:

- information published in the electronic procurement system;
- information of the unified state registers;
- information in databases open for access by the central authority implementing the state policy in the field of the public financial control.

To date, the Order of the Ministry of Finance of Ukraine of October, 28, 2020, No. 647 has approved 50 automated risk indicators, which are calculated to determine procurement procedures which contain signs of the violations of the public procurement legislation and/or testify the possibility of such violations. In addition, the mentioned order has approved a methodology for determining automated risk indicators and the procedure for their application.

The public financial control body shall publish **a notice on the decision to start monitoring** of the procurement procedure in the electronic procurement system within two working days upon such a decision, indicating the unique number of the announcement on a competitive procurement procedure assigned by the electronic procurement system and/or the unique number of the notice of intention to enter into a procurement contract (in the case of a negotiated procurement procedure), as well as a description of the grounds for monitoring of the procurement procedure.

It should be noted that the notice on the start of procurement monitoring doesn't not cease the procurement procedure.

If the appellate authority accepts the appellant's complaint for consideration in the manner, prescribed by Article 18 of the Law "On Public Procurement", the public financial control body shall not decide to start monitoring of the procurement procedure for those violations, circumstances and/or grounds that were or are the subject to reviewing by the appellate authority, regardless of the appellate authority's decision on such violations, circumstances and/or grounds. At the same time, the SAS shall take actions to bring an officials/authorized persons to the administrative responsibility for nonfulfillment of the appellate authority's decision on reviewing such complaints.

Monitoring of the procurement procedure may not exceed fifteen working days from the next working day upon the publication of the notice on the beginning of monitoring of the procurement procedure in the electronic procurement system.

During monitoring of the procurement procedure, through the electronic procurement system the official of the public financial control body responsible for monitoring of the procurement procedure has a right to request the contracting authority to provide explanations (information, documents) on the decisions and/or actions or omissions being under monitoring. The electronic procurement system shall automatically make all such requests available to the public. Within three working days upon the publication of the request to provide explanations on decisions and/or actions or omissions being under monitoring, the contracting authority should provide appropriate explanations (information, documents) through the electronic procurement system.

Following monitoring of the procurement procedure, the official of the public financial control body draws up and signs **a conclusion on the results of monitoring of the procurement procedure** (hereinafter – a conclusion). Such a conclusion shall be approved by the head/deputy head of the public financial control body. Such a conclusion shall be published in the electronic procurement system within three working days from the date of its compiling.

The form of the conclusion on the results of procurement monitoring and the procedure for its filling are approved by the Order of the Ministry of Finance of Ukraine of September, 08, 2020, No. 552.

The conclusion should contain the following information:

- 1) name, location and identification code of the contracting authority in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations, in respect of which the procurement procedure was monitored;
- 2) the name of the subject of procurement with the code of the Unified Procurement Dictionary (in case of division into lots such information should be indicated for each lot) and the name of the relevant classifiers of the subject of procurement and parts of the subject of procurement (lots) (if available) and its expected value;
- 3) a unique number of the announcement on the competitive procurement procedure assigned by the electronic procurement system and/or a unique number of the notice of intention to enter into a procurement contract (in the case of a negotiated procurement procedure);
- 4) a description of the violation (violations) of the public procurement legislation revealed by the procurement procedure monitoring;
- 5) obligations on the elimination of the violation (violations) of the public procurement legislation.

If monitoring of the procurement procedure reveals the signs of the violation of the law and the measures to eliminate such violations are not within the competence of the public financial control body, the relevant public bodies shall be notified about this in writing.

The contracting authority has a right to apply to the public financial control body once within three working days upon the conclusion published for clarification of the conclusion content and its obligations specified in the conclusion.

Within five working days upon the conclusion published by the public financial control body, the contracting authority shall publish through the electronic procurement system the information and/or documents testifying to the elimination of the violation (violations) of the public procurement legislation specified in the conclusion, or reasoned objections to the conclusion, or the information on the reasons for the inability to eliminate the identified violations.

If the public financial control body confirms that the contracting authority has eliminated the violation (violations) of the public procurement legislation specified in the conclusion, and the public financial control body publishes the relevant notice in the electronic procurement system within five working days upon the publication of the corresponding information by the contracting authority in the electronic procurement system, an official of the contracting authority and/or authorized person of the contracting authority shall not be brought to the administrative responsibility for the violation of procurement law due to the violations that were eliminated by the contracting authority under the conclusion.

If the contracting authority disagrees with the information specified in the conclusion, it may appeal the conclusion in the court within ten working days upon its publication, which shall be indicated in the electronic procurement system within the next working day upon the challenge date. If the contracting authority fails to eliminate the violation specified in the conclusion, which led to the non-compliance with the Law “On Public Procurement”, and the conclusion has not been appealed in the court, following the monitoring results the public financial control body shall take actions to bring to the administrative responsibility for the violations of the public procurement legislation after the deadline for appeal to the court.

During the 2020 - I quarter of 2022, the SAS monitored 23.1 thousand procurement procedures with a total value of 472.7 billion UAH.

In fulfilment of the SAS’s obligations set out in the conclusions on the results of the procurement monitoring, the contracting authorities have eliminated the violations by cancelling tenders or terminating contracts in almost 6,7 thousand procurements with a total value of 29,1 billion UAH and the public financial control body has achieved **the main goal of procurement monitoring to prevent the violations** of the public procurement legislation.

Responsibility for the violations of procurement legislation is defined by the Article 164-14 of the Code of Ukraine on Administrative Offenses, in particular as follows:

- violation of the procedure for determining the subject of procurement; untimely provision or non-provision of explanations on the content of the tender documentation; tender documentation wasn’t drawn up due to the requirements of the law; the amount of the tender offer security, established in the tender documentation, exceeds the limits determined by the law; non-disclosure or violation of the terms of publication of procurement information; non-disclosure or violation of the procedure for disclosure of information on procurement carried out under the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of Coronavirus Disease (COVID-19)”; failure to provide information and/or documents in cases provided by the law; violation of the terms of consideration of the tender offer;

- acquisition of goods, works and services before/without procurement/simplified procurement procedures in accordance with the requirements of the law; application of competitive dialogue, restricted tendering, or negotiated procurement procedure on terms not provided by the law; non-rejection of the tender offers that were subject to rejection in accordance with the law; rejection of

the tender offers on grounds not provided by the law or not in accordance with the requirements of the law (unjustified rejection); concluding a procurement contract with the participant, who became the winner of the procurement procedure, the terms of which do not meet the requirements of the tender documentation and/or the tender offer of the winner of the procurement procedure; amending the essential terms of the procurement contract in cases not provided for by the law; entering unreliable personal data into the electronic procurement system and not updating them in case of change; violation of the deadlines for publication of tender documents;

- failure to fulfil the decision of the Antimonopoly Committee of Ukraine as an appellate body on the results of consideration of appellers' complaints, the submission of which is provided by the law;

- conclusion of the contracts envisaging customer's payment of goods, works and services before/without conducting procurement procedures/ simplified procurement, defined by the law.

If the public financial control body confirms that the contracting authority has eliminated the violation (violations) of the public procurement legislation specified in the conclusion, and the public financial control body publishes the relevant notice in the electronic procurement system within five working days upon the publication of the corresponding information by the contracting authority in the electronic procurement system, an official and/or authorized person of the contracting authority shall not be brought to the administrative responsibility.

It should be noted that monitoring is not carried out on compliance of the tender documentation with the requirements of Part 4 of Article 22 of the Law of Ukraine "On Public Procurement", namely the existence of requirements that restrict competition and lead to discrimination of participants. At the same time, as noted, the SAS takes actions to bring the officials/authorized persons of the contracting authority to the administrative responsibility for non-fulfilment of the decisions of the appellate body, including on these issues.

18. Are there centralised purchasing bodies? If so, please provide information on their setup and the activities conducted.

Yes, there are. Centralised purchasing organisations (CPBs) are defined in The Law as legal entities owned by the State or local self-governing authorities and designated by the Cabinet of Ministers of Ukraine, the Council of Ministers of the Autonomous Republic of Crimea, or local self-governing authorities as contracting authorities responsible for organising and holding bidding and procurements under framework agreements on behalf of contracting authorities in accordance with this Law.

Peculiarities of the establishment and activity of the CPBs were approved by the Resolution of the Cabinet of Ministers of Ukraine of December 27, 2019 № 1216 "On Peculiarities of the Establishment and Activity of Centralized Procurement Organizations" (hereinafter - the Resolution). The Resolution provides a specific mechanism for the creation and operation of the CPB, as well as defines the conditions of their activities and interaction with other contracting authorities.

CPBs can be determined for the needs of public authorities and local governments, as well as for legal entities and their associations that are contracting authorities in accordance with the Law, both at the central and regional levels.

Therefore, the first step in organizing a CPB is to establish a body that should decide on the definition of such an organization.

According to the Resolution CPBs for conducting tenders and procurements under framework agreements are determined from newly created and/or existing legal entities by:

1. The Cabinet of Ministers of Ukraine - in the interests of executive bodies, social insurance bodies established in accordance with the law, as well as such legal entities and their associations that are contracting authorities in accordance with The Law and defined in the Resolution.

2. The Council of Ministers of the Autonomous Republic of Crimea - in the interests of the executive authorities of the Autonomous Republic of Crimea, as well as such legal entities and their associations that are contracting authorities in accordance with The Law and defined in the Resolution.

3. Local governments (city and regional councils, if the population of the city or region is equal to or exceeds 1 million people) - in the interests of local governments, as well as legal entities and their associations that are contracting authorities in accordance with the Law and defined in the Resolution.

In accordance with the requirements of the Resolution of the CPB is defined in the following organizational and legal form:

- state institution or state enterprise - by decision of the Cabinet of Ministers of Ukraine;
- communal institution, communal enterprise - by the decision of the local self-government body.

The body that decides on the definition of a CPB may, in its decision, establish a mandatory or voluntary procurement mechanism through the CPB for contracting authorities, which determines the financial model that ensures the functioning of such an organization.

The first mechanism is when the body in the decision to determine the CPB can establish a list of contracting authorities for whom tenders through the CPB will be mandatory, as well as a list of goods and services (except maintenance), the purchase of which through such an organization is mandatory. In case of a decision on mandatory tenders in the interests of CPB's contracting authorities and/or on determining the list of goods and services, the purchase of which is mandatory through the CPB, the body that decides on the establishment of the CPB provides funding for its activities from the state budget, funds of the relevant local (local) budgets or other funds.

The second mechanism is to receive remuneration for the organization and conduct of tenders. The requirements of the Resolution set the maximum amount of remuneration for organizing and conducting tenders in the interests of the contracting authorities of the CPB in the case when conducting tenders in the interests of such a contracting authority by the said organization is not mandatory. The contracting authority has the right to independently choose the CPB from among those determined by the Cabinet of Ministers of Ukraine, local governments, except in cases where contracting authorities are required to make purchases through the CPB.

The criteria to be met by the future CPB are defined by the Resolution. In particular, there must be at least 4 authorized persons and structural units that will be responsible for interaction with

contracting authorities, organization and conduct of procurement, legal unit and unit, whose tasks and functions will include market analysis of goods and services.

In addition, when a newly created legal entity is determined, its head is elected on a competitive basis, for a term not exceeding five years with the right to re-participate in the competition after the completion of the previous contract.

The procedure for procurement by contracting authorities through the CPB and the main functions of the CPB are defined in the Resolution.

Thus, the main functions of the CPB include:

- procurement in the interests of contracting authorities;
- development of methods of defining an expected value of the subject of procurement and methods of market analysis;
- creation of standard technical specifications and market analysis;
- providing consulting, training and information assistance.

CPBs in Ukraine are relatively new institutions conducting procurement procedures on behalf of contracting authorities in Ukraine. At the moment of writing there are three CPBs acting at the central level (CPB “Profesiyni Zakupivli” (“Professional Procurements”)) and specific CPBs respectively in the healthcare sector (“Medical Procurements of Ukraine”) and in IT-area (“Ukrainian Special Systems”) as well as a several new CPBs were established in 2020 and 2021 at the regional level.

III. PUBLICATION

19. Where do contracting authorities and/or contracting entities (as understood under the EU public procurement rules) publish tender notices?

The main legislative act that regulates the functioning of the national electronic procurement system and contains the main provisions of the system is The Law of Ukraine “On public procurement”, due to which from April 1, 2016 the electronic procurement system (“Prozorro”) became mandatory for central authorities and monopolists (contracting authorities stipulated in point 4 of part 1 of article 2 of The Law). And from August 1, 2016 - for all other contracting authorities.

Contracting authorities publish tender announcements in the electronic procurement system, and suppliers submit their commercial offers. This is done through the e-auction module, which contracting authorities and suppliers can access through electronic platforms authorized by the electronic procurement system.

Information on tenders enters the central database of the electronic procurement system and is published simultaneously on the portal prozorro.gov.ua and on all authorized platforms.

20. Are there publication obligations for award notices? If yes, do they apply for all types of award notices?

Yes, there are publication obligations for award notices. According to article 33 of The Law a decision on the intent to award the procurement contract shall be made by the contracting authority on the day of award to the successful tenderer.

Within one day of the date of such decision, the contracting authority shall publish a notice of intent to award a contract in the e-procurement system.

In accordance with Article 19 of The Law the report on the results of procurement done in the electronic procurement system shall contain the date of signing the procurement contract. The report on the results of a procurement procedure shall be automatically generated by the e-procurement system and published within one day of the publication of the procurement contract by the contracting authority in the e-procurement system or the cancellation of a procurement procedure or declaring it void.

Publication obligations apply for all types of awards notices that fall under the provisions of The Law of Ukraine “On public procurement”.

21. Are there any legal requirements regarding the publication of signed contracts and contract amendments?

According to Article 10 of The Law contracting authority shall publish on a free-of-charge basis via the Authorised e-platforms the following procurement information (only contract-related information is mentioned in this answer) in the e-procurement system in accordance with the procedure established by the Authorised Body and The Law:

- procurement contract with all annexes - within 3 business days of the date of its conclusion;
- notice of amendments to the procurement contract and the amendments to the procurement contract in cases envisaged by part 5 of article 41 of The Law - within three business days of the date when such amendments entered into force.

22. Please provide information on the e-procurement applied in Ukraine? Is there an electronic portal where the procurement opportunities are published?

The Decree of the Ministry of Development of Economy, Trade and Agriculture of Ukraine dated 07.04.2020 № 648 defines the information and telecommunication system "PROZORRO" as the web portal of the Authorized Body for Procurement.

Electronic procurement system (“Prozorro”) and its legal foundation were already mentioned in the answer to question 19. “Prozorro” is an electronic platform that unites more than 35,000 state and municipal authorities and enterprises (contracting authorities that purchase goods, works and services) and about 250,000 commercial companies (suppliers).

Resolution of the Cabinet of Ministers of Ukraine of February 24, 2016 № 166 "On approval of the Procedure for the functioning of the electronic procurement system and authorization of electronic platforms" defines the requirements for the functioning of the electronic procurement system, procedure for authorization of electronic platforms, connection conditions and cases of disconnection of electronic platforms procurement, requirements for electronic platforms and the responsibility of operators of authorized electronic platforms.

23. Please provide data on the features (only publication of notices or e-submission etc.) and the use of these portals, in particular the number and type of notices published.

The Ukrainian electronic procurement system features the use of electronic means at every stage of the procurement process - from the definition of specifications, publication of annual plans and tender documentation to the submission of tender offers, their evaluation and, as a future development plan, transition to the electronic form of contracts and their electronic administration.

Below the statistical data for 2020-2021 is given:

Public procurement data for 2020	
Bidding procedure	Number of procurement notices (defined by the number of lots in the system)
Open bidding procedure	202 430
Open bidding procedure with the publication in English language	23 080
Under threshold procurement	126 243
E-catalogs	6 431
Procurement under a framework agreement	499
Contract Report (COVID-19)	127 862
Competitive dialogue with publication in English language	1
Competitive dialogue	35
Negotiated procedure	77 490
Negotiated procedure (for defense purposes)	4 202
The procedure for reporting on the concluded contract	3 064 842
Simplified procurement	166 222

Public procurement data for 2021	
Bidding procedure	Number of procurement notices (defined by the number of lots in the system)
Open bidding procedure	258 891
Open bidding procedure with the publication in English language	41 153
Under threshold procurement	81 908

E-catalogs	9 418
Procurement under a framework agreement	776
Contract Report (COVID-19)	75 466
Simplified procurement procedure (for defense purposes)	1 379
Request for quotations	11 503
Negotiated procedure	119 400
Negotiated procedure (for defense purposes)	5
The procedure for reporting on the concluded contract	4 526 385
Simplified procurement	334 596

The central executive body implementing the state policy in the field of the public financial control and its interregional territorial bodies carry out monitoring of the procurement procedure through the personal cabinet of the State Audit Service that is a part of the electronic procurement system. This is regulated by the Decree of the Ministry of Finance of Ukraine of October 28, 2020 No. 647.

Using the personal cabinet of the SAS, the following is provided: registration of the employees of the public financial control body, automatic placement, receipt and transfer of information and documents during the monitoring of the procurement procedure, use of services with automatic exchange of information, access to which is carried out through the Internet.

The exchange of information between the public financial control body and the contracting authority, established by Article 8 of The Law, is carried out in electronic form through the electronic procurement system.

According to Article 8 of The Law, in the electronic procurement system, the public financial control bodies publish a notice on the decision to start monitoring of the procurement procedure; requests to the contracting authority for explanations (information, documents) on the decisions and/or actions or omissions being under monitoring; conclusion on the results of monitoring of the procurement procedure; information on the fact that the contracting authority has eliminated the violation (violations) of the public procurement legislation, the number of the protocol on bringing to the administrative responsibility for the violation of the public procurement legislation, and the date and number of opening of the proceeding.

In order to adopt a transparent, objective and unbiased decision to start monitoring of the procurement procedure in accordance with the provisions of The Law, the system of automated risk indicators (hereinafter – risk system) is used. This system is an analytical calculation complex in the structure of the electronic system of procurement, which ensures the constant and regular calculation of indicators on the basis of open data from the API service (application software interface service) of electronic system of procurement.

Every day the risk system automatically calculates indicators (there are 50 indicators for now) considering the procurement procedures carried out by the contracting authority in the electronic

procurement system, forms its queue and displays it in the personal cabinet of the SAS. During the selection of procurement procedures by the public financial control body for monitoring, those that have the highest priority in the queue are primarily chosen.

IV. REMEDIES

24. Please outline the review system in, including the appeal bodies. What review procedures are available in the event of an infringement of public procurement rules? When and to whom are they available? Are there any fees applicable? Is standstill period and automatic suspension of the award procedure in case of the review applicable?

According to paragraph 17 of the first part of Article 1 of The Law, the body of appeal is the Antimonopoly Committee of Ukraine. The procedure for appealing procurement procedures is determined by Article 18 of The Law.

According to Article 18 of The Law for the purposes of unbiased and efficient protection of rights and legitimate interests of persons related to participation in the procurement procedures, the Antimonopoly Committee of Ukraine, as the Complaint Review Authority, shall set up a Commission (Commissions) for Review of Complaints on Violations of the Public Procurement Legislation and exercise other powers set out in The Law, and the Law of Ukraine “On Protection of Economic Competition” and the Law of Ukraine “On the Antimonopoly Committee of Ukraine”. Decisions of the Commission for Review of Complaints on Violations of Public Procurement Legislation shall be adopted on behalf of the Antimonopoly Committee of Ukraine and are obligatory for compliance.

The complainant, contracting authority may appeal against the decision of the Complaint Review Authority in the District Administrative Court with territorial jurisdiction covering the city of Kyiv within 30 days of the date of its publication in the e-procurement system.

The right to appeal shall not restrict the complainant’s right of recourse to court without prior recourse to the Complaint Review Authority.

It is also worth noting that any natural person/legal entity, not later than 10 days before the expiry of the term for submitting tenders, shall have the right to request explanations from the contracting authority via the e-procurement system regarding the tender documentation and/or request the contracting authority to remedy violations committed during the procurement procedure. All requests for explanations and remedying violations shall be automatically published within the e-procurement system without identifying the requester. The contracting authority shall provide explanations in response to such request within three business days of its publishing, and shall publish them in the e-procurement system in accordance with Article 10 of The Law.

The list of persons entitled to file a complaint covers all participants of public procurement procedure if their interests have been violated.

It needs to be mentioned that the time frames for filing a complaint cannot be renewed.

The table below provides information on the possible subject of the appeal and the deadlines for filing a complaint with the Complaint Review Authority in various procedures.

Types of procedures	Appeal against the decision, action or inaction of the contracting authority <u>related to the requirements of the tender documentation</u>	Appeal against the decision, action or inaction of the contracting authority based on the results of consideration and evaluation of tender proposals, related, in particular, <u>to the rejection of the tender proposal, determination of the winner</u>	Appeal against the decision to conclude a procurement contract	Appeal against the decision to cancel the procurement procedure
Open bidding, Competitive dialogue, Restricted bidding	Yes, from the moment the announcement is published and no later than four days before the deadline for submission of tender proposals	Yes, within 10 days from the day when the subject of the appeal learned or should have learned about the violation of their rights as a result of the decision, action or inaction of the contracting authority, but before the date of conclusion of the procurement contract		Yes, within 10 days from the date of the decision to cancel the procurement/ procurement lot
Open bidding, Competitive dialogue, Restricted bidding with publication in English language (if the announcement of a competitive procurement procedure is published in accordance with part three	Yes, from the moment the announcement is published and no later than four days before the deadline for submission of tender proposals	Yes, within five days from the date of publication in the electronic procurement system of the protocol of evaluation of tender proposals, after evaluation of tender proposals, the procedure of which is provided by part twelve of Article 29 of The Law (on the decision to reject the tender after evaluation); within 10 days from the day when the subject of		Yes, within 10 days from the date of the decision to cancel the procurement/ procurement lot

of Article 10 of The Law)		the appeal learned or should have learned about the violation of its rights as a result of the decision, action or inaction of the contracting authority, but before the date of conclusion of the procurement contract (in case of rejection of the tender proposal or determination of the winner)		
Negotiated procurement procedure			Yes, within 10 days from the date of publication of the notice of intent to enter into a procurement contract	Yes, within 10 days from the date of the decision to cancel the procurement/ procurement lot

The complainant shall file its complaint in electronic form with affixing the qualified electronic signature to be considered as such according to the Law of Ukraine “On Electronic Trust Services”, by means of filling in electronic forms with separate fields fully specifying the information provided for in paragraph 5 of article 18 of The Law.

The filing fee shall be paid to submit a complaint to the Complaint Review Authority via the e-procurement system.

The amount of this fee is defined by the Resolution of the Cabinet of Ministers of Ukraine of April 22, 2020 № 292 “On establishing the amount of the fee for filing a complaint and approving the Procedure for payment for filing a complaint to the complaint review authority through the electronic procurement system and its return to the subject of the complaint”.

Thus, the amount of the complaint fee is 0.3% of the expected value of the subject of procurement or its part (lot), but not less than 2 thousand hryvnias (about 65 euros) and not more than 85 thousand hryvnias (about 2740 euros) in the case appeal against the requirements of the tender documentation and 0.6% of the expected value of the subject of procurement or its part (lot), but not less than 3 thousand hryvnias (about 100 euros) and not more than 170 thousand hryvnias (about 5485 euros), in the case appeal of the decisions, actions or inactions of the contracting authority after the end of the bid submission period.

It is also important to note that if the Complaint Review Authority based on the results of review of the complaint adopts a decision on satisfaction or partial satisfaction of such complaint, dismisses it without review in case if the contracting authority according to The Law remedied the violation

specified in the complaint, or adopts a decision on termination of review of the complaint in case if the procuring entity according to The Law remedied the violations specified in the complaint, the fee for filing the complaint shall be returned to the complainant, and in other cases it shall be transferred to the State Budget of Ukraine.

Upon payment, the complaint shall be automatically included in the register of complaints, and a relevant registration card shall be generated, that card shall be automatically published in the e-procurement system together with the complaint.

In case the contracting authority within the framework of a single procurement procedure distinguishes parts of the procurement item (lots), when filing a complaint with regard to a separate lot (lots) the registration cards shall be generated for each lot separately.

The contracting authority shall be prohibited to take any actions and adopt any decisions with regard to the procurement procedure, in particular to adopt a decision to cancel the procurement procedure or recognize it null and void, to cancel the negotiated procurement procedure, to award the procurement contract, except for actions aimed at elimination of the violations specified in the complaint.

The contracting authority may independently eliminate the violations specified in the complaint before considering the complaint or making a decision by the Complaint Review Authority. In this case, the contracting authority must notify the Complaint Review Authority within one working day from the moment of elimination of the violation and place the confirmation in the electronic procurement system.

The conclusion of a procurement contract during the appeal is prohibited.

Acceptance of the complaint for consideration leads to the automatic suspension of the relevant procurement procedure, i.e. the contracting authority cannot continue to carry out such a procedure. This is ensured by blocking the possibility of holding an auction in the electronic procurement system, publishing any decisions of the contracting authority, the results of the tender or concluding a procurement contract. Also, the contracting authority does not have the opportunity to cancel the tender or recognize it as not having taken place. In this case, the contracting authority is only allowed to take measures to eliminate the violation. The procurement procedure is resumed from the day following the day the Board decides on the complaint and publishes it in the electronic procurement system.

25. Are all types of public procurement contracts, including concessions and public private partnerships, and of all values, covered by the public procurement review system? If not, what are the available means for review for the contracts that are not covered by the public procurement review system?

All types of public procurement contracts described by The Law of Ukraine "On Public Procurement" are covered by the public procurement review system. The only exception is the simplified procurement (that was mentioned in the answer to question 4). However, in this case, in order to protect its rights and interests (that are protected by law), a tenderer of the simplified procurement may apply to the contracting authority and/or to the authority exercising control over the contracting authority or to the court. Decisions and actions of contracting authority may be challenged by the tenderer of simplified procurement in courts.

According to Article 5 of the Law of Ukraine "On Public-Private Partnership", a concession is one of the forms of public-private partnership.

As the selection of advisers for the provision of PPP project preparation services is carried out using competitive procurement procedures through the use of electronic procurement system or negotiated procedure in cases specified by the Law of Ukraine "On Public Procurement", these contracts are subject to appeal in the field of public procurement.

However, Article 19 of the Law of Ukraine "On Public-Private Partnership" stipulates that any disputes arising in connection with the implementation of obligations under a PPP Contract, direct agreement or any other agreement related to the implementation of the agreement concluded within the framework of public-private partnership shall be resolved through negotiations within the terms agreed by the parties in the relevant agreement or in bilateral investment agreements ratified by Ukraine.

The parties to a PPP Contract are free to choose a dispute resolution mechanism, including mediation, non-binding expert judgment, national or international commercial or investment arbitration, including arbitration located abroad (if the founder of a private partner is an enterprise with foreign investment within the meaning of the Law of Ukraine "On Foreign Investment Regime"), as well as procedural rules for resolving disputes.

At the request of a private partner or creditor, the state has the right to waive immunity in PPP Contract or direct agreement. Such refusal applies to all court decisions, decisions of international commercial arbitrations, decisions in proceedings on the preliminary securing of the claim, as well as the execution of decisions of judicial and arbitral tribunals.

In addition, Article 20 of the Law of Ukraine "On Concession", stipulates that the disputes arising in connection with the tender for a private partner, concession tender, competitive dialogue, are decided in court, and the subject of appeal may be only applicants and/or participants in the tender.

Article 45 stipulates that any disputes arising in connection with the performance of obligations under the concession agreement, direct agreement or any other agreement related to the implementation of the project carried out on the terms of the concession shall be resolved by conducting negotiations within the timeframe agreed by the parties in the relevant agreement or in bilateral investment agreements ratified by Ukraine.

The parties to the concession agreement are free to choose the dispute resolution mechanism, including mediation, non-binding expert assessment, national or international commercial or investment arbitration, including arbitration located abroad (if the concessionaire is the founder of a foreign investment company within the meaning of the Law foreign investment regime "), and procedural rules for resolving disputes.

At the request of the concessionaire or creditor, the state has the right to waive immunity in a concession agreement or direct agreement. Such refusal applies to all court decisions, decisions of international commercial arbitrations, decisions in proceedings on the preliminary securing of the claim, as well as the execution of decisions of judicial and arbitral tribunals.

26. Which body is responsible for the public procurement review? Is there one body or more bodies deciding on different aspects of the public procurement review? Are they of administrative or judicial nature? Are there any formal means of coordination between the

institutions? How is their independence from the contracting authorities ensured? Do they have sufficient institutional capacity to carry out their tasks (number of staff, document management systems in place, etc.)?

In accordance with the Law of Ukraine “On Public Procurement”, state regulation and control in the field of procurement is exercised, in particular, by the Antimonopoly Committee of Ukraine, within the limits of its powers defined by the Constitution and laws of Ukraine.

In the field of public procurement, the Antimonopoly Committee of Ukraine directly performs two main functions.

1) in accordance with the Law of Ukraine “On the Antimonopoly Committee of Ukraine” and the Law of Ukraine “On Protection of Economic Competition” - ensuring state protection of competition, in particular, in the field of public procurement, which is to consider cases of anticompetitive concerted actions between participation in public procurement (bid rigging, cartels).

2) in accordance with the Law of Ukraine “On Public Procurement” to perform functions of the appellate body, which is to consider complaints of tender participants regarding the actions of public procurement purchasers, actions of which are violating the rights of complainants, to participate in the tender.

Regarding the AMCU as an appellate body

The AMCU is a state body with a special status and, including functions of appellate body in public procurement. AMCU independent authority controlled by the President of Ukraine and accountable to the Verkhovna Rada of Ukraine.

This independence is ensured at the legislative level by the relevant provisions of the Law of Ukraine “On Public Procurement”, the Law of Ukraine “On the Antimonopoly Committee of Ukraine”.

In particular, the appellate body (as a collegial body – Collegium of the AMCU) consists of three members (currently State Commissioners of the Antimonopoly Committee of Ukraine), who are independent in making relevant decisions of the appellate body, are not members of and not subordinate to the Government (the Cabinet of Ministers of Ukraine), legislative body (Verkhovna Rada of Ukraine), President of Ukraine, etc.

The complaints review process is as transparent as possible: with the participation of the parties (buyer and complainant), there is the possibility of participation through the use of telecommunications systems in real-time interactive mode, there is the possibility of use by the parties during the session, of photo, video and audio tools. In addition, all sessions of the Appellate Body are broadcasted online, via YouTube video-hosting.

Relevant structural subdivision of the AMCU - the Department for Public Procurement Complaints Review, with a staff of 40 employees, which is sufficient to ensure the activities of the AMCU as a public procurement review body.

27. What powers are conferred on these review bodies? What type of measures/actions can they take? Is it possible for them to take interim measures, set aside or ensure setting aside of 38 decisions taken unlawfully, award damages to persons harmed by an infringement or consider a contract ineffective?

The powers of the Appellate Body are to establish the presence or absence of violations of the procurement procedures by the buyer, mentioned in the complaint, during the procurement procedure challenged by the tender participant.

In case of violations based on the results of the complaint, the appellate body determines the measures to be taken to eliminate them, in particular, the appellate body has the right to oblige the buyer to cancel all or part of its decisions, provide necessary documents, clarifications, eliminate any discriminatory conditions (including those specified in the technical specification, which is part of the tender documentation) to bring the tender documentation in line with legal requirements, or if it is impossible to correct violations, the appellate body has the right to oblige the buyer to cancel the procurement procedure.

Temporary measures during the appeal in accordance with the Law are suspension of deadlines (deadline for consideration of tender proposals, deadline for concluding the contract after determining the winner), as well as prohibition for the customers to take any action and make any decisions on procurement procedures, including decision on cancellation of the tender or declaring it invalid, cancellation of the negotiated procurement procedure, conclusion of the procurement contract, except for actions aimed at elimination of the violations specified in the complaint.

Decisions of the Appellate Body are binding on the parties and can be appealed only in court.

At the same time, the AMCU does not award compensation to persons who have suffered as a result of the buyer's actions.

The complainant may exercise this right in court: in case of violations, such undertaking may apply to the court for appropriate compensation from the buyer.

Regarding the invalidation of the contract, within the AMCU functions as appellate body, there is one possible case of invalidity (futility) of the contract - the conclusion of the contract during the appeal period, which is directly prohibited by law.

In other cases, the invalidity (futility) of the contract shall be established in court.

Regarding the powers of the bodies of the Antimonopoly Committee of Ukraine in the framework of consideration of cases on violations in the form of anti-competitive concerted actions relating to the distortion of the results of tenders, auctions, competitions, tenders

In the field of control over compliance with the legislation on protection of economic competition, the Antimonopoly Committee of Ukraine has the authority to consider applications and cases of violations of legislation on protection of economic competition and to investigate these applications and cases, to demand from local governments, administrative and economic management and control bodies, their officials and employees, other individuals and legal entities to provide information, including information with limited access, introduce examination and appoint an expert from among persons with the necessary knowledge to provide expert opinion.

Employees of the Antimonopoly Committee of Ukraine, the Regional Office of the AMCU, who are entrusted to collect and analyze evidence, carry out actions aimed at comprehensive, complete and objective clarification of the actual circumstances of the case, rights and obligations of the parties.

Based on the results of consideration of cases regarding violation of legislation on protection of economic competition in the form of anticompetitive concerted actions related to distortion of

biddings, auctions, competitions, tenders, the Antimonopoly Committee of Ukraine makes decisions, including recognition of violations of legislation on protection of economic competition and imposition of fine.

This violation is subject to a fine of up to ten percent of the income (revenue) of the undertaking from the sale of products (goods, works, services) for the last fiscal year preceding the year in which the fine is imposed.

However, the decision of the Antimonopoly Committee of Ukraine does not cancel and does not invalidate the contract concluded as a result of the procurement procedure.

28. Please provide data on the decisions of the public procurement review body for the last two years (number of complaints received, type of complaints, value etc.). Please provide data on court judgments regarding cases brought against the public review body decisions, if applicable.

In fact, complaints are divided into two types: complaints regarding the discriminatory conditions of the tender documentation established by the buyer and complaints about the results of the tender (buyer's decision to reject the bids, to select winners and admission of tenders to the evaluation procedure).

	2020	2021
Number of complaints received by the appellate body	12 675	14 828
Approved in full or in part	6 834	10 129
Complaints denied	3 808	3 517
Complaints have been suspended (violations have been eliminated by the buyer, tenders have been canceled, etc.)	711	357
Estimated total expected cost of procurement procedures under which the appellate body obliged the buyers to eliminate the violations (complaints are approved in full or in part)	UAH 250.9 billion (approximately 7.5 billion Euros)	UAH 285.3 billion (approximately 8.5 billion Euros)

Statistics on the decisions of the Collegium appealed to the court

	2020	2021
Are under consideration (in the court of first instance/appellate instance/cassation instance)	296	397
Left unchanged	117	45
Completely canceled by the courts	5	5
Canceled by the courts of the first /appellate instance	32	13

Appealed in court	418	442
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29. Are the decisions of the review body systematically published?

According to article 18 of The Law within one business day of adoption of the decision based on the results of review of the complaint, the AMCU shall publish information about the operative part of the decision in the e-procurement system, and publish the full decision in the e-procurement system within three business days of the day of its adoption. The decision based on the results of review of the complaint is automatically published in the e-procurement system and sent to the complainant and the contracting authority once it is placed in the e-procurement system.

Without the publication of a positive decision on the complaint in the electronic system, the State Treasury does not make payments for the procurement contract (part 2 of Article 7 of The Law).

CHAPTER 6: COMPANY LAW

I. COMPANY LAW

A. Legal Framework

Directive (EU) 2017/1132 relating to certain aspects of company law

1. To what extent is domestic legislation in Ukraine aligned with this directive? Are there plans in this regard?

Ukrainian legislation partially meets the provisions of Directive (EU) 2017/1132, in particular, regarding the implementation of provisions, previously covered by Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009, and reflected in Articles 13b - 13e, 13g, 13j, 14 - 21 of Directive (EU) 2017/1132. The provisions of the above articles of the Directive (EU) 2017/1132 are implemented in the Law of Ukraine "On State Registration of Legal Entities, Private Entrepreneurs and Public Associations" No. 755-IV, dated 15.05.2003 (hereinafter – “the Law on Registration”) and regulations adopted pursuant to this Law.

Moreover, the Verkhovna Rada of Ukraine has under consideration the Draft Law of Ukraine “On Introducing Amendments to Certain Laws of Ukraine to Streamline the Activities of Separate Divisions of a Legal Entity Formed under the Legislation of a Foreign State” Draft Law No. 4482 as of 10.12.2020, introduced by the Cabinet of Ministers of Ukraine. The Draft Law No. 4482 implements, inter alia, provisions on disclosure rules applicable to branches of companies from other Member States (Articles 28a - 28c, 29-30 of Directive (EU) 2017/1132). Namely, the information on such separate divisions should be entered into the Unified State Register of Legal Entities, Private Entrepreneurs, and Public Associations (*hereinafter – the Unified State Register*) and will be publicly available.

The Verkhovna Rada of Ukraine also considers the Draft Law of Ukraine “On Joint Stock Companies” (Registration No. 2493 as of 25.11.2019) (*hereinafter - the Draft Law No. 2493*), aimed at further implementation of Directive (EU) 2017/1132. Namely, the Draft Law No. 2493 establishes requirements for the convocation a general meeting of shareholders in case of significant losses to authorised capital, terms and conditions of repurchase of own shares and the order of increase / decrease of authorised capital, mergers, acquisitions, divisions of joint stock companies. On June 16, 2020, the Verkhovna Rada of Ukraine adopted the Draft Law No. 2493 as a basis in the first reading.

On July 12, 2021 the Committee on Economic Development of the Verkhovna Rada of Ukraine recommended the adoption of the revised version of the Draft Law No. 2493 in the second reading and entirely (Minutes of the meeting No. 73).

2. Is there a central business register in Ukraine for the registration of companies and disclosure of all information on business entities? If not, are there any plans in this respect? If yes, how does the register hold company information - paper, electronic, both? Is the register accessible to the public online? Are any fees charged for issuing certain documents (certificates, copies, transcripts, attestations, notifications) contained in the register?

Since 2004, Ukraine has implemented a single state information system that provides collecting, accumulating, processing, protecting, accounting and providing information on legal entities and private entrepreneurs. The state registration of legal entities and private entrepreneurs takes effect by entering information into this system.

Since 2016, the name of this system is the Unified State Register of Legal Entities, Private Entrepreneurs and Public Associations (hereinafter – “the Unified State Register”).

Pursuant to Article 1 of the Law on Registration, state registration of legal entities, public associations that have no status of a legal entity, and private entrepreneurs (hereinafter - “state registration”) is deemed to constitute the official recognition by the state acknowledging the following facts: (i) creation or termination of a legal entity, a public association that has no status of a legal entity, (ii) availability of the corresponding status of a public association, trade union, its unit or association, political party, employers' organisation, associations of employers' organisations and their symbols, (iii) acquisition or stripping of the status of the entrepreneur by a physical person, (iv) changes of the information contained in the Unified State Register, as well as other registration actions provided for by this Law.

According to Article 4(1) of the Law on Registration, the state registration is based on the following principles:

- Mandatory state registration in the Unified State Register;
- Public availability of information on state registration in the Unified State Register, as well as of the documents based on which it was held;
- Objectivity, reliability and completeness of information in the Unified State Register;
- Entering information into the Unified State Register exclusively on the basis of and pursuant to the Law on Registration;
- Openness of the Unified State Register and availability of information from it.

The Unified State Register and its software are the object of state property rights (the fifth part of Article 7 of the Law on Registration).

The information contained in the Unified State Register is open and publicly available (except for tax payers' identification numbers and identity documents data) and in cases provided by the Law a fee is charged for providing such data (the first part of Article 11 of the Law on Registration).

The information contained in the Unified State Register is provided in the following form:

1) free access through the portal of electronic services or via the Unified state web portal of electronic services:

- as to information from the Unified State Register relevant at the time of request - by searching information via the full or abbreviated name of a company, name, identification code, tax number, passport series and number (for individuals who have a mark in the passport confirming the right to make payments using passport series and number), as well as by viewing, copying and printing such information;

- as to the documents submitted for e-registration, information on the results of their consideration - via the personal account;

- as to the results of the administrative services related to state registration, including extracts from the Unified State Register and constituent documents - by searching via the access code, as well as by viewing, copying and printing.

2) free access through the personal account to the documents submitted for e-registration, information on the findings upon their consideration;

3) making public information from the Unified State Register in the form of open data under the Law of Ukraine "On Access to Public Information" No. 2939-VI dated 13.01.2011;

4) for a fee:

- as to e-documents and paper documents contained in the registration file;
- as to extracts in paper and electronic form containing information relevant at the time of the request or on a specified date;
- e-extracts and paper extracts for affixing an apostille.

Under the fourth part of Article 36 of the Law on Registration, the following fees shall be charged for providing information from the Unified State Register:

- 0.05 of the subsistence minimum for legally capable persons – for providing e-extracts and paper extracts for affixing an apostille;
- 0.07 of the subsistence minimum for legally capable persons – for providing a paper document contained in the registration file;
- 75 percent of the fee established by this part for providing a document in paper form – for providing an e-extract and an e-document contained in the registration file.

These fees are charged at the appropriate amount of the subsistence minimum for legally capable persons established by law as of January 1 of the calendar year in which the request for providing information is submitted, and is rounded up to the nearest 10 hryvnias.

It should be noted that the information contained in the Unified State Register is used to identify a legal entity or its subsidiary, public association that has no status of a legal entity, private entrepreneur, including while they carry out business activities and opening accounts in banks and other financial institutions (under the fourth part of Article 10 of the Law on Registration).

Under the first part of Article 14 of the Law on Registration, documents for the state registration may be submitted either in paper or electronically. Paper documents shall be submitted by the applicant in person or by mail.

If documents are submitted in paper form, the state registrar scans them and attaches such e-copies to the application for the state registration at the Unified State Register (Section II, para 9 of the Procedure for State Registration of Legal Entities, Private Entrepreneurs and Public Associations that have no Status of Legal Entities) approved by the Decree of the Ministry of Justice of Ukraine dated February 9, 2016 № 359/5 registered with the Ministry of Justice of Ukraine on February 09, 2016 under No. 200/28330 (*hereinafter – “the Registration Procedure”*).

Documents and / or information generated by the state registrar using the software of the Unified State Register during the state registration, as well as scanned e-copies of the original documents for the state registration attached to the application, are stored electronically in the Unified State Register (Section II, paragraph 20 of the Registration Procedure).

Therefore, the information in the Unified State Register is being stored in digital form, as envisaged by Directive 2017/1132.

3. How is the disclosure of documents and particulars carried out? Is there an official gazette?

Article 14 of Directive (EU) 2017/1132 defines the list of documents and information to be disclosed by companies, in particular: the constituent document and the charter, if it set out in a separate document, the charter; appointments, dismissals and data about persons authorised to represent the company in relations with third parties and in the court. The disclosed information should contain information on whether such authorised persons may represent the company independently or whether they should act jointly, etc.

The Ukrainian legislation generally complies with this requirement.

As stated above in answer to the previous question, when documents and information are submitted by the applicant for the state registration in paper, they are being scanned and entered into the Unified State Register electronically. At the same time, the same documents are stored in the registration file of the legal entity in paper form.

The list of information contained in the Unified State Register of Legal Entities, except for state and local authorities as legal entities, is defined in the second part of Article 9 of the Law on Registration.

Thus, the Unified State Register, in particular, contains information on:

- name of the legal entity, including abbreviation (if available);
- identification code of the legal entity in the Unified State Register of Enterprises and Organisations of Ukraine (the register for state statistics maintained by the State Committee of Statistics of Ukraine);
- legal form (form of business entity, incorporation);
- list of founders and participants of a legal entity (except for participants of non-governmental organizations, joint stock companies, public associations that have no status of a legal entity, charitable foundations and political parties): surname, name, patronymic (if any), date of birth, country of citizenship, place of residence, tax number (if any), passport series and number if the founder is an individual; name, country of residence, location and identification code if the founder is a legal entity; a mark on terminating the powers of the founder of a public association because of state registration;
- information on the ultimate beneficial owner of the legal entity;
- location of the legal entity;
- types of activities;
- name of management bodies of the legal entity;
- information on the head of the legal entity and other persons (if any) who may act on behalf of the legal entity, including signing contracts, submitting documents for the state registration, etc.: surname, name, patronymic, date of birth, tax number or passport series and number (for individuals who have a mark in the passport on the right to make payments based on passport series and number), information on where there are restrictions on representation of a legal entity;
- the amount of the authorised (composed) capital (mutual fund) and the amount of the share of each of the founders (participants);

- type of constituent document (constituent act, charter, model charter, memorandum of association, individual statement (memorandum), regulations, etc.);
- information for communication with a legal entity: telephone, e-mail address;
- date and number of the entry in the Unified State Register;
- information on subsidiaries of the legal entity;
- information on legal entities whose legal successor is a registered legal entity;
- information on legal entities that are the legal successors;
- date of adoption, date of entry into force and number of the court judgment on the basis of which the registration action was effected;
- information on whether the legal entity is in the process of termination, including data on the decision to terminate the legal entity, information on the termination commission (liquidator, liquidation commission, etc.) and the term determined by the founders (participants) of the legal entity, court or body that decided to terminate the legal entity for creditors to present their claims;
- information on whether the legal entity is going through bankruptcy proceedings, reorganisation, including information on the asset manager, reorganisation manager.

Ways of obtaining information from the Unified State Register are indicated above in the answer to question 2 of this Chapter.

There is no official gazette that discloses such documents and particulars.

4. Are there any penalties or fines imposed on companies if annual accounts are not deposited at the register? If so, what is the amount of such fines?

Under the first part of Article 11 Article 11 of the Law of Ukraine of 06.07.1999 № 996-XIV "On Accounting and Financial Reporting in Ukraine" (hereinafter – the Law on Accounting), the authorised body (official) managing the company or the owner under law and constituent documents is responsible for timely and full submission and publication of financial statements.

Under Article 15 of this Law, supervision of compliance with the legislation on accounting and financial reporting in Ukraine is carried out by the respective authorities within their mandate according to the law.

Article 164-2 of the Code of Ukraine on Administrative Offences No. 8073-X, dated 07.12.1984 establishes liability for violations of financial legislation, in particular, for entering false data in financial statements, failure to submit financial statements. The punishment for such violation is a fine that can range from 8 to 15 non-taxable minimum incomes (from UAH 136 to UAH 255) to be imposed on the liable persons.

The same actions committed by a person who within the year was subject to administrative sanction for the above offenses trigger imposition of a fine regarding from 10 to 20 non-taxable minimum incomes (from UAH 170 to UAH 340).

Meanwhile, Ukrainian law does not provide for the obligation of legal entities to disclose financial statements in the Unified State Register.

In addition, joint stock companies and other issuers of securities are required to disclose their financial statements in the annual report. The National Securities and Stock Market Commission

(hereinafter – the NSSMC) monitors compliance with these requirements. The law establishes a financial sanction for the breach of such requirements in the amount of up to 1 thousand non-taxable minimum incomes (UAH 17 thousand). For the repeated violation committed within a year, the financial sanction ranges from 1 thousand to 5 thousand non-taxable minimum incomes (from UAH 17 thousand to UAH 85 thousand).

5. Please indicate any preventive, administrative or judicial controls at the time of company formation. Do the instrument of constitution and other documents have to be drawn up in a specific form?

Ukrainian legislation establishes requirements as to the form and content of the company's instrument of constitution.

Under the first part of Article 87 of the Civil Code of Ukraine No. 435-IV, dated 16.01.2003, in order to establish a legal entity, its participants (founders) draft constituent documents, which are set out in writing and signed by all participants (founders), unless otherwise provided by law.

A legal entity of private law may be established and may operate on the basis of a model charter approved by the Cabinet of Ministers of Ukraine, which, after it has been adopted by the participants, becomes a constituent document.

Under the first part of Article 88 of the Civil Code of Ukraine No. 435-IV, dated 16.01.2003, the company's charter shall indicate the name of the legal entity, management bodies of the company, their mandate, decision-making procedure, procedure for joining and leaving the company unless additional requirements to the charter are established by this Code or by other laws.

The identical requirements for the information that shall be contained in the charter are established by the Law of Ukraine "On Limited and Additional Liability Companies" No. 2275-VIII, dated 06.02.2018. Also, this Law prescribes that the company's charter may contain other information that does not contradict the law.

Moreover, limited liability companies may operate on the basis of a model charter which has many variations and provides for the opportunity to choose different versions, including the "by default" version formed from the provisions recommended by the Cabinet of Ministers of Ukraine. The model charter of the limited liability company was approved by the Resolution of the Cabinet of Ministers of Ukraine of March 27, 2019 No. 367, dated 27.03.2019.

Meanwhile, in accordance with Article 13 of the Law of Ukraine "On Joint Stock Companies", the charter of a joint stock company must contain information on:

- 1) full and abbreviated name of the company in Ukrainian;
- 2) type of company;
- 3) the amount of authorised capital;
- 4) the amount of reserve capital (if any);
- 5) the nominal value and the total number of shares, the number of each type of shares issued by the company, including the number of each class of preferred shares (if preferred shares are issued);
- 6) the amount of dividends on preferred shares of each class (if issued by the company);
- 7) conditions and procedure for conversion of preferred shares of a certain class into ordinary shares of the company or into preferred shares of another class (if preferred shares are issued);

- 8) the rights of shareholders holding preferred shares of each class (if preferred shares are issued);
- 9) whether there exists a pre-emptive right of the shareholders of a private company to purchase shares of this company offered by their owner for sale to a third party and the procedure for such sale;
- 10) the procedure for notifying shareholders about the payment of dividends;
- 11) the procedure for convening and holding a general meeting;
- 12) the mandate of the general meeting;
- 13) the way of notifying shareholders of the general meeting and making changes to the agenda of the general meeting;
- 14) the composition of the company's bodies and their mandate, the procedure for forming, electing and recalling their members and their decision-making as well as the procedure for changing the composition of the company's bodies and their mandate;
- 15) the procedure for amending the charter;
- 16) the procedure for terminating the company.

The charter of a joint stock company may contain other provisions that do not contradict the law.

Thus, the constituent documents of a legal entity could be drawn up in any legitimate form. The laws of Ukraine define only the list of information that the constituent document of the legal entity must contain, such document may contain other information. It is also possible for a limited liability company to function on the basis of the model charter.

Requirements for drawing up documents submitted for state registration, including the constituent document of a legal entity, are defined in Article 15 of the Law on Registration.

Under paragraph 8 of the first part of Article 15 of the Law on Registration, the constituent document of a legal entity, regulations, rules of procedure, list of arbitrators of a permanent arbitration court, statute (regulations) of a civic association that does not have the status of a legal entity, agreement (declaration) on establishing a family farm must contain the information required by law and comply with the law.

The constituent document of a legal entity (except for legal entity established and operating on the basis of a model statute) is set out in writing, is stitched, numbered and signed by the founders (participants), persons authorised by them or the chair and secretary of the general meeting (if such a decision is made by the general meeting, unless a legal entity is established).

Constituent documents of banks and other legal entities that are subject to approval (registration) by the National Bank of Ukraine and other authorities in accordance with the law shall be submitted with a mark that they have been approved by the relevant authority.

Amendments to the constituent document of a legal entity are formalised by them in a new wording.

There are measures of administrative control in the course of the state registration of a new company. Under Article 25 of the Law on Registration, the state registrar checks the documents submitted to him/her to as certain whether there are grounds for suspension of their consideration

(Article 27 of the Law on Registration) and refusal in state registration (Article 28 of the Law on Registration).

If the documents submitted for the state registration do not meet the requirements set forth in Article 15 of the Law on Registration, including deficiency of content of constituent documents, the state registration of a company should be suspended.

In turn, under the first part of Article 28 of the Law on Registration, the grounds for refusing state registration, are, in particular, the following:

- documents are submitted by a person without respective mandate;
- the Unified State Register contains information on a court judgement that prohibits registration;
- documents contradict the requirements of the Constitution and laws of Ukraine;
- the procedure set forth in law for establishing a legal entity has been violated;
- the name of the legal entity does not meet the requirements of the law;
- there is state registration of a decision on terminating the legal entity because of ongoing liquidation involving the founder (participant) of the legal entity being established.

6. Can company formation be declared null and void? If so, under which conditions? Please provide reference to relevant legislation governing the matter.

The first part of Article 110 of the Civil Code of Ukraine No. 435-IV, dated 16.01.2003 stipulates that a legal entity shall be liquidated, in particular, by a court decision on liquidation of a legal entity due to violations committed at the time of its establishment and which cannot be eliminated, following a lawsuit lodged by a legal entity participant or a relevant public authority.

Another ground for applying to the court for termination of a legal entity, including for recognizing the registration documents invalid, is the presence of signs of fictitious activity of a legal entity.

Pursuant to Article 551 of the Commercial Code of Ukraine No. 436-IV, dated 16.01.2003, the signs of fictitiousness that give grounds to apply to the court to seek termination of a legal entity or terminate the activities of a private-entrepreneur, including to recognise the registration documents invalid, are the following:

- 1) it has been registered (re-registered) using invalid (lost) and forged documents;
- 2) it has not been registered with public authorities, if the law provides for the obligation to get registered;
- 3) it has been registered (re-registered) in the state registration bodies by natural persons with subsequent transfer (registration) into possession or for management by a fictitious (non-existent), deceased, or missing persons, or by persons who do not intend to conduct financial/economic activities or exercise powers;
- 4) it has been registered (re-registered) and involved in financial/economic activities without notification or consent of its founders or duly appointed managers.

Thus, Ukrainian laws provide for the possibility to liquidate a legal entity, including by recognizing the registration documents invalid, in particular, due to violations committed in the course of its establishment and which cannot be rectified.

Concerning rules on the formation of public limited liability companies and the maintenance and alteration of their capital:

7. Please indicate if there are minimum capital requirements for companies.

According to the first part of Article 14 of the Law of Ukraine “On Joint Stock Companies” No. 514 VI, dated 17.09.2008 (hereinafter – the Law on Joint Stock Companies), the minimum authorised capital of a joint stock company is 1250 minimum wages as of the date of a company’s establishment (registration). The amount of minimum wage is stipulated by the law annually. In turn, the authorised capital of the company determines the minimum size of the company's property, which guarantees the interests of its creditors.

The Ukrainian legislation does not set minimum requirements for the authorised capital of a limited liability company.

In addition, Ukrainian law sets increased minimum requirements for the size of the authorised capital of various financial institutions.

Pursuant to Article 31 of the Law of Ukraine “On Banks and Banking Activity” No. 2121-III dated 07.12.2000, the minimum authorised capital at the moment of state registration of a legal entity intending to carry out banking activities and the minimum authorised capital of a bank may not be less than UAH 200 million.

The National Bank of Ukraine has the right to establish a differentiated minimum amount of authorised capital for particular banks and legal entities that intend to carry out banking activities, but it should not be smaller than the amount provided for in this Article.

Recently the Verkhovna Rada of Ukraine adopted two new laws on insurance and on financial services and financial companies. Both set requirements for the minimum amount of capital for insurers and for financial companies respectively. Also, it should be mentioned that both laws will come into force on 1st January 2024.

In accordance with the first part of Article 17, of the Law of Ukraine “On Insurance” No. 1909-IX dated 18.11.2021, the size of the authorised capital of the insurer may not be less than the minimum capital of the insurer determined in accordance with the third part of Article 40 of this Law.

The third part of Article 40 of the Law of Ukraine "On Insurance" provides:

irrespective of the results of the calculation of the minimum capital of the insurer obtained under the first and second parts of this article, for the purposes of assessing the solvency of the insurer, the minimum capital of the insurer may not be less than the following minimum absolute values:

1) UAH 32 million - for an insurer who has received a license to carry out direct insurance activities for one or more of the classes of insurance other than life insurance, except for insurance classes specified in paragraph 2 of this part;

2) UAH 48 million - for an insurer that has received a license to carry out direct insurance activities in one or more of the following insurance classes: insurance of various types of liability, credit insurance and surety (guarantee) insurance (10, 11, 12, 13, 14, 15). This condition does not include direct insurance activities in insurance class 13, provided that the insurer's license to carry

out insurance activities contains restrictions and / or features for this class, defined by regulations of the National Bank of Ukraine, which may provide grounds for applying a simplified approach to the calculation of solvency capital and minimum capital;

3) UAH 48 million - for an insurer that has received a license to carry out direct insurance activities in one or more of the life insurance classes;

4) UAH 48 million - for an insurer whose license includes the right to carry out incoming reinsurance activities. This requirement does not apply to an insurer with licence to carry out activities on direct insurance of certain insurance classes if during a calendar year the amount of gross rewards under incoming reinsurance agreements does not exceed 10 percent of the total amount of gross insurance rewards, but in any case does not exceed UAH 7 million.

The absolute values specified in this part are reviewed by the National Bank of Ukraine every five years and are increased in proportion to the change in the consumer price index for the relevant period. The calculated absolute values are rounded up to a number of multiples of UAH 1 million. The procedure for reviewing the absolute values specified in this part and the period during which the activities of insurers must be brought into conformity with the revised values shall be established by the regulations of the National Bank of Ukraine. This period may not be less than six months.

In accordance with the third part of Article 33 of the Law of Ukraine “On Financial Services and Financial Companies” No. 1953-IX, dated 14.12.2021 the minimum authorised capital of a financial company or pawnshop may not be less than:

– UAH 1 million - if the applicant intends to operate a pawnshop and provide exclusively financial services for the provision of funds and bank metals on credit in the form of pawn loans;

– UAH 5 million - if the applicant intends to operate a pawn shop, as well as trade currency valuables in cash and/or provide financial payment services for transferring funds without opening an account and/or acquiring payment instruments;

– UAH 3 million - if the applicant intends to operate a financial company and provide only one of the following financial services: lending of cash and bank metals on credit, factoring, financial leasing and trading in currency valuables;

– UAH 5 million - if the applicant intends to operate a financial company and provide two or more of the following financial services: lending of cash and bank metals on credit, factoring, financial leasing, trading in currency valuables and providing financial payment services for transferring funds without opening an account and/or acquiring payment instruments;

– UAH 10 million - if the applicant intends to operate a financial company and provide guarantees.

Meanwhile, the Law of Ukraine "On Financial Services and Financial Companies" No. 1953-IX, dated 14.12.2021, establishes that if the law requires a minimum amount of authorised capital of a company of a certain organisational and legal form, the minimum authorised capital of the financial company or pawnshop at the time of its state registration must be not less than the amount established by law for a company of such organisational and legal form.

8. What safeguards are there to protect the company's capital (e.g. rules on contributions in kind, on distribution to shareholders, on acquisition by a company of its own shares, on providing financial assistance to third parties for the acquisition of a company's shares)?

According to the third part of Article 9 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 the founders may enter into a memorandum of association, which determines the procedure for joint activities to establish a joint stock company, the number, type and class of its shares to be acquired by each founder, the nominal and acquisition value of the shares, term and form of payment for the value of shares, validity term of the agreement.

According to the first part of Article 11 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 payment for the value of shares placed during the establishment of a joint-stock company may be made in monetary form, securities (except debt securities issued by the founder, and promissory notes, except government bonds that are exchanged for shares in cases provided by the law on the State Budget of Ukraine for the relevant year), property and property rights, intangible assets of monetary value.

Payment for the value of shares placed during the establishment of a joint stock company may not be made at a price lower than their nominal value.

Payment for the value of shares placed during the establishment of a joint stock company may not be made by assuming obligations to perform work or provide services for the company.

The third part of Article 11 of the Law “On Joint Stock Companies” No. 514-VI dated 17.09.2008 stipulates that each founder of a joint stock company must pay the full value of the acquired shares before the date of approval of the results of the issue of shares. In case of failure to pay (incomplete payment) of the value of the acquired shares before the date of approval of the results of the issue of shares, the joint stock company is considered unfounded. Until the payment of 50 percent of the authorised capital, the company has no right to carry out operations not related to its establishment.

Prior to the registration of the report on the results of the issue of shares, the founder has all the rights that are certified by the shares, except for the right to alienate them and encumber them with obligations.

According to the first part of Article 23 of the Law “On Joint Stock Companies” No. 514-VI, dated 17.09.2008, in case of placement of securities by a joint stock company, their payment is made in monetary form or (if agreed by the company and the investor) via property rights, non-property rights with monetary value, securities (except for debt securities issued by the purchaser; promissory notes, except for government bonds, which are exchanged for shares in cases provided by the law “On the State Budget of Ukraine” for the respective year), other property.

An investor may not pay for securities by assuming obligations to perform works or provide services for the company.

The charter of a joint stock company may set other restrictions on the forms of payment for securities. The company may not impose restrictions or prohibitions on the payment of securities by money.

The fifth part of Article 23 of the Law on Joint-Stock Companies No. 514-VI, dated 17.09.2008 stipulates that a joint-stock company may not grant a loan for the acquisition of its securities or a guarantee for loans granted by a third party for the acquisition of company’s shares.

The third part of Article 21 of the Law of Ukraine "On Joint Stock Companies" No. 514-VI, dated 17.09.2008 provides, as a general rule, that a joint stock company may not acquire its own shares which were placed for acquiring.

But a joint stock company may acquire shares held by its shareholders in the following exceptional cases:

- Under the section 13 of second part of Article 33 of the Law of Ukraine "On Joint Stock Companies" No. 514-VI, dated 17.09.2008 the general meeting may make a decision to acquire shares;

- Under the third part of Article 68 of the Law of Ukraine "On Joint Stock Companies" No. 514-VI, dated 17.09.2008 a joint stock company must acquire shares owned by a shareholder in the following cases provided in the first and second parts of this Article:

1. a shareholder - an owner of the company's ordinary shares, who have registered to participate in the general meeting, voted "against" approval of the decisions by the general meeting on:

- 1) company merger, acquisition, division, transformation, spin-off or change of a company's type;

- 2) execution of a major legal transaction by a company;

- 2-1) execution of a legal transaction by a company there may be interest in;

- 3) change in the amount of the authorised capital;

- 4) refusal to exercise the shareholder's preemptive right to acquire shares of additional issue in the process of their placement.

2. a shareholder - an owner of the company's preferred shares, who have registered to participate in the general meeting, voted "against" approval of the decisions by the general meeting on:

- 1) amending the charter providing for the placement of a new class of preferred shares whose owners will have a higher priority in collecting dividends or payments in case of liquidation of a joint stock company;

- 2) increase in the scope of rights of shareholders - owners of placed preferred shares, who have a higher priority in collecting dividends or payments in case of liquidation of a joint stock company;

- 3) refusal to exercise the shareholder's preemptive right to acquire shares of additional issue in the process of their placement.

9. What kind of protection is provided for the shareholders in the context of capital maintenance and alteration (e.g. decision-making power on fundamental issues such as increase and reduction of capital, pre-emption rights, and equal treatment of shareholders in the same position)?

The second part of Article 33 of the Law of Ukraine "On Joint Stock Companies" No. 514-VI, dated 17.09.2008 defines issues that fall within the exclusive competence of the general meeting, in particular:

- decision-making on increasing the authorised capital of the company;

- decision-making on reduction of the authorised capital of the company;

- decision-making on non-exercise of the preemptive right of shareholders to purchase shares of additional issue in the process of their placement.

According to the fifth part of Article 23 of the Law of Ukraine "On Joint Stock Companies" No. 514-VI, dated 17.09.2008 the decision of the general meeting of shareholders on the increase, decrease of the authorised capital is taken by more than three quarters of the votes of shareholders

who have registered to participate in the general meeting and are the owners of shares with the voting right on the issues.

Under the para 4 of second part of Article 27 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 the decision not to exercise the preemptive right of shareholders to acquire shares of additional issue in the process of their placement is decided by more than 95 percent of votes of shareholders of their total number registered for participation in the general meeting.

According to the first part of Article 27 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008:

1. The preemptive right of shareholders means:

- the right of a shareholder - an owner of ordinary shares to acquire ordinary shares placed by the company in proportion to the share of ordinary shares owned by him/her in the total number of ordinary shares;

- the right of a shareholder - an owner of preferred shares to acquire preferred shares of the same or another class placed by the company, if shares of such class give their owners an advantage over the priority while collecting dividends or payments in case of liquidation, in proportion to the share of preferred shares of certain class owned by such shareholder in the total number of preferred shares of such class.

2. Under the second part of Article 27 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 the preemptive right must be granted to a shareholder – an owner of ordinary shares in the process of issuing ordinary shares by the company in the manner prescribed by law (unless the general meeting of the shareholders decides not to exercise such right).

The preemptive right is granted to a shareholder - an owner of preferred shares in the process of issuing preferred shares by the company (unless the general meeting of shareholders decides not to exercise such right).

If non-exercise of the preemptive right to acquire additional shares in the process of their issue is included in the agenda of the general meeting of shareholders, the supervisory board (or the executive body if the supervisory board is not established by the company's charter) should present the written reasoning for non-use of such right at the respective general meeting of shareholders.

Not later than 30 days before the placement of shares with pre-emption granted to shareholders, the company notifies each shareholder who has such a right about the possibility to exercise it and publishes a notification on its website, as well as in the database of the person conducting regulatory information on behalf of capital market participants and professional participants in organised commodity markets.

The notice must contain data on the total number of shares placed by the company, the placement price, the rules for determining the number of securities for the purchase of which the shareholder has a preemptive right, the term and procedure for exercising this right. In case of placement of preferred shares, the notice must contain information about the rights granted to the owners of these securities.

3. According to the third part of Article 27 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 a shareholder who intends to exercise his/her preemptive right shall submit to the joint stock company within a specified period a written application for the purchase of shares and transfer funds to the appropriate account in an amount equal to the value of securities acquired by him/her. The shareholder's application must indicate his name (title), place of residence (location), the number of shares acquired by him/her. The application and the transferred funds are accepted by the company not later than the day preceding the day of placement of shares. The company issues a written commitment to the shareholder to sell the appropriate amount of shares.

4. Under the fourth part of Article 27 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 in case of violation of the procedure of shareholders’ preemptive rights exercise by the joint stock company, the National Securities and Stock Market Commission may decide to declare the issue unfair and suspend the placement of shares of this issue.

According to the first and second parts of Article 68 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008:

Every shareholder – an owner of ordinary shares has the right to demand mandatory acquisition of his ordinary shares by the company, if she/he has registered for participation in the general meeting and voted “against” approval of the decisions of the general meeting, in particular, on the following matters:

- 1) company merger, acquisition, division, transformation, spin-off or change of a company’s type;
- 2) execution of a major legal transaction by a company;
- 2-1) execution of a legal transaction by a company there may be interest in;
- 3) change in the amount of the authorised capital;
- 4) refusal to exercise the shareholder's preemptive right to acquire shares of additional issue in the process of their placement.

Every shareholder – an owner of preferred shares has the right to demand the mandatory acquisition of preferred shares in his ownership by the company, if she/he registered for participation in the general meeting and voted “against” the decisions of the general meeting on:

- 1) amending the charter providing for the placement of a new class of preferred shares whose owners will have a higher priority in collecting dividends or payments in case of liquidation of a joint stock company;
- 2) increase in the scope of rights of shareholders - owners of placed preferred shares, who have a higher priority in collecting dividends or payments in case of liquidation of a joint stock company;
- 3) refusal to exercise the shareholder's preemptive right to acquire shares of additional issue in the process of their placement.

Under the third part of Article 68 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 the joint stock company is obliged to acquire the shares owned by the shareholder in the cases provided above.

The fourth part of Article 68 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI dated 17.09.2008 defines that the list of shareholders entitled to demand the mandatory acquisition of their shares (in accordance with the first and second parts this Article) is based on the list of shareholders who have registered for participation in the general meeting, on which participants of the general meeting have made a decision, which constituted the grounds for such acquisition of shares.

10. What rules provide for the protection of creditors in case of reduction in capital?

According to the second part of Article 16 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 within 30 days from the date when a decision on a reduction of the joint stock company’s authorised capital has been made, the executive body shall notify each creditor whose claims against the company are not secured by a pledge, guarantee or surety of this decision in writing.

Under the third part of Article 16 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI dated 17.09.2008 within 30 days of receiving the notice, specified in the second part of this Article, a creditor, whose claims against the joint stock company are not secured by pledge or surety agreements, may apply to the company with a written request to carry out within 45 days one of the following measures subject to the company’s choice:

- concluding a pledge or surety agreement,
- early termination or fulfillment of obligations to the creditor, unless otherwise provided by the agreement between the company and the creditor.

If the creditor has not applied to the company in writing within the period provided for in the third part of this Article, it is considered that she/he does not require the company to take additional action related to obligations owned to him/her.

Pursuant to parts 3, 4, 5 of Article 19 of the Law of Ukraine “On Limited Liability and Additional Liability Companies”:

3. After the decision to reduce the authorised capital of the company, its executive body within 10 days must notify in writing about such a decision each creditor whose claims against the company are not secured by a pledge, guarantee or surety.

4. Within 30 days of the receipt of the notice referred to in part three of this article, creditors may apply to the company with a written request to carry out within 30 days one of the following measures of the company's choice:

- 1) ensuring the fulfillment of obligations by concluding a security agreement;
- 2) early termination or fulfillment of obligations to the creditor;
- 3) concluding another agreement with the creditor.

If the company fails to comply with this requirement within the prescribed period, creditors have the right to refer to the court for early termination or fulfillment of obligations by the company.

5. If the creditor has not applied to the company with a written request within the period provided for in part four of this article, it is considered that he does not require the company to take additional action to fulfill its obligations to him.

Similar provisions are included in the Order “On Increase (Reduction) of Joint Stock Company’s Authorised Capital”, approved by the Resolution of the National Securities and Stock Market Commission No. 385 dated 12.06.2018.

According to the point 5 of part 6 of Chapter III of the said Order notification of creditors, whose claims against the joint stock company are not secured by a pledge, guarantee or surety, on the decision to reduce the authorised capital is one of the mandatory steps for reducing a joint stock company’s authorised capital by reducing the nominal value of shares.

According to the point 5 of part 7 of chapter III of the said Order notification of creditors, whose claims against the joint stock company are not secured by a pledge, guarantee or surety, on the decision to reduce the authorised capital is one of the mandatory steps for reducing a joint stock company’s authorised capital by cancellation of previously acquired shares and otherwise obtained shares.

Concerning domestic mergers and divisions of public limited liability companies:

11. What type of mergers/divisions are allowed in your country (merger/division by acquisition, by formation of new companies)?

The Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008, in particular, allows mergers (merger by the formation of a new company, merger by acquisition), as well as division (division by formation of new companies) of joint stock companies.

It should be noted that there is no such form of division as "division by acquisition" in domestic law.

According to the first part of Article 104 of the Civil Code of Ukraine, a legal entity terminates as a result of reorganisation (merger by formation of a new company, merger by acquisition, division by formation of a new company, transformation) or liquidation. Upon reorganisation of legal entities, property, rights and obligations are transferred to legal successors.

In accordance with the first part of Article 80 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 merger by formation of a new company, merger by acquisition, division, spin-off and transformation of a joint stock company shall be carried out by the decision of the general meeting, and in cases stipulated by law, by the decision of the court or relevant authorities.

In the cases provided for by law, the division of a joint stock company or the spin-off of one or more joint stock companies is carried out by decision of the relevant state authorities or court.

According to Article 1 of the Law of Ukraine “On Economic Entities” acquisition of shares and other companies’ assets must be carried out by a company in compliance with the requirements of the legislation on protection of economic competition. This area is governed by the Regulations “On the Procedure for Submission and Consideration of Applications for Prior Obtaining Permission of the Antimonopoly Committee of Ukraine for the Concentration of Economic Entities”, approved by the Order of the Antimonopoly Committee of Ukraine No. 33-p, dated 19.02.2002.

The procedures for merger by formation of a new company, merger by acquisition, division, spin-off, transformation and liquidation of a joint stock company are defined in Articles 83-85 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008.

The Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008, in particular, allows mergers (merger by the formation of a new company), merger (merger by acquisition), as well as division (division by formation of new companies) of joint stock companies.

It should be noted that there is no such form of division as "division by acquisition" in domestic law.

How does the legislation define "merger by acquisition" and "merger by the formation of a new company"?

The first part of Article 83 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 provides that a merger by the formation of a new company is the emergence of a new joint stock company-successor with the transfer to it according to the transfer acts of all property, all rights and obligations of two or more joint stock companies that are being wound up.

The first part of Article 84 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 provides that the merger by acquisition is the termination of a joint stock company (several companies) with the transfer of all property, rights and obligations to another joint stock company - successor.

12. What are the main steps of the procedure (e.g. drawing up of draft terms of an operation and their disclosure, a report to shareholders, an examination by an independent expert, approval by the general meeting)?

According to Part 1 of Article 79 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008, a joint stock company is terminated as a result of the transfer of all its property, rights and obligations to other business entities - successors (by merger by formation of a new company, merger by acquisition, division, transformation).

Pursuant to Part 6 of Article 83 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 the procedure of merger by formation of a new company out of joint stock companies is carried out in the following order:

- 1) approval of a decision on: termination of the company by way of a merger; establishment of a company termination commission; election of members of the termination commission by a general meeting of each joint stock company participating in the merger;
- 2) settlement of claims of creditors submitted to the joint stock company which takes part in a merger according to the part 2 of Article 82 of this Law;
- 3) exercise of the right of the shareholders to demand mandatory acquisition of the joint stock company securities belonging to them in accordance with the procedure envisaged by Articles 68, 69 of this Law;
- 4) preparation of a transfer act by the termination commission of each joint stock company participating in the merger;
- 5) approval by the supervisory board of each joint stock company participating in the merger of a decision on approval of the following documents: a draft charter of a joint stock company being incorporated as a result of a merger of joint stock companies; a draft agreement on a merger of joint stock companies; the explanations to the terms of the agreement on merger; a transfer act prepared by the termination commission; the terms of conversion of the shares of the company being

terminated into the shares of the joint stock company being incorporated as a result of the merger of joint stock companies;

6) approval by a general meeting of each company participating in the merger of a decision on approval of the following documents: a transfer act; the agreement on a merger of joint stock companies; charter of the joint stock company; and also a decision on election of authorised persons of the joint stock company to carry out further actions on termination of the joint stock company by way of a merger;

7) filing an application and all required documents for registration of the share issue with the NSSMC by authorised persons of the joint stock companies participating in the merger;

8) registration of the share issue and issuance of a provisional certificate on registration of the share issue by the NSSMC;

9) assignment of the International Securities Identification Number (ISIN) to shares;

10) conclusion of an agreement on servicing share issues with a depository;

11) exchange of the shares of the company being incorporated as a result of a merger into the shares of the companies being terminated;

12) approval of the results of placement (exchange) of shares by authorised entities of the joint stock companies participating in the merger;

13) state registration of the joint stock company charter being incorporated as a result of a merger with state registration bodies;

14) submission of a report on the results of placement (exchange) of shares to the NSSMC;

15) registration by the NSSMC of a report on the results of placement (exchange) of the shares of the company being incorporated as a result of a merger for the shares of the companies being terminated and cancellation of registration of the issue of the shares of the companies terminated by the NSSMC;

16) state registration of termination of the joint stock companies terminated by way of a merger;

17) receipt of a certificate of state registration of the issue of shares of the company being incorporated as a result of a merger.

In accordance with Part 6 of Article 84, Part 6 of Article 85, Part 6 of Article 86 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 the procedures of merger by acquisition, division and spin-off of joint stock companies are similar to that of merger by formation of a new company.

In accordance with the requirements of Article 81 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008:

1. The supervisory board of each of the joint stock companies participating in a merger by formation of a new company, merger by acquisition, division, spin-off or transformation shall work out terms of an agreement on a merger (acquisition) or a plan of division (spin-off, transformation), which shall contain:

1) full titles and details of the joint stock companies participating in a merger, acquisition, division, spin-off or transformation;

2) the procedure and ratios used for conversion of shares and other securities as well as the amounts of possible cash payments to shareholders;

3) information on the rights to be given by the company-successor to owners of other securities, other than shares, of the joint stock company being terminated as a result of a merger, acquisition, division, transformation or a spin-off of the joint stock company and/or the actions suggested to be taken with respect to such securities.

4) information on nominated individuals who will become officials of the company - successor after completing a merger, acquisition, division, spin-off or transformation and fees or compensations suggested to be paid to such individuals.

5) procedure of voting at the general meeting of the shareholders whose companies takes part in merger or acquisition.

2. The supervisory board of each of the joint stock companies participating in a merger, acquisition, division, spin-off or transformation shall prepare for shareholders an explanation of the terms of the agreement on a merger (acquisition) or division (spin-off, transformation) plan.

Such explanation shall contain economic justification of the merger, acquisition, division, spin-off or transformation, and reasoning of methods used for valuation of the joint stock company property and calculation of a swap ratio of shares and that of other securities of the joint stock company.

4. The materials sent to shareholders of the company which takes part in a merger (acquisition), division (spin-off, transformation) during preparation of a general meeting which will consider approval of the terms of an agreement on merger (acquisition), a division (spin-off, transformation) plan, or a transfer act, shall include:

1) draft agreement on a merger (acquisition), draft plan for division (spin-off, transformation);

2) explanations to the terms of the agreement on a merger (acquisition) or a division (spin-off, transformation) plan;

3) in case of a merger (acquisition) – annual financial reporting of other companies which have been taking part in a merger (acquisition) for the last three years.

5. Upon recommendation of the supervisory board a general meeting of each of the joint stock companies participating in a merger, acquisition, division, spin-off or transformation shall approve a decision on a merger, acquisition, division, spin-off or transformation as well as on approval of the terms of the agreement on a merger (acquisition) or a division (spin-off, transformation, a transfer act (for a merger, acquisition, transformation) or a division balance sheet (for a division and spin-off).

Material terms of the agreement on a merger (acquisition) approved by general meetings of the joint stock companies participating in the merger (acquisition) shall be identical.

The legislation in force does not provide neither for the examination of draft terms of merger/division by experts nor for the independent expert report within the meaning of Articles 96, 125, 142 of Directive (EU) 2017/1132.

13. What are the provisions for the protection/safeguards of employees, shareholders, creditors?

(a) Concerning employees:

There are no specific provisions in legislation to protect the interests of the company's employees, if such employees are not shareholders of the company. Employees of joint stock companies are subject to the general provisions on the protection of labour rights, which are provided by the Labour Code of Ukraine, Laws of Ukraine "On Trade Unions, Their Rights and Guarantees of Activity", "On Collective Bargaining Agreements", "On Vacations" etc.

According to Part 1 of Article 28 of the Law of Ukraine "On Joint Stock Companies" No. 514-VI, dated 17.09.2008, officials of the joint stock company and other persons employed by the company have no right to require the shareholder - employee of the company to provide information on how he/she voted or the intention to vote at the general meeting, or about the sale of shares belonging to him/her or the intention to sell them, or to require the transfer of power of attorney to participate in the general meeting.

In case of violation of the requirements of this Article, the official of the company could be held administratively and materially liable, dismissed from office, while contract or employment agreement with him/her could be terminated in accordance with the law.

(b) Concerning shareholders:

The first part of Article 26¹ of the Law of Ukraine "On Joint Stock Companies" No. 514-VI, dated 17.09.2008 provides for the right to enter into an agreement between the shareholders of the company. Thus, an agreement between the company's shareholders is an agreement, whose subject is the exercise of rights related to shares and stipulated in law, charter and other company's internal documents by shareholders - owners of ordinary and preferred shares (hereinafter – "the agreement between shareholders"). Under the agreement between shareholders the parties undertake to exercise their rights and / or refrain from exercising these rights in the manner prescribed by such agreement.

The agreement between shareholders may stipulate the obligation of its parties to vote at the general meeting of shareholders in the manner prescribed by such agreement; agree on the acquisition or disposal of shares at a predetermined price; refrain from the disposal of shares in the event of circumstances specified in the agreement; as well as to take other actions related to the management of the company, its termination or the spin-off of a company. The agreement between the shareholders may provide conditions or procedures for determining the conditions under which the shareholder - party to the agreement is entitled or obliged to buy or sell shares of the company, and determine the cases (which may or may not depend on the actions of the parties) when these rights and obligations arise.

The agreement between the shareholders is concluded in writing. The authenticity of the signatures of the participants (founders) of the limited liability company - individuals on such an agreement is certified in the prescribed manner. The date of entry into force of the agreement between the shareholders is determined by this agreement. The agreement between the shareholders is concluded for a certain period or indefinitely.

According to the second part of Article 26¹ of the Law of Ukraine "On Joint Stock Companies" No. 514-VI, dated 17.09.2008 the subject of the agreement between shareholders may not be the obligation of the parties to this agreement to vote on the shares in whose regard this agreement is concluded in accordance with the instructions of the management of the company, unless the party is a person who is also a member of the management body of such company.

Under the seventh part of Article 26¹ of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 the rights of the parties to the agreement between shareholders based on such an agreement, including the right to demand compensation for damages, penalties (fines, penalties), payment of compensation (fixed amount or amount to be determined in the manner prescribed by the agreement between shareholders), the application of other liability measures in connection with the breach of contract between shareholders, are subject to judicial protection.

Article 26² of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 provides the mechanism for protecting rights of majority shareholder/s, i.e. person or group of persons acting jointly, who are the owners of the dominant controlling stake of the company.

Under the fourth part of the Article 26² of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 within 90 days from the date of submission of the notice specified in the second part of this Article, the person who owns the dominant controlling stake, or any of his/her affiliates or authorised person, has the right to send to the company a public irrevocable request to acquire shares from all owners of shares of the company. If a public irrevocable request is submitted to the company, all shareholders of the joint stock company, except for persons acting jointly with the owner of the dominant controlling stake of the company and his/her affiliates, and the company itself, are unconditionally obliged to sell their shares to the applicant of the request.

(c) Concerning creditors:

Pursuant to the eighth part of Article 26¹ of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 creditors of a joint stock company may enter into an agreement with the company's shareholders, under which shareholders could undertake exercising or refrain (refuse) from exercising their corporate rights, in the manner prescribed by such agreement, in order to ensure the legally protected interest of such third parties, such as vote at the company's general meeting of shareholders in the manner provided by such agreement, take other actions related to the management of the company in a concerted manner; acquire/ dispose of shares at a predetermined price; acquire/dispose of shares or refrain from it under circumstances specified in the agreement. The general provisions of the agreement between the shareholders shall apply to the said agreement, unless otherwise is provided by law or follows from the essence of the relations between the parties.

In addition, in accordance with the first part of Article 67 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 the general meeting of the joint stock company is not entitled to decide on acquisition of shares if the company did not satisfy the creditor's claims that had been submitted no later than three days prior to the date of the general meeting, whose agenda was including the issue of share acquisition.

Article 50 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 stipulates that if the decision of the general meeting, or the procedure for such a decision, violates the requirements of this Law, other legislation, charter or regulations of the general meeting of the company, the shareholder, whose rights and interests are infringed by such a decision, may challenge this decision to the court within three months from the date of its adoption.

Taking into account all the circumstances of the case the court has the right to uphold the contested decision, if no violation of the legal rights of the shareholder who challenged the decision, were to be found.

A shareholder may appeal the decision of the general meeting on issues mentioned in the first part of Article 68 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008

(issues involving mandatory acquisition of shares by the joint stock company at the request of shareholders) only after receiving a written refusal to exercise the right to require mandatory acquisition of his/her voting shares or in case of a failure to receive a response to his/her request within 30 days from the date of its sending to the address of the company in the manner prescribed by this Law.

In accordance with Article 82 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 within 30 days from the date of the general meeting’s decision to terminate the company by division, transformation or spin-off, and within 30 days from the date of the decision of general meeting of the last of the joint stock companies involved in the merger or acquisition to terminate the company by merger or acquisition, - the company must notify the company's creditors in writing and place a notice of the decision in the database of the entity conducting regulatory information on behalf of capital market participants and professional participants at organised commodity markets. The company is also obliged to notify about the decision each operator of the organised capital market that manages the organised market in which the company's shares are admitted to trading.

A creditor whose claims against a joint -stock company are not secured by pledge or surety agreements, and the latter’s entity activities are terminated as a result of a merger, acquisition, division, transformation or spin-off, within 20 days after sending him/her notice of termination shall apply in writing seeking from such entity one of the following actions at its choice: ensuring the fulfilment of obligations by concluding pledge or surety agreements; or early termination or fulfilment of obligations to the creditor and compensation for losses, unless otherwise is provided by the agreement between the company and the creditor. If the creditor has not applied to the company in writing within this period, it is considered that she/he does not require the company to take additional action on the obligations owed to him/her.

Mergers, acquisitions, divisions, spin-offs or transformations may not be completed until the creditors' claims have been honoured.

If the division balance sheet or transfer act does not make it possible to determine to which of the successors the obligation has passed or whether the company, from which the spin-off had been made remains liable, - the successors and the company from which the spin-off had been made shall be held jointly and severally liable.

The similar provisions are provided in the fourth part of the Article 109 of the Civil Code of Ukraine under which newly created legal entity and legal entity from which the spin-off had been made shall be jointly and severally liable to the creditor for such obligations.

It is also worth noting that the paragraph 4 of Article 7 of the Law of Ukraine “On State Regulation of Capital Markets and Organised Commodity Markets” No. 448/96-BP, dated 30.10.1996, states that one of the main tasks of the National Securities and Stock Market Commission is protection of the rights of investors in financial instruments (including consumers of financial services under the Law of Ukraine “On Financial Services and State Regulation of Financial Services Markets”) and participants in capital markets and organised commodity markets by applying measures to prevent and stop violations of legislation on capital markets and organised commodity markets, including the funded pension system, including, within its powers, imposing sanctions for violating the law.

In particular, in accordance with Article 8 of the Law of Ukraine “On State Regulation of Capital Markets and Organised Commodity Markets” No. 448/96-BP, dated 30.10.1996 the National Securities and Stock Market Commission is vested with the following rights:

- in order to protect the interests of the state and investors in securities, the NSSMC, pursuant to a respective decision, to suspend amendments to the registration system of owners of registered securities or to the system of depository accounting for securities of a certain issuer or a certain owner until the violations that led to such a decision are eliminated;

- If the NSSMC believes that the requirements of the legislation on capital markets and/or joint stock companies have been breached, it is entitled to suspend trading in securities (of the same type and class) on organised markets for up to 10 working days if there are sufficient grounds confirmed by relevant documents;

- to prohibit trading in securities (of the same type and class) on organised markets, if the fact of violation of the legislation on capital markets and/or joint stock companies has been established;

- to postpone or prohibit trading in securities if it finds existence of sufficient grounds confirmed by relevant documents, to believe that the issuer is in a situation where further circulation of its securities would violate the rights of investors;

- to stop the circulation of securities of the issuer, in particular, because of its inclusion in the list of issuers that have signs of fictitiousness, as well as the right to restore their circulation.

14. How is the legality of a merger/division controlled in your country?

The procedure for issuing shares of a joint stock company, which is created as a result of merger or division, is determined by the Procedure for Issuing and Registering the Issuance of Shares of Joint Stock Companies Created by Merger, Division, Spin-off or Transformation, or to Which the Merger by Acquisition is Carried Out, approved by the NSSMC’s Resolution dated 09.04.2013 №529 and registered at the Ministry of Justice of Ukraine on May 21, 2013 under №795/23327 (as amended).

According to the Chapter II of the Resolution of the NSSMC No. 520 dated 09.04.2013 the procedure for issuing shares of a joint stock company created as a result of merger determines the obligation to apply to the NSSMC as well as the NSSMC’s corresponding obligation to take appropriate actions. The procedure comprises, amongst others, the following steps:

1. submission of the application and all necessary documents by each of the joint stock companies participating in the merger to the National Securities and Stock Market Commission in order to suspend the circulation of shares;

2. suspension of the circulation of shares of each joint stock company participating in merger by the National Securities and Stock Market Commission;

3. submission of the application and all necessary documents by the joint stock companies’ persons authorised to carry out actions related to the creation of a joint stock company - successor to the National Securities and Stock Market Commission in order to register issuance of shares of the company created by merger;

4. registration of the issuance of shares of the joint stock company - successor and issuance of a temporary certificate on registration of the issuance of shares by the National Securities and Stock Market Commission;

5. submission of the application and all necessary documents by a joint stock company - successor to the National Securities and Stock Market Commission in order to register a report on the results of placement (exchange) of shares;

6. registration of the report on the results of placement (exchange) of shares of a joint stock company created as a result of merger and cancellation of the registration of issuance of shares of joint stock companies terminated as a result of the merger by the National Securities and Stock Market Commission.

The procedure for issuing shares of a joint stock company, created as a result of division, determines the obligation to apply to the NSSMC as well as the obligation of the NSSMC to take appropriate action. The procedure comprises, amongst others, the following steps:

1. submission of the application and all necessary documents by the joint stock company due to be terminated by division to the National Securities and Stock Market Commission in order to suspend the circulation of shares;

2. suspension by the NSSMC of the circulation of shares of the joint stock company, which is being terminated by the division;

3. simultaneous submission of the application and all necessary documents for registration of the issuance of shares by the authorised person of each created joint stock company to the NSSMC;

4. registration of share issuance and issuance of temporary certificates on registration of share issuance by the NSSMC;

5. simultaneous submission of the application and all necessary documents for registration of the report on the results of placement (exchange) of shares by each created joint stock company to the NSSMC;

6. registration of reports on the results of placement (exchange) of shares of joint stock companies, created as a result of the division and cancellation by the NSSMC of registration of the issuance of shares of the joint stock company, terminated by division, by the NSSMC.

The NSSMC verifies compliance of all submitted documents with the requirements of legislation.

According to the sixth part of subchapter 2 of chapter III of the Resolution of the National Securities and Stock Market Commission No. 520, dated 09.04.2013 the grounds for refusal to register the issuance of shares and report on the results of placement (exchange) of shares as follows:

1) non-compliance of the documents submitted by the issuer with the requirements of the legislation;

2) provision of unreliable data into the documents submitted for registration of shares issuance, and/or in the report on the results of placement (exchange) of shares;

3) violation of the procedure for making a decision on the placement (issuance) of shares established by law;

4) violation of the procedure for convening and/or holding a general meeting of shareholders at which the decision on the merger, division, spin-off or acquisition of the company has been made.

State registration of a joint stock company which is created as a result of a merger or division shall be carried out in the state registration authorities.

State registration of termination of joint stock companies which are terminated by merger or division shall be carried out in the state registration authorities.

The state registration of a joint stock company as well as the state registration of the termination of a joint stock company shall be carried out in accordance with the requirements of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations” No. 755-IV, dated 15.05.2003.

According to the first part of Article 5 of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations” No. 755-IV, dated 15.05.2003 the system of authorities in the field of state registration consists of the following bodies:

- 1) Ministry of Justice of Ukraine;
- 2) other subjects of state registration.

Under the second part of Article 5 of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations” No. 755-IV, dated 15.05.2003 the powers of the Ministry of Justice of Ukraine in the field of state registration include, in particular, the following:

- 1) formation of state policy in the field of state registration;
- 2) regulatory, methodological and informational support in the field of state registration;
- 3) performing the powers of the holder of the Unified State Register;
- 4) determination of the technical administrator;
- 5) ensuring access to the Unified State Register of state registrars, authorised persons of subjects of state registration, other subjects in accordance with this Law and making decisions on temporary blockage or cancellation of such access in cases established by this Law.

Under the third part of Article 5 of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations” No. 755-IV, dated 15.05.2003 the powers of other subjects of state registration include:

- 1) providing:
 - acceptance of documents submitted for state registration;
 - state registration and performing other registration actions;
 - maintenance of the Unified State Register and providing data from it;
 - formation and storage of registration files;
- 2) exercising other powers established by this Law and other regulations.

Article 17 of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations” No. 755-IV, dated 15.05.2003 defines the documents that should be submitted by the applicant for state registration of legal entity (including as a result of merger, division), as well as documents for state registration of termination of legal entity as a result of its reorganization after the expiration of the period of termination procedure, but not earlier than the expiration of the period for filing claims by creditors.

Article 15 of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations” No. 755-IV, dated 15.05.2003 establishes requirements for drawing up documents that should be submitted for state registration.

Article 25 of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations” No. 755-IV, dated 15.05.2003 establishes the procedure for state registration and other registration actions.

State registration and other registration actions are carried out based on documents submitted by the applicant for state registration.

Article 28 of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations” No. 755-IV, dated 15.05.2003 establishes the grounds for refusal of state registration of a joint stock company, and state registration of termination of a joint stock company.

Another body controlling mergers and acquisitions of legal entities is the Antimonopoly Committee of Ukraine.

According to the first part of the Chapter II of the Regulations “On the Procedure for Submission and Consideration of Applications for Obtaining Prior Permission of the Antimonopoly Committee of Ukraine for the Concentration of Economic Entities”, approved by the Order of the Antimonopoly Committee of Ukraine No. 33-p, dated 19.02.2002, in order to prevent the monopolisation of commodity markets, abuse of monopoly position, and restriction of competition, the bodies of the Antimonopoly Committee of Ukraine exercise state control over the concentration of economic entities.

To conclude, it should be noted that the procedures described in Article 102 of Directive 2017/1132 are not foreseen by Ukrainian law.

15. How is the merger/division registered?

First part of Article 104 of the Civil Code of Ukraine No. 435-IV, dated 16.01.2003 stipulates that a legal entity is terminated as a result of reorganization (merger, acquisition, division, transformation) or liquidation.

Pursuant to the first part of Article 106 of the Civil Code of Ukraine No. 435-IV, dated 16.01.2003, mergers, acquisitions, divisions and transformations of a legal entity shall be carried out by the decision of its members or the body of a legal entity which is authorised by the constituent documents, and in cases provided by law – by court or relevant state authorities.

The general procedure for reorganization (termination by merger, acquisition, division, or transformation) of a legal entity is determined by Article 107 of the Civil Code of Ukraine No. 435-IV, dated 16.01.2003 and Article 59 of the Commercial Code of Ukraine No. 436-IV, dated 16.01.2003.

The list of documents submitted by an applicant for the state registration of a legal entity, in particular regarding the termination of a legal entity, is defined by the provisions of Article 17 of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations” No. 755-IV, dated 15.05.2003.

Pursuant to fifth part of Article 4 of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations” No. 755-IV, dated 15.05.2003, in the event of

merger of legal entities, the state registration of a newly formed legal entity shall be carried out along with the state registration of termination of legal entities that are being terminated as a result of the merger. The merger is considered completed from the date of the state registration of the termination of legal entities that are terminated as a result of the merger.

In case of division of legal entities, the state registration of newly formed legal entities shall be carried out along with the state registration of the termination of the legal entity, which is terminated as a result of the division. The division is considered completed from the date of the state registration of the termination of the legal entity, which is terminated as a result of the division (the seventh part of Article 4 of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations” No. 755-IV, dated 15.05.2003).

Procedure for Issuing and Registering the Issue of Shares of Joint Stock Companies Created by Merger, Division, Spin-off or Transformation, or to Which the Merger is Carried Out, approved by the NSSMC Resolution dated 09.04.2013 №529 and registered at the Ministry of Justice of Ukraine on May 21, 2013 under №795/23327 (as amended).

This Procedure determines:

- the procedure for issuing shares of joint stock companies created by merger, division, spin-off or transformation, as well as joint stock companies to which the merger is carried out;
- the procedure for registration of shares issue of joint stock companies created by merger, division, spin-off or transformation, as well as joint stock companies to which the merger is carried out;
- the procedure for suspending the circulation of shares of joint stock companies, which are terminated in case of their merger, division, acquisition or from which the spin-off is carried out.

Registration of the issue of shares, registration of the report on the results of placement (exchange) of shares, suspension of shares circulation, resumption of shares circulation, cancellation of registration of shares issue are carried out by the NSSMC.

The procedure for issuing shares of a joint stock company, which is created as a result of a merger of joint stock companies, is carried out in the following order:

1. Approval of the market value of ordinary shares by the supervisory board (or by the general meeting of shareholders, if the formation of the supervisory board is not provided by the charter of the company) of each joint stock company participating in the merger.

The market value of shares is determined in accordance with the Ukrainian law as of the day preceding the day of placement in the publicly available information database of the NSSMC or through a person conduction disclosure of regulated information on behalf of stock market participants, notice of convening a general meeting, the agenda of which includes the issue on termination of the joint stock company by merger.

2. Adoption of decisions by the general meeting of each joint stock company participating in the merger concerning:

- a) termination of the joint stock company by merger;
- b) creation of a commission for termination of the joint stock company;
- c) election of the personnel of the termination commission.

3. Submission of an application and all necessary documents to suspend shares circulation to the NSSMC by each joint stock company participating in the merger.

4. Suspension of shares circulation of each joint stock company participating in the merger by the NSSMC.

5. Written notice of creditors on the decision concerning termination by merger by each joint stock company participating in the merger within 30 days from the date of decision made by the general meeting of the last of the joint stock companies participating in the merger concerning termination by merger.

6. Placing notice on the decision concerning termination by merger by each joint stock company, which are terminated by merger, within 30 days from the date of the termination decision on termination by merger that is adopted at the general meeting of the last of the joint stock companies terminated by merger in the manner prescribed by law.

The public joint stock company is also obliged to notify about such decision each stock exchange on which it has been listed.

7. Receipt of written claims of creditors whose claims against a joint stock company terminated by merger are not secured by pledge or surety agreements within the period provided for in Article 82 of the Law of Ukraine “On Joint-Stock Companies” No. 514-VI, dated 17.09.2008.

8. Satisfaction of creditors' claims against each joint stock company terminated by merger in accordance with the second part of Article 82 of the Law of Ukraine “On Joint-Stock Companies” No. 514-VI, dated 17.09.2008.

9. Compilation of a list of shareholders, which are entitled to require the mandatory redemption of their shares by each joint stock company participating in the merger.

10. Written notification of shareholders by each joint stock company participating in the merger in accordance with the list drawn up pursuant to the Clause 9 above concerning the right to require mandatory redemption of shares no later than 10 working days after the date of general meeting of shareholders.

11. Performing mandatory redemption of shares owned by shareholders in the manner and within the time limits provided by the Ukrainian law by each joint stock company participating in the merger.

The actions provided for in Clauses 5 to 8 shall be carried out simultaneously with the actions provided for in Clauses 9 to 11.

12. Drawing up a transfer act by the termination commission of each joint stock company terminated by merger.

13. Adoption of decisions by the supervisory board of each joint stock company participating in the merger concerning:

- a) approval of the conditions for conversion of shares of the company that is terminated into shares of the company that is created as a result of the merger of joint stock companies;
- b) approval of the draft agreement on merger of joint stock companies;
- c) approval of explanations to the terms of the agreement on merger;

d) approval of the draft charter of the joint stock company that is created as a result of the merger of joint stock companies;

e) approval of the transfer act prepared by the termination commission of the company.

14. Adoption of resolutions by the general meeting of each company participating in the merger concerning:

a) approval of the transfer act;

b) approval of the merger agreement;

c) creation of a successor joint stock company as a result of the merger;

d) approval of the charter of the joint stock company created as a result of the merger;

e) election of authorised persons of the joint stock company to carry out further actions to terminate the joint stock company by merger;

f) determination of the authorised body of the joint stock company which is empowered to approve the results of the placement (exchange) of shares (if it is not specified in the company's charter).

15. The joint general meeting of shareholders of the successor joint stock company decides on:

a) formation of bodies of the successor joint stock company;

b) election of authorised persons who are empowered to carry out actions related to the creation of a successor joint stock company as a result of a merger of joint stock companies;

c) issue of shares for the purpose of conversion of companies' shares, which are terminated due to the merger, into shares of the successor joint stock company.

16. Submission of application and all necessary documents for registration of shares issue of the company created by the merger to the NSSMC by authorised persons of joint stock companies authorised to carry out actions related to the creation of a successor joint stock company.

17. Registration of shares issue (issues) of the successor joint stock company and issuance of a temporary certificate(s) on the registration of shares issue by the NSSMC.

18. Assigning the International Stock Identification Number (ISIN) to shares.

19. Concluding an agreement on servicing securities issues with the Central Securities Depository.

20. Issuance and deposit of temporary global certificate(s).

21. Carrying out transactions in the depository accounting system to service the process of conversion of companies' shares, which are terminated by merger, into shares of the successor company and cancellation of shares that are not subject to conversion by the Central Securities Depository.

22. Approval of the results of placement (exchange) of shares by the authorised bodies of joint stock companies participating in the merger.

23. State registration of a joint stock company created as a result of merger in the state registration authorities.

24. Submission of application and all necessary documents for registration of the report on the results of placement (exchange) of shares by the successor joint stock company to the NSSMC.

25. Registration of the report on the results of placement (exchange) of shares of the joint stock company created as a result of the merger, as well as cancellation of registration of shares issue of joint stock companies terminated as a result of the merger by the NSSMC.

26. State registration of termination of joint stock companies terminated by merger.

27. Obtaining a certificate (certificates) of registration of the issue of shares of the successor company.

28. Execution and deposit of the global certificate(s).

The procedure for issuing shares of joint stock companies created as a result of the division of a joint stock company is carried out in the following order:

1. Approval of the market value of ordinary shares by the supervisory board (or the general meeting of shareholders, if the formation of the supervisory board is not provided by the charter of the joint stock company) of the joint stock company which is divided.

The market value of shares is determined in accordance with the Ukrainian law as of the day preceding the day of placement of the notice about general meeting, the agenda of which includes the issue on termination of the joint stock company by division, in the publicly available information database on securities market of the NSSMC or through a person engaged in publishing regulated information on behalf of stock market participants.

2. Adoption of the decision by the general meeting of the joint stock company, which is terminated by division, concerning:

- a) termination of the joint stock company by division;
- b) creation of the termination commission of the joint stock company;
- c) election of the personnel of the termination commission;
- d) creation of new joint stock companies.

3. Submission of application and all necessary documents to suspend circulation of shares to the NSSMC by the joint stock company, which is terminated by division.

4. Suspension of the circulation of shares of the joint stock company, which is terminated by division, by the NSSMC.

5. Written notice of creditors of the joint stock company, which is terminated by division, about the decision on termination by division, as well as placement of the notice about such decision in the manner prescribed by law (within 30 days from the date of the termination decision by division).

The public joint stock company is also obliged to notify about such a decision each stock exchange on which it has been listed.

6. Receipt of written claims of creditors whose claims against the joint stock company, which is terminated by division, are not secured by pledge or surety agreements within the period provided for in Article 82 of the Law of Ukraine "On Joint Stock Companies" No. 514-VI, dated 17.09.2008.

7. Satisfaction of creditors' claims against the joint stock company, which is terminated by division, in accordance with the second part of Article 82 of the Law of Ukraine of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008.

8. Compilation of a list of shareholders which are entitled to require the mandatory redemption of their shares by the joint stock company, which is terminated by division.

9. Written notification of shareholders by the joint stock company, which is terminated by division, in accordance with the list drawn up pursuant to the Clause 8 above concerning the right to require mandatory redemption of shares no later than 10 working days after the date of general meeting of shareholders.

10. Performing mandatory redemption of shares owned by shareholders in the manner and within the time limits provided by the Ukrainian law by the joint stock company, which is terminated by division.

The actions provided for in Clauses 5 to 7 shall be carried out simultaneously with the actions provided for in Clauses 8 to 10.

11. Drawing up a distribution balance by the termination commission of the joint stock company which is terminated by division.

12. Adoption of decisions by the supervisory board of the joint stock company, which is terminated by division, concerning:

- a) approval of the draft procedure for conversion of shares of the joint stock company, which is terminated by division, into shares of the created companies;
- b) approval of the draft division plan;
- c) approval of an explanation of the terms of the division plan;
- d) approval of the distribution balance.

13. Adoption of the decision by the general meeting of the joint stock company, which is terminated by division, concerning:

- a) approval of the distribution balance;
- b) approval of the division plan;
- c) issue of shares for the purpose of conversion of shares of the joint stock company, which is terminated by division, into shares of the created joint stock company (ies);
- d) determination of the authorised body of the joint stock company, which is empowered to approve the results of the placement (exchange) of shares (if it is not determined by the company's charter);
- e) election of the authorised person (s), who are authorised to carry out actions related to the establishment of a joint stock company (joint stock companies) as a result of division.

14. Simultaneous submission by the authorised person of each created joint stock company of the application and all necessary documents for registration of the issue (issues) of shares to the NSSMC.

15. Registration of share issues by the NSSMC and issuance of temporary certificates on registration of share issues.

16. Assignment of international identification numbers of securities to the shares of the created joint stock companies.

17. Conclusion of an agreement on servicing securities issues by each joint stock company established with the Central Securities Depository.

18. Execution and deposit of temporary global certificates.

19. Carrying out by the Central Depository of securities of operations in the system of depository accounting on servicing the process of conversion of shares of the company, which is terminated by division, into shares of created companies and cancellation of shares that are not subject to conversion.

20. Approval of the results of placement (exchange) of shares of the created company (companies) by the authorised body of the joint stock company, which is terminated by division.

21. The general meeting of shareholders of each created joint stock company makes decisions on:

- a) establishment of a joint stock company;
- b) approval of the charter;
- c) formation of bodies of a joint stock company.

22. State registration of joint stock companies created by division in the state registration bodies.

23. Simultaneous submission by each established joint stock company of an application and all necessary documents for registration of a report on the results of placement (exchange) of shares to the NSSMC.

24. Registration by the NSSMC of reports on the results of placement (exchange) of shares of joint stock companies created as a result of division, and cancellation by the NSSMC of registration of the issue of shares of a joint stock company, which is terminated by division.

25. State registration of termination of a joint stock company terminated by division.

26. Obtaining certificates of registration of the issue of shares of joint stock companies created as a result of the division.

27. Execution and deposit of global certificates.

The state registration of a joint stock company created as a result of a merger and division is carried out in the state registration bodies.

The state registration of the termination of joint stock companies terminated by merger and division shall be carried out in the state registration bodies as well.

The state registration of a joint stock company and the state registration of the termination of a joint stock company shall be carried out in accordance with the requirements of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations” No. 755-IV, dated 15.05.2003.

Article 17 of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations” No. 755-IV, dated 15.05.2003 defines the list of documents to be submitted by the applicant for state registration of a legal entity (including as a result of mergers,

divisions), as well as documents for state registration of termination as a result of legal entity's reorganization.

Article 15 of this Law establishes requirements for the execution of documents submitted for state registration.

Article 25 of this Law establishes the procedure for state registration and other registration actions.

State registration and other registration actions are carried out on the basis of documents submitted by the applicant for state registration.

16. What are the responsibilities of the members of the management and supervisory boards?

The obligations of members of the board and supervisory boards are determined by the Laws of Ukraine "On Joint Stock Companies No. 514-VI, dated 17.09.2008, "On Management of State Property" No. 185-V, dated 21.09.2006, "On Limited and Additional Liability Companies" No. 2275-VIII, dated 06.02.2018, the Civil Code of Ukraine No. 435-IV, dated 16.01.2003, the Commercial Code of Ukraine No. 436-IV, dated 16.01.2003, as well as the statutory documents of the companies.

For joint stock companies

As far as joint stock companies are concerned, Article 58 Law of Ukraine "On Joint Stock Companies" No. 514-VI, dated 17.09.2008 stipulates that the executive body of a joint stock company manages the current activities of the company.

The competence of the executive body includes the resolving of all issues related to the management of the current activities of the company, except for issues that fall within the exclusive competence of the general meeting and the supervisory board.

The executive body of the joint stock company is accountable to the general meeting and the supervisory board, organizes implementation of their decisions. The executive body acts on behalf of the joint stock company within the limits established by the charter of the joint stock company and the law. The executive body of a joint stock company may be collegial (board, directorate) or sole (director, general director).

The rights and obligations of members of the executive body of a joint stock company are determined by the Law of Ukraine "On Joint Stock Companies" No. 514-VI, dated 17.09.2008, other acts of legislation, the company's charter and / or regulations on the executive body of the company, as well as the contract concluded with each member of the executive body. The contract is signed on behalf of the company by the chairman of the supervisory board or a person authorised to do so by the supervisory board.

Article 51 of the Law of Ukraine "On Joint Stock Companies" No. 514-VI, dated 17.09.2008 stipulates that the supervisory board of a joint stock company is a collegial body that protects the rights of shareholders and within the competence defined by the charter and this Law, manages the company and controls and regulates the executive body.

The exclusive competence of the supervisory board of joint stock companies in accordance with the law includes:

1) approval of internal regulations governing the activities of the company, except for those belonging to the exclusive competence of the general meeting by this Law, and those that are transferred by the decision of the supervisory board for approval to the executive body;

1⁻¹) approval of the regulation on remuneration of members of the executive body of a joint stock company, the requirements for which are set by the NSSMC, except for the requirements for the remuneration of members of the executive body of a joint stock company – bank, which are set by the National Bank of Ukraine;

1⁻²) approval of the report on remuneration of members of the executive body of the joint stock company, the requirements for which are set by the NSSMC, except for the requirements for the report on remuneration of members of the executive body of the joint stock company – bank, which are set by the National Bank of Ukraine;

2) preparation of an agenda of the general meeting, approval of a decision on the date of its holding and on including proposals in the agenda, except for convening an extraordinary general meeting by the shareholders;

2⁻¹) formation of a temporary counting commission in case of convening a general meeting by the supervisory board, unless otherwise provided by the company's charter;

2⁻²) approval of the form and text of the ballot paper;

3) approval of a decision on holding regular and extraordinary general meetings according to the company's charter and in cases established by this Law;

(point 4 of Art 51 was canceled)

5) approval of a decision regarding company's issue of another securities, except for shares;

6) approval of a decision on buy-out of securities placed by the company other than shares;

7) approval of the market value of property in the cases provided by this Law;

8) election and termination of the powers of the chairman and members of the executive body;

9) approval of the terms of contracts to be concluded with members of the executive body, establishing the amount of their remuneration;

10) approval of a decision on suspension of the chairman or the member of the executive body from exercising his/her powers and election of the person who shall exercise temporarily the powers of the chairman of the executive body;

11) election and termination of the powers of the head and members of other bodies of the company;

11⁻¹) appointment and dismissal of the head of the internal audit department (internal auditor);

11⁻²) approval of the terms of employment contracts which shall be concluded with employees of the internal audit department (with the internal auditor), determination of the amount of their remuneration, including incentive and compensation payments;

11⁻³) control over the timeliness of providing (publishing) reliable information about the company's activities in accordance with the law, publishing information about the principles (code) of corporate governance of the company;

11⁻⁴) consideration of the report of the executive body and approval of measures based on the results of its consideration in case the company's charter includes the issue of appointment and dismissal of the chairman and members of the executive body to the exclusive competence of the supervisory board;

12) election of a registration commission, except for the cases established by this Law;

13) election of an auditor (audit firm) of a private joint stock company to conduct an audit based on the results of the current and/or last year(s); providing recommendations to the general meeting on the selection, appointment, reappointment and dismissal of the external auditor (audit firm) of the public joint stock company; determining the terms of the contract to be concluded with the auditor (audit firm) of the company, establishing the amount of payment for his (her) services;

13⁻¹) approval of recommendations to the general meeting based on the results of consideration of the opinion of the external independent auditor (audit firm) of the company to make a decision on it;

14) specification of the date of compiling a list of the persons having the right to collect dividends, a procedure and dates for dividend payment within the time limit specified by part 2 of Article 30 of this Law;

15) specification of the date of compiling a list of the shareholders who shall be notified of holding the general meeting according to part 1 of Article 35 of this Law and who shall have the right to participate in the general meeting in accordance with Article 34 of this Law;

16) settlement of the matters of participation of the company in industrial and financial groups and other associations;

16⁻¹) resolving issues of creation and / or participation in any legal entities, their reorganization and liquidation;

16⁻²) resolving issues of creation, reorganization and / or liquidation of structural and / or separate subdivisions of the company;

17) settlement of the matters which are within the competence of the supervisory board according to the Section XVI of this Law in case of a merger, acquisition, division, spin-off or transformation of the company;

18) making a decision to consent to a significant transaction or to give prior consent to such a transaction in cases provided for in Article 70 of this Law, and to consent to commit transactions with interest in cases provided for in Article 71 of this Law;

19) determination of the probability of declaring the company insolvent as a result of its assumption of obligations or their fulfillment, including as a result of payment of dividends or redemption of shares;

20) making a decision on electing an appraiser of the company's property and approving the terms of the contract to be concluded with him, establishing the amount of payment for his services;

21) making a decision on choosing (replacing) a depository institution that provides additional services to a joint stock company, approving the terms of the agreement to be concluded with it, establishing the amount of payment for its services;

22) sending an offer to the shareholders according to the Articles 65 - 65-1 of this Law,

23) settlement of other matters pertaining to the exclusive competence of the supervisory board according to the company's charter.

The procedure for work for members of the supervisory board and payment of their remuneration is determined by this Law, the company's charter, regulations on the supervisory board of the company, as well as civil or employment agreement (contract) with a member of the supervisory board. Such an agreement or contract on behalf of the company shall be signed by the chairman of the executive body or another person authorised by the general meeting on the terms approved by the decision of the general meeting. In the case of concluding a civil contract with a member of the supervisory board of the company, such an agreement may be paid or unpaid.

A member of the supervisory board must perform his/her duties personally and may not delegate his/her powers to another person.

Article 63 of the Law of Ukraine "On Joint Stock Companies" No. 514-VI, dated 17.09.2008, stipulates that officials of the joint stock company must act in the interests of the company, comply with the law, the charter and other documents of the company.

Executive body and members of the supervisory board are jointly liable for damages made to the joint stock company.

For limited liability companies

Similar to joint stock companies, the executive body of limited liability companies and additional liability companies is responsible for all issues related to the management of the current activities of the company except for issues that fall within the exclusive competence of the general meeting and the supervisory board (in case of its formation).

The executive body reports to the general meeting and the supervisory board (in case of its formation), organises the implementation of their decisions.

The executive body can be either sole (director or other name of the position indicated in the charter) or collegial (directorate or other name indicated in the charter).

The Law "On Limited and Additional Liability Companies" No. 2275-VIII, dated 06.02.2018, establishes non-compete rules for management of limited liability companies. Non-compete rules apply in case of engagement in similar businesses and if there is a conflict of interest between the manager's duties and his/her personal interests.

The supervisory board of the limited liability company and additional liability company, within the competence defined by the company's charter, controls and regulates the activities of the executive body of the company. In particular, the competence of the supervisory board may include the election of the sole executive body of the company or members of the collegial executive body of the company (all or separately one or more of them), the suspension and termination of their powers, establishing the amount of remuneration to members of the executive body of the company.

Detailed obligations of the members of the supervisory board are specified in the charter of the respective companies and in the regulation on the supervisory board (if any).

According to provisions of the law executive body, as well as members of the supervisory board (if any) should act in good faith and reasonably in the interest of the company.

Executive body and members of the supervisory board are jointly liable for damages made to the limited liability company or additional liability company.

17. Under which conditions may the nullity of the decision on merger be declared?

According to Article 83 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008, the merger of joint stock companies is the emergence of a new successor joint stock company with the transfer of all property rights and obligations of two or more joint stock companies at the same time as their termination.

A joint stock company may participate in a merger only with another joint stock company.

The supervisory board of each of the joint stock companies participating in the merger shall submit for approval to the general meeting of each joint stock company participating in the merger the issues of termination of the company by merger, approval of the merger agreement and the charter of a company to be formed as a result of merger, approval of the transfer act.

The formation of the bodies of the successor joint stock company is carried out at the joint general meeting of shareholders of the companies participating in merger.

According to Article 50 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 it is determined that if the decision of the general meeting or the procedure for making such a decision violates the requirements of this Law, other legislation, charter or regulations of the general meeting of the company, the shareholder whose interests are violated by such a decision, may appeal this decision to the court within three months from the date of its adoption.

The court has the right, taking into account all the circumstances of the case, to uphold the contested decision, if the violations do not violate the legal rights of the shareholder who is appealing the decision.

Similar to joint stock companies, decisions of the general meeting can be challenged in the court. There are chances to recognise the decisions as invalid.

Thus, the decision of a joint stock company, limited liability or additional liability company to merge can be declared invalid by a court decision.

Also based on provisions of Article 48 of the Law of Ukraine "On Limited and Additional Liability Companies" No. 2275-VIII, dated 06.02.2018, if among the legal predecessors of the limited or additional liability company there is a joint stock company, whose shareholders are persons whose rights to shares are recorded in the depository system of Ukraine on securities accounts opened by the depository under an agreement with such joint stock company, reorganisation of such company is not allowed. Decision on such reorganisation is declared invalid.

18. Please specify the different rules applying, if any, in case of the establishment of a new company?

A new company can be established in several ways: based on the decision of its founders, as a result of reorganisation (through merger, division, spin-off or transformation) or privatisation and transformation of state/municipal enterprises into private companies. Please see more details for each of the options below.

According to Ukrainian law the founders of a joint stock company can be the state represented by the body authorised to manage state property, the local community represented by the body

authorised to manage communal property, as well as individuals and / or legal entities that have decided to establish it.

The joint stock company can be founded by one, two or more persons.

The founders may enter into a memorandum of association, which determines the procedure for joint activities to establish a joint stock company, the number, type and class of shares to be acquired by each founder, nominal value and purchase price of these shares, term and form of payment of shares, validity agreement.

To create a joint stock company, the founders must issue its shares, constituent assembly and carry out state registration of the joint stock company.

The memorandum of association is not a constituent document of the company and is valid until the date of approval of the report on the results of the issue of shares.

The memorandum of association is concluded in writing. If the company is established with the participation of individuals, their signatures on the memorandum of association are subject to notarization.

In the case of founding a company by one person, the memorandum of association is not concluded.

In case of establishment of a joint stock company, its shares shall be placed exclusively among its founders. The public offering of the company's shares may be carried out upon receipt of the certificate of registration of the first issue of shares.

The establishment of a joint stock company is carried out in the following stages:

- 1) adoption by the meeting of founders of the decision to establish a joint stock company and the issue of shares;
- 2) submission by the official communication channel of the application and all necessary documents for registration of the issue of shares to the NSSMC;
- 3) registration of the issue of shares by the NSSMC and issuance of a temporary certificate of registration of the issue of shares;
- 4) assignment of shares to the shares of the international identification number of securities;
- 5) concluding an agreement with the Central Securities Depository on servicing the issue of shares;
- 6) issue of shares among the founders of the company;
- 7) payment of the full value of the shares by the founders;
- 8) approval of the results of the issue of shares among the founders of the company by the constituent meeting of the company, approval of the company's charter, as well as the adoption of other decisions provided by law;
- 9) registration of the company in the state registration bodies;
- 10) submission of a report on the results of the issue of shares to the NSSMC through the official communication channel;
- 11) registration by the NSSMC of the report on the results of the issue of shares;

12) obtaining a certificate of registration of the issue of shares;

13) issuance of documents confirming the ownership of shares to the founders of the company.

According to Article 10 of the Law of Ukraine “On Limited and Additional Liability Companies” No. 2275-VIII, dated 06.02.2018 the company can be incorporated based on the decision of its founders. If a company is established by several persons, such persons, provided it is necessary to determine the relationship between them while establishing the company may enter into an agreement on the establishment of the company in writing. The agreement on the establishment of the company may establish the procedure for founding the company, the conditions of joint activities to establish the company, the amount of authorised capital, share in the authorised capital of each participant, terms and procedure for contributions and other conditions. The agreement on the establishment of the company is valid until the date of state registration of the company, unless otherwise provided by the agreement or does not follow from the substance of the obligation.

The other way of establishment is transformation of state or municipal enterprises into private companies.

The procedure of transformation of state or municipal enterprises into private companies is regulated by the Law of Ukraine “On Privatisation of State and Municipal Property” No. 2269-VIII, dated 18.01.2018, and Resolution of the Cabinet of Ministers of Ukraine “On Approval of the Order for the Formation of Joint Stock Companies in the Process of Privatisation and Transformation of State Enterprises, the Issuance of Shares of Such Companies” No. 552, dated 11.07.2018.

Establishment of the joint stock company is also possible through merger, division, spin-off or transformation of an company (companies) (See answer to question No. 15 for more details).

19. Is there any acquis alignment on cross-border mergers of limited-liability companies? If yes, what type of mergers are covered (merger by acquisition, by formation of new companies) and what are the main procedural steps?

At present, domestic legislation does not provide for the possibility of merger of Ukrainian companies with companies from other jurisdictions.

20. Is there any alignment on disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State?

Pursuant to Article 5 of the Law of Ukraine "On Foreign Economic Activity" foreign companies engaged in foreign economic activity in Ukraine are entitled to open representative offices in Ukraine. Accreditation of branches and representative offices of foreign banks is carried out by the National Bank of Ukraine pursuant to the Law of Ukraine "On Banks and Banking Activity". Accreditation of branches of foreign payment institutions is carried out by the National Bank of Ukraine in accordance with the Law of Ukraine "On Payment Services". Registration of representative offices of other foreign business entities is carried out by the central executive authority, which ensures the formation and implementation of state policy in the field of economic development (the Ministry of economy of Ukraine), within sixty working days from the date of submission by a foreign business entity documents for registration.

The Instruction on the Order of registration of representative offices of foreign business entities in Ukraine was approved by the Order of the Ministry of Foreign Economic Relations and Trade of Ukraine No.30, dated 18.01.1996 (as amended), registered with the Ministry of Justice of Ukraine on 24.01.1996 under No.34/1059 (hereinafter – the Order of Registration).

However, the disclosure requirements in respect of branches established in the Directive (EU) 2017/1132 are not reflected in Ukrainian law. Namely, the Register of representative offices of foreign companies maintained by the Ministry of Economy of Ukraine is not publicly available, as information in it is considered as confidential (part 5 of the Order of Registration).

The website of the Verkhovna Rada of Ukraine publishes two registered draft laws designed to deregulate foreign economic activity, in particular, to update the procedure for registration of representative offices of foreign economic entities in Ukraine, namely:

- draft Law “On Amendments to Certain Legislative Acts Concerning Deregulation of Foreign Economic Activity” (reg. No. 5182, dated 02.03.2021).

- draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Regulating the Activities of Separate Subdivisions of a Legal Entity Established in accordance with the Legislation of a Foreign State” (reg. No. 4482, dated 10.12.2020). The aim of this draft Law is in particular to align the disclosure requirements to branches of foreign companies with Directive (EU) 2017/1132.

21. If yes, what information do companies and their foreign branches need to disclose and what is required for disclosure to be legally effective, e.g. making it publically available in the register, in the national gazette?

There is no such disclosure of information.

22. Are there sanctions for non-disclosure of accounting documents (financial statements and annual report)?

In accordance with part three of the Article 8 of the Law of Ukraine “On Accounting and Financial Reporting”, the authorised body (executive officer) that manages the company, or the owner in accordance with the legislation and constituent documents, is responsible for organising accounting and ensuring the recording of the facts of all business transactions in primary documents, preservation of processed documents, registers and reports within the established period, but not less than once in three years.

Pursuant to part 1 of Article 11 of the Law of Ukraine “On Accounting and Financial Reporting”, the authorised body (executive officer) that manages the company is responsible for timely and complete submission and publication of the company’s financial statements.

According to Article 163-16 of the Code of Ukraine on Administrative Offenses, violation of the procedure for publishing financial statements or consolidated financial statements together with the audit report entails a fine of one thousand to two thousand non-taxable minimum incomes.

Repeated violation committed during the year, for which the person had already been brought to administrative liability responsibility - entails the imposition of a fine in the amount ranging from two thousand to three thousand non-taxable minimum incomes.

Paragraph 4 of Part 1 of Article 7 of the Law of Ukraine “On State Regulation of Capital Markets and Organized Commodity Markets” No. 3480-IV, dated 23.02.2006 (hereinafter – the Law on Capital Markets) stipulates that the main task of the NSSMC, in particular, is to protect the rights of investors in financial instruments (including consumers of financial services within the competence of the Law of Ukraine “On Financial Services and State Regulation of Financial Services Markets” No. 2664-III, dated 12.07.2001) and capital markets and organized commodity markets participants by applying measures to prevent and stop violations of the legislation on capital markets and organized commodity markets, including the system of accumulative pension provision, the application of sanctions for violations of the law within the limits of its powers.

Article 11 of the Law of Ukraine “On Capital Markets and Organised Commodity Markets” No. 3480-IV, dated 23.02.2006, stipulates that the NSSMC shall apply financial sanctions to legal entities, in particular, for the following:

- for non-publication, incomplete publication of information and/or publication of inaccurate information – in the amount of up to one thousand non-taxable minimum incomes;
- for the same actions committed repeatedly during the year – in the amount of one thousand to five thousand non-taxable minimum incomes;
- for non-disclosure, disclosure of incomplete information and/or disclosure of inaccurate information in the public information database of the NSSMC on the securities market – in the amount of up to one thousand non-taxable minimum incomes;
- for the same actions committed repeatedly during the year – in the amount ranging from one thousand to five thousand non-taxable minimum incomes;
- for non-submission, incomplete submission of information and/or submission of inaccurate information to the NSSMC – in the amount of up to one thousand non-taxable minimum incomes;
- for the same actions committed repeatedly during the year – in the amount ranging from one thousand to five thousand non-taxable minimum incomes.

23. Are there specific requirements in place for single member companies? If not, any plans in this respect?

According to Article 6 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008, a joint stock company may be established by one person or may consist of one person in the event that one shareholder acquires all the company's shares. Information on this shall be registered and published for public information in accordance with the procedure established by the NSSMC.

It should be noted that Article 4 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 stipulates that a joint stock company may not have as a sole member another business company, in which one person is a member. A joint stock company may not consist only of shareholders – legal entities, the sole member of which is the same person.

Section XI of the Regulation on Disclosure of Information by Issuers of Securities approved by the NSSMC Resolution No.2826, dated 03.12.2013 (as amended) stipulates that in case of creation of a joint stock company by one person the issuer of securities is obliged to publish the information about it on the website of the joint stock company and in the public information database of the

NSSMC or through a person who carries out activities for the disclosure of the regulated information on behalf of stock market participants.

Information on the establishment of a joint stock company by one person shall be published within 15 days from the date of receipt of the certificate of state registration of the issue of shares.

Information on the establishment of a joint stock company by one person consists of the following data:

- the name of the joint stock company;
- the identification code according to the United State Register of Legal Entities, Individual Entrepreneurs and Public Organizations of Ukraine (for a resident legal entity), the code/number from the trade, banking or court register, the registration certificate of the local authority of the foreign state on the registration of a legal entity (for a non-resident legal entity);
- the date of receipt of the certificate of state registration of the issue of shares;
- the name of the founder of the joint stock company (for the founder - a legal entity).
- In case of creation of a joint stock company by an individual, the inscription "Individual" shall be made.

Information on the acquisition by one person of all shares of the company is disclosed in accordance with the procedure of disclosure of special information on the change of shareholders who own voting shares, the size of the block of which becomes larger, less than or equal to the threshold value of the block of shares.

24. If single member companies are allowed under the domestic legislation: What information is required for registration if the sole member is a natural person and a legal person? How are decisions taken by the sole member in a general meeting? How are legal transactions between the sole member and the company concluded? In case domestic legislation allows an individual entrepreneur to set up an undertaking with the liability limited to a sum dedicated to a stated activity - instead of allowing for formation of single-member companies - are sufficient safeguards laid down in domestic legislation?

The procedure and mechanism of registration is determined by the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations" and acts of secondary legislation arising from the mentioned Law.

Registration of a joint stock company with one shareholder is carried out in the general order.

For joint stock companies

According to Article 6 of the Law of Ukraine "On Joint-Stock Companies" No. 514-VI, dated 17.09.2008, a joint stock company may be created by one person or may consist of one person in case of acquisition by one shareholder of all shares of the company.

According to Article 49 of the Law of Ukraine "On Joint-Stock Companies" No. 514-VI, dated 17.09.2008, the sole shareholder exercises the powers of the general meeting of the company.

The shareholder prepares decisions on the issues within the competence of the general meeting in writing (in the form of a resolution). Such a decision of the shareholder has the status of the minutes of the general meeting of the joint stock company.

For limited liability companies

According to the first part of Article 37 of the Law of Ukraine "On Limited and Additional Liability Companies" in a company with one participant, decisions on matters within the competence of the general meeting of participants are made by him / her in writing.

The provisions on the procedure for convening the general meeting of participants of the company, decision-making of the general meeting by poll shall not apply to a company with one participant, and other provisions of this Law shall apply taking into account that decisions on issues within the competence of the general meeting are made individually and are formalised by the written decision of such participant.

Thus, the legislation provides for the possibility of establishing a limited liability company by one person who alone makes decisions that fall within the competence of the general meeting of the company.

Regarding conclusion of legal transactions between the sole member and the company

The Ukrainian legislation does not provide for restrictions on the conclusion of transactions between the sole participant and a respective limited liability company. Even in case when the only member of the company is at the same time the sole company's executive that concludes transactions on behalf of the company, there are no obstacles to concluding transactions of such a participant with the company, since being in the position of director, the person represents not his own interests, but the interests of such company.

As for the question "in case domestic legislation allows an individual entrepreneur to set up an undertaking with the liability limited to a sum dedicated to a stated activity - instead of allowing for formation of single-member companies - are sufficient safeguards laid down in domestic legislation".

As discussed above, the Ukrainian legislation provides for the possibility of establishing joint stock companies and limited liability companies with one participant, including by an individual.

However, in accordance with Articles 50 - 52 of the Civil Code of Ukraine, the right to exercise the entrepreneurial activity, which is not prohibited by law, has an individual with full civil capacity.

Hence, an individual exercises his right of entrepreneurial activity subject to his state registration as a private entrepreneur.

Legal acts regulating the entrepreneurial activity of legal entities shall be applied to the entrepreneurial activity of individuals, unless otherwise established by law or follows from the essence of the relationship.

A natural person-entrepreneur is liable for obligations related to entrepreneurial activity, with all his property, except for property, which according to the law cannot be seized.

Therefore, a private entrepreneur has no right to limit his responsibility in carrying out business activities to a certain property (amount), as he is liable for the obligations with all of his property.

25. Is there any domestic legislation aligned with Directive (2004/25/EC) on takeover bids, in particular the mandatory bid rule and derogations from this rule?

The provisions of Directive (2004/25/EU) on takeover bids have been partially implemented in Ukrainian legislation, including mandatory bid rule, equal treatment of the shareholders of the same class, etc. Ukrainian legislation also provides for the derogations from the mandatory bid rule (discussed below).

If not, any plans to that extent?

Additional implementation measures of the provisions of the Directive (2004/25/EU) dated 21.04.2004 are scheduled to begin this year.

If yes:

a) In which cases is the publication of takeover bids obligatory? Are there any exemptions from this obligation?

b) What is the mandatory content of a takeover bid?

c) Is the offer price regulated by law?

Ukrainian legislation currently does not regulate the process of acquiring control (controlling stake) of the company but regulates the consequences of such acquisition.

In this regard, below is the information on the mandatory offer to be made by the owner of a controlling stake in the results of its acquisition.

Part four of Article 65-1 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008, provides that a person (persons acting jointly) who became (directly or indirectly) the owner of the controlling stake or significant controlling stake in the company as a result of the acquisition of shares of the company or any of his affiliates, taking into account the number of shares owned by him and his affiliates, must offer all the shareholders to buy the shares of the company which are not subject to restrictions (encumbrances) from them by sending a public irrevocable offer to the company for all the shareholders – the owners of the shares of the company to purchase their shares (offer) within two working days from the date of receipt of information on the purchase price.

In this case, the “controlling stake” means an equity stake equal to 50 percent or more of ordinary shares of the joint stock company, and the “significant controlling stake” is an equity stake equal to 75 percent or more of ordinary shares of the public joint stock company.

The supervisory board (or the executive body of the company, if the establishment of the supervisory board is not provided by the company's charter) is **obliged to place the specified offer on the company's website and in the database** of the person conducting the activities for the disclosure of the regulated information on behalf of capital market participants and organized commodity markets professional participants, as well as to send it to each owner of ordinary shares of the company in accordance with the list of shareholders of the company within seven working days from the date of receipt of the offer.

Part ten of Article 65-1 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008, provides that **the provisions of this Article do not apply** to a person (persons acting jointly) who became the owner of the controlling stake of the company as a result of the acquisition of shares of the company, taking into account the number of shares owned by him (directly or indirectly), in the case of:

- such a person is already the owner of the controlling stake, taking into account the number of shares owned by him and/or his affiliates (except for the acquisition of ownership of the significant controlling stake) on the date provided for in part one of this Article;

- acquisition by a person of the controlling stake by inheritance or as a result of liquidation of the legal entity;

- acquisition of the controlling stake in the process of establishing the joint stock company.

Part eleven of Article 65-1 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 provides that the provisions of this Article do not apply to a person (persons acting jointly) who became the owner of the significant controlling stake of the company as a result of the acquisition of shares of the company, taking into account the number of shares owned by him (directly or indirectly), provided that:

1) such a person is already the owner of the significant controlling stake, taking into account the number of shares owned by him and/or his affiliates on the date provided for in part one of this Article;

2) acquisition by a person of the significant controlling stake by inheritance or as a result of liquidation of the legal entity;

3) acquisition of the significant controlling stake in the process of establishing the joint stock company; acquisition of the significant controlling stake as a result of the fulfillment by such persons of obligations to repurchase shares that arose as a result of the acquisition of the controlling stake of 50 or more, but less than 75 percent of ordinary shares of such company.

Part five of Article 65-1 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 stipulates that **the offer must contain the information on:**

1) person (each of the persons acting jointly) who became (directly or indirectly) the owner of the controlling stake or significant controlling stake of the company as a result of the acquisition of shares of the public joint stock company, taking into account the number of shares owned by him and his affiliates, and his affiliated persons (name), the registration number of the taxpayer's registration card (for an individual), the identification code according to the United State Register of Legal Entities, Individual Entrepreneurs and Public Organizations of Ukraine (for a resident legal entity), the code/number from the trade, banking or court register, the registration certificate of the local authority of the foreign state on the registration of a legal entity (for a non-resident legal entity) a person (each of the persons acting jointly) and his affiliated persons), place of residence (location), number, type and / or class of shares of the company owned by each of these persons, contact details of the person (each of the persons acting jointly);

2) responsible person, if the owners of the controlling stake or a significant controlling stake of the company are two or more persons acting jointly (name), the registration number of the taxpayer's registration card (for an individual), the identification code according to the United State Register of Legal Entities, Individual Entrepreneurs and Public Organizations of Ukraine (for a resident legal entity), the code/number from the trade, banking or court register, the registration certificate of the local authority of the foreign state on the registration of a legal entity (for a non-resident legal entity), place of residence (location), contact details of the person responsible;

3) type of shares acquired;

4) acquisition price of shares and the procedure for determining it;

- 5) period during which the shareholders may notify the acceptance of the offer to purchase the shares in accordance with part six of this Article;
- 6) procedure for payment for shares acquired;
- 7) method (methods) of payment for shares acquired;
- 8) intentions of the person (persons acting jointly) who acquired the controlling stake or the significant controlling stake of the company for further activities of the company, in particular its main activities, including plans for significant changes in employment conditions of the employees and the management;
- 9) information on sources of financing, offers for the acquisition of shares by a person (persons acting jointly) who has acquired the controlling stake or the significant controlling stake of the company;
- 10) information on securities, if payment for securities is determined as one of the methods of payment for the value of shares acquired;
- 11) compliance of the offer to acquire shares made as a result of the acquisition of the controlling stake or the significant controlling stake of the company with the requirements of Article 65-1 of this Law;
- 12) possibility of any shareholder to apply for protection of their rights to the commercial court at the location of the company in case of violation of the law on the acquisition of shares of the public joint stock company as a result of the acquisition of the controlling stake or significant controlling stake of the company.

The third part of Article 65-1 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 provides that **the acquisition price of shares shall be determined** by the highest of the following:

1. the market value determined in accordance with Article 8 of this Law, as of the last working day preceding the day of placing the notice of the conclusion by a person (persons acting jointly) of an agreement, as the result of which he, taking into account the number of shares owned by him and his affiliates, will become (directly or indirectly) the owner of the controlling stake or significant controlling stake of the public joint stock company, in the database of a person conducting activities on the disclosure of the regulated information on behalf of capital market participants and organized commodity markets professional participants;
2. the highest price at which a person (persons acting jointly) directly and/or indirectly acquired ownership of the shares of this company by acquiring shares (units, stakes) of another legal entity within 12 months preceding the day of acquisition by such person of the controlling stake or significant controlling stake of the company, including the day of acquisition;
3. the highest price at which a person (persons acting jointly) acquired shares (units, stakes) of another legal entity, which directly or indirectly owns the shares of this company, during the 12 months preceding the day of acquisition by such person of the controlling stake or significant controlling stake of the company, including the day of acquisition, provided that the value of shares of the company, which directly or indirectly belong to such legal entity, according to its latest annual financial statements is not less than 90 percent of the total assets value of such legal entity.

If a person (persons acting jointly), who became (directly or indirectly) the owner of the controlling stake, significant controlling stake and dominant controlling stake of shares of the company simultaneously, as a result of the acquisition of shares of the company, taking into account the number of shares owned by him and his affiliates, the purchase price of the voting shares shall be determined in accordance with part five of Article 65-2 of this Law.

d) Is the legislation aligned with articles 9 and 11 of the Directive?

The provisions of Articles 9 and 11 of Directive 2004/25 /EC have not been implemented.

e) Is the reciprocity rule of article 12 section 3 of the Directive applied?

The provisions of part 3 of Article 12 of Directive 2004/25/EC have not been implemented.

f) What are the thresholds for squeeze-out (article 15) and sell-out (article 16) following a takeover bid?

The right to “squeeze-out” and “sell-out” arise when the controlling shareholder acquires directly or indirectly the dominant controlling stake, namely a stake representing 95 percent or more of the ordinary shares of the company.

26. To what extent is domestic legislation in Ukraine aligned with the Shareholders' Rights Directive (2007/36/EC)? If there is alignment, please indicate the relevant legislation.

Ukrainian legislation generally complies with the provisions of the Directive 2007/36/EU dated 11.07.2007. The main legislative act regulating this issue is the **Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008.**

Meanwhile, the legislation of Ukraine lacks some provisions that supplemented this directive, in particular by the Directive (EU) 2017/828 dated 17.05.2017.

Are there any plans in this regard?

The Verkhovna Rada of Ukraine has been considering the Draft Law No. 2493, which, in particular, provides for the implementation of the provisions of the Directive 2007/36/EU in the domestic legislation, in particular in terms of providing the possibility of holding general meetings by electronic voting, improving the rules related to shareholder representation. On June 16, 2020, the Verkhovna Rada of Ukraine adopted the Draft Law No. 2493 as the basis in the first reading.

At the meeting held on 12.07.2021 (Minutes of the meeting No.73), the Verkhovna Rada Committee on Economic Development considered the Draft Law No. 2493 in the wording revised before the second reading, and based on the results of consideration in the second reading, adopted the resolution to recommend to the Verkhovna Rada of Ukraine to adopt the specified Draft Law in the second reading and in general after its technical and legal elaboration.

27. /28.:

Please detail the specific implementation of the following items:

a) Minimum notice period of 21 days for most General Meetings (GMs), which can be reduced to 14 days where shareholders can vote by electronic means and the general meeting agrees to the shortened convocation period

Part one of Article 35 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 stipulates that the notice of the general meeting of the joint stock company and the draft agenda shall be sent to each shareholder specified in the list of shareholders drawn up in the manner prescribed by the legislation on the depository system of Ukraine, on the date determined by the supervisory board, and in case of convening an extraordinary general meeting at the request of the shareholders in cases provided for in part six of Article 47 of this Law – by the shareholders who require it. The set date may not precede the day of the decision to hold the general meeting and may not be set earlier than 60 days before the date of the general meeting.

The notice of the general meeting and the draft agenda shall be sent to shareholders personally by the person convening the general meeting, in the manner prescribed by the supervisory board of the company, no later than 30 days before the date of the meeting. The notice shall be sent by the person convening the general meeting or by the person keeping records of the ownership rights to the company's shares in case the general meeting is convened by the shareholders.

In addition, part five of Article 47 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 provides that, if required by the interests of the company, the supervisory board when deciding to convene an extraordinary general meeting may establish that the notice of the extraordinary general meeting will be no later than 15 days before the date of its holding, in accordance with the procedure established by Article 35 of this Law. In this case, the supervisory board shall approve the agenda.

b) Internet publication of the convocation and of the documents to be submitted to the GM at least 21 days before the GM;

Part four of Article 35 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 provides that no later than 30 days (for extraordinary general meetings convened in accordance with part five of Article 47 of this Law – no later than 15 days) before the date of the general meeting the company must publish and ensure the availability of the following information on its own website:

- the notice of the general meeting;
- information on the total number of shares and voting shares as of the date of compiling the list of persons to whom the notice of the general meeting shall be sent (including the total number separately for each type of shares if the charter capital of the company is represented by two or more types of shares);
- the list of documents to be provided by the shareholder (shareholder's representative) for his participation in the general meeting;
- draft resolutions on the issues included in the agenda of the general meeting, prepared by the supervisory board or, if no resolution to be adopted is proposed, the comment of the company's governing body on each issue included in the agenda of the general meeting.

c) Abolition of share blocking and introduction of a record date in all Member States which may not be more than 30 days before the GM;

Legislation of Ukraine does not contain any norms on blocking shares in connection with the general meeting. Instead, part five of Article 22 of the Law of Ukraine “On the Depository System of Ukraine” No. 5178-VI, dated 06.07.2012 stipulates that for the general meeting of a joint stock

company the register of registered securities holders shall be drawn up as at 24:00 three working days before the date of such meeting in accordance with the procedure established by the NSSMC.

d) Abolition of obstacles on electronic participation to the GM, including electronic voting;

The possibility of holding the general meeting by electronic voting will be provided after the final adoption by the Verkhovna Rada of Ukraine of Draft Law No. 2493.

e) Right to ask questions and obligation on the part of the company to answer questions;

Part 4 of Article 36 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 provides that a joint stock company before the general meeting in the manner prescribed by it must provide written answers to written questions of shareholders on issues included in the draft agenda of the general meeting and the agenda of the general meeting before the date of the general meeting. The joint stock company may provide one general answer to all questions of the same content.

In addition, Article 78 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 regulates the issue of providing joint stock companies with information to shareholders.

f) Abolition of existing constraints on the eligibility of people to act as proxy holder and of excessive formal requirements for the appointment of the proxy holder.

The issues of shareholder representation are regulated by Article 39 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008.

This article stipulates that a representative of a shareholder at the general meeting of a joint stock company may be an individual or an authorised person of a legal entity, as well as an authorised person of the state or territorial community.

Officials of the company's bodies and their affiliates may not be representatives of other shareholders of the company at the general meeting.

The representative of a shareholder - an individual or legal entity at the general meeting of a joint stock company may be another individual or an authorised person of the legal entity, and the representative of the shareholder - state or territorial community - the authorised person of the body managing state or municipal property.

A shareholder has the right to appoint his representative permanently or for a fixed term. A shareholder has the right to replace his representative at any time by notifying the executive body of the joint stock company.

The notification by the shareholder of the relevant body of the company of the appointment, replacement or revocation of his representative can be done by electronic means in accordance with the legislation on electronic document management.

The power of attorney for the right to participate and vote at general meetings issued by an individual shall be certified by a notary or other officials performing notarial acts, as well as may be certified by a depository institution in accordance with the procedure established by the NSSMC. The power of attorney for the right to participate and vote at the general meeting on behalf of the legal entity is issued by its body or another person authorised to do so by its constituent documents.

A power of attorney for the right to participate and vote at a general meeting of a joint stock company may contain voting instructions, i.e. a list of issues on the agenda of the general meeting

indicating how and for which (against which) decision to vote. During voting at the general meeting, the representative must vote exactly as provided by the voting task. If the power of attorney does not contain a voting task, the representative decides on all voting issues at the general meeting of shareholders at his discretion.

A shareholder has the right to issue a power of attorney for the right to participate and vote at the general meeting to several of his representatives.

The shareholder has the right to recall or replace his representative at the general meeting of the joint stock company at any time.

Granting a power of attorney for the right to participate and vote at the general meeting does not exclude the right to participate in these general meetings of the shareholder who issued the power of attorney, instead of his representative.

g) Are there rules on shareholder identification, transmission of information, facilitation of shareholder rights, and transparency and non-discrimination of costs in line with Directive (EU) 2017/828?

A joint stock company may obtain information on the owners of its shares by obtaining the Register of Holders of Registered Securities from the Central Securities Depository.

The Law of Ukraine “On the Depository System of Ukraine” No. 5178-VI, dated 06.07.2012 (hereinafter – the Law on the Depository System) stipulates that the Central Depository in accordance with the requirements of the legislation compiles a list of shareholders (Register of owners of registered securities) on a certain date indicating the number of shares owned by these owners, nominal value and type of such shares (ordinary/privileged) and other information specified by the NSSMC.

Part 5 of Article 22 of the Law on the Depository System stipulates that the Register of Registered Holders of Registered Securities shall be compiled upon receipt of an order from the issuer or another person entitled to receive a register of registered securities holders as well as other cases established by the NSSMC.

The Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 and the Procedure for Sending Notices and Information through the Depository System of Ukraine, approved by the NSSMC Resolution, dated 07.03.2017 No.148, provide for the possibility for a joint stock company, if necessary, to send notifications (information, documents) to shareholders electronically through the depository system of Ukraine.

The NSSMC Resolution of 16.04.2020 No.196 approved the temporary procedure of convocation in connection with the implementation of measures to prevent the occurrence and spread of coronavirus disease (COVID-19). In addition, the Draft No.2493 stipulates that the above-mentioned procedure for convening and remote holding of general meetings of shareholders will operate on a permanent basis.

Tariffs of the Central Depository, including the provision of services to joint stock companies in connection with corporate transactions, are non-discriminatory, proportionate and freely available on its website.

h) Are there rules concerning transparency of intermediaries and shareholder engagement policy? Does your Company Law provide any legal framework on the engagement of institutional investors and asset managers, and on proxy advisors?

At present, these provisions are not implemented in the legislation of Ukraine.

i) On remuneration of directors, are there provisions regarding disclosure of the remuneration policy and the remuneration report as well as rules that allow shareholders to have an effective say on both?

The requirements to disclose of remuneration policy on the website of the joint stock company, as well as at the request of the shareholder, is provided for in Articles 77 and 78 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008.

In addition, the Regulation “On Disclosure of Information by Issuers of Securities”, approved by the Resolution of the NSSMC, dated 03.12.2013 No.2826, requires disclosure of the report on remuneration after its approval by the relevant body of the joint stock company.

J) Are there any rules on related party transactions?

Yes, such rules are established in Articles 71 and 72 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008.

In particular, Article 71 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 requires/provides as follows:

"1. The Resolution to grant consent to the transaction in which there is an interest (hereinafter – “the transaction of interest”), taken by the relevant body of the joint stock company in accordance with this article, if the market value of property or services or the amount of funds subject to the transaction of interest, exceeds 1 percent of the value of assets according to the latest annual financial statements of the joint stock company.

2. A person interested in a transaction by a joint stock company may be any of the following persons:

- 1) an official of the body of the joint stock company or its affiliates;
- 2) a shareholder who solely or jointly with affiliates owns at least 25 percent of the voting shares of the company, and its affiliates (except in cases where the shareholder directly or indirectly owns 100 percent of the voting shares of such joint stock company);
- 3) a legal entity in which any of the persons provided for in paragraphs 1 and 2 of this part is an official;
- 4) other persons determined by the charter of the joint stock company.

3. The person specified in part two of this article shall be considered interested in the transaction by the joint stock company if it:

- 1) is a party to such a transaction or exercises control over a legal entity that is another party to the transaction;
- 2) receives remuneration for the commission of such a transaction from a joint stock company (officials of a joint stock company) or from a person who is a party to the transaction;
- 3) as a result of such a transaction acquires property;

4) participates in the transaction as a representative or intermediary (except for the representation of the joint stock company by officials)".

k) Are there effective, proportionate and dissuasive sanctions or penalties applicable to infringements of national provisions adopted on the previous issues and their implementation?

As of today, sanctions for violating the legislation on joint stock companies are limited, ineffective and disproportionate.

Meanwhile, the Verkhovna Rada of Ukraine has under consideration the Draft Law of Ukraine "On Amendments to the Law of Ukraine "On State Regulation of Capital Markets and Organized Commodity Markets" and some other legislative acts of Ukraine on regulation and supervision of capital markets and organized commodity markets" (under registration number No. 5865, dated 26.08.2021 (hereinafter - the Draft Law No. 5865). The Draft Law No. 5865 aims at transposition of provisions of Directive 2004/109/EU of 15.12.2004 into the national legislation in order to align the NSSMC powers to supervise and enforce in accordance with the EU law and IOSCO Principles to build an effective system of supervision of capital markets and organized commodity markets.

Council Regulation (EC) 2157/2001 on the Statute for a European company (SE) – and Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees – and Council Regulation (EEC) 2137/85 on the European Economic Interest Grouping (EEIG).

29. Commission Recommendations 2004/913/EC, 2005/162/EC and 2009/384/EC, 2009/385/EC regarding remuneration of directors and the independence of directors and the committees of the supervisory board, as well as 2014/208/EU on corporate governance reporting ('comply or explain'):

Commission Recommendations 2004/913/EU, 2005/162/EU and 2009/384/EU, 2009/385/EU are implemented in the legislation of Ukraine, namely in the Law of Ukraine "On Joint Stock Companies" No. 514-VI, dated 17.09.2008, in the Requirements to the Regulation On Remuneration and the Report on Remuneration of members of the Supervisory Board and the executive body of the joint stock company, approved by the Resolution of the NSSMC, dated 25.09.2018 № 659, as well as in the standards of corporate governance:

- in Standard № 1 "Corporate governance in professional participants of capital markets and organized commodity markets. Basic concepts and terms", approved by the Resolution of the NSSMC, dated 30.12.2021 №1288;

- in Standard № 2 "Corporate governance in professional participants of capital markets and organized commodity markets. Organization and functioning of the internal control system in professional participants, which are enterprises of public interest and which are not banks", approved by the Resolution of the NSSMC, dated 30.12.2021 №1289;

- in Standard № 3 "Corporate governance in professional participants of capital markets and organized commodity markets. Organization and functioning of the internal control system in professional participants which are systemically important professional participants and who are not banks ", approved by the Resolution of the NSSMC, dated 30.12.2021 №1290;

- in Standard № 4 "Corporate governance in professional participants of capital markets and organized commodity markets. Organization and functioning of the internal control system in professional participants which do not belong to enterprises of public interest and to systemically

important professional participants ", approved by the Resolution of the NSSMC, dated 30.12.2021 №1291.

In addition, the principle of “comply or explain” provided by Recommendation 2014/208/EU is implemented in the Law of Ukraine “On Capital Markets and Organised Commodity Markets” No. 3480-IV, dated 23.02.2006, whose Article 127 of which stipulates that a joint stock company must explain the reasons for rejection and any part of the Corporate Governance Code, from which the joint stock company deviates in case of deviation of the joint stock company from provisions of the Corporate Governance Code.

30. Has a Corporate Governance code been introduced, or is there any plan to introduce it? What is it based on (e.g. OECD standards)? What are its main provisions? How binding is the compliance with the code (e.g. voluntary; comply or explain) and how is the compliance monitored? How is the remuneration of management board members determined? Are details of the remuneration publicly disclosed? Can the supervisory board establish committees? Are there any committees specifically required by law? Is there an obligation for all listed companies to include a corporate governance statement in their management report?

Resolution of the NSSMC, dated 12.03.2020 №118 “On generalization of the practice of application of corporate governance legislation”, which repealed the Resolution of the NSSMC, dated 22.07.2014 № 955 “On approval of the Principles of corporate governance”, approved the Corporate Governance Code: Key Requirements and Recommendations (hereinafter – “the Code”), which was developed in accordance with the OECD Principles of Corporate Governance.

The Code is developed in accordance with the OECD/G20 Principles of Corporate Governance, which are international guidelines for good corporate governance. In addition, the Code reflects the recommendations of the IOSCO Committee on Corporate Governance's Final Report on Growing and Emerging Markets. The IOSCO report provides up-to-date information on the priorities and practices of stock exchange regulators around the world in managing listed companies. The disclosure recommendations are in line with the recommendations set out in the Corporate Governance Guidelines for the Governance of the United Nations Conference on Trade and Development (UNCTAD). The provisions of the IFC Corporate Governance Methodology and various national codes have also been taken into account and served in the development of the Code.

The structure of the Code and a summary of its key provisions include the following:

1. Objectives of the Company

The company creates long-term sustainable value and maximizes profits for its shareholders, which is achieved by increasing the value of its shares and paying dividends.

2. Rights of Shareholders and the role of other Stakeholders

2.1. Shareholders' Rights: Shareholders' rights provided by the legislation and listing rules are fully respected. In addition, the Company ensures compliance with the spirit of the law, aimed at equal and fair treatment of all Shareholders.

2.2. General Meeting of Shareholders (GMS): Shareholders have the opportunity to exercise their legal rights and to participate in and vote during the General Meeting of Shareholders (GMS) in order to express their views and protect their interests.

2.3. Interaction of the Company with Shareholders: Shareholders have the opportunity to interact and maintain communication with the Company to express issues of concern to them and protect their legitimate interests.

2.4. Takeovers: The process of takeover is transparent and fair.

2.5. The role of other Stakeholders: The company is aware of best practices in dealing with Stakeholders and strives to implement such practices as much as possible. The Company adheres to all relevant legislative requirements aimed at protecting Stakeholders and encouraging interaction with Stakeholders.

2.6. Sustainable Development: The company is aware of best practices for Sustainable Development and strives to implement such practices as much as possible. The company adheres to legislation designed to promote sustainable development.

3. Supervisory Board

3.1. Commitment: Members of the Supervisory Board actively contribute to the management of the Company and the achievement of its goals.

3.2. Fiduciary Responsibilities of the Supervisory Board: The Supervisory Board is responsible, efficient and accountable and acts solely in the interests of the Company and its Shareholders.

3.3. Functions (roles) and responsibilities of the Supervisory Board: The Supervisory Board performs the functions (roles) expected of it.

3.4. Composition of the Supervisory Board: The Supervisory Board must be competent, experienced, independent and diverse in composition to perform its duties, functions and responsibilities.

3.5. Independence: The Supervisory Board is impartial, fair and acts independently of the interests of individual groups/individuals and the Executive Body in the interests of the Company and all its Shareholders.

3.6. Verification of professional suitability and integrity: Members of the Supervisory Board have an impeccable reputation, as well as the knowledge, skills and experience necessary for the Supervisory Board to perform their functions effectively.

3.7. Nomination and Appointment: The nomination and appointment process is fair, formal, open and transparent.

3.8. Training:

Introductory training: Once in office, members of the Supervisory Board are well informed about their fiduciary responsibilities, functions, good governance practices, and the nature of the Company's activities and challenges.

Ongoing training: Members of the Supervisory Board have modern knowledge and skills that help them to perform their functions effectively.

3.9. Chairman of the Supervisory Board: Effective leadership is practiced in the Supervisory Board.

3.10. Corporate Secretary: The Corporate Secretary provides the Supervisory Board with the administrative support and access to expert advice on governance and compliance that it needs to perform its duties effectively.

3.11. Supervisory Board Committees: The Supervisory Board relies on the support of committees for the proper performance of their functions and responsibilities.

Audit Committee: The Company's control system is subject to effective independent oversight to ensure that Stakeholders ensure that the Company has sound control and reporting mechanisms.

Nomination Committee: The Company has the best possible human resources to form the Supervisory Board and the Executive Body and is able to ensure stable leadership through effective human resource management and succession planning.

Remuneration Committee: The Company has fair remuneration practices that contribute to attract and retain the human talent needed for the effective work of the Supervisory Board and the Executive Body. The company motivates the Executive Body and employees and notes the high results of the Executive Body and staff. The Company is accountable to Shareholders for its remuneration policy.

3.12. Remuneration: Remuneration to members of the Supervisory Board and the Executive Body is transparent, fair and sufficient to attract, motivate and retain talent.

3.13. Quantitative composition of the Supervisory Board: The Supervisory Board has a quantitative composition that ensures the performance of its functions and areas of responsibility and the achievement of the goal of its creation.

4. Cooperation between the Executive Body and the Supervisory Board

The Company has an effective Executive Body that reports to the Supervisory Board and Shareholders on the achievement of the Company's objectives. The Supervisory Board and the Executive Body have different functions and areas of responsibility. They cooperate effectively for the benefit of the Company and do not interfere in each other's functions and responsibilities.

5. Disclosure of information and transparency

5.1. Communication with Shareholders: Shareholders and markets have timely and equitable access to all information that is relevant to investment decisions, and such information is presented in a balanced way.

5.2. Financial statements: The information about the financial results and financial condition of the Company is objective, reliable and clear, and shareholders are confident that they have sufficient information to make their investment decisions.

5.3. Non-financial reporting: Relevant non-financial information, including information on the company's management, is provided to Shareholders and markets in order to better inform them for investment decisions. The company's impact on society and the environment is clear to Stakeholders.

5.4. Independent external audit: Shareholders, stakeholders and markets fully trust the Company's financial and non-financial statements.

5.5. Dividends and Dividend Policy: Dividend policy is clear to shareholders and markets.

5.6. Company Website: All information intended for Shareholders, Markets and other Stakeholders is structured and easily accessible on the Company's website.

6. Control system and ethics standards

6.1. Internal control: The internal control system ensures that the Company has appropriate controls in place for its operations, financial statements and compliance.

6.2. Risk Management: Risk management gives companies and investors a high degree of confidence in their decisions. The risk management process detects, analyzes and controls risks and mitigates possible circumstances that could have a negative impact on achieving company objectives.

6.3. Compliance: The Company complies with applicable laws and internal rules, policies and procedures.

6.4. Internal Audit Function: The internal audit function is independent and ensures that the Company has established an effective system of internal control, risk management and compliance.

6.5. Code of Ethics: The Company, its Supervisory Board, the Executive Body and the employees act ethically and honestly.

6.6. Anti-corruption policy: The company does not engage in any corrupt practices and is honest and law-abiding.

6.7. Conflict of Interest Policy and Interests: The Company and its Shareholders are protected from abuse due to conflict of interest.

7. Assessment of corporate governance. The company is aware of the trends in the field of good governance and provides continuous improvement of its management practices.

In accordance with the provisions of the Law of Ukraine “On Capital Markets and Organised Commodity Markets” No. 3480-IV, dated 23.02.2006, the provisions of the Code are applied by joint stock companies on the principle of "comply or explain".

Compliance with the provisions of the Code is monitored by analyzing the corporate governance report of the company, which is part of the annual report of the company.

In addition, we note that the Resolution of the NSSMC, dated 02.12.2021 No. 1182 “On the Generalization of the Practice of Application of Corporate Governance Legislation” approved the Annex on Corporate Governance and Sustainable Development to the Corporate Governance Code (Annex on ESG).

The Annex on ESG has been developed in accordance with the recommendations set out in the Code. The following issues are covered in the Annex:

- Rationale for companies to implement ESG best practices.
- What may be of interest to investors in terms of ESG practice.
- Performance and reporting standards that companies can use to structure their practices.
- Guidelines on how companies can implement the Code's recommendations.

The Annex is intended to provide further clarification on how companies can implement the Code's recommendations.

As with the Code, the Annex adheres to the G20/OECD Principles of Corporate Governance and reflects the recommendations of the final reports on corporate governance and sustainable financing in emerging markets, the Committee on Development and Emerging Markets, the International Organization of Securities Commissions (IOSCO).

The Code and the Annex offer practices that go beyond the minimum requirements established by law, regulations and rules for admission to trading on the organized capital market. The Annex is voluntary. However, companies are expected to follow the recommendations set forth therein. Companies are given flexibility on when and how to implement them.

According to Article 52 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008, the exclusive competence of the supervisory board of a joint stock company includes the issues of approving the terms of contracts to be concluded with members of the executive body, setting their remuneration and approving the report on remuneration of members of the executive body of a joint stock company, the requirements for which are set by the NSSMC, in addition to the requirements for the report on the remuneration of members of the executive body of a joint stock company – a bank, which are set by the National Bank of Ukraine.

According to paragraph 8 of the Section IV of the Requirements to the provisions on remuneration and report on remuneration of members of the supervisory board and executive body of a joint stock company, approved by the NSSMC’s Resolution, dated 25.09.2018 № 659 (as amended), disclosure of information in reports on remuneration, if they are posted on a company's website, should not lead to the disclosure of:

- 1) the personal data of members of the supervisory board or executive body, namely the registration number of the taxpayer's account card or the passport series (if any) and number (for the individuals who due to their religious beliefs refuse to accept the registration number of the taxpayer's account card, notified the relevant supervisory authority about it and have the mark in the passport);
- 2) the commercial secrets of a company.

A company processes personal data of members of the supervisory board or the executive body, which are included in the remuneration reports in accordance with these Requirements, solely for increasing corporate transparency regarding the remuneration of members of the supervisory board or the executive body in order to enhance their accountability and ensure effective control over the remuneration of members of the supervisory board or executive body by shareholders.

Remuneration reports, if they are posted on a company's website, are removed from the website 10 years after the publication of the relevant remuneration report, unless otherwise provided by law.

Article 56 of the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 stipulates that the supervisory board of a joint stock company may establish permanent or temporary committees from among its members for preliminary study and preparation for consideration at the meeting of the issues falling within the competence of the supervisory board. The requirements for the establishment of committees by the bank's supervisory board, their functioning and composition are determined by the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008, considering the Law of Ukraine “On Banks and Banking” No. 2121-III, dated 07.12.2000.

A public joint stock company and a joint stock company, in the authorised capital of which more than 50 percent of shares belong to the state, as well as a joint stock company, 50 percent or more of shares in whose authorised capital belong to entities, where the government share is 100 percent, are obliged to establish the audit committee, the committee for remuneration of officials of a company (hereinafter – “the remuneration committee”) and the appointments committee. The remuneration committee and the appointments committee may be merged. The audit committee, the remuneration committee and the appointments committee are headed by the members of a company's

supervisory board, who are independent directors. The majority of members of the committees must be independent directors.

In accordance with part seven of Article 11 of the Law “On Accounting and Financial Reporting in Ukraine” No. 996-XIV dated 16.07.1996, the management report is submitted together with the financial statements and consolidated financial statements. Micro and small scale enterprises are exempt from submitting the management report. Medium-sized enterprises have the right of not displaying non-financial information in the management report.

B. Administrative Capacity

31. Which authorities are responsible for company law? What is the size of the department(s) dealing with this issue?

The NSSMC has been designated as the authority responsible for supervising compliance with the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008.

The NSSMC has several subdivisions responsible for corporate law, namely:

- the Corporate Governance and Corporate Finance Supervision Department, which has 76 employees, is responsible for supervising compliance with the Law of Ukraine “On Joint Stock Companies” No. 514-VI, dated 17.09.2008 and developing documents related to corporate governance;

- The Department for Methodology of Corporate Governance, Corporate Finance, Financial Instruments on Capital Markets and Organized Commodity Markets, which has 18 employees, is responsible for the development of regulatory legal documents related to corporate governance and corporate finance;

- the Strategic Development Department, which has 24 employees, is responsible for drafting legislation, in particular on corporate governance and corporate finance;

- the Securities Issues Registration Department, which has 20 employees, is responsible for the registration procedures.

32. Please identify the administrative or judicial authority responsible for the incorporation of companies.

In accordance with paragraph 14 of Article 1(1) of the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations", the authorities responsible for state registration are the Ministry of Justice of Ukraine, the central executive body that implements the state policy in the field of religion, the Council of Ministers of the Autonomous Republic of Crimea, oblasts, Kyiv and Sevastopol city state administrations, territorial bodies of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, oblasts, cities of Kyiv and Sevastopol, executive bodies of village, town and city councils, Kyiv and Sevastopol city, district, district in the cities of Kyiv and Sevastopol state administrations, notaries.

33. Is there a mechanism in place that allows coordination and cooperation with registers from Member States (e.g. in the context of a cross-border merger of companies)? Please explain.

Information interaction between the Unified State Register of Legal Entities, Individuals - Entrepreneurs and Public Associations and information systems of state bodies of Ukraine is carried out in accordance with Article 13 of the Law of Ukraine "On State Registration of Legal Entities, Individuals - Entrepreneurs and Public Associations". Meanwhile, legislation of Ukraine does not currently provide for interaction between the said register and the registers of the Member States.

II. TRANSPARENCY

Directive 2004/109/EC and 2013/50/EU regarding harmonisation of transparency requirements related to listed companies (and amending Directives 2008/22/EC, 2010/73/EU, 2010/78/EU).

34. To what extent is domestic legislation in Ukraine aligned with the abovementioned Directive?

The Ukrainian legislation, in particular, the Law on Joint Stock Companies and the Law of Ukraine "On Joint Stock Companies" No. 514-VI, dated 17.09.2008 and the Law of Ukraine "On Capital Markets and Organised Commodity Markets" No. 3480-IV, dated 23.02.2006, generally comply with the provisions of Directive 2004/109/EC, dated 15.12.2004.

However, the legislation of Ukraine lacks some provisions by which this Directive was supplemented, in particular, by Directive 2013/50/EU, dated 22.10.2013, specifically the ones on sanctions and recourses for violating the provisions of Directive 2004/109/EU, dated 15.12.2004.

Are there plans in this regard?

As it was stated above in the answer to question No. 28, the Verkhovna Rada of Ukraine has under consideration the Draft Law of Ukraine "On Introducing Amendments to the Law of Ukraine "On State Regulation of Capital Markets and Organised Commodity Markets and Some Other Legislative Acts of Ukraine on Regulation and Supervision of Capital Markets and Organised Commodity Markets" (registration № 5865, dated 26.08.2021) (hereinafter – the Draft Law No. 5865), which provides for, in particular, the implementation into the domestic legislation of the provisions of EU Regulation No. 596/2014, dated 16.04.2014 (MAR), Directive No. 2014/65/EU, dated 15.05.2014 (MIFID II), Directive 2004/109/EC, dated 15.12.2004 (TD) with regard to bringing the NSSMC's powers of supervision and enforcing laws and regulations into compliance with the EU legislation and the IOSCO Principles in order to build an effective system of supervision on capital markets and organized commodity markets.

On December 14, 2021, the Verkhovna Rada of Ukraine adopted the Draft Law No. 5865 as the basis in the first reading.

35. Have proper responsibilities of the issuer - or its administrative, management or supervisory bodies - been ensured?

Article 63 of the Law of Ukraine "On Joint Stock Companies" No. 514-VI, dated 17.09.2008 stipulates that officials of the bodies of a joint stock company must act in the interests of the company, complying with the requirements of the legislation, the articles of association and other documents of the company.

Officials of the bodies of a joint stock company are liable to the company for damages caused to the company by their actions (inaction), in accordance with the law.

If several persons are liable under this article, their liability to the company is joint.

The financial sanctions applied by the NSSMC to individuals and legal entities are defined in Article 11 of the Law of Ukraine “On State Regulation of Capital Markets and Organized Commodity Markets” No. 3480-IV, dated 23.02.2006.

36. How is the disclosure of regulated information ensured, in a manner ensuring fast access to such information on a non-discriminatory basis?

Pursuant to Article 124 of the Law of Ukraine “On Capital Markets and Organised Commodity Markets” No. 3480-IV, dated 23.02.2006, regulated information is disclosed in accordance with the procedure established by the NSSMC by placing it in the database of the entity performing the activity of publishing regulated information on behalf of capital market participants and professional participants of organized commodity markets.

Unless otherwise provided by law, regulated information is also disclosed by:

- 1) posting it on the own website of a capital market participant and/or a professional participant of organized commodity markets;
- 2) submitting it to the NSSMC.

Regulated information is disclosed by private joint stock companies (if a public offering of securities of such a company was not performed) exclusively by posting it on its website and by submitting it to the NSSMC.

A private joint stock company (except for a company that performed a public offering of securities and/or a company that is an enterprise of public interest and/or a company 100 percent of whose shares are directly or indirectly owned by the state), 100 percent of whose shares are directly or indirectly owned by one person, shall not disclose regulated information, unless otherwise provided by its articles of association.

In this case, the private joint stock company must disclose its ownership structure of a legal entity.

37. Are listed companies required to disclose voting rights concentration? What are the thresholds?

According to Article 128 of the Law of Ukraine “On Capital Markets and Organized Commodity Markets” No. 3480-IV, dated 23.02.2006, special information about the issuer is information, which includes, in particular, information about:

- the change of shareholders who own voting shares, whose stake becomes larger, smaller than or equal to the threshold value of the stake of shares;
- the change of persons who have voting rights on shares, the total number of rights to which becomes larger, smaller than or equal to the threshold value of the stake of shares;
- the change of persons who are owners of financial instruments related to the voting shares of a joint stock company, if the total number of rights to such shares becomes larger, smaller than or equal to the threshold value of the stake of shares. In the event of the change of the persons provided for in this paragraph, the persons who keep records of ownership rights to these financial instruments are obliged to provide the issuer with information at its request;

- the direct or indirect acquisition by an entity (entities acting jointly), taking into account the number of shares owned by it and its affiliates, of a majority shareholding indicating the information on the highest purchase price of shares for the last 12 months in the process of such acquisition, the name (names) of the owner (owners), the owner's (owners') code according to the Unified State Register (for a resident legal entity), code/number from the trade register, bank register or court register, legal entity registration certificate from the local authority of the foreign state (for a non-resident legal entity);

- the direct or indirect acquisition by an entity (entities acting jointly), taking into account the number of shares owned by it and its affiliates, of a significant majority shareholding indicating the information on the highest purchase price of shares for the last 12 months in the process of such acquisition, the name (names) of the owner (owners), the owner's (owners') code according to the Unified State Register (for a resident legal entity), code/number from the trade register, bank register or court register, legal entity registration certificate from the local authority of the foreign state (for a non-resident legal entity);

- the direct or indirect acquisition by an entity (entities acting jointly), taking into account the number of shares owned by it and its affiliates, of a dominant majority shareholding indicating the information on the highest purchase price of shares for the last 12 months in the process of such acquisition, the name (names) of the owner (owners), the owner's (owners') code according to the Unified State Register (for a resident legal entity), code/number from the trade register, bank register or court register, legal entity registration certificate from the local authority of the foreign state (for a non-resident legal entity).

According to paragraph 15 of part 1 of Article 2 of the Law of Ukraine "On Joint Stock Companies" No. 514-VI, dated 17.09.2008, the threshold values of the stake of shares are 5, 10, 15, 20, 25, 30, 50, 75, 95 percent of the voting shares of a public joint stock company.

38. Is there a central storage mechanism for disclosure of annual and half yearly accounts of listed companies? How can these documents be accessed? Please indicate the eventual fees imposed for access to these accounts.

Pursuant to Article 124 of the Law of Ukraine "On Capital Markets and Organized Commodity Markets" No. 3480-IV, dated 23.02.2006, regulated information is disclosed in accordance with the procedure established by the NSSMC by placing it in the database of the entity performing the activity of publishing the regulated information on behalf of the capital market participants and professional participants of the organized commodity markets.

Unless otherwise provided by law, regulated information is also disclosed by:

- 1) posting it on the own website of a capital market participant and/or a professional participant of organized commodity markets;
- 2) submitting it to the NSSMC.

A capital market participant must not restrict access to or charge a fee for access to the information that is subject to mandatory disclosure on the website.

Pursuant to Article 126 of the Law of Ukraine “On Capital Markets and Organized Commodity Markets” No. 3480-IV, dated 23.02.2006, annual information about the issuer is posted on the issuer's official website and is publicly available for at least 10 years after its disclosure.

Interim information about the issuer is posted on the issuer's official website and is publicly available for at least 10 years after its disclosure.

Entities performing the activity of disclosure of the regulated information on behalf of capital market participants and/or professional participants of capital markets and organized commodity markets shall ensure the availability of the regulated information to any legal entity and individual free of charge.

Access to the disclosed regulated information is free of charge and public in the database of an entity performing the activity of disclosure of the regulated information on behalf of capital market participants and professional participants of organized commodity markets (www.smida.gov.ua).

The NSSMC also carries out centralized storage of the regulated information disclosed by market participants by submitting it to the NSSMC in the form of electronic documents.

III. COMPANY REPORTING AND STATUTORY AUDIT

A. Company Reporting

The accounting Directive 2013/34/EU provides for the legal framework on the annual financial statements, consolidated financial statements, and related reports for certain undertakings (amending Directive 2006/43/EC and repealing Council Directives 78/660/EEC and 83/349/EEC). Directive 2013/34/EU was amended by Directive 2014/95/EU on the disclosure of non-financial and diversity information by certain large undertakings and groups and Directive (EU) 2021/2101 on the disclosure of income tax information by certain undertakings and branches. Also, Regulation (EC) No 1606/2002 on the application of international accounting standards (the IAS Regulation) is relevant when used for company law purposes (statutory accounts).

39. What are the legal requirements on the preparation of annual accounts by limited liability companies? Can companies use IFRS or shall they use official accounting standards issued by a standard-setting body (“nGAAP”)?

In Ukraine regulatory legal principles, organisation, accounting and preparation of financial statements are determined by the Law of Ukraine “On Accounting and Financial Reporting in Ukraine” No. 996-XIV, dated 06.07.1999, which applies to all legal entities established in accordance with legislation of Ukraine, regardless of their organisational forms, legal forms and forms of ownership, to representative offices of foreign entities engaged in economic activity, which are obliged to keep accounting records and submit financial statements.

According to the Law of Ukraine “On Accounting and Financial Reporting in Ukraine” No. 996-XIV, dated 06.07.1999, the Ministry of Finance of Ukraine provides state regulation of the accounting, financial reporting and is authorised to approve state accounting standards.

30 state standards in accounting were developed and approved based on international financial reporting standards (hereinafter – “IFRS”) and European Union legislation in the field of accounting.

Since the year 2012, in order to implement the provisions of Regulation (EC) 1606/2002 on the application of IFRS, certain categories of enterprises were obliged to directly apply IFRS as

established by the Law of Ukraine “On Accounting and Financial Reporting in Ukraine” No. 996-XIV, dated 06.07.1999, the remaining entities have to apply state accounting standards .

In 2017, within the framework of the implementation of the EU-Ukraine Association Agreement and in order to apply measures to implement the provisions of Regulation (EC) № 1606/2002 and EU Directive № 2013/34/EU, the range of enterprises obliged to apply IFRS has been expanded.

Currently, in accordance with the Article 12¹ of the Law of Ukraine “On Accounting and Financial Reporting in Ukraine” No. 996-XIV, dated 06.07.1999, public interest entities, public joint stock companies, economic entities operating in the extractive industries and enterprises engaged in economic activities by type, whose list is determined by the Cabinet of Ministers of Ukraine, prepare financial statements and consolidated financial statements in accordance with IFRS. Other enterprises independently determine whether application of IFRS is appropriate.

40. In case limited liability companies can use IFRS, is there 1) a mechanism for endorsing IFRS standards, 2) a requirement for specific disclosures of the Accounting Directive that go beyond IFRS disclosures?

Yes, there is a mechanism for endorsing IFRS standards and information disclosure requirements, in particular:

1)) In accordance with the Agreement with the IFRS Foundation (United Kingdom) regarding copyright disclaimer in limited territories Ministry of Finance of Ukraine receives the texts of IFRSs are in electronic form in the original language and translates it into Ukrainian language. After the approval by the International Accounting Standards Board (UK), it published on the official website of the Ministry of Finance of Ukraine.

In accordance with the Law of Ukraine “On Accounting and Financial Reporting in Ukraine” No. 996-XIV, dated 06.07.1999, IFRS that are set out in the state language and officially published on the website of the Ministry of Finance of Ukraine are used to prepare financial statements.

Note: the Ukrainian translation of IFRS is published on the official website of the Ministry of Finance of Ukraine (<https://www.mof.gov.ua>) in the section “Activity / Accounting and Auditing / Accounting / Introduction of International Financial Reporting Standards”.

2) If a limited liability company is required by law to keep accounting records and prepare financial statements in accordance with IFRS or decided to apply IFRS independently, the disclosure of financial statements indicators is carried out in accordance with IFRS. Moreover, in order to improve the legal framework for accounting and financial reporting in accordance with European law and the implementation of the Directive No. 2013/34/EU, dated 05.10.2017 No. 2164-VIII, the Law of Ukraine “On Introducing Amendments to the Law of Ukraine “On Accounting and Financial Reporting in Ukraine” (on improvement of certain provisions)” was adopted, which, in particular, establishes the obligation for some enterprises to compile, submit and publish report on management and report regarding payments to the state.

In accordance with part 7 of Article 11 on the Law of Ukraine “On Accounting and Financial Reporting in Ukraine” No. 996-XIV, dated 06.07.1999, the management report is submitted together with the financial statements and consolidated financial statements. Micro and small enterprises are exempt from submitting the management report. Medium-sized enterprises have the right of not displaying non-financial information in the management report.

In accordance with the Law of Ukraine, dated 18.09.2018 No. 2545-VIII “On Ensuring Transparency in the Extractive Industries”, the report on payments to the state is submitted by economic entities, which operate in the extractive industries and enterprises engaged in the industry of logging, which are of public interest.

Furthermore, the management report, the consolidated management report, the report on payments to the state, compiling of which is required by law, must be published on the website with the annual financial statements, annual consolidated financial statements and relevant audit reports.

41. Have you applied the company size and group size requirements in accordance with the Accounting Directive?

Yes, in the year 2017 certain steps has been made in the framework of the implementation of the EU-Ukraine Association Agreement in order to apply measures to implement the provisions of the Regulation (EC) No. 1606/2002. In particular, the Law of Ukraine “On Accounting and Financial Reporting in Ukraine” No. 996-XIV, dated 06.07.1999 introduced categories and criteria for the definition of enterprises (except budgetary institutions) that are classified as micro, small, medium or large enterprises. However, the Law on Accounting does not establish the division of groups by their size, but allows groups that fall within the criteria corresponding to that of a small group under the Accounting Directive not to prepare consolidated financial statements (Article 12 of the Law on Accounting)

Currently, the Verkhovna Rada of Ukraine plans to consider a draft law aimed at amending the Law “On Accounting” (No. 6244, dated 01.11.2021), which provides, in particular, that for compiling, submitting and publishing consolidated financial statements, categories and definition criteria of parent companies and their subsidiaries (small, medium or large) shall be established. The document provides that small and medium enterprises are supposed to be exempt from the mandatory preparation and submission of consolidated financial statements.

42. Do your legal accounting requirements have:

Yes, in particular:

a) a regime for small companies that is compliant with the Accounting Directive?

The Law of Ukraine “On Accounting and Financial Reporting in Ukraine” No. 996-XIV, dated 06.07.1999 provides that for micro enterprises, small enterprises, non-profit associations, representative offices of foreign entities engaged in economic activity, except those which are required to compile financial statements in accordance with IFRS, abbreviated financial statements has been established by indicators as a part of balance sheet and financial performance report. For such enterprises, the law requires submission of annual financial statements only. In addition, micro enterprises and s mall enterprises are exempted from submitting a management report.

b) a definition of Public Interest Entities (PIEs) (banks, insurance companies, companies with securities listed)?

In accordance with the Law of Ukraine “On Accounting and Financial Reporting in Ukraine” No. 996-XIV, dated 06.07.1999 public interest entities are companies – issuers of securities, whose securities are admitted to trading on the regulated capital market or whose securities have been publicly offered, banks, insurers, non-state pension funds and other financial institutions (except for other financial institutions and non-state pension funds belonging to micro and small enterprises) and enterprises which are defined as large enterprises according to this Law.

43. Is there a requirement to prepare a management report including a non-financial (information) statement, country-by-country reporting (CBCR) by extractive industry and loggers of primary forest companies on payments to governments, and taxes paid?

In 2017 in order to apply measures aimed at implementing provisions of the Directive No. 2013/34/EU amendments to the Law of Ukraine “On Accounting and Financial Reporting in Ukraine” No. 996-XIV, dated 06.07.1999, which, in particular, established management report and report on payments to the state, were introduced.

In accordance with the Law of Ukraine “On Accounting and Financial Reporting in Ukraine” No. 996-XIV, dated 06.07.1999, the management report is a document that includes financial and non-financial information which provides characteristics of performance and development of the enterprise and provides description of the principal risks and uncertainties it faces.

The management report is submitted with the financial statements and consolidated financial statements according to the procedure and time limits established by law. In case when the enterprise submits consolidated financial statements, a consolidated financial report must be submitted as well. Micro and small enterprises are exempt from submitting a management report. Medium-sized enterprises are entitled to not provide non-financial information in the management report.

The report on payments to the state is submitted by economic entities, which operate in the extractive industries in accordance with the Law of Ukraine “On Ensuring Transparency in the Extractive Industries” and enterprises engaged in the industries of logging, which are of public interest.

Procedure and time limits for submission of a report on payments to the state to public authorities, except for economic entities that operate in the extractive industries, are determined by the Procedure of Submitting Financial Statements, approved by Resolution of the Cabinet of Ministers of Ukraine, dated 28.02.2000 No. 419 (hereinafter - “Procedure for submitting financial statements”).

Procedure and time limits for submitting a management report to public authorities for banks are determined by the National Bank of Ukraine.

In accordance with the Procedure for submitting financial statements, banks submit financial statements, consolidated financial statements, management reports and consolidated management reports to the National Bank of Ukraine in accordance with the procedure established thereunder.

Methodological recommendations regarding preparation of the management report for enterprises, which compile management report in accordance with legislation (except banks, budgetary institutions, micro and small enterprises) are approved by the Order No. 982 of the Ministry of Finance of Ukraine, dated 07.12.2018.

Procedure and time limits for submission of a report on payments to the state by economic entities that operate in the extractive industries are established in accordance with the Law of Ukraine, dated 18.09.2018 No. 2545-VIII “On Ensuring Transparency in the Extractive Industries”.

In order to implement provisions of the Law of Ukraine “On Accounting and Financial Reporting in Ukraine” No. 996-XIV, dated 06.07.1999 and taking into account provisions of Directive No. 2013/34/EU the form and the procedure of compiling a report on payments to the state for enterprises engaged in the industries of logging are approved by the Order No. 499 of the Ministry

of Finance of Ukraine dated 13.08.2020. The report on payment to government includes the taxes paid to government and local authorities but it is exclusively domestic (not CBCR).

The composition and forms of a report on payments to the state for economic entities that operate in the extractive industries are established in accordance with the Law of Ukraine “On Ensuring Transparency in the Extractive Industries”.

44. Is the management report subject to an audit requirement?

Yes, in accordance with Article 14 of the Law of Ukraine, dated 21.12.2017 No. 2258-VIII “On the Audit of Financial Statements and Auditing Activities” an audit report based on the results of the statutory audit, shall, at least include the information regarding consistency of the management report (consolidated management report), which is compiled in accordance with legislation, with financial statements (consolidated financial statements) for the reporting period; regarding existence of significant misstatements and their nature in a management report.

45. Are individual and consolidated financial statements published in the business register?

The financial statements are not being published in the Unified State Register, but this information is disclosed as follows.

An annual financial statements and annual consolidated financial statements together with the relevant audit reports, a management report, a consolidated management report, a report on payments to the state and a consolidated report on payments to the state required by law must be published on the company’s website (in full) and in other ways in cases specified by law, in a format that excludes the possibility of changes in financial statements by other users, and in a single electronic format defined by the Ministry of Finance of Ukraine, based on a taxonomy of financial statements for IFRS.

In accordance with Article 14 of the Law of Ukraine “On Accounting and Financial Reporting in Ukraine” No. 996-XIV, dated 06.07.1999, the financial statements of enterprises do not constitute trade secrets, confidential or limited-access information, except as provided by law. Financial reporting is not prohibited by the dissemination of statistical information. Enterprises are required to provide copies of financial statements and consolidated financial statements at the request of legal entities and individuals in the manner prescribed by the Law of Ukraine "On Access to Public Information".

Public interest entities, public joint-stock companies, natural monopolies in the national market and economic entities operating in the extractive industries are required to publish annual financial statements and annual consolidated financial statements together with the auditor’s report on their website (in full) and in other ways in cases specified by law.

Large enterprises that do not issue securities, and medium-sized enterprises, other financial institutions belonging to micro and small enterprises, are required to publish annual financial statements together with the auditor’s report on their own website (in full).

Companies are required to ensure the availability of financial statements and consolidated financial statements so that legal entities and individuals can familiarize themselves at the location of these companies.

Individual and consolidated financial statements of issuers of securities are additionally disclosed in the annual report in accordance with the requirements of Article 124 of the Law of Ukraine "On Capital Markets and Organised Commodity Markets".

In accordance with the Procedure for Submitting Financial Statements in Ukraine, the process of submitting financial statements and consolidated financial statements, based on a taxonomy of financial statements in accordance with IFRS, was started in a single electronic format, defined by the Ministry of Finance of Ukraine, to the Centre for collecting financial statements, whose operational management is carried out by the National Commission on Securities and Stock Market, in order to ensure access of public authorities, other bodies and users to the financial statements and consolidated financial statements submitted by enterprises.

Meanwhile, the business register (the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Formations) does not contain the respective financial statements themselves or references thereto.

46. What sanctions exist for not complying with financial reporting requirements?

The Law of Ukraine "On Accounting and Financial Reporting in Ukraine" No. 996-XIV, dated 06.07.1999 provides for the imposition of administrative fines on heads and other officials of enterprises in connection with methodological errors or arithmetic errors in accounting and financial reporting related to the introduction of National Accounting Regulations (Standards).

According to Article 163-16 of the Code of Ukraine on Administrative Offences violation of the procedure for publishing financial statements or consolidated financial statements together with the audit report entails a fine ranging from one thousand to two thousand non-taxable minimum incomes.

A violation provided for in part one of this article repeatedly committed during a year, for which the person has already been brought to administrative liability, entails imposition of a fine ranging from two thousand to three thousand non-taxable minimum incomes.

According to Article 164-2 of the Code of Administrative Offences, concealment in the accounting of foreign exchange and other income, unproductive expenses and losses, lack of an accounting or keeping it in violation of the established procedure, entering false data in financial statements, failure to submit financial statements, late or poor inventory of cash and tangible assets entail imposition of a fine ranging from eight to fifteen non-taxable minimum incomes.

The same actions committed by a person who during the year was brought to administrative liability for one of the offences referred to in part one of this article, entail imposition of a fine ranging from ten to twenty non-taxable minimum incomes.

Liability for issuers of securities is foreseen in Article 11 of the Law of Ukraine "On State Regulation of Capital Markets and Organised Commodity Markets". The Law, in particular, stipulates that for non-placement, placement of incomplete information and/or placement of inaccurate information in the publicly available information database of the National Securities and Stock Market Commission on the securities market -a fine shall be imposed in the amount of up to one thousand non-taxable minimum incomes.

For the same acts committed repeatedly during the year -in the amount ranging from one thousand to five thousand non-taxable minimum incomes.

According to Article 1631 of the Code of Administrative Offences, failure to submit an auditor's conclusion, which is obligatory according to the laws of Ukraine, entails a fine in the amount ranging from five to ten non-taxable minimum incomes. The repeated violation during the year entails a fine ranging from ten to fifteen non-taxable minimum incomes.

In addition, corporate profit tax payers, which are obliged to publish annual financial reporting and annual consolidated financial reporting with the auditor's conclusion, shall submit the same to the State Tax Service of Ukraine annually no later than 10 June of the year which follows. Failure to comply with this requirement entails financial sanctions according to Clause 120.1 of Article 120 of the Tax Code of Ukraine - UAH 340 for each fact of non-submitted or untimely submitted documents, and UAH 1020 if the repeated failure during the year.

B. Statutory auditors

Directive 2006/43/EC amended by Directive 2014/56/EU on statutory audits of annual and consolidated accounts is relevant, as well as Regulation 537/2014/EU concerning specific requirements for the statutory audit of public-interest entities.

Starting from 2018, auditing activities and relations arising from auditing activities are regulated by the Law of Ukraine, dated 21.12.2017 No. 2258-VIII "On Audit of Financial Reporting and Auditing Activity" (hereinafter - "the Law on Audit"), which introduced the European model of public oversight on auditing activities and the procedure for entering the profession in accordance with the requirements of Directive № 2006/43/EC on statutory audit of financial statements and consolidated financial statements.

Today, there is a draft law registered in the Verkhovna Rada of Ukraine "On Introducing Amendments to Certain Laws of Ukraine on Improving the Legal Basis of Auditing in Ukraine" (No. 6245, dated 01.11.2021), developed by the Ministry of Finance of Ukraine to improve the legal framework for auditing financial statements and further harmonisation of national legislation in the field of audit with the provisions of Directive No. 2006/43/EU and EU Regulation No. 537/2014, which will ensure compliance of the audit regulatory system with European legislation, international standards and best world practices.

47. What legal instruments are foreseen in the auditing field? Are annual and consolidated financial statements required to be audited? If yes, which entities are required to have their financial statements audited?

The legal basis for the audit of financial statements, auditing in Ukraine is determined by the Law on Audit, which regulates the relations arising from its implementation, and which applies to auditors, business entities regardless of ownership and type of activity, public authorities and bodies of local governments.

Auditing activities are regulated by this Law, other legal acts and international auditing standards. If an international agreement, approved by the Verkhovna Rada of Ukraine, establishes rules other than those contained in this Law, the rules of the international agreement shall prevail.

The Cabinet of Ministers of Ukraine may establish the specifics of conducting audit activities in relation to certain tasks in accordance with inter-governmental agreements concluded in accordance with legislation on behalf of the Government of Ukraine with the governments of other states.

Peculiarities of auditing the financial statements of the National Bank of Ukraine and banks shall be established by this Law and other acts of legislation.

In accordance with Article 1 of the Law on Audit, the audit of financial statements (consolidated financial statements) of business entities that are required by law to disclose or provide financial statements (consolidated financial statements) to users of financial statements, together with the audit report conducted by audit entities on the grounds and in the manner prescribed by this Law, is mandatory.

In particular, according to Article 14 of the Law of Ukraine “On Accounting and Financial Reporting in Ukraine” No. 996-XIV, dated 06.07.1999 in Ukraine public interest entities (except for large enterprises that are not issuers of securities), public joint-stock companies, natural monopolies in the national market and business entities, operating in the extractive industries are obliged to publish the annual financial statements and the annual consolidated financial statements together with the auditor’s report on their website (in full) and in the other way, in cases specified by law, no later than April 30 of the year following the reporting period.

Large non-listed companies and medium-sized companies are required to publish the annual financial statements together with the auditor’s report on their website (in full) no later than June 1 of the year following the reporting period.

Other financial institutions, belonging to category of micro and small enterprises, are obliged to publish the annual financial statements together with the auditor’s report on their own website (in full) no later than June 1 of the year following the reporting period.

Besides, as mentioned previously, the entities which are obliged to publish financial reporting and auditor’s conclusions shall also submit the same to the State Tax Service of Ukraine no later than 10 June following the reporting period, jointly with the corporate profit tax return, as prescribed by Clause 46.2 of the Tax Code of Ukraine.

48. What requirements must be fulfilled to be approved as a statutory auditor and as an audit firm?

For statutory auditors

In accordance with Article 19 of the Law on Audit, an auditor may be an individual who:

- 1) has a higher education;
- 2) confirmed a high level of theoretical knowledge and professional competence by successfully passing the relevant exams;
- 3) has undergone practical training in auditing.

Theoretical knowledge is confirmed in the areas defined by this Law, and professional competence is confirmed by passing a qualifying examination, which should certify the ability of a person to apply theoretical knowledge in practice.

A person intending to be an auditor must gain practical experience in auditing through employment/internship with the audit entity for at least three years in any period, regardless of the date of receipt of the certificate of theoretical knowledge and qualifying examination.

With a valid certificate of examination and a positive characterisation, based on the results of practical training in auditing from the audit entity, the Attestation Commission decides to recognise the qualification of the person to conduct auditing.

In addition, the auditor must comply with the requirements for continuing professional education, which means the direct participation of the auditor in appropriate activities to ensure personal professional development, support for high levels of practical skills, and acquire new theoretical knowledge in the areas prescribed by law.

The minimum amount of continuous professional training of auditors, determined by the Procedure for Continuing Professional Training of Auditors, is 120 hours for three consecutive years, but not less than 20 hours per year.

In accordance with Article 4 of the Law on Audit, the auditor acquires the right to conduct auditing activities after confirmation of qualification and gaining practical experience in the manner prescribed by this Law. An auditor who has acquired the right to conduct auditing activities is included in the Register. The auditor has the right to conduct auditing activities alone only after his inclusion in the Register as an audit entity.

The auditor conducts auditing activities within the audit firm and/or as a natural person - entrepreneur or conducts independent professional activity, provided that such a person is not an employee of the audit firm.

Auditors are prohibited from engaging directly in other types of business activities that are not compatible with auditing, which does not preclude their right to receive dividends, income from other corporate rights, income from lease and alienation of movable and immovable property, and passive income.

Auditors can engage in public, educational, teaching and research activities, and prepare publications with the appropriate remuneration.

An auditor may not be a person who has an outstanding or unresolved criminal record or who has been brought to an administrative liability for corruption in the last year, as well as a person who in the last year has been subject to a penalty in the form of exclusion from the Register for submission of unreliable information to the Register.

For audit firms

In accordance with Article 5 of the Law on Audit, an audit firm acquires the right to conduct auditing activities, provided that it complies with the requirements of this Law.

In particular, the total share of founders (participants) of an audit firm who are not auditors and/or audit firms in the authorised capital may not exceed 30 percent.

The official, who manages an audit firm in accordance with the constituent documents, may be only an auditor.

The head of an audit firm may not be the head of another legal entity engaged in business activities in types that are incompatible with auditing activities.

An audit firm must have a good reputation. An audit firm may not be considered to have a good reputation if, for two consecutive years, the audit firm has been penalised more than three times in the form of a warning or suspension of the right to provide services for statutory audit of financial statements or statutory audit of financial statements of public interest entities.

49. Are statutory auditors and audit firms entered in a public register? If yes, who keeps this register?

In accordance with Article 20 of the Law on Audit, audit entities may provide audit services only after inclusion in the Register of auditors and audit entities (*hereinafter – the Register*).

Information is entered into the Register by the Audit Chamber of Ukraine.

The Register is public, published and kept up to date on the website of the Audit Chamber of Ukraine. The information contained in the Register is open and publicly available with the possibility of free access and copying around the clock.

The procedure for maintaining the Register was approved by the Order of the Ministry of Finance of Ukraine, dated 19.09. 2018 No. 766.

In accordance with Article 21 of the Law on Audit, the Register consists of the following sections:

1. auditors;
2. audit entities;
3. audit entities that have the right to conduct a statutory audit of financial statements;
4. audit entities that have the right to conduct a statutory audit of the financial statements of public interest entities.

In particular, the Register contains the following information on audit entities that have the right to conduct a statutory audit of financial statements and a statutory audit of financial statements of public interest entities:

1. name, identification code (not published) of the audit entity, registration number in the Register;
2. a list of auditors who are employees, partners, participants or otherwise involved in the audit activities, indicating the last name, first name, patronymic, registration number in the Register;
3. information on the audit network (in the case of membership of the audit entity in the audit network);
4. date and number of the decision of passing the audit of the quality control system of audit services;
5. details of the contract of insurance of civil liability of the audit entity, which conducts a statutory audit of financial statements, to third parties, the term of such contract, information about the insurer and the sum insured.

50. What are the rules for the approval of third-country auditors?

In accordance with Article 4 of the Law on Audit, an auditor of a foreign state may acquire the right to conduct auditing activities on the territory of Ukraine in the manner prescribed by this Law and subject to its compliance with the requirements established by this Law.

In particular, Article 19 of the Law on Audit stipulates that auditors admitted to conducting a statutory audit in any state of the European Union who intend to work in Ukraine must pass examinations to confirm theoretical knowledge of Ukrainian legislation in the areas of auditing and accounting, tax legislation and legislation on the unified social contribution, labour, civil, economic legislation, including corporate, and legislation to restore the solvency of the debtor or his bankruptcy.

In accordance with Article 5 of the Law on Audit, an audit firm of a foreign state may conduct auditing activities on the territory of Ukraine, provided it is admitted to conducting auditing activities in accordance with the national legislation of the country of origin of such audit firm if the key partner of this firm, which will conduct the audit of legal entities, a representative office of a foreign entity or other entity registered in Ukraine, meets the requirements of this Law to the auditor, compliance of the audit firm with the requirements of this Law, and after its inclusion in Register.

51. Are there any specific requirements for statutory audits of public-interest entities?

Peculiarities of the statutory audit and audit of public interest entities are established by Articles 23-39 of Section VI of the Law on Audit.

In particular, these articles set special requirements for the internal organisation of audit entities, the organisation of work on the statutory audit of financial statements, restrictions on the scope of the task of statutory audit of financial statements and for the provision of services, requirements for the duration of the task of statutory audit of financial statements, assessment of threats to independence, the procedure for appointment and removal of the audit entity, requirements for internal quality control of the performed task of auditing financial statements, detection of violations, requirements to be met when terminating provision of services of statutory audit of financial statements, as well as determining the procedure for forming an audit committee and submitting an additional report to the audit committee, a report for oversight bodies, a transparency report, information for the Audit Public Oversight Body of Ukraine.

52. Is there an independent public oversight (PO) for auditors already established? If yes, identify the competent authority and inform whether it is adequately resourced and funded?

In accordance with Article 15 of the Law on Audit, the body responsible for public oversight of auditing activities in Ukraine is the Audit Public Oversight Body of Ukraine (APOB), which consists of the Supervisory Board of Audit Activities and the Quality Assurance Inspection.

APOB was established in 2018 (see the Order of the Ministry of Finance of Ukraine, dated 18.09.2018 No. 765), and is fully operational since 2019. APOB and is a competent body that oversees the activities of auditors and audit firms that carry out the statutory audit of financial statements of public interest entities and is responsible for overseeing:

- registration of auditors and audit entities;
- introduction of international auditing standards;
- control over the certification of auditors and continuous training of auditors who perform mandatory audits of financial statements;
- quality control of audit services of audit entities that carry out a mandatory audit of financial statements;

- disciplinary proceedings against auditors and audit entities that carry out statutory audits of financial statements;

- application of penalties.

Information on APOB activities is public and published on the official APOB website.

Note: information on the activities of APOB is public and is published on the official website of APOB (www.apob.org.ua).

The latest APOB's public report in English is available at: <https://www.apob.org.ua/wp-content/uploads/2022/01/zvit2020eng.pdf>.

According to the Law on Audit, APOB is a non-profit legal entity under public law.

To ensure the financing of APOB activities, Article 15 of the Law stipulates that audit entities are obliged to pay the following contributions in favour of APOB under each contract for the provision of mandatory audit services to public interest entities:

- a fixed contribution, amounting to three minimum incomes established by law on January 1 of the reporting year, from each audit report prepared by the audit entity on the results of the provision of mandatory audit services to the public interest entity;

- contribution as a percentage of the amount of remuneration (excluding value added tax) under the contract for the provision of statutory audit services to public interest entities, whose amount is determined by the Cabinet of Ministers of Ukraine (see the Resolution of the Cabinet of Ministers of Ukraine, dated 10.04.2019 No. 313) on the basis of the APOB's budget, but may not exceed 2 percent of the amount of such remuneration.

The APOB's budget is approved by the Cabinet of Ministers of Ukraine.

53. Does an external quality assurance (QA) system for statutory auditors and audit firms exist? If yes, is this external quality assurance system independent from the audit profession?

In accordance with Article 40 of the Law on Audit, quality control of audit services of audit entities that have the right to conduct a mandatory audit of financial statements of public interest entities is carried out by the APOB's Quality Assurance Inspection (hereinafter - "the Inspection").

Quality control of audit services of audit entities that provide services for statutory audit of financial statements (except for audit entities that have the right to conduct a statutory audit of financial statements of public interest entities) is conducted by the Audit Chamber of Ukraine.

The Inspection and the Audit Chamber of Ukraine must implement policies and procedures for the independence of inspectors and ensure that conflicts of interest are prevented.

Inspections on quality control are carried out directly by inspectors who are officials of the Inspection and employees of the Committee for the quality control of the audit services of the Audit Chamber of Ukraine. A person who meets the following criteria may be appointed as an inspector:

- 1) has experience as an auditor for at least five years;
- 2) has ceased the activity of providing audit services alone or as part of the audit activity entity;
- 3) improved his/her qualification according to the relevant program approved by the attestation commission.

Prior to commencing a quality control audit, the inspector must declare that there is no conflict of interest between him and the audit entity to be audited.

The inspector may inspect the audit entity with which he/ she has had an employment or property relationship, control relationship, etc., not earlier than three years after the termination of such relationship.

The Inspection and the Audit Chamber of Ukraine may involve experts in the quality control audit of audit entities. In this case, experts must meet the same independence requirements as inspectors.

The procedure for conducting inspections to control the quality of audit services was approved by the Order of the Ministry of Finance of Ukraine, dated 29.08.2019 No. 362.

54. Is the professional body involved in the public oversight and to what extent?

In accordance with part five of Article 15 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, the following powers are delegated to the Audit Chamber of Ukraine, which is a legal entity that carries out professional self-government of audit activities, provided that its organisational structure prevents a conflicts of interest:

- 1) registration of auditors and audit entities;
- 2) control over the continuous training of auditors who carry out mandatory audits of financial statements, except for the audit of financial statements of public interest entities;
- 3) quality control of audit services of audit entities that carry out a mandatory audit of financial statements, except for the audit of financial statements of public interest entities;
- 4) carrying out disciplinary proceedings against audit entities that carry out a mandatory audit of financial statements, except for audit entities that audit the financial statements of public interest entities.

Pursuant to part six of Article 15 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, the APOB supervises the implementation of the powers delegated to the Audit Chamber of Ukraine. Pursuant to the eighth part of Article 15 of the said Law, to carry out such a supervision, the APOB has the right to:

- 1) receive information about an auditor (audit entity), which relates to the performance by such an auditor (audit entity) of its professional duties;
- 2) receive information from legal entities and individuals with respect to the auditor and the audit entity related to the performance of the auditor's (audit entity's) professional duties, disclosure of the financial statements together with the audit report, and on the performance of delegated powers by the Audit Chamber of Ukraine;
- 3) to conduct on-site inspections of auditors and audit entities in the performance of their professional duties;
- 4) send materials on identified offences to law enforcement agencies;
- 5) involve inspectors and experts in conducting inspections and conducting disciplinary proceedings;

- 6) impose penalties on auditors and audit entities;
- 7) receive reports from the Audit Chamber of Ukraine and conduct audits of the Audit Chamber of Ukraine in order to ensure its performance of delegated powers in accordance with the requirements of the APOB;
- 8) consider and revise the decisions made by the Audit Chamber of Ukraine, within the framework of its delegated powers;
- 9) provide sound recommendations on the actions to be taken by the Audit Chamber of Ukraine for the proper performance of delegated powers.

In accordance with part five of Article 47 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII dated 21.12.2017, in order to properly perform delegated powers, the Audit Chamber of Ukraine has the right to:

- 1) have access to data on the auditor and the audit entity that are relevant to the performance of professional duties by such an auditor or audit entity, with the possibility of obtaining copies of such data;
- 2) receive from legal entities and individuals information on the auditor and the audit entity related to the performance of professional duties by the auditor or the audit entity;
- 3) conduct audits of audit entities, except for those that carry out a mandatory audit of financial statements of public interest entities, in terms of their professional duties;
- 4) make proposals to public authorities on the formation and implementation of state policy in the field of auditing;
- 5) appeal to the court, according to the rules of administrative proceedings, on its own behalf decisions (regulations, acts of individual action, actions or omissions of subjects of power) that violate the rights or legitimate interests of members of the Audit Chamber of Ukraine
- 6) in the manner prescribed by law, to receive from the APOB information necessary for the implementation of the powers of the Audit Chamber of Ukraine;
- 7) conduct inspections of compliance by the members of the Audit Chamber of Ukraine with the requirements of the Regulations on Membership Fees approved by the Congress of Auditors of Ukraine;
- 8) apply to the members of the Audit Chamber of Ukraine the disciplinary measures provided by the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017;
- 9) carry out international cooperation;
- 10) use the work of employees, establish the structure, staffing, number of employees, forms and amounts of payment and material incentives for their work in accordance with legislation and within the budget of the Audit Chamber of Ukraine, approved in accordance with the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017.

To better understand the extent of involvement of the APOB into the public oversight, it is necessary to draw a distinction between the internal self-governing quality control mechanisms of the Audit Chamber of Ukraine and the role of APOB’s governing bodies while exercising oversight over the decision-making process of the governing bodies of the Audit Chamber of Ukraine, which

according to part nine of Article 47 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017 are:

- 1) the Congress of Auditors of Ukraine;
- 2) the Board of the Audit Chamber of Ukraine.

In accordance with part nine of Article 47 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, the Committee for the Quality Control of the Audit Services is established within the Audit Chamber of Ukraine.

In accordance with Article 51 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, the Committee for the Quality Control of the Audit Services of the Audit Chamber of Ukraine provides for audits of audit entities, except for those that carry out mandatory audits of financial statements of public interest entities.

Part four of Article 49 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017 provides that the meeting of the Board of the Audit Chamber of Ukraine is attended by members of the APOB’s Supervisory Board of Audit Activities, and decisions of the Board of the Audit Chamber of Ukraine, adopted by it in the framework of delegated powers, may be reviewed by the APOB’s Supervisory Board of Audit Activities and could be cancelled in case such a cancellation is justified .

According to the APOB’s Statute approved by the Order of the Ministry of Finance of Ukraine No. 765, dated 18.09.2018, to achieve the goal and fulfil the statutory tasks the APOB has the authority to supervise maintenance of the Register of auditors and audit entities; agree on the form in which auditors and audit entities submit to the Audit Chamber of Ukraine information to be published in the Register of auditors and audit entities; decide on the exclusion of the auditor and the audit entities from the Register of auditors and audit entities on the grounds provided for by the Law and the Procedure for maintaining the Register auditors and audit entities.

In accordance with the requirements of the Procedure for maintaining the Register of auditors and audit entities, approved by the Order of the Ministry of Finance of Ukraine No. 766, dated 19.09.2018, to supervise the registration of auditors and audit entities in Ukraine, the APOB performs the following functions:

- 1) supervises the activities of the Audit Chamber of Ukraine in terms of maintaining the Register, conducts inspections of the Audit Chamber of Ukraine to ensure its implementation in accordance with the requirements of the APOB powers to maintain the Register;
- 2) provides informed recommendations to the Audit Chamber of Ukraine in order to eliminate the identified violations in the activities of the Audit Chamber of Ukraine in maintaining the Register and improving the procedure for maintaining the Register;
- 3) exercises other powers to ensure the functioning of the Register and obtain reliable information from the Register.

55. Who is responsible for inspections/investigations, preparation of inspection reports and publication of inspection findings, enforcement of penalties? Is there any external expertise used during inspections? Is there any track record of inspections and investigations already performed? Are any of the results published?

In accordance with Article 15 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, the appropriate authority to investigate and impose penalties is vested with the APOB, which oversees and is responsible for overseeing disciplinary proceedings against auditors and audit entities that carry out statutory audits of financial statements.

In accordance with paragraph 5 of the eighth part of Article 15 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, the APOB, while exercising its overseeing function, has the right, in particular, to involve inspectors and experts in conducting inspections and conducting disciplinary proceedings.

The third part of Article 42 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017 stipulates that disciplinary proceedings against audit entities that have the right to conduct a statutory audit of financial statements of public interest entities are carried out by the APOB’s Supervisory Board of Audit Activities.

The verification of information on the presence of signs of professional misconduct on behalf of the APOB’s Supervisory Board of Audit Activities is carried out by the APOB’s Quality Assurance Inspection.

In accordance with part twelve of Article 15 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, if the APOB’s Supervisory Board of Audit Activities attracts experts to perform certain tasks, they may not participate in any decision-making. The experts involved should not have a conflict of interest in relation to the auditor (audit entity), which is the subject of a disciplinary proceeding or an audit involving the expert.

Since 2019, the APOB’s Supervisory Board of Audit Activities has imposed 19 penalties on audit entities that were entitled to conduct a mandatory audit of public interest entities, and continues to verify information on signs of professional misconduct.

In accordance with part one of Article 18 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, the APOB shall publicly disclose the following information:

- 1) annual reports on its activities;
- 2) annual work programs on performance of its tasks;
- 3) schedule of annual inspections to control the quality of audit services;
- 4) annual reports on the overall results of the quality assurance system. The report shall contain information on the inspections carried out, recommendations provided, verification of their implementation, measures taken and penalties imposed. It shall also contain information on the main performance indicators of the APOB’s budget and the resources involved in performing the functions;
- 5) information on the imposed penalties.

The Procedure for disclosure of information on the amount and use of technical assistance received by the APOB from foreign governments, their agencies and institutions, as well as international financial organisations is approved by the Order of the Ministry of Finance of Ukraine No. 341, dated 14.08.2019. The mentioned Procedure stipulates the following disclosure obligations of the APOB:

- 1) Information on the amount and directions of use of technical assistance received by the APOB from foreign governments, their agencies and institutions, as well as international financial

organisations, is provided in the Report on the size and use of international technical assistance (the Report) according to the form enclosed as the appendix to the Procedure.

2) The Report shall be published on the official website of the APOB for the first quarter, first half of the year, nine months and the entire year.

3) The Report shall be available on the official website of the APOB for three years.

Note: information on activities that entail bringing to professional liability and penalties for audit entities is published in accordance with the requirements of Article 44 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017 (which fully takes into account the requirements of Article 30c of Directive No. 2006/43/EU regarding the mandatory disclosure of information on applied penalties in compliance with the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union, in particular, the right to respect for private and family life and the right to protection of personal data) on the official APOB website and available at: https://www.apob.org.ua/?page_id=57&lang=en

56. Any specific requirements for the QA and investigations undertaken with regard to the statutory audit of public-interest entities?

In accordance with part three of Article 40 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, mandatory quality control of audit services is carried out in relation to:

1) audit entities that provide services for the statutory audit of financial statements of large enterprises, banks, professional stock market participants and issuers, whose securities are admitted to trading on stock exchanges or whose securities have been publicly offered - once every three years;

2) audit entities that provide services for the statutory audit of financial statements, other than those specified in paragraph 1 of this part - once every six years.

In accordance with part four of Article 40 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, quality control of audit services of audit entities that have the right to conduct a statutory audit of financial statements of enterprises of public interest is carried out by the APOB’s Quality Assurance Inspection.

In accordance with part ten of Article 40 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, quality control of audit services includes testing of internal procedures, verification of working documents, audit reports and other reports, contracts for the provision of audit services, internal regulations of the audit entity, which determine the policies and procedures to be applied while providing audit services, namely:

a) compliance with applicable international auditing standards, independence requirements and other requirements of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, including ensuring the accuracy of information submitted for inclusion in the Register of Auditors and Audit Entities;

b) the quantity and quality of resources used, including compliance with the requirements for continuous training of auditors;

c) compliance with the requirements for remuneration for audit services, if any;

- d) the effectiveness of the internal quality control system of the audit entity;
- e) the reliability of the information in the transparency report if its publication is provided by this Law, on the assessment of the effectiveness of the internal quality control system of the audit entity.

In accordance with part three of Article 42 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, disciplinary proceedings against audit entities that have the right to conduct a statutory audit of the financial statements of public interest entities are carried out by the APOB’s Supervisory Board of Audit Activities.

Disciplinary proceedings against auditors and audit entities (except for audit entities that have the right to conduct a mandatory audit of financial statements of public interest entities) are carried out by the Board of the Audit Chamber of Ukraine.

In accordance with part one of Article 45 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, everyone who knows the facts proving existence of such actions has the right to apply to the Supervisory Board and/or the Audit Chamber of Ukraine with a statement (complaint) regarding the actions of the auditor or audit entity, which may constitute the ground for bringing to professional liability.

In accordance with part four of Article 45 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, every application (complaint), except for those that cannot constitute the ground for launching disciplinary proceedings in accordance with part three of Article 45 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017 (namely, except for the application (complaint) which does not contain information about the presence of signs of professional misconduct of the auditor or audit entity, as well as an anonymous application (complaint)), shall be considered.

Applications from the National Bank of Ukraine, the National Commission on Securities and Stock Market are subject to immediate consideration.

57. What kinds of sanctions can be applied to auditor's misconduct?

In accordance with part six of Article 42 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, penalties may be applied to the auditor and audit entity for committing professional misconduct in accordance with the requirements of national legislation, namely:

- 1) a warning requiring the auditor and the audit entity responsible for the breach to stop the unacceptable conduct or to remedy the breach and to refrain from any such retaliation;
- 2) suspension of the right to provide services for the statutory audit of financial statements or the statutory audit of financial statements of public interest entities for a period of one month to three years;
- 3) official statement of the APOB or the Audit Chamber of Ukraine on non-compliance of the audit report with the requirements of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017;
- 4) imposition of a fine on the auditor or the audit entity;

- 5) exclusion of the auditor or audit entity from the Register of Auditors and Audit Entities.

In accordance with part eight of Article 42 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, the subject of audit activity may be fined in the amount of:

- 1) up to 30 percent of the amount of remuneration under the contract for the provision of audit services in case of concluding a contract without proper enforcement of the requirements and restrictions established by paragraph 4 of part one of Article 23, Articles 26, 27 and Article 30 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017;
- 2) up to 10 percent of the amount of remuneration under the contract for the provision of audit services in the case of services for statutory audit of financial statements without a valid contract of civil liability insurance of the audited entity to third parties, which conducts statutory audit.

Fines are paid to the State Budget of Ukraine.

Meanwhile, according to part fourteen of Article 45 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, when choosing the type of penalty, the circumstances of the violation and its consequences, the severity and duration of the violation, financial condition, level of cooperation of the person involved in misconduct reportedly committed by the auditor or audit entity with the APOB, and previous violations are taken into account.

58. How is such a system of PO/QA financed?

According to Article 15 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, the APOB is responsible for public oversight of auditing activities in Ukraine. The Audit Chamber of Ukraine has been delegated, in particular, the authority of quality control of audit services of audit entities that carry out statutory audits of financial statements, except for audits of financial statements of public interest entities, and impose disciplinary charges against such audit entities, maintaining the Register of auditors and audit entities.

According to paragraph 5 of part fourteen of Article 15 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, sources of property and funds of the APOB can be as follows:

- 1) cash contributions to the authorised capital;
- 2) contributions of audit entities in accordance with this Law;
- 3) funds raised on a non-fundable basis (except for funds from audit entities), including fund received from governments of foreign states, their agencies and institutions, as well as international financial organisations;
- 4) property acquired in the manner prescribed by law;
- 5) other sources not prohibited by law.

According to paragraph 1 of part thirteen of Article 15 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, in order to ensure the financing of the APOB activities, audit entities are obliged to pay the following contributions to the APOB in each contract for the provision of statutory audit services to companies of public interest:

- a fixed contribution, amounting to three minimum wages defined by law on January 1 of the reporting year, from each audit report prepared by the audit entity on the results of the provision of statutory audit services to the public interest entity;

- contribution as a percentage of the amount of remuneration (excluding value added tax) received under the contract for the provision of audit services for statutory audit to enterprises of public interest, whose amount is determined by the Cabinet of Ministers of Ukraine (see the Resolution of the Cabinet of Ministers of Ukraine, dated 10.04.2019, No. 313) on the basis of the APOB's budget, but may not exceed 2 percent of the amount of such remuneration.

APOB's annual financial statements are subject to mandatory audit by an independent audit entity. The procedure for selecting an independent auditor is determined by the Cabinet of Ministers of Ukraine (see the Resolution of the Cabinet of Ministers of Ukraine of December, dated 04.12.2019 No. 996).

According to paragraph 3 of part thirteen of Article 15 of the Law "On Audit of Financial Reporting and Auditing Activity" No. 2258-VIII, dated 21.12.2017, the APOB's budget is approved by the Cabinet of Ministers of Ukraine.

According to paragraph 4 of part thirteen of Article 15 of the Law "On Audit of Financial Reporting and Auditing Activity" No. 2258-VIII, dated 21.12.2017, the budget of the Audit Chamber of Ukraine regarding the financing of delegated powers is approved by the Audit Oversight Board.

According to paragraph 4 of part thirteen of Article 15 of the Law "On Audit of Financial Reporting and Auditing Activity" No. 2258-VIII, dated 21.12.2017, to ensure the financing of the activities of the Audit Chamber of Ukraine in exercise of delegated powers (quality control of audit services, investigation and maintenance of the Register) audit entities are obliged under each contract on provision of audit services for statutory audit to other legal entities that are not enterprises of public interest to pay the following contributions to the Audit Chamber of Ukraine:

- a fixed contribution of 0.3 of the minimum wage defined by law on January 1 of the reporting year, from each audit report prepared by the audit entity on the results of the provision of statutory audit services;

- contribution as a percentage of the amount of remuneration (excluding value added tax) under the contract for the provision of statutory audit services, whose amount is determined by the Audit Chamber of Ukraine, but may not exceed the amount of contribution paid to the APOB entities that provide statutory audit services to companies of public interest.

59. Are auditors required to use the International Standards on auditing (ISAs)?

Yes, according to part one of Article 13 of the Law "On Audit of Financial Reporting and Auditing Activity" No. 2258-VIII, dated 21.12.2017, auditors and audit entities conduct audit activities in accordance with International Standards on auditing.

According to paragraph 14 of the Law "On Audit of Financial Reporting and Auditing Activity" No. 2258-VIII, dated 21.12.2017, International Standards on auditing are defined as a set of professional standards that establish rules for the provision of audit services and disclose issues of ethics and quality control, which are defined by international standards of quality control, audit, review, other assurance and related services adopted by the International Auditing and Assurance

Standards Board, as well as the the International Code of Ethics for Professional Accountant, adopted by the Council of International Standards of Ethics for Accountants and promulgated by the International Federation of Accountants.

According to part two of Article 13 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, International standards on auditing published in the official language on the official website of the Ministry of Finance of Ukraine, which ensures their updating, are used in conducting audit activities.

Note: Ukrainian translation of International standards on auditing is posted on the official website of the Ministry of Finance of Ukraine (<https://www.mof.gov.ua>) in the section "Activities / Accounting and auditing / Auditing / International standards on auditing" (the direct link is <https://www.mof.gov.ua/uk/mizhnarodni-standarti-auditu>; materials are available only in Ukrainian version of the site).

60. Is there a Code of Ethics for auditors?

Yes, according to Article 8 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, auditors and audit entities are obliged to ensure ethical professional conduct in providing audit services in compliance with the public interests, general morals, principles of independence and objectivity, professional competence, confidentiality and professional secrecy.

According to part two of Article 13 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, International Standards on auditing are a set of professional standards that establish rules for the provision of audit services and disclose issues of ethics and quality control, which are defined by international standards of quality control, audit, review, other assurance and related services adopted by the International Auditing and Assurance Standards Board, as well as the International Code of Ethics for Professional Accountants, adopted by the Council of International Standards of Ethics for Accountants and promulgated by the International Federation of Accountants.

Note: the Ukrainian translation of the International Code of Ethics for Professional Accountants (including International Standards of Independence) is posted on the official website of the Ministry of Finance of Ukraine (<https://www.mof.gov.ua>) in the section "Activities / Accounting and auditing / Auditing / International Standards on Auditing" (the direct link is <https://www.mof.gov.ua/uk/mizhnarodni-standarti-auditu>; materials are available only in Ukrainian version of the site).

61. What are the requirements concerning auditor independence and the rules on the conflict of interests?

According to part one of Article 10 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, members of administrative, management and supervisory bodies, owners (founders, participants) of the audit entity, as well as its related parties are prohibited from interfering with the audit activities of the auditor in a manner that violates his independence and threatens the objectivity of his opinion.

According to part one of Article 10 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, the auditor and the audit entity have the right to provide audit services, review financial statements and perform other assurance tasks, provided that such auditor, audit entity, its owners (founders, participants), officials and employees are independent of the legal entity, whose financial statements are subject to audit, did not participate in the preparation and adoption of management decisions of such legal entity. The independence requirement applies to the reporting period of the audited financial statements and the period for providing audit services of such financial statements.

According to part two of Article 10 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, the auditor and the audit entity are required to take appropriate measures to ensure independence in the provision of audit services in cases stated in the international standards on auditing, in particular, to avoid existing or potential conflicts of interest and the impact of contractual or other relationships involving auditor, audit entity, audit network, owners (founders, participants), officials and employees of the audit entity, other persons involved in the provision of audit services, and related parties of the audit entity.

According to part three of Article 10 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, the auditor and the audit entity are obliged to refrain from providing audit services in case of threat to moral principles, property interests, protection of personality and family relations, forcing to take certain actions due to financial, personal, contractual, labour and other relations between the auditor, audit entity, its audit network and other persons capable of influencing the outcome of audit services, and legal entities, whose financial statements are subject to audit, as a result of which an objective, rational and knowledgeable third party may take into account the precautionary measures taken, and the conclusion that the independence of the auditor or the subject of audit activity is not observed.

According to part four of Article 10 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, the provision of audit services is prohibited if the auditor, the audit entity, its key audit partners, its owners (founders, participants), officials and employees and other persons involved in the provision of such services, as well as close relatives and family members of the following persons:

- 1) are owners of financial instruments issued by a legal entity, whose financial statements are subject to audit, or a legal entity related to such legal entity by joint ownership, control and management, except for those owned by such legal entity indirectly through collective investment institutions;
- 2) participate in transactions with financial instruments issued, guaranteed or otherwise supported by a legal entity, whose financial statements are subject to audit, except for transactions within collective investment institutions;
- 3) have been in employment, contractual or other relations with a legal entity, whose financial statements are subject to audit, during the periods specified in part one of this Article, which may lead to a conflict of interest.

According to part ten of Article 15, part four of Article 17, part six of Article 49, part three of Article 51 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, anti-corruption legislation is applied to the members of the APOB’s Supervisory Board

of Audit Activities, officials of the APOB's Quality Assurance Inspection, members of the Board of the Audit Chamber of Ukraine, staff of the Committee for the Quality Control of the Audit Services.

According to Article 8 of the Law "On Audit of Financial Reporting and Auditing Activity" No. 2258-VIII, dated 21.12.2017, auditors and audit entities are obliged to ensure ethical professional conduct in the provision of audit services in compliance with the public interest, general morals, principles of independence and objectivity, professional competence, confidentiality and professional secrecy.

It should be noted that a conflict of interest under this Law is a conflict between the personal property, non-property interests of the auditor (officials of the audit firm) and his (their) professional rights and responsibilities, whose presence may affect objectivity or impartiality in performance by him/her (them) of their professional duties, as well as the conduction or failure to conduct actions.

According to part five of Article 10 of the Law "On Audit of Financial Reporting and Auditing Activity" No. 2258-VIII, dated 21.12.2017, the auditor and audit entity shall ensure documenting in auditor's working papers all significant threats to their independence, as well as the precautionary measures taken to reduce such threats.

According to part six of Article 10 of the Law "On Audit of Financial Reporting and Auditing Activity" No. 2258-VIII, dated 21.12.2017, the auditor and the audit entity shall not be entitled to demand or accept cash or non-monetary gifts from the audited entity or a related party, except in the amount and to the extent permitted by law.

According to part seven of Article 10 of the Law "On Audit of Financial Reporting and Auditing Activity" No. 2258-VIII, dated 21.12.2017, if a legal entity is reorganised during the reporting period for which the audited financial statements are prepared, the auditor and the audit entity should assess the impact of the action on their independence and ensure that an audit is possible after the date of reorganisation. If threats to independence are identified within three months, take steps to address them or refuse to provide financial statement audit services.

According to part eight of Article 10 of the Law "On Audit of Financial Reporting and Auditing Activity" No. 2258-VIII, dated 21.12.2017, auditor, key audit partner, officials and employees of the audit entity and other persons involved in the provision of services for the statutory audit of financial statements for at least one year, and in the case of a statutory audit of financial statements enterprises of public interest - for at least two years after the provision of relevant services are not entitled to:

- 1) hold senior positions in the governing body of the legal entity to which the services of statutory audit of financial statements were provided;
- 2) be appointed as a member of the audit committee of a legal entity to which the services of statutory audit of financial statements were provided, or in the absence of such a committee - a member of the body performing the relevant functions;
- 3) be appointed (be elected) as a member of the administrative or supervisory body of the legal entity to which the services of mandatory audit of financial statements were provided.

In addition, Article 12 of the Law "On Audit of Financial Reporting and Auditing Activity" No. 2258-VIII, dated 21.12.2017 stipulates that members of administrative, management and supervisory bodies, owners (founders, participants) of the audit entity, as well as its related parties are prohibited from interfering in the audit activities of the auditor in a manner that violates his independence and threatens the objectivity of his opinion.

The Law of Ukraine “On the Prevention of Corruption” No. 1700-VII, dated 27.04.2022 defines the range of subjects that are covered by the requirements of this Law, including the prevention and resolution of conflicts of interest. The list of such subjects includes, in particular, persons who are not civil servants, local government officials but those who render public services, including auditors.

The general rules for the prevention and resolution of conflicts of interest, as defined by the Law of Ukraine “On Prevention of Corruption” No. 1700-VII, dated 27.04.2022, apply to the auditor pursuant to Article 3 of the said Law.

According to part one of Article 28 the Law of Ukraine “On Prevention of Corruption” No. 1700-VII, dated 27.04.2022, the general obligations to prevent and resolve conflicts of interest, regardless of position, status, comprises:

- 1) the obligation to take measures to prevent the occurrence of conflicts of interest;
- 2) the obligation to report conflicts of interest;
- 3) the obligation not to take any actions/not to make decisions under the conditions of a conflict of interest;
- 4) the obligation to take measures to address a conflict of interest.

Given that auditing is an independent professional activity, the auditor is, in fact, a person without an immediate head, and conflicts of interest should be reported to the National Agency on Corruption Prevention of Ukraine.

According to part three of Article 28 the Law of Ukraine “On Prevention of Corruption” No. 1700-VII, dated 27.04.2022, the National Agency on Corruption Prevention shall explain, within seven working days, to such a person the procedure for his/her actions to be undertaken to resolve the conflict of interest.

In addition, a person who has an actual or potential conflict of interest, can independently take steps to resolve it by eliminating the respective private interest.

62. Are there any requirements as regards the internal organisation of statutory auditors and audit firms?

Yes, part one of Article 23 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017 sets out the requirements for the internal organisation of audit entities that have the right to conduct a statutory audit of financial statements.

In particular, the audit entity shall ensure:

- 1) independence and objectivity of auditors and key partners in providing audit services, in particular through the implementation of appropriate policies and procedures, as well as the existence of a system of control over their implementation;
- 2) implementation of an internal control system, procedures for registration and accounting of facts, information on which is subject to recording and disclosure in accordance with this Law, internal control mechanisms, application of risk assessment methods, measures and means to protect information processing systems;

3) the possibility of informing the authorised person of the audit entity about the facts of violations of the requirements of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017 by its employees;

4) sufficient level of qualification and experience of auditors and personnel involved in the provision of services in accordance with international standards on auditing. There must be at least three auditors at the principal place of business. When providing services for the statutory audit of financial statements of public interest entities (other than those that meet the criteria of a small enterprise), at the main place of work must be at least five auditors with a total number of 10 skilled workers involved in the implementation of tasks, of which at least two persons must prove their qualifications in accordance with Article 19 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017 or have valid certificates (diplomas) of professional organisations confirming a high level of knowledge of international financial reporting standards. The list of professional organisations, whose certificate (diploma) indicates a high level of relevant knowledge, is approved by the APOB Oversight Board;

5) a sufficient level of staffing to perform the tasks of statutory audit of financial statements. If auditors and other employees, who are not employees of the auditor’s principal place of business, are involved in the provision of these services, the audit entity is obliged to take measures to prevent a decrease in the quality of internal control. The participation of employees of the audit entity, who do not work at the main place of work, in performing the task of mandatory audit of financial statements does not affect the responsibility of the audit entity, which is entrusted to him in accordance with law and contract with the legal entity to whom the relevant services are provided;

6) implementation of organisational and administrative mechanisms to prevent, identify, eliminate or manage and disclose any risks and threats to its independence;

7) implementation of internal policies and procedures for the fulfilment of tasks on the statutory audit of financial statements, which should also include mandatory training, supervision and inspection of auditors and other employees, requirements for the creation and scope of working documents of the auditor;

8) implementation of an internal system of quality control of audit services. The head of the audit entity is responsible for the organisation and effective functioning of the internal quality control system, and he may appoint a responsible person only from among the auditors, who are employees of the audit entity at the main place of work;

9) use of the foregoing internal procedures, systems, mechanisms and resources to ensure the systematic and regular provision of statutory audit services;

10) implementation of mechanisms for registration and resolution of a non-standard situations that have or may have significant consequences for the impartiality of the activities of auditors and key partners related to the provision of services for statutory audit of financial statements;

11) application of the remuneration policy for the personnel involved in the conduction of statutory audit tasks, which would provide incentives to ensure the quality of work. In this case, the remuneration received by the audit entity from the legal entity for services not related to the statutory audit of financial statements, cannot be taken into account in any way in determining the amount of remuneration of auditors and other employees involved in the task of statutory audit of the financial statements of this legal entity;

12) continuous monitoring, assessment of compliance and effectiveness of internal policies and procedures, internal control system, including annual assessment of the internal quality control system and taking appropriate measures to eliminate any deficiencies. The audit entity may engage professional auditor's; organisations to independently evaluate the internal quality control system. The audit entity should keep the information about the results of the evaluation of the effectiveness of the internal control system and the measures taken for seven years.

63. Are there any specific confidentiality and professional secrecy rules in place for auditors

Yes, according to Article 8 of the Law "On Audit of Financial Reporting and Auditing Activity" No. 2258-VIII, dated 21.12.2017, auditors and audit entities are obliged to ensure ethical professional conduct in providing audit services in compliance with the public interests, general morals, principles of independence and objectivity, professional competence, confidentiality and professional secrets.

It should be noted that the professional secret of the auditor, in accordance with paragraph 18 part one of Article 1 of the Law "On Audit of Financial Reporting and Auditing Activity" No. 2258-VIII, dated 21.12.2017, is information (materials, documents, etc.) that became known to the auditor in the process of providing audit services and meets the following criteria:

- is unknown or not publicly available to a wide range of people;
- the disclosure of which may harm the interests of the person who applied to the auditor, the subject of audit activity.

Part one of Article 11 of the Law "On Audit of Financial Reporting and Auditing Activity" No. 2258-VIII, dated 21.12.2017 stipulates that in accordance with the principle of confidentiality and professional secrecy, auditors and audit entities are obliged to maintain the confidentiality of information obtained during the provision of audit services, not to disclose information to which they have access during the provision of audit services, and not to use them in their own interests or in the interests of third parties. The principle of confidentiality and professional secrecy should not prevent the implementation of the provisions of the Law "On Audit of Financial Reporting and Auditing Activity" No. 2258-VIII, dated 21.12.2017. The term of the obligation to maintain the confidentiality of information may be determined by the contract.

According to part two of Article 11 of the Law "On Audit of Financial Reporting and Auditing Activity" No. 2258-VIII, dated 21.12.2017, in the event that a legal entity replaces an audit entity for the provision of services for the statutory audit of financial statements, such an audit entity shall provide the succeeding audit entity with which the contract for the provision of relevant services is signed, access to relevant information on such a legal person and the last audit of its financial statements.

According to part three of Article 11 of the Law "On Audit of Financial Reporting and Auditing Activity" No. 2258-VIII, dated 21.12.2017, if the audit entity provides audit services to a subsidiary of a group, whose parent company is a non-resident, the principles of confidentiality and professional secrecy should not prevent the audit entity from providing relevant documentation, including other information containing banking secrecy and personal data on the performed work on the audit of the financial statements of the group auditor, if such documentation is necessary for the provision of audit services.

According to part four of Article 11 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, an audit entity that provides statutory audit services to a legal entity that issues securities in another country, or is a subsidiary of a group that is required to publish consolidated financial statements in another country, may submit available working papers on the audit of financial statements or other documents concerning such legal entity to the competent authorities of the respective states provided that compliance with legislation of Ukraine is ensured.

According to part five of Article 11 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, the transfer of information to the auditor of a group located in another state must be carried out in compliance with the legislation on personal data protection.

According to part six of Article 11 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, the auditor and the audit firm are not subject to disciplinary, administrative, civil and criminal liability for submission to the central executive body that implements state policy in the field of preventing and combating legalisation (money laundering) of proceeds from crime, terrorist financing and proliferation of weapons of mass destruction, information on financial transactions, even if such actions caused damage to legal entities or individuals, and for other actions if they acted within the framework of the Law of Ukraine “On Prevention and Counteraction to Legalisation (Money Laundering) of Proceeds from Crime, Terrorism Financing and Financing proliferation of weapons of mass destruction”.

According to part seven of Article 11 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, the auditor and the audit firm shall not be subject to disciplinary, administrative, civil or criminal liability for submitting to the National Securities and Stock Market Commission information on a professional participant in capital markets or an issuer, whose securities are admitted to trading on a regulated stock market or if a public offer has been made, even if such actions have caused damage to legal or natural persons.

According to part eight of Article 11 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, the auditor’s working documents are the property of the auditee. Access to the auditor’s working documents, as well as information constituting professional secrecy, is allowed only pursuant to a court decision, except in cases of quality control of audit services by a body authorised in accordance with the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, disciplinary proceedings, in other cases specified by law, and voluntary consent of the subject of audit.

In addition, according to part one Article 33 of the Law “On Audit of Financial Reporting and Auditing Activity” No. 2258-VIII, dated 21.12.2017, if the audit entity ceases to provide statutory auditing services of financial statements to the company of public interest, it is obliged to continue to comply with the requirements of confidentiality and professional secrecy.

64. Does Ukraine cooperate with the competent authorities from third countries in the area of auditing? Are there any Memoranda of Understandings or other cooperation agreements signed to that end?

Yes, APOB is a full member of the International Forum of Independent Audit Regulators (IFIAR) and uses European and global practices in the system of audit oversight.

In addition, in 2019 APOB signed a Memorandum of Cooperation with the Service for Accounting, Reporting and Auditing Supervision (Georgia) (www.saras.gov.ge).

The APOB also participates in meetings of the Steering Committee of the EU project “Implementing EU Practices in Accounting, Financial Reporting and Auditing in Ukraine” (EU-FAAR).

CHAPTER 7. INTELLECTUAL PROPERTY

I. COPYRIGHT AND NEIGHBOURING RIGHTS

1. Please describe the domestic legislation in Ukraine concerning copyright and neighbouring rights. To what extent is it aligned with the EU acquis? Please indicate the relevant legislation and provide the concordance table, if available. What are the major discrepancies, if any? What are reasons for these discrepancies? If domestic legislation is not yet aligned with the Directive, are there plans to that extent?

The main legislative acts of Ukraine in the field of copyright and related rights are the Civil Code of Ukraine, the Law of Ukraine "On Copyright and Related Rights" and the Law of Ukraine "On Efficient Management of Property Rights of Right holders in the Sphere of Copyright and/or Related Rights" (concerning collective management - based on the requirements of Directive 2014/26/EU). Besides, there is the Law of Ukraine "On the peculiarities of state regulation of economic entities related to the production, export, import of disks for laser reading systems" in force. There are also Government regulations on copyright registration and agreements concerning copyright in a work (voluntary registration, subject to the requirements of the Berne Convention); on the transfer of part of the remuneration collected by collective management organizations for the development of Ukrainian culture.

In general, Ukrainian legislation in the field of copyright and related rights meets the requirements of EU directives in this area. Some terms and regulations need to be refined to bring it into line with the Directives 96/9/EC, 2001/29/EC, 93/83/EC, 2001/84/EC, 2009/24/EC.

Major discrepancies between Ukrainian legislation in the field of copyright and related rights and EU acquis include:

- 1) in the context of the Directive 96/9/EC: Ukrainian legislation doesn't provide detailed provisions on sui generis protection of databases;
- 2) in the context of the Directive 2001/29/EC: Ukrainian legislation doesn't provide 'communication to the public' as a separate economic right. Instead, it provides a number of other economic rights (public performance, broadcasting, making available etc) included in 'communication to the public' according to the Directive 2001/29/EC. Several exceptions and limitations are not provided in Ukrainian legislation (acts of reproduction which are transient or incidental and an integral and essential part of a technological process; use in connection with the demonstration or repair of equipment; ephemeral recordings made by broadcasting organisations; freedom of panorama);
- 3) in the context of the Directive 93/83/EC: Ukrainian legislation operates the term 'videogram' (video recording of a performance or any moving images (with or without a soundtrack), except for the images in the form of a recording that is part of an audiovisual work) that is an object of related

rights and is narrower than the term “film” according to the Directive 93/83/EC. The term of “cable retransmission” according to the Ukrainian legislation doesn’t protect national broadcasting organizations;

4) in the context of the Directive 2001/84/EC: Ukrainian legislation provides narrower scope of original works of art and only one tariff rate – 5% of the resale price. Minimum sale price from which the sales shall be subject to resale right is non provided in current Ukrainian legislation;

5) in the context of the Directive 2009/24/EC: Ukrainian legislation doesn’t provide that when a computer program is created by an employee in the execution of his duties or following the instructions given by his employer, the employer exclusively shall be entitled to exercise all economic rights in the program so created, unless otherwise provided by contract.

More details are in the attached concordance table.

The Draft Law of Ukraine “On Copyright and Related Rights”, initiated by the Ministry of Economy, is designed to correct these shortcomings. In addition to the key EU directives in the field of copyright and related rights, this draft law takes into account Directives 2012/28/EU, 2017/1564 and some provisions of Directive 2019/790.

The Draft Law “On Copyright and Related Rights” has been submitted to the Parliament of Ukraine (registration No 5552-4 of 09 June 2021) and is now under the consideration of the Parliament Profile Committee on Economic Development. This Draft Law has been prepared by the Ministry together with the representatives of rightsholders, users, collective management organisations, scientists, and IP specialists. However, there are four alternative draft laws on copyrights and related rights, submitted by the Members of the Parliament. Given this, in November 2021 the Parliament Profile Committee on Economic Development established working group on copyright reform for the finalization drafting process.

2. Does the legislation in Ukraine provide for a rental right, lending right and the provisions on certain related rights set out in Directive 2006/115/EC (the codified version of original Directive 92/100/EEC)?

a) If yes, please give references and the principal contents of the legislation.

Does the legislation notably provide for a right to equitable remuneration for rental where an author or performer has transferred or assigned his rental right concerning a phonogram or an original copy of a film to a phonogram or film producer? Does your legislation provide that at least authors obtain remuneration for public lending? Does it provide for derogation from the exclusive public lending right and if so, would this be in line with the Directive? Does your legislation provide that a single equitable remuneration is paid by the user to the relevant performers and phonogram producers every time a phonogram published for commercial purposes is used for broadcasting by wireless means or for any communication to the public?

The Law of Ukraine “On Copyright and Related Rights” (link to official translation of the Law – {HYPERLINK <https://zakon.rada.gov.ua/laws/show/en/3792-12#n522>}) provides that:

- the exclusive right of an author (or other copyright holder) to allow or prohibit the use of a work by other persons shall entitle him/her to allow or prohibit lending and/or commercial rental after the first sale, alienation by another method of the original or copies of audiovisual works, computer software, databases, musical works as sheet music, as well as of works fixed on a phonogram or videogram or in a computer-readable form;

- all authors of an audiovisual work shall preserve the right to receive a fair remuneration for the lending and/or commercial rental of copies thereof. The remuneration shall be distributed and paid out by collective management organizations or by another method;

- performers' proprietary rights shall be their exclusive right to permit or prohibit other persons to take commercial rental or lending of their performances fixed on a phonogram or videogram, if, during the fixation, they did not grant their consent to the commercial rental and lending, even after the performances have been distributed by, or with the approval of, the phonogram (videogram) producer;

- if the performer, during the first fixation of a performance, expressly permits further reproduction thereof by the producer of a phonogram or the producer of a videogram, the performer shall be deemed to have assigned to the producer of the phonogram or the producer of the videogram the exclusive right to distribute the phonograms, videograms and copies thereof by first sale or other transfer for ownership or possession, as well as by lending, commercial rental and other transfer manners. The performer shall retain the right to receive a fair remuneration for said types of use of his/her performance through collective management organizations or by another method;

- the proprietary rights of producers of phonograms and producers of videograms shall include their exclusive right to use their phonograms, videograms and the exclusive right to permit or prohibit to other persons commercial rental of phonograms, videograms and copies thereof, even after they have been distributed by a producer of a phonogram or videogram, or with their permission;

- if phonograms, videograms or copies thereof are lawfully put into civil circulation by the producer of a phonogram (videogram) or with his/her consent through first sale thereof in Ukraine, further distribution thereof by sale, bestowal, etc., shall be allowed without the consent of the producer of the phonogram (videogram) or his/her successor and without payment of remuneration to him/her. In this case, however, the right to transfer such copies of phonograms (videograms) for lending or commercial rental shall be reserved exclusively for the producer of the phonogram (videogram);

- the following direct or indirect commercial use of phonograms and videograms and copies thereof shall be permissible without the consent of the producers of phonograms (videograms), the phonograms (videograms) of which were published for commercial use, or of the performers whose performances are fixed on these phonograms (videograms), but with payment of remuneration:

a) public performance of a phonogram or a copy thereof, or public demonstration of a videogram or a copy thereof;

b) broadcast of a performance fixed on a phonogram or videogram, and copies thereof;

c) wire (cable) broadcast of a performance fixed on a phonogram or videogram, and copies thereof.

The current legislation in Ukraine provides rental and lending rights, but Directive 2006/115/EC has not yet been fully implemented.

Ukrainian legislation provides rental and lending rights for all categories of works before first sale of copies in material form (Article 15 (3) (8)) and for several categories of works (audiovisual works, computer software, databases, musical works as sheet music and works fixed on a phonogram or videogram or in a computer-readable form) – after first sale of copies in material form (Article 15 (3) (10). Draft law No 5552-4 provides rental and lending rights for all categories of works regardless of the fact of the first sale.

Current legislation doesn't have provision the right to obtain equitable remuneration for authors of audiovisual works is unwaivable (Article 5 of Directive 2006/115/EC). Draft law No 5552-4 provides that author may not waive the right to obtain equitable remuneration for the rental of the original and (or) copies of the work and that performer may not waive the right to obtain equitable remuneration for the rental of a recording of a performance recorded in a phonogram or film.

Current legislation provides that author obtain remuneration for public lending and does not provide for derogation from the exclusive public lending right (Article 6 of Directive 2006/115/EC).

Draft Law “On Copyright and Related Rights” No 5552-4, developed by the Ministry of Economy of Ukraine, provides the implementation Directive 2006/115/EC (the codified version of original Directive 92/100/EEC), including the definition of terms “rental” and “lending”, and provides “the right to an equitable remuneration, joint for performers and producers of phonograms (videograms), for the public performance of phonograms and recorded performances in them, or public demonstration of videograms and recorded performances in them, published for commercial use” and “the right to an equitable remuneration, joint for performers and producers of phonograms (videograms), for public broadcasting of phonograms and recorded performances in them, videograms and recorded performances in them, published for commercial use, except for cable retransmission” (extended collective management in these 2 fields is exercised by accredited collective management organizations according to the Law of Ukraine “On Efficient Management of Property Rights of Right holders in the Sphere of Copyright and/or Related Rights”).

3. Is the term of protection of copyright and related rights in your country in conformity with Directive 2011/77/EU and Directive 2006/116/EC (the codified version of original Directive 93/98/EEC)? If no, how and by when do you intend to align your legislation with this directive?

The term of protection of copyright and related rights in Ukraine is in conformity with Directive 2006/116/EC (the codified version of original Directive 93/98/EEC).

The draft Law “On Copyright and Related Rights” No 5552-4, developed by the Ministry of Economy of Ukraine, provides for the extension of the term of protection of related rights of performers, phonogram producers and broadcasting organizations from 50 to 70 years, which meets the requirements of Directive 2011/77/EU.

Draft Law “On Copyright and Related Rights” No 5552-4 is registered in the Verkhovna Rada of Ukraine (Parliament) on 09.06.2021. This draft is under the consideration of the Parliament Profile Committee on Economic Development.

4. Does the copyright law provide for the legal protection of computer programs?

Ukrainian copyright law provides for the legal protection of computer programs.

5. If yes, is it fully compatible with Directive 2009/24/EC (the codified version of original Directive 91/250/EC), including with the provisions of this directive on authorship, restricted acts, exceptions to the restricted acts, de-compilation and special measures of protection?

The Law of Ukraine “On Copyright and Related Rights” provides detailed provisions for the legal protection of computer programs, that are mostly in line with Directive 2009/24/EC 2006/116/EC (the codified version of original Directive 91/250/EC), including with the provisions of this directive on authorship, restricted acts, exceptions to the restricted acts, de-compilation and special measures of protection.

Current legislation provides that intellectual property rights to the object (including computer program), created in connection with the performance of the employment contract, belong to the employee who created the object, and the legal or natural person where or in which he works, jointly, unless otherwise provided by the contract.

Law of Ukraine “On Copyright and Related Rights” provides the exclusive rights of the rightsholder to do or to authorize any the acts of use – the list of these acts is is not exhaustive (Article 15 (3) of the Law).

According to Art. 50 of the Law of Ukraine “On Copyright and Related Rights” copyright and/or related rights infringements that give grounds for seeking protection of such rights, including the judicial one shall be (among others):

- importation into the customs territory of Ukraine, without permission of the persons holding the copyright and/or related rights, of copies of works (including computer software and databases), phonograms, videograms and broadcast programs;
- commitment of actions that pose a threat of infringement of copyright and/or related rights;
- any actions for the intentional circumvention of technical means of protection of copyright and/or related rights, in particular the production, distribution, importation for distribution and use of means of such circumvention;
- counterfeiting, altering or eliminating rights-management information, in particular rights-management information in electronic form, without permission from the copyright and/or related rights holders or the persons performing such management;
- distribution, importation into the customs territory of Ukraine for distribution purposes, and broadcast of objects of copyright and/or related rights from which rights-management information, in particular such information in electronic form, had been eliminated or altered without the copyright and/or related rights holders’ permission.

According to the Draft Law No 5552-4 commitment of actions that pose a threat of infringement of copyright and/or related rights include:

- distribution, import into the customs territory of Ukraine of technical devices, equipment that includes software and provides users with access to objects of copyright and (or) related rights without the permission of the subjects of copyright and (or) related rights (including software, applications and add-ons to it, technologies or technical devices use signals from other Internet resources);

- setting up software, applications, technologies, technical devices that provide access to objects of copyright and (or) related rights without the permission of the subjects of copyright and (or) related rights of such objects including when software, applications and applications to it, technologies or technical devices use signals from other Internet resources);

- providing instructions on setting up software, applications and add-ons, technologies, technical devices to gain access to objects of copyright and (or) related rights without the permission of the subjects of copyright and (or) related rights of such objects in in any form for the purpose of obtaining remuneration for the provision of such instructions.

Draft Law “On Copyright and Related Rights” No 5552-4, developed by the Ministry of Economy of Ukraine, extends and more properly describes ownership rights and their restrictions according to the above mentioned Directive, including, implementation of the provision that when a computer program is created by an employee in the execution of his duties or following the instructions given by his employer, the employer exclusively shall be entitled to exercise all economic rights in the program so created, unless otherwise provided by contract.

6. If no, is there any plan to adopt any legislation in this field? Please give details and dates.

Full compliance with Directive 2009/24/EC is planned in the Draft Law No 5552-4, registered in the Verkhovna Rada of Ukraine (Parliament) on 09.06.2021. This draft is under the consideration of the Parliament Profile Committee on Economic Development.

7. Does the copyright law provide for the legal protection of databases?

a) If yes, is it fully compatible with Directive 96/9/EC, including on scope of protection, protection under copyright and sui generis protection?

The Law of Ukraine “On Copyright and Related Rights” provides for the legal protection of databases, that are in line with Directive 96/9/EC except the detailed provisions for sui generis protection of databases. Current legislation provides that the following items shall not be objects of copyright: transportation schedules, TV and radio broadcast schedules and telephone directories and other similar databases that do not meet the originality criteria and to which the sui-generis right (a peculiar, special right) is applicable.

Ukrainian legal system currently provides only possibility for sui generis right to an non-original database (but there are no any detailed provisions for such protection). So currently Ukrainian law doesn’t provide any list of exclusive rights for sui generis protection of databases.

The Law of Ukraine "On Copyright and Related Rights" provides for the legal protection of databases under copyright law. Article 1 of the Law provides that database must be original: "Database (data compilation): an aggregate of works, data or any other independent information in unrestricted form, including in electronic form, in which the selection and placement of components and their organization are result from creative work, and the components of which are available individually and can be found via a special retrieval system based on electronic (computer) or other means".

Article 15 of the Law of Ukraine "On Copyright and Related Rights" provides the following exclusive rights for databases corresponding to the restricted acts provided by the Article 5 of Directive 96/9:

- Art. 15 (3)(1): reproduction – including recording for temporary or permanent storage in electronic (including digital), optical or other computer-readable form (taking into account the definition of the term 'reproduction' in the Article 1 of the Law);

- Art.15 (3)(2): public performance and broadcast;

- Art.15 (3)(3): public demonstration and public display;

- Art.15 (3)(5): translations;

- Art.15 (3)(6): adaptations, arrangements and other similar alterations to works;

- Art.15 (3)(8): distribution of originals of works and their copies by first sale or alienation by another method or by transferring for property lease or rental, and by other transfer prior to the first sale of copies of a work;

- Art.15 (3)(9): making available the public of his/her works in such a manner that its representatives can have access to the works at any place and at any time at their own discretion.

Law of Ukraine "On Copyright and Related Rights" also provides the following exceptions to database copyright corresponding to the Article 6 of Directive 96/9:

- Art.25: reproduction for private purposes;

- Art.21 (7): reproduce for court and administrative proceedings, to the extent justified by this purpose;

- the conditions of 3-step test application to all copyright exceptions and limitations are provided in the Article 15 (6).

Draft Law No 5552-4 will be adjusted to the requirements of Directive 96/9 including Articles 5,6 and Chapter III (sui generis right). This Draft also provides for detailed provisions on copyright and sui generis protection of databases according to Directive 96/9/EC.

8. Does the copyright legislation provide for the legal protection of copyright and related rights in conformity with Directive 2001/29/EC? If yes, is it fully compatible with the listed exclusive rights of authors and certain neighbouring right holders?

The current Ukrainian Law transposed main key provisions of the Directive 2001/29/EC on exclusive rights of authors and certain neighbouring right holders.

The Law of Ukraine "On Copyright and Related Rights" provides the exclusive reproduction right (including making material copy or recording for temporary or permanent storage in electronic (including digital), optical or other computer-readable form) of authors – Art. 15(3)(1); of performers (reproduction (direct and/or indirect) of their performances that were fixed without their consent in a phonogram or videogram, or with their consent if the reproduction is carried out for a purpose other than the one to which they granted their consent) – Art. 39(1); of producers of phonograms and producers of videograms (reproduction (direct and/or indirect) of their phonograms and videograms in any form and by any method) - Art. 40(1)(a); of broadcast organizations (fixation of their programs on a material medium and reproduction thereof) - Art. 41(1)(b).

The Law of Ukraine "On Copyright and Related Rights" also provides:

- the exclusive making available right of authors -Article 15(3)(9); of performers - Article 39(1)(f); of producers of phonograms and producers of videograms - Article 40(1)(d).

- the exclusive distribution right of authors - Article 15(3)(8); of performers - Article 39(1)(d); of producers of phonograms and producers of videograms - Article 40(1)(b).

- the protection of technological measures - Article 50(f) and rights management information Article 50(g).

9. Does the legislation provide, in particular, for a right of communication to the public of works and a right of making available to the public other subject-matter? Does it provide for the mandatory exception for “temporary copies” (Article 5.1)? Does it provide for other exceptions? If yes, please list them.

The Law of Ukraine “On Copyright and Related Rights” provides a right of communication to the public of works and a right of making available to the public other subject-matter.

There are no provisions for the mandatory exception for “temporary copies” yet.

The current list of copyright exceptions and limitations includes:

- 1) citing for critical, polemical, scientific, or informational purposes;
- 2) inclusion of literary and artistic works as illustrations in publications, broadcasts, sound recordings, or videos of an educational nature;
- 3) use of works on current economic, political, religious and social issues;
- 4) use of works seen or heard during current events to highlight these events;
- 5) reproduction of works in catalogues of public exhibitions, auctions, fairs;
- 6) publishing works in special formats for persons with visual impairments and dyslexia;
- 7) reproduction of works for judicial and administrative proceedings;
- 8) public performance of musical works during official and religious ceremonies or funerals;
- 9) reproduction of publicly proclaimed speeches and other similar works;

- 10) use of works to create parodies, caricatures or potpourri;
- 11) adaptation of audiovisual works for persons with visual impairments and dyslexia;
- 12) reproduction of excerpts of works for educational purposes;
- 13) reproduction, modification and decompilation of computer programs;
- 14) reproduction of works for personal use;
- 15) reprographic reproduction of works by libraries and archives;
- 16) reprographic reproduction of works by educational institutions for classroom teaching.

The Law of Ukraine "On Copyright and Related Rights" covers with exclusive rights the following acts of communication to a public not present at the place where the communication originates, covered by the Article 3 of the Directive 2001/29/EC.

The Law of Ukraine "On Copyright and Related Rights" provides for:

- the exclusive making available right of authors -Article 15(3)(9); of performers - Article 39(1)(f); of producers of phonograms and producers of videograms - Article 40(1)(d);
- the exclusive broadcasting right of authors -Article 15(3)(2); of performers (broadcast of their non-fixed performances (live broadcast)) - Article 39(1)(a); broadcast organizations (public promulgation of their programs by broadcast and rebroadcast) - Article 40(1)(d).

According to the Art.1 of the Law the term broadcasting includes the acts of cable retransmission.

Article 43 (1)(a)(b) of the Law provides that the following direct or indirect commercial use of phonograms and videograms and copies thereof (as the acts of communication to the public, covered by the Article 3 of the Directive 2001/29/EC) shall be permissible without the consent of the producers of phonograms (videograms), the phonograms (videograms) of which were published for commercial use, or of the performers whose performances are fixed on these phonograms (videograms), but with payment of remuneration:

- a) public performance of a phonogram or a copy thereof, or public demonstration of a videogram or a copy thereof;
- b) broadcast of a performance fixed on a phonogram or videogram, and copies thereof.

Draft Law "On Copyright and Related Rights" No 5552-4 also provides above mentioned exceptions and limitations and also the mandatory exception for "temporary copies", temporary acts of reproduction for ephemeral recordings made by broadcasting organisations, the freedom of panorama; use for public security; use in connection with the demonstration or repair of equipment – according to the Directive 2001/29/EC.

10. Does the legislation in Ukraine provide for a system of fair compensation to right holders for the following: reprography, reproductions made by a natural person for private

use, reproductions of broadcasts made by social institutions pursuing non-commercial purposes?

Current Ukrainian legislation provides a system of fair compensation to right holders for the reprography, reproductions made by a natural person for private use (Law of Ukraine “On Copyright and Related Rights”, Law of Ukraine “On Efficient Management of Property Rights of Right holders in the Sphere of Copyright and/or Related Rights”).

Ukrainian legislation does not provide an exception allowing reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, taking into account that according to the Article 5(2)(e) of the Directive there is no obligations to provide such kind of exception or limitation and fair compensation for this.

11. Does your legislation provide for the legal protection of technological measures and rights management information?

The Ukrainian legislation provides for the legal protection of technological measures and rights management information (more detailed provisions on technological measures are provided in the draft Law No 5552-4).

The Law of Ukraine “On Copyright and Related Rights” (Art. 50) provides that copyright and/or related rights infringements that give grounds for seeking protection of such rights, including the judicial one shall be:

- counterfeiting, altering or eliminating rights-management information, in particular rights-management information in electronic form, without permission from the copyright and/or related rights holders or the persons performing such management;
- distribution, importation into the customs territory of Ukraine for distribution purposes, and broadcast of objects of copyright and/or related rights from which rights-management information, in particular such information in electronic form, had been eliminated or altered without the copyright and/or related rights holders’ permission.

According to the Article 1 of this Law:

- rights management information - information, including in electronic (digital) form, that identifies an object of copyright and/or related rights and the author or another person holding the copyright and/or related rights to this object, or information concerning the conditions of using an object of copyright and/or related rights or any digits or codes in which such information is represented, when any of such elements of information is attached to or incorporated into a copy of an object of copyright and/or related rights, or appears in connection with its being presented for general notice;

- Technical means of protection: technical devices and/or technological means designed to create a technological obstacle to the infringement of copyright and/or related rights during receipt

and/or duplication of protected (encoded) recordings in phonograms (videograms) and broadcast organization transmissions, or to control access to the use of objects of copyright and related rights.

Draft Law No. 5552-4 provides more precise provisions technological means of protection in view of the requirements of the Directive 2001/29/EC:

- technological means of protection - any technology, software, equipment or component, which in its normal functioning is intended to prevent or counteract actions in relation to objects, the use of which is not permitted by the subject of copyright or related rights, or subject of sui generis rights. Technological measures are considered effective if the use of the protected object is controlled by the subjects of these rights through the use of access control or protection procedures, such as encryption, encryption or other transformation of the protected object, or a copy control mechanism that achieves this protection;

- that copyright and/or related rights infringements that give grounds for seeking protection of such rights, including the judicial one shall be:... any acts of unauthorized circumvention of the technological means of protection of the object of copyright and (or) related rights, including card sharing, as well as the manufacture, advertising, distribution, import for distribution and use of means for such circumvention.

12. What sanctions and remedies does your legislation provide in respect of infringements of the rights and obligations set out in Directive 2001/29/EC?

The main civil sanctions for infringement of copyright and related rights are all forms of compensation for damages, including moral damages, and prohibition of actions that infringe rights. Criminal sanctions include fines and imprisonment. The Code of Ukraine on Administrative Offences provides fines and confiscation for copyright and related rights infringements.

According to the Art. 52 (2) of the Law of Ukraine “On Copyright and Related Rights” a court of law shall have the right to issue a resolution or award concerning seizure (confiscation) of counterfeit copies of works, phonograms, videograms or broadcast programs, as well as of equipment and materials for the production and reproduction thereof.

According to the Art.52 (2) of the Law of Ukraine “On Copyright and Related Rights” a court may resolve to seize or confiscate all counterfeit copies of works, phonograms, and videograms or broadcast programs with respect to which it has been established that such were produced or distributed in contravention of copyright and/or related rights, as well as means of circumvention. This shall also apply to all cliches, matrices, moulds, originals, magnetic tapes, photo negatives and other items used for the reproduction of copies of works, phonograms, videograms, broadcast programs or means of circumvention, as well as the materials and equipment used for reproduction thereof and for the production of means of circumvention.

Pursuant to a court decision, counterfeit copies of works (including computer software and databases), phonograms, videograms and broadcast programs that have been seized, may be transferred to the copyright and/or related rights holder whose rights have been infringed, at the holder's request. If this person does not request the transfer, the counterfeit copies shall be destroyed,

and the materials and equipment used for the reproduction of the counterfeit copies shall be alienated and the relevant proceeds remitted to the State budget of Ukraine.

According to the Art.53 (3) of the Law of Ukraine “On Copyright and Related Rights” if a defendant in proceedings concerning an infringement of copyright and/or related rights denies access to the required information, or does not arrange for the submission thereof within a reasonable period, or if he/she hinders court procedures; or for the purpose of securing the relevant evidence of the alleged infringement, especially when any delay can result in irreparable damage to the person holding the copyright and/or related rights; or where there exists an apparent risk that the evidence will be destroyed, the court or judge shall have the right *sua sponte*, upon the applicant's application, to impose interim measures prior to lodging of a claim or prior to the initiation of proceedings with the participation of the other party (defendant), by:

a) issuing an order authorizing inspection of the premises at which the events, relating to an infringement of copyright and/or related rights, are allegedly occurring;

b) levying attachment on and seizing all copies of works (including computer software and databases), recorded performances, phonograms, videograms and broadcast programs believed to be counterfeits, and of means of circumvention, as well as of materials and equipment used for the production and reproduction thereof;

c) levying attachment on and seizing invoices and other documents that can serve as evidence of actions infringing or creating a threat of infringement of (or certifying an intention to infringe) copyright and/or related rights.

Rights holders can be held administratively liable intermediaries (website owners, hosting providers) infringing the procedure for suspension of infringements of copyright and (or) related rights with the use of the Internet (Art. 51-1 of the Law) and hosting service providers infringing their responsibilities of regarding the protection of copyright and (or) related rights via the Internet (Art. 51-2 of the Law)

13. Does the copyright law provide for a resale right for the benefit of the author of an original work of art?

a) If yes, is it fully compatible with Directive 2001/84/EC?

The current regulations are not fully compliant with Directive 2001/84/EC.

The Law of Ukraine “On Copyright and Related Rights” provides a resale right for the benefit of the author of an original work of art. It provides 5% of resale price of fine art (sculpture, painting, drawing, engraving, lithograph, a work of artistic (including stage) design, etc).

Draft Law “On Copyright and Related Rights” No 5552-4 provides for detailed provisions on resale right compatible with Directive 2001/84/EC (including the list of works of art to which the resale right relates and rates) which are fully compliant with Directive 2001/84/EC.

Law of Ukraine “On Efficient Management of Property Rights of Right holders in the Sphere of Copyright and/or Related Rights” provides that resale right royalties can be collected within the

mandatory collective management – by accredited collective management organization (term of accreditation – 3 years).

14. Has Ukraine adhered to the two WIPO Treaties of 1996 (WCT and WPPT)? To which other international treaties and agreements relevant to copyright and related rights is your country a party?

Ukraine is a party to the WIPO Treaties of 1996 (WCT and WPPT), and to other international treaties and agreements relevant to copyright and related rights, namely:

- Berne Convention for the Protection of Literary and Artistic Works;
- Universal Copyright Convention;
- Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms;
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations;
- TRIPS Agreement;
- European Union–Ukraine Association Agreement.

Ukraine is also in the process of acceding to the WIPO Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. The relevant package of documents is already submitted for consideration of the President of Ukraine with the purpose of implementation of internal procedures necessary for Ukraine's accession to the Marrakesh Treaty.

15. Does the copyright law provide for the protection of satellite broadcasting? If yes, do you consider that it is in conformity with the provisions of Directive 93/83/EEC, in particular as regards the principle of acquisition of broadcasting rights in accordance with the terms of this directive? Is there a definition of communication to the public by satellite? If no, is there any plan to adopt any legislation in this field?

The Law of Ukraine “On Copyright and Related Rights” provides that broadcast organization shall be entitled to prohibit the dissemination, in or from the territory of Ukraine, of a satellite signal carrying their programs, by a distributing body not intended to receive such satellite signal. Current Law doesn’t provide a definition of «communication to the public by satellite», but the definition of terms “Air broadcast organization” and “Broadcast” provide the activity concerning air transmission via radio waves (as well as laser beams, gamma rays, etc.) including via satellite.

The Law of Ukraine "On Copyright and Related Rights" provides the exclusive broadcasting right of authors -Article 15(3)(2), of performers (broadcast of their non-fixed performances (live broadcast)) - Article 39(1)(a), broadcast organizations (public promulgation of their programs by broadcast and rebroadcast) - Article 40(1)(d).

The definition of broadcasting in Article 1 includes broadcasting via satellite.

Extended collective management is exercised by accredited collective management organizations the fields “public broadcasting of musical non-dramatic works with and without lyrics,

including those works included in audiovisual works, except for cable retransmission” and “the right to an equitable remuneration, joint for performers and producers of phonograms (videograms), for public broadcasting of phonograms and recorded performances in them, videograms and recorded performances in them, published for commercial use, except for cable retransmission”. According to the Law of Ukraine “On Efficient Management of Property Rights of Right holders in the Sphere of Copyright and/or Related Rights” rightholders may withdraw their rights from management of an organization accredited for the exercise of extended collective management of rights. In such case, in the territory of Ukraine, the management of rights withdrawn from collective management may be exercised by the rightholder.

Draft Law “On Copyright and Related Rights” No 5552-4, developed by the Ministry of Economy of Ukraine, provides detailed provisions on satellite broadcasting, compatible with Directive 93/83/EEC and with Art. 170 of European Union–Ukraine Association Agreement.

The draft law No 5552-4 provides for developments of regulation of satellite broadcasting in view of the Article 1 of the Directive 93/83/EEC:

“broadcasting – communication to the public by transmission for reception by the public by wireless means, or by cable network or satellite, etc. (except cable retransmission) of copyright and (or) related rights, as well as the transmission of encrypted signals, if means for decoding provided for public use by the broadcasting organization or with its permission. A signal carrying a broadcasting program is considered to be encoded if the broadcasting of such a broadcasting program becomes available for public perception only after this signal has been processed by means of a special decoding device (means) obtained on the basis of a corresponding decoding device. an agreement concluded with this broadcasting organization or with another person authorized by this broadcasting organization to sell (rent) this device (means).”

“1. In the case of broadcasting programs of broadcasting organizations from a communication station located in Ukraine, to the satellite in such a way that the broadcasting of such a program of broadcasting organizations, as well as other objects of copyright and (or) related rights transferred by the broadcasting organization, from the satellite extends beyond the territory of Ukraine, for the purposes of this Law it is considered that such broadcasting takes place in Ukraine, and the rights and obligations under this Law, in particular the obligation to pay remuneration for the use of copyright and (or) related rights, as well as the responsibility for compliance with copyright and (or) related rights is borne by the person who broadcasts the objects of copyright and (or) related rights to the satellite.

2. If a broadcasting organization resident of Ukraine carries out or instructs another person to broadcast via satellite from a communication station located outside the territory of Ukraine, for the purposes of this Law it is considered that such broadcasting is carried out on the territory of Ukraine at the location of such broadcasting organization and such broadcasting organization has the relevant rights and bears the obligations under this Law, in particular the obligation to pay remuneration for the use of copyright and (or) related rights, as well as is responsible for compliance with copyright and or) related rights during such broadcasting.

3. Broadcasting organization that transmits encoded signals, decoding means of which are provided for public use by the broadcasting organization or with its permission, as well as the person who sells (rents) devices (means) for decoding and (or) is responsible for use decoding device (means), have obligations under this Law, in particular the obligation to pay remuneration for the use

of copyright and (or) related rights, as well as are jointly and severally liable for compliance with copyright and (or) related rights during such broadcasting.

4. This Article applies to cases of use of a satellite operating on frequency bands which are intended for the transmission of signals for reception by the public or for closed direct (two-point) communication. However, in the latter case, the conditions of individual signal reception must be similar to those used in the first case. In this case, public announcement by satellite broadcasting means the introduction, under the control of the broadcasting organization and under its responsibility, signals-carriers of programs intended for public reception, in a continuous chain of communication channels "satellite - earth" in countries where Appropriate protection is provided, under the control of the organization of broadcasting and under its responsibility, signals-carriers of programs are entered into a continuous chain of communication channels "satellite - earth".

5. Where a satellite-based broadcasting takes place in other States and cannot provide an adequate level of protection:

1) if the signals-carriers of the programs are transmitted to the satellite by the line of communication "ground - satellite" located in the state, which provides protection, public announcement by broadcasting via satellite should be considered a public announcement made in the state where protection, and the rights provided by this Law may be used against the person who operates the communication station "earth - satellite"; or

2) if the land-satellite communication station is not used in the state where the appropriate protection is provided, but the broadcasting organization established in such state has carried out the action of public announcement by broadcasting by satellite, this action should be considered carried out in the state, where appropriate protection is provided and where the head office of the broadcasting organization is located, and the rights provided by this Law may be used against this broadcasting organization”.

16. Does the copyright law provide for the protection of cable retransmission?

a) If yes, do you consider that it is in conformity with the provisions of Directive 93/83/EEC, in particular in relation to the following: principle of mandatory collective management extended to non-members of a collecting society; principle of good faith in the negotiations for cable retransmission and principle of mediation?

The Law of Ukraine “On Copyright and Related Rights” provides for the protection of cable retransmission, but the definition of this term doesn’t protect the national broadcasters: “cable retransmission: the reception and simultaneous broadcasting by TV and radio organizations, programme service providers and other parties, independently of the technical means used, of the full and unchanged transmissions (programmes) of the broadcasting organisations, as well as works, performances, phonograms, videograms, in particular those that are contained in such transmissions (programmes) of the broadcasting organizations provided that the initial broadcast of such transmission (program) is carried out by a broadcasting organization that does not fall under the jurisdiction of Ukraine in accordance with a law or an international agreement, the consent to be bound by which was given by the Verkhovna Rada of Ukraine”.

The Law of Ukraine "On Copyright and Related Rights" in Article 15 (3) (4) provides for cable retransmission as an exclusive right for authors. Article 41 (1) (a) provides cable retransmission as an exclusive right for Broadcast Organizations.

The Law of Ukraine "On Copyright and Related Rights" in Article 15 (3) (4) provides that wire (cable) broadcast of a performance fixed on a phonogram or videogram, and copies thereof shall be permissible without the consent of the producers of phonograms (videograms), the phonograms (videograms) of which were published for commercial use, or of the performers whose performances are fixed on these phonograms (videograms), but with payment of remuneration.

Law of Ukraine "On Efficient Management of Property Rights of Right holders in the Sphere of Copyright and/or Related Rights" provides mandatory collective management extended to non-members of a collecting society; principle of good faith in the negotiations for cable retransmission and principle of mediation (Ministry of Economy of Ukraine is a mediator during negotiations between collective management organization accredited for cable retransmission and associations of users in this sphere).

Law of Ukraine "On Efficient Management of Property Rights of Right holders in the Sphere of Copyright and/or Related Rights" provides mandatory collective management in the field "cable retransmission of copyright and (or) related rights objects, except for the rights of broadcasting organizations in relation to their own programs (broadcasts)". This Law provides that:

- Mandatory collective management does not foresee the withdrawal by the rightholder, in whole or in part, of his property rights from the management of the accredited organization;
- On its behalf and in the interests of the rightholders, the collective management organizations shall conclude agreements with users on authorising the use of the copyright and (or) related rights objects and agreements on payment of remuneration (deductions) for the use of the copyright and (or) related rights objects.

Thus, we suppose that these provisions of Ukrainian legislation meet the requirements of the Article 9(1) of Directive 92/82/EEC providing that „right of copyright owners and holders or related rights to grant or refuse authorization to a cable operator for a cable retransmission may be exercised only through a collecting society”.

Draft Law "On Copyright and Related Rights" No 5552-4, developed by the Ministry of Economy of Ukraine, provides detailed provisions and definition of cable retransmission, compatible with Directive 93/83/EEC.

17. Is the functioning of collective management organizations in Ukraine in conformity with Directive 2014/26/EU? Does the legislation provide the rules enabling the multi-territorial licensing by collective management organizations of author's rights in musical works for online use set out in this Directive? If no, is there plan to adopt any legislation in this field? Please, give details and dates.

Law of Ukraine "On Efficient Management of Property Rights of Right holders in the Sphere of Copyright and/or Related Rights" (Law No 2415) provides for the legal basis for collective rights management in conformity with Directive 2014/26/EU. Law No 2415 provides for regulations on basic principles of collective management; general assembly of collective management organization; supervisory body of collective management organization; executive body of collective management

organization; annual report on activity of collective management organization; functions of collective management organization and spheres of rights management; declaration of property rights; withdrawal of property rights from management of collective management organization; rights of the rightholders in relationship with the collective management organization; registration and accreditation of collective management organizations; collection, distribution and payment of rights revenue; state supervision over the activities of collective management organizations, mediation in negotiations on royalty rates.

Ukrainian legislation doesn't provide for the rules enabling the multi-territorial licensing by collective management organizations of author's rights in musical works for online use set out in this Directive? The plans to adopt legislation in this field is connected with the perspectives of membership of Ukraine in the European Union.

The current provisions of the Law of Ukraine "On Efficient Management of Property Rights of Right holders in the Sphere of Copyright and/or Related Rights" regulate the rights of rightholders who are not members of the collective management organisation (Article 7 of the Directive 2014/26/EU). According to the Article 14 of this Law the rightholders who have not acquired the status of a member of collective management organization shall have the following rights:

1) to participate in the general assembly of collective management organization in accordance with the provisions of Article 7 of this Law;

2) to participate in the activity of the supervisory or executive body of collective management organization in accordance with the provisions of Articles 8 and 9 of this Law;

3) to receive from the collective management organizations information about the management of their property rights, the amounts of collected rights revenue and accrued for them share of rights revenue, as well as the amount of remuneration for management retained by collective management organization;

4) to receive their respective share of rights revenue;

5) to contact the organization with the help of telecommunication facilities (telephone, e-mail, authorized electronic platforms, other means of communication);

6) to withdraw from the management of collective management organization their property rights in accordance with the procedure provided for in Article 13 of this Law.

The Law of Ukraine "On Efficient Management of Property Rights of Right holders in the Sphere of Copyright and/or Related Rights" also regulates the collection and use of rights revenue (Article 11 of the Directive 2014/26/EU) and deductions (Article 12 of the Directive 2014/26/EU). In particular, according to the Article 12 (3) of this Law collected rights revenue, the unclaimed funds and any other funds of the organization shall be separately accounted for on the accounts of collective management organization.

According to the Article 21 (7-10) of this Law collective management organizations shall have the right to withhold from the sum of the collected rights revenue the amount of administration fee. The deductible amounts of administration fees shall not exceed the maximum amounts provided by this Law.

In the event that the collected share of rights revenue is payable directly to the rightholder, the maximum amount of administration fee may not exceed 20 percent of the amount collected in favour of the rightholder.

If the distributed share of rights revenue is paid to the collective management organization on the basis of the agreement concluded between the organizations, the aggregate maximum amount of the administration fee of all collective management organizations involved in the process of payment of the share of revenue to the rightholder can not exceed 25 percent of the amount collected in favour of the rightholder.

In case of extended collective management, a larger share of the aggregate maximum amount of administration fee may belong to the organization that collected the corresponding rights revenues from users - provided that in the agreement of representation of rights concluded with the organization to which the collected rights revenue is transferred in favour of rightholders, the size of this share is agreed and the transfer of funds is carried out with the provision of comprehensive and objective data, on the basis of which the distribution of rights revenue was made to rightholders.

In case of mandatory collective management, the share of the aggregate maximum amount of the administration fee of an organization accredited for the management in this sphere can not exceed one third of the aggregate maximum amount of administration fee of all collective management organizations that participate in the process of paying a share of the rights revenue to the rightholder.

In addition to deducting the administration fee, the collective management organization, in accordance with the procedure established by this Law and the statute of the organization, may make other deductions from the collected rights revenue, but not more than 15 percent of the amount of collected rights revenue.

Such additional deductions shall be directed to the creation of special funds of the collective management organization for the provision of social, cultural or educational services to its members and other rightholders or in the interests of the creative community (including implementation of informational and educational measures on public awareness and respect for intellectual property, the need for its protection, etc.).

The works on the law concerning multi-territorial licensing of rights in musical works for online use have not yet begun. Taking into account that Draft Law No 5552-4 proposes several changes to the Law of Ukraine "On Efficient Management of Property Rights of Right holders in the Sphere of Copyright and/or Related Rights", the issues of multi-territorial licensing of rights in musical works for online use may be discussed during the elaboration of the Draft Law No 5552-4 in the Parliament.

18. Which authorities are responsible for intellectual property law in Ukraine? What is Ukraine's administrative capacity in this area?

On 16.06.2020, the Parliament of Ukraine adopted the Law of Ukraine "On Amendments to Certain Laws of Ukraine Concerning the Establishment of a National Intellectual Property Authority" (№ 703-IX) which entered into force on October 14th, 2020. The Law introduced the two-tier structure of the state system of legal protection of intellectual property with the Ministry of Economy of Ukraine being responsible for development and implementation of the public policy in the field of

intellectual property, and the National Intellectual Property Authority (NIPA) performing certain public functions to implement this policy.

Since October 14th, 2020, the State Enterprise “Ukrainian Intellectual Property Institute” (Ukrpatent) has started executing functions of NIPA in accordance with the Resolution of the Cabinet of Ministers of Ukraine “On National Intellectual Property Authority” adopted on October 13th, 2020.

According to the Laws of Ukraine “On Protection of Rights to Inventions and Utility Models”, “On Protection of Rights to Trademarks for Goods and Services”, “On Protection of Industrial Design Rights”, “On Protection of Rights to Semiconductors”, “On Legal Protection of Geographical Indications”, “On Copyright and Related Rights”, “On Efficient Management of Property Rights of Right holders in the Sphere of Copyright and/or Related Rights” the main powers of the Ministry of Economy of Ukraine in IP sphere include:

- ensuring the legal regulation in the IP sphere;
- determination of priority areas for the development of the IP sphere;
- interaction and coordination with central executive authorities, other government bodies when forming and implementing state policy in the field of intellectual property, as well as with a view to strengthening the protection of intellectual property rights;
- development of proposals to improve legislation in the field of intellectual property;
- implementation of international cooperation in the field of intellectual property and representation of Ukraine's interests in international organizations;
- conclusion of international treaties on cooperation in the field of legal protection of intellectual property in accordance with the law;
- ensuring the implementation of international programmes and projects in the field of legal protection of intellectual property in accordance with international treaties;
- ensuring the fulfilment of obligations arising from Ukraine's membership in international organisations in the field of legal protection of intellectual property;
- interaction with the relevant authorities of foreign states and international organisations in accordance with the established procedure;
- coordination of NIPA activities;
- exercising control over the NIPA observance of the legislation in the field of intellectual property, use of proceeds from the collection of IP fees;
- facilitation of registration and accreditation of collective management organization, the maintenance of Register of Collective Management Organizations;
- securing compliance of CMOs with the requirements of the law;
- application of sanctions to collective management organizations in a manner prescribed by the law.
- receipt from the state authorities of information, documents and materials necessary for performing collective management;
- provision of methodical assistance to collective management organizations and specialized associations and associations of users;

6) analysis of compliance with the requirements of the legislation in the sphere of collective management and monitoring of the activities of accredited collective management organizations, upon the results of which the Institution publishes relevant information on its website.

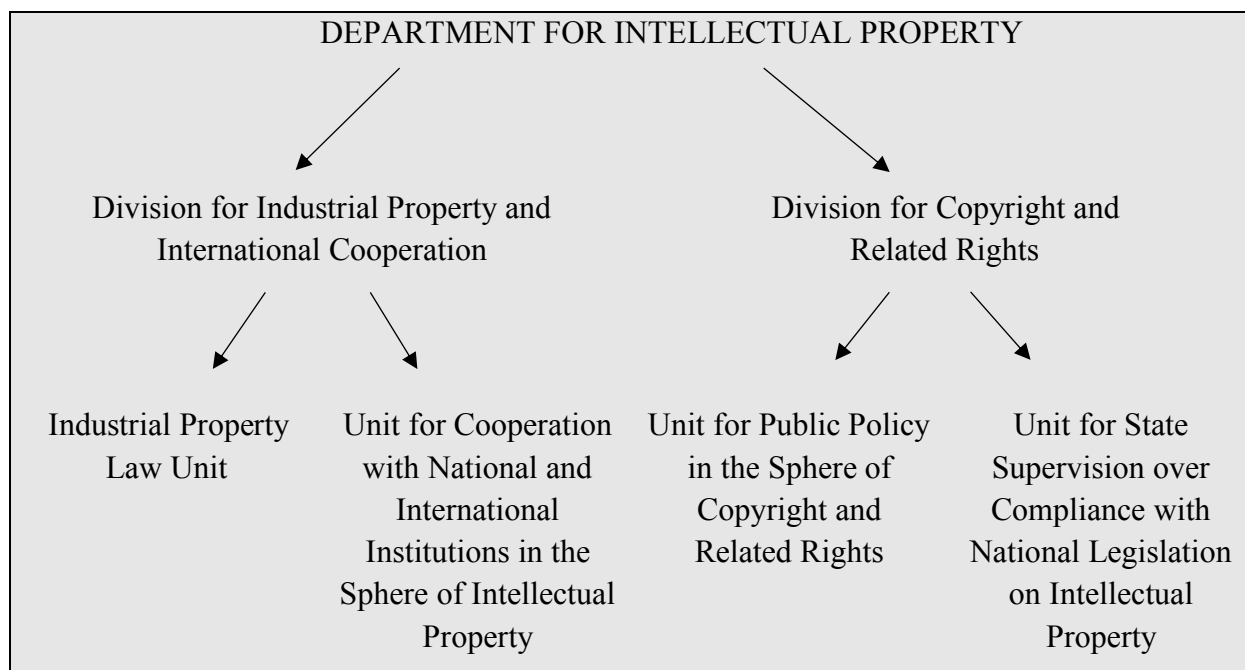
The Department for Intellectual Property of the Ministry of Economy of Ukraine is responsible for ensuring implementation of all the abovementioned functions of the Ministry in IP sphere.

Department for Intellectual Property at the Ministry of Economy of Ukraine is functioning under the supervision of one of the Deputy Ministers of Economy of Ukraine and is staffed with 22 employed public officials: Director of the Department; 2 Deputy Directors of the Department (1 Head of Division for Copyright and Related Rights and 1 Head of Division for Industrial Property and International Cooperation), 4 Heads of Units and 15 experts.

It includes two divisions: Division for Industrial Property and International Cooperation, and Division for Copyright and Related Rights.

Division for Industrial Property and International Cooperation includes in its turn two Units: Industrial Property Law Unit and Unit for Cooperation with National and International Institutions in the Sphere of Intellectual Property.

Division for Copyright and Related Rights includes two Units as well: Unit for Public Policy in the Sphere of Copyright and Related Rights, and Unit for State Supervision over Compliance with National Legislation on Intellectual Property.



The State Enterprise "Ukrainian Intellectual Property Institute" (Ukrpatent/NIPA) is an institutional component of the state system of intellectual property legal protection in Ukraine.

In accordance with the Laws of Ukraine “On Protection of Rights to Inventions and Utility Models”, “On Protection of Rights to Trademarks for Goods and Services”, “On Protection of Industrial Design Rights”, “On Protection of Rights to Semiconductors”, “On Legal Protection of Geographical Indications”, “On Copyright and Related Rights” (as amended by the Law of Ukraine

“On Amendments to Certain Laws of Ukraine Concerning the Establishment of a National Intellectual Property Authority’ No 703-IX of 16 June 2020) Ukrpatent (NIPA) performs the following functions:

- receipt of applications for industrial property rights, examination thereof, taking decisions on such applications;

- receipt and consideration of applications for state registration of copyright in works of science, literature and art, as well as for registration of agreements relating to copyright in works, registration thereof;

- state registration of industrial designs and issuance of certificates;

- state registration of geographical indications;

- state registration of inventions and utility models, issuance of patents for inventions and utility models;

- state registration of trademarks, issuance of trademark certificates;

- state registration of semiconductor product layouts (layouts), issuance of certificates for layouts;

- issuance of registration certificates for copyright to a work;

- total or partial invalidation of rights to an industrial design;

- invalidation of rights to inventions and utility models;

- publication of official information on industrial designs, trademarks, layouts, geographical indications, inventions and utility models in the Bulletin;

- maintenance of state IP registers;

- provision of extracts and abstracts;

- maintenance of the Trademark Applications Database;

- publications in the official bulletin on copyright and related rights protection;

- training, attestation and registration of representatives on IP matters (patent attorneys);

- maintaining the State Register of Representatives on Intellectual Property Matters (Patent Attorneys);

- provision of information and explanations concerning the implementation of the state policy in the sphere of IP rights legal protection;

- performing the functions of the "national Office" and the "Office" provided for by the Hague and Geneva Acts to the Hague Agreement Concerning the International Registration of Industrial Designs;

- performing the functions of the "national Office" provided for by the Madrid Agreement Concerning the International Registration of Marks and the Protocol to the Madrid Agreement Concerning the International Registration of Marks;

- performing the functions of the "receiving Office", "International Searching Authority" and "International Preliminary Examining Authority" under the Patent Cooperation Treaty.

Ukrpatent is a state enterprise headed by the Director General and operates under the governance of the Ministry of Economy of Ukraine.

Ukrpatent has its own Steering Committee, which provides efficient management and strategic activity of the Office. It also includes its Board of Appeal and Commission for Issues on Inclusion of Markings with the Official Name of the State "Ukraine" to the Trademark.

The Director General has its First Deputy Director General and 2 regular Deputy Directors General.

There are 4 Departments, 6 Divisions functioning in the Ukrpatent, as well as a number of separate Sections providing infrastructural activity and coordination (e.g. Finance Section, Accounting Section, Legal Section, HR Section, State Secret Protection Section, Record Keeping Section etc.)

I. The First Deputy Director General supervises the work of:

1) Division for Informational Support, comprising 2 Units:

- Unit for Examination Referential and Information Fund;
- Unit for Patent Information, Documentation and Standardization;

2) Division for Patent Information Services, comprising 3 Units:

- Unit for Advisory Assistance for Applicants;
- Unit for Patent Information Services;
- Unit for Agreement Conclusion and Agreement Implementation Control;

3) Documentation Division with specific 4 Units:

- Registration Unit;
- Unit for Production of Protection Certificates;
- Unit for Digitalization of Protection Certificates;
- Statistics Unit;

II. The (second) Deputy Director supervises the work of:

- Division of Computerization and Information Technologies, which in its turn has 5 Units:
- Unit for Introduction and Support of Information Technologies;
- Unit for Network and Server Technologies;
- Unit for System Analysis and Technological Support;
- Unit for Cyber Protection and Telecommunication Technologies;
- Procurement Unit.

III. The (third) Deputy Director supervises the work of:

- IP Academy, which is composed of 2 Units (Unit for Educational Activities, and Unit for Training and Certification);

- Division for Intellectual Property Development, which comprises 2 Units: Unit for Development of Technology and Innovation Support Centers (TISC) Network, and Unit for International and Public Relations.

Besides, there are 4 Departments each headed by its own Director:

1) Department for Examination of Applications for Inventions, Utility Models and Semiconductors with 7 specific Units:

- Unit for Quality Control and Examination Improvement;
- National Applications Unit;
- International Applications Unit;
- Chemical Technologies Unit;
- Biotechnologies Unit;
- Industrial Technologies Unit;
- Engineering Technologies Unit.

2) Department for Examination of Applications for Trademarks, Industrial Designs and Geographical Indications, which has 8 Units:

- Industrial Designs Unit;
- Unit for International Registration of Trademarks;
- Unit for Formal Examination of Applications for Trademarks;
- Unit for Determination of the Application Submission Date;
- Unit for Substantive Examination of Applications for Trademarks;
- Unit for Geographical Indications;
- Documentation Procession Unit;
- Application Record Keeping Unit.

3) Department for Intellectual Property Law and Methodology, which includes 6 Units and 1 Division (with 6 Units):

- Unit for General and International Lures of Law;
- R&D Works Unit;
- Unit for Markings Issues;
- Unit for Law Enforcement Monitoring;
- Unit for Support of Collegiate Bodies Functioning;
- Unit for Representation of Interests in Court;
- Division for Public Registration:
 - Unit for Public Registration of Inventions, Utility Models and Semiconductors;
 - Unit for Public Registration of Industrial Designs;
 - Unit for Public Registration of Trademarks and Geographical Indications;

- Unit for Public Registration of Copyright;
- Unit for Copyright;
- Unit for Disposal of Rights.

4) Department for Administrative and Economic Support (including 8 specific Units).

Ukrpatent (the only examining authority for IPRs applications in Ukraine) has got a certificate of quality management system conformity to the international standard ISO 9001:2015.

In July 2021 Ukrpatent was subjected to recertification audit in order to verify that Quality Management System (QMS) meet the requirements of ISO 9001:2015. As a result of the audit, it has been verified that Ukrpatent's Quality Management System (QMS) meet the requirements of ISO 9001:2015 and new certificate, valid for 3 years until September 2024 has been issued.

Scope of certification:

- examination of applications for intellectual property rights and examination support processes;
- state registration of intellectual property rights, maintenance of state registers and preparation of information for publication in official bulletins, granting of titles of protection for intellectual property rights;
- information searches with regard to the claimed intellectual property rights, preparation of respective reports, in particular, on applications for inventions under the Patent Cooperation Treaty.

The Department for Intellectual Property of the Ministry of Economy of Ukraine and Ukrpatent have the in fact the capacity to perform their functions (including the question of accountability, management system, projects management, control system, resources in their possession, including qualified staff. There are different kinds of training programs in which the staff participate regularly including EU, EUIPO, EPO, WIPO, US and UK funded projects on IP.

II. INDUSTRIAL PROPERTY RIGHTS

A. Patents

19. Please provide information on Ukraine's intention regarding accession to the European Patent Convention. Is the legislation fully aligned with the EU acquis on industrial property in the field of patents? Has the Union acquis served as benchmark when your national law was created?

Ukraine is not a Contracting State to European Patent Convention. The possibility of accession and the proper amendments to the national legislation (namely, to the Law of Ukraine "On Protection of Rights to Inventions and Utility Models") are being discussed. Furthermore, Ukraine has established an active cooperation with the European Patent Office (EPO). In 2021, EPO experts conducted a number of events for Ukrpatent experts. Aiming at further developing a successful cooperation with the EPO, the Ukrainian and European sides prepared a joint Action Plan for 2022-2023, which shall serve as a roadmap for concluding a Memorandum on Enhanced Cooperation in the nearest future. In the framework of cooperation with EPO the Ministry of Economy of Ukraine

will propose to discuss the specific actions regarding accession to the European Patent Convention. And the possibility of Ukraine to accede to the Agreement on the Unified Patent Court (UPC) in the future requires further discussion.

On 21 July 2020 the Law of Ukraine No 816-IX “On Amendments to Certain Legislative Acts of Ukraine on Patent Law Reform” was adopted and entered into force on 16 August 2020. The Law introduces to the national legislation (Civil Code of Ukraine and Law of Ukraine “On Protection of Rights to Inventions and Utility Models”) the European standards of legal protection of inventions and utility models directed at achieving a balance between the interests of patent monopoly and the everyone’s right to the access to medicine (incl. Art. 219-223 EU-Ukraine Association Agreement, the provisions of Directive No. 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the Legal Protection of Biotechnological Inventions, Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products, Regulation (EU) 2019/933 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EC) No 469/2009 concerning the supplementary protection certificate for medicinal products, Regulation (EC) No 1901/2006 of the European Parliament and of the Council of 12 December 2006 on medicinal products for paediatric use, Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use).

According to the Law of Ukraine “On Protection of Rights to Inventions and Utility Models” (as amended by Law No. 816-IX of 21 July 2020):

(1) Conditions for granting patent (Paragraph 1 Art. 6):

- Legal protection is provided by the invention (utility model) that does not contradict public order, generally recognized principles of morality and meets the criteria of patentability (Paragraph 1);

- The subject-matter of an invention, legal protection to which is granted in accordance with this Law, may be a product (device, substance, microorganism strain, cell culture of plants and animals, etc.), process (method) (Indent 1 Paragraph 2);

- The subject-matter of an utility model, legal protection to which is granted in accordance with this Law, may be a device or a process (method) (Indent 2 Paragraph 2);

2) Legal protection in accordance with this Law shall not apply to the following subject matters (Paragraph 3 Art. 6):

- plant varieties and animal breeds;

- biological, at its core, processes for reproduction of plants and animals not related to non-biological and microbiological processes, as well as to the product of such process;

- topography of semiconductor product;

- the results of artistic design;

- surgical or therapeutic methods of treatment of humans or animals, and methods of diagnostics of the human or animal body. This provision shall not apply on products, in particular substances or compositions, for use in any of these methods;

- processes for cloning human beings;

processes for modifying the germ line genetic identity of human beings;

the use of human embryos for industrial or commercial purposes;

processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes;

the human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene. This provision shall not affect the grant of legal protection for an invention the subject matter of which are elements isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, may constitute a patentable invention, even if the structure of that element is identical to that of a natural element;

a product or a process, which concern plants or animals, if its use is confined to a particular plant or animal variety;

a product or a process which concern a natural biological material not isolated from its natural environment, or which is not a product of a technical process.

Prohibition on the legal level of commercial use of a certain subject matter for other reasons shall not affect the provision of legal protection.

3) The following does not meet the concept of “invention (utility model)” defined in Article 1 of this Law, and is not recognized as an invention (utility model) under this Law if it acts as a separate subject-matter (Indent 15 Paragraph 3 Art. 6):

discovery, scientific theory, mathematical method;

scheme, rules and method of holding games, contests, auctions, physical exercises, intellectual or organizational, in particular economic, activities (planning, financing, supply, accounting, lending, forecasting, rationing, etc.);

computer program;

form of presentation of information (e.g. in the form of tables, diagrams, graphs, acoustic signals, pronunciation of words, visual demonstrations, in particular on the screen of a computer device, books, audio and video disks, symbols, including road signs, route plans, codes, fonts, etc., schedules, instructions, design or layouts of structures, buildings, territories);

appearance of products (in particular goods, structures, territories) aimed at meeting purely aesthetic needs.

4) The scope of the legal protection is defined by the patent (utility model) claims. The interpretation of the patent claims shall be accomplished within the description of a patent (utility model) and relevant drawings (Art. 6(5)).

5) The criteria for patentability (Art. 7):

- the invention meets the criteria of patentability, if it is new, involve an inventive step and is industrially applicable (Paragraph 1);

- the utility model meets the criteria of patentability, if it is new and industrially applicable (Paragraph 2).

- an invention (utility model) shall be considered to be new provided that it does not form part of the state of the art. Objects that are a part of the state of the art shall be considered only separately when determining the novelty of an invention (Paragraph 3);

- the state of the art comprises everything made available to the public throughout the world before the date of filing of the application with the NIPA or, if the priority has been claimed, before the date of its priority (Paragraph 4);

- the state of the art shall also include the contents of any application for state registration of an invention (utility model) in Ukraine (including an international application in which Ukraine is designated) stated in the initial wording of such application, provided that the date of its filing (if the priority has been claimed, the date of the priority) is prior to the date referred to in Paragraph 4 of this Article, and that the application has been already published on or after this date (Paragraph 5);

- the recognition of an invention (utility model) as a patentable one does not depend on the disclosure of information on the invention (utility model) by an inventor or by a person which has received such an information directly from an inventor or indirectly within 6 months before the date of filing of the application with the NIPA or, if the priority has been claimed, before the priority date. In this case, the person, who is interested in using this provision, is obliged to prove the circumstances of the disclosure of information (Paragraph 6);

- an invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art. If the state of the art also includes documents within the meaning of paragraph 5 of this Article, these documents shall not be considered in deciding whether there has been an inventive step. Those that comprised in the state of the art may be recognized new forms of a medication known in the art, including salts, esters, ethers, compositions, combinations and other derivatives, polymorphs, metabolites, pure forms, particle sizes, isomers, unless they differ significantly in their properties in terms of efficiency (Paragraph 7);

- An invention (utility model) shall be considered to be industrially applicable provided that it may be used in industry or other field of activity (Paragraph 8).

6) A person, who wishes to obtain a patent (to register an invention or utility model) and has the right to do this, shall file an application with the National IP Authority (Ukrpatent) (Art. 12).

The applicant shall have the right to the priority of a previous application for the same invention (utility model) within 12 months from the date of submission of the previous application to the NIPA or an appropriate authority of the State, which is a member of the Paris Convention for the Protection of Industrial Property or the Agreement Establishing the World Trade Organization, if the priority has not been claimed on the previous application (Art. 15).

7) Procedure up to grant:

- preliminary examination (examination on filing);

- formal examination (examination as to formal requirements);

- publication of the patent application: ((a) after the expiry of a period of eighteen months from the date of filing or, if priority has been claimed, from the date of priority, or (b) at the request of the applicant, before the expiry of that period, the NIPA shall publish the patent application in the Bulletin;

- qualification examination (whether the application meets the requirements of Art. 7);

- pre-grant opposition (paragraph 17 Art. 16):

a) within six months of the publication of the patent application, any person may give notice to the NIPA of opposition to that patent application (opposition fee);

b) the NIPA shall send this opposition to the applicant immediately;

c) within two months, the applicant may refute the opposition and leave the patent application unchanged, amend or withdraw the application.

- observation by third parties (indents 5-8 paragraph 17 Art. 16)

a) after the publication of the patent application, any third party may present observations (free of charge) concerning the patentability of the invention to which the application relates;

b) that person shall not be a party to the proceedings;

c) the NIPA shall send this opposition to the applicant immediately;

d) the applicant may inform the Office of his opinion to this observation;

- qualification examination (whether the application meets the requirements of Art. 7): request for examination: the NIPA conducts the qualification examination upon receipt relevant request (i) the applicant may request the examination of the patent application up to 3 years after the date of filing (option - plus 6 months); (ii) any third person – after publication of application but no later 3 years after the date of filing (that person shall not be a party to the proceedings).

If the applicant fails to request in due time, the application shall be deemed to be withdrawn.

- grant or refusal: final results of examination – reasonable opinion of the examination:

if the application meets the requirements of the Law – Patent Granting & Publication,
it not – refuse the application.

8) Appeals procedure on decision on application

The applicant may appeal the NIPA's decision on the application in the Appeal Board as well as to court within two months from the date of receipt of such decision (Art. 24)

9) Opposition (Post-grant) (Art. 33²):

- within nine months of the publication of the granting of the patent in the Bulletin, any person may give notice to the Appeal Board (AB) of opposition to that patent (Invention);

- the notice of opposition to Utility Model – during the entire term of patent validity and after its termination;

- opponents shall be parties to the opposition proceedings as well as the proprietor of the patent;

- the parties may appeal the decision of the Appeal Board to the court within two months from the date of receipt of such decision.

Link to official translation of the Law of Ukraine “On Protection of Rights to Inventions and Utility Models” (as amended by Law No. 816-IX of 21 July 2020) – {HYPERLINK “<https://zakon.rada.gov.ua/laws/show/en/3687-12#Text>”}.

20. What are the plans for further alignment, and by when? Is the legislation aligned with the Directive 98/44/EC on the legal protection of biotechnological inventions? If no, please indicate what are the plans for further alignment and by when.

As of today the harmonization process at the level of law is completed.

On 21 July 2020 the Law of Ukraine No 816-IX “On Amendments to Certain Legislative Acts of Ukraine on Patent Law Reform” was adopted and entered into force on 16 August 2020. The Law introduces to the national legislation (Civil Code of Ukraine and Law of Ukraine “On Protection of Rights to Inventions and Utility Models”) the European standards, including the provisions of Directive No. 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the Legal Protection of Biotechnological Inventions.

The Law of Ukraine “On Protection of Rights to Inventions and Utility Models” (as amended by Law No. 816-IX of 21 July 2020) also extends the list of technologies which go outside the legal protection (namely, processes for cloning human beings; processes for modifying germline genetic identity of human; the use of human embryos for industrial or commercial purposes; processes for modifying genetic identity of animals that may cause their suffering without any significant medical benefit to humans or animals, as well as animals bred as a result of such a process); envisages a possibility to file an objection against applications on inventions after their publication (pre-grant opposition) and to recognize invalid the rights to inventions and utility models administratively in Appeal Board of National IP Authority (post-grant opposition); specifies the procedure for granting supplementary protection certificate (SPC).

The Law of Ukraine “On Protection of Rights to Inventions and Utility Models” (as amended by Law No. 816-IX of 21 July 2020) also aimed to achieve a balance between the interests of patent monopoly and third parties' rights by providing exemptions from patent infringement.

In particular, according to Art. 31 (2) of this Law the following use of the patented invention (utility model) shall not be considered to constitute the infringement upon rights resulting from a patent:

- the use in the design or in the course of the operation of a vehicle of a foreign state, which sojourns temporarily or accidentally in waters, airspace, or on the territory of Ukraine, provided that the invention (utility model) is being used solely for the needs of the said vehicle;

- the use without commercial purposes;

- the use for scientific or experimental purposes;

- the use in case of extraordinary situations (disasters, epidemics, etc.) with notification of the patent holder as soon as it becomes practically possible and payment of the corresponding compensation.

This Law also provides for the regulatory exemption (Bolar exemption) provided by Article 10 (6) of Directive 2001/83/EC as amended by Directive 2004/27/EC on the Community code relating to medicinal products for human use:

- the importation into the customs territory of Ukraine, in the manner prescribed by law, of goods manufactured using the invention (utility model) for research and/or use of the invention (utility model) in research conducted for the purpose of preparation and submission of information

for registration of a medicinal product shall not be considered to constitute the infringement of patent rights (Art. 31(5) of the Law);

- manufacture of a product or medicinal product containing a product that uses a patented invention for export to third countries, as well as other actions recognized in accordance with this Law as use of the invention if they are necessary for the manufacture of a product or medicinal product containing product, for export to third countries shall not be considered to constitute the infringement upon rights resulting from the supplementary protection certificate set forth in Article 27¹ of this Law (Art. 31(6) of the Law).

Link to official translation of the Law of Ukraine “On Protection of Rights to Inventions and Utility Models” (as amended by Law No. 816-IX of 21 July 2020) – {HYPERLINK “<https://zakon.rada.gov.ua/laws/show/en/3687-12#Text>”}.

However, there are Government regulations as by-laws to be adopted for proper implementation of the Law No. 816-IX of 21 July 2020. Namely, the Ministry of Economy of Ukraine has already prepared the Draft Order of the Ministry of Economy of Ukraine “On Adoption of Rules for Drafting, Submitting and Conducting of Examination of an Application for Invention and an Application for Utility Model”. On 18 February 2022 this Draft was published on the Ministry website for public consultations. It is planned to adopt this Draft in 2022.

21. Are supplementary protection certificates (SPCs) for medicinal products and/or plant protection products available in your country?

Yes, the Law of Ukraine No.816-IX of 21 July 2020 “On Amendments to Certain Legislative Acts of Ukraine on Patent Law Reform” which also provides SPCs entered into force on 16 August 2020.

According to Art. 27¹ of the Law of Ukraine “On Protection of Rights to Inventions and Utility Models” (as amended by Law No. 816-IX of 21 July 2020):

1. The holder of a patent for an invention, the object of which is an active pharmaceutical ingredient of a medicinal product, the process of obtaining a medicinal product, or application of a medicinal product, animal protection product, plant protection product, the introduction of which in Ukraine is granted by the relevant competent authority according to the current legislation of Ukraine, has the right to extend the validity of intellectual property rights to such an invention (supplementary protection), which is confirmed by a certificate of supplementary protection.

The supplementary protection certificate is issued at the request of the patent holder. A fee is levied for the submission of such request.

The rights to supplementary protection are limited by the product (active pharmaceutical ingredient or set of active pharmaceutical ingredients of the medicinal product), the introduction of which in Ukraine is allowed by the relevant competent authority according to the current legislation of Ukraine, and by its use as a medicinal product, animal protection product, plant protection product within the rights granted by the respective patent as of the day of submitting the application for supplementary protection certificate, and are valid subject to the validity of such permission.

The holder of a patent for an invention, the object of which is a medicinal product, animal protection product, plant protection product, shall have the right to extend the validity of intellectual

property rights if the application for authorisation of the competent authority to place a medicinal product, animal protection product, plant protection product on the market in Ukraine was filed within 1 year from the date of submission of such an application for the first time in any country.

2. The period of supplementary protection shall be equal to the period between the date of filing the application with the NIPA and the date of receipt by the patent holder of the first authorisation of the competent authority for placing the product on the market, reduced by 5 years.

The term of supplementary protection may not exceed 5 years.

The term of supplementary protection shall be extended for six months for the invention, the object of which is the active pharmaceutical ingredient of the medicinal product, which has been studied in the field of application for children, the results of which are reflected in the information on the medicinal product authorised by the relevant competent authority referred to in Paragraphs 1 and 2 of this Part.

3. The request for supplementary protection must be received by the NIPA within 6 months from the date of publication of the information on state registration of the invention or from the date of issuance of the first authorisation of the relevant competent authority for placing the product on the market (whichever comes last). The application shall be accompanied by documents confirming the right of the patent holder to supplementary protection.

The application shall be considered by the NIPA in the manner determined by the central executive authority in charge of shaping and implementing state policy in the field of intellectual property [Ministry of Economy of Ukraine].

4. If the submitted documents confirm the right of the patent holder to supplementary protection, the NIPA shall carry out the state registration of supplementary protection by entering the relevant information into the Register. Simultaneously with the state registration of supplementary protection, the NIPA shall publish in the Bulletin the information on such registration determined by it. Issuance of the supplementary protection certificate shall be carried out by the NIPA within one month after the state registration of supplementary protection.

5. The rights and obligations of the holder of the supplementary protection certificate shall be the same as the rights of the holder of the respective patent, subject to the limitations established by Part 1 of this Article.

6. Subject to compliance with the requirements specified in this Part, the following use of the invention during the period of supplementary protection shall not be recognized as infringement of the rights to the invention:

1) manufacture of a product or medicinal product containing a product that uses a patented invention for export to third countries, as well as other actions recognized in accordance with this Law as use of the invention if they are necessary for the manufacture of a product or medicinal product containing product, for export to third countries;

2) the manufacture of a product or medicinal product containing the product that uses the patented invention not earlier than six months before the expiration of the period of supplementary protection for storage in order to put into circulation after the expiration of the term of supplementary protection, as well as other actions that, according to this Law, are recognized as the use of the invention if they are necessary for the manufacture of a product or medicinal product containing the product, and its storage that is not earlier than the specified period.

A person who intends to manufacture a product or a medicinal product containing a product that uses a patented invention during the period of supplementary protection is obliged to affix the information mark "UA Export" for the manufacture of the product.

A person who intends to manufacture a product or medicinal product containing a product that uses a patented invention during the period of supplementary protection shall notify the NIPA and the holder of the supplementary protection certificate in writing of such intention not later than three months before the use of the invention.

The applicant's notification shall indicate his/her address, methods of use of the invention and the purpose of such use, number and date of issue of the supplementary protection certificate. In the case of the manufacture of a product or medicinal product containing a product for export purposes, the notification shall also indicate the authorisation number of the competent authority of the third country to which the export is to be made. The NIPA ensures the publication of the information contained in the notification.

The manufacturer of a product or medicinal product containing a product is obliged to obtain written guarantees from all persons who, on his/her behalf, carry out storage, export, or perform other actions, which in accordance with this Part are not recognized as infringement of the rights to the invention, that the product or medicinal product containing the product will not be used other than for export or storage in the manner prescribed by law.

7. For maintaining the validity of the supplementary protection certificate for each full or incomplete year of its validity, a fee shall be paid in accordance with the procedure established in Part 2 of Article 32 hereof.

8. Termination of the supplementary protection certificate and its invalidation, protection of the rights of the holder of the supplementary protection certificate shall be carried out in accordance with the procedure established for the relevant patent.

Still, there are Government regulations as by-laws to be adopted for proper implementation of protection certificates (SPCs) for medicinal products and/or plant protection products. It is planned to adopt proper regulation in 2022.

22. Are the rules governing the grant of compulsory licences and are they aligned with Regulation 2006/816/EC on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems in relation to the Doha Declaration/TRIPS and Public Health)? If not, what are the plans for further alignment and by when?

Yes, the Law of Ukraine "On Protection of Rights to Inventions and Utility Models" envisages compulsory licences provisions.

According to Art. 30 (3) of the Law of Ukraine "On Protection of Rights to Inventions and Utility Models":

"In order to ensure the health of the population, state defence, environmental security, and other public interests, the Cabinet of Ministers of Ukraine shall have the right to allow a person nominated by it to use the invention (utility model) without consent of the holder of the patent. However:

- 1) permission for such use is granted based on specific circumstances;

2) the scope and duration of such use are determined by the purpose of the permit, and in the case of semiconductor technology, it should be only non-commercial use by public authorities or correction of anti-competitive practices by the decision of the relevant public authority;

3) permission for such use does not deprive the patent holder of the right to grant permits for the use of the invention (utility model) to other persons;

4) the right to such use is not transferred, except in the case when it is transferred together with that part of the enterprise or business practice in which this use is carried out;

5) the use is allowed mainly to meet the needs of the internal market;

6) the patent holder is notified of the granting of permission to use the invention (utility model) as soon as it becomes practically possible;

7) the permit for use is revoked if the circumstances due to which it was issued cease to exist;

8) the patent holder is paid adequate compensation in accordance with the economic value of the invention (utility model).

Decisions of the Cabinet of Ministers of Ukraine on granting permission to use an invention (utility model), term and conditions of its granting, revocation of permission to use, amount and procedure for payment of remuneration to the patent holder may be appealed in court”.

The procedure for granting by the Cabinet of Ministers of Ukraine permission to use a patented invention (utility model) related to a medicinal product is determined by the Resolution of the Cabinet of Ministers of Ukraine No. 877 of 4 December 2013.

Also according to the Law of Ukraine No 981 of 3 February 2016 Ukraine accepted Protocol amending the WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) done on 6 December 2005 in Geneva. The Protocol allows exporting countries to grant compulsory licenses (one that is granted without the patent holder’s consent) to their generic suppliers to manufacture and export medicines to countries that cannot manufacture the needed medicines themselves. These licenses were originally limited to predominantly supplying the domestic market.

Therefore, the abovementioned Resolution of the Cabinet of Ministers of Ukraine should be amended to full alignment with the provision of Regulation 2006/816/EC and the Protocol. During this year (2022) the proper amendments will be discussed by the Ministry of Economy of Ukraine with the Ministry of Health of Ukraine.

B. Trade marks

23. What are your plans for full alignment with the EU acquis on industrial property in the field of trade marks? Has the Union acquis served as benchmark when your national law was created? What are the plans for further alignment, and by when?

On 21 July 2020 the Law of Ukraine No 815-IX “On Amendments to Certain Legislative Acts of Ukraine on Strengthening the Legal Protection and Enforcement of Trademarks and Industrial Designs and Combating Patent Abuse” was adopted and entered into force on 16 August 2020.

The Union acquis has served as benchmark for our legislation on industrial property in the field of trade marks. The Law No 815-IX of 21 July 2020 introduces to the national legislation (Civil Code of Ukraine and the Law of Ukraine “On Protection of Rights to Trademarks for Goods and Services”) the European standards of legal protection of trade marks.

The Law No 815-IX of 21 July 2020 implements to national legislation the requirements of Art. 193-200 EU-Ukraine Association Agreement, the provisions of Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks, and Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark.

Namely, according to the Law of Ukraine “On Protection of Rights to Trademarks for Goods and Services” (as amended by the Law No 815-IX of 21 July 2020):

- the legal protection shall be granted to a trademark that is not contrary to the public order and generally accepted principles of morality, requirements of the Law of Ukraine “On Condemnation of the Communist and National-Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propaganda of Their Symbols” and is not subject to grounds for refusal of legal protection defined by this Law (Art. 5(1));

- any sign or any combination of signs may be the subject of a trademark. Such signs may be, in particular, words, including personal names, letters, numerals, figurative elements, colours, the shape of goods or their packaging, sounds, provided that such signs are suitable to distinguish the goods or services of one person from the goods or services of other persons, are appropriate for their reproduction in the Register in such a way as to enable clear and precise scope of the granted legal protection Art. 5(2);

According to Art. 6 (2) of the Law:

“The legal protection shall not be granted for signs which:

- do not usually have distinctive character and have not obtained it through their use;
- consist only of signs that are generally used in the modern language or in fair and constant trade practices on goods and services;

- consist only of signs or data which are descriptive when being used in terms of goods and services referred to in the application or due to them, show the type, quality, composition, quantity, properties, intended purpose, value of goods and services, geographical origin, the place and time of production or selling of goods or provision of services, or other specifications of goods or services;

- may mislead with regard to the goods or services, namely, as to their properties, quality or geographical origin;

- may mislead with regard to the person manufacturing goods or providing services;

- consist exclusively of signs that are commonly used symbols and terms;

- represent only the form imposed by the nature of goods or by the necessity to obtain a technical result, or by the form which gives substantial value to goods;

- reproduce the name of a plant variety registered or applied for registration in Ukraine or which has been granted legal protection in accordance with an international treaty of Ukraine before the date

of submitting an application for a trademark containing such a sign, and if the claimed sign concerns a plant variety of the same or related species;

- contain geographical indications (including for alcohol and alcoholic beverages) registered or applied for registration in Ukraine, or which are granted legal protection in compliance with the relevant international treaty of Ukraine, prior to the date of submitting an application for a trademark which contains such an indication, and if the priority has been claimed – prior to the date of priority for the identical or related goods, if when using the sign applied for reputation of a geographical indication is used and/or the sign applied for misleads the public as to the special quality, characteristics and true origin of the product.

The signs specified in paragraphs 2, 3, 4, 7 and 8 of this clause may be included in a trademark as non-protected elements in the event that these signs are not dominative in the image of the trademark.

The signs specified in paragraphs 2, 3, 4, 7 and 8 of this clause may be granted legal protection in the event that they have acquired distinctive character as a result of their use prior to the date of application”.

Also according to Art. 6 (3) of the Law: “Signs shall not be registered as trademarks when as of the date of submitting an application or, if the priority is claimed, as of the date of priority, they are identical or similar to such an extent that they may be confused, in particular, associated with:

- trademarks that were earlier registered or submitted for the registration in Ukraine in the name of another person for identical or related goods and services;

- trademarks of other persons if such trademarks are protected without registration within the territory of Ukraine on the basis of the international treaties of Ukraine, namely, the trademarks recognised as well-known in compliance with Article 6bis of the Paris Convention for identical or related goods and services;

- trademarks of other persons, if such trademarks are protected without registration within the territory of Ukraine on the basis of the international treaties of Ukraine, namely, the trademarks recognised as well-known in compliance with Article 6bis of the Paris Convention for non-related goods and services, if the use of a trademark by another person in regard to such non-related goods and services indicates the connection between them and the owner of a well-known trademark and may harm the interests of such owner;

- trade names that are known in Ukraine and belong to other persons who have acquired the right to them before the date of submitting the application to NIPO regarding identical or related goods and services;

- conformity marks (certification marks) registered in accordance with the established procedure;

- trademarks used by another person in a foreign state, if an application is submitted on his own behalf by an agent or a representative of such person within the meaning of Article 6septies of the Paris Convention without such person’s authorisation and there are no proofs that justify such submission if there is an objection by such person”.

Signs that contradict the requirements of part 2, Article 5 of this Law and the Law of Ukraine “On Condemnation of the Communist and National-Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propaganda of Their Symbols” shall not be granted legal protection and shall not be registered as trademarks (Art. 5 (5) of the Law).

Signs specified in paragraphs 2 to 5 and 7, clause 3 of Article 6 and paragraph 2, clause 4 of Article 6 may be registered as trademarks, if the consent is given by a certificate holder of the earlier registered trademark or the holder of the other earlier acquired right and there is no possibility to mislead the consumers.

Also according to the Law any person (third party) may give notice to the NIPA of opposition; applicant and third party have a right to appeal the decision on the application to the Appeal Board; applicant and third party have a right to appeal the decision on the application to the court.

Link to official translation of the Law of Ukraine “On Protection of Rights to Trademarks for Goods and Services” (as amended by Law No. 815-IX of 21 July 2020) – {HYPERLINK “<https://zakon.rada.gov.ua/laws/show/en/3689-12#Text>”}

As of today, there are no plans for further alignment. However, there are Government regulations as by-laws to be adopted for proper implementation of the Law No 815-IX of 21 July 2020. Namely, the Ministry of Economy of Ukraine has already prepared the Draft Order of the Ministry of Economy of Ukraine “On Adoption of Rules for Drafting and Submitting an Application for Trademark, an Application for International Registration of Trademark, and Conducting Examination of an Application for Trademark, International Registration of Trademark with Extension to Ukraine”. After the approval by the State Regulatory Service of Ukraine this Rules will be submitted to the Ministry of Justice of Ukraine for state registration and will enter into force after official publication. It is planned to adopt this Rules in 2022.

24. Is Ukraine trademark law harmonised with EU acquis (Trade mark Package), in particular with the recent Directive 2015/2436 to approximate the domestic laws of EU Member States relating to trademarks (codified version)?

Yes, the Law of Ukraine “On Protection of Rights to Trademarks for Goods and Services” (as amended by Law No. 815-IX of 21 July 2020) is harmonised with EU acquis (Trade mark Package), in particular with the recent Directive 2015/2436 to approximate the domestic laws of EU Member States relating to trademarks (codified version).

25. Are there specific provisions relating to the protection of trade marks with reputation/well-known trade marks?

Yes. According to Art. 25 “Protection of Rights to a Well-Known Trademark” of the Law of Ukraine “On Protection of Rights to Trademarks for Goods and Services” (as amended by Law No. 815-IX of 21 July 2020):

“1. The protection of rights to a well-known trademark shall be carried out according to Article 6bis of the Paris Convention and this Law and shall be based on the recognition of the trademark to be well known by the Appeals Chamber of National IP Authority (Ukrpatent) or the court. The trademark may be recognised as well-known regardless of its registration in Ukraine.

2. When determining whether a trademark is well known in Ukraine, the following factors may be considered, if applicable:

- degree of notability and recognition of the trademark in the relevant public sector;
- duration, scope and geographical area of any use of the trademark;
- duration, scope and geographical area of any promotion of the trademark, including advertising, making public, and display at fairs or exhibitions of goods and/or services with respect to which the trademark is used;
- duration, scope and geographical area of any registrations and/or applications for registration of a trademark, provided that the trademark is used or recognised;
- evidence of the successful assertion of rights to the trademark, in particular the territory where the trademark is recognised to be well known by competent authorities;
- the value associated with the trademark.

3. The procedure for recognising a trademark to be well known in Ukraine by the Appeals Chamber shall be established by the central executive authority in charge of shaping and implementing state policy in the field of intellectual property. The fee shall be paid for the submission of the request on the recognition of a trademark to be well known.

The decision of the Appeals Chamber on the recognition of a trademark to be well known in Ukraine may be appealed in court.

4. If a trademark is recognised as well-known in court, a person the trademark of which is recognised to be well known shall inform National IP Authority (Ukrpatent) of such decision.

Information on well-known trademarks, which are recognised as such by the Appeals Chamber or in court, shall be entered into the list of trademarks well known in Ukraine by National IP Authority (Ukrpatent) and published in the Bulletin. The list of well-known trademarks in Ukraine shall be for reference purposes, available for the public and published on the official website of National IP Authority (Ukrpatent)".

The procedure for consideration in the Appeals Chamber of applications for recognition of a trademark as well-known in Ukraine is defined in the Regulations of the Appeals Chamber of the National Intellectual Property Authority (approved by the Order No 433 of the Ministry of Economy of Ukraine of 02 March 2021).

As regards the protection of trademarks with reputation, it will be discussed by the Ministry of Economy of Ukraine this year and necessary amendments to the legislation will be proposed.

26. Are there specific provisions relating to the protection of collective marks?

Yes, the Law of Ukraine "On Protection of Rights to Trademarks for Goods and Services" (as amended by Law No 815-IX of 21 July 2020) also covers the protection of collective marks.

According to the abovementioned Law collective trademark means a sign which serves to distinguish the goods and services of members of the association, which means any association

irrespective of its organisational and legal form and composition and the existence of which does not contradict the legislation of the state where it has been created, from the goods and services of other persons (Art. 1 of the Law).

Due to Art. 7 (5) of this Law the applicant(s) and his address shall be indicated in a request for a trademark registration (TM application). Relevant checkmark shall be made in a request for a collective trademark registration together with the indication of the list of persons entitled to use such trademark. The request for registration of a collective trademark shall also be accompanied by the document that sets out the terms of its use.

27. To what extent is compliance with the TRIPS Agreement, the Paris Convention, the Singapore Treaty on the Law of Trademarks and Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks assured?

Ukraine ratified the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) on May 16, 2008, the Paris Convention for the Protection of Industrial Property – on December 25, 1991, the Singapore Treaty on the Law of Trademarks – on May 24, 2010, the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks – on December 29, 2000.

On February 3, 2016, Ukraine also accepted the Protocol amending the TRIPS Agreement done on 6 December 2005 in Geneva.

The national legislation on IP in the sphere of trademarks is fully in line with the provisions of the aforementioned international agreements.

C. Designs

28. What are the plans for full alignment with the EU acquis on industrial property in the field of designs? Has the Union acquis served as benchmark when your national law was created? What are the plans for further alignment, and by when?

On 21 July 2020 the Law of Ukraine No 815-IX “On Amendments to Certain Legislative Acts of Ukraine on Strengthening the Legal Protection and Enforcement of Trademarks and Industrial Designs and Combating Patent Abuse” was adopted and entered into force on 16 August 2020.

The EU acquis has served as benchmark for our legislation on industrial property in the field of designs. The Law No 815-IX of 21 July 2020 introduces to the national legislation (Civil Code of Ukraine and the Law of Ukraine “On Protection of Industrial Design Rights”) the European standards of legal protection of designs.

The Law No. 815-IX of 21 July 2020 implements to national legislation the requirements of Art. 212-218 EU-Ukraine Association Agreement, the provisions of Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs, and Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs. Namely, the Law introduces new requirement of protectability (individual character), envisages a possibility to protect not registered industrial designs (3 years), establishes the period of protection of registered industrial designs (up to 25 years), envisages the possibility of pretrial cancellation of industrial design

certificate in Appeal Board of NIPA. In the field of legal protection of industrial designs were introduced the concepts of "individual character", "general impression", "informed user", "degree of freedom of the author", "bringing the industrial design to the public", "circles specializing in the field", which previously not used in the legislation of Ukraine.

Link to official translation of the Law of Ukraine “On Protection of Industrial Design Rights” (as amended by Law No. 815-IX of 21 July 2020) – {HYPERLINK “<https://zakon.rada.gov.ua/laws/show/en/3688-12#Text>”}.

As of today, there are no plans for further alignment. However, there are Government regulations as by-laws to be adopted for proper implementation of the Law No 815-IX of 21 July 2020. Namely, the Ministry of Economy of Ukraine has already prepared the Draft Order of the Ministry of Economy of Ukraine “On Adoption of Rules for Drafting and Submitting an Application for Industrial Design, and Conducting Examination of an Application for Industrial Design and International Registration of Industrial Design”. This Draft is being prepared for public consultation. It is planned to adopt this Draft in 2022.

29. Is Ukraine legislation harmonised with the content of Directive 98/71/EC on the legal protection of designs?

Yes, the Law of Ukraine “On Protection of Industrial Design Rights” (as amended by Law No 815-IX of 21 July 2020) is fully in conformity with the content of Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs.

30. Are there, or are there plans to adopt, provisions relating to the protection of unregistered designs?

Yes, the Law of Ukraine “On Protection of Industrial Design Rights” (as amended by Law No 815-IX of 21 July 2020) also covers the protection of unregistered designs. Namely:

- the industrial design may receive legal protection as registered industrial design and as unregistered industrial design, if it is brought to public notice in the manner prescribed by this Law (Art. 5 (4));

- the term of legal protection for the unregistered industrial design is three years from the date of its bringing to the public notice on the territory of Ukraine (Art. 5 (6));

- the industrial design shall meet the criteria for registration, if it is new and individual (Art. 6 (1));

- the industrial design shall be deemed to be new if no identical industrial design has been made public for unregistered industrial design – until the date on which the industrial design protection is requested for was first brought to the public (Art. 6 (2));

- the industrial design shall be deemed to have an individual character if the general impression it makes on the informed user differs from the general impression made on such user by any other industrial design brought to the public's knowledge of unregistered industrial design – until the date on which the industrial design protection is requested for was first brought to the public (Art. 6 (3));

- the unregistered industrial design shall be deemed to have been made public if it has been published, exhibited, used in a trade or otherwise made public in such a way that, in the normal course of business, such measures may, for objective reasons, become known in circles specializing in the relevant field and carry out their activities in Ukraine (Art. 6 (4)).

There are not any changes required to the current provisions of the Law of Ukraine “On Protection of Industrial Design Rights” (as amended by Law No 815-IX of 21 July 2020). However, there are Government regulations as by-laws to be adopted for proper implementation of this Law. Namely, the Ministry of Economy of Ukraine has already prepared the Draft Order of the Ministry of Economy of Ukraine “On Adoption of Rules for Drafting and Submitting an Application for Industrial Design, and Conducting Examination of an Application for Industrial Design and International Registration of Industrial Design”. This Draft is being prepared for public consultation. It is planned to adopt this Draft in 2022.

31. Are the registrability criteria for designs compliant with the public policy or morality principles?

According to Art. 5(1) of the Law of Ukraine “On Protection of Industrial Design Rights” (as amended by Law No. 815-IX of 21 July 2020) the legal protection shall be granted to the industrial design that does not contradict public interest, principles of humanity and moral and complies with criterion for registration.

32. Can a design protected by a registered design right be also eligible for protection under the law of copyright?

According to Ukrainian legislation, a registered design (as an object of industrial property) may be simultaneously protected as an object of copyright (for example, as a work of artistic design or as a work of applied art).

33. To what extent is compliance with the TRIPS Agreement, the Paris Convention and the Locarno Agreement Establishing an International Classification for Industrial Designs assured?

Ukraine ratified the WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) on May 16, 2008, the Paris Convention for the Protection of Industrial Property – on December 25, 1991, and the the Locarno Agreement Establishing an International Classification for Industrial Designs – on July 9, 2009.

The national legislation on IP in the sphere of designs is fully in line with the provisions of the aforementioned international agreements.

III. TRADE SECRETS

34. Is there protection for the trade secrets in Ukraine? What are the conditions for protection?

According to the Civil Code of Ukraine (Art. 505 (1)) trade secret means information that is secret in the sense that it is unknown in whole or in some form and in the aggregate of its components and is not easily accessible to persons who normally deal with the type of information to which it belongs, in particular; thereby it has commercial value, and it has been the subject of reasonable secrecy measures taken by the person lawfully in control of this information.

Trade secret may be information of a technical, organizational, commercial, industrial and other nature, except for those which, in accordance with the law, cannot be classified as a trade secret (Art. 505(2) of the Civil Code of Ukraine).

The IPRs to a trade secret shall belong to the person who lawfully identified the information as a trade secret (trade secret holder), unless otherwise provided by contract. IPRs to trade secrets are: 1) the right to use trade secrets; 2) the exclusive right to allow the use of trade secrets; 3) the exclusive right to prevent the unlawful disclosure, collection or use of trade secrets; 4) other intellectual property rights established by law (Art. 506 of the Civil Code of Ukraine).

The term of validity of an intellectual property right to a trade secret is limited by the term of existence of the set of features of the trade secret established by part one of Article 505 of the Civil Code of Ukraine.

35. What measures can be taken in case of unlawful acquisition, use and disclosure of trade secrets?

The issue of unlawful acquisition, use and disclosure of trade secrets is regulated, namely, by the Law of Ukraine “On Protection against Unfair Competition”, Code of Ukraine on Administrative Offenses and Criminal Code of Ukraine.

According to Art. 1 of the Law of Ukraine “On Protection Against Unfair Competition” Unfair competition shall be understood as any actions performed in the course of competition that are counter to trade and other fair customs in business activities. In particular, actions stipulated by Chapters 2–4 (Art. 4-19) of this Law shall be qualified as unfair competition.

Relations on protection against unfair competition are regulated by this Law, the Law of Ukraine “On Protection of Economic Competition”, the Law of Ukraine “On the Antimonopoly Committee of Ukraine”, Paris Convention for the Protection of Industrial Property of 20 March 1883, international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine, other legislative acts adopted based on the laws or resolutions of the Verkhovna Rada of Ukraine (Art. 3 of the Law of Ukraine “On Protection Against Unfair Competition”).

Chapter 4 of the Law of Ukraine “On Protection Against Unfair Competition” (Articles 16 – 19) deals with the unlawful acquisition, disclosure and use of trade secrets:

- “Unlawful acquisition of trade secrets is understood as an illegal collection of information that according to the Ukrainian legislation constitutes a trade secret if this caused or may have caused damage to the business entity” (Art. 16);

- “Disclosure of trade secrets is understood as an acquaintance of the third party without the permission with the authorised person of information that, according to the Ukrainian legislation, constitutes a trade secret by a person that received such information in the course of performing relevant duties, if the same caused or could cause damage to the business entity” (Art. 17);

- “Solicitation to disclose trade secret shall be understood as the persuasion of a person that was duly entrusted or became aware of information in the course of performing relevant duties that according to the Ukrainian legislation, constitutes a trade secret, to disclose such information, if the same caused or could cause damage to the business entity” (Art. 18);

- “Unlawful use of trade secrets shall be understood as an introduction into the production cycle or taking into account while planning or performing business activities of information, that according to the Ukrainian legislation, constitutes a trade secret without permission of an authorised person” (Art. 19).

Activities that are defined by the Law of Ukraine “On Protection Against Unfair Competition” as an unfair competition entail the following liabilities:

- Imposition of a fine for unfair competition (Art. 21):

A business entity that committed actions that are defined by this Law as unfair competition shall be imposed with a fine for up to five per cent of income (revenue) from sales of products (goods, works, services) of such a business entity for the last reporting year that preceded the year in which the fine is imposed.

If such income (revenue) is not existent or the defendant did not provide information about the amount of such income (revenue) at the request from the authorities, head of the territorial branch of the Antimonopoly Committee of Ukraine, the fine that is provisioned in part one of this Article shall be imposed in the amount of ten thousand non-taxable minimum incomes of citizens.

The fine shall be imposed according to provisions of parts three to seven of Article 52 of the Law of Ukraine “On Protection of Economic Competition”.

The amounts of such collected fines and late payment penalties are credited to the state budget.

- Compensation for damages (Art. 24): Persons who have suffered damages as a result of committing actions defined by this Law as unfair competition are entitled to submit a claim to the court for compensation for such damages.

- Refutation of false, inaccurate or incomplete information (Art. 26):

If the fact of defamation of a business entity had been established, the Antimonopoly Committee of Ukraine shall have the right to make a decision on the official refutation at the expense of the infringer of false, inaccurate or incomplete information distributed by the infringer within the time and in a manner defined by the legislation or such decision.

Also disclosure of information that is part of a trade secret may be subject to administrative and criminal liability.

Namely, obtaining, using, disclosing trade secrets, as well as other confidential information in order to damage the business reputation or property of another entrepreneur entails a fine of nine to eighteen non-taxable minimum incomes (Art. 164³ (3) of the Code of Ukraine on Administrative Offences).

According to Art. 231 “Illegal acquisition for the purpose of the use or the use of information that constitutes banking or trade secrets” of the Criminal Code of Ukraine intended actions aimed at obtaining information that constitutes a trade or banking secret for the purpose of disclosure or other use of this information, as well as illegal use of such information, where it has caused substantial

damage to an economic entity shall be punishable by a fine of three thousand to eight thousand tax-free minimum incomes.

Note. Public, including through the media, journalists, public associations, trade unions, report by a person on a criminal or other offence committed in compliance with the law, shall not be deemed actions stipulated by this Article, and shall not entail criminal liability.

Also according to Art. 232 “Disclosure of trade or banking secrets” of the Criminal Code of Ukraine willful disclosure of trade or banking secrets without consent of its owner, by a person who was aware of these secrets in connection with his/her professional or official activity, where it was committed for mercenary motives and caused a substantial damage to an economic entity shall be punishable by a fine of one thousand to three thousand tax-free minimum incomes or deprivation of the right to hold certain positions or engage in certain activities for up to three years.

36. What are the plans for full alignment with the EU acquis in the field of trade secrets (see Directive 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure)?

The national legislation in the field of trade secrets is mostly in line with the EU acquis.

In Ukraine there is no special Law on Trade Secrets. Main provisions on trade secrets are enshrined in the Civil Code of Ukraine (Articles 505-508 (the definition of trade secret, IPRs on trade secret, time of validity of IPRs on trade secret)) which are in line with Directive 2016/943. Trade secret is one of the objects of IPRs so the general lawful acquisition of IPRs also applies to trade secrets.

Generally according to Art. 2 of the Law of Ukraine “On Information” the core principles of information relations shall include securing the rights to information; publicity and availability of information, freedom in exchanging the information; authenticity and completeness of information; freedom to express opinions and beliefs; obtaining, using, disseminating, storing and securing the information in a lawful manner etc.

The preservation of confidentiality of trade secrets in the course of legal proceedings is regulated by the provisions of Civil, Commercial and Criminal Procedural Codes of Ukraine according to which a case shall be considered in the closed court hearing if the open court hearing may result in the disclosure of confidential or other information protected by law, there is need to protect personal and family life of a person, as well as in other cases established by law.

Also the national legislation provides for liability for unlawful acquisition, use or disclosure of trade secret, namely the Criminal Code of Ukraine (Articles 231, 232), Code of Ukraine on Administrative Offences (Art. 1643 (3)), Law of Ukraine “On Protection against Unfair Competition” (Articles 16-21, 24-26).

The specific features of enforcement of IPRs are widely determined in part IV of this Chapter.

And as of today the issue of its’ full alignment with the Directive 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure is under consideration. The proper amendments to the legislation will be developed by the Ministry of Economy of Ukraine during the year for public consultation.

IV. ENFORCEMENT AND INSTITUTIONAL CAPACITIES

37. Which area(s) of intellectual, industrial and commercial property law still require further major changes/adaptations to fully comply with the EU acquis, and for what reasons?

As of today, Ukraine has already implemented to the national legislation the provisions of EU-Ukraine Association Agreement and the acquis regarding patents, designs, semiconductors, geographical indications, collective rights management, border measures.

Our legislation on copyright and related rights and on the enforcement of intellectual property rights is mostly compatible with EU standards.

Aimed to implement all provisions of EU-Ukraine Association Agreement and the acquis in these spheres the Government of Ukraine submitted to the Parliament of Ukraine several draft laws, developed by the Ministry of Economy of Ukraine:

- Draft Law “On Copyright and Related Rights” (registration number 5552-4 dated 09.06.2021). In general, Ukrainian legislation in the field of copyright and related rights meets the requirements of EU directives in this area. Some terms and regulations need to be refined to bring it into line with the Directives 96/9/EC, 2001/29/EC, 93/83/EC, 2001/84/EC, 2009/24/EC. The Draft Law № 5552-4 is designed to correct these shortcomings. In addition to the basic EU directives in the field of copyright and related rights, Draft Law № 5552-4 takes into account Directives 2012/28// EU, 2017/1564 and some provisions of Directive 2019/790 (more widely described in Part I of this Chapter);

- Draft Law “On Amendments to the Code of Ukraine on Administrative Offences, the Criminal Code of Ukraine, and the Criminal Procedure Code of Ukraine with Regard to Liability for Infringement of Copyright and (or) Related Rights” (registration number 5643 dated 09.06.2021). This Draft Law proposes strengthening the administrative and criminal liability for copyright and related rights infringements. In particular, it envisages a new article 176¹ “Financing copyright and related rights infringements” to complement the Criminal Code of Ukraine. This article covers a liability for deliberate financing of actions related to illegal use of copyright works: (including literary, fiction works, software, databases (compilations of data), other works); and/or related rights works: (performances, phonograms, films, programs of broadcasting organizations), producing, advertising, distributing, importing with the purpose of further distribution and using tools for illegal circumvention of technical means of protection of copyright and/or related rights (including card-sharing), camcording, other deliberate infringements of copyright and related rights;

- Draft Law “On Amendments to Certain Legislative Acts of Ukraine in Respect to Strengthening the Enforcement of Intellectual Property Rights” (registration number 6464 dated 24.12.2021). This Draft Law provides in the national legislation the provisions of Directive 2004/48/EC, namely Art. 8 “Right of information” (proper amendments to the Commercial Procedural Code of Ukraine (new Art. 81¹) and to the Civil Procedural Code of Ukraine (new Art. 84¹)); Art. 12 “Alternative measures” (amendments to Art. 432 of the Civil Code of Ukraine); Art. 13 “Damages” (amendments to Articles 25, 26 of the Law of Ukraine “On Protection of Rights to

Industrial Designs”, Articles 18, 19 of the Law of Ukraine “On Protection of Rights to Marks for Goods and Services”, Art. 21 of the Law of Ukraine “On Protection of Rights to Semiconductors”, Art. 34 of the Law of Ukraine “On Protection of Rights to Inventions and Utility Models”); Art. 15 “Publication of judicial decisions” (amendments to Art. 432 of the Civil Code of Ukraine).

The official government Report on the implementation of the Association Agreement between Ukraine and the European Union 2021 refers to the level of 61% of fulfilment of obligations in the field of intellectual property.

38. Please describe which domestic institutions are competent on the enforcement of intellectual property law, and their institutional set-up. What are the tasks and powers of these bodies? Do they have the necessary institutional capacity to carry out their tasks? Do the administrative and operational enforcement authorities dispose of sufficient and sufficiently trained staff? Please explain their capacity to ensure IPR protection and provide their organization chart and the number of staff employed.

In Ukraine the system of domestic institutions which are competent on the enforcement of intellectual property law is represented by the following authorities: the National Police of Ukraine; the Bureau of Economic Security of Ukraine; the Security Service of Ukraine; the State Customs Service; the Prosecutors’ offices.

1) The National Police of Ukraine

Structure of the National Police of Ukraine:

- Central Office (Main directorate): Senior Management; The Head’s Office; Criminal Investigation Department (within Criminal Police); Migration Police Department (within Criminal Police); Criminal Intelligence and Surveillance Department (within Criminal Police); Technical Intelligence Department (within Criminal Police); CBRN Department (Chemical, Biological, Radiological and Nuclear Threats Department) (within Criminal Police); Criminal Analysis Department (within Criminal Police); Public Security Department; International Police Cooperation Department; Main Pre-Trial Proceedings Department (within the pre-trial proceedings body); Command and Coordination Department; IT Department (Information Technology Department); Legal Affairs Department; HR Department (Human Resources Department); PR Division (Public Relations Division); Finance and Accounting Department; Internal Audit Division; Property Management Department; Document Flow Department; EOD Service (Explosive Ordnance Disposal Service) (within Special Police Force); Secrecy and Data Protection Division; Human Rights Protection Division; Anti-Corruption Division; K9 Unit (Police Canine Unit); Secure Communication Unit; Pension Section; Water and Air Police Division; Pre-Trial Inquiry Division (within the pre-trial proceedings body); Operative Support Division (within Patrol Police); State and Society Protection Department (within Criminal Police); Rapid Response Corps Department “KORD” (within Special Police Force);

- Interregional territorial bodies: Patrol Police Department; Internal Investigation Department; Cyberpolice Department; Guard Police Department; Strategic Investigation Department; Counter Narcotics Department;

- Main Departments of the National Police in regions (Main Department in Kyiv, Main Department in the Autonomous Republic of Crimea and the city of Sevastopol, and Main Departments in 24 regions).

Two departments at the National Police of Ukraine are responsible for investigating cases of IPR infringements: Department for Strategic Investigation and Cyber Police Department.

The Chief of the National Police of Ukraine in coordination with the Minister of Internal Affairs of Ukraine approves the structure of the Department for Strategic Investigations.

The Chief of the National Police of Ukraine also approves the staff and budget of the Department for Strategic Investigations. As of March 30, 2022, the total number of employees of the Department of Strategic Investigations and its territorial structural (separate) units is 3,476 people.

The Unit for Combating Crimes in the Sphere of Illicit Content and Telecommunications of the Cyber Police Department of the National Police of Ukraine (with a staff of 15 certified police officers) provides operational support for criminal proceedings for IPR infringements. In addition, the Cyber Police Department of the National Police of Ukraine is an interregional territorial body, and in each region there is its separate structural unit - Office or Department for Combating Cybercrime, staffed by at least of two operational officers responsible for this direction of work.

According to the Criminal Procedural Code of Ukraine (Art. 216) investigators of the National Police shall conduct pre-trial investigation of criminal offences provided for by the Law of Ukraine on criminal liability, except for those referred to the jurisdiction of other pre-trial investigation agencies.

In accordance with paragraph 1 of Art. 216 of the Criminal Procedural Code of Ukraine, the pretrial investigation of criminal offenses under Articles 176 (Copyright and Related rights infringement), 177 (Infringement of the rights to invention, utility model, industrial design, semiconductor, a variety of plants, innovative proposals) of the Criminal Code of Ukraine shall be carried out by investigation officers of the National Police of Ukraine.

The National Police of Ukraine records the commitments of administrative offenses related to infringement of intellectual property rights by preparing appropriate protocols and opens criminal proceedings for infringement of intellectual property rights under the Criminal Code of Ukraine.

In addition to administrative and criminal measures of combating infringements of intellectual property rights, which are taken by the police officers, the Expert Service of the Ministry of Internal Affairs of Ukraine in cooperation with the state specialized forensic institutions of the Ministry of Justice of Ukraine, Ministry of Health of Ukraine, Ministry of Defense of Ukraine, Security Service of Ukraine and the State Border Guard Service of Ukraine carries out forensic activities in the field of intellectual property.

The Department of Strategic Investigations of the National Police of Ukraine detects this category of crimes within its competence in order to stop the criminal activities of leaders and members of organized groups and criminal organizations, as well as in cases of supporting criminal proceedings upon the request of an investigator.

2) The Bureau of Economic Security of Ukraine

The Law of Ukraine dated January 28, 2021, No 1150-IX "On the Bureau of Economic Security of Ukraine" defines the legal basis for the organization and activities of the Bureau of Economic Security of Ukraine.

The Economic Security Bureau of Ukraine is the central body of executive power, which is entrusted with the task of counteracting offenses that encroach on the state economy functioning. According to the defined tasks, the Economic Security Bureau of Ukraine performs law enforcement, analytical, economic, informational and other functions. The activities of the Economic Security Bureau of Ukraine are governed and coordinated by the Cabinet of Ministers of Ukraine.

The structure of the Economic Security Bureau:

- Central Office (Main directorate);

- Territorial Departments (in Vinnytsia region; in Volyn region; in Dnipropetrovsk region; in Donetsk and Luhansk regions; in Zhytomyr region; in Zakarpattia region; in Zaporizhzhia region; in Ivano-Frankivsk region, in Kyiv city and Kyiv region; in Kirovohrad region; in Lviv region; in Mykolaiv region; in Odesa region; in Poltava region; in Rivne region; in Sumy region; in Ternopil region; in Kharkiv region; in Kherson region, the Autonomous Republic of Crimea and the city of Sevastopol; in Khmelnytskyi region; in Cherkasy region; in Chernivtsi region; in Chernihiv region.

In accordance with Art. 4 of the Law "On the Bureau of Economic Security of Ukraine" the main tasks of the Economic Security Bureau of Ukraine are as follows:

- identification of risk areas in the economic sector by analyzing structured and unstructured data;

- assessment of risks and threats to the economic security of the state, development of ways to minimize and eliminate them;

- submission of proposals for amending laws and regulations on the elimination of prerequisites for the appearance of schemes of illegal activities in the economic sector;

- ensuring the economic security of the state by preventing, detecting, suppressing, investigating criminal offences that infringe on the functioning of the state's economy;

- collection and analysis of information about offences affecting the economic security of the state, and determination of ways to prevent their occurrence in the future;

- planning of measures in the field of counteraction to criminal offences referred by the law to its jurisdiction;

- identification and investigation of crimes related to the receipt and use of international technical assistance;

- drawing up analytical conclusions and recommendations for state bodies to increase the efficiency of their management decisions on the regulation of relations in the economic sector.

According to the Criminal Procedural Code of Ukraine (Art. 216 (3)) detectives of the Bureau of Economic Security of Ukraine carry out pre-trial investigation of criminal offenses, namely, under Art. 229 "Illegal use of a trade mark, registered trade name, qualified indication of origin (GI)", Art. 231 "Illegal collection for the purpose of use or use of information that constitutes banking or trade secrets", Art. 232 "Disclosure of trade or banking secrets" of the Criminal Code of Ukraine.

3) The Security Service of Ukraine

The Security Service of Ukraine is a “specially authorized state body in the field of protection of state secrets” (section 6, Article 5 of the Law of Ukraine “On State Secrets”), and issues decisions of state experts for information classified as a state secret in the form of “Summary of information constituting a state secret” (section 1, Article 12 of the said Law). According to subparagraphs 3 and 4, paragraph 1, section 4 of the specified Law of Ukraine such decisions can be made concerning objects of intellectual property, namely: the grounds and expediency of classifying information on inventions (utility models) intended for use in the areas specified in section 1 of Article 8 of this Law as a state secret; on inventions (utility models) that have dual use or are intended for use in defense, economy, science and technology, foreign relations, public security and law enforcement.

In case of such decision the protection of information from unauthorized dissemination shall be provided in the same manner as other information constituting a state secret including with the application of counterintelligence, operational and investigative and criminal procedural powers.

4) Prosecutor’s office

Procedural guidance and supervision in these proceedings is provided by the prosecutors of the district prosecutor’s offices, the relevant branch units of the regional prosecutor's offices and the Office of the Prosecutor General.

5) According to statistics, during 2021, the National Police registered 81 criminal offenses under Art. 176 Criminal Code of Ukraine. In 29 criminal offenses, notices of suspicion were handed to the suspects. Out of the whole number of registered offences, the indictments for 29 criminal offenses were forwarded to the court during the reporting period.

According to statistics, during 2021, the National Police registered 23 criminal offenses under Art. 177 Criminal Code of Ukraine. In 2 criminal offenses, notices of suspicion were handed to the suspects. Out of the whole number of registered offences, the indictments for 2 criminal offenses were forwarded to the court during the reporting period.

According to statistics, during 2021, the National Police registered 92 criminal offenses under Art. 229 Criminal Code of Ukraine. In 14 criminal offenses, notices of suspicion were handed to the suspects. Out of the whole number of registered offences, the indictments for 12 criminal offenses were forwarded to the court during the reporting period.

6) The State Customs Service

The State Customs Service, which is a central executive body implementing the state customs policy maintains customs register of intellectual property rights, which are protected in accordance with the national law, on the basis of applications from right holders.

Customs control and customs clearance of goods containing intellectual property rights, which are imported into the customs territory of Ukraine or exported from the customs territory of Ukraine, are carried out in accordance with the provisions of the Customs Code of Ukraine and other laws of Ukraine.

In particular, Art. 544 of the Customs Code of Ukraine envisages the principal tasks of customs authorities, including promoting the protection of intellectual property rights, taking measures to prevent the movement across the customs border of Ukraine of goods with infringements of legally

protected intellectual property rights, preventing the movement across the customs border of Ukraine of counterfeit goods.

The State Custom Service takes measures on prevention and detection of crimes related to manufacture and distribution of counterfeit and unsafe products on the market of Ukraine, as well as prevention and detection of crimes related to infringement of copyright and related rights in the course of reproduction, distribution of software, performance of phonograms, videograms and broadcasting programs.

2019 figures – 6875 cases of suspension of customs clearance of goods related to IPRs infringements were fixed by the Customs Authorities in 2019. However, their low efficiency was evidenced by the fact that only 1.3% of the total number of suspensions ended with the destruction of goods, drawing up reports on infringements of customs regulations (21 protocols, the amount is about 1 million USD) and returning goods received by mail to the sender.

After the amendments to the Customs Code of Ukraine in 2020, the number of suspensions decreased significantly to 1,907 cases, while the effectiveness of these measures increased by 10%. The regional offices of the State Customs Service of Ukraine conducted 1,907 suspensions of customs clearance of goods upon suspicion of IPR infringement. Upon the results of conducted suspensions 75 cases of elimination of counterfeit goods and 41 reports on infringement of customs rules under Articles 473 and 476 of the Customs Code of Ukraine were documented. In general, in 2020, regional customs offices removed counterfeit goods out of trade circulation. A reported value of these goods amounts to 5.5 million UAH (around \$196 000). The items of documented infringements included the following labelling: Puma, Nike, Adidas, Calvin Klein clothes and shoes; Chanel, Lacoste perfumery and cosmetics; NGK, Apple portable electronics; Dior, Puma, Nike, Tommy Hilfiger, Calvin Klein, Hugo Boss leather goods; Hot Wheels, L.O.L. Surprise, Lego, UEFA toys; Michael Kors wristwatches.

2021 figures – customs offices took 406 decisions on the suspension of customs clearance of goods on allegations of IP rights infringement. Upon results of the mentioned decisions, the customs offices filed 27 protocols on infringement of customs rules under Article 476 of the Customs Code of Ukraine in respect of goods with a value over 1,6 millions UAH, and over 80 cases of destruction of counterfeit products. In particular, the customs offices have destroyed following counterfeit products: Lego toys, Kodi professional nail files, L.O.L. Surprise chocolate, Apple earphones etc. Odesa Region Customs Office upon its initiative suspended customs clearance and further destruction of filters for agricultural equipment JOHN DEERE (723 items). Lviv Region Customs Office suspended customs clearance of motor oil MOTUL worth over 100k UAH. Zaporizhzhia Region Customs Office suspended tracksuits PUMA, ADIDAS, NIKE, UNDER ARMOUR worth around 70k UAH. Kyiv Region Customs Office suspended customs clearance 1050 items of wireless earphones BASEUS worth over 170k UAH etc.

7) Also the Ministry of Economy of Ukraine has determined a mechanism for preparing and submitting protocols and materials on administrative offenses by state inspectors on intellectual property issues to the bodies authorized to consider cases of administrative offenses. The relevant Order dated February 13, 2019 № 217, registered with the Ministry of Justice of Ukraine, entered into force on April 9, 2019. This Order approved the Instruction on Registration of Materials on Administrative Offenses by State Inspectors on Intellectual Property of the Ministry of Economy of Ukraine

8) The administrative and operational enforcement authorities dispose of sufficient and sufficiently trained staff. There are different kinds of training programs in which the staff participate regularly including EU, US and UK funded projects on IP.

39. Does Ukraine provide for a specific border regime preventing importation, exportation and transit of counterfeited and pirated subject matter? Please explain how the prevention of import of counterfeited goods is ensured? Does Ukraine have any legislation regarding customs enforcement of IPR?

According to Articles 84, 250 and Annex XV “Approximation of Customs Legislation” of the EU-Ukraine Association Agreement the Law of Ukraine “On Amending the Customs Code of Ukraine regarding IPR enforcement” was adopted on 17 October 2019. This Law is aimed at implementation to the national legislation of the Regulation (EU) No 608/2013 of the European Parliament and of the Council as of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003.

Link to official translation the Customs Code of Ukraine as amended by Law No. 202-IX of 17 October 2019{HYPERLINK “<https://zakon.rada.gov.ua/laws/show/en/4495-17#Text>”}.

According to Art. 4 of the Customs Code of Ukraine:

“counterfeit goods” shall mean:

a) goods that are the subjects of infringement of intellectual property rights to a trademark in Ukraine, which without permission contain a mark identical to the trademark protected in Ukraine in respect of the same type of goods, or which is so similar that it can be confused with such a trademark brand;

b) goods that are the subjects of infringement of intellectual property rights to a geographical indication in Ukraine and contain a name or term or are described by a name or term that is protected by such a geographical indication;

c) any packaging, label, sticker, brochure, instruction manual, warranty or other documents of this type, even if presented separately, which is the subject of an infringement of the intellectual property rights to a trademark or geographical indication containing the designation, name or term, identical to a trademark or geographical indication protected in Ukraine, or which are so similar that they may be confused with such a trademark or geographical indication, and that can be used in relation to the same type of goods in respect of which the trademark or geographical indication is protected in Ukraine;

“pirated goods” shall mean goods which are the subjects of infringement of copyright and/or related rights or intellectual property rights to a registered industrial design in Ukraine and which constitute or contain copies made without the consent of the holder of copyright and related rights or intellectual property rights to an industrial design or a person authorised by such a rightholder in the country of production;

“goods suspected of infringement of intellectual property rights” shall mean:

a) the goods with the features of infringement of copyright and related rights, intellectual property rights to the inventions, industrial designs, trademarks, geographical indications, species of plants, topographies of semiconductor products, the rights granted under the supplementary protection certificates for the medicinal products and crop protection agents;

b) devices, products or components, designated, produced or adapted mainly for insuring or simplifying circumvention of the technology, device or component, which in the normal mode of operation prevent or limit the actions that are not permitted by the copyright and related rights holder;

c) any form or matrix specially designated or adapted for the production of the goods that are the subjects of infringement of intellectual property rights;

Carrying out customs business, customs authorities perform the main tasks determined in Art. 544 of the Customs Code of Ukraine, namely promoting the protection of intellectual property rights, taking measures to prevent the movement across the customs border of Ukraine of goods with infringements of legally protected intellectual property rights, preventing the movement across the customs border of Ukraine of counterfeit goods.

Section XIV (Chapter 57) of the Customs Code of Ukraine is devoted to facilitation of protection of intellectual property rights while moving goods across the customs border of Ukraine, namely, Art. 397 “Procedure for customs control and customs clearance of goods containing intellectual property items”, Art. 398 “Customs register of intellectual property items”, Art. 399 “Suspension of customs clearance of goods on the basis of the customs register data”, Art. 400 “Suspension of customs clearance of goods at the initiative of the customs authority”, Art. 400¹ “Early release of goods whose customs clearance is suspended on suspicion of infringement of intellectual property rights”, Art. 401 “Destruction of goods whose customs clearance is suspended on suspicion of infringement of intellectual property rights”, Art. 401¹ “Specific aspects of suspension of customs clearance and destruction of small consignments of the goods being moved (shipped) across the customs border of Ukraine in international postal and express items”, Art. 402 “Change of marking on goods and their packing”, Art. 403 “Interaction of customs authorities with other state authorities in the field of protection of intellectual property rights”.

According to Art. 476 “Movement of goods across the customs border of Ukraine in infringement of intellectual property rights”: Importation into the customs territory of Ukraine or exportation outside this territory of goods intended for production or other business activities, in infringement of legally protected intellectual property rights – entail the imposition of a fine of one thousand non-taxable minimum incomes with the confiscation of goods moved in infringement of intellectual property rights.

Also there are two important by-laws which regulate the customs clearance and customs control procedure in Ukraine:

1) The Order of the Ministry of Finance of Ukraine dated 30.05.2012 N.648 “On Approval of the Procedure for Registration in the Customs Register of Intellectual Property Rights, Which are Protected in Accordance with the Law” as amended by the Order of the Ministry of Finance of Ukraine dated 09.06.2020 N.282;

2) The Order of the Ministry of Finance of Ukraine dated 09.06.2020 N.281 “On Approval of the Procedure for Application of Measures to Promote the Protection of Intellectual Property Rights and Interaction of Customs Authorities with Right Holders, Declarants and Other Interested Persons and Amendments to Certain Regulations of the Ministry of Finance of Ukraine”.

40. Which system of exhaustion of intellectual, industrial and commercial property rights does Ukraine apply? In particular, does Ukraine apply a system of national or international exhaustion of trademarks? Does Ukraine apply a system of national or international exhaustion of the distribution right (copyright and related rights)?

Ukraine applies a system of international exhaustion of trademarks (according to Art. 16 (6) of the Law of Ukraine “On Protection of Rights to Trademarks for Goods and Services” the exclusive rights of a certificate owner on trade mark to prohibit the use of the registered trade mark by other persons without his permission does not extend to the use of the trade mark for the goods, which have been placed on the market under this trade mark by the certificate owner or by his permission, provided that the certificate owner has no essential reasons to prohibit such a use in connection with the further sale of the goods, in particular in case when the condition of goods changed or the quality of the goods lowered after its placing on the market) and a system of national exhaustion of the distribution right regarding copyright and related rights (Art. 15 (7) and Art. 40 (3) of the Law of Ukraine “On Copyright and Related Rights”).

Regarding patents and designs it should be mentioned that:

1) according to the Law of Ukraine “On Protection of Rights to Inventions and Utility Models” (Art. 31):

“The introduction of a product that has been manufactured with the use of the patented invention (utility model) into the commercial circuit by any person, which has obtained a product without infringement of the patent owner rights, shall not be considered to be the infringement of rights deriving from a patent.

The product manufactured with the use of the patented invention (utility model) shall be considered to be obtained without the infringement of the patent owner rights provided that this product has been manufactured by the patent owner and (or) after manufacturing has been introduced into the commercial circuit by the patent owner or other person according to the special permission (license) of the patent owner.

The use of an invention (utility model) with the commercial purpose by any person, which has obtained a product manufactured with the use of the patented invention (utility model), but could not know that this product has been manufactured or introduced into the commercial circuit with the infringement of the rights granted by the patent, shall not be considered to be the infringement of rights deriving from a patent. Meanwhile, after receiving the relevant notification from the owner of rights, the said person shall terminate the use of a product or pay the relevant compensation to the owner of rights. The amount of the said compensation shall be determined according to laws or by an agreement between the parties. The court shall resolve any disputes on the amounts and the procedure of paying compensation;

2) according to the Law of Ukraine “On Protection of Rights to Industrial Designs” (Art. 22) “the introduction of a product that has been manufactured with the use of registered design into the commercial circuit, after the introduction of this product into the commercial circuit by the owner of the design or other person according to the special permission (license) of the owner, shall not be considered to be the infringement of the rights to the design”.

41. Does Ukraine provide for an effective system of enforcement of intellectual property rights (both copyright and related rights and industrial property rights) to combat piracy and counterfeiting? If yes, is it fully compatible with Directive 2004/48/EC on the enforcement of intellectual property rights?

In Ukraine the system of enforcement of IPRs (incl. to combat piracy and counterfeiting) is mostly in line with Directive 2004/48/EC. And currently we are planning to modify it in fully line with the EU standards.

In part of economic and civil protection of intellectual property rights, it is implemented on the basis of the provisions of the Civil Code of Ukraine, as well as special laws in the field of IP, and in practice prevails over all other ways of protecting IP right. Also the procedural aspects are determined in the Civil Procedural and Commercial Procedural Codes of Ukraine. General provisions are set up in the Civil Code of Ukraine, namely in Art. 432 “Protection of the intellectual property right by court”:

“1. Everyone has the right to address to court for protection of the right intellectual property in accordance with Article 16 of this Code.

2. The court may decide in the cases and in the manner prescribed by law decisions, in particular, on:

1) application of immediate measures to prevent infringements of the law intellectual property and preservation of relevant evidence;

2) suspension of the passage through the customs border of Ukraine of goods, imports or which are exported in infringement of intellectual property rights;

3) withdrawal from civil circulation of goods manufactured or introduced into civil turnover in infringement of intellectual property rights and destruction of such goods;

4) seizure from civil circulation of materials and tools that were used mainly for the manufacture of goods in infringement of intellectual property rights or seizure and destruction of such materials and tools;

5) application of a one-time monetary penalty instead of compensation for damages for illegal use of the object of intellectual property rights. The amount of the penalty is determined in accordance with the law, taking into account the guilt of the person and other significant circumstances;

6) publication in the media of information about the infringement of intellectual property rights and the content of the court decision on such infringement.

Civil Law Remedies for the Protection of Copyright and Related Rights are determined in Art. 52 of the Law of Ukraine “On Copyright and Related Rights”. And the procedure for termination of infringements of copyright and/or related rights using the Internet (“notice and takedown”) is regulated by Art. 52¹ of this Law (Link to official translation of the Law of Ukraine “On Copyright and Related Rights” - <https://zakon.rada.gov.ua/laws/show/en/3792-12#n522>).

Also on 23.12.2021 the Cabinet of Ministers of Ukraine approved and submitted to the Parliament of Ukraine a draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine in Respect to Strengthening the Enforcement of Intellectual Property Rights” (registration number 6464 dated 24.12.2021). The mentioned draft Law was developed by the Ministry of Economy with the aim to improve the national legislation in terms of general obligations, civil measures, procedures and means of enforcement of IP rights according to the EU-Ukraine Association Agreement and to fully compatible with Directive 2004/48/EC.

The provisions of the draft Law aim to, in particular, prevent the distribution of goods produced in infringement of IP rights (pirated and counterfeit products) through marketing channels. The draft Law proposes amending the Civil Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Commercial Procedure of Ukraine, Law of Ukraine “On Protection of Rights to Industrial Designs”, Law of Ukraine “On Protection of Rights to Marks for Goods and Services”, Law of Ukraine “On Protection of Rights to Inventions and Utility Models”, Law of Ukraine “On Protection of Rights to Semiconductors”.

The Draft Law No 6464 provides in the national legislation the provisions of Directive 2004/48/EC, namely Art. 8 “Right of information” (proper amendments to the Commercial Procedural Code of Ukraine (new Art. 81¹) and to the Civil Procedural Code of Ukraine (new Art. 84¹)); Art. 12 “Alternative measures” (amendments to Art. 432 of the Civil Code of Ukraine); Art. 13 “Damages” (amendments to Articles 25, 26 of the Law of Ukraine “On Protection of Rights to Industrial Designs”, Articles 18, 19 of the Law of Ukraine “On Protection of Rights to Marks for Goods and Services”, Art. 21 of the Law of Ukraine “On Protection of Rights to Semiconductors”, Art. 34 of the Law of Ukraine “On Protection of Rights to Inventions and Utility Models”); Art. 15 “Publication of judicial decisions” (amendments to Art. 432 of the Civil Code of Ukraine).

The adoption of the mentioned draft Law will ensure the improvement of mechanisms of enforcement of IP rights in judicial proceedings, in particular, with regard to feasibility of application of relevant measures (injunctions) against persons whose services are used in case of infringement of IP rights, that would prevent the distribution of pirated and counterfeit products through the networks of “inter-agents”.

The Ukrainian Parliament registered two draft Laws developed by the Ministry of Economy of Ukraine “On Copyright and Related Rights” (registration number 5552-4 dated 09.06.2021) and “On Amendments to the Code of Ukraine on Administrative Offences, the Criminal Code of Ukraine, and the Criminal Procedure Code of Ukraine with Regard to Liability for Infringement of Copyright and (or) Related Rights” (registration number 5643 dated 09.06.2021). The bills aim to strengthen administrative and criminal liability for infringement of copyright and related rights.

The draft Law No 5552-4 proposes, in particular, to improve the procedure of “notice and take-down” of pirated content:

- a claim of a infringement may be filed through an advocate or a patent attorney;
- the procedure is suggested to be applied in respect to all copyright and related rights works, and not only audiovisual, musical works, software, videograms, phonograms, programmes of broadcasting organizations as it is envisaged by current legislation;
- the National Police is envisaged to be empowered along with the state IP inspectors of the Ministry of Economy in relation to drafting protocols on administrative offences against persons who do not follow the procedure of "notice and take-down".

The draft Law No 5552-4 also proposes categorizing the following actions as those creating risks for copyright and (or) related rights infringements:

- distribution, importation into the customs territory of Ukraine of technical devices, equipment which includes software and provides access for the users to copyright and/or related rights without a permission of copyright and/or related rights subjects (including the cases when software, its applications, technologies or technical devices use signals of other Internet resources);

- settings of software, its applications, technologies, technical devices which provide access to copyright and/or related rights works without a permission of copyright and/or related rights subjects (including the cases when software, its applications, technologies or technical devices use signals of other Internet resources);

- providing instructions on settings of software, its applications, technologies, technical devices with the purpose of obtaining access to copyright and/or related rights works without a permission of copyright and/or related rights subjects in any form aiming to receive remuneration from providing such instructions.

The draft Law No 5552-4 envisages a liability for placement in the Internet of hyperlinks to copyright and related rights works based on the practices of the European Court of Justice.

The Draft Law No 5643 proposes strengthening the administrative and criminal liability for copyright and related rights infringements. In particular, it envisages a new article 176¹ “Financing copyright and related rights infringements” to complement the Criminal Code of Ukraine. This article covers a liability for deliberate financing of actions related to illegal use of copyright works: (including literary, fiction works, software, databases (compilations of data), other works); and/or related rights works: (performances, phonograms, films, programs of broadcasting organizations), producing, advertising, distributing, importing with the purpose of further distribution and using tools for illegal circumvention of technical means of protection of copyright and/or related rights (including card-sharing), camcording, other deliberate infringements of copyright and related rights.

42. Are there specialised courts or tribunals to hear intellectual or industrial and commercial property cases? Is there litigation on intellectual / industrial property litigated matters in Ukraine?

In Ukraine, the system of litigation for the protection of intellectual property rights is built on the principle of specialization. The principle of specialization is provided by the Constitution of Ukraine (Art. 125) and the Law of Ukraine “On the Judiciary and the Status of Judges” (Articles 17, 18). The specialization provides additional guarantees of fair justice and also serves as a mean of improving the quality of justice and the efficiency of the judicial system.

The system of judicial protection of intellectual property rights consists of local courts, courts of appeal and the Supreme Court. At the same time, the courts within their jurisdiction decide cases related to copyrighted artistic and literary property, as well as industrial property.

Currently the system of courts having jurisdiction over IP cases have both common courts (civil jurisdiction) and commercial courts (commercial jurisdiction). The delimitation of jurisdictions is mostly parties-based.

Civil IP cases (involving at least one private individual not being registered as a sole entrepreneur as a claimant or respondent) are under jurisdiction of the common courts:

- District courts as courts of first instance;
- Courts of appeals;
- Supreme Court (its Civil Cassation Court having no specialized chamber and its Grand Chamber in limited cases, e.g. conflict of jurisdiction, necessity of unification of court practice of different courts of cassation, cases having fundamental importance for the development of the law).

Commercial IP cases (mainly those in which only legal entities and sole entrepreneurs participate) are under the jurisdiction of commercial courts:

- Local commercial courts in regions (first instance);
- Commercial courts of appeals having jurisdiction over several regions;
- Supreme Court (its Commercial Cassation Court having the chamber specialized in IP matters and its Grand Chamber).

In cases specified by law, as well as by relevant court judge assembly decision specialization of judges to consider specific categories of cases (part two of Art. 18 of the Law of Ukraine "On Judiciary and Status of Judges") may be introduced. A separate Chamber for cases on intellectual property rights protection, as well as related to antitrust and competition law has been set up in the Supreme Court (directly in the Commercial Court of Cassation within the Supreme Court) to comply with the mandatory requirement of part 6 Art. 37 of the named Law. Relevant specializations for the protection of intellectual property rights are also introduced, if necessary, by decisions of judge assemblies in local and appeal courts.

The Law of Ukraine "On the Judicial System and Status of Judges" as of 02.06.2016 provides for the establishment of High IP Court. This will positively affect the quality of litigation on intellectual property issues and significantly shorten their consideration, and also shall avoid diverse law enforcement practice and unify the judicial practice. On September 29, 2017 the President of Ukraine issued the Decree "On Establishment of the High Court on Intellectual Property". As of today, the personal composition of the court is in process.

The functioning of the High IP Court under Art. 125 of the Constitution of Ukraine is determined by the Decree of the President of Ukraine of September 29, 2017 No 299/2017, Articles 3, 20, 24, subparagraph 15 of paragraph 1 of Section XI "Transitional Provisions" of the Commercial Procedural Code of Ukraine, Art. 31 of the Law of Ukraine "On the Judiciary and the Status of Judges".

After the judicial reform enters its further stage, when the High Court for Intellectual Property (the 'HCIP') starts functioning, IP cases will be subjected to the jurisdiction of the HCIP as the court of first instance. The court will be located in Kyiv and it will consist of twenty-one judges.

The new court will focus not only on industrial facilities cases, but also on other disputes over intellectual property rights, regardless of the subject of the parties. The expediency of concentrating the consideration of all cases related to the protection of intellectual property rights in one court is obvious. Due to the peculiarities of the specialized court, the efficiency, economy and flexibility of the procedure on cases consideration is ensured.

The jurisdiction of the HCIP is defined in the Code of Commercial Procedures (the ‘CCP’) new version of which was adopted on October 3, 2017 and entered into force on December 15, 2017 except for some provisions including those related to jurisdiction of the HCIP, they will enter into force when the HCIP starts working.

Article 20(2) of the CCP lists the following matters to be subjected to jurisdiction of the HCIP as soon as it officially starts functioning (the delimitation of jurisdictions is based on the subject matter criterion):

- Intellectual property rights to inventions, utility models, industrial designs, trademarks, business names and other IP rights, including the right of prior use;
- Registration and keeping records of IP rights, the invalidation, prolongation and early termination of patents, certificates and other acts certifying IP rights or infringing such rights or lawful interests associated with them;
- Deciding whether a trademark is well-known;
- Copyright and related rights, including disputes concerning the collective management of copyright and related rights;
- Concluding, amending, terminating and executing agreements for IP rights management and franchising agreements; and
- Protection against unfair competition such as unlawful usage of a trademark or a product by another manufacturer; copying the outer appearance of a product; collecting, disclosing and using commercial secrets; judicial review of the decisions by the Antimonopoly Committee of Ukraine in the abovementioned cases.

The hierarchy of courts having jurisdiction over IP cases is going to be the following: HCIP as the court of first instance; Appeal chamber within the HCIP; Supreme Court as the court of cassation (specialized chamber in IP cases).

Thus, the High IP Court will act as a court of first and appeal instances. It is assumed that chambers may be established within the High IP Court to adjudicate certain categories of first instance cases. The cassation proceedings will be provided by the Supreme Court in cases and in the manner prescribed by procedural law.

Also on December 29, 2021, the draft Law of Ukraine “On the Supreme Court of Intellectual Property” was registered in the Verkhovna Rada of Ukraine under No 6487. This Draft Law provides additional requirements on the qualification of Judges of the High IP Court. These requirements are related to the experience of applying intellectual property law. Qualification requirements for judges of first and appellate instances will be differentiated.

Regarding the competition for vacant positions of a judge of the High IP Court it should be mentioned that by the decision of the High Qualification Commission of Judges of Ukraine (hereinafter - HQCJU) of September 30, 2017, the competition for 21 vacant positions of a judge of the HCIP was announced, in which judges, lawyers and patent attorneys have the right to participate. By the HQCJU decision of October 05, 2018, the competition for 9 vacant positions of judges of the Chamber of Appeal of the High Court on Intellectual Property was announced.

As of today, the competition to the HCIP has been unfinished, as on November 7, 2019, due to adoption of the Law of Ukraine “On making amendments to the Law of Ukraine “On the Judiciary

and the Status of Judges” and certain laws of Ukraine concerning the activity of judicial governance bodies” of October 16, 2019, No. 193-IX the powers of all the HQCJU composition have been terminated at the same time.

On August 5, 2021, the Law of Ukraine “On making amendments to the Law of Ukraine “On the Judiciary and the Status of Judges” and certain laws of Ukraine regarding the restoration of work of the High Qualification Commission of Judges of Ukraine” (hereinafter – Law of Ukraine No. 1629-IX) entered into force. Art. 95 of the Law of Ukraine “On the Judiciary and the Status of Judges” (in wording of the Law of Ukraine No. 1629-IX) provides that the appointment to the position of the HQCJU member is carried out by the High Council of Justice by the results of the competition in order, determined by this Law, for a term of four years. Art. 95¹ of the Law of Ukraine “On the Judiciary and the Status of Judges” (in wording of the Law of Ukraine No. 1629-IX) provides that for holding a competition for the position of HQCJU member and forming the list of candidates to the position of the HQCJU member who comply with criteria of integrity and professional competence, the Selection Commission should be formed as a subsidiary body of the High Council of Justice.

Part nineteen of Art. 95¹ of the Law of Ukraine “On the Judiciary and the Status of Judges” (in wording of the Law of Ukraine No. 1629-IX) determines that the secretariat of the High Council of Justice carries out organizational and material and technical provision of the Selection Commission. On September 17, 2021, by the order of the Acting Chairman of the High Council of Justice Hryshchuk V.K. No. 51/0/1-21 “On the first composition of the Selection Commission” members of the first composition of the Selection Commission for holding a competition for filling position of HQCJU member were appointed. On October 26, 2021, pursuing the requirements of the Law of Ukraine “On the Judiciary and the Status of Judges” (in wording of the Law of Ukraine No. 1629-IX), the High Council of Justice by its decision No. 2124/0/15-21 approved amends to the Rules of Procedure of the High Council of Justice in the part of consideration by the Council of issues connected to holding a competition on filling position of a HQCJU member, appointment and dismissal from positions of HQCJU members. On October 28, 2021, pursuing the requirements of the Law of Ukraine “On the Judiciary and the Status of Judges” (in wording of the Law of Ukraine No. 1629-IX), the High Council of Justice by its decision No. 2124/0/15-21 approved amends to the Regulation on automated system of cases distribution (determining a member of the High Council of Justice – rapporteur). To the request of the Selection Commission, the High Council of Justice and the HQCJU on December 31, 2021, signed an agreement on the lease of part of the building of the HQCJU for the Selection Commission, assistants and translators, as well as authorized staff of the secretariat of the High Council of Justice, which will provide organizational assistance to members of the Selection Commission.

On January 21 and January 24, 2022, the first and second official meetings of the first composition of the Selection Commission were held. During the first meeting, the leadership of the Selection Commission was elected, and also documents that determine holding a competition were approved, namely the Rules of Procedure of the Commission, the Regulation on holding a competition, the Methodology of assessment of compliance of candidates with criteria of integrity and professional competence, forms of an application of a person willing to be appointed as an HQCJU member together with annexes and the announcement on the beginning of the first competition on filling vacant positions of HQCJU members.

On January 26, 2022, the Announcement of the beginning of the first competition for filling vacant positions of HQCJU members was published in “Holos Ukrainy” newspaper. According to the text of the Announcement, persons who are willing to participate in the competition shall file documents starting from February 4, 2022, till March 4, 2022. A section dedicated to the activity of the Selection Commission was created on the official website of the High Council of Justice.

On February 24, 2022, the Verkhovna Rada of Ukraine adopted the Law of Ukraine No. 2102-IX “On approval of the Decree of the President of Ukraine “On implementation of martial law in Ukraine” by which approved the Decree of the President of Ukraine of February 24, 2022, No. 64/2022 “On implementation of martial law in Ukraine” due to the military aggression of the Russian Federation against Ukraine.

On March 11, 2022, the High Council of Justice received a letter on temporary suspension of the work of the Selection Commission on selection members of the High Qualification Commission of Judges of Ukraine, dated February 24, 2022. The Commission informs that candidates will have the possibility to file applications and participate in the competition when the Commission announces this.

Therefore, when the High IP Court starts functioning, this Court will act as a court of first and appeal instances (High IP Court as the court of first instance, Appeal chamber within the High IP Court as appeal instance) for all civil and commercial IP cases, Supreme Court will continue functioning as the court of cassation (specialized chamber in IP cases). The jurisdiction of the High IP Court is defined in the abovementioned Art. 20 (2) of the Code of Commercial Procedures of Ukraine. Furthermore, the functioning of the High IP Court will be in line with the Art. 123 (1) of the Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark.

Ukraine aims to build a judicial system that would guarantee the fastest and most efficient resolution of intellectual property disputes. This is fundamentally important for the stability of society and the investment attractiveness of the state.

43. In which cases is it possible to obtain provisional and precautionary measures?

Precautionary measures should be taken in cases on intellectual property rights protection to prevent infringements of intellectual property rights and to preserve evidence of such infringement.

According to the second part of Art. 432 of the Civil Code of Ukraine, the court in cases and in the manner prescribed by law, may decide, in particular, on:

- 1) application of immediate measures to prevent infringement of intellectual property rights and preservation of relevant evidence;
- 2) suspension of the passage through the customs border of Ukraine of goods, the import or export of which is carried out in infringement of intellectual property rights;
- 3) withdrawal from civil circulation of goods manufactured or put into civil circulation in infringement of intellectual property rights and destruction of such goods;
- 4) seizure from civil circulation of materials and tools that were used mainly for the manufacture of goods in infringement of intellectual property rights or seizure and destruction of such materials and tools;

5) application of a one-time monetary penalty instead of compensation for damages for illegal use of the object of intellectual property rights. The amount of the penalty is determined in accordance with the law, taking into account the guilt of the person and other significant circumstances;

6) publication in the media of information about the infringement of intellectual property rights and the content of the court decision on such infringement.

Requirements for the application of precautionary measures at the border in case of infringement of intellectual property rights are defined by the Customs Code of Ukraine, in particular Art. 399 of this Code.

At the same time, Ukraine is working on further implementation of the provisions of the Association Agreement between Ukraine and the European Union and Directive 2004/48 / EC of the European Parliament and Council of the European Union of 29 April 2004 on protection of intellectual property rights, in particular with regard to implementation of standards securing a claim for infringement of intellectual property rights.

In many cases, enforcement measures may be the only effective means of protecting the interests of intellectual property owners.

Chapter 10 of the Commercial Procedural Code of Ukraine, Chapter 10 of the Civil Procedural Code of Ukraine and Art. 117 of the Code of Administrative Procedures of Ukraine allow securing a claim both before filing and at any stage of the court proceeding, if failure to take such measures may make much more difficult or impossible effective protection or restoration of the infringed or disputed rights and interests of the plaintiff, for the protection of which he has applied or intends to go to court.

According to the legal position set out in the decision of the Constitutional Court of Ukraine of 31 May 2011 №4-rp / 2011, the institute of securing a claim is provided for in the procedural laws of Ukraine in order to guarantee the execution of a court decision in case of satisfaction of claims. This institute is an element of the right to judicial protection and is aimed at preventing the irreversibility of certain consequences of the relevant actions to restore the infringed right. It is included in the mechanism of protection of human rights and freedoms, in particular in court, and is a guarantee of their protection and restoration, and therefore an element of justice. Securing a lawsuit applies to all stages of court proceedings (preparation, appointment, consideration of the case) and is part of a set of measures aimed at protecting public-legal and substantive-legal interests in litigation, as well as one of the guarantees of real implementation of a possible positive decision. Securing the claim is aimed at preventing situations where failure to take such measures may significantly complicate or impede the execution of a court decision.

In accordance with Art. 137 of the Commercial Procedural Code of Ukraine, Art. 150 of the Civil Procedure Code of Ukraine, the claim is secured, including:

- seizure of property and (or) funds belonging to or subject to transfer or payment to the defendant and held by him or other persons;
- prohibition of the defendant to perform certain actions;
- a prohibition on other persons to take action on the subject matter of the dispute or to make payments, or to transfer property to the defendant, or to perform other obligations in respect of him;
- suspension of the property sale, if a lawsuit is filed to recognize the ownership of this property, or to exclude it from the description and to lift the seizure from it;

- suspension of customs clearance of goods or objects containing intellectual property;
- other measures in cases provided by law, as well as international agreements, the binding nature of which has been approved by the Verkhovna Rada (Parliament) of Ukraine.

Procedural laws establish a list of restrictions on the application of measures to secure the claim. Thus, in accordance with the provisions of the Civil Procedural and Commercial Procedural Codes of Ukraine, it is not allowed to take measures to secure the claim, which are identical in content to satisfaction of the stated claim, unless the dispute is resolved on the merits.

To protect the interests of the defendant, Art. 141 of the Commercial Procedural Code of Ukraine and Art. 154 of the Civil Procedural Code of Ukraine provide for counter-security. The court may require the person who filed the claim to provide compensation for the defendant's damages that may be caused by securing the claim.

Procedural laws also address the issue of providing evidence. Ways of providing evidence by the court are interrogation of witnesses, appointment of examination, retrieval and (or) examination of evidence, including at their location, prohibition to take certain actions on evidence and obligation to take certain actions on evidence.

44. What are the possibilities for the right holder to obtain damages from the infringing party?

According to Art. 432 (1) of the Civil Code of Ukraine everyone has the right to address to court for protection of the intellectual property rights in accordance with Article 16 of this Code (in particular, compensation for damages and other methods of compensation for property damage (Art. 16 (2(8) of this Code), compensation for moral (non-pecuniary) damage (Art. 16 (2(9)) of this Code).

According to Art. 22 "Compensation for damages and other methods of compensation for property damage" of the Civil Code of Ukraine person to whom losses (damages) as a result of infringement of its civil law are caused has the right to their compensation. Damages are:

- 1) damages which person suffered in connection with destruction or damage of thing, and also expenses which person made or shall make for recovery of the infringed right (real damages);
- 2) the income which person could receive really under regular circumstances if its right was not infringed (lost profit).

Damages are paid in full if the agreement or the law do not provide compensation in smaller or bigger size. If person who infringed the right received with respect thereto the income, then the size of lost profit which shall be compensated to person whose right is infringed there cannot be less income, gained by person who infringed the right.

Upon the demand of person to whom harm is done and according to the facts of the case property harm can be compensated and in a different way, in particular, damage caused to property can be compensated in nature (transfer of thing of the same sort and the same quality, correction of the damaged thing, etc.) if other is not established by the law.

According to Art. 23 “Compensation for moral damage (harm)” of the Civil Code of Ukraine person has the right to compensation of the moral harm done as a result of infringement of its rights. Moral harm is:

- in physical pain and sufferings which an individual underwent in connection with injury or other damage of health;
- in mental sufferings which an individual underwent in connection with illegal behavior towards himself, members of his family or close relatives;
- in mental sufferings which an individual underwent in connection with destruction or damage of his property;
- in humiliation of honor and dignity of an individual, as well as business reputation of a natural person or legal entity.

Unless otherwise provided by law, non-pecuniary damage shall be compensated in cash, other property or in another way.

The amount of monetary compensation for non-pecuniary damage is determined by the court depending on the nature of the offense, the depth of physical and mental suffering, impairment of the victim or deprivation of their ability to realize them, the degree of guilt of the person who caused non-pecuniary damage. which are essential. In determining the amount of compensation takes into account the requirements of reasonableness and fairness.

Non-pecuniary damage shall be compensated regardless of the property damage that is subject to compensation and is not related to the amount of such compensation. Non-pecuniary damage shall be reimbursed once, unless otherwise provided by contract or law.

Also according to Art. 432 (2(5)) of the Civil Code of Ukraine the court may decide in the cases and in the manner prescribed by law decisions, in particular, on application of a one-time monetary penalty instead of compensation for damages for illegal use of the object of intellectual property rights. The amount of the penalty is determined in accordance with the law, taking into account the guilt of the person and other significant circumstances.

The protection of IPRs by the right holders shall be implemented in compliance with the procedure prescribed by administrative, civil and criminal legislation.

In the sphere of industrial property (patents (inventions and utility models), designs, trade marks, geographical indications, semiconductors) the protection of IPRs is provided in the court and another procedure determined by legislation. The jurisdiction of courts covers all legal relations arising in connection with the application of the law. Courts, in accordance with their competence, shall resolve, in particular, disputes about compensation (Art. 34-35 of the Law of Ukraine “On Protection of Rights to Inventions and Utility Models”, Art. 26-27 of the Law of Ukraine “On Protection of Rights to Industrial Designs”, Art. 20-21 of the Law of Ukraine “On Protection of Rights to Marks for Goods and Services”, Art. 23, 25 of the Law of Ukraine “On Legal Protection of Geographical Indications”, Art. 21-22 of the Law of Ukraine “On Protection of Rights to Semiconductors”).

In the sphere of copyright and related rights:

According to Art. 52 of the Law of Ukraine “On Copyright and Related Rights” in the case of infringement by any person of the copyright and/or related rights persons holding copyright and/or related rights shall have the right:

- to require the recognition and renewal of their rights including to prohibit actions that constitute infringements of copyright and/or related rights, or create a threat of such infringement;

- to lodge claims with a court of law requiring renewal of the infringed rights and/or the termination of actions infringing copyright and/or related rights or posing a threat of their infringement;

- to lodge claims to the court requiring reimbursement of moral (non-proprietary) losses;

- to lodge claims to the court requiring reimbursement of losses (material damage), including lost profit, or collection of the income derived by the infringer as a result of his/her infringement of copyright and/or related rights, or payment of compensation;

- to require the termination of preparations for an infringement of copyright and/or related rights, including the suspension of customs procedures, if there is a suspicion that counterfeit copies of works, phonograms, videograms or means of circumvention might be allowed into or from the customs territory of Ukraine, in compliance with the procedure stipulated in the Customs Code of Ukraine;

- to participate in the inspection of production premises, storage facilities, technological processes and business operations relating to the production of copies of works, phonograms and videograms with respect to which there are grounds to suspect infringement or threat of infringement of copyright and/or related rights, in compliance with the procedure established by the Cabinet of Ministers of Ukraine;

- to require, including by court action, the publication in mass media of information about infringements of copyright and/or related rights and of court judgments with respect to such infringements;

- to require the provision, by the persons infringing the claimant's copyright and/or related rights, of information about third parties involved in the production and distribution of counterfeit copies of works and objects of related rights or means of circumvention, and the relevant distribution channels;

- to protect copyright and (or) related rights in order established by Art. 52-1 of this Law (notice-and-takedown procedure);

- to require taking of other measures envisioned by legislation, concerning the protection of copyright and related rights.

A court of law shall have the right to issue a resolution or award concerning:

- a) the reimbursement of moral (non-proprietary) damages resulting from an infringement of copyright and/or related rights, specifying the amount of the reimbursement;

- b) the reimbursement of damages resulting from an infringement of copyright and/or related rights;

- c) the collection from the infringer of copyright and/or related rights, of income derived from the infringement;

d) payment of compensation determined by the court as a lump sum on the basis of such elements as doubled, and in case of intentional infringement - as a triple amount of remuneration or commissions that would have been paid if the offender applied for permission to use the disputed copyright or related rights instead of indemnity or revenue collection;

e) a ban on the publication of works, performance or staging thereof, the issuance of copies of phonograms, videograms, transmission thereof; termination of distribution thereof; seizure (confiscation) of counterfeit copies of works, phonograms, videograms or broadcast programs, as well as of equipment and materials for the production and reproduction thereof; publication in the press of the information about the infringement, etc., if, in the course of court proceedings, the fact of copyright and/or related rights infringement, or the fact of actions posing a threat of infringement of these rights, is proven;

f) to require the provision, by the persons infringing the claimant's copyright and/or related rights, of information about third parties involved in the production and distribution of counterfeit copies of works and objects of related rights, or means of circumvention, and the relevant distribution channels.

When determining damages to be reimbursed to a person whose rights have been infringed, and when reimbursing moral (non-proprietary) damages, a court shall proceed from the merits of an infringement, the proprietary and moral damages suffered by the person holding the copyright and/or related rights, and the estimated income that could have been derived by this person. The damages suffered by a person whose rights have been infringed may also include this person's court expenses and legal fees (lawyers, attorneys, etc.).

When determining compensation to be paid in lieu of damage reimbursement or income collection, the court shall determine, within the scope stipulated in clause "d" of this Part of the Article, a specific compensation amount, taking into account the extent of the infringement and/or the defendant's intentions.

A court may resolve to impose upon an infringer a fine at the rate of 10 percent of the amount awarded to the claimant by the court. Fine amounts shall be remitted to the State budget of Ukraine in compliance with the established procedure.

A court may resolve to seize or confiscate all counterfeit copies of works, phonograms, and videograms or broadcast programs with respect to which it has been established that such were produced or distributed in contravention of copyright and/or related rights, as well as means of circumvention. This shall also apply to all cliches, matrices, moulds, originals, magnetic tapes, photo negatives and other items used for the reproduction of copies of works, phonograms, videograms, broadcast programs or means of circumvention, as well as the materials and equipment used for reproduction thereof and for the production of means of circumvention.

Pursuant to a court decision, counterfeit copies of works (including computer software and databases), phonograms, videograms and broadcast programs that have been seized, may be transferred to the copyright and/or related rights holder whose rights have been infringed, at the holder's request. If this person does not request the transfer, the counterfeit copies shall be destroyed, and the materials and equipment used for the reproduction of the counterfeit copies shall be alienated and the relevant proceeds remitted to the State budget of Ukraine.

45. Are infringements of intellectual property rights (both copyright and related rights and industrial property rights) covered by criminal law provisions? Are infringements of intellectual property rights covered by administrative law provisions? Does the legal framework properly tackle the issue of intellectual property infringements over the Internet? Are these infringements covered by specific legal provisions (civil, administrative or criminal)? Is there the possibility to obtain provisional and/or permanent injunction orders against intermediaries, including online intermediaries such as internet service providers.

Yes, according to the Criminal Code of Ukraine:

1) “Article 176. Infringement of copyright and related rights

1. Illegal reproduction or distribution of scientific, literary, or art works, computer software or databases, and also illegal reproduction, distribution of performances, phonograms, videograms and broadcast programmes, making their illegal copies and distribution on audio and video tapes, disks, other media, camcording, cardsharing or other infringement of copyright and allied rights, where such actions caused a substantial pecuniary damage -

shall be punishable by a fine of two hundred to one thousand tax-free minimum incomes, or correctional labour for a term of up to two years, or imprisonment for the same term.

2. The same actions, where repeated or committed by a group of persons upon their prior conspiracy, or where they have caused heavy pecuniary damage -

shall be punishable by a fine of one thousand to two thousand tax-free minimum incomes, or correctional labour for a term of up to two years, or imprisonment for a term of two to five years.

3. Any such actions as provided for by parts 1 or 2 of this Article, where committed by an official through abuse of office or by an organised group of persons, or where they caused a particularly heavy pecuniary damage -

shall be punishable by a fine of two thousand to three thousand tax-free minimum incomes or imprisonment for a term of three to six years, with or without the deprivation of the right to hold certain positions or engage in certain activities for up to three years.

Note. Under Articles 176 and 177 hereof, a pecuniary damage shall be deemed as substantial, where its amount equals or exceeds twenty tax-free minimum incomes; pecuniary damage shall be deemed heavy where its amount equals or exceeds two hundred tax-free minimum incomes; pecuniary damage shall be deemed especially heavy where its amount equals or exceeds one thousand tax-free minimum incomes”.

2) “Art. 177. Infringement of the rights to invention, utility model, industrial design, topography of microelectronic integrated circuits, a variety of plants, innovative proposals

1. Illegal use of an invention, utility model, industrial design, topography of microelectronic integrated circuits, a variety of plants, innovative proposals, usurpation of authorship, or infringement of other rights related to these objects, where such actions caused a substantial pecuniary damage -

shall be punishable by a fine of two hundred to one thousand tax-free minimum incomes, or correctional labour for a term of up to two years, or imprisonment for the same term.

2. The same actions, where repeated or committed by a group of persons upon their prior conspiracy, or where they have caused heavy pecuniary damage -

shall be punishable by a fine of one thousand to two thousand tax-free minimum incomes, or correctional labour for a term of up to two years, or imprisonment for a term of two to five years.

3. Any such actions as provided for by parts 1 or 2 of this Article, where committed by an official through abuse of office or by an organised group of persons, or where they caused a particularly heavy pecuniary damage -

shall be punishable by a fine of two thousand to three thousand tax-free minimum incomes or imprisonment for a term of three to six years, with or without the deprivation of the right to hold certain positions or engage in certain activities for up to three years”

3) “Article 229. Illegal use of a trade mark, registered trade name, qualified indication of origin (GI)

1. Illegal use of a trade or service mark, registered trade name, qualified indication of origin, or any other intended infringement of the rights to these objects, and where this caused a substantial pecuniary damage -

shall be punishable by a fine of one to four thousand tax-free minimum incomes.

2. The same actions, where repeated or committed by a group of persons upon their prior conspiracy, or where they have caused heavy pecuniary damage -

shall be punishable by a fine of three to ten thousand tax-free minimum incomes.

3. Any such actions as provided for by parts 1 or 2 of this Article, where committed by an official through abuse of office or by an organised group of persons, or where they caused a particularly heavy pecuniary damage -

shall be punishable by a fine of ten thousand to fifteen thousand tax-free minimum incomes of citizens with or without deprivation of the right to hold certain positions or engage in certain activities for up to three years.

Note. A pecuniary damage shall be deemed substantial, where its amount equals or exceeds twenty tax-free minimum incomes; heavy pecuniary damage shall mean the amount that equals or exceeds two hundred tax-free minimum incomes; particularly heavy pecuniary damage shall mean the amount that equals or exceeds one thousand tax-free minimum incomes”.

The Department of Strategic Investigations of the National Police of Ukraine, within its competence, supports criminal proceedings upon request of an investigator, opened on the grounds of committing a crime under Art. 176 (Copyright and Related Rights Infringement), Art. 177 (Infringement of rights to invention, utility model, industrial design, topography of integrated circuit, plant variety, innovation proposal) of the Criminal Code of Ukraine. The detectives of the Bureau of Economic Security of Ukraine carry out pre-trial investigation of criminal offenses under Art. 229 (Illegal use of the mark for goods and services, brand name, qualified indication of origin (GI)) of the Criminal Code of Ukraine. Procedural guidance and supervision in these proceedings is provided by the prosecutors of the district prosecutor’s offices, the relevant branch units of the regional prosecutor's offices and the Office of the Prosecutor General.

In the course of the year 2021, the National Police of Ukraine took actions directed at combating piracy in the Internet and production of counterfeits having achieved some results in the sphere of fighting against IP rights infringements. Thus, in 2021, investigation units of the National Police commenced 218 criminal proceedings in connection with commitment of criminal offences related

to IP rights infringement, including 86 criminal proceedings for copyright and related rights infringement, 4 proceedings in connection to illegal circulation of disks for laser reading systems, 102 proceedings in connection to illegal use of marks for goods and services, and 177 proceedings in connection with infringement of industrial property rights. In 63 criminal proceedings, indictments were filed and sent to court with 61 persons notified of being suspected in commitment of a criminal offence. Regarding the infringement of copyright and related rights (pursuant to Article 176 of the Criminal Code of Ukraine): 19 criminal proceedings have been initiated, 23 searches have been carried out within criminal proceedings, in 10 criminal proceedings the notifications of suspicion have been made; 9 criminal proceedings have been forwarded to court with indictment or through cooperation; the activity of over 25 pirated web resources has been terminated.

According to the Code of Ukraine on Administrative Offences (Art. 51² “Infringement of the of intellectual property rights”) illegal use of the object of intellectual property rights (literary or artistic work, their performance, phonograms, broadcast programs, computer program, database, scientific discovery, invention, utility model, industrial design, trade marks, topography of semiconductor products, innovation proposal, plant varieties, etc.), assignment of authorship to such IPRs or other intentional infringement of the IPRs protected by law entails the imposition of a fine of ten to two hundred non-taxable minimum incomes of citizens with the confiscation of illegally manufactured products and equipment and materials intended for its manufacture.

Also it should be mentioned that on April 26, 2017 the amendments to the Law of Ukraine “On Copyright and Related Rights” and the Code of Ukraine on Administrative Infringements entered into force. It prescribes additional legal mechanisms on fighting against Internet-piracy. Thus, according to Art. 52¹ of the Law of Ukraine “On Copyright and Related Rights” persons whose copyright and related rights were infringed by using Internet shall have the right to address to the owner of website or webpage where relevant digital information is placed with the request to stop infringement. The mentioned request shall be sent to the owner of the website with a copy to the relevant hosting provider. Moreover, there is an administrative responsibility in case if the above-mentioned Internet entities fail to fulfil rightsholder’s request.

Also the Code of Ukraine on Administrative Offences was supplemented by Art. 164¹⁷ according to which infringement of the terms and conditions governing the termination of infringement of copyright and (or) related rights using the Internet, including failure of the owner of the website, hosting provider under copyright law and related rights to prevent access to Internet users to the objects of copyright and (or) related rights, failure to provide or late response to the application of the subject of copyright and (or) related rights by the website owner, hosting provider, providing knowingly inaccurate information in response to the application copyright and / or related rights, the website owner, the hosting provider, as well as the non-posting by website owners, hosting service providers on their own websites, in public databases of domain name records (WHOIS) of reliable information about myself, entail a fine of five hundred to one thousand non-taxable minimum incomes.

The same actions committed repeatedly within a year after the imposition of an administrative penalty for one of the offenses referred to in part one of this article - entail the imposition of a fine of one thousand to two thousand non-taxable minimum incomes.

The possibility of obtaining provisional and/or permanent injunction orders against intermediaries, including online intermediaries such as internet service providers is determined namely by the Civil Code, Civil Procedural Code, Commercial Procedural Code and Criminal Procedural Code of Ukraine.

Firstly, according to Art. 432 (1) of the Civil Code of Ukraine everyone has the right to address to court for protection of the intellectual property rights in accordance with Article 16 of this Code (in particular, termination of the infringing activity (Art. 16 (2(3)) of this Code).

Also, according to Art. 150 of the Civil Procedural Code of Ukraine to secure the claim the court may apply different types of measures, mentioned in Part 1 of Art. 150, namely a prohibition on other persons to perform actions in relation to the subject matter of the dispute or to make payments, or to transfer property to the defendant or perform other obligations relating to the subject matter of the dispute.

The same provision are determined in the Commercial Procedural Code of Ukraine. Thus, according to Art. 137 of this Code the claim may be secured namely by a prohibition on other persons to perform actions in relation to the subject of the dispute or to make payments, or to transfer property to the defendant or perform other obligations relating to the subject of the dispute.

According to Art. 131 (2) of the Criminal Procedural Code of Ukraine measures to ensure criminal proceedings shall be in particular provisional access to objects and documents, provisional seizure of property, attachment of property.

According to Art. 159 of the Criminal Procedural Code of Ukraine provisional access to items and documents consists in providing a party in criminal proceedings by the person who owns such items and documents with the opportunity to examine such items and documents, make copies thereof and seize them (execute seizure). Provisional access to electronic information systems or their parts, mobile terminals of communication systems shall be conducted by removing a copy of the information contained in such electronic information systems or their parts, mobile terminals of communication systems, without removing them.

Provisional seizure of property shall mean the actual deprivation of the suspect or persons in possession of the property specified in part 2 of Art. 167 of this Code the possibility to own, use and dispose of certain property until the issue is resolved of seizure or return, or its asset forfeiture in the manner prescribed by law.

The property in the form of items, documents, money, etc. may be provisionally seized where there are sufficient grounds to believe that such property:

1) was found, manufactured, adapted or used as a means or instrument of committing a criminal offense and (or) have preserved its traces;

2) was intended (used) to induce a person to commit a criminal offence, to finance and/or provide material support for a criminal offence or to be rewarded for its commission;

3) has been an object of a criminal offence related inter alia to its illegal trafficking;

4) has been gained as a result of commission of a criminal offence and/or is proceeds of such, as well as the property into which they have been fully or partially converted.

According to Art. 168 (2) of the Criminal Procedural Code of Ukraine property may also be provisionally seized during search or examination. Provisional (temporary) seizure of electronic

information systems or their parts, mobile terminals of communication systems for the study of physical properties that are important to criminal proceedings shall be conducted only where they are directly specified in the court ruling.

Provisional seizure of electronic information systems or their parts, mobile terminals of communication systems shall be prohibited, except when their provision together with the information contained in them is a necessary condition for expert research, or where such objects are obtained as a result of criminal offence or they are means or tools of its commission, as well as where access to them is restricted by their owner, possessor or holder or is associated with breaking the system of logical security.

Where necessary, the investigator or prosecutor shall copy the information contained in information (automated) systems, telecommunication systems, information and telecommunication systems, and their integral parts. Copying of such information shall be conducted with the involvement of a specialist.

According to Art. 170 of the Criminal Procedural Code of Ukraine attachment of property shall mean temporary, until revoked in the manner prescribed by this Code, deprivation by decision of the investigating judge or court of the right to alienate, dispose of and/or use property in respect of which there are grounds to reasonably suspect that it is evidence of a criminal offence, subject to asset forfeiture from the suspect, accused, convicted person, third parties, confiscation from a legal entity, to secure a civil action or recovery from the legal entity of the received improper advantage, probable forfeiture of property. Attachment of property shall be revoked in the manner prescribed by this Code.

Attachment of property shall be allowed in order to ensure 1) preservation of physical evidence; 2) asset forfeiture; 3) forfeiture of property as a type of punishment or measure of a criminal law nature against a legal entity; 4) compensation for damage caused as a result of a criminal offence (civil action), or recovery of improper advantage received from a legal entity (Art. 170 (2)).

Where provided for by clause 1, part 2 of Article 170, attachment shall be imposed on the property of any individual or legal entity where there are sufficient grounds to believe that it meets the criteria specified in Article 98 hereof.

Seizure of computer systems or parts thereof shall be imposed only in cases where they were obtained as a result of committing a criminal offense or are a means or instrument of its commission, or have retained traces of a criminal offense, or in cases provided for in paragraphs 2, 3, 4 of part two of Article 170, or if their provision together with the information contained therein is a prerequisite for expert research, and if access to computer systems or parts thereof is restricted by their owner, owner or holder or is related to overcoming the logic system protection (Art. 170 (3)).

46. Do judicial authorities have the possibility to order the destruction of counterfeit or pirated goods?

In Ukraine, judicial authorities do have the possibility to order the destruction of counterfeit or pirated goods.

According to Art. 432 (1) of the Civil Code of Ukraine everyone has the right to address to court for protection of the intellectual property rights in accordance with Article 16 of this Code. And the court may decide in the cases and in the manner prescribed by law decisions, in particular, on withdrawal from civil circulation of goods manufactured or introduced into civil turnover in

infringement of intellectual property rights [counterfeit or pirated goods] and destruction of such goods (Art. 432 (2(3)) of the Civil Code of Ukraine).

The procedural aspects of IP protection in the court are determined in the Civil Procedural, Commercial Procedural and Criminal Procedural Codes of Ukraine.

In judicial practice, there is a significant number of court decisions on the withdrawal from civil circulation and destruction of counterfeit goods in accordance with the requirements of Art. 432 of the Civil Code of Ukraine.

In accordance with the Procedure for registering, storage, valuation of confiscated and other property that becomes the property of the state, and its disposal, approved by the Cabinet of Ministers of Ukraine dated 25.08.1998 № 1340 (with appropriate amendments) a property, which quality does not meet the standards, is subject to recycling or destruction (disposal).

A similar procedure is envisaged in Art. 401 of the Customs Code of Ukraine. The Ministry of Finance of Ukraine by its Order dated 09.06.2020 № 281 approved the Procedure for applying measures to promote the protection of intellectual property rights and interaction of customs authorities with right holders, declarants and other stakeholders, which also provides for the destruction of goods the customs clearance of which is suspended on suspicion of infringement of intellectual property rights.

47. What is Ukraine's administrative capacity in the area of examiners (e.g. patent, trade mark, design examiners etc.), and what are the future plans?

On 16.06.2020, the Parliament of Ukraine adopted the Law of Ukraine "On Amendments to Certain Laws of Ukraine Concerning the Establishment of a National Intellectual Property Authority" (№ 703-IX) which entered into force on October 14th, 2020. The Law introduced the two-tier structure of the state system of legal protection of intellectual property with the Ministry of Economy of Ukraine being responsible for development and implementation of the public policy in the field of intellectual property, and the National Intellectual Property Authority (NIPA) performing certain public functions to implement this policy.

Since October 14th, 2020, the State Enterprise "Ukrainian Intellectual Property Institute" has started executing functions of NIPA in accordance with the Resolution of the Cabinet of Ministers of Ukraine "On National Intellectual Property Authority" adopted on October 13th, 2020.

NIPA (Ukrpatent) has been performing, in particular, the following functions: a) receiving and considering applications for registration of copyright, as well as the contracts on the author's rights; b) receiving and considering applications for registration of industrial property objects and conducting their examination (inventions, utility models, industrial designs, trademarks, geographical indications, semiconductors etc.); c) issuing titles of protection (patents, certificates); d) preparing, training, examining and registering patent attorneys; support the functioning of collegiate bodies (Appeal Board etc.); e) conducting functions as International Searching Authority and International Preliminary Examination Authority (ISA/IPEA) under the PCT Treaty; f) representing Ukraine in international organizations etc.

In Ukrpatent there are more than 100 patent examiners, 4 industrial designs 4 experts, formal examination - 31 (trademarks), qualification examination – 42 (trademarks), sector geographical indications – 3 experts, international division – 12, sector of filing date – 8.

Received Applications

	2019	2020	2021
Inventions	3852	3198	3395
Utility models	8459	5269	4424
Designs	2678	2026	1838
Trademarks	42194	34932	39315

Granted patents/Registrations

	2019	2020	2021
Inventions	2255	2179	2298
Utility models	8412	6385	4363
Designs	2599	2047	1751
Trademarks	17322	19640	22455

In the framework of international cooperation, in May 2021, with the assistance of the Ministry of Economy of Ukraine, the Ukrainian Intellectual Property Institute (Ukrpatent) signed a Memorandum of Understanding on bilateral cooperation with the European Union Intellectual Property Office (EUIPO).

The memorandum provides for the following areas of cooperation: the use of information tools, harmonization of best practices on trademarks and designs; awareness raising, training programs for examiners, expert meetings, internship; exchange of information, development of methodologies etc.

At the beginning of 2022, a joint Action Plan for the implementation of the abovementioned Memorandum for 2022-2023 has been developed and approved.

Furthermore, Ukraine has established an active cooperation with the European Patent Office (EPO). In 2021, EPO experts conducted a number of events for Ukrpatent experts. Aiming at further developing a successful cooperation with the EPO, the Ukrainian and European sides prepared a joint Action Plan for 2022-2023, which shall serve as a roadmap for concluding a Memorandum on Enhanced Cooperation in the nearest future.

48. Please describe the cooperation and coordination mechanisms put in place between relevant administrations (including market inspectorate, intellectual property office, police, customs, etc.), as well as cooperation with rights-holders. What are the channels of communication and mechanism for cooperation, and how do these work in practice? What are the plans to improve enforcement capacity? Are there any special units to tackle internet piracy?

The institutional framework in the national system of intellectual property includes state bodies and institutions and judiciary bodies with relevant powers in the field of intellectual property, scientific and educational institutions, public organizations and other structures, which are actively involved in a wide range of tasks for legal protection, management, implementation and protection of intellectual economic rights.

The following state bodies, institutions and structures endowed with direct and indirect functions and responsibilities in the field of intellectual property, as well as judicial bodies are actively cooperating with each other regarding the issues of legal protection and enforcement of intellectual property rights: Ministry of Economy; National Intellectual Property Authority (NIPA); Ministry of Science and Education; Ministry of Culture and Information Policy; Ministry of Agrarian Policy and Food; Ministry of Health; Antimonopoly Committee; State Agency for Cinematography; National Academy of Sciences of Ukraine and branch Academies of Sciences; State Customs Service; Ministry of Internal Affairs; National Police; Security Service; Bureau of Economic Security; Office of the General Prosecutor; Supreme Court; high specialized courts; courts of appeal; district courts of first instance.

The issue of strengthening the system of IP rights in Ukraine attracts a particular attention of the world IP society. In light of this, IPR enforcement remains in the focus of priority areas of the Ukrainian Government's activity.

The Ministry of Economy of Ukraine as a main public authority responsible for forming and implementing the public policy in the sphere of IP keeps working on the tasks aimed at the improvement of this sphere and reaching a decent position in the world economic environment.

In Ukraine, in accordance with the resolution of the Cabinet of Ministers of Ukraine dated 07.02.2018 № 90, the Council on Intellectual Property was established, the main tasks of which are the formation of the state policy in the field of intellectual property, as well as the strengthening the IP rights protection; combating the "patent trolling"; fighting against online piracy; software legalization in the state authorities; cooperation with High IP Court; elaboration proposals to draft laws and recommendations to the IP Strategy. The Council acts as an advisory and advisory body to the Cabinet of Ministers of Ukraine. This resolution approved the composition and regulations of the Council. The Council, headed by the First Vice Prime Minister of Ukraine - Minister of Economy of Ukraine, included the heads of the Central Executive Committee, law enforcement agencies, representatives of the legislative and judicial authorities, law enforcement, antitrust and customs bodies, academies of science and heads of specialized enterprises, scientific institutions and public organizations.

During 2018 - 2021 several meetings of the Council were held, which discussed the issues of building the national IP system and coordination between institutional units, improving the efficiency of protection of IP rights, including: and the preparation of the draft National IP Strategy.

According to the current legislation, numerous public organizations and associations exercise appropriate public control over the activity of the government institutions through representatives from the public (both individuals and collective entities), which aims to verify (monitor, supervise) the legitimacy of tasks of the government institutions.

National Police of Ukraine, in structure of which a special unit (Cyber Police Department) was created to counteract IPR infringements in 2015, systematically takes measures to identify and disclosure of criminal IPR offenses, to develop and improve necessary legal framework to combat

these phenomena, to develop methods to document new forms of criminal offenses. The Division for Combating Crimes in the Sphere of Illicit Content and Telecommunications of the Cyber Police Department of the National Police of Ukraine regularly conducts preventive measures to stop illegal activities of groups and individuals who carry out transactions which facilitate the illegal access to satellite broadcasting and infringement of copyright, and other forms of Internet piracy.

In order to ensure the transparency in the course of fulfilment of IPRs tasks the Ministry of Economy, National IP Authority (Ukrpatent), National Police, State Customs Service, Office of the General Prosecutor; Supreme Court and other government institutions take efforts on establishment of state-private collaborative relationship with NGOs of rightsholders, business associations, media-industry and with general public (holding regular meetings and discussions (working groups, conferences, conference calls) on IPRs issues).

49. Do the enforcement bodies have ex-officio powers to act against intellectual property infringements

In accordance with the Criminal Code of Ukraine and the Criminal Procedural Code of Ukraine, law enforcement authorities within their powers prevent the detection and cessation of offenses the liability for which is provided for by the Criminal Code of Ukraine.

Counteraction to offenses (Art. 176, 177 of the Criminal Code of Ukraine) belongs to the competence of the criminal police authorities and preventive activities in the system of the National Police of Ukraine, and to offences under Art. 229, Art. 231, Art. 232 of the Criminal Code of Ukraine - the Bureau of Economic Security of Ukraine

The main competence of pre-trial investigation authorities is ensuring pre-trial investigation of criminal offenses under their jurisdiction.

Investigative units carry out their activity in accordance with the principles of the rule of law, legitimacy, equality before the law and courts, respect for human dignity, ensuring the right to liberty and security of person, inviolability of the home or other property, secrecy of communication, non-interference in private life, inviolability of property rights, presumption of innocence and proof of guilt, self-disclosure freedom and the right not to testify against close relatives and family members, prohibition to prosecute twice for the same offense, ensuring the right to defense, adversarial proceedings and freedom in presenting their evidence to the court and in proving to the court their persuasiveness, immediacy of examination of testimony, subjects and documents, right to appeal procedural decisions, actions or omissions, publicity, effect on agreement between the parties, reasonableness of pre-trial investigation time.

According to the Custom Code of Ukraine (Art. 397) the customs authorities shall apply the following measures to goods suspected of infringing intellectual property rights, to facilitate the protection of intellectual property rights:

1) suspension of customs clearance of goods on the basis of data of the customs register of intellectual property items, protected in accordance with the law, in accordance with Article 399 of this Code;

2) suspension of customs clearance of goods at the initiative of the customs authority in accordance with Article 400 of this Code;

3) destruction of goods, customs clearance of which is suspended on suspicion of infringement of intellectual property rights, in accordance with Article 401 of this Code;

4) suspension of customs clearance and destruction of small consignments of goods which are moved (shipped) across the customs border of Ukraine in international postal and express items, in accordance with Article 401-1 of this Code;

5) change of marking on goods and their packing in accordance with Article 402 of this Code.

50. If there is no stem of enforcement of intellectual property rights, what measures, procedures and remedies does Ukraine envisage adopting in order to dispose of an efficient system to fight against piracy and counterfeiting?

In addition to the current regulatory mechanism for the protection of intellectual property rights, in order to strengthen the effectiveness of the system of protection of intellectual property rights in Ukraine, in particular in the field of copyright and related rights, Ukraine, in September 2020, joined the WIPO-Alert Data Sharing Platform, which allows rights holders to identify pirated websites that host illegal content.

51. Which international conventions is Ukraine part to? Does Ukraine have plans to accede in the next five years to any international conventions relating to intellectual, industrial and commercial property of which it is not yet a member? If so, which convention(s) and when?

Ukraine is a party to the following international treaties:

1. Singapore Treaty on the Law of Trademarks (STLT) – since May 24th, 2010
2. Convention establishing the World Intellectual Property Organization – since April 26, 1970;
3. Universal Copyright Convention – since January 17, 1994;
4. Paris Convention for the Protection of Industrial Property – since December 25th, 1991;
5. Patent Cooperation Treaty (PCT) – since December 25, 1991;
6. Madrid Agreement Concerning the International Registration of Marks – since December 25, 1991;
7. Berne Convention for the Protection of Literary and Artistic Works – since October 25, 1995;
8. International Convention for the Protection of New Varieties of Plants – since November 3, 1995;
9. Trademark Law Treaty (TLT) – since August 1st, 1996;
10. Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Plant Procedure – since July 2, 1997;
11. Nairobi Treaty on the Protection of the Olympic Symbol – since December 20, 1998;
12. Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks – since December 29, 2000;
13. Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks - since December 29, 2000;

14. Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms – since February 18, 2000;
15. WIPO Copyright Treaty – since March 6, 2002;
16. WIPO Performance and Phonograms Treaty – since May 20, 2002;
17. Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations - since June 12, 2002;
18. Hague Agreement Concerning the International Registration of Industrial Designs – since August 28, 2002;
19. Patent Law Treaty (PLT) – since April 28, 2005;
20. Strasbourg Agreement Concerning the International Patent Classification – since April 7, 2009;
21. Locarno Agreement Establishing an International Classification for Industrial Designs - since July 7, 2009;
22. Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks – since July 29, 2009.

Besides the aforementioned treaties, which are administered by the World Intellectual Property Organization, on May 16, 2008, Ukraine became a member of the World Trade Organization and that very day ratified the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). On February 3, 2016, Ukraine accepted the Protocol amending the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) done on 6 December 2005 in Geneva by approving the Law of Ukraine No 981.

Ukraine is also in the process of acceding to the WIPO Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. 30.01.2021 the Ministry of Economy of Ukraine submitted to the Ministry of Foreign Affairs the relevant package of documents for its further submission for consideration of the President of Ukraine with the purpose of implementation of internal procedures necessary for Ukraine's accession to the Marrakesh Treaty.

The possibility of Ukraine to accede to the Agreement on the Unified Patent Court (UPC) in the future requires further discussion.

Ukraine has established an active cooperation with the European Patent Office (EPO). Aiming at further developing a successful cooperation with the EPO, the Ukrainian and European sides prepared a joint Action Plan for 2022-2023, which shall serve as a roadmap for concluding a Memorandum on Enhanced Cooperation in the nearest future. In the framework of cooperation with EPO the Ministry of Economy of Ukraine will propose to discuss the specific actions regarding accession to the European Patent Convention.

Annex to this Chapter can be found under the link: <https://bit.ly/3PexNDF>.

CHAPTER 8: COMPETITION POLICY

I. ANTITRUST INCLUDING MERGERS

J.

1. Please describe the legislation concerning antitrust and mergers. Which authorities are responsible for the issue? Does the competition law reflect the contents of Article 101 and 102 of TFEU?

Legislation of Ukraine on protection of economic competition on counteraction to restrictions of competition and merger control consists of Part Two of Article 42 of the Constitution (basic principles), Law of Ukraine “On protection of economic competition” (substantive, procedural norms, liability), Law of Ukraine “On Antimonopoly Committee of Ukraine” (powers of the state body for protection of competition). To implement these legislative provisions, a significant number of by-laws has been adopted. The most important of them are: the Rules for review of applications and cases on infringement of economic competition legislation (the AMCU Ordinance of 19.4.1994 No. 5 (as amended by the Ordinance of the Antimonopoly Committee of Ukraine No. 169-p of 29.6.1998), the Regulation on the Procedure for submitting applications to the Antimonopoly Committee of Ukraine for preliminary approval of economic operator concentration permit (the Concentration Regulation) (the AMCU Ordinance of 19.2.2002 No. 13-p as amended by the AMCU Ordinance of 21.6.2016 No. 14-pn), the Regulation on the Procedure for applying to the offices of the Antimonopoly Committee of Ukraine for permits of concerted actions by multiple economic operators (The AMCU Ordinance of 12.2.2002 No. 26-p, the Regulation on the Procedure of conducting audits of compliance with economic competition protection legislation (the AMCU Ordinance of 25.12.2001 No. 182-p), the Methodology for identifying monopolistic (dominant) status of an economic operator in the market (the AMCU Ordinance of 05.3.2002 No. 49-p), the System of standard requirements to economic operators’ concerted actions.

The Antimonopoly Committee of Ukraine is a public body with a special status whose purpose is to provide state protection of competition in business activities, while providing state aid to economic entities and in the field of public procurement.

The main task of the Antimonopoly Committee of Ukraine shall be to participate in shaping and implementation of the competition policy regarding:

1) exercising public control over compliance with competition legislation on the basis of equality of economic entities before the law, neutrality in competition and priority of consumer rights, prevention, detection and elimination of violations of competition legislation;

2) control over concentration, concerted actions of economic entities and compliance with the requirements of competition legislation when regulating prices (tariffs) for goods produced (sold) by natural monopoly entities;

3) promoting fair competition;

4) methodological support for the application of competition legislation;

5) exercising control regarding the creation of a competitive environment and the protection of competition in the area of public procurement;

6) monitoring public assistance to business entities and exercising control over the eligibility of such aid for competition.

Section II (Articles 6-13) of the Law “On the Protection of Economic Competition” immediately reflects the content of Articles 101 and 102 TFEU:

«**Article 6.** Anti-competitive concerted actions of economic entities

Anti-competitive concerted actions are concerted actions that have led or may lead to the prevention, elimination or restriction of competition.

2. Anticompetitive concerted actions, in particular, are recognized concerted actions that concern:

1) setting prices or other conditions for the purchase or sale of goods;

2) restrictions on production, markets for goods, technical and technological development, investment or establishing control over them;

3) distribution of markets or sources of supply according to the territorial principle, range of goods, the volume of their sale or purchase, the range of sellers, buyers or consumers or other characteristics;

4) distortion of the results of trades, auctions, competitions, tenders;

5) elimination from the market or restriction of market access (exit from the market) of other business entities, buyers, sellers;

6) application of different conditions to equivalent agreements with other economic entities, which puts that economic entities at a disadvantage in competition;

7) conclusion of agreements on condition of acceptance by other economic entities of additional obligations, which by their content or in accordance with trade and other fair customs in economic activities do not relate to the subject of these agreements;

8) significant restriction of the competitiveness of other economic entities in the market without objectively justified reasons.

3. Anticompetitive concerted actions are also considered to be similar actions (inaction) on the goods market that have led or may lead to the prevention, elimination or restriction of competition if the analysis of the situation on the goods market denies the existence of objective reasons for such actions (inaction).

4. The commission of anti-competitive concerted actions is prohibited and entails liability under the law.

5. A person who has committed anti-competitive concerted actions but has previously voluntarily notified the Antimonopoly Committee of Ukraine or its territorial branch and provided information relevant to the decision in the case shall be released from liability for anti-competitive concerted actions envisaged by Article 52 of this Law.

The bodies of the Antimonopoly Committee of Ukraine shall ensure the confidentiality of personal information on the basis of a reasoned request in the interests of the investigation of a case of violation of the legislation on protection of economic competition.

The person specified in this part shall not be released from liability if he/she:

did not take effective measures to terminate its anti-competitive concerted actions after notifying them to the Antimonopoly Committee of Ukraine;

initiated or managed anti-competitive concerted actions;

did not provide all the evidence or information about violation that he/she was aware of and that he/she could easily obtain.

Article 10. Concerted actions that can be allowed

1. Concerted actions provided for in Article 6 of this Law may be authorized by the relevant bodies of the Antimonopoly Committee of Ukraine if their participants prove that these actions contribute to:

improving the production, purchase or sale of goods;

technical and technological, economic development;

development of small or medium entrepreneurs;

optimization of export or import of goods;

development and application of uniform technical conditions or standards for goods;

rationalization of production.

2. The concerted actions provided for in part one of this Article shall not be authorized by the bodies of the Antimonopoly Committee of Ukraine if competition is significantly restricted in the whole market or in a significant part of it.

3. The Cabinet of Ministers of Ukraine may authorize concerted actions not authorized by the Antimonopoly Committee of Ukraine in accordance with part two of this Article if the participants in the concerted actions prove that the positive effect on the public interest outweighs the negative effects of restricting competition.

4. Permission under part three of this Article shall not be granted if:

participants in concerted actions apply restrictions that are not necessary for the implementation of concerted actions;

restriction of competition threatens the market economy system.

5. The concerted actions provided for in this Article shall be prohibited until the permission of the bodies of the Antimonopoly Committee of Ukraine or the Cabinet of Ministers of Ukraine has been obtained.

Article 12. Monopoly (dominant) position of economic entity

1. An economic entity occupies a monopoly (dominant) position in the commodity market if:

it has no competitors in this market;

does not face significant competition due to limited access of other entities to purchase raw materials, supplies and sales of goods, the presence of barriers to market access of other entities, the availability of benefits or other circumstances.

2. Monopoly (dominant) is the position of an entity whose share in the market of goods exceeds 35 percent, unless it proves that it is subject to significant competition.

3. The position of an economic entity may also be recognized as monopolistic (dominant) if its share of the product market is 35 percent or less, but it is not subject to significant competition, in particular due to the relatively small size of market shares owned by competitors.

4. It is considered that each of two or more economic entities occupies a monopoly (dominant) position in the market of goods, if there is no competition between them or there is little competition between them, and in respect of them taken together one of the conditions of part one of this Article performed.

5. The position of each of several business entities is also considered to be monopolistic (dominant) if the following conditions are met in respect of them:

the combined share of no more than three entities with the largest market shares in one market exceeds 50 percent;

the combined share of no more than five entities with the largest market share in one market exceeds 70 percent –

and along with it, they will not prove that the conditions of part four of this article do not apply to them.

Article 13. Abuse of monopoly (dominant) position in the market

1. Abuse of monopoly (dominant) position in the market is the actions or inaction of an economic entity that holds a monopoly (dominant) position in the market, which led or may lead to the prevention, elimination or restriction of competition, or harm to other economic entities or consumers, which would be impossible in the presence of significant competition in the market.

2. Abuse of monopoly (dominant) position in the market, in particular, is recognized:

1) setting prices or other conditions for the purchase or sale of goods that could not be set in the face of significant competition in the market;

2) application of different prices or different other conditions to equivalent agreements with economic entities, sellers or buyers without objectively justified reasons;

3) stipulating the conclusion of agreements by the acceptance by the business entity of additional obligations, which by their nature or in accordance with trade and other fair practices in business activities do not relate to the subject of the contract;

4) restrictions on production, markets or technical development that have caused or may cause damage to other economic entities, buyers, sellers;

5) partial or complete refusal to purchase or sell the goods in the absence of alternative sources of sale or purchase;

6) significant restriction of the competitiveness of other economic entities in the market without objectively justified reasons;

7) creating barriers to market access (exit from the market) or eliminating sellers, buyers and other business entities from the market.

3. Abuse of monopoly (dominant) position in the market is prohibited and entails liability under the law.».

A. Scope of application

2. As to the scope of application of competition law:

a) Does the law cover all sectors of the economy?

Yes. The law does not single out any sector of the economy.

b) Does the law cover both public and private enterprises?

In particular, Article 2 of the Law of Ukraine “On Protection of Economic Competition” (hereinafter - the Law) stipulates that this Law regulates the relations of public authorities, local self-government bodies, bodies of administrative and economic management and control with undertakings; undertakings with other undertakings, consumers, other legal entities and private individuals in connection with economic competition.

According to Article 1 of the Law, undertaking is a legal entity regardless of the organizational and legal form and form of ownership, or a private individual engaged in production, sale, purchase of goods or other economic activity.

c) Does the law cover goods and services?

Based on the definitions mentioned above, the goods and services provided in the previous question are the subject of economic activity of undertakings.

According to Article 1 of the Law “On Protection of Economic Competition”, the goods are any object of economic turnover, including products, works, services, documents confirming obligations and rights (including equities).

d) Does the law incorporate the principles of Article 106(2) TFEU?

The relations of state or municipal property undertakings are subject to the provisions of the Law “On Protection of Economic Competition”, as the Law regulates relations between undertakings, regardless of the form of ownership, etc.

The Second Part of Article 4 of the Law stipulates that undertakings, authorities, local self-government bodies, as well as bodies of administrative and economic management and control are obliged to promote competition and not to commit any illegal actions that may adversely affect competition.

Also, in accordance with the Third Part of Article 15 of the Law, it is prohibited and entails liability under the law for anticompetitive actions of authorities, local self-government bodies, bodies of administrative and economic management and control. Article 16 of the Law prohibits the delegation of certain powers to associations, enterprises and other undertakings, if this leads or may lead to the prevention, elimination, restriction or distortion of competition.

Article 17 of the Law stipulates that actions or inaction of authorities, local self-government bodies, bodies of administrative and economic management and control (a collegiate body or an official), that induce undertakings, authorities, local self-government bodies, bodies of administrative and economic management and control, to violate the laws on the protection of economic competition or to create conditions for committing violations of that sort or for legalizing them, shall be prohibited.

B. Restrictive agreements

3. Does the law cover agreements between undertakings, decisions by associations of undertakings and concerted practices?

Article 5 of the Law stipulates that concerted actions are the conclusion of agreements by undertakings in any form, decision-making by associations in any form, as well as any other concerted competitive behavior (actions, inactivity) of undertakings.

Consorted actions are also the establishment of undertaking, association, the purpose or consequence of which is the coordination of competitive behavior between undertakings that established the undertaking, association, or between them and the newly established undertaking, or joining such association.

4. Does the law contain a general prohibition of restrictive agreements?

The Fourth Part of Article 6 of the Law stipulates that conduction of anticompetitive concerted actions is prohibited and entails liability under the Law.

5. Does the law lay down the nullity of restrictive agreements, i.e. are they unenforceable before the courts?

Yes, taking into account the peculiarities of national legislation.

According to the first part of Article 215 of the Civil Code of Ukraine, the ground for invalidity of the transaction is non-compliance at the time of the transaction by the party (parties) requirements established by parts one - three, five and six of Article 203 of this Code.

A transaction is invalid if its invalidity is established by law (a void transaction). In this case, the recognition of such a transaction as invalid by the court is not required. In cases established by this Code, a void transaction may be recognized by a court as valid.

If the invalidity of a transaction is not directly established by law, but one of the parties or another interested person denies its validity on the grounds established by law, such a transaction may be declared invalid by a court (disputed transaction).

Article 215 of the Civil Code of Ukraine actually defines two types of invalid transactions, namely: void transactions (invalidity of a transaction is directly established by law and does not require recognition as such in court) and disputed transaction, the invalidity of which must be recognized by a court (invalidity of a transaction is not directly established by law, but one of the parties or another interested person denies its validity on the grounds established by law).

In some cases, national law provides for the need to confirm the nullity of transaction by a court, even if it is explicitly established, which was investigated by the Grand Chamber of the Supreme Court in its decision of 04 June 2019 in case № 916/3156/17.

According to the first part of Article 203 of the Civil Code of Ukraine, the content of the transaction shall not contradict this Code, other acts of civil law, as well as the interests of the state and society, its moral principles.

According to the fifth part of Article 13 of the Civil Code of Ukraine, the use of civil rights for the purpose of unlawful restriction of competition, abuse of monopoly position in the market, as well as unfair competition are not allowed.

Thus, the restrictive transactions do not comply with the Civil Code of Ukraine and are disputed transactions, the invalidity of which must be confirmed by a court.

Article 228 of the Civil Code of Ukraine establishes the legal consequences of a transaction that violates public order, committed for a purpose contrary to the interests of the state and society.

The transaction is considered to violate public order if it was aimed at violating the constitutional rights and freedoms of man and citizen, destruction, damage to property of a natural or legal person, state, Autonomous Republic of Crimea, territorial community, illegal possession of it.

A transaction that violates public order is void.

In case of non-compliance with the requirement of compliance of the transaction with the interests of the state and society, its moral principles, such a transaction may be declared invalid.

If the invalid transaction recognized by the court was made for a purpose that is known to be contrary to the interests of the state and society, then:

in the presence of intent on both sides – in case of execution of transaction by both parties – all received by them under the transaction is collected in state revenue by the decision of the court;

in case of execution of a transaction by one party – all received by the other party under the transaction and all due from it is collected by the decision of the court in favour of the first party to reimburse the received. If there is an intent of the one part only all received by it under the transaction must be returned to the other party, and received by the last or due to it for compensation executed by a court decision is collected in state revenue.

For example, paragraph 46 of the Supreme Court ruling of 15.12.2021 in case № 922/2645/20 states that the contract of sale of a special permit for the use of oil and gas subsoil, concluded as a result of an auction held in the absence of fair competition among participants, is invalid in accordance with part one of Article 203, part three of Article 215 and part three of Article 228 of the Civil Code of Ukraine, as contrary to acts of civil law, as well as the interests of the state and society on the need to comply with the procedure established by law for the provision of subsoil use and to ensure fair competition in selecting the winner of the tender for special permits for the use of oil and gas subsoil.

This conclusion of the Supreme Court is based on the decision of the AMCU dated 23.08.2018 № 414-r, which established the violation of paragraph 4 of Part 2 of Article 6 of the Law of Ukraine "On Protection of Economic Competition" in the form of anti-competitive concerted actions auction in 2016, held by the State Service of Geology and Subsoil of Ukraine on March 22, 2016, for the sale of a special permit for the use of subsoil areas for geological study, including research and development, followed by oil, gas (industrial development of the field) South Kisivska Square, located in Kolomatsky district of Kharkiv region.

Thus, transactions concluded in violation of the law on protection of economic competition are contrary to public policy and are void.

6. Does the law provide for an exception from the prohibition of restrictive agreements, or how are exceptions provided for?

Certain law provisions establish an exception from the prohibition under specified conditions for the following categories of concerted actions: concerted actions by small or

medium-sized entrepreneurs (Art. 7), concerted actions as regards goods supply and use (Art. 8), concerted actions as regards intellectual property rights (Art. 9).

Article 7 of the Law stipulates that the provisions of Article 6 of the Law (anticompetitive concerted actions of undertakings) do not apply to any voluntary concerted actions of small or medium-sized undertakings in terms of the joint purchase of goods that do not significantly restrict competition and enhance the competitiveness of small or medium undertakings.

Also, in accordance with Article 8 of the Law, the provisions of Article 6 of the Law relating to the supply and use of products do not apply to concerted actions if a party in the concerted actions imposes, with respect to another party in the concerted actions, restrictions on:

- use of products supplied by it or on the use of products of other suppliers;
- purchase of products from other undertakings or on the sale of other products to other undertakings or consumers;
- purchase of products that due to their nature or in terms of customs in trade and other fair customs in business activities have nothing in common with the subject of the relevant agreement;
- price setting or other contractual conditions for selling supplied product to other undertakings or consumers.

According to Article 9, prohibition for anticompetitive concerted actions shall not apply to agreements on the transfer of intellectual property rights or on the use of the object of intellectual property rights insofar as they restrict the party to the agreement to which the right is transferred, if these restrictions do not go beyond legal rights of the subject of intellectual property rights.

It is considered that do not go beyond legal rights referred to in the first part of this Article restrictions on the scope of the transferred rights, the term and territory of the permit for the use of the object of intellectual property, as well as the type of activity, scope of use, minimum production volume.

Besides, Article 10 of the Law provides for individual permits of concerted actions on the basis of compliance with Art. 101(3) of TFEU, and Article 11 of the Law gives the Committee the right to exempt certain concerted action categories from the prohibition through adopting standard requirements for concerted actions.

7. Does the law provide for the possibility of block exemptions to be established (based on EU principles)?

Article 11 of the Law stipulates that the AMCU may determine standard requirements for concerted actions. Concerted actions complying with the standard requirements for certain concerted action types are allowed and do not require any individual permit by the Antimonopoly Committee of Ukraine offices, according to paragraph one of Article 10 of this Law, if it is explicitly specified in the decision of the Antimonopoly Committee of Ukraine on imposing the standard requirements.

In particular, the AMCU adopted:

“Standard requirements for concerted actions of undertakings for general exemption from prior permission of the Antimonopoly Committee of Ukraine for concerted actions of undertakings”,

approved by the Order of the AMCU as of 12.02.2002 No. 27-r, registered at the Ministry of Justice of Ukraine as of 07.03.2002 No. 239/6527 (as amended);

“Standard requirements for establishing an economic association for general exemption from prior permission of the offices of the Antimonopoly Committee of Ukraine for its establishment,” approved by the AMCU Ordinance No. 511-p of 30.11.2006, registered with the Ministry of Justice of Ukraine on 26.01.2007 under No. 61/13328;

“Standard requirements for concerted actions of undertakings as regards production specialization, allowing for such concerted actions without permission from the offices of the Antimonopoly Committee of Ukraine,” approved by the AMCU Ordinance No. 880-p of 11.12.2008, registered with the Ministry of Justice of Ukraine on 24.01.2009 under No. 74/16090;

“Standard requirements for concerted actions of undertakings as regards joint research and development and/or design and engineering activities, allowing for such concerted actions without permission from the offices of the Antimonopoly Committee of Ukraine,” approved by the AMCU Ordinance No. 557-p of 15.08.2012, registered with the Ministry of Justice of Ukraine on 05.09.2012 under No. 1537/21849;

“Standard requirements for vertical concerted actions of undertakings regarding the supply and use of goods”, approved by the Order of the AMCU as of 12.10.2017 No. 10-rp, registered at the Ministry of Justice of Ukraine as of 09.11.2017 No. 1364/31232;

“Standard requirements for concerted actions of undertakings in the field of technology transfer, compliance with which allows to carry out these concerted actions without permission of the Antimonopoly Committee of Ukraine” approved by the Order of the AMCU as of 12.10.2017 No. 21-rp, registered at the Ministry of Justice of Ukraine as of 09.11.2018 No. 1413/32865.

8. Do the conditions for exceptions from the prohibition of restrictive agreements (both individual and group) correspond to Article 101(3) TFEU?

Part One of Article 10 of the Law stipulates that concerted actions provided for in Article 6 of this Law may be authorized by the relevant bodies of the Antimonopoly Committee of Ukraine, if the parties are able to prove that these actions contribute to:

- improvement of the production, purchase or sale of a product;
- technical, technological, and economic development;
- the development of small or medium-sized undertakings;
- optimization of the export or import of products;
- development and application of unified technical conditions or standards for products;
- rationalization of production.

C. Abuse of dominant position

9. Does the law contain a general prohibition of abuse of dominance?

Third Part of Article 13 of the Law stipulates that abuse of monopoly (dominant) position in the market is prohibited and entails liability under the Law.

10. Does the law contain an exemption or defence for abuse, in line with the ones accepted in EU law under Article 102 TFEU?

Part Two of Article 42 of the Constitution sets that abuse of monopoly position in the market is not allowed. Article 13 of the Law “On Protection of Economic Competition” prohibits the abuse of monopoly (dominant) position in the market, Article 52 of the same Law establishes penalties for such actions. Prohibition of abuse of monopoly (dominant) position in the market, as in Part 1 of Article 102 TFEU, is absolute and unconditional.

Assessment and consideration of objective necessity and efficiencies, as described in points 28 to 31 of the Communication from the Commission — Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings (2009/C 45/02) is not provided for in the national legislation of Ukraine.

11. To what extent does the legislation reflect the EU regulations, guidelines and communications adopted for the implementation of Article 102 TFEU?

The practice of consideration of violations of the law on the protection of economic competition in the form of abuse of monopoly (dominant) position takes into account the provisions set out in Council Regulation (EC) № 1/2003 of 16 December 2002 and in Communication from the Commission – Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings; 2009/C 45/02). Same as Article 102 TFEU, the statutory definition of abuse in Article 13 LPEC covers both exploitative and exclusionary abuses. The list of abuses in Article 13(2) LPEC is not exhaustive, as confirmed by the Supreme Economic Court of Ukraine.

D. Mergers

12. Does the definition of mergers cover the establishment of control (including de-jure and de-facto control) and joint ventures?

Yes.

Article 22 of the Law “On Protection of Economic Competition” defines merger, in particular as:

- acquisition of control, directly or through other entities, by one or several undertakings over one or more undertakings or parts of undertakings;
- establishment by two or more undertakings of the undertaking, which for a long period of time will independently carry out economic activity, however, such establishment does not result in coordination of competitive behavior between undertakings that created this undertaking, or between them and the newly created undertaking.

At that, national legislation on protection of economic competition defines control as decisive influence of one or more related legal entities and/or natural persons on economic activity of an undertaking or its part, exercised either directly or through third parties, in particular, due to:

ownership or management of all assets or their considerable portion; rights resulting in decisive influence upon formation of composition, results of voting and decision making by management bodies of the undertaking; conclusion of agreements and contracts enabling them to determine conditions of its economic activity, to issue binding instructions or to exercise functions of a management body; filling a position of the Head or Deputy Head of the review board, executive board, other supervision or executive body of the undertaking by a person, already occupying one or more of the said positions in other undertakings; occupying more than a half of member positions at the review board, executive board, other supervision or executive body of the undertaking by persons, already occupying one or more of the said positions in another undertaking (paragraph 5 of Article 1 of the Law of Ukraine “On Protection of Economic Competition”).

13. Does the law provide for an obligation of prior notification?

Yes.

Article 24 of the Law “On Protection of Economic Competition” defines the cases in which it is necessary to obtain a permit for merger of undertakings.

14. What are the criteria for notification (e.g. turnover)?

Article 24 of the Law sets out the following criteria:

- total value of assets or total sales of the parties to the merger, including relations of control for the last fiscal year and including those abroad, exceeds the amount equivalent to 30 million Euros, determined at the official exchange rate set by the National Bank of Ukraine on the last day of the fiscal year, with the value (total value) of assets or volume (total volume) of sales of goods in Ukraine of at least two parties to the merger, including relations of control, exceeds the amount equivalent to 4 million Euros, determined at official exchange rate of the National Bank of Ukraine, acting on the last day of the fiscal year; or

- total value of assets or total sales of goods in Ukraine of the undertaking under which control is acquired, or entities’ assets, shares (stocks, corporate stocks) which are acquired or received for management and use, or at least one of the founders of the established undertaking, taking into account the relationship of control, for the last fiscal year exceeds the amount equivalent to 8 million Euros, determined at the official exchange rate set by the National Bank of Ukraine, acting on the last day of the fiscal year, while volume of sales of goods of at least one other party to the merger, taking into account relations of control, for the last fiscal year and including those abroad, exceeds the amount equivalent to 150 million Euro, determined at the official exchange rate set by the National Bank of Ukraine on the last day of the fiscal year.

15. Does the notification have a suspensive effect?

Yes.

Pursuant to Part Five of Article 24 of the Law “On Protection of Economic Competition”, merger which requires authorization shall be prohibited until it has been authorized. Until such permission is granted, the parties to the merger must refrain from actions, that could lead to restrictions of competition and the impossibility of restoring the original state.

16. Describe the steps in the investigation procedure. Is there a preliminary phase? An in-depth investigation phase for potentially problematic mergers? Do these phases have to be completed within prescribed deadlines?

Consideration of the application for a permit for the merger of undertakings involves two mandatory stages: 1) acceptance of the application for consideration (establishing the formal compliance of the application and the attached materials with the requirements of the AMCU; 2) consideration of the application (determination of the impact of the declared merger on competition in the market and the possibility of granting permission for it). If grounds for prohibition of merger are identified, consideration of the merger case shall begin. At the level of the law it is determined, that the acceptance of the application for consideration is carried out within 15 days, consideration of the application – in accordance with the general rules makes 30 days, in cases specified by law under simplified procedure - within 25 days. The term for consideration of a merger case shall not exceed three months from the date of submission by the applicant (applicants) of a full information and receipt of an expert opinion.

17. What are the criteria for prohibition (e.g. Significant Impediment of Effective Competition – "SIEC") or the creation or strengthening of dominance)? Is there an exemption for reasons of public interest in order to take into account a specific national interest in line with the provision of Articles 63 and 64 TFEU? To what extent does the legislation reflect the EU regulations, guidelines and communications adopted for the implementation of Article 102 TFEU?

According to the First Part of Article 25 of the Law "On Protection of Economic

Competition" merger permit is granted if it does not lead to monopolization or significant restriction of competition in the whole market or in a significant part of it. Therefore, both criteria are used as complementary. However, the Cabinet of Ministers of Ukraine may authorize a concentration that the Antimonopoly Committee of Ukraine has not authorized, if the positive effect on the public interest of the concentration outweighs the negative effects of restriction of competition.

The legislation of Ukraine on merger control of undertakings reflects the main provisions of the Council Regulation (EC) No. 139/2004 as of 20.01.2004. regarding the merger control between undertakings (EC Merger Regulation).

AMCU has adopted the following guidelines:

- **On assessment of horizontal concentrations** which reflect the provisions of the European Commission's Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/03).

On assessment of non-horizontal concentrations which reflect the provisions of the European Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07).

18. Do the Parties to a transaction have the possibility to offer commitments to address competition concerns in relation to a transaction? Are there provisions on divestitures or other remedies?

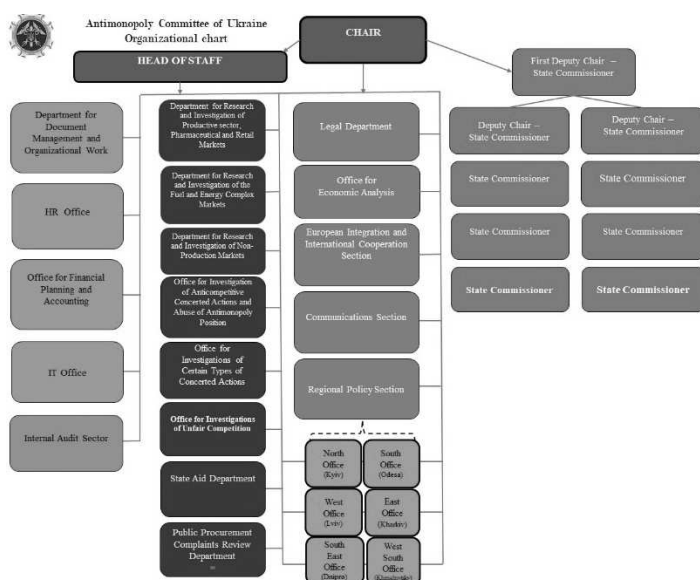
Pursuant to the Second Part of Article 31 of the Law “On Protection of Economic Competition”, in case of establishing grounds for prohibition of merger, the Antimonopoly Committee of Ukraine notifies the parties regarding the content of such grounds and sets a thirty-day period for proposals on remedies parties are willing to undertake, and which eliminate the relevant negative impact of the merger on competition, and allow the Antimonopoly Committee of Ukraine to decide on the granting of a merger permit. The remedies suggested by the parties to the merger may be of any nature, both structural and behavioral, but they must be proportionate to the legitimate threats of adverse effects on competition declared by the merger, and the requirements for monitoring their implementation should not be excessive.

E. General procedures

19. Please describe the authority entrusted with implementing competition law, including the institutional set-up and information on the staffing situation (organisational structure, number of staff, etc.).

The AMCU forms Regional Offices, and if necessary carries out their reorganization or liquidation. The AMCU consists of Central Office and 6 Inter-Regional offices.

The actual number of staff of the AMCU Central Office (as on 31.12.2021) is 288 people while the maximum possible number is 363. The actual number of employees in Regional Offices of the AMCU (as on 31.12.2021) is 305 people, while the maximum possible number is 398. The maximum amounts of positions are determined by the Resolution of the Cabinet of Ministers of Ukraine.



a) By whom and according to which procedure and criteria are its board members appointed?

The Antimonopoly Committee of Ukraine is composed of the Chairman and eight state commissioners. (Article 6 of the Law of Ukraine “On the AMCU”).

According to Article 9 of the Law of Ukraine “On the AMCU” the Chairman of the Antimonopoly Committee of Ukraine has the status of a state commissioner.

According to Article 11 of the Law of Ukraine “On the AMCU” a citizen of Ukraine of at least 30 years old with higher, as a rule, legal or economic education, and professional experience of at least five years during the last ten years may be appointed as a state commissioner.

The Chairman of the Antimonopoly Committee of Ukraine is appointed and dismissed from office by the President of Ukraine with consent of the Verkhovna Rada of Ukraine.

Article 10 of the Law of Ukraine “On the AMCU” stipulates that the First Deputy and Deputy Chairman of the Antimonopoly Committee of Ukraine are appointed from among the state commissioners on proposal of the Prime Minister of Ukraine and dismissed from office by the President of Ukraine. The Prime Minister of Ukraine lodges to the President of Ukraine a submission on appointing the First Deputy and Deputy Chairman of the Antimonopoly Committee of Ukraine in accordance with the proposals of the Chairman of the Antimonopoly Committee of Ukraine.

According to Article 11 of the Law of Ukraine “On the AMCU” AMCU state commissioners shall be appointed to office on the proposal of the Prime Minister of Ukraine, which shall be submitted on the basis of proposals of the Chairman of the Antimonopoly Committee of Ukraine, and dismissed from office by the President of Ukraine.

The term of powers of AMCU state commissioner is seven years.

Also, in order to ensure the consideration of complaints about violations of public procurement legislation, the AMCU establishes a Commission (commissions) for consideration of complaints about violations of public procurement legislation from among the commissioners for consideration of complaints in the field of public procurement consisting of three persons. There are 10 people authorized to deal with complaints about violations of public procurement legislation.

The Commissioners for consideration of complaints about violations of public procurement legislation are appointed and dismissed by the Chairman of the AMCU on competitive basis.

A citizen of Ukraine who has a higher education (specialist or master's degree, legal and/or economic and/or technical), work experience in the field of at least 5 years for the last 10 years and is fluent in the state language may be authorized to consider complaints about violations of public procurement legislation.

b) On the basis of which internal procedures and voting mechanisms are decisions reached?

The activity of the AMCU, administrative boards of the AMCU, administrative boards of the Regional Offices of the AMCU as collegial bodies is determined by the Law of Ukraine “On AMCU”, other acts of legislation on protection of economic competition, including regulations of these bodies approved by the Antimonopoly Committee of Ukraine.

Orders and decisions of the AMCU, the administrative board of the AMCU, the administrative board of the territorial branch of the AMCU are adopted by a majority vote of the members present at their meetings.

Meetings of the Commission for consideration of complaints about violations of public procurement legislation are held in accordance with the Rules of Procedure of the Commission for consideration of complaints about violations of public procurement legislation approved by the Antimonopoly Committee of Ukraine.

Decisions of the Commission (commissions) for consideration of complaints about violations of public procurement legislation are adopted by a majority vote of the members present at the meetings.

c) Is this authority able:

(i) to take decisions independently, free from political interference and to neither seek nor take instructions from any government, or other institution, body, or office;

Yes.

According to Article 19 of the Law of Ukraine "On the AMCU" in the exercise of their powers bodies and officials of the Antimonopoly Committee of Ukraine and its Regional Offices are governed only by legislation on protection of economic competition and are independent of state bodies, local authorities, their officials and undertakings, as well as political parties and other public associations or their bodies.

According to Paragraph 2 of Article 19 of the Law of Ukraine "On the AMCU" influence in any form on employees of the Antimonopoly Committee of Ukraine and its territorial offices in order to obstruct performance of their official duties or take unlawful decisions entails the responsibility provided for by law.

Interference of state bodies, local authorities, their officials and undertakings, as well as political parties and other public associations or their bodies with activities of the Antimonopoly Committee of Ukraine and its Regional Offices is prohibited, except in cases specified by the laws of Ukraine.

(ii) to exercise its powers transparently and impartially, with appropriate rules on conflict of interests;

Yes.

Article 16 of the Law of Ukraine "On the AMCU" establishes that a state commissioner of the Antimonopoly Committee of Ukraine is obliged to comply with the requirements of the legislation of Ukraine, to be objective and impartial during the exercise of his/her powers. The same applies to the heads of Regional Offices (Article 17 of the Law of Ukraine "On the AMCU").

Section V of the Law of Ukraine "On Prevention of Corruption" establishes the procedure for preventing and resolving conflicts of interest.

(iii) to have adequate and stable human, financial and technical resources.

Yes.

The Law of Ukraine "On the AMCU" stipulates that funding of the Antimonopoly Committee of Ukraine and its Regional Offices is done at the expense of funds of the general and special funds of the state budget (Article 28).

Financing of the upkeep expenditures of the Antimonopoly Committee of Ukraine and its Regional Offices is carried out by transferring funds of the general fund of the state budget. The value of this standard is set by the Verkhovna Rada of Ukraine during adoption of the following year's state budget.

Fees charged to reimburse expenses related to consideration of applications for approval of concerted actions, concentration of undertakings, findings are credited to revenues of the special fund of the state budget to a special account. These revenues are not subject to withdrawal and can only be used for the intended purpose of financing activities of the Antimonopoly Committee of Ukraine and its Regional Offices, in particular, for technical and logistical support.

Staff turnover in 2021 was: for the central office of the Committee - 23% (82 dismissed); with regard to the territorial branches of the Committee - 19% (75 dismissed); total in the Committee system - 21%.

In general, the economic effect of the AMCU in 2021 amounted to UAH 5.19 billion, which is 12% more than in 2020.

Information on human resources and the structure of the AMCU is provided in the answer to question 19.

20. Can the competition authority act on its own initiative? Or only on the basis of a complaint?

Yes, on its own initiative.

Article 36 of the Law “On Protection of Economic Competition” stipulates that consideration of a case on violation of the legislation on protection of economic competition may be initiated by the AMCU.

21. Which investigative powers does the law provide to the competition authority? How do they compare to the investigative powers laid down in Regulation 1/2003/EC and Regulation 139/2004/EC?

When considering cases of violation of the legislation on protection of economic competition, applications and cases of concentration of economic entities, the bodies of the Antimonopoly Committee have the following powers, similar to the investigative powers provided by Regulation (EU) 01/2003 and Regulation (EU) 139/2004:

- to require economic entities, associations, authorities, local governments, administrative and economic management and control bodies, their staff and official persons and employees, other individuals and legal entities information, including with limited access (item 5 of first part and item 5 of second part of Article 7 of the Law of Ukraine “On Antimonopoly Committee of Ukraine”), (Article 18 of EC Regulation 01/2003, Article 11 of Regulation 139/2004);

- to receive oral explanations of parties, third parties, officials, other staff and citizens (first part of Article 41 of the Law "On Protection of Economic Competition"), (Article 19 of EC Regulation 01/2003);

- to inspect economic entities, associations, authorities, local governments, administrative and economic management bodies and control their compliance with legislation on protection of economic competition and during investigations into applications and cases of violation of the legislation on protection of economic competition and, in the cases and in the manner prescribed by

law, to inspect offices and vehicles of economic entities - legal entities, withdraw or to impose arrest on objects, documents or other information carriers that may be evidence or a source of evidence in the case, regardless of their location (item 4, 7 of the first part of Article 7 of the Law "On the Antimonopoly Committee of Ukraine"), (Article 20 of EC Regulation 01/2003).

Currently, the AMCU does not have the authority to conduct inspections in the premises, vehicles of directors, managers and other staff members of undertakings or associations of undertakings (provided for in Article 7 of the Directive (EU) as of 11.12.2018 No. 2019/1).

22. Which fining powers does the law provide for in case of violations (e.g. a percentage of the turnover)?

According to Article 52 of the Law "On Protection of Economic Competition", fine is imposed in the amount of:

up to 10% of the income (revenue) of undertaking from the sale of products (goods, works, services) for the last reporting year - for anticompetitive concerted actions; abuse of monopoly (dominant) position; non-execution of the decision, preliminary decision of the bodies of the Antimonopoly Committee of Ukraine or their execution not in full volume;

up to 5% of the income (revenue) of undertaking from the sale of products (goods, works, services) for the last reporting year - for the conduction of concerted actions by participants, which are prohibited before obtaining a permit; restrictive and discriminatory activities; violation of the provisions of the constituent documents of undertaking, established as a result of merger agreed with the AMCU, if this leads to restrictions of competition; merger without obtaining the appropriate permission of the AMCU, if such permission is required; non-fulfillment by the parties to the concerted actions, mergers, of requirements and obligations, which conditioned the decision to grant permission for the concerted actions, merger;

up to 1% of the income (revenue) of undertaking from the sale of products (goods, works, services) for the last reporting year - for restrictive activities; failure to submit information within the deadlines set by the AMCU bodies or legal acts; submission of incomplete information; submission of inaccurate information; creation of obstacles for the AMCU employees conducting inspections, reviews, exclusion or seizure of property, documents, objects or other media; provision of recommendations to undertakings, associations of undertakings, authorities, local government bodies, bodies of administrative and economic management and control that predispose to violations of the legislation on protection of economic competition or contribute to the conduction of such violations; restrictions on the economic activity of the undertaking in response to the fact that it turned to the AMCU with a statement regarding violation of the law on protection of economic competition.

In this case, the income (revenue) of undertaking from the sale of products (goods, works, services) is defined as the total value of income (revenue) from the sale of products (goods, works, services) of all legal entities and private individuals forming a group, which is recognized as undertaking.

If there is no income (revenue) or no information is provided, a fine of 20,000, 10,000 and 5,000 non-taxable minimum incomes is imposed.

23. Is there a policy of immunity from fines or reduction of fines in cartel cases (leniency)?

Yes.

Part 5 of Article 6 of the Law “On Protection of Economic Competition” provides for that a person who has committed anticompetitive concerted actions but has previously voluntarily notified the Antimonopoly Committee of Ukraine or its territorial branch and provided information relevant to the decision in the case is released from liability for anticompetitive concerted actions, provided for in Article 52 of this Law.

The relevant procedure is set out in more detail in the Procedure for submitting applications to the Antimonopoly Committee of Ukraine for exemption from liability for violation the law on protection of economic competition, approved by Decree of the AMCU as of 25.06.2012 No. 399-r.

24. Is there a settlement procedure in cartel cases?

No.

25. Is there a commitment procedure in abuse of dominance cases?

No.

Nevertheless, according to Article 46 of the Law “On Protection of Economic Competition”, the AMCU has the right to make recommendations to authorities, local self-government bodies, bodies of administrative and economic management and control, undertakings, associations of undertakings regarding the termination of actions that contain signs of violation of legislation on protection of economic competition, elimination of causes the occurrence of these violations and the conditions that contribute to them, and if the violation is terminated - to take measures to eliminate the consequences of these violations.

If terms of the recommendations are met, the proceedings shall be closed, if not, then in accordance with Article 48 of the Law, the AMCU bodies can make decisions, in particular on:

- establishment of the fact of a violation of the laws on the protection of economic competition;
- termination of a violation of the laws on the protection of economic competition;
- imposition of obligation on authority, local self-government body, body of administrative and economic management and control, to repeal or amend such a decision or to break such agreements that were considered as anticompetitive actions of authorities, local self-government bodies, bodies of administrative and economic management and control;
- imposition of a fines;
- blocking of equities;
- elimination of consequences of violations of the laws on protection of economic competition, in particular, elimination or mitigation of negative impact of concerted actions and mergers of undertakings for the competition;

Although recommendations in Ukraine and commitments in EU are not identical, they have some similarities, allowing to remove the competition concerns quickly and without finding an infringement.

26. Does the law provide for interim measures?

In accordance with Article 47 of the Law “On Protection of Economic Competition”, in the process of case consideration, the bodies of the Antimonopoly Committee of Ukraine, on the basis of an application submitted by undertaking for taking measures to prevent negative and irreparable consequences for undertakings as a result of violation of the law on the protection of economic competition, may make a preliminary decision on:

- prohibition for a person (defendant), whose actions show signs of violation, to perform certain actions, including the blocking of equities;
- obligatory performance of certain actions, if the urgent performance of these actions is necessary based on the legal rights and interests of others.

27. Does the law contain prescription periods? What is their duration?

Article 42 of the Law “On Protection of Economic Competition” stipulates that the statute of limitations for violation of legislation on protection of economic competition is 5 years from the date of the violation, and in case of ongoing violation - from the date of termination of the violation.

In case of “informational violations” or creation of obstacles to the AMCU employees - 3 years from the date of the violation, and in case of ongoing violation - from the date of the end of the violation.

28. Does the law contain limitation periods? What is their duration?

Yes.

Article 42 of the Law stipulates that the statute of limitations for violating the legislation on protection of economic competition is 5 years from the date of the violation, and in case of ongoing violation - from the date of termination of the violation.

In case of “informational violations” or creation of obstacles to the AMCU employees - 3 years from the date of the violation, and in case of ongoing violation - from the date of the end of the violation.

Also, according to the Paragraph 2 of Article 42 of the Law “On Protection of Economic Competition”, running of the statute of limitations shall be suspended for the term of consideration by the bodies of the Antimonopoly Committee of Ukraine of the case on violation of legislation on protection of economic competition.

29. Does the law provide for the right to be heard, including the right of access to files?

Article 40 of the Law “On Protection of Economic Competition” provides for the rights of persons involved in the case:

to get acquainted with the materials of the case (except for information with limited access, as well as information, the disclosure of which may harm the interests of other persons involved (participated) in the case, or hinder further consideration of the case);

provide evidence, submit motions, oral and written explanations (objections), proposals on issues submitted for examination;

to receive copies of decisions in the case (extracts from them, except for information with limited access, as well as information, the disclosure of which may harm the interests of other persons involved in the case);

to appeal the decision in the manner prescribed by law.

Right to be heard includes availability of hearings in the procedure. Hearings are foreseen in Article 23-1 of The Law on the Antimonopoly Committee of Ukraine. Bodies of the Antimonopoly Committee of Ukraine, which are considering a case for granting permission for concerted actions, concentration, on violation of legislation on protection of economic competition, including unfair competition, may hold hearings in cases.

The hearing is held by the body of the Antimonopoly Committee of Ukraine, which considers the case, or on instruction of the Head of this body, by one or more of its members.

The body of the Antimonopoly Committee of Ukraine involves persons participating in consideration of the case, to give explanations, present arguments and other considerations necessary for establishing actual circumstances of the case.

Employees of the Antimonopoly Committee of Ukraine, its territorial offices, and, if necessary, experts take part in the hearing.

Other persons may be involved in the hearing, if the applicant, and in cases of violation of legislation on protection of economic competition - the applicant and the defendant, have not presented substantiated objections to this.

The body of the Antimonopoly Committee of Ukraine, on its own initiative or at the request of persons involved in the proceedings, may hold a fully or partially closed hearing in the case if an open hearing may harm interests of the state, persons involved in the proceedings, and other persons or prevent further consideration of the case.

The procedure for conducting a hearing in a case is determined by the Antimonopoly Committee of Ukraine in accordance with this Law and other legislative acts on protection of economic competition.

In order to exercise the right to receive a copy of the decision provided for in Article 40 of the Law of Ukraine "On Protection of Economic Competition", Article 24 of the Law of Ukraine "On Antimonopoly Committee of Ukraine" was established the procedure for providing decisions and orders of the Antimonopoly Committee of Ukraine and heads of its Regional Offices.

The rights of persons involved in the case are also provided by paragraphs 16 and 26 of the Rules for consideration of applications and cases of violation of legislation on protection of economic competition, approved by the Antimonopoly Committee of Ukraine on 19.04.1994 № 5, registered in the Ministry of Justice of Ukraine on 06.05.1994 with № 90299, which in general reproduce the provisions of Article 40 of the Law of Ukraine "On Protection of Economic Competition".

At the same time, paragraph 26 of this Rules provides for the right to receive the Statement of Objection and the deadline for its submission by the Antimonopoly Committee of Ukraine, the ability to respond to it, including by providing evidence, and extend the deadline for such objections on a reasoned request.

It should be noted that the rights of individuals are not limited exclusively by these rules. According to the Article 4 of the Law “On the AMCU”, The Antimonopoly Committee of Ukraine bases its activities on the principles of:

- legality;
- publicity;
- protection of competition on the basis of equality of physical and legal persons before the law and the priority of consumer rights.

In the context of the rights of those involved in a case, these principles, including the legality, may be interpreted broadly depending on the circumstances of each case.

30. Does the law lay down the rights of third parties?

The Fifth Part of Article 30 of the Law “On Protection of Economic Competition” stipulates that third parties may participate in the consideration of applications and cases if the decision of the AMCU bodies may significantly affect their rights and interests protected by this Law.

An order is issued by the AMCU to involve a third party, and the persons involved in the case are notified.

According to the First Part of Article 39 of the Law, third parties are recognized as persons involved in the case, in particular, they have the rights provided for in Article 40 of the Law.

31. Does the law provide for judicial review of the competition authority’s decisions? If yes, how many decisions of the competition authority have been upheld and annulled by the courts?

Yes.

Article 60 of the Law “On Protection of Economic Competition” provides for the right of the applicant, defendant, third party to appeal the decisions of the Antimonopoly Committee of Ukraine in whole or in part to the Economic Court within two months from the date of receipt of the decision.

In 2020, the AMCU made 138 decisions on the imposition of fines and obligations to stop violations, of which 84 remained in force and 2 decisions were revoked.

In 2021, the AMCU made 132 decisions on fines and commitments to stop violations, of which 34 decisions were appealed. There are no revoked decisions, as the trial continues.

32. Does the law provide for the publication of the decisions of the competition authority?

Yes.

According to Second Part of Article 48 of the Law of Ukraine “On Protection of Economic Competition” the Antimonopoly Committee of Ukraine publishes decisions on violations of legislation on protection of economic competition on the official website of the Antimonopoly Committee of Ukraine within 10 business days. The decision shall be made public in full, except for the information specified as restricted excess information.

Part 6 of Article 31 of the Law of Ukraine “On Protection of Economic Competition” stipulates that the decision taken as a result of consideration of applications, cases of concerted actions or mergers shall be published on the official website of the Antimonopoly Committee of Ukraine within 10 business days. The decision shall be made public in full, except for the information specified as restricted excess information.

33. Can third parties bring cases before domestic courts on a possible breach of competition rules that affects their interests?

No. The legislation of Ukraine on competition does not provide for the possibility of application by courts of legislation on protection of economic competition in the sense proposed by Art. 6 of Council Regulation 1/2003 of 16 December 2002.

34. Does the law foresee the possibility of private damages actions in cases of infringement of competition rules?

Article 55 of the Law “On Protection of Economic Competition” stipulates that person who have suffered damage as a result of violation of the legislation on the protection of economic competition may apply to the Economic court for compensation.

35. Is the competition authority consulted on draft laws that may affect competition?

Yes.

According to Article 20-1 of the Law of Ukraine “On the Antimonopoly Committee of Ukraine”, the AMCU, if necessary, submits to the Committees of the Verkhovna Rada of Ukraine proposals for draft laws on issues within its competence.

Also, in accordance with § 33, 72 of the Rules of Procedure of the Cabinet of Ministers of Ukraine, draft regulations (Draft Laws, Acts of the Government) are subject to coordination with the interested bodies.

In Addition, Article 20 of the Law of Ukraine “On the On the Antimonopoly Committee of Ukraine” stipulates that draft regulations and other decisions of authorities, bodies of local self-governments, etc. that may affect competition are subject to approval by the AMCU.

Also, the same Article mentioned that in matters of development of competition and demopolization of the economy, the Antimonopoly Committee of Ukraine and its Regional offices interact with state authorities, local self-government bodies, and bodies of administrative and economic management and control.

The Antimonopoly Committee of Ukraine and its territorial offices interact with mass media and NGOs in efforts to prevent violations of legislation on protection of economic competition, and publish reports on their activities and decisions made in the media.

Authorities, bodies of local self-government, bodies of administrative management and control shall be obliged to promote the Antimonopoly Committee of Ukraine in performing its powers in the field of support and protection of economic competition, restriction of monopolism and control over compliance with legislation on protection of economic competition, according to Part 5 of Article 4 of the Law “On protection of economic competition”.

36. Please provide information on the enforcement record of the authority charged with implementing competition law. In particular, for the years 2020 and 2021, indicate the number of negative decisions or decisions imposing remedies in cases concerning restrictive? agreements, abuses of dominant position and mergers. For each year, specify the number of decisions imposing fines and the amount of the fines.

Fines imposed:

2020 - UAH 1,635.6 million (EUR 47.081 million as of December 31, 2020)

2021 - UAH 7,237.2 million (EUR 234.042 million as of December 31, 2021)

Decisions on imposition of fines were made:

2020 - 539

2021 - 485

Decisions were made on violations in the form of concentration without the permission of the AMCU (including those for which no fine was provided):

2020 - 47

2021 - 26

Decisions were made on concentrations with remedies:

2020 - 10

2021 - 2

Decisions were made on anti-competitive concerted actions with remedies:

2020 - 0

2021 - 1

Decisions were made on anti-competitive concerted actions (bid rigging, including those for which no fine was provided):

2020 - 262

2021 - 193

Decisions were made on anti-competitive concerted actions (cartels, including those for which no fine was provided):

2020 - 5

2021 - 3

Decisions were made on the abuse of monopoly (dominant) position:

2020 - 54

2021 - 54

II. STATE AID

37. Which authorities are competent on State aid control issues? Is there a law on State aid control which reflects Article 107 and 108 TFEU? Under the State aid legislation, what is the definition given to State aid? Under the State aid legislation, is there a general prohibition of State aid? What are the criteria laid down in the legislation for compatibility of State aid?

The Law of Ukraine “On the Antimonopoly Committee of Ukraine” stipulates that one of the main tasks of the AMCU is to participate in the formation and implementation of competition policy in terms of monitoring of State aid to undertakings and monitoring the compatibility of such aid for competition.

The Antimonopoly Committee of Ukraine in accordance with the First Part of Article 8 of the Law of Ukraine “On State Aid to Undertakings” (hereinafter - the Law) is the Authorized State Aid Body.

The Law contains provisions that reflect/equate the provisions of Articles 107 and 108 of TFEU.

Thus, similarly to Article 107 TFEU, Article 5 of the Law “On State Aid to Economic Entities” provides that State aid is compatible if:

- 1) the aid is of a social nature, the final beneficiaries of which are consumers, provided that such aid is granted without discrimination on grounds of origin of goods;
- 2) provided for the purpose of compensation for damages caused by emergencies of man-made or natural character.

The First Part of Article 6 of the Law stipulates that State aid may be recognized as compatible if it is provided for the following purposes:

1) promoting the socio-economic development of regions where living standards are low or unemployment is high;

2) implementation of national programs for the development or solution of social and economic problems of a national nature;

3) promotion of certain types of economic activities or certain economic spheres, or undertakings in certain economic zones, provided that it does not contradict international agreements of Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine;

4) support for culture, creative industries, tourism and preservation of cultural heritage, if the impact of such State aid on competition is insignificant.

Article 8 of the Law stipulates that the Authorized Body for State aid is the Antimonopoly Committee of Ukraine. Article 8 establishes the AMCU authority to, inter alia, collect and analyze information on measures to support undertakings at the expense of state or local resources, demand information from providers and recipients of State aid, their officials, including restricted access information, necessary for making decisions provided by this Law; providing State aid providers with mandatory recommendations for amendments to the terms of such aid in order to eliminate or minimize the negative impact of State aid on competition, and clarifications on the application of State aid legislation. This corresponds to the provisions of the First Part of Article 108 TFEU.

In accordance with Article 108 (3) TFEU, Article 9 of the Law stipulates that State aid providers submit notifications of new State aid with proposals for the preparation of draft laws, other regulations and administrative acts aimed at supporting undertakings at the expense of state resources or local resources, making changes to the terms of existing State aid. New State aid to be notified may be provided only after receiving the relevant decision of the Authorized Body provided for in paragraphs 1 and 2 of Part Six of Article 10 or paragraphs 1-3 of Part Seven of Article 11 of this Law.

In accordance with the Second Part of Article 108 TFEU, Article 15 of the Law provides for the existing State aid inventory, namely: if based on the analysis of information received from the State aid provider, the Authorized Body receives confirmation that current State aid is not or can no longer be considered compatible for competition, it sends recommendations to the relevant State aid provider regarding: amendments to the State aid program; introduction of an additional procedure for the implementation of the State aid program; termination of the State aid program. The recommendations of the Authorized Body are subject to mandatory consideration by the State aid provider to which they are provided. The results of their consideration shall be notified to the Authorized Body within one month from the date of receipt of such recommendations. If the State aid provider has filed an objection to the recommendations of the Authorized Body within the established period, and the Authorized Body after consideration of the objection considers it necessary to implement the recommendations, the Authorized Body shall decide to start consideration of the State aid case in accordance with Article 11 of this Law.

Pursuant to Article 7 of the Law, the Authorized Body may establish exemptions from the obligation to notify new State aid to certain groups of providers of categories of State aid defined in Part Two of Article 6 of this Law. Exemption from the obligation to notify State aid providers for the restoration of solvency and restructuring of undertakings, as well as for the support of certain sectors of the economy is not allowed. This corresponds to the Fourth Part of Article 108 TFEU. Based on the same Article of the Law, the Committee has adopted the Ordinance of 29.04.2021 No. 10-pn that provides for an exemption the obligation to notify providers of State aid of a new State aid, aimed at overcoming the effects of the coronavirus disease COVID-19, if the aid complies with the criteria, approved by the Resolution of the Cabinet of Ministers of Ukraine of 03.03.2021 No. 200.

According to the definition given in Paragraph 1 of the First Part of Article 1 of the Law, State aid to undertakings is support in any form of undertakings at the expense of state or local resources that distorts or threatens to distort economic competition, creating benefits for production of certain types of goods or carrying out certain types of economic activities.

This definition of State aid corresponds to the concept set out in Article 107 (1) TFEU on the cumulative nature of State aid, with the exception of the effect on trade. At the same time, the Verkhovna Rada of Ukraine registered Draft Law No. 5648 “On Amendments to the Law of Ukraine On State Aid to Undertakings and other legislative acts of Ukraine on Improving Control and

Monitoring of State Aid to Undertakings”, which provides for the coverage of the definition of State aid signs of impact on trade.

Thus, the Law contains provisions on the general prohibition of State aid. According to Article 2 of the Law, State aid is compatible for competition, unless otherwise provided by this Law.

According to the Second Part of Article 6 of the Law, the Cabinet of Ministers of Ukraine determines the criteria for assessing the compatibility of certain categories of State aid, in particular, the following categories:

1) aid to ensure the development of the regions (approved by Decree of the Cabinet of Ministers of Ukraine as of 07.02.2018 No. 57);

2) aid for medium and small undertakings (approved by Decree of the Cabinet of Ministers of Ukraine as 07.02.2018 No. 57);

3) aid for professional training of employees (approved by Decree of the Cabinet of Ministers of Ukraine as of 11.01.2018 No. 11);

4) aid for employment of certain categories of employees and creation of new jobs (approved by Decree of the Cabinet of Ministers of Ukraine as of 31.01.2018 No. 33);

5) aid for the restoration of solvency and restructuring of undertakings (approved by the Decree of the Cabinet of Ministers of Ukraine as of 31.01.2018 No. 36);

6) aid for the protection of the natural environment (approved by the Decree of the Cabinet of Ministers of Ukraine as of 11.10.2021 No. 1060);

7) aid for conducting scientific research, technical development and innovation activities (approved by Decree of the Cabinet of Ministers of Ukraine as of 07.02.2018 No. 118);

8) aid for support of certain sectors of the economy, coal industry (approved by Decree of the Cabinet of the Ministers of Ukraine, as of 13.01.2021 No. 38);

9) aid in overcoming the consequences caused by the coronavirus disease COVID-19 (approved by the Decree of the Cabinet of Ministers of Ukraine as of 03.03.2021 No. 200).

Besides, according to the EU legislation, a State aid activity is compatible only if it meets each of the following criteria:

1) contribution to a clearly identified objective of common interest;

2) need for state intervention – remedying a well-defined market failure;

3) feasibility of the aid activity;

4) incentive effect;

5) proportionality of the aid (aid being limited to the minimum necessary extent);

6) avoidance of severe unjustified negative effects to competition and trade among Member States;

7) transparency of the aid.

Establishing compliance of a State aid activity with the above-mentioned criteria is done by the Committee, but such criteria are not secured at the legislative level with a legal and normative and/or regulatory act.

Along with that, the information, specifically, as regards the purpose, incentive effect, need for state intervention, is supplied by the provider in accordance with the State Aid Notification Form, approved by the AMCU Ordinance of 04.03.2016 No. 2-пн, registered with the Ministry of Justice of Ukraine on 4 April 2016 under No. 501/28631.

38. To what extent does the legislation reflect the EU regulations, guidelines and communications adopted for the implementation of Articles 107 and 108 and Article 106 TFEU (e.g. on certain State aid instruments, or on State aid to certain sectors or for certain objectives)?

As it was stated in response to question 37, the Law “On State Aid to Economic Entities” contains provisions identical to Articles 107 and 108 of the TFEU and reflects the content of these articles of the TFEU.

It also should be noted that the Law introduces the concept of services of general economic interest (hereinafter - SGEI), and Article 3 of the Law provides that this Law does not apply, in particular, to support economic activities related to the provision of services of general economic interest, in terms of compensation for reasonable costs for the provision of such services. The list of services of general economic interest is established by the Cabinet of Ministers of Ukraine (approved by the Decree of the Cabinet of Ministers as of 23.05.2018 No. 420).

In addition, the draft Law of Ukraine “On Amendments to the Law of Ukraine On State Aid to Undertakings and other legislative acts of Ukraine to improve control and monitoring of State aid to undertakings” expanded the concept of SGEI and Article 3 of the Law supplemented under which the Law does not apply to compensation for losses for the provision of SGEI. These conditions reflect the conditions in accordance with the decision of the European Court of Justice as of 24.07.2003 No. 280/00 Altmark Trans Gmbh, Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark Gmbh.

This indicates compliance with the provisions of Article 106 TFEU.

Also, taking into account the provisions of Articles 264 and 267 of the Agreement, the Authority shall make full use of relevant case law of the Court of Justice of the European Union, as well as relevant secondary legislation, framework provisions, guidelines and other applicable administrative acts of the Union, in the absence of relevant provisions in national law.

Criteria for assessing the compatibility of State aid provided for in Part Two Articles 6 of the Law are adopted in accordance with the provisions, in particular the following EU acquis:

Criteria for assessing the compatibility of State aid to undertakings for research, technical development and innovation (Decree of the Cabinet of Ministers of Ukraine as of 07.02.2018 No. 118) in accordance with Commission Regulation (EU) No. 651/2014, in particular Section 4, and the Commission Notice (2014/C 198/01);

Criteria for assessing the compatibility of State aid to undertakings for the employment of certain categories of workers and the creation of new jobs (approved by the Decree of the Cabinet of Ministers of Ukraine as of 31.01.2018 No. 33) in accordance to Commission Regulation (EU) No. 651/2014, in particular Section 6;

Criteria for assessing the compatibility of State aid to undertakings for professional training of employees (approved by the Decree of the Cabinet of Ministers of Ukraine as of 11.01.2018 No. 11) in accordance with Commission Regulation (EU) No. 651/2014, in particular section 5;

Criteria for assessing the compatibility of State aid to undertakings for the restoration of solvency and restructuring (approved by the Decree of the Cabinet of Ministers of Ukraine as of 31.01.2018 No. 36) in accordance with the Commission Notice (2014/ C 249/01);

Criteria for assessing the compatibility of State aid to undertakings to ensure regional development and support of medium and small undertakings (approved by the Decree of the Cabinet of Ministers of Ukraine as of 07.02.2018 No. 57) in accordance with Commission Regulation (EU) No. 651/2014, in particular Section 1 and Section 2, and the Guide to Regional State Aid for 2014-2020, 2013/C 209/01; at the moment, the AMCU has developed a draft of Governmental Resolution on approving the criteria for assessing the compatibility of State aid to undertakings to ensure regional development and the criteria for assessing the compatibility of State aid to undertakings to support small and medium undertakings, taking into account the 2021 Guide to Regional State Aid (2021/C 153/01);

Criteria for assessing the compatibility of State aid to undertakings in the coal industry (approved by the Decree of the Cabinet of Ministers of Ukraine as of 13.01.2021 No. 38) in accordance with the Council Decision as of 10.12.2010 on State aid for the closure of uncompetitive coal mines (2010/787/EU) and Council Regulation No. 1407/2002 as of 23.07.2002 on State aid to the coal industry;

Criteria for assessing the compatibility of State aid to undertakings to overcome the consequences caused by coronavirus disease COVID-19 (approved by the Decree of the Cabinet of Ministers of Ukraine as of 03.03.2021 No. 200) in accordance with the Temporary Framework to support the economy in the context of coronavirus outbreak (2020/C 91 I 01); First Amendment to the Temporary Framework to support the economy in the context of the coronavirus outbreak (2020/C 112 I/01); Second amendment to the Temporary Framework to support the economy in the context of the coronavirus outbreak (2020/C 164/03); Third amendment to the Temporary Framework for State aid measures to support the economy in the current Covid-19 outbreak (2020/C 218/03); Amended notification template for the Temporary Framework after the third amendment);

Criteria for assessing the compatibility of State aid to undertakings for environmental protection (approved by the Decree of the Cabinet of Ministers of Ukraine as of 11.10.2021 No. 1060) in accordance with the Regulation of the Commission (EU) No. 651/2014 as of 17.06.2014 and the European Commission Notice on the Principles of State Aid for Environmental Protection and Energy in 2014-2020 (2014/C 200/01).

39. Please describe the State aid authority, including the institutional set-up and information on the staffing situation (organisational structure, number of staff, etc.). By whom and according to which criteria and procedure are its board members appointed? To what extent is this institution independent from State aid granting authorities? Is it attached to or part of another administration, e.g. a ministry? Is this authority able (i) to take decisions independently, free from political interference and to neither seek nor take instructions from any government, or other institution, body, or office; (ii) to exercise their powers transparently

and impartially, with appropriate rules on conflict of interests; (iii) to have adequate and stable human and financial resources

In order to ensure the effective implementation of the powers vested in the Antimonopoly Committee of Ukraine as the Authorized Body for State Aid, the AMCU has a Department for Monitoring and Control of State Aid (hereinafter - the Department), established in July 2017 to fulfill Ukraine's international obligations which arose, in particular, as a result of the signing of the Association Agreement.

The main task of the Department is to ensure the work of the AMCU as the Authorized Body for State Aid in accordance with the Laws of Ukraine “On State Aid to Undertakings” and “On the Antimonopoly Committee of Ukraine”, in particular, monitoring and control, prevention of distortions of economic competition, formation and implementation of competition policy in the field of State aid.

The Department is headed by the Director of the Department, who is appointed and dismissed by order of the Chief of Staff of the AMCU in the manner prescribed by law.

The number staff of the Department is currently 30 units. The positions of the employees of the Department belong to the positions of public officials.

The Department consists of five Sections with distributed sectoral specialization, which, exercising the powers of the AMCU in accordance with the requirements of the Law, in particular, monitor and control of State aid to undertakings and to assess the compatibility of such aid for competition, make proposals to existing legal acts and develop regulations on State aid, etc.

Experts of the Department also administer the State Aid Portal, which, in particular, contains:

- Register of State aid, the need for which is established by Law;
- Decisions on State aid;
- Cases of State aid.

This Portal also provides for the function of electronic document flow between State aid providers and the Antimonopoly Committee of Ukraine.

According to the Law of Ukraine “On the Antimonopoly Committee of Ukraine”, the Antimonopoly Committee of Ukraine is a state body with a special status, the purpose of which is to ensure State protection of competition in business activities and public procurement.

According to this Law, the special status of the Antimonopoly Committee of Ukraine is determined by its tasks and powers, including the role in the formation of competition policy, determined by this Law, other legislation and, in particular, the appointment and dismissal of the Chair of the Antimonopoly Committee of Ukraine, State Commissioners of the Antimonopoly Committee of Ukraine, Heads of territorial offices of the Antimonopoly Committee of Ukraine, in special procedural principles of the Antimonopoly Committee of Ukraine, providing social guarantees, protection of personal and property rights of employees of the Antimonopoly Committee of Ukraine.

Information on appointment of members of the Antimonopoly Committee of Ukraine and on activity of the Committee as an independent authority can be found in the reply to Question 19 hereof.

According to Article 27 of the Law of Ukraine “On the Antimonopoly Committee of Ukraine”, the structure, staffing table of the Antimonopoly Committee of Ukraine and its territorial offices is

approved by the Chair of the Antimonopoly Committee of Ukraine within expenditures according to estimates of revenues and expenditures. The maximum number of employees of the Antimonopoly Committee of Ukraine and its territorial offices is approved by the Cabinet of Ministers of Ukraine.

Terms of funding of public officials of the Antimonopoly Committee of Ukraine and its territorial offices are established in accordance with the Law of Ukraine “On Public Service”.

The procedure for funding technical support of the Antimonopoly Committee of Ukraine is determined by Article 28 of the Law of Ukraine "On the Antimonopoly Committee of Ukraine".

40. What are the competences of the State aid authority? How do they compare to the powers laid down in Council Regulation (EU) 2015/1589?

According to the Second Part of Article 8 of the Law of Ukraine “On State Aid to Undertakings” the powers of the Authorized Body include:

1) receipt and consideration of notifications of new State aid from providers of such aid in accordance with the procedure established by this Law;

2) to assess measures to support undertakings through state or local resources for their qualification as state aid, to assess compatibility of state aid with competition, to take decisions as set forth by this Law;

3) gathering and analyzing information on measures to support undertakings at the expense of state or local resources, requiring from providers and recipients of State aid, and their officials of information, including limited access information, necessary for decision-making under this Law;

4) provision:

binding recommendations for State aid providers on amendments to the conditions of such aid in order to eliminate or minimize the negative impact of State aid on competition;

explanations on the application of State aid legislation.

5) decision-making on:

temporary cessation of illegal State aid provision in accordance with this Law;

termination and recovery of illegal State aid declared incompatible for competition;

6) establishing the order for:

submission and formalization of information regarding new State aid and about the introduction of amendments to the conditions of current State aid;

consideration of cases on State aid;

revocation of decisions specified in Part Six of Article 10 or Part Seven of Article 11 of this Law;

State aid monitoring;

maintaining and accessing the State aid register;

7) definition of:

forms and requirements for submitting information on current State aid;

methods of forming a map of the regional distribution of State aid, preparation and publication of official reports of Ukraine in the field of State aid;

8) development and submission in the prescribed manner to the Cabinet of Ministers of Ukraine of proposals for the adoption of regulations on State aid;

9) implementation of international cooperation measures;

10) exchange of information with international organizations, state bodies, non-governmental organizations on State aid in other states.

Taking into account the above-mentioned powers and the relevant administrative acts of the AMCU, we would like to note the following.

Articles 2-5 of Chapter II of Council Regulation (EU) 2015/1589 provide for the regulation of the notification of State aid. The Ukrainian legislation defines the relevant procedure according to similar principles. Submission by the provider and consideration by the AMCU of notifications on new State aid and amendments to existing State aid are regulated by Articles 9 and 10 of the Law, as well as the Procedure for submitting and issuing notifications regarding new State aid and amendments to the terms of existing State aid, approved by the Order of the AMCU as of 04.03.2016 No. 2-rp, registered at the Ministry of Justice of Ukraine as of 04.04.2016 No. 04 501/28631.

These legal provisions stipulate that State aid providers submit a notification of new State aid in advance and new State aid to be notified may be granted only after receiving the relevant decision of the AMCU provided by Law. The notification shall be submitted electronically to the State Aid Portal in the prescribed form and shall be deemed accepted by the AMCU if within 15 days of its receipt, the AMCU has not notified the State aid provider that the information in the notification does not meet the requirements or incomplete to decide on the compatibility of State aid for competition, and has not sent a request for additional information. In this case, the notification is considered revoked if the provider has not provided the requested information and has not proved the impossibility of its submission. In such a case, the bodies of the AMCU shall decide to refuse to consider this notification and notify State aid provider in writing.

The decision on the results of the review of the notification on new State aid, which is accepted for consideration, shall be made by the AMCU within two months from the date of its consideration of:

- compatibility of new State aid for competition;

- recognition of the aid to undertaking specified in the notification as not State aid in accordance with this Law;

- beginning of consideration of the case on State aid.

If during the specified period of consideration of the notification, the AMCU has not started consideration of the case on State aid, the decision on compatibility of new State aid shall be considered adopted.

Articles 6-9 of Chapter II of Council Regulation (EU) 2015/1589 set out the principles for the formal investigation procedure. Similar provisions are provided by Article 11 of the Law and the Procedure for consideration of cases of State aid to undertakings, approved by the Order of the AMCU as of 12.04.2016 No. 8-rp, registered at the Ministry of Justice of Ukraine as of 06.05.2016 No. 686/28816 (hereinafter - Procedure No. 8-rp).

It is envisaged that the AMCU will begin its consideration of the State aid case if it finds reasonable grounds to conclude that State aid is not compatible for competition or that an in-depth analysis of compatibility of State aid for competition should be carried out. The decision to initiate a State aid case shall contain information on the results of the new State aid notification, substantiated grounds for concluding that State aid is not compatible for competition or conducting an in-depth analysis of State aid compatibility for competition. Information on the commencement of proceedings is posted on the official website of the AMCU and contains a request to all interested parties to submit reasoned objections and comments. In considering the case, the AMCU exercises the power to demand from providers and recipients of State aid and their officials of information, including limited access information, necessary for decision-making under the Law. Currently, no fine is provided for undertakings in case of failure to provide information or submission of inaccurate information or incomplete information at the request of the AMCU, but such a provision is provided in the draft law “On Amendments to the Law of Ukraine On State Aid to Undertakings and other legislative acts of Ukraine on improving the control and monitoring of State aid to undertakings”, registered at the Verkhovna Rada of Ukraine No. 5648.

Copies of the submission with preliminary conclusions in the case before the decision in the case are sent to the parties and third parties.

The AMCU shall take a decision on the results of the consideration of the case on State aid within six months from the date of the decision to start the consideration of such a case on:

- recognition of the aid to undertaking specified in the notification of new State aid, as not State aid in accordance with this Law, including due to changes made by the State aid provider to the conditions of its provision;
- compatibility of new State aid for competition, including as a result of changes in the conditions of its provision by the State aid provider;
- compatibility of new State aid for competition, provided that the provider and recipients of State aid fulfill the obligations established by the Authorized Body;
- recognition of new State aid as not compatible for competition;
- termination and recovery of illegal State aid, declared incompatible for competition.

Article 10 of Chapter II of Council Regulation (EU) 2015/1589 provides for the possibility of withdrawing notifications. Pursuant to Part Seven of Article 9 of the Law, State aid provider may withdraw its notification of new State aid at any time before the final decision of the AMCU. Also, Paragraph 2 of Section IX of the Procedure No. 8-rp stipulates that if during the consideration of a State aid case initiated as a result of consideration of a notification of new State aid or changes to the conditions of existing State aid, the State aid provider withdrew its notice of new State aid or changes to the terms of existing State aid, the AMCU may suspend the case, on which parties of the case are notified.

Pursuant to Part Ten of article 11 of the Law, the AMCU may revoke a decision taken in accordance with Part Seven of this article or Part Six of Article 10 of this Law if it was made on the basis of inaccurate information, which led to an unreasonable decision, and adopt a new decision in accordance with the procedure established by this Article. This corresponds to the content of Article 11 of Chapter II of Council Regulation (EU) 2015/1589.

Articles 12-16 of Chapter III of Council Regulation (EC) 2015/1589 set out the procedure for

unlawful State aid. Similar norms are contained in Articles 12 and 14 of the Law. In the event that substantiated information on illegal State aid is obtained from any source, the AMCU shall verify such information by sending a request for notification to the relevant provider. In the event that, at the request of the AMCU, a notification is not submitted within the time period established by it, or the information specified in the notification does not comply with the requirements established by Law, or the AMCU receives a reasoned application from undertaking to take measures to prevent negative consequences for it in the event of providing such assistance, the AMCU decides on suspension of illegal State aid until a decision is made on its compatibility for competition.

If, as a result of consideration of a State aid case initiated as a result of verification of information on illegal State aid, and the AMCU decides to declare State aid incompatible for competition, such aid shall be suspended and recovered in accordance with Article 14 of this Law.

Article 14 of the Law stipulates that the AMCU decides on the recovery of illegal State aid if it is declared incompatible for competition. State aid provider is obliged to take the necessary measures to ensure the recovery of illegal State aid, which is incompatible for competition by its recipient in accordance with the decision of the AMCU. The procedure for the return of illegal State aid, which is incompatible for competition, was approved by the Decree of the Cabinet of Ministers of Ukraine as of 04.07.2017 No. 468.

In the event of noncompliance with the decision to terminate or recover unlawful State aid that is incompatible for competition, the AMCU shall take legal actions.

Part 5 of the Article 14 of the Law provides that the AMCU may not demand the recovery of unlawful State aid after 10 years from the date of entry into force of the legal or administrative act on the basis of which such aid was granted. This is in line with the provisions of Article 17 of Chapter IV of Council Regulation (EU) 2015/1589.

The procedure for the misuse of State aid is set out in Article 20 of Chapter V of Council Regulation (EU) 2015/1589. Article 13 of the Law contains similar norms in Ukrainian legislation.

Articles 21-23 of Chapter VI of Council Regulation (EU) 2015/1589 set out the procedure for existing aid schemes. At the same time, the inventory of existing State aid in accordance with Article 15 of the Law is carried out on a similar basis. If the AMCU finds that there is no evidence that existing State aid is or can no longer be considered compatible for competition, it shall send a written request to the provider to grant information and documents on the provision of such aid. If, following the analysis of the information received from the provider, the AMCU receives confirmation that the existing State aid is not or can no longer be considered compatible for competition, it shall send recommendations to the relevant provider regarding:

- making amendments to the State aid program;
- introduction of an additional procedure for the implementation of the State aid program;
- termination of State aid program.

Recommendations of the AMCU are binding for consideration by the State aid provider to which they are provided. If the provider has submitted an objection to the implementation of the recommendations within the established time limit, and the AMCU, after considering the objection, considers it necessary to implement the recommendations, the AMCU shall decide to start consideration of the State aid case. If State aid provider has submitted written consent to the implementation of the recommendations within the established period, the AMCU, in agreement with

the provider, shall determine the period for the implementation of the recommendations.

Article 24 of Chapter VII of Council Regulation (EC) 2015/1589 regulates the rights of interested parties. Ukrainian law grants similar rights to interested parties who may file objections and comments in connection with the consideration of a State aid case and require non-disclosure of information about themselves to the provider of such aid; Certain interested persons may submit to the AMCU applications for verification of information on illegal State aid and/or improper use of State aid, which are subject to mandatory consideration by the AMCU in accordance with the procedure established by it. Pursuant to Article 17 of the Law, the persons concerned have the right to appeal against the decisions of the AMCU, adopted in accordance with this Law, to the court. Also, all decisions made by the AMCU based on the results of consideration of notifications and cases are published on the official website of the AMCU and on the State Aid Portal.

Articles 26-28 of Chapter VII of Council Regulation (EU) 2015/1589 set out the principles for monitoring State aid. Relevant principles are reflected in Articles 16 and 17 of the Law and the Order of the AMCU as of 28.12.2015 No. 43-rp, registered at the Ministry of Justice of Ukraine as of 26.01.2016 for No. 140/28270. It is envisaged that the State Aid Register is compiled and maintained by the AMCU, based on the results of State aid monitoring and on the basis of information on current State aid provided by such aid providers. State aid register is open and accessible to all users free of charge.

Providers State aid are obliged to submit to the AMCU annually, by April 1 of the following year, information on current State aid, its purpose, forms, sources, recipients and their shares in the total amount of State aid, provided during the last fiscal year, within the relevant program or information that no State aid was provided during the reporting year.

Each year, by September 1 of the following year, the AMCU shall prepare an annual report on the provision of State aid in Ukraine for the previous fiscal year and submit it to the Government. Such a report is published.

41. To what extent are the State aid authority's decisions binding?

As mentioned above, Article 8 of the Law stipulates that the Authorized Body is the Antimonopoly Committee of Ukraine.

According to Article 22 of the Law of Ukraine “On the Antimonopoly Committee of Ukraine: orders, decisions and demands of the Antimonopoly Committee of Ukraine, the Head of the territorial office of the Antimonopoly Committee of Ukraine, the demands of authorized employees of the Antimonopoly Committee of Ukraine, its territorial offices within the time limits specified by them, are binding for execution in the terms determined by them, unless otherwise provided by Law.

Failure to comply with orders, decisions and demands of the Antimonopoly Committee of Ukraine, the Head of the territorial office of the Antimonopoly Committee of Ukraine, the demands authorized employees of the Antimonopoly Committee of Ukraine and its territorial office entails liability under the Law.

According to the Article 15 of the Law recommendations of the competent authority must be considered for the state aid provider to which they are addressed.

According to the Third Part of Article 12 of the Law, the decision of the Authorized Body on the temporary cessation of illegal State aid until the decision on its compatibility for competition is binding on the State aid provider from the date of its receipt.

42. Can the State aid authority ask for the recovery of unlawful and incompatible State aid, with interests?

Yes, it can. Recovery of illegal State aid declared not compatible by the Authorized Body is based on Article 14 of the Law of Ukraine “On State Aid to Undertakings” and the Procedure for Recovery of Illegal State Aid Incompatible for Competition, approved by the Cabinet of Ministers of Ukraine as of 04.07.2017 No. 468.

43. Can the State aid authority investigate measures ex officio? Can the State aid authority proceed to market investigations into sectors and aid instruments?

Yes, it can. In accordance with the First Part of Article 11 of the Law and the Procedure for consideration of cases of State aid to undertakings, approved by the Order of the Antimonopoly Committee of Ukraine as of 12.04.2016 No. 8-rp, registered at the Ministry of Justice of Ukraine as of 06.05.2016 No. 686/28816, the Authorized Body in accordance with the procedure established by it, consideration of the case on State aid in case of identification of reasonable grounds for the conclusion on the incompatibility of State aid for competition or on conducting an in-depth analysis of the compatibility of State aid for competition, in particular, based on:

- verification of information on illegal State aid or improper use of existing State aid obtained during the monitoring of existing State aid or from any other sources of information;
- revocation of the decision by the Authorized Body in accordance with Part Ten of this article.

The law does not establish the powers of the Authorized Body to conduct market research in relevant areas. At the same time, the Law of Ukraine “On the Antimonopoly Committee of Ukraine” defines the powers of the AMCU bodies to conduct market research.

During the consideration of relevant cases and/or schemes, assessments of compatibility of State aid, the Department for Monitoring and Control of State Aid of the Antimonopoly Committee of Ukraine may apply to other sectoral departments/offices of the AMCU, to obtain relevant expert opinions on market conditions, market participants, shares and more.

44. Is there a system in place to examine complaints by third parties?

Yes, such a system is provided by Law.

Clause 2 of the First Part of Article 1 of the Law stipulates that interested parties - providers and recipients of State aid, undertakings, other legal entities and natural persons, their associations, whose interests may be affected by the provision of State aid.

Article 11 of the Law gives the interested parties the right to submit to the Authorized Body (Antimonopoly Committee of Ukraine) (hereinafter - the AMCU) information, objections or remarks in connection with the State aid case, the interested parties may request non-disclosure of information to the State aid provider.

Article 17 of the Law provides for the right of the interested party to appeal against the decision of the AMCU, taken in accordance with the Law in whole or in part, within one month after its receipt, to the District Administrative Court whose territorial jurisdiction extends to Kyiv city.

In addition, in accordance with the Procedure for consideration of cases regarding State aid to undertakings, approved by the Order of the Antimonopoly Committee of Ukraine as of 12.04.2016 № 8-rp, registered with the Ministry of Justice of Ukraine 06.05.2016 № 686/28816 (hereinafter - the Procedure), undertakings, public authorities, local self-government bodies, administrative and economic management and control bodies, as well as legal entities acting on their behalf, authorized to dispose of public or local resources and initiating and/or providing State aid, other legal entities, their associations, whose interests can be affected by providing State aid, have the right to submit to the AMCU applications for verification of information regarding illegal State aid and/or improper use of State aid. The term of consideration of such an application by the AMCU is 30 calendar days and may be extended by 60 calendar days. If, as a result of consideration of the application of the interested party, reasonable grounds have been identified, the AMCU shall begin consideration of the case on State aid. At the time of consideration of such a case, the AMCU shall oblige the State aid provider to suspend the illegal State aid pending a decision.

Section III of the Procedure stipulates that the parties involved in the State aid case are: the parties, third parties, their representatives. The parties to the case are the applicant and the defendant, the third party is the person involved in the case due to the fact that the decision in the case of State aid may affect his rights and freedoms. Persons involved in the case, including third parties, are granted procedural rights to review the case file, provide evidence, petitions, oral and written explanations, arguments and objections, appeal decisions in the manner prescribed by Law, use other rights in accordance with legislation.

Thus, the legislation of Ukraine in the field of State aid has a system that protects the rights and interests of interested parties and third parties, in particular, by giving them the right to complain about illegal State aid or improper use of State aid to the AMCU. In addition, such third parties are granted other rights that allow them to defend their interests, in particular the right to appeal against the decisions of the AMCU and to participate in State aid proceedings.

45. Is the State aid authority subject to certain deadlines to adopt decisions? Which ones?

According to Article 10 of the Law, the decision on the results of consideration of the notification of new State aid is made by the Authorized Body within two months from the date of its consideration.

Article 11 of the Law stipulates that the Authorized Body shall make a decision based on the results of the consideration of a State aid case within six months from the date of the decision to initiate consideration of such a case.

46. How many decisions on aid measures were adopted in 2020 and 2021? How many negative or conditional decisions were adopted in each of these two years? Have there been any decisions ordering the recovery of unlawful aid since the law on State aid control came into force?

During 2020, the AMCU made 216 decisions on the merits of State aid. Number of conclusions set out in these decisions (given that some of the decisions taken by the AMCU in operative part contain several conclusions):

Aid to undertakings is recognized as not State aid

157

State aid compatible for competition

74

State aid is not compatible for competition

19

In 77 decisions taken in 2020, the AMCU identified obligations for State aid providers to eliminate inconsistencies with the law, of which 15 decisions contained obligations to recover illegal State aid found incompatible for competition.

During 2021, the bodies of the AMCU made 178 decisions in the field of State aid. Number of conclusions set out in these decisions (given that some of the decisions taken by the AMCU in operative part contain several conclusions):

Aid to undertakings is recognized as not State aid - 130

State aid compatible for competition - 78

State aid is not compatible for competition - 5

In 44 decisions taken in 2021, the AMCU determined the conditions of compatibility of State aid to bring this aid by providers in line with the requirements of State aid legislation, of which 5 decisions contain obligations to stop and/or return illegal State aid recognized incompatible for competition.

47. Has an inventory of the existing State aid schemes (i.e. instituted before the establishment of the State aid authority) been established? What is the state of play regarding the alignment of these schemes?

In January 2022, on the basis of the official web portal of the Antimonopoly Committee of Ukraine, a register of current State aid was created, which operates in a test mode and contains more than 60 decisions of the AMCU to evaluate existing State aid programs adopted during 2018-2021.

During December 2021 - February 2022 within the thematic subgroup of the intersectoral working group on State aid, to bring potential State aid measures provided by the Tax and Customs Codes of Ukraine, in accordance with the Law of Ukraine “On State Aid to Undertakings” and the Association Agreement, a number of meetings were held, during which more than 60 measures of State support provided by the Tax and Customs Codes of Ukraine were processed, and more than 20 state support programs were identified to contain signs of current State aid.

In addition, work was carried out to identify and develop potential existing State aid programs with the relevant central executive bodies (in particular, ministries). As a result of such work, more than 20 additional state support programs were identified, which contain signs of current State aid in various industries and sectors of the economy.

The AMCU also analyzed the current State aid, in particular, provided to undertakings in the field of aircraft construction in accordance with the Law of Ukraine: "On the Development of the Aircraft Industry". The AMCU adopted a number of decisions declaring the said State aid to be incompatible for competition, such as:

as of 28.08.2020 No. 563-r on the results of the case No. 500-26.15/35-20-DD on State aid of the Ministry of Economic Development, Trade and Agriculture of Ukraine in the form of exemption from corporate income tax, payment of value added tax at import of goods into the customs territory of Ukraine and payment of import duties when importing goods into the customs territory of Ukraine from 09.06.2010 till 01.01.2025 of State enterprise (SE) "Kharkiv Aggregate Design Bureau";

as of 10.09.2020 No. 584-r on the results of the case No. 500-26.15/38-20-DD on State aid of the Ministry of Economic Development, Trade and Agriculture of Ukraine in the form of exemption from corporate income tax, payment of value added tax at import of goods into the customs territory of Ukraine and payment of import duties when importing goods into the customs territory of Ukraine from 09.06.2010 till 01.01.2025 of Joint-stock company "FED", etc.

At the same time, the AMCU obliged the State aid provider - the Ministry of Economy of Ukraine (Ministry of Strategic Industries of Ukraine) to bring this State aid in line with State aid legislation, in particular the criteria for assessing the compatibility of State aid to undertakings for development of the regions and support for small and medium-sized undertakings (approved by the Decree of the Cabinet of Ministers of Ukraine as of 07.02.2018 No. 57).

The following should be highlighted.

In connection with the military aggression of the Russian Federation against Ukraine, based on the proposal of the National Security and Defense Council of Ukraine, in accordance with paragraph 20 of the First Part of Article 106 of the Constitution of Ukraine, Law of Ukraine "On Legal Status of Martial Law" No. 64/2022 martial law was imposed in Ukraine from 05:30 on February 24, 2022 for a period of 30 days and was extended by the Decree of the President of Ukraine as of 14.03.2022 No. 133/2022 from 05:30 on March 26, 2022 for a period of 30 days.

On April 21, 2022, the Verkhovna Rada adopted the Law of Ukraine "On Approval of the Decree of the President of Ukraine "On Extension of Martial Law in Ukraine" of April 19, 2022 № 7300, according to which the martial law in Ukraine is extended from 05:30 on April 25, 2022 for a period of 30 days - until May 25, 2022.

At the same time, the AMCU continues to fulfill its obligations under the Agreement in terms of conducting an inventory of existing State aid and establishing an appropriate register of such aid. Monitoring and analysis (from open sources) of potential current State aid programs is constantly carried out, identified programs form an additional register of measures that contain signs of current State aid that require in-depth analysis and further alignment with the Law of Ukraine "[On State Aid to Undertakings". This work continues and will continue after the cessation or abolition of martial law.

A. Liberalisation

General aspects

48. Is the competition and State aid legislation fully applicable to public undertakings and undertakings with special or exclusive rights, in accordance with Article 106 TFEU?

State aid and competition legislation is fully applicable to state-owned enterprises as well as to enterprises of any form of ownership.

In the context of State Aid exception is giving a state-owned entity a special task of general economic interest.

When analyzing the application of State aid rules in Ukraine, companies with exclusive or special rights usually fulfill their obligations to provide services of general economic interest. Therefore, in cases where compensation for the provision of such services cumulatively meets the Altmark criteria, State aid law does not apply. Such support is not recognized as state aid.

In cases where compensation does not meet the Altmark criteria cumulatively, its compatibility is assessed in accordance with State aid law. This applies to absolutely all areas of activity of general economic interest: housing and municipal services, public transport services, services to provide comprehensive coverage of socio-political life of the city, region, country and more.

Thus, such an evaluation mechanism is in line with Article 106 TFEU, which stipulates that undertakings with an obligation to provide services of general economic interest are subject to competition rules, to the extent that the application of these rules does not impede compliance, legally or, in fact, the special task entrusted to them.

49. Which public or private undertakings have been granted exclusive or special rights?

As a rule, the municipal enterprises that provide services of general economic interest are endowed with exclusive or special rights.

In the decisions of the AMCU on the recognition of State aid as compatible on the fulfillment of certain obligations, one of the points of the obligation is that the contract for the provision of services must contain:

- clearly defined obligations for the services to be provided by the entity and the relevant geographical areas;
- parameters on the basis of which compensation and the availability of any exclusive rights are calculated;
- the nature and extent of the exclusive rights granted in a way that prevents overcompensation, in particular, the compensation may not exceed the amount needed to cover the net financial difference between the costs incurred and the income of the enterprise in fulfilling the obligation to provide, which remains with the company, and a reasonable level of profit;
- mechanisms for determining the distribution of costs associated with the provision of services.

Thus, the nature of exclusive or special rights of economic entities that provide services of general economic interest shall specify in the contracts.

In some cases, there may be private undertakings if, for example, they have won a tender for service provider for the carriage of passengers on a particular route and receive compensation.

If, for example, the city has tram tracks and they are transferred to the balance of the municipal company, then the local government and this entity entrusts this undertaking with the task of maintaining these tracks.

In addition, the legislation of Ukraine does not use the concept of “granting special or exclusive rights”.

Based on the definitions given in European legislation:

Exclusive right - any right granted by a public authority to undertaking through any legislative, regulatory or administrative instrument to provide services or operate within a geographical area (for example, passenger rail transport);

Special right - is the same as exclusive right, but:

- there are two or more undertakings authorized to provide services or to carry out activities;
- which significantly affect the ability of any other undertaking to provide the same services or to develop the same activities in the same geographical area under substantially the same conditions.

The concept of business licensing can be considered similar to such concepts.

According to Article 1 of the Law of Ukraine “On Licensing of Types of Economic Activities”:

- *license* - the right of undertaking to conduct a type of economic activity or part of the type of economic activity subject to licensing.

- *issuance of a license* - granting undertaking the right to conduct a business or part of a business activity subject to licensing by the licensing authority to decide on the issuance of a license, which is recorded in the license register.

- *licensing body* - a state body authorized by Law or the Cabinet of Ministers of Ukraine to carry out licensing of economic activity.

The Law of Ukraine “On Licensing of Types of Economic Activities” regulates public relations in the field of licensing of economic activities, determines the exclusive list of economic activities subject to licensing, establishes a unified procedure for licensing, supervision and control in the field of licensing, liability for violations of licensing legislation types of economic activity.

Article 7 of the Law of Ukraine “On Licensing of Types of Economic Activities” establishes the types of economic activity that are subject to licensing.

Therefore, undertakings engaged in economic activity subject to licensing in accordance with the above-mentioned Law of Ukraine may be endowed with special and/or exclusive rights.

In addition, in accordance with the Law of Ukraine “On Natural Gas Market” in order to ensure public interests in the functioning of the natural gas market, natural gas market entities in exceptional cases and for a specified period may be subject to special obligations in the amount and conditions determined by the Cabinet of Ministers of Ukraine after consultations with the Secretariat of the Energy Community.

Also, the Law of Ukraine “On Electricity Market” provides that in order to ensure the general economic interest in the electricity sector of Ukraine, necessary to meet the interests of citizens, society and the state, and ensure sustainable long-term development of the electricity sector and competitiveness of Ukraine's economy. assigned special responsibilities to ensure the public interest in the functioning of the electricity market.

Also, the National Commission for State Regulation in the Fields of Energy and Public Utilities shall also inform the Secretariat of the Energy Community of the measures taken to implement this Article, in particular the possible consequences of such measures for competition in the electricity market of Ukraine and the electricity market of the Energy Community.

Information on the measures taken to implement this Article shall be updated to the Secretariat of the Energy Community every two years.

50. What are the subject, scope and duration of the relevant exclusive or special rights?

The subject, scope and term of validity of the relevant exclusive or special rights are determined in the contracts, administrative and/or regulatory legal acts.

51. Is there an obligation for the companies with exclusive or special rights to fulfil tasks of a general economic interest? If so, please specify.

Economic operators with exclusive or special rights can also be entrusted to fulfil tasks of a general economic interest (hereinafter – TGEI).

Subject matter, amount and period of validity of appropriate exclusive or special rights can be defined by licences, accordingly, such undertakings having special or exclusive rights are licensees.

Thus, according to the Law of Ukraine “On Licensing of Economic Activities,” in particular, the following ones are subject to licensing: radio and television broadcasting activity, carriage of passengers by domestic road, railway and air transport, activities in electricity sector, thermal energy production, thermal energy supply, household waste burial, household waste recycling, etc.

The list of services of general economic interest, approved by the Decree of the Cabinet of Ministers of Ukraine as of 23.05.2018 No. 420 (as amended) (hereinafter - the List of SGEI), defines SGEI in the following areas:

- 1) services in the field of functioning of the electricity market;
- 2) services in the field of functioning of the natural gas market;
- 3) services in the field of housing and municipal services (in particular, district heating services, heat supply services; household waste disposal services, household waste management services, etc.).

In addition, similar to the practice of the European Union, as provided for in Paragraph 46 of the European Commission Notice on the application of European Union State aid rules to compensation for services of general economic interest (Official Journal of the European Union C 8/4 as of 11.01.2012), In the absence of certain services in the above-mentioned Decree, but which meet the criteria of the SGEI, the Antimonopoly Committee of Ukraine assesses the compatibility of State aid for the provision of services such as the SGEI.

For example, taking into account the provisions of national legislation in the relevant field, the definition in Paragraph 14 of Article 1 of the Law of Ukraine “On State Aid to Undertakings” (services of general economic interest) (hereinafter - SGEI) - services related to satisfying of particularly important general needs of citizens that cannot be provided on a commercial basis without state support) and the corresponding interpretation in the acts of European Union legislation of the concept of SGEI, the following services are considered as SGEI:

- milk-based baby food production services;
- activities of enterprises to ensure comprehensive coverage of the socio-political life of the city, region, country, etc. (according to the European Commission Notice on the application of State aid rules to public broadcasting (Official Journal of the European Union 2009-C257/01);
- public transport services (according to the Regulation of the European Union No. 1370/2007 of the European Parliament and of the Council as of 23.10.2007 on public passenger transport services by rail and by road (as amended));
- aviation services (in particular, in accordance with Commission Notice 2014/C 99/03 “Guidelines for the provision of State aid to airports and airlines”);
- digital television distribution services;
- services related to the payment and delivery of pensions and financial assistance to the population.

Therefore, according to the practice of the Antimonopoly Committee of Ukraine as the Authorized State Aid Body, undertakings with special or exclusive rights fulfill their obligations to provide SGEI within the areas of activity defined by the SGEI List and in accordance with European Union practice.

However, in accordance with Paragraph 2 of the Decree of the Cabinet of Ministers of Ukraine “On approval of the list of services of general economic interest” as of 23.05.2018 No. 420 (as amended), ministries, other central executive bodies and collegial bodies may conduct analysis of the markets which provide SGEI, and in case of occurrence/loss of the need to provide such services, as well as the expiration of special obligations of undertakings to ensure timely submission to the Cabinet of Ministers of Ukraine of draft decisions to amend the SGEI List.

52. Are there specific State aid rules on the financing of services of general economic interest?

In accordance with Article 264 of the Agreement, the Antimonopoly Committee of Ukraine, as the Authorized State Aid Body, applies the provisions of the Agreement using as a source of interpretation the criteria arising from Articles 106, 107 and 93 TFEU, including relevant case law of the Court of Justice and relevant secondary legislation, framework provisions, guidelines and other applicable administrative acts of the European Union.

That is, if the 4 cumulative criteria set out in the Decision of the European Court of Justice as of July 24, 2003, No. 280/00 *Altmark Trans GmbH, Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*, are not met, the AMCU evaluates the compatibility of State aid, pursuant to the decision of the European Commission 2012/21/ EU as of 20.12.2011 on the application of Article 106 (2) TFEU to State aid in the form of reimbursement of public service costs to certain undertakings entrusted with the provision of SGEI. The European Union framework for State aid in the form of public service compensation (2011) 2012/C 8/03 also applies where appropriate.

At the same time, special acts of the European Union are applied in certain areas, in particular:

European Commission Notice on the application of State aid rules to public service broadcasting (Official Journal of the European Union 2009-C257/01) - on State aid to public service broadcasters;

Regulation of the European Union (1370/2007 of the European Parliament and of the Council as of 23 October 2007 on public passenger transport services by rail and by road (as amended) - on State aid for the provision of public transport services;

Commission Notice 2014/C 99/03 “Guidelines on State aid to airports and airlines” - on State aid for the provision of aviation services, etc.

We would like to underline, that in order to bring the national legislation of Ukraine into the rules of control and monitoring of State aid enshrined in the Association Agreement and, accordingly, the *acquis* of the European Union, to improve the legal regulation of State aid in order to effectively operate the system of control and monitoring of State aid, the draft Law “On Amendments to the Law of Ukraine “On State Aid to Undertakings” and other legislative acts of Ukraine on improving the control and monitoring of State aid to Undertakings” was registered at Verkhovna Rada of Ukraine on 10.06.2021, under No. 5648.

Thus, Paragraph 8 of the Second Part of Article 6 of this draft Law provides for the authority of the Cabinet of Ministers of Ukraine to determine the criteria for assessing the compatibility of State aid for the purposes provided for in Part One of this Law, in particular the provision of SGEI.

53. Are there monopolies of a commercial character within the meaning of Article 37 TFEU?

Establishment and functioning of state monopolies of a commercial nature within the meaning of Article 37 TFEU does not fall within the competence of the Antimonopoly Committee of Ukraine.

At the same time, state monopolies of a commercial nature do exist in Ukraine. For example, the monopoly of the national postal operator SC “Ukrposhta” on forwarding of certain categories of postal items, the monopoly of the national gas transmission system operator JSC “Ukrtransgaz” on the transportation of gas by main gas pipelines, the monopoly of JSC “Ukrzaliznytsia” on the operation of railway transport infrastructure.

