



# Project Cybercrime@EAP III

## *Public/private cooperation*

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Східне партнерство Eastern  
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### REPORT ON UKRAINE

**Prepared by the Cybercrime Programme Office on the basis of the expertise by  
Independent Council of Europe experts Markko Kunnapu and Marko Juric**

**ON**

**Current legislation and draft Laws supplementing and amending various issues related to  
cybercrime and electronic evidence**

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## **I. Executive Summary**

The European Union and the Council of Europe supported Eastern Partnership countries between 2011 and 2014 through the CyberCrime@EAP I project. Two follow up projects, CyberCrime@EAP II and Cybercrime @EAP III, were launched, in May and December 2015 respectively, with focus on international cooperation and public-private partnerships in cybercrime and electronic evidence. All countries – with the exception of Belarus – are Parties to the Budapest Convention on Cybercrime and are thus members of the Cybercrime Convention Committee (T-CY).

During CyberCrime@EAP I, Eastern Partnership countries concluded that public/private cooperation, in particular with regard to access to electronic evidence for criminal justice purposes, was a strategic priority. This was reconfirmed during the launching event of the CyberCrime@EAP II project in September 2015. Finally, at the launching event of the CyberCrime@EAP III project in Kyiv in April 2016, the question of applicable legislation and its clarity, consistency and proper implementation has been brought forward repeatedly among other issues discussed during the event. By virtue of its work on international standards and development of law, as well as closely related capacity building projects, the Council of Europe was deemed to be well-placed to support Ukraine in developing regulatory framework for implementation of the procedural powers under the Budapest Convention in a manner that respects the balance between public and private interests.

To address the above-mentioned problems, in the framework of the CyberCrime@EAP III project, the Cybercrime Programme Office has contracted the Council of Europe experts, Mr. Markko Kunnapu from Estonia and Mr. Marko Juric from Croatia, to provide an overview of applicable and currently discussed laws and regulations in Ukraine in terms of compliance with the Council of Europe Convention on Cybercrime and other applicable standards. This is a direct follow-up of study on available best practices and solutions implementing the procedural powers of the Budapest Convention in its member states, which was presented on 5-6 September 2016 in Kyiv. In parallel, the working group identified and assessed the problems in the legislation of Ukraine representing major obstacles to public-private cooperation in cybercrime and electronic evidence, resulting in the production of this report.

On 14 September 2016, the Council of Europe also received a letter from Mr. Oleksandr Danchenko, Chair of Parliamentary Committee on Informatisation and Communication of Ukraine, requesting assistance of the Council of Europe to provide expertise on draft laws related to telecommunication and information technologies. As the legislative package on which this letter required expert review also concerned the matters of public-private cooperation on cybercrime and electronic evidence, same group of experts was also asked to integrate their findings in this assessment report (as Appendix 2).

The following conclusions and recommendations were provided by the experts:

- Organization and ownership of legal reform on the issue needs to be made clear for effective management of the process;
- Provide clear separation of investigative authority between the security and law enforcement when it comes to cybercrime and electronic evidence;
- Continuous training and specialization of criminal justice personnel is necessary;
- Clear definitions of electronic evidence, as well as definitions of subscriber information, traffic data and content data would increase predictability and foreseeability of law;
- Introduce specific powers for the preservation of data pursuant to Articles 16 and 17 of the Cybercrime Convention and enable sending and receiving preservation orders and similar requests electronically;
- Introduce clear and explicit obligation for the service providers to retain data about electronic communications, provide clear rules for accessing and use of retained data,

- create appropriate and independent supervision and stipulate in law that retained data must be destroyed after retention period expires;
- Introduce production order provisions pursuant to Article 18 of the Convention as an alternative to powers of search and seizure;
  - Review the rules on search and seizure in order to cover the collection of electronic evidence, including the possibility of copying necessary data, extended search possibilities with regard to lawfully accessible data, and extended blocking/freezing possibilities under Art. 19 of the Cybercrime Convention;
  - Review the limitations and safeguards for the application of monitoring and interception provisions pursuant Art. 20 and 21 of the Convention, especially with regard to detailed requirements developed in the case-law of the European Court of Human Rights;
  - Ensure compatibility of measures provided by the Law on Operative and Investigative Activity with evidentiary requirements of the Criminal Procedure Code, including the conditions and safeguards contained therein;
  - Blocking and take-down of the illegal content on the Internet should be regulated on the basis of proportionality requirements;
  - Consider drafting specific rules on collection of electronic data applicable in urgent cases;
  - Consider concluding Memoranda of Understanding or similar cooperation agreements between the law enforcement authorities and service providers.

## **II. Introduction and Scope of the Expertise**

Cooperation between criminal justice authorities and private sector entities, including in particular service providers, is essential to protect society against crime. Such cooperation concerns primarily access by police and prosecution services to data held by service providers for criminal justice purposes, but also the sharing of information and experience, as well as training.

In recent years, the question of public/private cooperation and specifically the issue of criminal justice access to data has become more complex. This is also true for countries of the Eastern Partnership, many of whom share similar features and challenges due to common heritage in terms of criminal law and criminal procedure. Often, local and multinational service providers are reluctant to cooperate with the law enforcement; criminal justice measures and national security measures are not clearly separated; and public trust is limited. Moreover, law enforcement powers such as those foreseen in the Budapest Convention on Cybercrime are not always clearly defined in criminal procedure law, and this adversely affects law enforcement/service provider cooperation as well as human rights and the rule of law.

In the specific context of Ukraine, public-private cooperation in cybercrime and electronic evidence has been hampered, chiefly among other reasons, by the absence of coherent legal framework for exercise of procedural powers available under the Budapest Convention on Cybercrime, as well as uneven practice of application of already available investigative powers. Availability, consistency and proportional use of these specialized solutions by the law enforcement represents, beyond reasons of efficiency for investigations, important safeguards for the private sector entities in terms of clarity and foreseeability of law and protection from arbitrary interference with privacy of individuals.

The task set is to evaluate legal requirements for effective public-private cooperation in cybercrime and electronic evidence in Ukraine, and to present experts' findings on the matter. The publication and discussion of the findings of this report with counterparts in Ukraine will enable the Cybercrime Programme Office to plan specific future steps concerning drafting and revision of necessary legislative amendments in one with standards set by the Budapest Convention on Cybercrime.

### **III. Implementation of the Procedural powers provisions of the Budapest Convention in Ukraine**

#### **i. Background**

Ukraine has signed the Convention on Cybercrime on 23.11.2001 and ratified it on 10.03.2006.

On its 6th Plenary Session on 23-24 November 2011 the Cybercrime Convention Committee (T-CY) decided to start an assessment and review the implementation of the provisions of the Convention which provide for the expedited preservation of data.

The T-CY adopted the assessment report on its 8th Plenary on 5-6 December 2012 and *inter alia* concluded that the legislation of Ukraine was not in line with the Article 16 (Expedited preservation of stored computer data) and Article 17 (Expedited preservation and partial disclosure of traffic data). The T-CY also gave general recommendations to the Parties to undertake appropriate measures to bring their legislation in line with the Convention. Therefore it had been clear that the legislation had some serious gaps and legislative amendments were necessary to fight cybercrime effectively and respecting fundamental rights and freedoms at the same time.

The workshop organised in Kiev on 5-7 September 2016, which was followed by several meetings with relevant authorities on 8-9 September 2016, helped to understand better what was the situation in terms of legislation and practice and what were the major shortcomings.

The discussion that took place during the workshop and meetings with relevant stakeholders showed clearly that there was lack of common understanding of the existing legislation which presumably had resulted in lack of trust. As relevant government institutions as well as private sector entities were having different opinions how existing law dealt with the rights and obligations of the private sector, it could be considered as the major source of distrust and cause for conflicts.

Although some government authorities were fully aware of the shortcomings in legislation and had started to prepare possible amendments, still this information hadn't reached all the others.

As both cybercrime and cybersecurity related responsibilities were within the competence of several authorities there was no coordination at central governmental level which in turn had resulted in drafting legislative amendments simultaneously. For example amendments to the Criminal Procedure Code could be found in different draft laws instead of consolidating them into single act. As draft laws were prepared and discussed in parallel, the consultation process didn't involve all the relevant stakeholders including the private sector.

#### **Recommendations**

1. While discussing already existing draft laws as well as while preparing new draft laws, all the relevant stakeholders including the law enforcement authorities and private sector need to be involved. Possible implications to the law enforcement authorities and private sector need to be analysed.

2. Ownership of the legislative reform should be clear. In other words, while it is necessary to include a wide array of stakeholders, in particular ISPs, it should also be made clear which institution is in charge of the reform. In this context, particular problem is the fact that several draft laws that have been prepared in parallel cover similar matters and include for example changes to the CPC. It seems that there is no common understanding what the practical problems are and how to solve them.

3. Instead of having amendments being spread among different draft laws, it would be better to consolidate them into one draft. That would enable easier understanding of the proposed amendments and their scope.

## ii. Competent authorities to fight cybercrime

According to the Ukrainian legislation the competent authorities to prevent and investigate cybercrime offences are National Police, State Security Service and Office of the Prosecutor. As regards the procedural powers, the legal framework includes Criminal Procedure Code, Law on Operative Investigation Activity and Law on the Security Service of Ukraine. In order to fight serious crime including cybercrime the State Security Service may also use means and measures which are not available for the police. Combining protection of state security, counter-intelligence and other competences which are unique to the security services, together with the police powers into one government institution may provide for the effective use of resources, but as measures can be conducted by choosing legal basis and legal regime, it might pose risk to the fundamental rights and freedoms. Therefore having an authority with competence in both state security and criminal justice requires extra attention to the applicable legal conditions and safeguards.

From the meetings and discussion it became clear that all competent authorities were in need of additional training with the special focus on cybercrime and electronic evidence.

### Recommendations

4. Most of the new legislation proposed focuses on the cybersecurity and activities of the Security Service of Ukraine. It is important to stress that police needs to have similar powers and competences to fight cybercrime. Currently it is not very clear how powers and competences have been divided by different authorities. The law should provide for the clear rules on investigative powers and competences of both Security Service and police.

5. Basic knowledge on the collection and handling of the electronic evidence should be provided to all law enforcement officers. Staff specialised in high-tech crime or cybercrime should also receive advanced level trainings. Appointing specialised prosecutors with additional, more advanced training would be useful as well.

## iii. Requirements regarding human rights protection

### a. Summary of requirements in the field of human rights protection

Procedural powers defined in Articles 16 – 21 of the Cybercrime Convention interfere with fundamental human rights and freedoms, most notably with the right to privacy. Although these rights are not absolute, and are therefore subject to some restrictions, such restrictions are permissible only if and to the extent that they satisfy requirements stipulated in relevant human right treaties. This requirement follows directly from international human right treaties to which Ukraine is party: European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and International Covenant on Civil and Political Rights (ICCPR). In order to satisfy these requirements, state must, in particular, (1) ensure that any restriction of a fundamental right observes principle of legality (is "*in accordance with the law*")<sup>1</sup> and is "necessary in a democratic society".

There are four conditions which need to be satisfied in order for a restriction of a fundamental right to be in accordance with law:

- There must exist a legal basis in national law which authorizes such restriction.
- National law must be adequately accessible.

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<sup>1</sup> ECHR, Article 8(1).

- National law must be precise and *foreseeable*.<sup>2</sup> While it is necessary to avoid excessive rigidity of laws and foreseeability is therefore not synonym with “absolute certainty”, it is nevertheless important that laws be to the greatest extent possible clear and predictable. This is particularly important with regard to provisions concerning secret surveillance.<sup>3</sup>
- National law must provide a measure of legal protection against arbitrary interferences by public authorities.

Moreover, restriction is “necessary in a democratic society” if it corresponds to a pressing social need, and if principle of proportionality is observed.

Finally, Cybercrime Convention itself imposes several conditions for human rights protection in its Article 15. Firstly, it requires that all above mentioned requirements, which arise from other international treaties, are observed.<sup>4</sup> Secondly, it stipulates that parties to the Convention must implement appropriate conditions and safeguards, which “incorporate the principle of proportionality”,<sup>5</sup> and which must, *where appropriate*, include judicial or other independent supervision, grounds justifying application, and limitation of the scope and the duration of power or procedure.<sup>6</sup>

Implementation of Convention’s procedural powers requires that both external (those arising from the ECHR and ICCPR) and internal (those explicitly mentioned in the Convention itself) conditions and safeguards are applied. In order to enable their better understanding, summary of requirements for every procedural power is provided.

## **b. Recommendations**

6. Drafters of laws should find a right balance between the needs of the law enforcement and protection of privacy and other fundamental rights. For certain procedural powers (i.e. access to subscriber information and IP addresses), this means not setting the thresholds too high, otherwise it might hinder effective investigations. The problems might include not only lengthy and time-consuming process to get access to data, but it would also increasing workload for the judiciary. For some other measures such as search and seizure and, most importantly, interception of content, it is mandatory that strong conditions and safeguards are applied.

7. In any case, particular attention should be given to clarity and foreseeability of legislation. Laws should provide adequate indication to the citizens about circumstances in which their right might be restricted. Similarly, when imposing obligations on third parties such as ISPs, the law should define with precision the scope of such obligations. Finally, legal powers given to the authorities should be clearly defined. This would increase thrust among stakeholders and minimize risks of abuse of power.

8. Principle of necessity and proportionality should be respected and amendments should strike a balance between public interests and fundamental freedoms.

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<sup>2</sup> This is because, as emphasized by the European Court for Human Rights, norm “cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail”. See Sunday Times, para. 49.

<sup>3</sup> As stated by ECtHR in *Zakharov v Russia*, “since the implementation in practice of measures of secret surveillance of communications is not open to scrutiny by the individuals concerned or the public at large, it would be contrary to the rule of law for the discretion granted to the executive or to a judge to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion”.

<sup>4</sup> See Article 15(1) of the Cybercrime Convention: „Each Party shall ensure that the establishment, implementation and application of the powers and procedures provided for in this Section are subject to conditions and safeguards provided for under its domestic law, which shall provide for the adequate protection of human rights and liberties, including rights arising pursuant to obligations it has undertaken under the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 United Nations International Covenant on Civil and Political Rights, and other applicable international human rights instruments”.

<sup>5</sup> Cybercrime Convention, Article 15(1).

<sup>6</sup> Cybercrime Convention, Article 15(2).

#### iv. Necessary definitions

##### a. Electronic Evidence

The Convention doesn't provide for the definition of electronic evidence. However, in order to implement Articles of the Convention on procedural measures, defining it would be advisable. This can be achieved by introducing a specific definition of electronic evidence in the Code of Criminal Procedure (CPC), or by amending general definition of evidence to that it stipulates with necessary precision and foreseeability that evidence in electronic form is covered by its scope.

##### Ukrainian legislation

CPC does not contain the definition of electronic evidence. Like many other countries Ukrainian CPC and its rules on evidence are based on traditional general notion of the evidence. According to Article 84(1) of the CPC, evidence is defined broadly, and covers any factual knowledge, obtained in accordance with the CPC, by which presence or absence of facts and circumstances which are important for the criminal proceedings can be proved. Sources of such knowledge (evidence) can be testimonies, objects, documents and expert findings.<sup>7</sup> As the current article provides for the exhaustive list it doesn't leave more room for interpretation.

According to Article 99(1), 'document' is "*material object, which was created specifically for conservation of information, such object containing fixed by means of written signs, sound, image etc. the knowledge that can be used as evidence of the fact or circumstance which is established during criminal proceedings*". It is further stipulated in paragraph 2 that documents might be "*materials of photography, sound recording, video recording and other data media (including electronic)*".

Although sometimes the general rules on evidence may cover and could be applied to the information stored in electronic form, it does not appear to be completely satisfactory solution in Ukrainian CPC. While it seems that there might be an opportunity to use electronic information as evidence if it is stored on data media on the basis of Article 99(2), not all types of electronic evidence could be considered as 'documents'.

Opinions of Ukrainian stakeholders are divided about whether specific definition of 'electronic evidence' is necessary. However, discussions with relevant authorities showed that there exist some uncertainty in the application of the Articles 84 and 99.

##### Recommendations

9. Having specific norms on electronic evidence would not be an absolute necessity but may be a valuable asset. Firstly, introducing such definition would make drafting specific procedural measures a lot easier. This is particularly important because the rest of the CPC rules on evidence aren't in line with the concept of electronic evidence, as all existing procedural measures refer to evidence as physical or tangible object. Secondly, introducing the notion of 'electronic evidence' would increase legal clarity and foreseeability of law.

10. Specific legislation on electronic evidence and related procedural measures would enable to establish rules on the admissibility of electronic evidence.

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<sup>7</sup> CPC, Article 84(2).

## **b. Subscriber information, traffic data, content data**

### **Cybercrime Convention**

While the Convention does not define electronic evidence, it nevertheless differentiates between 'subscriber information', 'traffic data' and 'content data', which are most often used types of such evidence. These types of computer data are subject to different procedural powers and corresponding conditions and safeguards. For example, access to subscriber information, as well as traffic data, has less negative impact of person's private life and fundamental rights and freedoms, so conditions to allow it can be lower than with regard to the content data, which should enjoy highest legal protection.

**Subscriber information** is defined in Article 18(3) of the Convention, as:

*any information contained in the form of computer data or any other form that is held by a service provider, relating to subscribers of its services other than traffic or content data and by which can be established:*

- a) the type of communication service used, the technical provisions taken thereto and the period of service;*
- b) the subscriber's identity, postal or geographic address, telephone and other access number, billing and payment information, available on the basis of the service agreement or arrangement;*
- c) any other information on the site of the installation of communication equipment, available on the basis of the service agreement or arrangement.*

The notion of "traffic data" is used in the Convention, but also in EU Directive on privacy and electronic communications<sup>8</sup> and many national sources of law. It should be noted that definitions in these sources differ and that they are differently applied in different areas of law. According to Article 1(d) of the Convention, **traffic data** means:

*any computer data relating to a communication by means of a computer system, generated by a computer system that formed a part in the chain of communication, indicating the communication's origin, destination, route, time, date, size, duration, or type of underlying service.*

Such data is in possession of service providers, which are defined in Article 1(c) of the Convention as:

- i) any public or private entity that provides to users of its service the ability to communicate by means of a computer system, and*
- ii) any other entity that processes or stores computer data on behalf of such communication service or users of such service.*

The notion of **content data** is relevant since it is subject to Convention's most intrusive procedural power – interception of content data, defined in Article 21. While the term 'content data' is not defined in the Convention itself, according to Explanatory report it refers to "content of the communication" or "information being conveyed by the communication (other than traffic data)".<sup>9</sup>

### **Ukrainian legislation**

While several articles of the CPC refer to the collection of subscriber data and identification of the subscriber (Articles 162, 248, 263, 268), the notion of 'subscriber' data is not defined in the CPC. The only definition related to this notion can be found in Law on Telecommunications, where the

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<sup>8</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12th July 2002, concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), Official Journal L 201 , 31/07/2002 P. 0037 – 0047.

<sup>9</sup> Explanatory report, para 209.

term 'subscriber' is explained. This definition is not sufficient, due to the narrow scope of the LOT (it applies only to telecommunication providers), and also because only the notion of 'subscriber', and not 'subscriber information', is elaborated.

Finally, the definitions for traffic data and content data are lacking at all.

## **Recommendations**

11. Definitions of 'subscriber information', 'traffic data' and 'content data' are indispensable for proper implementation of procedural powers defined in the Convention. This is so because these definitions are necessary to:

- provide foreseeability to citizens, who have to be given adequate indication about which categories of data are used for certain purposes,
- provide legal certainty for the law enforcement authorities and service providers,
- properly differentiate between different procedural powers in the CPC and their corresponding conditions and safeguards.

12. It is necessary to review the definitions of subscriber information and traffic data, and develop the limitations and safeguards corresponding to those. This requires domestic analysis in order to assign these thresholds.

13. Particular attention should be given to the definition of IP address. It is recommended that IP address be considered subscriber information – as opposed to traffic data – if the purpose is to obtain the identification of a subscriber in relation to an IP address.<sup>10</sup>

14. The notion of traffic data should be defined with utmost precision. One example of such definition is provided in Appendix 3.

## **v. Implementation of procedural measures required by Budapest Convention**

### **a. General remarks regarding implementation of Articles 16 – 21**

As procedures and measures related to the electronic evidence are of different nature and characteristics compared to measures related to tangible objects, it is highly recommended to establish set of rules in the CPC that would focus on collection and handling of electronic evidence. Articles 16-21 should be fully implemented, paying at the same time attention to proper conditions and safeguards.

It is necessary to establish clear and precise norms which would make the work of the law enforcement authorities more effective and increase predictability and trust among the private sector. It would be of utmost importance to have discussions with all the relevant stakeholders while preparing the draft laws and before submitting them to the government or legislative authorities.

### **b. Expedited preservation of stored computer data (Article 16) and partial disclosure of traffic data (Article 17)**

## **Cybercrime Convention**

In order to properly implement Article 16 of the Convention, Parties should adopt legislative and other measures necessary to obtain expeditious preservation of computer data. Article 17 creates

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<sup>10</sup> Rules on obtaining subscriber information, Report adopted by the T-CY at its 12th Plenary (2-3 December 2014), p. 4.

additional requirements when preservation of traffic data is required. In particular, Parties should take into account the following when implementing Articles 16 and 17:

**Purpose of Articles 16 and 17:** to secure data where there are grounds to believe that it is particularly vulnerable to loss or modification. Preservation is a provisional measure, which is used as a first step to securing volatile data without delay. Expedited preservation allows for the time needed to actually obtain the data through production order or seizure.

**Object:** Any stored computer data, including subscriber information, traffic data and content data.

**Power applied against:** Any legal or natural person (including, but not limited to, service providers) who possesses or controls data.

**Obligation:** "preservation" requires data to be "protected from anything that would cause its current quality or condition to change or deteriorate. It requires that it be kept safe from modification, deterioration or deletion".<sup>11</sup> In cases of traffic data preservation, Parties must ensure "expeditious disclosure to the Party's competent authority, or a person designated by that authority, of a sufficient amount of traffic data to enable the Party to identify the service providers and the path through which the communication was transmitted".

**Limitations:** Applies only to existing data (data already stored by means of computer system).

**Duration:** For a period of time as long as necessary, up to a maximum of ninety days. However, the Party is allowed to introduce the possibility of renewing the order.

**Confidentiality:** There should exist possibility of obliging "the custodian or other person who is to preserve the computer data to keep confidential the undertaking of such procedures for the period of time provided for by domestic law".

**Preferred method of implementation:** By introducing power to issue specific order to preserve data (power "to order preservation").

**Alternative method of implementation:** By using production order or search and seizure (power to "similarly obtain" data). This approach is valid if such posers enable securing of electronic evidence *in relation to any crime and any legal or physical person holding data* in an *expedited manner*.<sup>12</sup>

**Conditions and safeguards:** Law should be precise and foreseeable. If Article 16 is given effect by specific preservation order, conditions for such order "should not be too restrictive or complex but should be possible in an expedited manner".<sup>13</sup> Court authorization is not required, as judicial or other appropriate safeguards can be applied in production / seizure phase.

## Ukrainian legislation

Ukraine did not implement Article 16 of the Convention by introducing specific preservation order. Chapter 15 of the Criminal Procedure Code foresees some possibility of preserving computer data by using 'provisional access to objects and documents'. According to Article 159(1) of the CPC, purpose of 'provisional access to objects and documents' is for a party in proceedings to (1) get opportunity to examine objects and documents, (2) make copies thereof and, (3) seize them. As such, this measure corresponds to Convention's production and/or seizure orders.

Although many countries use general powers to access and obtain information instead, the preference and recommendation has always been that countries should establish specific

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<sup>11</sup> Explanatory report, para 159.

<sup>12</sup> Preservation report, p. 7.

<sup>13</sup> Preservation report, p. 10.

measures. Alternative powers can be used to achieve the purpose of preservation provision, but only if they can be applied *expeditiously*, for any crime and against any data holder.

In order to expeditiously preserve data in compliance with the CPC, it is necessary to request provisional access to 'documents'. The term 'document' should be interpreted in line with Article 99, and broadly, so that it includes not only material object – electronic data media – but also computer data stored therein. While such interpretation seems possible, certain reservations regard scope of the term 'documents' have already been expressed. Another issue is whether 'provisional access to documents' can be applied expeditiously enough? Most straightforward use of provisions in Chapter 15 of the CPC would require that the following steps be taken.

- Firstly, party in criminal proceedings should submit *motion to investigating judge* (during pre-trial) or to *court* (during trial).<sup>14</sup> Such motion should contain all elements stipulated in Article 160(2) of the CPC, including description of facts of the criminal offence, its legal qualification and reasoning regarding significance of objects of documents for criminal proceedings.
- Moreover, 'personal correspondence of a person', 'other notes of personal nature', as well as 'information held by telecommunication operators and providers on communications, subscriber, rendering of telecommunication services including on receipt of services, their duration, content, routes of transmission etc' are considered to be secret protected by law (Article 162/1/6-7). Motion to provisionally access such secrets must also contain reasoning as to why it is impossible to use some other measure to prove relevant circumstances (Article 160/2/6).
- Thirdly, investigating judge should summon the data holder and, in the ruling to summon him, should "state that objects and documents should be preserved in the condition in which they are at the moment of receiving court summons" (Article 160(3) of the CPC). Only at this point, preservation of data could be achieved.
- Alternatively, if party submitting motion proves the presence of sufficient grounds to believe that a real threat exists of altering or destruction of the objects and documents concerned, order can be granted without first summoning data holder. In such case, it would be necessary to undertake additional steps to actually secure possession of documents.

It is acknowledged that provisions of Ukrainian CPC provide some possibility to achieve preservation of data using 'provisional access to documents'. However, drafters of this report are of the opinion that provisions in Chapter 15 cannot be considered as sufficient in the light of Articles 16 and 17 of the Convention.

Firstly, it is not clear whether and to what extent the notion of 'document' includes 'computer data'. This is relevant because, in order to properly implement Articles 16 and 17, national legislation must enable expedited preservation of any computer data, including subscriber information, traffic data and content data.

Secondly, it should be noted that 'provisional access to documents' is in essence a temporary production / seizure power. Its application is therefore subject to stringent conditions and safeguards. It includes, *inter alia*, requirement that public prosecutor proves that "needs of pre-trial investigation justify such degree of interference [production / seizure] in rights and freedoms of a person". It is also necessary to submit extensively regulated motion to the investigating judge / court, and to obtain necessary order. All of these requirements make the procedure unnecessarily complex and prolonged. As noted above, powers required by Articles 16 and 17 are in essence provisional measures, which should be applied expeditiously. Setting the threshold for preserving

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<sup>14</sup> CPC 160(1).

data too high might hinder the efficiency of criminal proceedings. This issue is particularly emphasized with regard to documents which are, under Ukrainian law, considered secrets, which imposes additional conditions and safeguards.

## **Recommendations**

15. All stakeholders in the reform would find it beneficial if *specific preservation order* would be introduced in the criminal procedure. Firstly, specific procedural power, which would have as its purpose and object expedited preservation of stored computer data, would significantly increase precision and foreseeability of law. In particular, trust among stakeholders would be increased if the law would create clear obligation for data holders (preserve computer data under their control) and at the same time made it possible and ordinary for law enforcement to use less intrusive measure (preservation of data) instead of seizure of material objects (data carriers etc.). Secondly, law enforcement authorities might find it beneficial to have at their disposal measure which can be applied expeditiously, with minimum formal requirements. While court order to obtain tangible objects and documents is reasonable safeguard, it might not be the best solution to obtain for example subscriber information or IP-addresses. For the latter, lower level thresholds could be considered sufficient as well.

16. To speed up the proceedings and make them more effective, review the procedures in the CPC and other relevant laws in order to enable sending and receiving preservation orders and similar requests electronically is recommended.

### **c. Retention of traffic data as a complementary measure**

#### **Data retention in general**

Data preservation and data retention are two concepts that have been very often misunderstood by both policy makers and legislators. Obviously there are similarities between these two, but the scope and use are different. They are applicable to different categories of data and their use is subject to different conditions and safeguards.

As explained above, preservation is essentially a mechanism which enables law enforcement authorities to order any person (including communication service providers) to preserve certain specified computer data (subscriber information, traffic data, content data) they are processing and which is being possessed or controlled by them, and which could be used as evidence. It is however limited only to already existing data, meaning data which is already stored on some computer system. Preservation order cannot encompass future data. Therefore, preservation order does not create, for service provider, obligation to keep some records, but only to secure already existing records. In essence, preservation is a provisional measure, which is used as a first step to securing volatile data without delay. Such securing allows for the time needed for the second step, that is, to actually obtain the data through formal procedures such as production or seizure.<sup>15</sup>

Retention, on the other hand, can be considered as a general obligation to telecommunications service providers to store particular types of data for a period that has been defined by the law and make it accessible to the law enforcement authorities. As traffic data is usually retained for a period from 6 months to 2 years, it enables law enforcement authorities also to access and use data has been stored before the request. By using this data which is often called historic data about the device or person, investigators would get lots of additional information which wouldn't be available with preservation order.

Budapest Convention regulates only the first of these methods (preservation, Articles 16 and 17, discussed below). While the data retention was not foreseen by the Convention, it was introduced

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<sup>15</sup> See extensively in T-CY Assessment report *Implementation of the preservation provisions of the Budapest Convention on Cybercrime*, p. 73.

in the European Union by the Data Retention Directive<sup>16</sup> in 2006. Although the Directive was declared invalid by the CJEU in 2014,<sup>17</sup> many EU states continue to operate data retention mechanism on the basis of their national legislation.

What would be most important to understand with regard to data preservation and data retention, is that they cannot be considered as alternatives to each other. In the field of electronic communications, data retention is seen as superior method of securing traffic data for purposes of law enforcement. On the other hand, preservation has particularly significant role when securing other types of data (subscriber information, content data) is necessary. In conclusion, these measures complement each other, are necessary tools for law enforcement authorities and should be provided by the law.

On the basis of best practices from other countries, drafters of this report suggest that legislators should consider the following:

- Data retention is an important tool for crime investigation and prosecution,
- Data retention creates stronger interference with person's privacy than prevention, and should therefore be subject to higher thresholds and safeguards,
- Legal framework for data retention must be particularly precise and foreseeable. This requires clear and precise provisions regulating (1) types of data to be stored, (2) period of retention, (3) conditions for accessing data, (4) independent supervision and (5) obligation, stipulated in law, to destroy data after retention period expires.

### **Data retention in Ukraine**

Obligation to retain some data about communications exists in Ukrainian legislation, however, the scope and actual fulfilment of this obligation is subject to much uncertainty. Discussions with Ukrainian stakeholders showed that there exist serious reservations and differences of opinion when it comes to implementation and use of data retention. On the one side, it is emphasized that data retention obligation is imposed by Article 39 of the Law on Telecommunications (LOT), interpreted in connection with the Civil Code. On the other side, many stakeholders argue that this provision is imprecise, unforeseeable, does not contain adequate conditions and safeguards and is, as a result, subject to arbitrary application.

Article 39 of the LOT regulates 'responsibilities of telecommunication operators', and reads as follows:

*1. Telecommunication operators shall have the following responsibilities:*

...

*7) to keep records concerning the provided telecommunication services over the duration of a period of action as established by the law of Ukraine and to provide information concerning the services having been provided following the procedure established by the law;*

...

It appears that the scope of this obligation is not elaborated in secondary legislation. Records are to be kept during a period of statute of limitation for commercial disputes, which is according to Civil Code three years.

While it cannot be denied that Article 39 of the LOT creates legal basis for data retention, drafters of this report are of the opinion that this provision is not fully compatible with requirements regarding quality of law and proportionality.

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<sup>16</sup> Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC.

<sup>17</sup> See Joined Cases C-293/12 and C-594/12 Digital Rights Ireland and Seitlinger and Others.

Firstly, scope of the retention obligation does not appear to be sufficiently precise and foreseeable. According to Article 39/1/7, telecommunication providers are required to keep 'records concerning the provided telecommunication services'. However, the term 'records' is not defined in the LOT. Consequently, service providers are subject to vague and unforeseeable obligation, because they cannot know with certainty which data should be retained. Also, citizens have no indication which of their private data are stored and for what purposes. Analysis of practices from other countries shows that legal provisions which have similar object and purpose as Article 39/1/7 of the LOT are drafted with more precision. For example, Article 110 of the Croatian Electronic Communications Act stipulates that service providers must retain data necessary to "(1) trace and identify the source of a communication, (2) identify the destination of a communication, (3) identify the date, time and duration of a communication; (4) identify the type of communication, (5) identify users' communication equipment or what purports to be their equipment, and (6) data necessary to identify the location of mobile communication equipment". This obligation is further elaborated in secondary legislation (regulation), which stipulates with precision categories of data to be retained (See Appendix 3). Identical approach is followed in Serbian legislation.

Secondly, LOT does not specify with precision the purpose of the obligation to 'keep records'. Taking into account that this obligation exists 'over the duration of a period of action as established by the law of Ukraine', provision could be understood as ensuring the availability of data necessary to establish contractual rights and obligation of a service provider and its users. However, on the other hand, it is not foreseeable from this provision that records which are being kept can be used for law enforcement purposes. In comparative legislation, provisions on data retention stipulate with precision for what purposes data can be used. For example, in Croatian legislation it is stipulated that service providers "*shall be obliged to retain electronic communications data ... in order to make possible the conduct of the investigation, discovery and criminal prosecution of criminal offences, in accordance with a special law concerning criminal procedure and in order to protect defence and national security in accordance with special laws in the fields of defence and national security*".

Thirdly, duration of retention obligation in the LOT is limited to 'period of action', as is defined by law on obligations. We believe that this provision is unacceptable from the point of foreseeability and legal certainty. Consequently, quality of legislation would be significantly enhanced if the retention period would be stipulated in the LOT itself. Such approach is also followed in comparative legislation.

Fourthly, drafters of the report are of the opinion that retention for a period of three years is excessive. For example, comparative legislation imposes retention obligation for periods of 12 months (Croatia, Serbia and Estonia).

## **Recommendations**

17. Introduce clear and explicit obligation for the service providers to retain data about electronic communications, including description of the data to be stored.

18. Legislation should provide clear rules for accessing and use of retained data, create appropriate and independent supervision and stipulate in law that retained data must be destroyed after retention period expires.

19. Legislation should stipulate that no content data should be retained.

20. As retention of data usually brings extra costs and expenditures for the service providers, detailed regulations on the obligations of Internet industry need to be foreseen. The issues of costs or potential compensation should not be hindrance to this goal, and can be dealt with through a dialogue respecting the principle of technological neutrality.

#### d. Production order (Article 18)

##### Cybercrime Convention

In order to properly implement Article 18 of the Convention, Parties should adopt legislative and other measures necessary to order any person to order

- a) *a person in its territory to submit specified computer data in that person's possession or control, which is stored in a computer system or a computer-data storage medium; and*
- b) *a service provider offering its services in the territory of the Party to submit subscriber information relating to such services in that service provider's possession or control.*

In particular, Parties should take into account the following when implementing Article 18:

**Purpose of production order:** to obtain computer data by less intrusive means than seizure. As was elaborated in Explanatory report, "*a "production order" provides a flexible measure which law enforcement can apply in many cases, especially instead of measures that are more intrusive or more onerous. The implementation of such a procedural mechanism will also be beneficial to third party custodians of data, such as ISPs, who are often prepared to assist law enforcement authorities on a voluntary basis by providing data under their control...*".<sup>18</sup>

**Object:** any computer data, including subscriber information, which is possession or control of a person against whom the order is directed. Limited to existing computer data.<sup>19</sup> Article 18 does not create obligation to retain data or keep any sort of records.<sup>20</sup>

**Subject:** any natural or legal person, including service providers.

**Relevancy:** Subscriber information is the most often sought category of data in domestic investigations but also at the international level.<sup>21</sup> Ability to obtain such information is indispensable for successful investigation and prosecution of cybercrime.

**Conditions and safeguards:** National legislation should observe general principles regarding quality of the law. It might exclude privileged data or information from the scope of production order.<sup>22</sup> There is no universal requirement that judicial authorization is required to order production of data. As elaborated in the Explanatory report: "*with respect to some types of data, such as publicly available subscriber information, a Party might permit law enforcement agents to issue such an order where in other situations a court order could be required*".<sup>23</sup> At least for subscriber information, many countries allow that such information are obtained through a formal police request or an order of a prosecutor.<sup>24</sup> On the other hand, higher standards should be applied to order production of content data.

##### Ukrainian legislation

Ukraine did not implement Article 18 of the Convention by introducing specific production order. Chapter 15 of the CPC (described above) is also relevant here.

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<sup>18</sup> Explanatory report, para 171.

<sup>19</sup> Explanatory report, para 170.

<sup>20</sup> Explanatory report, para 172.

<sup>21</sup> Rules on obtaining subscriber information, Report adopted by the T-CY at its 12th Plenary (2-3 December 2014), p. 8.

<sup>22</sup> Explanatory report, para 174.

<sup>23</sup> Explanatory report, para 174.

<sup>24</sup> Rules on obtaining subscriber information, Report adopted by the T-CY at its 12th Plenary (2-3 December 2014), p. 16.

CPC provides only very limited possibility to order production of data using provisions on 'provisional access to documents'. The main concern is that application of this measure is unnecessarily burdened by imposing high thresholds in the form of conditions and safeguards which are applicable (see above 6.2.3.). This is particularly true for subscriber information. There are two issues here. Firstly, as explained above, the notion of 'information held by telecommunication operators on ... subscribers' is not elaborated in the law. This is not acceptable from the point of certainty and foreseeability of law. Secondly, such information are deemed 'secrets protected by law' and are subject to unnecessarily extensive conditions and safeguards.

## **Recommendations**

21. Introduce production order provisions pursuant to Article 18 of the Convention vs. practice under the provisional access to documents provisions, as this would also be a viable alternative to seizure and help to build the culture of trust; as a principle, use lighter measures before reverting to heavier.

22. As data copying requires specific skills as well as special hardware and software, often search and seizure has been the preferred option. Additional trainings on the collection and handling of electronic evidence should be provided.

23. To speed up the proceedings and make them more effective, review the criminal procedure and other relevant laws in order to enable sending and receiving production orders and similar requests electronically.

## **e. Search and seizure**

### **Cybercrime Convention**

Article 19 of the Cybercrime Convention requires that every Party adopts legislative and other measures necessary to empower the competent authorities to To achieve full purpose of Article 19, national legislation should ensure the following:

**Purpose of article 19:** Enable authorities to (1) conduct measure of search of similar accessing, (2) expeditiously extend such measure to linked systems, (3) seize computer system, mediums or data and (4) order any person who has knowledge or information necessary to conduct search to provide them.

**Scope of power to search:** competent authorities must be able to search or similarly access (1) computer system, (2) parts of computer systems, (3) storage mediums and (4) computer data stored therein.

**Power to extend search:** competent authorities must have the power to expeditiously extend previously mentioned power to other computer system or its part if, while conducting a search of the initial system, they develop grounds to believe that the data sought is stored in that other system, and data in question is lawfully accessible from or available to the initial system.

**Power to request information necessary to conduct search:** Competent authorities must be empowered to order anyone who has knowledge or information about functioning of the computer system or measures applied to protect the computer data therein to provide, as is reasonable, the necessary information to conduct a search.<sup>25</sup>

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<sup>25</sup> In particular, this power can be applied against system administrators, who are best positioned to give information or advice about technical modalities about search and seizure on a particular system. Explanatory report, para. 200.

**Scope of power to seize data:** Competent authorities must be empowered to seize or similarly secure computer data,<sup>26</sup> which includes powers to (1) seize (take away)<sup>27</sup> or similarly secure computer system, parts of it or storage mediums, (2) make and retain a copy of computer data; (3) maintain the integrity of the relevant stored computer data; and (4) render inaccessible or remove those computer data in the accessed computer system.

**Conditions and safeguards:** National legislation should observe general principles regarding quality of the law. It may exclude privileged data or information from the scope of search / seizure. Grounds justifying application should be elaborated. Judicial or other independent supervision should be exercised.

### **Ukrainian legislation**

Search and seizure of computer data can partially be achieved on the basis of Chapter 16 ('provisional seizure of property'), search of home or other possessions of a person (Articles 234 – 236),

Articles 234 – 236 of the CPC (search) and 167 ('provisional seizure of property') can in principle be used to achieve some purposes of Convention's Article 19. However, there are several shortcomings if these provisions are to be applied on search and seizure of computer data.

Firstly, these provisions were meant to be used with regard to tangible objects. This is visible firstly from the object of these actions, which is 'property' or 'possessions'. While this includes the notion of 'documents', it is necessary to once again point to the limited scope of that notion. Moreover, measures which are specific to search and seizure of computer data are not implemented. Also, in the context of search, there is no provision which would enable continuing search online (extension of search to connected systems).

Chapter 21 of the Criminal Procedure Code provides for the possibility to conduct covert investigative actions (special investigation techniques) and gives a list of different measures. Here the main concern is that the measures indicated are only applicable in case of serious crime and therefore might not include necessarily all the cybercrime offences. Article 264 which provides the possibility to collect data from electronic information systems enables law enforcement authorities to access computer system and obtain information which can be considered as electronic evidence. Together with Article 256 the results of such an action can be used as evidence.

Bearing in mind the assessment given above it is possible to conclude that Article 19 of the Convention has been partially implemented. Criminal Procedure Code enables search and seizure as well as obtaining information from a computer system. Although it is not explicitly mentioned it is possible to conclude that covert access without the knowledge of the owner to a computer system could cover also the extended online search. Still recommendation would be to have a clear reference to that, because it might not be sufficient in case of ordinary search and seizure which might take place with the awareness of the owner. In addition legislation needs to be improved with regard to the copying of the data and making it inaccessible.

### **Recommendations**

24. Review the rules on search and seizure in order to cover the collection of electronic evidence. As an alternative to seizure of data carriers include the possibility of copying necessary data on the spot.

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<sup>26</sup> According to the Explanatory report, „seize or similarly secure data has two functions: 1) to gather evidence, such as by copying the data, or 2) to confiscate data, such as by copying the data and subsequently rendering the original version of the data inaccessible or by removing it. The seizure does not imply a final deletion of the seized data. Para. 199.

<sup>27</sup> Explanatory report, para. 197.

25. Review the extended search possibilities under Art. 19 par. 2 of the Convention, with particular emphasis on lawfully accessible data that needs to be defined, and introduce this into law.

26. Review the extended blocking/freezing possibilities under Art. 19 par. 3 of the Convention, and introduce this into law.

**f. Real-time collection of traffic data (Article 20) and interception of content data (Article 21)**

**Cybercrime Convention**

Proper implementation of Article 20 requires that the following is observed:

**Purpose of Article 20:** to enable real-time collection and recording of traffic data.

**Object:** traffic data, as previously defined.

**Power directed against:** users who communicate by means of computer system / service providers.

**Means to achieve the purpose:** through the application of technical means, in real-time, to traffic data associated with specified communications transmitted by means of a computer system. Also, by compelling service provider, within its existing technical capability, to collect or record traffic data through the application of technical means, or to co-operate and assist the competent authorities in the collection or recording of traffic data.

**Confidentiality:** party should adopt legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact that this power is being executed.

**Conditions and safeguards:** General requirements regarding quality of the law. Grounds justifying application. Judicial or other independent supervision.

Finally, interception of content data (Article 21) is the most intrusive procedural power in the Convention on Cybercrime. In order to properly implement it, Party to the Convention should observe the following:

**Purpose of Article 21:** to empower competent authorities to intercept, through technical means and in real time, content data of specified communications within its territory, transmitted by means of a computer system.

**Object:** content data, as previously defined.

**Power directed against:** users who communicate by means of computer system / service providers.

**Means to achieve the purpose:** through the application of technical means, in real-time. Also, by compelling service providers to collect or record such data, or to cooperate with and assist the competent authorities.

**Confidentiality:** party should adopt legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact that this power is being executed.

**Conditions and safeguards:** There are several conditions and safeguards which need to be satisfied if this measure is to be permissible under international human rights law. The most important ones include the following:

- Firstly, it is to be applied in relation to a range of serious offences to be determined by domestic law. While the determination of which offences are serious enough in order to

trigger the application of this measure is left to national legislation, the ECtHR criticized solutions in which such range appeared to be overbroad.<sup>28</sup>

- Categories of people liable to have their communications intercepted should be precisely defined.<sup>29</sup>
- Interception measure should be subject to proper authorization by judicial or other independent supervision.<sup>30</sup> According to the ECtHR,<sup>31</sup> such authority must be (1) Capable of verifying the existence of a reasonable suspicion against the person concerned, and (2) Capable of ascertaining whether the requested interception meets the requirement of "necessity in a democratic society", as provided by Article 8 § 2 of the Convention, including whether it is proportionate to the legitimate aims pursued, by verifying, for example whether it is possible to achieve the aims by less restrictive means.
- Content of the authorization warrant must be precise in the sense that it clearly identifies "a specific person to be placed under surveillance or a single set of premises, as the premises in respect of which the authorisation is ordered. Such identification may be made by names, addresses, telephone numbers or other relevant information"<sup>32</sup>
- Limited duration. There should exist "a clear indication in the domestic law of the period after which an interception warrant will expire, the conditions under which a warrant can be renewed and the circumstances in which it must be cancelled".<sup>33</sup>
- The procedures to be followed for examining, using and storing the data obtained. National law should provide for safeguards against the risk of unauthorized access to data. It should also stipulate the terms of storage of the materials obtained by interception. Finally, national law should prescribe that any data which are not relevant to the purpose for which they have been obtained must be destroyed immediately.<sup>34</sup>

### Ukrainian legislation

Article 40(4) of the LOT obliges telecommunication operators to, at their own expense, "install and ensure functioning of the technical means necessary for the performance by search and investigation bodies and Ukrainian telecommunication networks security monitoring agencies, as well as to promote, within the scope of their competences, search and investigation activities, monitoring performance and prevention from the disclosure of the employed organizational and tactical techniques". It is also stipulated that operators must ensure protection of said technical means from unauthorized access.

Next, Articles 258 – 266 of the CPC provide legal basis for several covert investigative (detective) actions which interfere with the private communications of the individual. In the context of Articles 20 and 21 of the Convention, primarily relevant action is 'collecting information from transport telecommunication networks' (CPC Article 263).

It is to be noted that, according to Ukrainian CPC, these provisions apply to content data. According to Article 258(4), "interference in private communication implies access to the contents

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<sup>28</sup> For example, in *Zakharov*, the ECtHR stated that it "notes with concern that Russian law allows secret interception of communications in respect of a very wide range of criminal offences, including for example ... pickpocketing". Similarly, in *Iordachi and others v Moldova*, it was stated that "the Court notes that more than one half of the offences provided for in the Criminal Code fall within the category of offences eligible for interception warrants".

<sup>29</sup> For example, in *Zakharov*, the Court noted "the absence of any clarification in Russian legislation or established case-law as to how the terms "a person who may have information about a criminal offence" and "a person who may have information relevant to the criminal case" are to be applied in practice".

<sup>30</sup> See also Explanatory report, para 215.

<sup>31</sup> *Zakharov*, para 257-267

<sup>32</sup> *Zakharov*, para 264.

<sup>33</sup> *Zakharov*, para 250.

<sup>34</sup> *Zakharov*, para 253-256.

of communication under conditions when participants to the communication can reasonably expect that their communication is private”.

Although the measures referred were intended to use for the interception of the telecommunications networks and for the phones and mobile phones they are applicable also to the computer systems. The limitation that is present is that these measures can only be applied to the investigations of serious criminal offences. Therefore it might not cover all of the cybercrime offences. Legal safeguards are also foreseen. As Chapter 21 describes in detailed manner the grounds for measures, procedures of obtaining the order, the documentation and possibility to use information as evidence, it is in line with the Convention concerning the rest.

## **Recommendations**

27. Review the limitations and safeguards for the application of monitoring and interception provisions pursuant Art. 20 and 21 of the Convention, especially with regard to detailed requirements developed in the case-law of the ECtHR.

### **vi. Other recommendations**

The team of experts, through review of the available legislation and following discussion of these issues during the workshop on legal regulation on 5-7 September and study visits to various agencies on 8-9 September 2016, would also recommend the authorities of Ukraine to focus on the following issues:

28. Since measures provided by the Law on Operative and Investigative Activity can be used also during the criminal proceedings and information collected can be used as evidence, it is necessary to bring it in line with the Criminal Procedure Code, including the conditions and safeguards contained therein;

29. Blocking and take-down of the illegal content on the Internet, being a highly controversial measure, should be regulated in detail to enable effective action against illegal content. In doing so, special care should be taken to ensure that blocking orders are not applied in an overbroad manner. Strict application of proportionality requirements is necessary.

30. Consider drafting specific rules on access to and collection of electronic data applicable in urgent cases. Special attention should be paid on conditions and safeguards including on when and how validating the measures would take place;

31. Consider concluding Memorandum of Understanding or similar cooperation agreement between the law enforcement authorities and the Internet service providers. To enhance the speed and effectiveness of the proceedings, both service providers and law enforcement should appoint contact persons.

## **APPENDIX 1. Analysis of Draft Laws of Ukraine related to cybercrime and cybersecurity**

### **General comments**

Firstly, it should be noted with deep appreciation the initiative of the authorities of Ukraine to come out with relatively large number of different draft laws which address the fight against cybercrime and increase overall cybersecurity in a country.

However it should also be pointed out that the drafting procedure and preparation of different draft laws seem to be uncoordinated among the institutions. For example amendments to the Criminal Code and Criminal Procedure Code are contained in different draft laws which are being discussed in parallel. This is a practice that could have been easily avoided if more consultation and cooperation among different stakeholders had been in place. Having amendments in different texts not only makes the discussion more difficult, but it would also create a situation where policymakers and legislators might not understand completely the whole framework and scope of amendments as well as full impact to the public and private sector.

From the discussions it emerged that at least some amendments were not consulted with all the stakeholders and as a result of this law enforcement authorities were unaware of planned amendments and possible changes to their work and working methods.

During the review experts also noted that the quality of the texts varied a lot and were from high to low. There were really good examples where new norms and amendments to existing laws were drafted in clear and precise manner which enabled easy understanding concerning the scope and impact of the draft law.

To conclude the general remarks on the draft laws, experts would like to state the following: Coordination concerning the preparation of the draft laws and consultation should be improved. Consultation should include all the relevant stakeholders including both public and private sector. In case of several amendments to a particular law, they should be consolidated into one instrument. The structure of the draft laws and the way amendments to other legal acts are presented could be improved.

### **1. Law on electronic communications**

The law provides for several definitions - consumer, subscriber, operator, provider - which are also relevant concerning law enforcement access to data. Therefore having clear definitions is an important element to define powers of the law enforcement authorities. However it seems that the definition of operator and provider seem to overlap and might later cause confusion in practice, in particular with regard to cases where rights and obligations are under question. Certain overlapping might occur also with regard to the definitions on consumer and subscriber.

As regards the scope of law (Article 5) it might be good to mention in the beginning that the purpose of the law is also foreseeing rights and obligations of providers.

Article 9 on protection of privacy can be considered as one of the cornerstones of the law and requires providers to keep the content of the communications confidential. However the scope of the Article could be even wider and instead of focusing only to the communications, it could cover all the personal data collected or processed during the provision of services. It could also provide for the exceptions where subscriber information and traffic data can be disclosed, to whom and for which purposes. If possible, laws that would provide exceptions, could be listed here as well. The same would apply to Article 43 on protection of personal data of the subscriber.

Obligations of providers have been foreseen in Article 48. According to paragraph 1 subparagraph 10 providers shall “keep records of electronic communications services within the limitation period specified by law and provide information on the provided electronic communications services in the order prescribed by law”. From this it can be deduced that the will of the legislator has been to introduce mandatory retention of traffic data. However the chosen way to achieve this cannot be considered proper. As the purpose is to put certain obligations to the providers, then the law in order to respect the principles of necessity and proportionality should provide precisely types of data, period of retention as well as purpose of the retention. Law should also include list of authorities who would have access to data concerned. An abstract norm as it stands at the moment wouldn't be in line with rule of law principle.

Law also introduces an obligation to limit access to resources which distribute child abuse material. This type of regulation and practice has been quite common in many countries in the world. Still the law should be more precise and provide more information whether it would apply to websites or servers and how limitation would be carried on, in particular with regard to resources that are abroad and outside the jurisdiction of Ukraine.

Subparagraph 27 in fact literally opens a door for whatever additional obligations and wouldn't be in line with the principle of clarity and predictability. In case additional obligations would be imposed on providers in the future, amendments to the Article 48 would be necessary. As providers have lawful expectations concerning their obligations, the law should include an exhaustive list and subparagraph 27 as it stands should be left out.

The purpose of paragraph 4 remains unclear and should contain regulation in a more detailed manner. As for the purposes of rescue and undisclosed search operations different types of data are needed, they should be regulated separately. Regulation should also be more detailed in order to understand what equipment and what capabilities are expected from provider's side. The obligation of the provider to keep the information confidential should be regulated together with the access and disclosure of the personal data. A separate article on the confidentiality of requests might be advisable.

Articles 49 and 50 both provide for an obligation to stop or prevent the offence while providing caching/hosting services if such a requirement prescribed by the court order. The purpose of the obligation remains unclear. If stopping or preventing an offence would take place in the form of termination of services, it should be mentioned explicitly. As the powers and rights of the providers are limited by the law it is not possible to impose abstract obligations as they currently stand in the text.

Article 83 provides for the sanctions for violations of the law. Currently it seems to cover all the possible violations. Still it would be recommended to establish separate articles or paragraphs for specific violations. These would include failure to store data for the period provided by the law, failure to provide access to the networks in order to conduct rescue or undisclosed search operations, and violation of the obligation to keep the law enforcement authorities' requests confidential.

Since this law imposes certain restrictions on fundamental human rights and freedoms (Article 48), it could be stipulated in Article 2 that one of its purposes is also to ensure protection for fundamental human rights and freedoms, and to ensure that any restriction of those rights is compatible with the rule of law, pursues a legitimate aim and is necessary.

Regarding Article 48, several provisions should be changed / added:

- i. The term 'records' should be defined. For reference, please see Article 5 of the EU Data Retention Directive. Complete list of categories of data to be retained can be defined in secondary legislation, however it would be important to have at least general categories in the Law on Electronic Communications.
- ii. It should be stipulated in law that content data must not be retained.

- iii. Period for keeping 'records' should be stipulated in this law (instead of using phrase 'within the limitation period specified by law).
- iv. It should be stipulated in the law that retained data (or 'records') must be deleted after the expiry of limitation period.
- v. Law should specify the purposes for which retained data ('records') can be used. These purposes should be limited to the needs of crime investigation and prosecution, as well as those falling within the competence of security and intelligence agencies.
- vi. It is not clear what is the relation between Article 48, para 1, subparagraph 10 and para 2 ('Providers of electronic communication services shall retain and provide the information on the provided electronic communications services to its subscriber in the order established by law'. This should be clarified.
- vii. It should be stipulated in the law that providers shall keep records about performed search and rescue and undisclosed search operations, and that this information shall be made available only to competent supervisory bodies, at their request.

## **2. Law on amendments to some legislative acts of Ukraine regarding processing of information in cloud computing systems**

The purpose of the law is to define information security principles for the cloud service providers. Among other new definitions the draft law introduces the definition for a provider of cloud services. The first view without seeing and analyzing the whole text of the law, is that it might overlap with the notions and definitions provided by the draft law on electronic communications. The view of the experts is that if the law on electronic communications is meant to cover also so-called cloud providers and their obligations then whole legal framework should be established in one place. Regulating the status and obligations of providers of similar nature in different legal acts might create confusion among the practitioners as well as among private sector. As very often providers may provide different services and therefore they may fall under the scope of both proposed draft laws. In order to increase clarity and predictability among the private sector about their obligations and expectations, it should be considered whether to merge two draft laws into one.

Another general comment would be on obligation to ensure information security of the cloud services by the provider. According to the draft law the providers need to protect the security of information. Reference is made to relevant ISO standards as well as other standards. In case there would separate instruments on cloud providers and other providers according to the law on electronic communications, in order to maintain consistency between different instruments, similar reference could be introduced also in the latter.

## **3. Law on the Fundamentals for Ensuring Cybersecurity of Ukraine**

The purpose of the law is to establish the principles of cybersecurity and create legal and organizational framework. As it deals with the whole subject of cybersecurity from the information security and national security perspective it would be necessary to pay attention the norms related to the cybercrime and criminal justice. It is recommended not to mix cybercrime with cybersecurity as they are different concepts which belong to different legal regimes. As different standards and safeguards are applicable for national security and criminal justice frameworks, clear distinction between those disciplines should be kept.

On the definitions one must note that the definitions of cybercrime and cyberattack are partially overlapping which would mean that in case of cyberattack also criminal justice measures should be used. Definitions of technical nature should be compared and if necessary brought in line with other relevant laws, i.e. law on electronic communications.

Some regulations in the proposed draft law, i.e. on assistance and responsibility have been worded in a very broad manner. As one of the principles on which the draft law is based, is rule of law, it would be advisable to draft articles imposing direct or indirect obligations to public and private sector in a more detailed way.

On international cooperation it should be noted that as we are dealing here with different disciplines and legal regimes, international cooperation on cybersecurity and mutual legal assistance in criminal matters should be kept separated.

As regards the oversight of legality of actions related to cybersecurity it should be borne in mind that for the criminal justice area supervision, right to appeal etc are regulated in the Criminal Procedure Code. Also, while dealing with cybercrimes/cyberattacks within the criminal justice framework procedural guarantees and safeguards of the suspected and accused persons must be respected.

#### **4. Law on state support to cinematography in Ukraine**

The main purpose of the law is to define principles concerning the cinematography and film industry.

However the draft law contains many definitions which go far beyond the scope of the act. Notions like web-page, web-site owner, hyperlink, hosting service providers etc which are of technical nature and have a horizontal scope, should be placed in another law.

The transition provisions however contain amendment to the Criminal Code on violation of intellectual property rights. As Article 10 of the Budapest Convention provides for the same obligations to the states, the amendment is highly welcomed.

#### **5. Law on Amendments to Some Laws of Ukraine Concerning Aggravation of Responsibility for Committed Offenses in the Sphere of Information Security and Combating Cybercrimes**

The draft law contains amendments to the Code of Administrative Offences, Law on Operative Investigation Activity, Law on the Security Service of Ukraine, Law on Counter-intelligence Activities, Law on the Fundamentals of the National Security of Ukraine, and on Law on the Intelligence Agencies of Ukraine.

The main focus of the draft law is to improve the capacity of the security and intelligence authorities to fight cyber threats. However powers which are necessary to detect and investigate cybercrime offences should be given also to the criminal justice law enforcement authorities. While cybercrime investigations are under questions all the measures need to be in line with the Criminal Procedure Code and with the conditions and safeguards contained therein. Measures to protect national security and measures related to criminal justice need to be clearly separated. In case information has been collected during national security or intelligence investigation, clear rules should be in place whether and on which conditions this information may be used as evidence in criminal proceeding.

Draft introduces new definition for cybernetic security (cybersecurity). As similar proposals have been drafted, which often overlap, a comprehensive review of the draft laws being discussed should be conducted.

The obligation of the providers to equip themselves with necessary technical means to enable operative investigations is more or less similar to the text proposed to the law on electronic communications. Duplication should be avoided and relevant legislation on the obligations of the providers should be put into one single legal act.

## **6. Law on amendments to the Criminal Code of Ukraine regarding introduction of responsibility for cyberterrorism**

The purpose of the amendments is to introduce a new concept of cyberterrorism into the legislation of Ukraine.

Although some other countries have introduced similar concepts as well it should be noted that it might entail some risks. First the substance of the act of cyberterrorism is the commission of particular cybercrime offence with the terrorist intent or purpose. From the objective side the offence is identical to the cybercrime, certain unlawful action has been committed against the computer system or computer data. It would be the purpose of the action or the intent of the person which may qualify the action as cyberterrorism. That means that law enforcement authorities would have a higher burden to prove what has been person's real intent. If so-called terrorist intent cannot be proven, the person could be prosecuted only for committing cybercrime.

In case there is a willingness to introduce the concept and offence of cyberterrorism, the regulation needs to be more precise. Attack on information needs to be fully elaborated and its content explained. As an attack may include illegal access, illegal interception, data interference and system interference, it should be clearly defined what kind of behavior would constitute an element of cyberterrorism. As the text as it currently stands provides for a cumulative list of all the necessary mental elements concerning the purpose, it would be good to have a list of alternative scenarios instead, otherwise practical application of the regulation would be almost impossible.

## **7. Law on Introduction of Amendments to the Criminal Code of Ukraine (Concerning Aggravation of Responsibility for Cyberterrorism and Cybercrimes)**

As the Budapest Convention provides only the minimum standards concerning the substantive law and cybercrime offences, it has been recommended many times by the Cybercrime Convention Committee that countries can always go beyond and adopt higher standards in terms of aggravating circumstances. Therefore the proposal to establish aggravating circumstances and more severe sanctions is welcomed. However as several draft laws that are being discussed propose new definitions and terminology they should all be reviewed in order to ensure consistency. Also elements like considerable property damage and grave consequences need to be explained.

## APPENDIX 2. Translation of draft laws

### DRAFT LAW OF UKRAINE "On Electronic Communications"

This Law establishes the legal framework for activities in the electronic communications sphere, the principles of formation and operation of the national regulatory authority as well as the rights, obligations, and principles of liability of individuals and legal entities engaged in such activities or using electronic communications services.

#### Chapter I

#### GENERAL PROVISIONS

##### Article 1. General definitions

1. The terms used in this Law shall have the following meaning:

*subscriber* – a consumer of electronic communications services who receives such electronic communications services based on a contract providing for the connection of the end equipment owned or employed by such subscriber to the electronic communications network;

*subscription fee* – fixed payment that may be charged by the provider of electronic communications services for the subscriber's continuous access to the provider's electronic communications network regardless of whether or not the services have been delivered;

*electronic communications network subscriber line (local loops)* – electronic communications network line that connects the consumer's end equipment with switching equipment of the provider of electronic communications services;

*subscriber number* – a combination of digital characters to designate (identify) the subscriber within the electronic communications network;

*Internet address* – a symbolic and/or digital identifier of domain names which is created in compliance with the international standards applicable on the Internet and used in the hierarchical system of domain names;

*Internet address space* – totality of addresses on the Internet;

*building distribution network* – a section of the access electronic communications network between the building's cable input and the network termination points, which is designed to provide electronic communications services to consumers in separate facilities (apartments) of the building;

*interconnection of electronic communications networks* – physical and/or logical linking of operators' electronic communications networks to allow consumers to directly or indirectly exchange information;

*virtual electronic communications network* – electronic communications network of an operator of electronic communications designed to delivery of own electronic communications services which functions on the terms of the agreement on usage of the electronic communications network or its separate components of another operator of electronic communications;

*owner (holder) of electronic communications network infrastructure* - an individual or a legal entity owning (possessing) electronic communications network infrastructure elements, which have been acquired within the legal framework and are used for delivery of electronic communications services;

*owner (holder) of the cable duct of electronic communications networks* - an individual or a legal entity owning (possessing) the entire infrastructure of the cable duct of electronic communications network or its elements, which have been acquired within the legal framework;

*secondary allocation of the numbering resource* - allocation by the operator of the numbering resource to subscribers, as specified in the license for use of the numbering resource;

*voice telephony* - real time voice exchange of information via electronic communications networks;

*data* - information in the form suitable for automated processing by computer equipment;

*domain* - a part of the hierarchical Internet address space, having a unique name (domain name) identifying it, serviced by a group of domain name servers and administered centrally;

*top-level domain* - a domain of the hierarchical Internet address space that is created based on country name coding in accordance with international standards for the purpose of servicing the address space of the Ukrainian segment of the Internet, and that is delegated within the framework of the procedure for implementation of internationalised domain names to represent Ukraine within the global system of domain names;

*second-level domain* - a part of the Internet address space that is located at the second level of the hierarchy of domain names within the network;

*access to electronic communications network* - provision of one provider of electronic communications services an access to electronic communications network and/or electronic communications services to another provider of electronic communications services on contractual basis for providing electronic communications services;

*access to electronic communications network infrastructure* - ability of providers of electronic communications services to use the electronic communications network infrastructure or its elements on the basis of contracts with the owners (holders) of such infrastructure or its elements;

*electronic communications* - transmission, emission and/or receipt, routing, switching and storage of symbols, signals, written text, images and sounds or messages of any kind via radio, wired, optical or other electromagnetic systems;

*electronic communications network* - a complex of electronic communications technical facilities and structures, software designed for routing, switching, storage, transmission and/or receipt of symbols, signals, written text, images and sounds or messages of any kind via radio, wired, optical or other electromagnetic systems between end equipment;

*public electronic communications network* - an electronic communications network wholly or partially used for the provision of electronic communications services available to the general public and supporting information transmission between network termination points;

*access electronic communications network* - the part of an electronic communications network between the switching node (centre) and the network termination point inclusive;

*electronic communications service* - a service provided, as a rule, on a paid basis and involving wholly or mainly transmission of signals via electronic communications networks, including telecommunications and transmission services in the networks that are used for broadcasting, but exclusive of content services, including editorial control of content transmitted via communication networks and services;

*publicly available electronic communications services (public services)* - electronic communications services available to all consumers;

*universal electronic communications services (universal services)* - a electronic communications services list of which is defined by Article 62 of this Law, available to all consumers throughout Ukraine and comply with established quality levels;

*Internet* – global public access information system which is logically integrated by global address space and based on Internet protocol determined by international standards;

*public access information system* – totality of public electronic communications networks and facilities designed for data collection, processing, storage, and transmission;

*information security of electronic communications networks* – ability of electronic communications networks to provide protection from unauthorised access, blocking, destruction, or violation of integrity of information, leakage or breach of the established routing order;

*information* – any information and/or data that can be stored on a data medium or represented electronically;

*electronic communications network infrastructure* – electronic communications technical facilities, other than end equipment, as well as buildings, towers, antennas, supports and other engineering structures used to organise electronic communications, as well as any part thereof (elements of electronic communications network infrastructure);

*cable duct of electronic communications networks* – engineering structures including cable conduits, viewing devices, stationary cable shafts, collectors, equipment and other devices designed for laying, installation and operational maintenance of electronic communications cables;

*electronic communications channel* – totality of equipment designed for carrying electrical signals between two points of electronic communications network and characterised by certain frequency bandwidth and/or transmission speed;

*cable duct channel of electronic communications networks* – separately allocated spaces of limited capacity in the infrastructure of construction sites (including cable duct of electronic communications networks), transport and power infrastructure designated for laying electronic communications cables;

*end equipment* – equipment designated to connect to the network termination point with the end to provide access to electronic communications services;

*electronic communications network line* – the part of electronic communications technical facilities that create the environment to distribute electromagnetic signals via radio, wired, optical or other electromagnetic systems between electronic communications technical facilities designated for transmission/receipt of electromagnetic signals and/or end equipment;

*license for use of the numbering resource* – a document certifying the right of a provider of electronic communications services to use a portion of the numbering resource in the specific area and/or electronic communications network for a specified period of time;

*quality monitoring of electronic communications services* – collecting, processing, storing, and analysing quality indicators of electronic communications services;

*National Numbering Plan of Ukraine* – a legal document determining the structure of the numbering resource and the numbering space of public electronic communications networks;

*national regulatory authority* – the national commission for the state regulation of electronic communications and postal services;

*numbering resource* – totality of digital characters used to designate (identify) networks, services, and subscribers within public electronic communications networks;

*operator* – a provider of electronic communications services that operates electronic communications networks and/or uses the numbering and radio frequency resources in the course of providing electronic communications services;

*operator of virtual electronic communications network (virtual operator)* – provider of electronic communications services of mobile communications that operates electronic communications

networks of another operator, uses numbering resource and does not use radio frequency resource in the course of providing electronic communications services;

*wholesale market of electronic communications services* – the sphere of circulation of electronic communications services provided by providers of electronic communications services to other providers of electronic communications services to be further used in the course of providing (selling) electronic communications services to consumers;

*traffic origination* – service of establishment and maintenance by the electronic communications network of an operator of physical and/or logical linking between end equipment of subscribers initiating such connection and the point of interconnection with electronic communications network of another operator for receiving traffic termination and/or traffic transit services;

*primary allocation of the numbering resource* – allocation of a portion of the numbering resource to an operator with specification, inter alia, of indices, number capacity, specific network codes, services, to be used within electronic communications network for providing electronic communications services;

*data transmission* – transmission of information in the form of data with the use of electronic communications networks;

*number portability* - electronic communications service provided to a subscriber upon respective application and consisting in retention of such subscriber's number assigned by the provider of electronic communications services, in order to use the number for receiving electronic communications services within the network of another provider of electronic communications services, which also provides electronic communications services in Ukraine according to its legislation;

*personal number* – a subscriber number assigned to each registered subscriber upon that subscriber's respective application per the procedure established by the national regulatory authority, which number is administered centrally and can be used by such subscriber in accordance with the contract on electronic communications services regardless of the geographic location in Ukraine and the type of such services;

*ex ante regulation* – regulatory obligations that are aimed at developing economic competition in the markets of electronic communications services and that are imposed where deemed appropriate by the decision of the national regulatory authority further to the results of the analysis of such markets and determination of the providers with SMP;

*traffic transmission services* – electronic communications services of traffic origination and/or termination and/or transit provided by a provider of electronic communications services to other providers of electronic communications services;

*provider of electronic communications services* – an undertaking that carries out and/or has the right to carry out activities in electronic communications sphere;

*provider of electronic communications services with significant market power (provider with SMP) in the market of certain electronic communications services* – a provider of electronic communications services or a group of providers of electronic communications services, including an operator, where one or more of them exert control of the others within the meaning of Article 1 of the Law of Ukraine "On Protection of Economic Competition", whose revenue fraction on a certain market of electronic communications services as defined by the national regulatory authority in the year prior to the conduct of the market analysis exceeds 25 percent of the total revenue of all other providers of electronic communications services obtained in the same market within the same timeframe, and/or if due to technological process of providing the service to another provider of electronic communications services the service is available only within the network of such provider of electronic communications services;

*caching service provider* – an undertaking which provides services for automatic, intermediate and temporary storage of information for the sole purpose – to make the next transmission of

information to other consumers of electronic communications services they demand more effective;

*hosting service provider* – an undertaking that provides a storage of information and access to it via the Internet;

*traffic transmission* – traffic passage between the elements of one or several different electronic communications networks;

*network termination point* – a point of junction (connection) between electronic communications network and subscriber drop wire or end equipment;

*regulatory reporting* – periodical information and/or data required by the respective decision of the national regulatory authority, including those that contain financial and economic performance indicators of providers of electronic communications services and are necessary for the national regulatory authority to exercise its powers and achieve its objectives;

*regulatory obligations* – obligations imposed by the national regulatory authority on providers with SMP in the market of electronic communications services based on the results of the analysis conducted;

*resources of electronic communications networks* – an available quantity of numbers (numbering resource) within electronic communications networks, the number and capacity of wired lines with metal conductors, optical fibers, radio lines, channels, routes for transmission of information, switching stations and switchboards, and radio frequency resource;

*market of certain electronic communications services* – wholesale or retail market of circulation of electronic communications services that can meet the needs of consumers and providers of electronic communications services from the standpoint of price, intended use, competitive environment and structure of demand and supply;

*retail market of electronic communications services* – the sphere of circulation of electronic communications services provided by providers of electronic communications services to consumers of electronic communications services;

*allocation of the numbering resource* – allocation of the numbering resource within a specific range of numbers for the provision of electronic communications services;

*accounting tariff* – a sum that determines payment amount for access to the operators' resources of electronic communications networks (accomplishment of access) for transmission of a unit of traffic and that is used in the interrelations between different operators;

*accounting tariff for traffic transmission service* – amount of payment for origination, termination or transit of a unit of traffic between electronic communications networks of different operators;

*national roaming* – an electronic communications service that provides the possibility for the subscribers of one provider of electronic communications services providing mobile communications services in the territory of Ukraine to receive electronic communications services within the electronic communications network of another provider (providers) of electronic communications services of mobile communications in Ukraine;

*mobile communications* – electronic communications using radio technologies during which end equipment of at least one of the consumers can freely travel within the framework of all network termination points;

*joint use of the electronic communications network infrastructure* – use of the electronic communications network infrastructure jointly by several providers of electronic communications services on a contract basis, if technically possible;

*consumer of electronic communications services (consumer)* – a legal entity or an individual, who requires, orders and/or receives electronic communications services for personal needs;

*electronic communications network facilities* – buildings, towers, antennas, engineering structures and other land improvements used to arrange for electronic communications;

*sustainability of electronic communications network* – capacity of electronic communications network to preserve its functions wholly or partially while subject to the impact of destabilising factors;

*electronic communications market entities* – providers of electronic communications services, consumers of electronic communications services, manufacturers and/or suppliers of electronic communications technical facilities;

*service tariff unit (tariff unit)* – unit of the service volume (length of time, data volume, number of messages or communication sessions) subject to billing (tariffication);

*tariff plan* – aggregate of proposals offered to the consumer by the provider of electronic communications services including price, terms and volume of certain services;

*traffic termination* – service related to establishment and maintenance by the operator's electronic communications network of physical and/or logical linking, traffic transmission between electronic communications network that sends requests for or initiates connections and the end equipment those requests or connections are addressed or initiated to;

*electronic communications technical facilities* – electronic communications equipment, stationary and linear structures designed to form electronic communications networks;

*traffic transit* – a service of establishment and maintenance by the operator's electronic communications network of physical and/or logical linking, traffic transmission between two other electronic communications networks;

*transport electronic communications network* – a network to transmit characters, signals, written text, images and sounds or messages of any kind between access electronic communications networks connected to the network;

*traffic* – totality of information signals transmitted by technical facilities of the providers of electronic communications services over a definite time interval, including consumer information data and/or service data;

*fixed-line communications* – electronic communications via stationary (fixed) end equipment;

*The term "close person"* – within the meaning defined by the Law of Ukraine "On prevention of corruption".

## **Article 2. Purpose of the Law**

1. The purpose of this Law is to ensure ubiquitous availability of electronic communications services of sufficient range of variety, volume and quality through limited regulation of market relations to facilitate effective functioning of transparent and fair competitive market. The law defines the principles of consumer protection in the electronic communications sphere and control in the electronic communications sphere on behalf of the state.

## **Article 3. Designation of electronic communications**

1. Sphere of electronic communications is the part of the communications industry of Ukraine.  
2. Electronic communications make an integral part of business and social infrastructure of Ukraine and aim to meet the needs of individuals, legal entities and the state for electronic communications services.

## **Article 4. Legislation on electronic communications**

1. The legislation of Ukraine on electronic communications consists of the Constitution of Ukraine, this Law and other normative legal acts applicable to the relations in this sphere.

## **Article 5. Scope of Law**

1. This Law applies to the relationship between the electronic communications market entities related to provision and receipt of electronic communications services and use of public electronic communications networks.

2. This Law does not apply to electronic communications networks that do not interact with public electronic communications networks, except when they are used in case of emergency situation, state of emergency and during antiterrorist operation.

## **Article 6. Principles of organisation of state administration, regulation and activities in the electronic communications sphere**

1. Creation and functioning of system of state administration and state regulation in the electronic communications sphere shall be based on the following principles:

1) clear allocation and separation of functions of state administration and regulation, as well as powers of state authorities concerning determination, formation and implementation of state policy;

2) consistency, coherence, complementarity of objectives and activities of the various state authorities and local self-governments;

3) combination of centralisation and decentralisation of powers of state authorities and local self-governments;

4) effective combination, completeness and interoperability of functions within the powers of the authority;

5) public participation in the preparation, adoption and monitoring of the implementation of regulations and other decisions related to the development and functioning of the electronic communications sphere;

6) public activities and accountability of state authorities in the electronic communications sphere.

2. Basic principles of activity in the electronic communications sphere include:

1) access of consumers to public services that they need to satisfy their private needs, and for their participation in political, economic and social life;

2) interaction and interconnectivity of electronic communications networks to enable communication between the consumers of all networks;

3) ensuring of sustainability of electronic communications networks and administration of such networks based on common standards, rules and regulations;

4) governmental support of domestic production of electronic communications technical facilities;

5) promotion of competition in the interests of the consumers of electronic communications services;

6) increase in volumes of electronic communications services and their variety range, as well as creation of new jobs;

7) implementation of world achievements in the electronic communications sphere, engagement and use of domestic and foreign material and financial resources, advanced technologies and management experience;

8) promotion of international cooperation in the electronic communications sphere and development of global electronic communications network;

9) ensuring of consumer access to the information on ways to receive and on the quality of electronic communications services;

10) efficient and transparent regulation in the electronic communications sphere;

11) creation of favourable conditions for activity in the electronic communications sphere and in the market of electronic communications services;

- 12) state regulation of joint use of the electronic communications network infrastructure in the cases prescribed by law;
- 13) ensuring of provision of services subject to the requirements of information security and protection of personal data of consumers.

3. Provision of electronic communications services in the territory of Ukraine is the exclusive right of legal entities located in the territory of Ukraine, registered under the laws of Ukraine and/or of individual entrepreneurs with permanent residence in Ukraine.

#### **Article 7. Language in the electronic communications sphere**

1. Language use in the electronic communications sphere is governed by Article 25 of the Law of Ukraine "On Principles of State Language Policy".

#### **Article 8. Accounting and reporting time zone in the electronic communications sphere**

1. The only accounting and reporting time zone to be used when carrying out activity in the electronic communications sphere is Kyiv time zone.
2. In international electronic communications the accounting and reporting time zone shall be determined by international treaties of Ukraine.

#### **Article 9. Protection of privacy of telephone conversations, telegraph and other correspondence, safety of electronic communications**

1. Protection of privacy of telephone conversations, telegraph or other correspondence transmitted by electronic communications technical facilities, and information security of electronic communications networks are guaranteed by the Constitution and laws of Ukraine.
2. Interception of information in electronic communications networks is prohibited, except when otherwise provided exclusively by law.
3. Providers of electronic communications services shall take all technical and organisational measures required by the legislation to protect electronic communications networks, electronic communications facilities, limited access information on organisation of electronic communications networks and the information transmitted by such networks. In the case of security violation or loss of integrity of electronic communications networks, providers of electronic communications services shall immediately notify a national regulatory authority.

#### **Article 10. Interaction between providers of electronic communications services and public authorities, local self-government bodies and other persons**

1. Interaction between providers of electronic communications services and public authorities and local self-government bodies related to delivery of electronic communications services to the latter shall be on a contract basis in accordance with the legislation of Ukraine.
2. Owners of railway stations, airports, sea and river ports, piers, bus depots (bus station), and checkpoints on the state border, technical service stations, hotels, and motels shall be obliged to arrange for the provision of electronic communications services in sufficient volumes.

#### **Article 11. Scientific and technical support for operation and development of electronic communications**

1. Scientific and technical support for operation and development of electronic communications shall be implemented through organisation of scientific research, creation of legal framework and development of regulatory documents, harmonisation of national standards with international ones, implementation of new technologies and means of electronic communications.

**Article 12. Powers of the Verkhovna Rada of Ukraine in the electronic communications sphere**

1. The Verkhovna Rada of Ukraine shall adopt state policies and provide the legislative basis for the state management and regulation in the electronic communications sphere.

**Article 13. Governance in the electronic communications sphere**

1. The state management in the electronic communications sphere shall be accomplished by:  
the Cabinet of Ministers of Ukraine;

the central executive body responsible for the formation and implementation of the state policies in the electronic communications sphere;

other executive bodies in accordance with law.

**Article 14. Competence of the Cabinet of Ministers of Ukraine in the electronic communications sphere**

1. Cabinet of Ministers of Ukraine shall:

- 1) ensure implementation of the state policy in the electronic communications sphere;
- 2) ensure equal conditions for the development of all forms of ownership in the electronic communications sphere;
- 3) manage state property in the electronic communications sphere;
- 4) define the legal and organisational basis for the management and use of electronic communications networks in an emergency situation in electronic communications sphere, emergency situation, state of emergency and martial law;
- 5) direct and coordinate the activities of ministries and other central executive bodies in the electronic communications sphere.

**Article 15. Powers of the central executive body responsible for the formation and implementation of the state policy in the electronic communications sphere**

1. The central executive body responsible for the formation and implementation of the state policies in the electronic communications sphere shall:

- 1) develop proposals on the state policy in the electronic communications sphere and implement the policy within the framework of its powers;
- 2) elaborate draft laws and other normative legal acts;
- 3) develop and approve laws and other normative legal acts on the matters within its competence;
- 4) set the requirements for quality of electronic communications services;
- 5) establish quality levels of publicly available electronic communications services;
- 6) implement technical policy in the sphere of electronic communications services, standardisation, verification of conformity of electronic communications technical facilities;
- 7) organise and be responsible for developing standards and testing methods in the electronic communications sphere;
- 8) approve technical requirements for electronic communications networks, electronic communications facilities, elements of the electronic communications network infrastructure, and approve state construction standards related to the electronic communications network infrastructure;
- 9) develop jointly with the national regulatory authority, ministries and other central executive bodies the Concept of Development of Electronic Communications of Ukraine, focused on strategic interests and international competitiveness of Ukraine;

- 10) make forecast of the development of electronic communications networks and services;
- 11) arrange for scientific support for the operation and development of the electronic communications sphere;
- 12) arrange for the conduct of research and development of recommendations on convergence of computer and electronic communications technologies;
- 13) inform the electronic communications market entities of the policy and the strategy of development of the public electronic communications networks;
- 14) resolve the issues within its competence related to provision of communications for the needs of the state system of government communications, of the national system of confidential communications, and of the security, defence, and law enforcement bodies;
- 15) resolve the issues within its competence related to readiness for operation of public electronic communications networks in case of an emergency situation, state of emergency, special period and during antiterrorist operation;
- 16) obtain from state bodies and local self-government bodies, national regulatory authority, electronic communications market entities free of charge documents, materials and information prescribed by law and necessary to perform its tasks;
- 17) cooperate with international organisations and relevant bodies of other states;
- 18) perform the functions of the Administration for Communications and Radio Frequencies of Ukraine;
- 19) exercise other powers in accordance with law.

2. Ensuring the development of the technical policy in the electronic communications sphere shall be made by the central executive body responsible for the formation and implementation of the state policies in the electronic communications sphere, through:

- 1) development and adoption of concepts and programs of development of electronic communications sphere;
- 2) development of long-term plans and conditions for the introduction of innovative technologies, including broadband Internet access;
- 3) development and adoption of technical regulations, national standards and other normative documents in the electronic communications sphere.

### Chapter III

#### STATE REGULATION IN ELECTRONIC COMMUNICATIONS SPHERE

##### **Article 16. Goal and tools of state regulation**

1. The goal of the state regulation in the electronic communications sphere shall be ensuring of the balance of interests between the state, providers of electronic communications services and consumers of such services, as well as satisfaction of the consumer demand for electronic communications services, creation of favourable organisational and economic conditions to attract investments, increase in the volume of services and their better quality, development and modernisation of electronic communications networks, subject to the interests of national security and defence.

2. Tools of state regulation in the electronic communications sphere shall include the following:

- 1) laws and regulation;
- 2) registration of activity of undertakings in the electronic communications sphere and licensing of restricted resources (numbering and/or radio frequency resource);
- 3) development and implementation of pricing and billing (tariff) policies;
- 4) supervision (control);
- 5) leverage in case of violations of the law;
- 6) other state regulation tools as set forth in this Law.

3. Power entities shall comply with the following principles of cooperation during the provision of administrative services, training and decision-making, consideration of appeals and complaints of the electronic communications market entities:

- 1) operate exclusively in accordance with the law, their powers and established procedures;
- 2) equality to any of the entities of the electronic communications market that are in the same situation, especially in the conditions of provision of administrative services on the grounds of competitive (tender) procedures;
- 3) unbiased attitude to any of the entities of the electronic communications market, refusal to take into account any factors that are not directly envisaged by regulations as well as maximum use indicators for comparison and evaluation which have quantitative characteristics;
- 4) implementation of measures of state coercion, restriction of rights exclusively on a pro rata basis without redundancy in so far as this is necessary to achieve this goal;
- 5) performance the duties and execution of powers within a reasonable period of time which are justified only by the content of procedures that are necessary in this situation;
- 6) mandatory provision of procedural opportunity for all entities of the electronic communications market to take personal part in the consideration of all matters relating to decisions that affect their rights or interests.

### **Article 17. State regulatory authority in the electronic communications sphere**

1. The state regulation in the electronic communications sphere shall be carried out by the national regulatory authority in accordance with this Law and other laws and normative legal acts.

2. The national regulatory authority is a state collegial body subordinated to the President of Ukraine and accountable to the Verkhovna Rada of Ukraine.

The national regulatory authority shall not be part of the executive branch.

3. The Head of the national regulatory authority shall, every year not later than April 1, submit to the President of Ukraine and the Verkhovna Rada of Ukraine a written report on the activities of the national regulatory authority for the previous year.

4. The basic principles of the activity of the national regulatory authority shall be:

- 1) legality;
- 2) efficiency of state regulation;
- 3) independence;
- 4) impartiality and foreseeability of state regulation;
- 5) objectivity in decision making;
- 6) open and transparent procedures of state regulation;
- 7) non-discrimination;
- 8) collegial decision-making in accordance with law.

5. The independence of the national regulatory authority in its activity is guaranteed by:

- 1) regulation of interaction between the national regulatory authority and state bodies, other public authorities, and local self-government bodies solely by law;
- 2) exhaustive list of grounds for termination of office of the head and members of the national regulatory authority, as defined in this Law;
- 3) legally established order of financing of the activity of the national regulatory authority;
- 4) other means set forth in this Law.

Unlawful interference on behalf of state bodies, other public authorities, local self-government bodies, their officials and officers, political parties, non-government organisations and other individuals or legal entities with the activities of the national regulatory authority shall be strictly prohibited. Any written or oral instructions, requirements, orders, etc. addressed to the national regulatory authority regarding its powers established by law, or to its employees regarding their performance of employment duties shall be illegal and unenforceable.

6. The national regulatory authority shall, where necessary, interact with state bodies, other public authorities, and local self-government bodies through:

initiation of and participation in consideration of issues related to the areas subject to regulation, including preparation of proposals regarding ways to regulate specific relations;

introduction in the prescribed order of draft laws and acts of the Cabinet of Ministers of Ukraine for consideration by the Cabinet of Ministers of Ukraine;

submission of draft normative legal acts of the national regulatory authority to state bodies, other public authorities, and local self-government bodies to let them express their opinions.

Reasoned rejection of the proposals and comments of state bodies, other public authorities, and local self-government bodies regarding draft normative legal acts of the national regulatory authority shall not hinder adoption of the normative legal acts.

7. The national regulatory authority is a legal entity with property in its own name, which is the state property.

The national regulatory authority shall have a seal with the National Emblem of Ukraine and its name on it.

#### **Article 18. Structure of the national regulatory authority**

1. National regulatory authority shall consist of 7 members of the national regulatory authority.

Members of the national regulator shall be the Head and other members of the national regulatory authority.

The apparatus of the national regulatory authority shall provide the activity of the national regulatory authority, including by performance of organisational, technical, legal, analytical, informational and other jobs necessary for efficient operation of the national regulatory authority.

The manning table of the national regulatory authority shall be approved by the head within the size and structure approved by the national regulatory authority.

Members of the national regulatory authority and the employees of the apparatus shall be civil servants.

To exercise its powers the national regulatory authority shall have the right to create its regional offices as structural departments of its apparatus. Regional offices shall act on behalf of the national regulatory authority within the framework of powers granted by the national regulatory authority.

The regulations on structural subdivisions of the central apparatus and regional offices shall be approved by the head of the national regulatory authority.

#### **Article 19. Composition, procedure of appointment, and powers of the head and members of the national regulatory authority**

1. The Head and members of the national regulatory authority shall be appointed and dismissed by the respective decree of the President of Ukraine according to this Law.

The national regulatory authority shall become authorised as of appointment of more than half of all of its members.

2. The Head as well as a member of the national regulatory authority must be a citizen of Ukraine, have a command of Ukrainian and one of Council of Europe official languages with complete higher education (industry-related, in economics or law), excellent good will and work experience of five or more years in senior positions over the last ten years.

An individual may not be appointed to the position of a member of the national regulatory authority if he/she:

- 1) within one year appointment was a part of the governing bodies of a political party or was in employment or other contractual relationships with a political party;
- 2) has a representative mandate or participating in the activities of political parties;
- 3) owns corporate rights of any provider of electronic communications services, postal service operator, manufacturer of electronic communications equipment, whose activities under this Law and other laws are subject to regulation by the national regulatory authority; nor if owners of such corporate rights are their close relatives;
- 4) is incompetent or have limited legal capacity according to the court's decision;
- 5) has been convicted of a crime in case such conviction has not been removed from official records or expunged in accordance with the law (except for rehabilitated persons) or who was imposed with an administrative penalty for committing corruption offence during last year;
- 6) is incapacitated to engage in activities related to the state functions or to hold relevant positions in accordance with court verdict;
- 7) in case of appointment would be directly subordinated to the person who is a close person in relation to him/her;
- 8) had not submitted a declaration of assets, income, expenses and financial liabilities over the previous year or failed to pass a special inspection according to the Law of Ukraine "On prevention of corruption";
- 9) has the citizenship of another country.

3. The term of office of members of the national regulatory authority shall be six years. The same person shall not occupy such post for more than two consecutive terms.

4. The Head of the national regulatory authority shall:

- 1) chair the national regulatory authority and preside at its meetings;
- 2) manage daily activities of the national regulatory authority and decide on all issues of its activity, excluding those within the competence of the national regulatory authority as a collegial body;
- 3) act without power of attorney on behalf of the national regulatory authority within the limits set forth by the legislation of Ukraine;
- 4) represent the national regulatory authority in relations with public authorities of other states on issues related to the areas subject to the state regulation, and with international organisations;
- 5) convene and conduct meetings of the national regulatory authority, introduce issues to be considered at such meetings, sign minutes of the meetings and decisions of the national regulatory authority as well as approve agenda for the meeting of the national regulatory authority;
- 6) issue orders related to the matters within his/her competence;
- 7) approve regulations on structural subdivisions of the central apparatus and regional offices, regulations on structural subdivisions of apparatus of the national regulatory authority including regional offices;
- 8) hire and dismiss employees of the apparatus, engage incentives and disciplinary actions on employees of the apparatus in the order prescribed by the legislation;
- 9) sign the documents issued based on the decisions of the national regulatory authority;
- 10) represent the interests of the national regulatory authority before the Cabinet of Ministers of Ukraine and have the right to take part at meetings of the Cabinet of ministers of Ukraine with an advisory vote;
- 11) submit propositions to the President of Ukraine on appointment and dismissal of members of the national regulatory authority;
- 12) submit draft budget estimate of the national regulatory authority to its Budget Board;
- 13) submit to the Verkhovna Rada of Ukraine an annual report on the activities of the national regulatory authority;
- 14) perform other functions necessary for the national regulatory authority to carry out its activities (except for those within the competence of the national regulatory authority as a collegial body), including the functions contemplated by this Law.

If temporarily unavailable, the Head of the national regulatory authority shall delegate his/her duties to one of the members of the national regulatory authority.

5. Division of functions between the members of the national regulatory authority and their interchangeability, as well as performance by a member of the national regulatory authority of the duties of the head, if the head has not delegated his/her duties to any member of the national regulatory authority.

6. The Head or a member of the national regulatory authority may be dismissed by the President of Ukraine upon:

- 1) submission of a voluntary resignation application;
- 2) inability to perform his/her duties due to health reasons during four consecutive months;
- 3) termination of citizenship of Ukraine, presence (acquisition) of citizenship of another state or departure from Ukraine for permanent residence;
- 4) entry into force of a court ruling on criminal conviction, based on other grounds set forth by the legislation;
- 5) possessing of corporate rights of any provider of electronic communications services, postal service operator, manufacturer of electronic communications equipment, whose activities under this Law and other laws are subject to regulation by the national regulatory authority; nor if owners of such corporate rights are their close relatives;
- 6) availability of other grounds provided by law.

The powers of the Head or a member of the national regulatory authority shall be terminated in the event of his/her death, being declared missing or dead as well as declaring him/her incapable or restricting his/her civil capacity.

If a new President of Ukraine comes into office, it shall not provide grounds for dismissal of the Head or a member of the national regulatory authority.

Upon expiration of the term of office of the Head or a member of the national regulatory authority, he/she shall continue performing its duties until appointment of a new Head or a new member of the national regulatory authority respectively.

7. The Head and members of the national regulatory authority shall have the right to represent the national regulatory authority in court without power of attorney.

#### **Article 20. Principles of activity of the national regulatory authority as a collegial body**

1. The basic form of activity of the national regulatory authority as a collegial body shall be meetings held by the decision of the Head of the national regulatory authority.

A meeting of the national regulatory authority shall be competent if attended by more than half of all its members.

2. Decisions of the national regulatory authority shall be adopted by majority vote of its members. The Head and a member of the national regulatory authority shall have one vote each.

3. The procedure for organising the activity of the national regulatory authority, including conduct of meetings, shall be set forth in the regulations approved by the national regulatory authority.

#### **Article 21. Acts of the national regulatory authority**

1. The national regulatory authority shall develop and approve normative legal acts on issues within its competence binding on central and local executive bodies, local self-government bodies, electronic communications market entities, associations of the electronic communications market entities, other individuals and legal entities as well as control its execution.

2. Acts of the national regulatory authority shall be issued in the form of decisions, and in case of revealing violations of the legislation on electronic communications on the grounds of results of supervision (control) in the electronic communications sphere – in the form of orders or warnings.

3. Decisions of the national regulatory authority shall neither be subject to mandatory consent or approval by state bodies, other public authorities; nor may they be cancelled by those bodies.

Normative legal acts of the national regulatory authority shall be recorded in the Unified State Register of Normative Legal Acts. Date of receipt of the normative legal act by the Ministry of Justice of Ukraine shall be the date such act is recorded in the Unified State Register of Normative Legal Acts.

4. Normative legal acts of the national regulatory authority shall take effect on the day of the official publication unless the later date of coming into effect is provided in such act. Other acts of the national regulatory authority shall take effect on the day of its adoption unless the later date of coming into effect is provided in such acts.

The official publication of the normative legal act of the national regulatory authority shall be the first publication of its full text in one of the bulletins of "Official Gazette of Ukraine", newspapers "Governmental Courier" or "Voice of Ukraine" or the first posting on the official website of the national regulatory authority on the Internet, depending on where it published before. Other acts of the national regulatory authority shall be published by posting on the official website of the national regulatory authority on the Internet with due account for the requirements of the legislation concerning information.

5. Acts of the national regulatory authority may be exclusively appealed in court. In case the national regulatory authority receives the documents on the appeal of such warnings or orders in court, the information about such appeal and its results shall be published on the official website of the national regulatory authority on the Internet. Such information shall be published with due account for the requirements of the legislation concerning information.

## **Article 22. National regulatory authority funding**

1. Activity of the national regulatory authority shall be funded from a special fund of the State Budget of Ukraine based on the budget estimate of the national regulatory authority.

2. Budget estimate of the national regulatory authority shall be approved by the national regulatory authority subject to recommendations of the Budget Board of the national regulatory authority in accordance with this Law.

The Head of the national regulatory authority shall submit draft budget estimate to the Budget Board of the national regulatory authority composed of:

two individuals appointed by the President of Ukraine;

two individuals appointed by the Verkhovna Rada of Ukraine;

two individuals appointed by the Cabinet of Ministers of Ukraine;

two individuals appointed by the Public Council of the National Commission.

The Budget Board of the national regulatory authority shall be a temporary body; its meetings shall be held where it is necessary to review the draft budget estimate of the national regulatory authority, and in other cases established by this Law.

Powers of the Budget Board shall be include the following:

consideration of draft budget request of the national regulatory authority for the next budget year;

consideration of the draft budget of the national regulatory authority and provision of appropriate proposals.

Decisions of the Budget Board of the national regulatory authority shall be adopted by simple majority of votes.

The Budget Board of the national regulatory authority shall act in accordance with the regulations adopted by it.

The Budget Board of the national regulatory authority shall, upon completion of the work on the draft budget estimate, submit its proposals, if necessary, which shall include:

assessment of effectiveness of implementation of previous year budget of the national regulatory authority;

appropriateness and reasonableness of purpose and amount of expenditures.

Proposals of the Budget Board of the national regulatory authority to the draft budget estimate and the budget estimate approved by the national regulatory authority shall be published on the official website of the national regulatory authority on the Internet.

Members of Budget Board of the national regulatory authority shall exercise their powers on the voluntary basis.

While preparing draft State Budget of Ukraine for the next budget year the expenditures on funding the national regulatory authority shall be planned at the level not lower than the budget estimate of the national regulatory authority.

If the budget estimate of the national regulatory authority has not been approved before the beginning of the new budget year in the order prescribed by this Law, the national regulatory authority shall be funded based on the budget estimate for the previous budget year.

3. The sources of funding the national regulatory authority shall include revenues to the special fund of the State Budget of Ukraine:

regulatory fees estimated by the Tax Code of Ukraine of not more than 0,2 percent of the revenue earned by providers of electronic communications services from the provision of electronic communications services, including revenue from the provision of electronic communication services to other providers of electronic communications services, revenue of postal service operators, earned from provision of postal services;

15 percent of rental fees for use of radio frequency resource of Ukraine calculated and paid by payers of such fee in accordance with the Tax Code of Ukraine.

4. Payers of the regulatory fee shall be:

providers of electronic communications services as of the date of being included to the state register of providers of electronic communications services according to notification;

postal service operators as of the date of being included to the register of postal service operators.

The regulatory fee shall be charged on the revenue of payers earned from providing electronic communications services or postal services respectively, in the reporting quarter. If it is impossible to separate out the revenue of the provider of electronic communications services and postal service operator earned from providing electronic communications services, postal services respectively from other revenue, a quarterly regulatory fee shall be charged on aggregate revenue of the payer.

Payers shall pay the regulatory fee to the special fund of the State Budget of Ukraine on a quarterly basis within the calendar month following the reporting quarter. Regulatory fee shall be paid regardless of the financial standing of the payer.

### **Article 23. Audit of the national regulatory authority**

1. Audit of annual financial statements of the national regulatory authority shall be conducted at least once a year by an audit firm that has experience in audit according to international auditing standards.

The same audit firm shall not have the right to perform an audit of the annual financial statements of the national regulatory authority for more than three consecutive years.

2. Annual audit report shall be published on the official website of the national regulatory authority on the Internet and submitted to the Budget Board of the national regulatory authority together with the annual report for the Verkhovna Rada of Ukraine, as well as, no later than April 1 of the year following the reporting year, on the official website of the national regulatory authority on the Internet.

#### **Article 24. Scientific-methodological and informational support of the national regulatory authority**

1. The national regulatory authority may create consultation and other advisory bodies to perform its tasks. The regulations on such bodies shall be approved by the national regulatory authority.

2. For the scientific and methodological and informational support of its activities, including for the achievement of the balance of interests between electronic communications market entities in the course of its activity, the national regulatory authority may engage scientists, experts, consultants, and members of the public.

#### **Article 25. Liability of officials of the national regulatory authority**

1. The Head and members of the national regulatory authority and officials of the apparatus of the national regulatory authority shall bear liability established by law for any violations of the provisions of this Law, other acts of law, for failure to perform or for improper performance of their respective employment duties resulting in violation of legitimate rights and interests of electronic communications market entities.

2. The head and other members of the national regulatory authority shall not be personally liable for decisions of the national regulatory authority taken collectively.

#### **Article 26. Powers of the national regulatory authority**

1. The national regulatory authority shall be empowered to:

- 1) develop and submit according to the procedure to the President of Ukraine drafts of legal acts and acts of the President of Ukraine, as well as to the Cabinet of Ministers of Ukraine – draft laws and other normative legal acts in the electronic communications sphere;
- 2) participates in preparing draft laws, technical regulations, national standards and other normative legal acts in the electronic communications sphere;
- 3) issue normative legal acts on the matters within the competence of the national regulatory authority and exercise control over compliance with them;
- 4) approve the budget estimate of the national regulatory authority taking into account recommendations of the Budget Board of the national regulatory authority, and establishes the regulatory fees in accordance with the budget;
- 5) develop and approve within its competence the regulation on the national regulatory authority;
- 6) issue its official bulletin (electronic periodical) and publishes in the bulletin normative legal acts and other information required by this Law, promulgate and provide information upon requests pursuant to the Law of Ukraine "On Access to Public Information";
- 7) carry out the registration in the electronic communications sphere, establish the procedure for maintaining and maintain the state register of providers of electronic communications services;
- 8) determine the list of activities in the electronic communications sphere and establish the Rules for carrying out activity in the electronic communications sphere;
- 9) change the structure of the numbering resource and numbering space, establish the procedure for allocation and accounting of the numbering resource, the procedure for number portability services and the procedure for provision of national roaming services;
- 10) carry out initial allocation and accounting of the numbering resource, as well as issuance, re-issuance, issuance of a duplicate, extension of the term of, and cancellation of licenses for use of the numbering resource, and ensure supervision (control) over the use of the numbering resource;

- 11) establish the procedure, in accordance with law, for opening the numbering resource which provides for creation of personal subscriber numbers and the procedure for administrating, assigning and maintaining personal subscriber numbers, determine the organisation to perform centralised technical administration of personal numbers and ported subscriber numbers, and establish the tariffs for its work (services);
- 12) establishes the procedure of formation of tariffs for number portability services;
- 13) ensure quality monitoring procedures with respect to electronic communications services per the procedure established by it and publish the results of the monitoring;
- 14) determine the list of quality criteria of electronic communications services provided to consumers, whose levels are required to be promulgated by providers of electronic communications services, as well as establish the procedure for and terms of such promulgation;
- 15) engage in tariff regulation in the electronic communications sphere in compliance with the law and establish the procedure for mutual settlements between different providers of electronic communications services;
- 16) approve special tariffs for publicly available electronic communications services of the providers of electronic communications services for disabled and socially disadvantaged people;
- 17) provide organisational and legal support of publicly available electronic communications services and traffic transmission services;
- 18) receive, free of charge, from the providers of electronic communications services regulatory reporting and information necessary for the exercise of its regulatory powers, including the information of limited access and the information that includes financial and economic indicators, in the volume, form and order established by the national regulatory authority, as well as receives, within the period of time established by the national regulatory authority, comments on the signs of violations of the legislation in the electronic communications sphere revealed upon the analysis of the regulatory reporting submitted by the providers of electronic communications and/or upon monitoring of the quality of electronic communications services;
- 19) determine wholesale and retail markets for certain electronic communications services in the order established by it as well as analyse such markets and identify the providers with SMP in the markets of such services;
- 20) impose, amend, withdraw or maintain regulatory obligations of the providers with SMP in the market of certain electronic communications services;
- 21) obtain, free of charge, from state bodies and local self-government bodies' documents, materials, statistical and other information determined by the legislation;
- 22) adopt decisions within its competence, including the decisions on elimination of violations revealed in the result of monitoring the quality of electronic communications services, as well as warnings and orders which are binding on the electronic communications market entities;
- 23) engage in supervision (control) in the electronic communications sphere over the observance of legislation on electronic communications by the electronic communications market entities;
- 24) impose, within its powers and in the order established by the legislation, administrative and economic sanctions on undertakings for violation of the legislation in the electronic communications sphere;
- 25) submit to the Antimonopoly Committee of Ukraine materials containing data about signs of violations of the legislation on protection of economic competition, and submits to law enforcement agencies materials containing data about signs of criminal offences;
- 26) submit claims to the court in the event of breach of the legislation on electronic communications by undertakings operating in the electronic communications sphere, as well as claims for termination of legal entities or business activities of individual entrepreneurs carrying out their activities in the electronic communications sphere;
- 27) regulate the interaction between providers of electronic communications services in the course of joint use of the electronic communications network infrastructure, interconnection of electronic communications networks, including that related to traffic transmission services; establish the procedure for traffic routing;
- 28) establish the procedure for formation of tariffs for the access to the electronic communications network infrastructure;

- 29) develop and approve basic requirements to an agreement on joint use of the electronic communications network infrastructure, basic requirements to an agreement on electronic communications services, procedure for registration of subscribers receiving electronic communications services on the basis of a contract made in the form other than in writing;
- 30) create favourable organisational and economic conditions to attract investments in the electronic communications sphere;
- 31) provide equal conditions for the activities in the electronic communications sphere;
- 32) provide out-of-court settlement of disputes between the electronic communications market entities related to joint use of the electronic communications network infrastructure and interconnection of electronic communications networks, including disputes related to the traffic transmission services, national roaming services, number portability services, and use of personal numbers;
- 33) cooperate with the respective regulatory authorities in the electronic communications sphere of other states;
- 34) exercise other powers provided for in this Law and in other laws.

#### **Article 27. Transparency of activities of the national regulatory authority**

1. The national regulatory authority shall ensure transparency of its activities according to this Law and to the Law of Ukraine "On Access to Public Information".
2. The agenda for the meetings of the national regulatory authority shall be published on the official website of the national regulatory authority on the Internet one day before the meeting at the latest.
3. The meetings of the national regulatory authority may be conducted in the form of public or closed hearings. In the consideration of the issues of great public importance, the meeting shall be held in the form of public hearings; such meetings may be attended by electronic communications market entities and non-government organisations in the order prescribed by the regulations of the national regulatory authority.
4. The national regulatory authority shall inform the public of the results of its work, promulgate its normative legal acts, information required by law and other information related to its activities in the mass media, including printed media.
5. The national regulatory authority shall publish its budget estimate for the following year, as well as, no later than April 1 of the year following the reporting year, annual reports on its work and the report on budget performance in the previous year, on the official website of the national regulatory authority on the Internet.

#### **Article 28. Activities of the national regulatory authority related to consumer protection**

1. To protect the rights of consumers the national regulatory authority shall cooperate with organisations representing interests of consumers, provide such organisations, as well as consumers, with the necessary information regarding the activities of providers of electronic communications services, except when the information is limited access information.
2. Consumers shall have the right to apply to the national regulatory authority for resolution of any issues within its powers. The national regulatory authority shall analyse and summarise consumer complaints and suggestions on the issues within its competence, and take appropriate measures further to the consideration of the complaints and suggestions.

#### **Article 29. Analysis of the markets for electronic communications services**

1. Analysis of the markets for electronic communication services shall be conducted based on the decision of the national regulatory authority with the view to applying ex ante regulation and identifying providers of electronic communications services covered thereby.

The decision to conduct the analysis of the market of electronic communications services shall indicate:

name of the market;

major consumer characteristics of the market;

list of providers of electronic communication services providing electronic communications services in the market subject to the analysis;

list of financial and economic indicators of the performance of providers of electronic communications services that are necessary to form the basis for the analysis of the market;

list of reporting forms to be used in the course of the analysis;

timeframe of the analysis.

2. Analysis of the market of certain electronic communications services shall be conducted by the national regulatory authority based on the following criteria:

revenue of providers of electronic communications services earned in the market of certain electronic communications services;

technological process of providing a certain service to another provider of electronic communications services.

The procedure for determining the specific markets for electronic communications services, performing analysis of the markets, identifying the providers with SMP in the market of electronic communications services shall be established by the national regulatory authority.

The national regulatory authority shall evaluate the expedience of applying ex ante regulation further to the results of the analysis of the market of certain electronic communications services on the basis of the following criteria:

level of market concentration (concentration of share of revenues from provision of electronic communications services in the market of certain electronic communications services in a particular number of providers of such services);

presence of significant (high and permanent) barriers keeping other providers of electronic communications services from entering the market;

availability of providers with SMP in the market of electronic communications services.

If one or more of the above criteria is found positive, it shall be deemed expedient to apply ex ante regulation with respect to such market.

3. If it is expedient to apply ex ante regulation with respect to the market based on the results of the analysis of the market of certain electronic communications services, the national regulatory authority shall identify the providers with SMP in the market of such electronic communications services and impose, amend or maintain regulatory obligations with respect to them, as provided for in Article 51 of this Law.

When identifying providers with SMP in the market of certain electronic communications services the national regulatory authority shall take into account revenue of the provider of electronic communications services and/or technological specifics of provision of a service by the provider of electronic communications services to another provider of electronic communications services.

In case results of the analysis of the markets for electronic communications services shows the lack of expedience of applying ex ante regulation, the national regulatory authority shall not define any providers with SMP and not impose any regulatory obligations prescribed by Article 51 of this Law or withdraw previously set regulatory obligations of the providers with SMP and such providers are no longer deemed as such providers with SMP.

Analysis of the markets of electronic communications services and review of the regulatory obligations shall be conducted not earlier than three years after the adoption by the national regulatory authority of a decision on the results of the latest analysis of relevant market of electronic communications services.

Based on a reasonable request from a provider of electronic communications services, the national regulatory authority may decide to conduct a new analysis of the markets of certain electronic communications services and to review the regulatory obligations prior to the expiry of the above term, but not less than one year after the national regulatory authority adopts a decision on the results of the earlier analysis. Such analysis may be conducted not earlier than one year after the adoption by the national regulatory authority of a decision on the results of the latest analysis of relevant market of electronic communications services.

4. Upon the analysis of the market of electronic communications services, the national regulatory authority shall make a decision specifying:

conclusions about the level of concentration in the market;

problems that do not contribute to the increase of the level of competitiveness of the market;

provider (providers) with SMP in the market;

regulatory obligations imposed on the provider with SMP in accordance with Article 51 of this Law.

5. Providers of electronic communications services may appeal the decision of the national regulatory authority on the results of the analysis of the market of certain electronic communications services in court.

6. If in the course of the analysis of the markets of electronic communications services the national regulatory authority reveals signs of violation of the legislation on protection of economic competition, it shall submit the results of the analysis and materials with respect to such market research to the Antimonopoly Committee of Ukraine.

### **Article 30. Supervision (control) in the electronic communications sphere**

1. Supervision (control) in the electronic communications sphere is a complex of measures taken by the national regulatory authority and its officials, within their powers established by law, aimed at revealing and preventing violations of the legislation by electronic communications market entities and protecting public interests, in particular, as to appropriate quality of electronic communications services. The procedure for supervision (control) in the electronic communications sphere shall be approved by the national regulatory authority in accordance with this Law.

2. The purpose of supervision (control) in the electronic communications sphere shall be ensuring of:

1) quality of provided electronic communications services;

2) availability of licenses required by law;

3) compliance of electronic communications market entities with the legislation, technical regulations, national standards and other normative documents in the electronic communications sphere.

3. To perform supervision (control) in the electronic communications sphere the officials of the national regulatory authority may:

1) have access to the territory and premises of providers of electronic communications services, manufacturers and suppliers of electronic communications technical facilities in the order prescribed by the legislation;

2) verify compliance of electronic communications market entities with legal requirements, technical regulations, national standards and other normative documents in the electronic communications sphere;

- 3) receive from electronic communications market entities free-of-charge information, explanations and other materials, including limited access information subject to the requirements of the legislation on protection of information, sufficient to perform the tasks assigned to the national regulatory authority by this Law and other laws;
- 4) obtain from state bodies and local self-government bodies free of charge documents, materials, statistical and other information necessary to perform the tasks assigned to the national regulatory authority;
- 5) record the process of taking a measure of supervision (control) by means of audio, photo and video equipment;
- 6) demand cease of any actions which hinder measures of supervision (control);
- 7) exercise other rights established by law.

4. Supervision (control) in the electronic communications sphere shall include the following measures:

analysis of regulatory reporting submitted by providers of electronic communications services;  
audits of electronic communications market entities.

5. In case of revealing any signs of non-compliance with the legislation on electronic communications based on the results of the analysis of the regulatory reporting submitted by providers of electronic communications services, the officials of the national regulatory authority shall approach the respective provider of electronic communications services with the demand to provide explanations with respect to such signs of non-compliance with the legislation on electronic communications, and the provider of electronic communications services shall, within the timeframe specified in the demand, provide reasonable explanations on the merits and, if necessary, support such explanations with duly certified copies of documents.

The term to respond to the national regulatory authority shall depend on the volume of information and shall not be less than five or more than twenty working days as of receipt of the respective demand. This term may be extended to the period which shall not exceed 10 working days by official of the national regulatory authority upon reasonable request made by the provider of electronic communications services.

If the officials of the national regulatory authority receive sufficient information confirming due compliance of the provider of electronic communications services with the legislation on electronic communications within the prescribed period of time, they shall give notice thereof to the respective provider of electronic communications services within ten working days.

If the information received within the prescribed period of time is sufficient to confirm violation of the legislation on electronic communications, the national regulatory authority shall take measures set forth in Article 31 of this Law.

If the national regulatory authority does not receive the information within the prescribed period of time or the information received is insufficient to identify whether or not there is a violation of the legislation on electronic communications, an officer of the national regulatory authority shall again demand from the provider of electronic communications services to give its explanations or clarify provided explanations for signs of non-compliance with the legislation in the electronic communications sphere within the period prescribed by the requirements of this part.

If the national regulatory authority does not receive the information within the prescribed period of time or the information received is insufficient to find out whether or not there is a violation of the legislation on electronic communications for the second time, the national regulatory authority shall approve the decision on audit of the provider of electronic communications services.

6. Audit shall be performed based on the decision of the national regulatory authority with respect to the issues referred to in the decision. The decision on audit shall indicate the basis, subject, period of audit, and title of the provider of electronic communications services subject to

audit. Audit shall be performed by the officials of the national regulatory authority based on the decision on audit and in compliance with the issued certificates for conduct of the audit.

Decision on audit may be made based on:

reasonable written statement from an individual or a legal entity on violations of legislation, technical regulations, national standards and other normative documents in the electronic communications sphere;

written application from the provider of electronic communications services for audit upon request;

revealed signs of violation of the legislation, technical regulations, national standards and other normative documents in the electronic communications sphere based on the results of quality monitoring of electronic communications services, revealed upon the analysis of the regulatory reporting submitted by the providers of electronic communications, failure to submit the regulatory reporting and information within the prescribed period without valid reasons as well as failure to submit the information within the prescribed period of time or submission of the information insufficient to decide on whether or not there is violation of the legislation on electronic communications after applying to the provider of electronic communications services one more time;

orders or warnings to eliminate the revealed violations in order to check them for compliance with those orders and warnings.

Decision on audit shall not be made on the grounds of application from the same applicant concerning the same question and the same period in case the audit was held on the grounds of the previous application.

Provider of electronic communications services shall be made aware of the decision of the national regulatory authority on audit with providing a copy of such decision and a document which was the ground of making such decision.

In the course of the audit the national regulatory authority may conduct certain measurements to verify compliance with the established procedure for traffic routing in electronic communications networks and parameters of such electronic communications networks.

Withdrawal of originals of financial and economic, accounting and other documents as well as information and communication systems and their parts from electronic communications market entities during the audit shall be prohibited.

The duration of the audit shall not exceed ten working days. By reasonable decision of the national regulatory authority the duration of the audit may be extended by, however, no more than five working days.

Two copies of the certificate on audit shall be executed based on the results of the audit. One copy of the certificate shall be issued to the electronic communications market entity subject to audit, and the other shall be kept by the national regulatory authority.

7. If any provision of law, technical regulation, national standard, normative legal act or normative act issued in compliance with the law suggests controversial interpretation of the rights and obligations of an undertaking or of the national regulatory authority and its officials, the decision shall be made in favour of the undertaking.

### **Article 31. Response measures to be taken by the national regulatory authority in case of revealing violations**

1. The national regulatory authority shall issue orders on elimination of violations if it reveals violations of the legislation on electronic communications prescribed by Part 3 of Article 83 of this Law in the course of supervision (control) in the electronic communications sphere, the national regulatory authority shall also impose administrative and economic sanctions for such violations.

Orders of the national regulatory authority shall be binding on the electronic communications market entities within the term specified therein.

The order may also contain the demand to the electronic communications market entity to terminate or suspend certain electronic communications services if the provider with SMP in markets for certain electronic communications services fails to fulfil regulatory obligations established by the decision of the national regulatory authority.

2. The national regulatory authority shall issue warnings if it reveals other violations of the legislation on electronic communications not prescribed by Part 3 of Article 83 of this Law in the course of supervision (control) in the electronic communications sphere.

Warnings of the national regulatory authority concerning elimination of violations of the legislation on electronic communications shall be binding on the provider of electronic communications services within the term specified therein.

A warning shall not involve application of any administrative and economic sanctions to an electronic communications market entity.

3. The provider of electronic communications services who received a warning or an order from the national regulatory authority shall, within the period of time stated in the warning or the order, eliminate the violation and submit the information on such elimination of violation to the national regulatory authority in writing.

Upon reasonable application by the provider of electronic communications services, the period of time stated in the warning or order may be extended by the decision of the national regulatory authority.

A warning or an order of the national regulatory authority may be appealed in court.

## Chapter IV

### ELECTRONIC COMMUNICATIONS TECHNICAL FACILITIES

#### **Article 32. Conditions for use of electronic communications technical facilities**

1. Conditions for use of electronic communications technical facilities include the compliance of such equipment with the national standards and technical regulations. Electronic communications technical facilities shall have an obligatory document confirming its compliance with the requirements of normative documents in the electronic communications sphere issued in the order prescribed by the legislation.

2. Conformity of electronic communications technical facilities shall be verified in accordance with the Law of Ukraine "On Technical Regulations and Conformity Assessment."

3. Central executive body responsible for the formation and implementation of the state policies in the electronic communications sphere shall decide on the list of equipment that can be used in public electronic communications networks, and at least twice a year publish this list in the official bulletin and on the official website of the national regulatory authority on the Internet.

4. To use electronic communications facilities not included in the list, providers of electronic communications services shall seek the approval of central executive body responsible for the formation and implementation of the state policies in the electronic communications sphere in the order established by the legislation.

5. The criteria to approve electronic communications facilities to be used in electronic communications networks shall include the following:

- 1) unification and unity of public electronic communications networks;
- 2) reliability and security of electronic communications networks;
- 3) automation of operational and technical management of the networks;

- 4) compliance with applicable normative documents in the electronic communications sphere and technical regulations on conformity verification;
- 5) harmonisation of national normative legal acts on conformity verification in the electronic communications sphere with international and European legislation;
- 6) other technical and economic parameters defined by the legislation of Ukraine.

6. Central executive body responsible for the formation and implementation of the state policies in the electronic communications sphere shall, within 60 calendar days of receipt of the application from the provider of electronic communications services, make the decision on suitability of electronic communications facility for use in electronic communications networks. If electronic communications facility is found suitable it shall be added to the list as set forth in part three of this article.

7. The control over compliance with the conditions for use of equipment in public electronic communications networks shall be exerted by the national regulatory authority.

8. The provisions of this Article shall also extend to end equipment.

### **Article 33. Standardisation in the electronic communications sphere**

1. Standardisation in the electronic communications sphere shall focus on creation of a unified system of national standards and other normative documents setting the requirements to electronic communications networks, their equipment and quality of electronic communications services, as well as harmonisation of these requirements with international normative documents, including that through recognition and implementation of international standards, regional standards and national standards of other states which are members of relevant international or regional organisations of standardisation and with which relevant international agreements of Ukraine regarding cooperation work on standardisation are concluded.

2. The requirements of technical regulations, national standards and other normative documents related to electronic communications technical facilities shall be binding on all manufacturers and suppliers of technical facilities, science and research organisations, design and construction organisations, as well as providers of electronic communications services. The requirements to quality of the services shall be binding on all providers of electronic communications services providing electronic communications services in Ukraine.

3. National standards shall be developed and approved in accordance with the legislation of Ukraine on standardisation subject to standards and recommendations of international organisations.

### **Article 34. Metrological support in the electronic communications sphere**

1. Metrological support in the electronic communications sphere shall be performed in accordance with the Law of Ukraine "On Metrology and Metrological Activities".

2. The normative basis for metrological support in the electronic communications sphere shall include technical regulations, national standards and the results of the conformity assessment performed in other states, in the cases stipulated by the Law.

3. Requirements of the legislation on metrology and metrological activities in the electronic communications sphere shall be binding on all providers of electronic communications services, manufacturers of electronic communications technical facilities, other institutions and organisations that conduct tests of electronic communications technical facilities.

## Chapter V

### ELECTRONIC COMMUNICATIONS NETWORKS

### **Article 35. Public electronic communications network**

1. Public electronic communications networks shall be developed and improved in accordance with the Concept of Development of Electronic Communications of Ukraine using the latest technology in electronic communications industry that meet international standards, taking into account technological integrity of networks and electronic communications facilities, and improvement of efficiency and sustainability of operation. The Concept of Development of Electronic Communications of Ukraine shall focus on harmonious and dynamic development of electronic communications networks throughout Ukraine, especially in the regions with insufficient saturation of public local networks.
2. Ownership of electronic communications networks can belong to any individual entrepreneur or legal entity that is a resident of Ukraine, regardless of the form of ownership.
3. Public electronic communications networks shall be managed by the operators that operate such networks based on common standards, rules and regulations.
4. Providers that operate public electronic communications networks shall be responsible for their sustainability.
5. Requirements to sustainability of public electronic communications networks shall be taken into account in the course of their construction and equipping.
6. The national regulatory authority, state bodies and local self-government bodies within their powers shall create favourable conditions for the functioning of public electronic communications networks and comprehensive provision of electronic communications services.
7. Providers of electronic communications services, regardless of the form of ownership, shall first of all make the resources of their networks available on contractual basis to the state system of government communications, national system of confidential communications, security, defence, law enforcement agencies, National Anti-Corruption Bureau of Ukraine, National Police of Ukraine in the order prescribed by central executive body responsible for the formation and implementation of the state policies in the electronic communications sphere, as well as to civil protection governance authorities according to the Code of Civil Protection of Ukraine.
8. Unauthorised interference with and/or use of electronic communications networks by individuals and legal entities shall entail liability in accordance with law.

#### **Article 36. Joint use of electronic communications network infrastructure**

1. Joint use of the electronic communications network infrastructure shall be on the basis of an agreement concluded between provider of electronic communications services and the owner (holder) of the electronic communications network infrastructure and providing for technical, organisational, economic and other terms for such joint use of the electronic communications network infrastructure.
2. Agreement on joint use of the electronic communications network infrastructure shall be concluded in compliance with the basic requirements to model agreement approved by the national regulatory authority.
3. Access to the electronic communications network infrastructure shall be billed based on the procedure for formation of tariffs for the access to the electronic communications network infrastructure adopted by the national regulatory authority.

#### **Article 37. Use of public electronic communications networks for television and radio**

1. The use of resources of public electronic communications networks for television and radio shall be on contractual basis in accordance with the legislation.
2. The provision of electronic communications services for the needs of television and radio shall be governed by the Law of Ukraine "On Television and Radio".

**Article 38. Operational and technical management of public electronic communications networks in case of an emergency situation, state of emergency, special period and during antiterrorist operation.**

1. Management of public electronic communications networks and ensuring of their sustainability during the state of emergency shall be the responsibility of central executive body responsible for the formation and implementation of the state policies in the electronic communications sphere.

2. The operational and technical management of public electronic communications networks of all providers in case of an emergency situation, state of emergency, special period and during antiterrorist operation shall be ensured by creation of the National Centre for Operational and Technical Management of Electronic Communications Networks of Ukraine.

3. The procedure for creating and operating the National Centre for Operational and Technical Management of Electronic Communications Networks of Ukraine shall be adopted by the Cabinet of Ministers of Ukraine.

4. In case of an emergency situation, state of emergency, special period and during antiterrorist operation the National Centre for Operational and Technical Management of Electronic Communications Networks of Ukraine shall engage in operational and technical management of electronic communications networks within the powers granted thereto by the Cabinet of Ministers of Ukraine.

5. Under normal circumstances, the National Centre for Operational and Technical Management of Electronic Communications Networks of Ukraine shall:

- 1) interact with the control centres of the operators, including foreign operators;
- 2) perform other functions delegated thereto by the operators on the contractual basis.

6. Operators shall submit the information on electronic communications networks that they operate and their condition in volumes and in the order established by the Cabinet of Ministers of Ukraine to the National Centre for Operational and Technical Management of Electronic Communications Networks of Ukraine in order for the latter to be able to perform its functions.

7. The operators and the National Centre for Operational and Technical Management of Electronic Communications Networks of Ukraine shall interact on the contractual basis in the order and on the terms of a model agreement approved by central executive body responsible for the formation and implementation of the state policies in the electronic communications sphere.

8. The state shall carry out funding of special electronic communications sites at the cost and in the scope set forth by the State Budget of Ukraine.

The Cabinet of Ministers of Ukraine shall adopt the list of such special electronic communications sites.

**Article 39. Determining the directions to develop public electronic communications networks**

1. Priority areas for the development of electronic communications networks shall be defined by the Concept of Development of Electronic Communications of Ukraine. The Cabinet of Ministers of Ukraine, central executive body responsible for the formation and implementation of the state policies in the electronic communications sphere and the national regulatory authority shall within their respective powers create the appropriate environment for its execution through implementation of the state tariff policy, promotion of economic competitiveness and creation of favourable investment climate in the electronic communications sphere.

2. Investments in the development of public electronic communications networks shall originate from the funds of the providers of electronic communications services, funds of other legal entities and individuals engaged on the contractual basis, as well as from loans, issuance of securities and other revenue not prohibited by the legislation of Ukraine.

3. Investments in the development of public electronic communications networks may also originate from the state and local budgets if such expenditures are provided for within such budgets. The state shall invest in the development of public electronic communications networks in accordance with the laws of Ukraine, based on the Concept of Development of Electronic Communications of Ukraine, the respective government programs and projects. Investments in the development of public electronic communications networks from the local budgets shall be in accordance with the plans for the development of the respective territories by the decision of local self-government bodies.

**Article 40. Design, construction, reconstruction, modernisation and operation of electronic communications networks**

1. Electronic communications networks shall be constructed, reconstructed, modernised and operated according to the approved project documentation.
2. Construction, reconstruction and modernisation of electronic communications networks shall not result in the reduction of their reliability and quality of electronic communications services.
3. Developers shall equip all new housing and community, cultural, medical and other facilities of all forms of ownership with networks and devices to arrange for public electronic communications networks.
4. Customers ordering the construction of electronic communications networks shall be permitted to lay cable underground, underwater and aerial lines of electronic communications networks over bridges, tunnels, sewers, streets, roads, buildings, forests and water, and use power transmission line supports in accordance with the legislation of Ukraine.
5. Customers ordering the reconstruction and construction of bridges, tunnels, sewers, streets, roads, buildings, power lines with joint use of poles for hanging lines of electronic communications networks shall at their own expense perform the works related to organisation and relocation of electronic communications networks located within the construction zone in compliance with technical specifications issued by the owners of such networks.
6. Undertakings engaged in the construction of public electronic communications networks may install electronic communications equipment in rented premises based on agreements with the owner of such premises and use roofs, facades, technical and auxiliary facilities for the installation of antennas and other necessary equipment on the contractual basis in compliance with the law.
7. The procedure for and terms of use of the electronic communications network infrastructure, its elements and cable duct channels of electronic communications networks by individuals not owning them shall be stipulated in the agreement with the owner in compliance with the legislation.

The use of cable duct channels of electronic communications networks of all forms of ownership and its elements shall be subject to the rules of use of cable duct channels of electronic communications networks established by the Cabinet of Ministers of Ukraine.

Chapter VI

CONSUMERS OF ELECTRONIC COMMUNICATIONS SERVICES

**Article 41. Rights of the consumers of electronic communications services**

1. In the course of ordering and/or receiving electronic communications services consumers shall have the right to:
  - 1) state protection of their rights;
  - 2) free access to electronic communications services;
  - 3) security of electronic communications services;

- 4) choice of the provider of electronic communications services;
- 5) choice of the type and quantity of electronic communications services;
- 6) free-of-charge and exhaustive information from the provider of electronic communications services about the content, quality, cost and order of provision of electronic communications services;
- 7) timely and qualitative receipt of electronic communications services;
- 8) receipt from providers of electronic communications services of the available information on electronic communications services provided;
- 9) restriction on behalf of the provider of electronic communications services of the consumer's access to certain services further to such consumer's written request;
- 10) refund from the provider of electronic communications services of the remaining portion of unused funds when refusing from prepaid electronic communications services in the cases and in the order prescribed by regulations on provision and receipt of such services;
- 11) refusal from electronic communications services in the order stipulated in the agreement on electronic communications services;
- 12) recovery of damages incurred due to non-performance or improper performance by the provider of electronic communications services of its respective obligations under the agreement with the consumer or the legislation;
- 13) appeal against unlawful actions of the provider of electronic communications services by having recourse to court and to the authorised state bodies;
- 14) refusal from making payment for electronic communications services which they did not order;
- 15) receipt of information on possibility and procedure to refuse from previously ordered electronic communications services;
- 16) free-of-charge receipt from the provider of electronic communications services of bills for the provided electronic communications services. At the personal request of the consumer and taking into account technical capacity of the equipment of electronic communications network, the billed amount for the services provided shall only be detailed for the period in doubt by the consumer and shall indicate the subscriber number dialled by the consumer, type of service, start and end times of each communication session, volume of services provided, amount of funds to pay for each communication session;
- 17) number portability, use of personal number;
- 18) other rights established by the legislation of Ukraine and the agreement on electronic communications services.

#### **Article 42. Obligations of consumers of electronic communications services**

1. Consumers of electronic communications services shall follow the rules for the provision and receipt of electronic communications services adopted by the national regulatory authority, including the duty to:
  - 1) use end equipment with the valid certificate of conformity;
  - 2) prevent the use of end equipment of the consumer for committing illegal actions or actions contrary to the interests of the national security, defence and law enforcement;
  - 3) refrain from any actions that may jeopardise safe operation of electronic communications networks, their integrity and interoperability, protection of information security of electronic communications networks, electromagnetic compatibility of radio electronic equipment, or actions that may complicate or make impossible provision of the services to other customers;
  - 4) refrain from commercial use of end equipment and subscriber lines for the provision of electronic communications services to third persons;
  - 5) abide by the terms of the agreement on electronic communications services, inter alia, make timely payments for electronic communications services.
2. Consumers of electronic communications services shall duly perform other obligations prescribed by this Law and legislation of Ukraine.

#### **Article 43. Protection of information about consumer**

1. Providers of electronic communications services shall ensure and be responsible for the safety of information about the consumer received in the course of concluding the agreement, providing electronic communications services, including the information about the services received, their duration, content, transmission routes, etc.
2. Telephone directories designed to be published, including electronic versions and databases of information and reference services, may contain information about the full name, address, and phone number of the subscriber if the agreement on electronic communications services contains consent of such subscriber to publication of the aforementioned information. In the course of automated processing of information on subscribers the provider of electronic communications services shall ensure the protection of such information pursuant to law. The consumer shall have the right to have such information fully or partly deleted from electronic versions of information and reference databases free-of- charge.
3. Information on consumer and electronic communications services provided to the consumer may be disclosed in the cases and in the order prescribed by law. In all other cases, such information shall be disclosed only upon written consent by the consumer.

#### **Article 44. Protection of interests of consumers if the provider of electronic communications services terminates its activity in the provision of such services**

1. The provider of electronic communications services shall, within 5 working days as of approval of the decision to terminate provision of electronic communication services, notify the consumers of this decision in the order prescribed by the agreement with the consumer. The provider of electronic communications services shall make such a decision no later than three months prior to the date of termination of provision of electronic communications services.
2. In case of removal from the state register of providers of electronic communications services and/or in case of cancellation or invalidity of licenses for the use of numbering resource and/or radio frequency resource as a result of violation by the provider of electronic communications services of the legislation, and/or the in case of entry into force of a court order to terminate activities in provision of electronic communication services, such a provider of electronic communications services shall reimburse the subscriber all losses associated with the termination of provision of electronic communications services, in the order established by law.

#### **Article 45. Liability of consumers of electronic communications services**

1. Consumers of electronic communications services are liable for violations of this Law, the rules of providing and receiving electronic communications services in accordance with the law.
2. If a consumer fails to make timely payment for electronic communications services to the provider of electronic communications services, the consumer shall pay a penalty charged on the cost of the unpaid services in the amount of the discount rate of the National Bank of Ukraine effective over the period for which such penalty is charged.
3. Payment by a consumer of the penalty, legitimate termination or reduction of the list of electronic communications services by the provider of electronic communication services, receipt of the number portability service shall not relieve the subscriber of the duty to pay for electronic communications services provided to the consumer.
4. In case of revealing any damage to electronic communications network due to proven fault of the consumer, all expenses of the provider of electronic communications services on elimination of the damage, as well as compensation for other damages (including lost profits) shall be charged to the subscriber through court procedure.

## PROVIDERS OF ELECTRONIC COMMUNICATIONS SERVICES

### **Article 46. Legal framework for operation of providers of electronic communications services**

1. Providers of electronic communications services shall operate in compliance with the legislation on electronic communications.
2. Legal framework for operation of providers of electronic communications services shall include:
  - 1) equal rights of providers of electronic communications services in the market of electronic communications services;
  - 2) top-priority of the interests of consumers of electronic communications services;
  - 3) development of competition in the conditions of operation of providers of electronic communications services of different forms of ownership;
  - 4) prevention of discrimination on the part of providers with SMP in markets for electronic communications services against other entities in such markets.
3. The Antimonopoly Committee of Ukraine based on the legislation on protection of economic competition shall determine which providers of electronic communications services are the providers of electronic services having monopoly (dominant) position in the market of electronic communications services.
4. Providers of electronic communications services shall be relegated to the providers of electronic communications services with SMP in the market of electronic communications services by the decision of the national regulatory authority based on this Law.

### **Article 47. Rights of providers of electronic communication services**

1. Providers of electronic communications services shall have the right to:
  - 1) operate in the electronic communications sphere in compliance with the legislation;
  - 2) procure licenses pursuant to this Law;
  - 3) plan and develop their own electronic communications networks;
  - 4) establish tariffs for electronic communications services provided by them, except for those services, tariffs for which are subject to regulation by the state in compliance with this Law;
  - 5) assign phone numbers to consumers within numbering resource granted to such provider and engage personal numbers in the order prescribed by the national regulatory authority;
  - 6) connect electronic communications networks that are in their possession or use with electronic communication networks in possession or use of other providers of electronic communications services in compliance with this Law;
  - 7) cut the list of electronic communications services to be provided to the consumers that violate the rules for provision and receipt of electronic communications services and the terms of the agreement;
  - 8) terminate provision of electronic communications services to the consumers that violate the rules for provision and receipt of electronic communications services;
  - 9) disconnect end equipment of the consumer if it does not have the certificate of compliance with normative documents in the electronic communications sphere issued in the legally established order, per the procedure prescribed by the rules for provision and receipt of electronic communications services;
  - 10) disconnect the equipment and terminate provision of services (both temporarily and permanently) that was used to change the established traffic routing;
  - 11) disconnect end equipment based on a court decision if it is used by the subscriber to commit illegal actions or actions that are contrary to the interests of the national security;
  - 12) install electronic communications technical facilities in rented premises subject to permission of the owner of such premises and install such equipment on infrastructure elements of

construction, transport and power supply objects on the contractual basis in the order prescribed by the legislation;

13) use the electronic communications network infrastructure and its components on the contractual basis in the order prescribed by the legislation;

14) terminate operation in the electronic communications sphere in the order prescribed by the legislation;

15) negotiate with any operator of electronic communications concerning access to his electronic communications networks and interconnection with the objective of ensuring provision of electronic communications services;

16) exercise other rights prescribed by the legislation of Ukraine and agreements on electronic communications services.

Clauses 2, 5 and 6 shall extend exclusively to operators.

2. The Cabinet of Ministers of Ukraine shall establish the procedure for disconnection of end equipment of connection lines of emergency services to the units of the Ministry of Defence of Ukraine, the Security Service of Ukraine, the National Anti-Corruption Bureau of Ukraine, the Foreign Intelligence Service of Ukraine, the State Service for Special Communications and Information Protection of Ukraine, the Ministry of Internal Affairs of Ukraine, the National Police of Ukraine, the Department of the State Guard of Ukraine, the central executive body responsible for formation and implementation of the state tax and customs policies, the central executive body responsible for formation and implementation of the state policies in the spheres of civil protection, fire and technological safety, protection of the state border.

#### **Article 48. Obligations of providers of electronic communication services**

1. Providers of electronic communications services shall:

1) operate in the electronic communications sphere in compliance with the legislation provided their inclusion on the list of providers of electronic communications services;

2) provide the consumers with free-of-charge access to electronic communications networks to call firefighting service, police, ambulance, gas emergency service and single telephone number 112 emergency unit;

3) provide electronic communications services in compliance with the approved quality criteria;

4) provide consumers with comprehensive free-of-charge information necessary for conclusion of the agreement, as well as the information related to electronic communications services being provided;

5) provide to subscriber number portability service, use of personal number in the order prescribed by the national regulatory authority;

6) keep accurate records of electronic communications services provided to the consumer;

7) keep separate records of revenue and expenses for each electronic communications service as defined by the national regulatory authority, both on wholesale and retail markets of electronic communications services and pay regulatory fees charged by the national regulatory authority in compliance with this Law;

8) ensure correct application of the tariffs;

9) set the billing unit, define full and partial billing unit;

10) keep records of electronic communications services within the limitation period specified by law and provide information on the provided electronic communications services in the order prescribed by law;

11) prevent unfair competition in the market of electronic communications services;

12) give priority to provision of electronic communications services to the units of the Ministry of Defence of Ukraine, the Security Service of Ukraine, the National Anti-Corruption Bureau of Ukraine, the Foreign Intelligence Service of Ukraine, the State Service for Special Communications and Information Protection of Ukraine, the Ministry of Internal Affairs of Ukraine, the National Police of Ukraine, the Department of the State Guard of Ukraine, the central executive body responsible for formation and implementation of the state tax and customs policies, the central

executive body responsible for formation and implementation of the state policies in the spheres of civil protection, fire and technological safety, protection of the state border;

13) provide for operability of their electronic communications networks in case of emergency situation, state of emergency, special period and during antiterrorist operation, including the ability to alert the consumers under such circumstances;

14) annually submit to central executive body responsible for the formation and implementation of the state policies in the electronic communications sphere the information on their electronic communications networks for testing mobilisation plans within the limits determined by the Cabinet of Ministers of Ukraine;

15) keep accounting and other documentation as required by the legislation with respect to their electronic communications networks and interconnection with other electronic communications networks;

16) submit timely reports and information to central executive body responsible for the formation and implementation of the state policies in the electronic communications sphere of the volumes, in the order and within the period of time established by the legislation;

17) provide timely reports and information to the national regulatory authority of the volumes, in the order and within the period of time established by the national regulatory authority as well as upon requests of officials of the national regulatory authority and within the demanded time limits set in the requests submit reasonable explanations on the merits of the requests and, if necessary, support such explanations with duly certified copies of documents;

18) promulgate tariffs for electronic communications services that are established or changed by the provider of electronic communications services, information on tariff plans and changes to tariff plans for electronic communications services, changes in the terms of provision of services, and notify the consumers of the changes in the terms of provision of services, including tariff plans they are given, but not later than seven days before such changes become effective;

19) provide for incoming and outgoing connections for its subscribers with any subscriber number of the allocated numbering resource of the public electronic communications network;

20) warn the consumers of the potential reduction of the list of electronic communications services or of the disconnection of their end equipment in the cases and in the order prescribed by the rules for provision and receipt of the services;

21) take measures to prevent unauthorised access to electronic communications networks and the information transmitted by these networks;

22) based on a court decision limit the access of their subscribers to the resources which distribute child pornography;

23) submit the following information to the single telephone number 112 emergency centre: immediately upon receipt of an emergency call from a mobile communications subscriber – data on the number and its location;

monthly – information on subscriber numbers of fixed-line communications, full names and addresses contained in the database;

24) engage in joint use of the electronic communications network infrastructure on the contractual basis as prescribed by the legislation;

25) negotiate in case of application of any operator of electronic communications concerning access to electronic communications networks and their interconnection as well as provide him with all information necessary;

26) offer access to electronic communications networks and their interconnection to other operators of electronic communications within the terms and conditions prescribed by this Law and decisions of the national regulatory authority;

27) perform other obligations in compliance with the legislation of Ukraine.

Clauses 2, 5, 13 – 15, 19, 21, 23, 25 and 26 shall extend exclusively to operators.

2. Providers of electronic communication services shall retain and provide the information on the provided electronic communications services to its subscriber in the order established by law.

3. Providers of electronic communications services when performing settlements with consumers for the received electronic communications services shall bill only full tariff units. Consumers shall be billed only for the de facto used full tariff units.

4. Operators together with the owner (holder) of the electronic communications network infrastructure shall at their own expense install equipment in electronic communications networks necessary for the authorised bodies to perform search and rescue and undisclosed search operations and refrain from disclosure of organisational and tactical methods of such activities. Providers of electronic communications services shall ensure the protection of such equipment from unauthorised access.

5. Providers of electronic communications services shall not have the right to deny further provision of public services to the disabled groups I and II of all categories, whose current debt for the services received does not exceed the minimum retirement-by-age pension.

#### **Article 49. Peculiarities of activities of caching service provider**

1. The caching service provider while making transmission via electronic communications network of information provided by the consumer of the electronic communication service shall not be responsible for the automatic, intermediate and temporary storage of such information, which is carried out with the sole purpose – to provide more effective next transmission of information to other consumers of electronic communications services on their demand provided that such provider:

- 1) did not change the information provided by the consumer of electronic communications services;
- 2) fulfils the conditions of access to the information provided by the consumer of electronic communications services;
- 3) follows the information updating rules which are widely recognised and applied in the electronic communications sphere;
- 4) does not impede the lawful use of technologies widely recognised and used in the electronic communications sphere in order to obtain data on the use of information;
- 5) take operational measures to remove the information it stores, or disable access to the information in the case when it became aware that the primary source of this information was removed from an electronic communications network or access to it was blocked or the court imposed a ban on the dissemination of such information.

2. The caching service provider is obliged to stop or prevent the offence while providing caching services if such a requirement prescribed by the court order.

#### **Article 50. Peculiarities of activities of hosting service provider**

1. The hosting service provider while storing information provided by the consumer of the electronic communication service shall not be responsible for information stored at the request of the consumer of electronic communications services provided that:

- 1) the service provider is not aware of illegal activity of consumer of electronic communications services or information, and in case of receiving claims for damages – is not aware of facts or circumstances indicating such illegal activity or information; or
- 2) hosting service provider removed the information or made it impossible to access it in a timely manner after receiving the information referred to in paragraph 1 of this part.

2. The hosting service provider is obliged to stop or prevent the offence while providing hosting services if such a requirement prescribed by the court order.

#### **Article 51. Regulatory obligations of a provider of electronic communications services with significant market power in the market of certain electronic communications services**

1. Regulatory obligations shall be imposed on providers with SMP to achieve the goal of resolving a certain problem in the market where ex ante regulation was found as expedient based on the results of the analysis conducted.

Regulatory obligations imposed on providers with SMP shall be objective, transparent, reasonable, based on the nature of the problem identified, non-discriminatory, proportionate and consistent with the principles of activities in the electronic communications sphere as well as with the purpose of state regulation.

Consideration made by the national regulatory authority of issue concerning regulatory obligations imposed on a provider with SMP prescribed by this Article shall be made with an obligatory invitation of a relevant provider with SMP.

2. On wholesale markets of electronic communications services where application of ex ante regulation has been found expedient, the national regulatory authority by its decision shall impose on providers with SMP in the market of certain electronic communications services one or more of the following regulatory obligations:

1) ensuring of transparency in relation to interconnection and/or access to electronic communications networks by promulgating the information about characteristics of electronic communications networks, organisational, technical, economic conditions for access thereto, of the volumes and in the order established by the national regulatory authority;

2) creation of non-discriminatory conditions in the course of interconnection and/or access to electronic communications networks by applying similar conditions in similar circumstances to all providers of electronic communications services, as well as providing services to other providers of electronic communications services on the same conditions and of the same quality as that of the provider with SMP provided for its own needs;

3) creation of suitable conditions in the course of interconnection and/or access to electronic communications networks, use of certain network elements through:  
creation of new interconnection points at the request and at the cost of providers of electronic communication services ordering such creation in accordance with the requirements prescribed by the national regulatory authority;

access to certain elements of electronic communications network, including subscriber lines of electronic communications networks on the contractual basis;

granting of electronic communications channels for use;

provision of national roaming services on the contractual basis in the order prescribed by the national regulatory authority;

provision of the opportunity to co-locate equipment and jointly use the electronic communications network infrastructure on the contractual basis;

prohibition of unilateral termination of the existing interconnection and access without the respective decision of the national regulatory authority;

4) calculations of cost of electronic communications services, in particular interconnection and/or access to electronic communications networks of providers of electronic communications services, based on distribution of expenses by services (types of services) and according to the procedure approved by the national regulatory authority, and their submission along with auditor report to the national regulatory authority in accordance with its requirements;

5) compliance with the requirements of the national regulatory authority related to tariffs (tariff plans) for electronic communications services in the markets for certain electronic communications services and refusal from certain tariffs (tariff plans) upon the decision of the national regulatory authority if such tariffs (tariff plans) do not comply with such requirements;

6) obligation related to interconnection and/or access to electronic communications networks of providers electronic communications services according to the tariffs calculated in accordance with legislation.

3. On retail markets for electronic communications services where application of ex ante regulation was found expedient, the national regulatory authority shall impose on the providers with significant market power in the market of certain electronic communications services one or more of the following regulatory obligations:

- 1) obligation not to hinder entry to the market by other providers of electronic communications services through the establishment of economically unjustified tariffs (prices) for electronic communications services;
- 2) calculations of cost of electronic communications services based on distribution of expenses by services (types of services) and according to the procedure approved by the national regulatory authority, and their submission along with auditor report to the national regulatory authority in accordance with its requirements;
- 3) compliance with the requirements of the national regulatory authority related to tariffs (tariff plans) for electronic communications services in the markets for certain electronic communications services and refusal from certain tariffs (tariff plans) upon the decision of the national regulatory authority if such tariffs (tariff plans) do not comply with such requirements;

#### **Article 52. Liability of providers of electronic communications services**

1. Provider of electronic communications services shall bear the following financial liability to the consumers for failure to provide or improper provision of electronic communications services:

- 1) for failure to provide electronic communications services that have been paid for or their provision in volumes less than they have been paid for – in the amount paid for the underprovided services and a fine of 25 percent of the amount;
- 2) for delay in transmission of a telegram, which resulted in failure to deliver it or late delivery – a fine of 50 percent of the paid amount for the service and refund of the money received for the service to the consumer;
- 3) for unjustified termination of electronic communications services – in the amount of the subscription fee for the entire period of non-provision of such services;
- 4) for unjustified reduction or change of the list of services – in the amount of the subscription fee for one month;
- 5) in other cases - in amounts prescribed by the agreement on electronic communications services;
- 6) if the provider of electronic communications services fails to eliminate damage to electronic communications network, which made it impossible for the consumer to access the service or reduced its quality to unacceptable level, within one day as of receipt of the respective request from the subscriber, the subscription fee for the entire period of the damage shall not be charged; if the provider of electronic communications services fails to eliminate damage within five days as of receipt of the respective request from the subscriber, it shall pay a penalty in the amount of 25 percent of the daily subscription fee for each day exceeding this term, but no more than three months.

2. Providers of electronic communications services shall not bear financial liability to the consumers of electronic communications services for failure to perform or improper performance of their respective obligations to provide electronic communications services due to act of god (earthquake, flood, hurricane, etc.), emergency situation, state of emergency, martial law, operations in the framework of the Law of Ukraine "On Combating Terrorism", or malicious damage or theft of linear and stationary facilities used by providers of electronic communications services, which was duly recorded in Unified Register of Pre-Trial Investigations, or due to the fault of the consumer in the cases established in this Law.

3. All disputes regarding recovery of actual damages, moral damages, lost profits incurred by the consumers due to improper performance by the provider of electronic communications services

of its respective obligations under the agreement on electronic communications services shall be resolved in court.

4. Providers of electronic communications services while transmitting information via electronic communications networks or providing access to electronic communications network shall not be responsible for the content of information transmitted if such provider:

- 1) was not an initiator of such transmission;
- 2) did not choose the recipient of information provided by the consumer;
- 3) did not choose and change the information transmitted.

Transmitting of an information provided by a consumer providing access to electronic communications network mentioned in paragraph 1 of this part shall include automatic, intermediate and temporary storage of information and have the sole purpose – transmitting of such information via electronic communications network provided that such information would not be stored longer than it is necessary for ensuring such transmission.

### **Article 53. Personnel of providers of electronic communications services**

1. Personnel of a provider of electronic communications services shall include all employees who are in labour relations therewith.

2. Personnel of a provider of electronic communications services shall bear liability for violations of the legislation of Ukraine on secrecy of telephone conversations, telegraph and other correspondence transmitted by means of communication or computer, as well as limited access information related to organisation and functioning of electronic communications networks in the interests of national security, defence and law enforcement.

3. Relationships concerning participation of personnel of a provider of electronic communications services strikes shall be subject to regulation by the Law of Ukraine "On the procedure for settling collective labour disputes (conflicts)".

4. Providers of electronic communications services shall create jobs for people with disabilities; such jobs shall amount to 4 percent of the total number of employees excluding those engaged in difficult or hazardous conditions and increased risk jobs.

5. Directors of legal entities – providers of electronic communications services may be employed under contracts.

## Chapter VIII

### REGULATION OF ACCESS TO ELECTRONIC COMMUNICATIONS MARKET

### **Article 54. Carrying out activity in the electronic communications sphere**

1. Carrying out activity in the electronic communications sphere shall be performed on the grounds of submitting notice of commencement of a certain type (types) of activity in the electronic communications sphere in the order prescribed by this Law.

Providers of electronic communications services shall be able to engage in the following types of activities in the electronic communications sphere:

- 1) provision of fixed-line services to consumers:
  - a) local telephone services;
  - b) long-distance telephone services;
  - c) international telephone services;
  - d) data transmission, including Internet access;
- 2) provision of mobile communications services to consumers:

- a) voice telephony;
  - b) data transmission, including Internet access;
- 3) provision of access to electronic communications networks, including virtual networks and traffic transmission to other providers of electronic communications services:
- a) on fixed-line networks;
  - b) on mobile communications networks;
  - c) on data transmission networks;
  - d) data transmission, including Internet access;
- 4) granting of electronic communications channels for use;
- 5) the making available for use of infrastructure of electronic communications networks, including cable ducts of electronic communications networks, electronic communications lines, electronic communications networks or their elements;
- 6) provision of broadcasting services in electronic communication networks, including television and radio broadcasting;
- 7) maintenance and operation of electronic communications networks.

Virtual operators shall be able to engage in the types of activities in the electronic communications sphere prescribed by paragraph 2 of this Article.

2. Any undertaking intending to engage in certain activities in the electronic communications sphere in a particular territory shall submit a notice of commencement of a certain type (types) of activity in the electronic communications sphere to the national regulatory authority not later than ten days before such commencement.

Submitting of the notice of commencement of a certain type (types) of activity in the electronic communications sphere shall give such undertaking the right to engage in the type of activity in the electronic communications sphere specified therein within 10 working days of the date of submitting of such notice and oblige such entity to abide by laws and other normative legal acts applicable to providers of electronic communications services.

Certain type (types) of activity in the electronic communications sphere which involves the use of a limited (numbering and/or radio frequency) resource shall require preliminary receiving of the respective licence (licences).

3. The form and content of the notice of commencement of a certain type (types) of activity in the electronic communications sphere shall be developed by the national regulatory authority and include:

full title of the legal entity or full name of the individual entrepreneur;

company code (USREOU) for a legal entity, or registration number of taxpayer's registration card or passport series and number (for individuals who due to their religious beliefs refuse to accept registration number of the taxpayer's registration card and officially informed the respective bodies of the State Tax Service and have the respective mark in the passport) - for an individual entrepreneur;

location – for a legal entity, or residence – for an individual entrepreneur;

address for correspondence;

contact details: telephone numbers, fax, e-mail, official website on the Internet if applicable;

full name of the head;

types of activities in the electronic communications sphere;

territory covered by the activities in the electronic communications sphere (for each type);

brief description of electronic communications networks and services

commitment of the applicant to fulfil the obligations prescribed by laws and other normative legal acts for providers of electronic communications services.

The notice shall be signed by the individual who has the right to take actions on behalf of such undertaking without a power of attorney and who is indicated within the Unified State Register of Legal Entities and Individuals-Entrepreneurs or by another individual authorised by the latter through power of attorney.

4. The notice of commencement of a certain type (types) of activity in the electronic communications sphere shall be submitted by an undertaking to the national regulatory authority in electronic or written form.

Notice of commencement of a certain type (types) of activity in the electronic communications sphere submitted by the undertaking in electronic form shall be made according to the legislation concerning electronic documents and electronic document workflow.

Notice of commencement of a certain type (types) of activity in the electronic communications sphere submitted by the undertaking in written form shall be submitted by an undertaking personally, by its authorised body or person, or via registered mail with an inventory.

The date of the notice of commencement of a certain type (types) of activity in the electronic communications sphere shall be the date of its incoming registration with the national regulatory authority.

5. Responsibility for creditability and completeness of the information within the notice on commencement of a certain type (types) of activity in the electronic communications sphere shall be that of the submitting undertaking.

6. Officials authorised by the national regulatory authority shall enter the information about the undertaking to the state register of providers of electronic communications services within five working days as of the date of incoming registration of the notice on commencement of a certain type (types) of activity in the electronic communications sphere with the national regulatory authority.

Information in the state register of providers of electronic communications services shall be open and public except data about individual entrepreneurs concerning their taxpayer's registration card or passport series and number (for individuals who due to their religious beliefs refuse to accept registration number of the taxpayer's registration card and officially informed the respective bodies of the State Tax Service and have the respective mark in the passport);

7. In case of submitting of changes to the notice of commencement of a certain type (types) of activity in the electronic communications sphere by an undertaking within five working days after the date prescribed in paragraph 4 of part 4 of this Article, the date of submitting of such changes shall be the beginning of deadline marking after which the undertaking shall be able to engage in type (types) of activity mentioned in notice as well as a term defined for entering of information about such undertaking into the state register of providers of electronic communications services. Such changes shall be submitted in the order prescribed by parts three and four of this Article.

The undertaking within three working days shall submit a relevant notification on changes of information the state register of providers of electronic communications services to the national regulatory authority in the order prescribed by part four of this Article.

8. The notice of commencement of a certain type (types) of activity in the electronic communications sphere as well as notice about change of information in the state register of providers of electronic communications services shall be deemed not submitted if:

- 1) the notice was submitted (signed) by a person not authorised to do so;
- 2) the notice was completed not as required by the form established by the national regulatory authority and/or was partially completed;

3) the Unified State Register of Legal Entities and Individual entrepreneurs lacks the information about state registration of the undertaking that submitted the notice or the information specified within the notice about the undertaking does not match the information within the Unified State Register of Legal Entities and Individual Entrepreneurs;

4) the kind of activity in the electronic communications sphere specified within the notice is not on the list of activities in the electronic communications sphere approved by the national regulatory authority.

If there are grounds to believe that the notice is not duly submitted, the officials authorised by the national regulatory authority shall inform the undertaking about this in writing or in electronic form using digital signature within five working days of the date mentioned in paragraph 4 of part 4 of this Article with indicating the grounds on which the notice was deemed as not submitted.

Upon elimination of the reasons based on which the notice was deemed as not submitted, the undertaking shall have the right to re-apply to the national regulatory authority with a notice on commencement of a certain type (types) of activity in the electronic communications sphere in the order prescribed by parts two through four of this Article.

9. At the request of the undertaking the officials authorised by the national regulatory authority shall provide (send) it with an excerpt from the state register of providers of electronic communications services on the letterhead of the national regulatory authority.

10. Changes to the state register of providers of electronic communications services shall be entered free of charge.

11. The state register of providers of electronic communication services shall be part of the information and analytical system of the national regulatory authority.

Any undertaking shall be granted access to the informational and analytical system of the national regulatory authority via subscriber account on the official web-page of the national regulatory authority on the Internet.

The informational and analytical system of the national regulatory authority shall provide the following functions to undertakings: search function, formation of electronic excerpts on providers of electronic communication services, report submission, etc. subject to the requirements of laws on data protection.

The procedure for and rules of using the informational and analytical system of the national regulatory authority shall be established by the national regulatory authority.

#### **Article 55. Rules of carrying out activity in the electronic communications sphere**

1. The rules of carrying out activity in the electronic communications sphere shall be a normative legal act containing a list of organisational, qualification and other special requirements binding in the engagement in certain type of activity in the electronic communications sphere.

2. The rules of carrying out activity in the electronic communications sphere shall be established by the national regulatory authority.

#### **Article 56. Administrating the address space of the Ukrainian segment of the Internet**

1. Administrating the address space of the Ukrainian segment of the Internet shall include a number of organisational and technical measures necessary for the functioning of address support equipment, including domain name servers of the Ukrainian segment of the Internet, top level domain registers in coordination with the international system for administering the Internet, focused on systematisation and optimisation of use, accounting and administration of second level domains, and on the creation of the conditions for use of the domain name space on the principles of equal access, consumer protection and free competition.

2. The address space of the Ukrainian segment of the Internet shall be administered for:

- 1) creation of registers of domain names and addresses of the Ukrainian segment of the Internet;
  - 2) creation of registers of domain names in top-level domains;
  - 3) creation and maintenance of an automated system of registration and accounting of domain names and addresses of the Ukrainian segment of the Internet;
  - 4) ensuring of uniqueness, development and support the space of second level domain names in top-level domains;
  - 5) creation of the conditions for use of the address space of the Ukrainian segment of the Internet on the principles of equal access, optimal use, protection of consumers of Internet services and free competition;
  - 6) representation and protection of interests of consumers of the Ukrainian segment of the Internet in the respective international organisations.
3. Top-level domain address space of the Internet shall be administered by non-government organisations created as self-governing organisations of providers of electronic communications services and registered in compliance with international standards.
4. Formation of address space, allocation and provision of addresses, information routing between addresses shall be carried out in compliance with international standards.

## Chapter IX

### INTERCONNECTION OF ELECTRONIC COMMUNICATIONS NETWORKS

#### **Article 57. Requirements to organisation of interconnection of electronic communications networks**

1. In the interconnection of electronic communications networks the following principles shall be observed:

- 1) organisational, technical and economic conditions of interconnection of electronic communications networks shall be subject to an agreement between providers;
- 2) economic conditions of interconnection of providers of electronic communications networks, including accounting tariffs for traffic transmission services and accounting tariffs for access to electronic communications networks of providers, shall be determined based on prime cost and taking into account the profitability of the respective services in the order approved by the national regulatory authority;
- 3) organisational, technical and economic conditions of interconnection with electronic communications networks of providers with significant market power in the markets of certain electronic communications services, including the accounting tariffs for services of transmission of traffic to electronic communications networks shall be regulated in the order prescribed by the national regulatory authority.

The accounting tariffs for services of transmission of traffic to electronic communications networks of providers without significant market power shall not be lower than the corresponding accounting tariffs for services of traffic transmission from their networks to the networks of providers with significant market power in this market.

2. The national regulatory authority shall, at the request of any party, regulate the relations between providers related to interconnection, including those related to traffic transmission services, in the course of conclusion, implementation and termination of the respective agreements.

In order to facilitate economic competition and create the conditions that do not restrict the rights and are acceptable to both parties and beneficial to consumers, the national regulatory authority shall adopt a decision in any such dispute within one month of the date of receiving such request.

3. The decision of the national regulatory authority in a dispute related to interconnection, including a dispute related to traffic transmission services, shall be binding on the providers and may be cancelled by court decision only.

**Article 58. Obligations of operators when interconnecting electronic communications networks**

1. Operators shall:

- 1) comply with the technical requirements established for electronic communications networks;
- 2) provide to other operators looking to enter into agreements on interconnection the information necessary to prepare such agreements, as well as offer interconnection conditions not worse than those proposed to other operators;
- 3) provide interconnection of electronic communications networks in all technically possible places with the capacity sufficient for high-quality electronic communications services. Providers in the course of interconnection shall not demand from each other to execute any works, deliver services or bear the costs related to further equipping their electronic communications networks;
- 4) provide the information on the conditions of interconnection of electronic communications networks at the request of the national regulatory authority;
- 5) adhere to accounting tariffs for traffic transmission services established by the national regulatory authority in the cases established by this Law;
- 6) make timely and complete payments under the terms of agreements between the operators;
- 7) refrain from hindering interconnection of electronic communications networks;
- 8) take measures to ensure sustainable and high-quality operation of interconnected electronic communications networks within a day, inform each other of any damages to electronic communications network or any other circumstances that have led or may lead to unacceptable decrease of quality of electronic communications services;
- 9) exchange the data of accounting of electronic communications services that have been provided through the points of interconnection of their networks;
- 10) follow the established traffic routing procedure.

**Article 59. Directory of proposals for interconnection of electronic communications networks**

1. The national regulatory authority shall approve and publish at least once a year in the official bulletin (electronic periodic) the directory of proposals to interconnect electronic communications networks. The published proposals shall include a list of the existing points for interconnection of electronic communications networks, organisational, economic and technical conditions of interconnection.

2. Operators, except those with significant market power in the markets of certain electronic communications services, shall not be obliged to submit proposals.

3. The procedure for submission, review and approval of the operators' proposals for interconnection of electronic communications networks shall be established by the national regulatory authority.

**Article 60. Conclusion of, amendments to and termination of the agreement on interconnection of electronic communications networks**

1. An agreement on interconnection of electronic communications networks shall be concluded by operators in compliance with the mandatory requirements to agreements on interconnection approved by the national regulatory authority.

2. The operator intending to conclude an agreement on interconnection, or an agreement to amend or terminate it, shall submit to the respective operator its proposals for interconnection of electronic communications networks in writing.

3. The operator that received such written proposal for interconnection of electronic communications networks from another operator shall respond to the proposal within 20 calendar days of receipt of the proposal.

4. An operator that received such written proposal for interconnection of electronic communications networks shall have the right to reasonably deny interconnection with electronic communications network of another operator.

5. An operator with significant market power in the market of certain electronic communications services shall not have the right to deny interconnection with electronic communications network of another operator in accordance with the proposals listed in the directory of operators' proposals for interconnection with their electronic communications networks, except in the cases that an electronic communications network proposed for interconnection does not meet the requirements of this Law.

6. The parties to an agreement on interconnection of electronic communications networks shall notify the national regulatory authority of the conclusion of, amendments to or termination of such agreement, within 30 calendar days of the signature of the respective documents.

7. The national regulatory authority shall quarterly publish in its official bulletin (electronic periodical) the list of agreements concluded between operators on interconnection of electronic communications networks.

#### **Article 61. Out-of-court settlement of disputes on interconnection of electronic communications networks**

1. If operators fail to agree on conclusion of, amendments to or termination of the agreement governing interconnection of electronic communications networks, or failed to receive response within the established period of time, the interested party may submit the dispute for consideration by the national regulatory authority.

2. In order to have the dispute resolved the operator, which believes its rights have been violated, shall send a request to the national regulatory authority, accompanied by a draft agreement on interconnection of electronic communications networks, proposals concerning the conditions of interconnection which are the subject matter of the dispute between the parties, and certified copies of all documents and materials necessary for the consideration of the dispute.

3. The procedure for consideration of the requests, review of the materials, and delivery of the decision in a dispute between the parties shall be established by the national regulatory authority.

4. The national regulatory authority with the participation of the interested parties, specialists in the electronic communications sphere, and other experts shall consider the submitted materials, hear the parties and make the decision which shall be binding on the operators in the course of interconnection. Such decision made by the national regulatory authority may be appealed by the parties to the dispute in court.

### Chapter X

#### ELECTRONIC COMMUNICATIONS SERVICES

#### **Article 62. Public services**

1. Public services shall include: connection of end equipment of the consumer to public electronic communication networks of fixed-line communications (universal access), emergency services calls, information services, including provision of information about telephone numbers, publication of telephone directories in printed or electronic form, as well as local telephone services using payphones.

Public services can be provided using both wired and/or wireless access technology.

### **Article 63. Procedure for provision and receipt of electronic communications services**

1. Electronic communication services shall be provided in compliance with the legislation.
2. Terms of provision of electronic communications services:
  - 1) conclusion of an agreement between the provider of electronic communications services and the subscriber in accordance with the basic requirements to the agreement on electronic communications services. Agreement on electronic communications may be executed in writing or in any other form, subject to registration of the subscriber with the provider of electronic communications services, in which case the provider is given personal data in compliance with the law; In case of concluding of such an agreement in any other form than in written, the obligatory registration of subscriber by the provider of electronic communications services with providing the provider with personal data of subscribers – individuals shall be made;
  - 2) payment for electronic communications service ordered by the consumer, unless otherwise provided by the agreement.
3. Electronic communications services to consumers eligible for discounts in payment as established by the legislation of Ukraine shall be delivered by the providers of electronic communications services in accordance with the laws of Ukraine.
4. The State shall guarantee universal service, i.e. universal access for the consumers (including individuals with disabilities) to public electronic communications networks and provision of public services at the tariffs regulated by the state.
5. Universal access shall meet the following requirements:
  - 1) connection of end equipment to public electronic communications networks of fixed-line communications at the tariffs regulated by the state;
  - 2) public electronic communications networks to which the consumer's end equipment is connected shall provide for support of voice telephony, facsimile, data transmission at the level of at least 56 Kbit/s;
  - 3) in the provision of universal access the cost of connection to public electronic communications network shall not depend on access technology or connection method.

### **Article 64. Peculiarities of development and provision of public services**

1. The main goal of the development and provision of public services shall be provision of the opportunity to citizens of Ukraine to satisfy their needs for legally established electronic communications services at the tariffs regulated by the state, and to fully participate in political, economic and social life of the society.
2. Public services shall be developed in compliance with the Concept of Development of Electronic Communications of Ukraine.
3. In the regions with insufficient saturation of public electronic communications networks with equipment, the applications for provision of public services shall be granted in the order of precedence as follows:
  - 1) state bodies and local self-government bodies, the Security Service of Ukraine, the Foreign Intelligence Service of Ukraine and military institutions of Ukraine;
  - 2) health care institutions, fire safety departments, organisations that provide information about pending natural disasters (earthquakes, floods, hurricanes, etc.), public pre-school and educational institutions, state science and culture institutions;
  - 3) diplomatic missions and consular offices of foreign countries;
  - 4) citizens eligible for electronic communications services on privileged terms in accordance with the legislation of Ukraine;
  - 5) other individuals and legal entities.
4. Individuals and legal entities investing in the construction of electronic communications network to which their end equipment is to be connected in the amount of at least the value of the

respective number of subscriber numbers shall have priority right in the provision of the services by the provider of electronic communications services of this network notwithstanding the above order.

5. When consumer demand for public services in certain regions of Ukraine is insufficiently satisfied, the national regulatory authority shall have the right to oblige the providers of electronic communications services to develop and deliver public services to consumers in the respective market of electronic communications services, including consumers – individuals with disabilities, on respective electronic communications services market with the use of the compensation mechanism established by law.

#### **Article 65. Provision of electronic communications services in case of emergency situation, state of emergency, special period and during antiterrorist operation**

1. Providers of electronic communications services in case of emergency situation, state of emergency, special period and during antiterrorist operation shall ensure high quality communications and public alert system in the order prescribed by the Cabinet of Ministers of Ukraine.

2. Providers of electronic communications services shall be ready to perform their functions in case of emergency situation, state of emergency, special period and during antiterrorist operation. During the state of emergency all facilities and electronic communications networks, irrespective of the form of ownership, shall be used to ensure mobilisation and meet the needs of the national security, defence, and law enforcement. Providers of electronic communications services shall interact with the National Centre for Operational and Technical Management of Electronic Communications Networks of Ukraine on all issues within its competence.

3. In emergency situations or during the state of emergency, providers of electronic communications services may impose temporary restrictions on the provision of electronic communications services to consumers in order to provide the means of notification and electronic communications services to participants in liquidation of the consequences of emergencies, restoration works and other relevant actions taken by the Council of Ministers of the Autonomous Republic of Crimea, oblast administrations, Kyiv City and Sevastopol City State Administrations and local self-government bodies, subject to approval by central executive body responsible for the formation and implementation of the state policies in the electronic communications sphere, all that until the consequences of the emergency are liquidated and the state emergency is cancelled.

4. The Council of Ministers of the Autonomous Republic of Crimea, oblast administrations, Kyiv City and Sevastopol City State Administrations and local self-government bodies shall within their powers facilitate the providers of electronic communications services and their local units in liquidation of emergency situations due to natural disasters and their consequences, in purchase of the necessary material resources, as well as through provision of manpower, transport and other technical means for the purposes.

5. To prevent and terminate criminal actions carried out with terroristic intent, electronic communications services to one consumer or a group of consumers within the area of antiterrorist operation may be temporarily restricted further to the demand from commanders-in-charge of such antiterrorist operation.

### Chapter XI

#### REGULATION OF TARIFFS AND SETTLEMENTS

#### **Article 66. Regulation of tariffs**

1. Tariffs for electronic communications services shall be established by the providers of electronic communications services independently, except as otherwise provided in parts two and three of this article.

2. The following tariffs shall be subject to state regulation through approval of the maximum or fixed tariffs:

- 1) tariffs for public services;
  - 2) accounting tariffs for traffic transmission services in electronic communications networks of providers with SMP in certain markets of electronic communications services;
  - 3) tariffs for use of the cable duct of electronic communications networks of providers of electronic communications services.
  - 4) tariffs for terrestrial broadcasting services provided by television and radio broadcasting company in terrestrial multichannel television network by operators of electronic communications.
- The maximum or fixed tariffs provided for in part two of this Article shall be established by the national regulatory authority in accordance with the procedures established thereby.

3. Tariffs (tariff plans) shall be subject to state regulation in the cases and in the order established in paragraph 5 of part two and paragraph 3 of part three of Article 49 of this Law.

#### **Article 67. Principles of tariff regulation and establishment**

1. Tariff regulation and establishment of tariffs on electronic communications market of Ukraine shall be based on the following principles:

- 1) all calculations of the tariffs shall be based on prime cost of the services plus profit;
- 2) tariff rate shall depend on the quality level of electronic communications services;
- 3) application by some providers of electronic communications services of artificially low prices or of different prices to equivalent transactions without objectively justified reasons shall be prohibited;
- 4) cross-subsidisation of certain electronic communications services at the cost of others shall be avoided;
- 5) the consumer shall be charged for the actual time of receiving electronic communications services on hourly basis;
- 6) open and transparent calculation of prime cost of electronic communications services based on cost sharing by the respective services.

#### **Article 68. Procedure for payment for electronic communications services**

1. Payments for electronic communications services shall be made on the terms of the agreement on electronic communications services between the provider of electronic communications services and the consumer.

2. If the prepaid amount was not used completely within the billing period, the balance of the funds shall be applied to the next billing period, unless otherwise provided for by the agreement. The provider of electronic communications services shall not write-off the remaining amount of funds of the subscriber, including that for its own benefit.

### Chapter XII

#### NUMBERING RESOURCE

#### **Article 69. Principles of formation, allocation and use of the numbering resource Ukraine**

1. Numbering resource is a technically limited resource of public electronic communications networks.
2. Providers of electronic communications services shall use the numbering resource of Ukraine on the grounds of license to use the numbering resource.

The national regulatory authority shall have powers to issue, refuse to issue, re-issue, refuse to re-issue, issue duplicates, extend, refuse to extend, cancel the licenses for use of the numbering resource.

3. Basic principles of formation and allocation of the numbering resource shall include the following:

- 1) openness, non-discrimination and objectivity, equality of rights of access to the numbering resource for all operators;
- 2) use of the numbering resource shall be license and fee based;
- 3) creation of the numbering reserve;
- 4) ensuring of the rational use of the numbering resource;
- 5) harmonisation of the Ukraine National Numbering Plan with international requirements and the needs of the electronic communications market.

4. In order to expand and ensure sufficient capacity of the numbering resource and to harmonise it with international requirements national regulatory authority shall adopt a decision to change the structure of the numbering resource and numbering space.

5. The decision of the national regulatory authority to change the structure of the numbering resource and numbering space shall be published in its official bulletin (electronic periodical).

6. The national regulatory authority shall notify the operator of changes to the structure and space of the numbering resource allocated thereto at least six months before such changes become effective.

7. Operators shall submit to the national regulatory authority the information about the use of the numbering resource in the order prescribed by the national regulatory authority, as well as in the cases established by this Law, a report on the use of the allocated numbering resource in the form established by the national regulatory authority.

8. The national regulatory authority shall keep the register of licenses for use of the numbering resource.

#### **Article 70. Initial allocation of the numbering resource**

1. The numbering resource shall be allocated to the operator within the National Numbering Plan for carrying out activities in the electronic communications sphere without the right of re-assignment of it to other persons, except in cases of the secondary distribution of the numbering resource in accordance with the legislation and provision of number portability services.

2. The numbering resource shall be allocated to the provider based on the decision by the national regulatory authority to issue the license for use of the numbering resource. The license for use of the numbering resource shall be granted for the term of ten years. The term of engagement of the numbering resource shall be established by the national regulatory authority and shall not be greater than three years. The use of the numbering resource without obtaining the appropriate license for use of the numbering resource shall be prohibited.

3. In order to obtain the license for use of the numbering resource the operator shall personally submit to the national regulatory authority an application in the form prescribed by the latter in writing or by means of electronic communications in electronic form. Such application supplied with the documents attached shall be personally submitted in written form through an authorised body or an individual or sent by mail (by registered mail with inventory) or in electronic form.

Electronic application submitted to the national regulatory authority for obtaining the license for use of the numbering resource shall be managed in the order prescribed by the legislation concerning electronic documents and electronic document workflow.

The application for the license shall be accompanied by the following:

statement substantiating the need for allocation of the requested volume of the numbering resource;

report on use of the previously allocated numbering resource in the same territory where the applicant expects to get the numbering resource as of the first day of the month in which the

application is being submitted, except when it is the first application by the applicant for the numbering resource.

4. The grounds for denying a license for use of the numbering resource shall include the following:

- 1) false data in the application of the operator and in the documents attached thereto or submission of incomplete set of documents;
- 2) absence of the applicant in the state register of providers of electronic communications services and/or discrepancy between the requested type and/or territories of the activities and those in the state register of providers of electronic communications services;
- 3) non-compliance of the type of activity for which the numbering resource is requested, including types of services and/or territories of the activities with those in the state register of providers of electronic communications services;
- 4) lack of available numbering resource in the territory the requested by the operator in the application;
- 5) absence of the desired numbering resource in the National Numbering Plan of Ukraine;
- 6) non-compliance of the requested numbering resource with the structure and numbering space of public electronic communications network;
- 7) secondary allocation by the operator of less than 70 percent of the previously allocated volume of the numbering resource in the territory allocation is requested for.

5. The decision to either grant or deny the license for use of the numbering resource shall be adopted by the national regulatory authority within 20 working days of the date of registration of the respective application from the operator.

#### **Article 71. Re-issuance of the license for use of the numbering resource**

1. Grounds for re-issuance of the license for use of the numbering resource shall include the following:

- 1) change of the name by the legal entity or change of the surname, name or patronymic by an individual entrepreneur;
- 2) reorganisation of the legal entity-undertaking through conversion, consolidation, merger, division as well as spinoff. In this case (except in case of division and spinoff) the licenses granted to the operator shall be reissued to its legal successor. In the event of reorganisation through division the licenses previously granted for use of the numbering resource shall be reissued to the undertaking subject to reorganisation, and in the event of the spinoff the licenses granted shall be reissued to the undertaking from which the spinoff was made and/or (undertaking) undertakings formed as a result thereof. At that, indices and capacity of the numbers of the reissued licenses within each region shall correspond to indices and capacity of the numbers subject to reissuance;
- 3) if the operator has the need to change the volume and area of use or the type of activity under which the numbering resource shall be used;
- 4) the need to extend the term of use of the numbering resource;
- 5) changes in the structure of the numbering resource or numbering space of the National Numbering Plan of Ukraine;
- 6) application by the operator for the license to get the numbering resource used by subscribers of another operator, whose license was cancelled by the decision of the national regulatory authority.

2. Whenever there are grounds for the license to be reissued in accordance with paragraphs 1 – 4 of part 1 of this Article, the operator shall personally, through an authorised body or individual or by registered mail with inventory in writing or by means of electronic communications in electronic form, submit application to the national regulatory authority for reissuance of the license in the form established by the latter, within 30 working days as of the date such grounds arise, and those in clauses 5 and 6 of part one of this Article within the period specified by the national regulatory

authority. When an application is submitted electronically, it shall be submitted in the order prescribed by the legislation concerning electronic document and electronic document workflow.

When the license is subject to re-issuance under clause 4 of part one of this Article the term to use the numbering resource may be extended only once for the period of two years, unless the operator requests a shorter term to use the numbering resource within its application.

The following items shall accompany the application for reissuance of the license:

license subject to reissuance;

documents confirming changes (applicable to clauses 1 and 2 of part one hereof);

explanatory note with grounds for re-issuance of the license (applicable to clauses 2-3 and 6 of part one hereof);

report on use of the previously allocated numbering resource by the provider in the area subject to reissuance as of the first day of the month in which the application is submitted (applicable to clauses 2-6 of part one hereof).

copy of the document certified by the provider and evidencing connection of the electronic communications network of the operator to public electronic communications networks and use of the aforementioned numbering resource within such networks (applicable to clauses 2, 3 and 6 of part one hereof if required by the license for use of the numbering resource).

3. When reissuing the license for use of the numbering resource based on clauses 1 – 5 of part one hereof, the term of the renewed license for use of the numbering resource shall not exceed the term of the license subject to reissuance. When reissuing the license based on clause 6 of part one hereof – the license for use of the numbering resource shall be granted for the term of ten years.

4. Grounds to deny reissuance of the license for use of the numbering resource shall include the following:

- 1) submission of the application for reissuance of the license in violation of the prescribed terms;
- 2) false data in the application of the operator for reissuance of the license and the documents attached thereto or submission of incomplete set of documents;
- 3) lack of grounds for reissuance, including the grounds for changing the volume and area of use or the type of activity under which the numbering resource shall be used;
- 4) violation of the terms of engagement of the numbering resource in whole or in part specified in the license;
- 5) discrepancy of the numbering resource subject to reissuance with the National Numbering Plan Ukraine.

5. The national regulatory authority shall approve a reasoned decision on reissuance of or refusal to renew the license for use of the numbering resource within 15 working days as of the date of registration of the application from the operator on reissuance of the license.

6. If the national regulatory authority approves the decision to renew the license for use of the numbering resource, it shall also approve the decision on the license subject to reissuance becoming void.

7. Any license not renewed within the prescribed term shall be void; respective entry shall be made in the register of licenses to use the numbering resource based on the decision of the national regulatory authority.

## **Article 72. Issue of duplicate of the license for use of the numbering resource**

1. Grounds to issue duplicate of the license for use of the numbering resource shall include the following:

loss of the license;

damage to the letterhead of the license.

2. If the license for use of the numbering resource is lost the operator shall submit an application to issue its duplicate to the national regulatory authority. If the letterhead of the license is no longer suitable for use due to its damage, the application submitted to the national regulatory authority shall be accompanied by the damaged letterhead of the license. Model application to issue duplicate of the license for use of the numbering resource shall be approved by the national regulatory authority.

3. Duplicate license for use of the numbering resource shall be valid for the term not exceeding the term of the lost or damaged license.

4. The operator submitting the application to issue duplicate license for use of the numbering resource shall pursue its activities based on the copy of such application registered by the national regulatory authority until such duplicate license is issued.

5. The national regulatory authority shall approve the decision to grant duplicate license for use of the numbering resource to the applicant and invalidate the lost or damaged license within ten working days as of the date of registration of the application for a duplicate license.

### **Article 73. Extension of the license for use of the numbering resource**

1. If the operator intends to continue a specific type of activity in the electronic communications sphere involving use of the numbering resource specified in the license upon expiration thereof, it shall submit an application to the national regulatory authority under the form prescribed by the latter in person, through an authorised body or individual or by registered mail with inventory in writing or by means of electronic communications in electronic form not later than four months before expiration of the respective license. When an application is submitted electronically, it shall be submitted in the order prescribed by the legislation concerning electronic document and electronic document workflow.

If the license specifies certain terms for engagement of the numbering resource, the application shall be accompanied by copy of the document certified by the operator and evidencing connection of the electronic communications network of the operator to public electronic communications networks and use of the aforementioned numbering resource within such networks.

Licenses for the use of the numbering resource may be extended for 10 years.

2. Grounds to refuse extension of the license for use of the numbering resource shall include the following:

- 1) submission of the application to extend the license in violation of the prescribed terms;
- 2) false data in the application of the provider for extension of the license.
- 3) violation of the terms of engagement of the numbering resource in whole or in part specified in the license.

3. The national regulatory authority shall approve the decision to extend the license or refuse its extension within 20 working days as of the date of registration of the application. The decision to refuse the extension of the license shall indicate the grounds for refusal.

4. If the operator challenges the decision of the national regulatory authority to refuse the extension of the license for use of the numbering resource in court before its expiration, the decision shall be suspended until completion of the court consideration.

### **Article 74. Withdrawal of the numbering resource**

1. Numbering resource shall be withdrawn though cancellation of the license for use of the numbering resource further to the decision of the national regulatory authority.

2. Grounds to cancel the license for use of the numbering resource shall include the following:

- 1) application for cancellation of the license submitted by the operator personally, through an authorised body or individual or by registered mail with inventory in writing or by means of electronic under the form prescribed by the national regulatory authority. When submitting electronic application, it shall be submitted in the order prescribed by the national regulatory authority and electronic document workflow;
- 2) changes to the state register of providers of electronic communications services, under which the provider suspended its type of activity in the electronic communications sphere which involved the use of the numbering resource as specified in the license;
- 3) repeated during one year failure by the operator to observe the order of the national regulatory authority related to breach of the terms to use the numbering resource;
- 4) certificate evidencing repeated during one year refusal by the operator to grant access to the officials of the national regulatory authority to inspect the use of the numbering resource, subject to compliance with the procedure for such inspections by the latter;
- 5) decision of the national regulatory authority to refuse reissuance of the license for use of the numbering resource under clause 4 of part four of Article 71 hereof;
- 6) decision of the national regulatory authority to refuse extension of the license for use of the numbering resource under clause 3 of part two of Article 73 hereof.

3. \* The national regulatory authority shall consider cancellation of the license for use of the numbering resource and approve its decision on the matter within 30 working days as of identifying the grounds for such cancellation of. If there is evidence to confirm such grounds the national regulatory authority shall approve the decision to cancel the license for use of the numbering resource. The operator or its authorised representatives shall be invited to attend consideration of cancellation of the license for use of the numbering resource under clauses 3 – 6 of part two hereof. The decision to cancel the license for use of the numbering resource may be challenged in court.

4. The decision to cancel the license for use of the numbering resource shall enter into force ten days upon its adoption. If the operator appeals the decision in court within this term, the decision shall be suspended until completion of court consideration.

The decision to cancel the license for use of the numbering resource shall be complied with three months upon the effective date of the decision.

5. Licenses to use the numbering resource shall be cancelled free of charge.

#### **Article 75. Notifications on the decisions related to licenses to use the numbering resource, issue of licenses to use the numbering resource**

1. The operator shall be notified on the decision related to licenses to use the numbering resource through sending (issue) the respective notice in writing when the operator submitted its respective application in writing or in electronic form using digital signature in the order prescribed by the legislation concerning electronic document and electronic document workflow when the operator submitted its application electronically within five working days as of adoption of such decision.

2. The notice of issuance, reissuance, issuance of a duplicate, extension of the license for use of the numbering resource shall include brief decision of the national regulatory authority, the fee to be paid by the operator to obtain the license, including extended licence and duplicate of the licence for use of the numbering resource.

3. The national regulatory authority shall issue the license for use of the numbering resource, including reissued license, extended license, or a duplicate of license, within five working days as of receipt of the proof of payment for such issuance.

4. If the applicant failed to submit proof of payment of the respective fee within 30 days as of receipt of the notice of issuance, reissuance, issuance of a duplicate, extension of the license for

use of the numbering resource, the national regulatory authority shall have the right to cancel the respective decision.

5. Licenses to use the numbering resource shall be issued on letterheads the design of which shall be subject to approval by the national regulatory authority. The content of the license shall also approved by the national regulatory authority.

6. All decisions on issuance, refusal to issue, reissuance, refusal to reissue, issue of a duplicate, extension, refusal to extend, cancellation of licenses to use the numbering resource shall be published in the official bulletin (electronic periodic) of the national regulatory authority and on its official website on the Internet.

**Article 76. Fee for issuance, reissuance, issuance of a duplicate, extension of licenses for use of the numbering resource**

1. A fee shall be charged for issuance, reissuance, issuance of a duplicate, extension of licenses for use of the numbering resource; the amount of such fee shall be established by law.

2. If the national regulatory authority approves the decision to cancel the license for use of the numbering resource, the fee previously paid for its issuance, reissuance, issuance of a duplicate, extension shall not be recovered.

**Article 77. Allocation and use of radio frequency resource**

1. Radio frequency resource of Ukraine shall be allocated and used for the activities in the electronic communications sphere in compliance with the Law of Ukraine "On Radio Frequency Resource of Ukraine".

Chapter XIII

TERMINATION OF OPERATION BY PROVIDERS OF ELECTRONIC COMMUNICATION SERVICES

**Article 78. Termination of delivery of electronic communications services due to liquidation of the provider of electronic communications services**

1. Grounds for a termination of delivery of electronic communications services by the provider of electronic communications services shall be:

- 1) the application of provider of electronic communications services on termination of activities in the electronic communications sphere;
- 2) court decision concerning termination of activities in the electronic communications sphere by the provider of electronic communications services which came into force;
- 3) information from the Unified State Register of Legal Entities and Individual Entrepreneurs concerning state registration of termination of the legal entity or termination of business activities of an individual entrepreneur.

2. Provider of electronic communications services whose activity in the electronic communications sphere is terminated shall notify the national regulatory authority about such termination in written or electronic form within 5 working days as of the date of decision on termination of activity in the electronic communications sphere according to the legislation concerning electronic documents and electronic document workflow as well as party (parties) – counter-agent (counter-agents) to agreements on interconnection of electronic communications networks - on the term upon which electronic communications services shall be terminated. Such provider shall ensure provision of electronic communications services in accordance with this Law for at least three months as of approval of the decision on its liquidation.

3. Information concerning termination of activities in the electronic communications sphere shall be entered to the state register of providers of electronic communications services by persons authorised by the national regulatory authority within the following terms:

on the grounds prescribed by paragraph 1 of part 1 of this Article – within three months after receiving of such application by the national regulatory authority;

on the grounds prescribed by paragraphs 2 and 3 of part 1 of this Article – within three days from the day receiving of a court decision by the national regulatory authority or from the day of revealing of information from Unified State Register of Legal Entities and Individual Entrepreneurs.

4. Information concerning termination of activities of the provider of electronic communications services in the electronic communications sphere shall be published on the official website of the national regulatory authority on the Internet on the day of its entering into the state register of providers of electronic communications services.

#### **Article 79. Peculiarities of liquidation of a provider of electronic communications services providing electronic communications services with the use of the numbering resource**

1. An operator – legal entity which terminates its activity through liquidation or merger or an operator – individual entrepreneur which terminates its business activities and providing electronic communications services with the use of the numbering resource shall submit an application to the national regulatory authority in the prescribed order on cancellation of the license for use of the numbering resource as well as information about the numbering resource used by consumers of electronic communications services provided by such operator (hereinafter – numbering resource used).

2. With the consent of another operator to accept the numbering resource used by the consumers of a provider under liquidation, the operator granting such consent, together with the application on cancellation of the license for use of the numbering resource by the provider under liquidation, shall submit its application on reissuance of the license for use of the numbering resource to the national regulatory authority in the prescribed order.

3. If no application on cancellation of the license for use of the numbering resource was submitted to the national regulatory authority and/or there is no other operator consenting to accept the numbering resource used by the consumers, the national regulatory authority shall post the ad with the following information on its official website on the Internet:

area of providing services;

numbering resource used by the consumers, the license to which may be reissued;

deadline for applications from operators on re-issuance of the license for use of the numbering resource used by the consumers, along with the list documents as established by this Law.

4. If there are applications from operators for re-issuance of the license for use of the numbering resource used by the consumers, the national regulatory authority shall re-issue the license for use of the numbering resource in accordance with procedure prescribed by this Law.

5. If there are no applications from operators and to prevent suspension of delivery of electronic communications services to the consumers due to cancellation of the license for use of the numbering resource used by such consumers, the national regulatory authority shall have the right to oblige the operators with significant market power in certain markets for electronic communications services, as well as fixed-line providers engaged or intending to engage in the activities in the respective areas to provide public services to the consumers of the provider under liquidation.

### Chapter XIV

#### INTERNATIONAL COOPERATION

#### **Article 80. Purpose and basic principles of international cooperation**

1. The purpose of international cooperation in the electronic communications sphere is integration of electronic communications of Ukraine into global electronic communications taking into account the political and economic interests of Ukraine.

2. International cooperation in the electronic communications sphere shall include:

- 1) conclusion of international agreements;
- 2) participation in international organisations;
- 3) participation in international projects related to creation of global and regional electronic communications networks with account to the interests of national security of Ukraine;
- 4) harmonisation of standards, rules and regulations with international standards, guidelines, rules and regulations related to the requirements to equipment and electronic communication networks, cooperation among providers of electronic communications services, use of limited resources, quality and types of electronic communications services;
- 5) interaction between providers of electronic communications services of Ukraine and providers of electronic communications services in other countries.

3. The Radio Frequencies Administration of Ukraine shall exercise the functions of Ukraine as a member of the International Telecommunication Union and be responsible for carrying out the obligations of Ukraine's under the Statute of the International Telecommunication Union and the Convention of the International Telecommunication Union, and the obligations under administrative regulations, and interact and cooperate with the agencies on communications of foreign states. Such Administration shall also represent the interests of Ukraine in the prescribed order in other global, European and regional organisations for electronic communications and the World Trade Organisation in issues related to electronic communications.

#### **Article 81. International agreements**

1. If international agreements of Ukraine provide for the rules other than those prescribed by the legislation of Ukraine on electronic communications, the rules under international agreements shall apply.

#### **Article 82. Interaction between providers of electronic communications services of Ukraine with providers of electronic communications services of other countries**

1. Interaction between providers of electronic communications services of Ukraine with providers of electronic communications services of other countries, distribution of revenue from international communications services between them, interconnection of public electronic communications networks, etc. shall rest upon the recommendations of the International Telecommunication Union on the basis of international agreements of Ukraine with the respective states and/or agreements between providers of electronic communications services of Ukraine and providers of electronic communications services of other countries.

### Chapter XV

#### LIABILITY FOR VIOLATION OF LEGISLATION ON ELECTRONIC COMMUNICATIONS

#### **Article 83. Liability for violation of legislation on electronic communications**

1. Any persons faultily violating the legislation on electronic communications shall be liable under the laws of Ukraine.

2. Revenue earned by an entity as a result of its activities without submitting to national regulatory authority the notice of commencement of a certain type (types) of activity in the electronic communications sphere in the order prescribed by this Law and/or license shall be seized by the state fiscal service authorities under the court procedure initiated by the national regulatory authority and remitted to the State Budget of Ukraine.

3. The following administrative economic sanctions shall be applied to undertakings for violating the requirements hereof:

1) for failure to implement the warning or order of the national regulatory authority concerning elimination of violations of the legislation on electronic communications; denial to the officials of the national regulatory authority of making an audit of the provider of electronic communications services (denial of the provider of electronic communications services to provide documents, information concerning the subject of the audit on the written demand from the officials of the national regulatory authority, denial of access of the officials of the national regulatory authority to places of conducting of activity by the provider of electronic communications or objects that are used by such provider during conducting of activity, or absence in the location of the provider of electronic communications services of a person authorised to represent the interests of provider of electronic communications services in the process of audit during the first day of such audit); for the violation of the legislation in the electronic communications sphere which caused or could reasonably cause damage to electronic communications market entities or to the interests of a State, – a fine of up to 0,3 percent of the revenue earned by the provider of electronic communications services from the provision of electronic communications services in the previous calendar year.

2) for repeated failure to implement the warning or order of the national regulatory authority concerning elimination of violations of the legislation by the provider during one year – a fine of up to 1 percent of the revenue earned by the provider of electronic communications services from the provision of electronic communications services in the previous calendar year;

3) for repeated failure to submit information and/or regulatory reporting by the provider of electronic communications services during one year or repeated submission of false information and/or regulatory reporting necessary for the national regulatory authority within its powers to determine specific markets of electronic communications services, conduct the analysis and identify providers with SMP in certain markets of electronic communications services, – a fine of up to 1 percent of the revenue earned by the provider of electronic communications services from providing electronic communications services in the year preceding the analysis of the market of certain electronic communications services;

4) for failure of provider with SMP to fulfil regulatory obligations established by the decision of the national regulatory authority, – a fine from 3 to 5 percent of the revenue earned by the provider with SMP in the year preceding the analysis of the market of certain electronic communications services.

If it is impossible to separate out the revenue of the undertaking earned from provision of electronic communications services from other revenue earned thereby, the fine provided for in this part of this Article shall be charged on the aggregate revenue of such undertaking.

If an undertaking has operated for less than one year, the fine shall be charged on the revenue of such undertaking for the entire period of its operation before approval of the decision to impose the fine.

Amount of fines imposed on undertakings in accordance with this part shall be credited to the State Budget of Ukraine.

The term of limitation of liability for the aforementioned violations shall amount to six months as of the date of discovering any such violation, but no longer than one year as of the date of committing such violation; if the violation persists – as of the date of identifying it.

Fines hereunder shall be imposed further to the respective decision by the national regulatory authority based on certificates executed by its officials.

The decision of the national regulatory authority to impose a fine shall be delivered for execution by sending or handing it under signed receipt or making it available in any other way.

Whenever it is impossible to deliver the decision of the national regulatory authority on imposition of a fine, in particular due to unavailability of the individual entrepreneur at the last known place of residence (place of registration), unavailability of the officers or authorised representatives of an undertaking at the respective legal address, the decision of the national regulatory authority to impose a fine shall be deemed to have been delivered to the undertaking ten days after its publication on the official website of the national regulatory authority on the Internet.

Any person subject to a fine further to the decision of the national regulatory authority shall pay it within one month upon receipt of the decision on the fine.

Undertakings shall submit the documents evidencing payment of the fine to the national regulatory authority within five days upon paying it.

The decision of the national regulatory authority to impose a fine can be challenged in court.

If the fine is not paid, it shall be enforced based on a court decision further to the claim of the national regulatory authority.

## Chapter XVI

### FINAL AND TRANSITIONAL PROVISIONS

1. This Law shall enter into force on July 1, 2016 but not earlier than the day following its publication.

Requirements to members of the national regulatory authority concerning having a command of one of Council of Europe official languages envisaged by part 2 of Article 19 of this Law shall be applied since January, 1, 2017.

2. Until normative legal acts are harmonised with this law, their existing provision shall apply without prejudice to this Law.

3. The Cabinet of Ministers of Ukraine within four months as the day following the publication of this Law shall:

develop and adopt normative legal acts required hereby, and harmonise its existing normative legal acts herewith;

ensure development and approval of normative legal acts of the central executive bodies as provided for by this Law, and harmonisation by the central executive bodies of their own normative legal acts with this Law.

4. The national regulatory authority shall develop and approve normative legal acts provided for by this Law, and harmonise its own normative legal acts with this Law within four months as of the day following the publication of this Law.

5. The national regulatory authority shall provide for the creation of the state register of providers of electronic communications services based on the information from the register of providers and telecommunication providers.

If the data within the register of operators and providers of electronic communications services is incorrect, the respective operators and telecommunication providers included on the register of operators and telecommunications providers shall forward a notice to the national regulatory authority in accordance with Article 54 of this Law within three months of the date of enactment of this Law.

6. Operators of electronic communications which procured permits for use of the numbering resource under law shall have the right to apply to the national regulatory authority in order to obtain free licenses for use of the numbering resource replicating the data within the respective permit (permits) for use of the numbering resource, including its (their) validity term, within one year from the date of enactment of this Law.

Permits to use the numbering resource issued before the enactment of this Law shall remain valid throughout their validity term, but not longer than one year from the date of enactment of this Law.

7. Until the law establishes the fees for issuance, reissuance, issuance of a duplicate, extension of the license for use of the numbering resource, the respective fees shall be charged at the rate established by the Cabinet of Ministers of Ukraine for issuance of the permits for use of the numbering resource.

All subscribers receiving electronic communications services without a written agreement shall continue to receive electronic communications services until July 1, 2017 under the agreements concluded before the enactment of this Law in any other form without registration with the provider of electronic communications services and without being subject to clauses 8, 16 and 17 of part one of Article 41 of this Law.

8. The national regulatory authority shall be the legal successor of the National Commission for State Regulation of Communications and Informatisation.

The National Commission for State Regulation of Communications and Informatisation shall exercise the powers of the national regulatory authority until the latter is created.

9. The following legislation shall be no longer effective:

The Law of Ukraine "On Temporary Prohibition of Fines on Citizens of Ukraine for Late Payment for Communication Services" (Gazette of the Verkhovna Rada of Ukraine, 1999, No 9-10, p. 71);

The Law of Ukraine "On Telecommunications" (Gazette of the Verkhovna Rada of Ukraine, 2004., No 12, p. 155 with subsequent amendments).

10. Amendments shall be made to the following legislative acts of Ukraine:

1) in the Code of Ukraine on Administrative Offences (Gazette of the Verkhovna Rada of the Ukrainian SSR 1984, annex to No 51, p. 1122, with subsequent amendments):

a) in part 1 of Article 14<sup>2</sup> the words "in information and telecommunication systems" shall be replaced with the words "information and communications systems";

b) Articles 144, 148<sup>1</sup>, 148<sup>2</sup>, 148<sup>4</sup>, 148<sup>5</sup> shall be excluded;

c) Article 145 shall be restated as follows:

"Article 145. Violation of the conditions and rules governing the activities in the field of radio frequency resource of Ukraine subject to licenses, permits

Violation of the conditions and rules governing the activities in the field of radio frequency resource of Ukraine subject to licenses, permits shall

entail a fine imposed on officials of enterprises and organisations of all forms of ownership and individual entrepreneurs in the amount between one hundred and two hundred untaxed minimum revenues of citizens.

The same actions committed repeatedly within a year after the administrative fine for the violation as stipulated in part one of this Law

shall entail a fine imposed on officials of enterprises and organisations of all forms of ownership and individual entrepreneurs in the amount between two hundred and three hundred untaxed minimum revenues of citizens.";

d) Article 147 shall be restated as follows:

"Article 147. Violation of safety rules with respect to lines and structures of electronic communications networks

Violation of safety rules with respect to lines and structures of electronic communications networks or damage to the elements of electronic communication networks (electronic communications technical facilities, television, wired transmission, facilities or equipment of electronic communications networks that provide for their operation, lines of electronic communications networks, including cable, air, radio-relay and/or structures or equipment thereof) if it did not cause termination of communication –

shall entail a fine imposed on the citizens in the amount between ten and three hundred untaxed minimum revenues of citizens, and on officials – between one hundred and five hundred untaxed minimum revenues of citizens";

e) in Article 1887 words "the National Commission for State Regulation of Communications and Informatisation" shall be replaced with the words "the National Commission for State Regulation of Electronic Communications and Postal Services", and the word "telecommunications" shall be excluded;

f) in Article 221 after the number and character "146," numbers and characters "147, 1483," shall be added;

g) Article 243 shall be restated as follows:

"Article 243. The National Commission for State Regulation of Electronic Communications and Postal Services

The National Commission for State Regulation of Electronic Communications and Postal Services shall consider administrative cases regarding violation of legislation on electronic, postal services and radio frequency resource (Articles 145 and 188<sup>7</sup>).

The head, members of the commission and officers authorised by the commission shall have the powers to consider administrative cases and impose administrative sanctions on behalf of the National Commission for State Regulation of Electronic Communications and Postal Services";

h) in clause 1 of part one of Article 255: in paragraph two numbers "148" shall be replaced with numbers "146 - 148, 1483";

paragraph "the National Commission for State Regulation of Communications and Informatisation (Articles 144 – 148<sup>5</sup>, 164 (in part concerning violation of the procedure for economic activities in communications sphere), 188<sup>7</sup>)" shall be restated as follows:

"the National Commission for State Regulation of Electronic Communications and Postal Services (Articles 145, 188<sup>7</sup>)";

i) in paragraph three of part one of Article 2793 the words "via telecommunications" shall be replaced with the words "via electronic communications";

j) in part three of Article 2794 the words "respective information and telecommunication system" shall be replaced with the words "respective information and communication system";

2) Article 360 of the Criminal Code of Ukraine (Gazette of the Verkhovna Rada of Ukraine, 2001, No 25-26, p. 131) shall be restated as follows:

"Article 360. Intentional damage to electronic communications networks

Intentional damage to the elements of electronic communications networks (electronic communications technical facilities, television, wired transmission, facilities or equipment of electronic communications networks that provide for their operation, lines of electronic communications networks, including cable, air, radio-relay and / or structures or equipment thereof) that caused temporary termination of communications -

shall be subject to a fine in the amount between five hundred and one thousand untaxed minimum revenues of citizens, or correctional labour for up to two years, or limitation of freedom for up to five years";

3) in the Land Code of Ukraine (Gazette of the Verkhovna Rada of Ukraine, 2002, No 3-4, p. 27, with subsequent amendments):

a) in paragraph one of part six of Article 20 the words "power and communication lines" shall be replaced with the words "power and electronic communications networks lines";

b) in Article 23 the words "power and communication lines" and "Power and communication lines" shall be replaced with the words "power and electronic communications networks lines" and "Power and electronic communications networks lines" respectively;

c) Article 75 shall be restated as follows:

## "Article 75. Lands for communications

Lands for communications include lands for electronic communications.

Lands for communications include land plots ownership of which is acquired in the established order or which are given by their owners for use to individual entrepreneurs and legal entities to host the electronic communications network infrastructure.

2. Lands for communications can be either public, municipal or private property.
  3. There shall be made safety zones along overhead and underground cable lines of electronic communications networks outside settlements, as well as around buildings of electronic communications networks and radio relay lines; safety strips shall be created where necessary.
  4. The size of land plots, including safety zones and safety strips, provided to the persons and entities listed in part one of this Article shall be determined in accordance with land acquisition standards for the mentioned type of activity and with project and budget estimate documentation approved in the established order.
  5. Providers of electronic communications services who in compliance with the Law of Ukraine "On Electronic Communications" that submitted notice of commencement of a certain type (s) of activity in the electronic communications sphere shall have the right to demand from land owners or users to establish easements, including personal easements, over the category of lands defined by this Code for the purpose of laying underground electronic communications networks and / or for repairing damage to electronic communications networks."
- d) in clause "6" of part one of Article 122 the words "along communication lines" shall be replaced with the words "along lines of electronic communications networks";
- 4) in the Commercial Code of Ukraine (Gazette of the Verkhovna Rada of Ukraine, 2003, No 18-22, p. 144, with subsequent amendments):
- a) new Chapter 15<sup>1</sup> shall be added with the following content:

### "Chapter 15<sup>1</sup>

#### LIMITED USE OF RESOURCES IN THE ELECTRONIC COMMUNICATIONS SPHERE

##### Article 153-1. Limited use of resources in the electronic communications sphere

1. Limited resources in the electronic communications sphere shall mean the numbering resource and radiofrequency resource.
  2. Relations related to the use of limited resources in the electronic communications sphere shall be subject to the Law of Ukraine "On Electronic Communication" and the Law of Ukraine "On Radio Frequency Resource of Ukraine".
  3. Undertakings shall use limited resources in the electronic communications sphere on the basis of licenses issued under the Law of Ukraine "On Electronic Communication" and the Law of Ukraine "On Radio Frequency Resource of Ukraine";
- b) in Article 191:
- the words "by the state collegial bodies" shall be added to part one after the words "prices shall be introduced";
- the words "and other laws" shall be added to part two;
- 5) in paragraph two of part two of Article 639 of the Civil Procedural Code of Ukraine (Gazette of the Verkhovna Rada of Ukraine, 2003, No 40-44, p. 356, with subsequent amendments) the

words "information and telecommunication systems" shall be replaced with the words "information and communications systems";

6) in clause 3 of part one of Article 96 of the Civil Procedural Code of Ukraine (Gazette of the Verkhovna Rada of Ukraine, 2003, No 40-42, p. 492, with subsequent amendments) the words "telecommunication services" shall be replaced with the words "electronic communications services";

7) in the Criminal Procedural Code of Ukraine (Gazette of the Verkhovna Rada of Ukraine, 2013, No 9-13, p. 88):

a) in clause 7 of part one of Article 162 the words "operators and providers of telecommunications, on connection, the subscriber, provision of telecommunication services" shall be replaced with the words "providers of electronic communications services, on connection, the subscriber, provision of electronic communication services";

b) in clause 8 of part two and clause 4 part four of Article 248 the words "telecommunications network" shall be replaced with the words "electronic communications network";

c) in clause 3 part four of Article 258, in the title of the Article, parts two though four of Article 293, in part one of Article 265, of part three of Article 268 the words "transport telecommunications network" in all word forms (cases) and grammatical numbers shall be replaced with "electronic communications network" in respective word forms (cases) and grammatical numbers;

d) in Article 263:

part one shall be restated as follows:

"1. Interception of information in electronic communications networks (networks that provide routing, switching, transmission and/or receipt of characters, signals, written text, images and sounds or messages of any kind via radio, wired, optical or other electromagnetic systems between end equipment) shall be kind of interference in private communications without the awareness on behalf of the individuals using means of electronic communication to transmit information, based on the decision of investigating judge, if such interception may clarify the circumstances relevant to the criminal proceedings.";

in part four the words "telecommunications operators" shall be replaced with the words "providers of electronic communications services";

e) in the title of Article 265 the words "telecommunications networks" shall be replaced with the words "electronic communications networks";

f) in part one of Article 268 the word "operators" shall be replaced with the words "providers of electronic communications services";

8) in Article 30 of the Code of Civil Protection of Ukraine (Gazette of the Verkhovna Rada of Ukraine, 2013, No 34-35, p. 458; 2014, No 13, p. 221):

a) in clause 2 of part two the words "telecommunications networks" shall be replaced with the words "electronic communications networks";

b) in part four the words "Telecommunications operators" shall be replaced with the words "Providers of electronic communications services";

9) in part one of Article 26 of the Law of Ukraine "On Principles of Social Protection of Disabled Persons" (Gazette of the Verkhovna Rada of Ukraine, 1991, No 21, p. 252; 2003, No 25, p. 1179; 2012, No 31, p. 381) the words "operators and providers of telecommunications" shall be replaced with the words "providers of electronic communications services";

10) in Article 8 of the Law of Ukraine "On Detective Operations" (Gazette of the Verkhovna Rada of Ukraine, 2002, No 22, p. 303, with subsequent amendments) the words "from transport telecommunications networks" shall be replaced with the words "from electronic communications networks";

11) in part two of Article 12 of the Law of Ukraine "On Information" (Gazette of the Verkhovna Rada of Ukraine, 1992, No 48, p. 650; 2011, No 32, p. 313) the words "information and telecommunication systems" shall be replaced with the words "information and communications systems";

12) in part one of Article 27 of the Law of Ukraine "On Road Traffic" (Gazette of the Verkhovna Rada of Ukraine, 1993, No 31, p. 338, with subsequent amendments) the words "information and telecommunication" (adj) shall be replaced with the words "information and communications" (adj);

13) the words "except terms and forms of remuneration of the civil servants of the National Commission for State Regulation of Electronic Communications and Postal Services" defined abiding by the Law of Ukraine "On Electronic Communications" shall be added to part seven of Article 33 of the Law of Ukraine "On Civil Service" (Gazette of the Verkhovna Rada of Ukraine, 1993, No 52, p. 490);

14) in part one of Article 29 of the Law of Ukraine "On Information Agencies" (Gazette of the Verkhovna Rada of Ukraine, 1995, No 13, p. 83, with subsequent amendments) the words "power and electronic communications" shall be replaced with the words "end equipment of electronic communications", and the word "telecommunications" shall be replaced with the words "electronic communications";

15) in Article 8 of the Law of Ukraine "On Remuneration of Labour" (Gazette of the Verkhovna Rada of Ukraine, 1995, No 17, p. 121 with subsequent amendments):

a) in part two the words "prescribed by part three of this Article" shall be replaced with the words "prescribed by parts three and four of this Article";

b) part four shall be added to the Article with the following content:

"Terms and forms of remuneration of the officials of the National Commission for State Regulation of Electronic Communications and Postal Services shall be prescribed by the Law of Ukraine "On Electronic Communications";

16) in paragraph two of part nine of Article 231 of the Law of Ukraine "On Citizen's Applications" (Gazette of the Verkhovna Rada of Ukraine, 1996, No 47, p. 256, with subsequent amendments) the words "information and telecommunication system" shall be replaced with the words "information and communications system";

17) in clause 20 of part one of Article 8 of the Law of Ukraine "On State Regulation of the Securities Market in Ukraine" (Gazette of the Verkhovna Rada of Ukraine, 1996, No 51, p. 292; 2013, No 26, p. 264): the words "information and telecommunication systems" shall be replaced with the words "information and communications systems";

18) in paragraph twelve of Article 1 of the Law of Ukraine "On Space Activity" (Gazette of the Verkhovna Rada of Ukraine, 1997, No 1, p. 2; 2000, No 22, p. 172) the word "telecommunications" shall be replaced with the words "electronic communications";

19) in paragraph one of clause 9 of Article 2 of the Law of Ukraine "On Mandatory State Pension Insurance Charge" (Gazette of the Verkhovna Rada of Ukraine, 1997, No 37, p. 237; 1999, No 38, p. 349) the words "value of any services" shall be replaced with the words "value of any services delivered", the words "advance payment" shall be excluded;

20) in the Law of Ukraine "On Concept of the National Informatisation Program" (Gazette of the Verkhovna Rada of Ukraine, 1998, No 27-28, p. 181, with subsequent amendments):

a) in paragraph fifteen of part one of Article 1 the words "telecommunication systems" shall be replaced with the words "electronic communications systems";

b) in paragraph eleven of part one of Article 6 the words "telecommunication" shall be replaced with the words "electronic communication";

21) in the Concept of the National Informatisation Program approved by the Law of Ukraine "On Concept of the National Informatisation Program" (Gazette of the Verkhovna Rada of Ukraine, 1998, No 27-28, p. 182, with subsequent amendments):

a) paragraph twenty of Section III shall be restated as follows:

"The National Commission for State Regulation of Electronic Communications and Postal Services shall exercise state regulation of the informatisation that shall be established and operate abiding by the Law of Ukraine "On Electronic Communications" and other laws of Ukraine;

b) throughout the text of the Concept:

the words "information and telecommunications network", "information and telecommunication system", "information and telecommunication equipment system", the word "telecommunications" (adj), and the word "telecommunications" (noun) in all word forms (cases) and grammatical numbers shall be replaced with the words "information and communications network", "information and communications system", "information and communications equipment system", "electronic communications" (adj) and "electronic communications" (noun) in all word forms (cases) and grammatical numbers respectively;

22) after part two of Article 24 of the Law of Ukraine "On Settlement of Collective Labour Disputes (Conflicts)" (Gazette of the Verkhovna Rada of Ukraine, 1998, No 34, p. 227) new part shall be added with the following content:

"Personnel of the provider of electronic communications services shall be prohibited to go on strikes if such action causes disruption in operating of electronic communications networks or in provision of electronic communications services, which undermines provision of the national security, healthcare and human rights and liberties."

In this regard part three shall be deemed part four;

23) in clause 7 of part one of Article 21 of the Law of Ukraine "On the Capital of Ukraine - Kyiv Hero City" (Gazette of the Verkhovna Rada of Ukraine, 1999, No 11, p. 79; 2000, No 22, p. 172) the word "telecommunications" shall be replaced with the words "electronic communications";

24) in paragraph eleven of part two of Article 3 of the Law of Ukraine "On Concession" (Gazette of the Verkhovna Rada of Ukraine, 1999, No 41, p. 372; 2005, No 26, p. 349) the words "telecommunication services" shall be replaced with the words "electronic communications services";

25) in the Law of Ukraine "On Libraries and Library Activity" (Gazette of the Verkhovna Rada of Ukraine, 2000, No 23, p. 177, with subsequent amendments):

a) in paragraph three of part two of Article 4 the words "telecommunication systems" shall be replaced with the words "electronic communications systems";

b) in paragraph four of part one of Article 21 the words "telecommunication facilities" shall be replaced with the words "electronic communications technical facilities";

c) in part two of Article 26 the words "telecommunication facilities" shall be replaced with the words "electronic communications technical facilities";

26) in part five of Article 8 of the Law of Ukraine "On State Statistics" (Gazette of the Verkhovna Rada of Ukraine, 2000, No 43, p. 362; 2014, No 4, p. 61) the words "telecommunication facilities" shall be replaced with the words "electronic communications";

27) in paragraph two of part one of Article 26 of the Law of Ukraine "On Insurance Fund of Documentation of Ukraine" (Gazette of the Verkhovna Rada of Ukraine, 2001, No 20, p. 101) the words "communication and telecommunication system" shall be replaced with the words "information and communications systems and electronic communications";

28) in clause 38.2 of Article 38 of the Law of Ukraine "On Payment Systems and Funds Transfer in Ukraine" (Gazette of the Verkhovna Rada of Ukraine, 2001, No 29, p. 137; 2005, No 1, p. 23) the words "telecommunication facilities" shall be replaced with the words "electronic communications technical facilities";

29) in part three of Article 8 of the Law of Ukraine "On Diplomatic Service" (Gazette of the Verkhovna Rada of Ukraine, 2002, No 5, p. 29) the words "telecommunications network" shall be replaced with the words "electronic communications network";

30) in the Law of Ukraine "On Postal Service" (Gazette of the Verkhovna Rada of Ukraine, 2002, No 6, p. 39, with subsequent amendments):

a) the term of the following content shall be added to Article 1 with account to alphabetical order:

"National regulatory authority - the National Commission for the State Regulation of Electronic Communications and Postal Services";

b) in Article 8:

the title of the Article shall be restated as follows:

"Article 8. Competence of public authorities in postal services sphere";

part four shall be restated as follows:

The national regulatory authority shall engage in state regulation of the market of postal services; the former shall be created and operated under the Law of Ukraine "On Electronic Communications". State regulation based on balance of the interests of the public, providers and subscribers of postal services shall provide for the efficiency of the market of postal services.";

part five shall be excluded;

part six shall be restated as follows:

"The national regulatory authority shall be assigned:

to establish the procedure for and keeping the register of postal services operators;

to develop the tariff policy and regulation of postal tariffs and services in compliance with the legislation of Ukraine;

to exercise state supervision of the market of postal services";

paragraph one of part eight shall be restated as follows:

"State supervision of the market of postal services shall be carried out by";

in part nine:

in paragraph one the words "State Inspection on Communications" shall be replaced with the words "national regulatory authority";

in clauses 5 and 6 the words "assigned to SIC" shall be replaced with the words "assigned to the national regulatory authority";

in clause 7 the words "and SIC" shall be excluded;

in part ten the words "in the order prescribed by the National Commission for State Regulation of Communications and Informatisation" shall be replaced with the words "by national regulatory authority";

the first sentence in part twelve shall be restated as follows: "Unscheduled inspections shall be carried out based on the decision of national regulatory authority";

in parts fourteen and fifteen the word "SIC" shall be replaced with the words "national regulatory authority" in the respective word form (case);

c) a part shall be added to Article 17 with the following content:

"Operators shall pay regulatory fees as provided in the Law of Ukraine "On Electronic Communications" and the Tax Code of Ukraine.";

d) throughout the text of the Law the words "the National Commission for the State Regulation of Communication and Informatisation" in all word forms (cases) shall be replaced with the words "national regulatory authority" in respective word forms (cases);

31) in the Law of Ukraine "On National System of Confidential Communication" (Gazette of the Verkhovna Rada of Ukraine, 2002, No 15, p. 103, with subsequent amendments):

a) in Article 1:

in part one:

paragraphs two and three shall be restated as follows:

"specialised electronic communications network is an electronic communications network for the purpose of information exchange with limited access;

"specialised electronic communications network of dual purpose is a specialised electronic communications network intended to provide electronic communications in the interests of the state and local self-government bodies by utilising a part of its resource for providing services to other consumers";

in paragraph four the words "telecommunication systems (networks)" shall be replaced with the words "electronic communications networks";

part two shall be restated as follows:

"The terms "operator" and "communications network" in this Law shall be used in the sense of the terms "operator" and "electronic communications network" defined in the Law of Ukraine "On Electronic Communications";

b) in part one of Article 3 the words "On Protection of Information in Automated Systems", "On Telecommunications" shall be replaced with the words "On Protection of Information in Information and Communications Systems", "On Electronic Communications";

c) in part one of Article 5 the words "telecommunication systems (networks)" shall be replaced with the words "electronic communications networks";

32) in part one of Article 5 of the Law of Ukraine "On the Fight Against Terrorism" (Gazette of the Verkhovna Rada of Ukraine, 2003, No 25, p. 180, with subsequent amendments) the words "telecommunications" shall be replaced with the words "electronic communications";

33) in Article 171 of the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs" (Gazette of the Verkhovna Rada of Ukraine, 2003, No 31-32, p. 263; 2015, No 21, p. 133) the words "by means information and telecommunications" shall be replaced with the words "by means of electronic communications";

34) in the Law of Ukraine "On Electronic Documents and Electronic Workflow" (Gazette of the Verkhovna Rada of Ukraine, 2003, No 36, p. 275, with subsequent amendments):

a) in part one of Article 3 the words "On Protection of Information in Automated Systems", "On State Secrecy", "On Telecommunications" shall be replaced with the words "On Protection of Information in Information and Communications Systems", "On State Secrecy", "On Electronic Communications";

b) in part one of Article 10 the words "telecommunication, information and telecommunication systems" shall be replaced with the words "electronic communications, information and communications systems";

c) in part four of Article 11 the words "telecommunication, information and telecommunication system" shall be replaced with the words "electronic communications, information and communications system";

d) in part two of Article 15 the words "telecommunication, information and telecommunication systems" shall be replaced with the words "electronic communications, information and communications systems";

35) in paragraph ten of part four of Article 8 and paragraph six of part two of Article 11 of the Law of Ukraine "On Electronic Digital Signature" (Gazette of the Verkhovna Rada of Ukraine, 2003, No 36, p. 276) the words "public telecommunication channels" shall be replaced with the words "public electronic communications networks";

36) in paragraph two of part one of Article 1 of the Law of Ukraine "On the Fundamentals of National Security of Ukraine" (Gazette of the Verkhovna Rada of Ukraine, 2003, No 39, p. 351; 2010, No 40, p. 527) the words "transport and communications" shall be replaced with the words "transport and communications, as well as electronic communications";

37) after part two of Article 3 of the Law of Ukraine "On the Fundamentals of State Regulatory Policy in the Sphere of Economic Activity" (Gazette of the Verkhovna Rada of Ukraine, 2004, No 9, p. 79, with subsequent amendments) new part shall be added with the following content:

"This Law shall not be applicable, save Articles 7-9, parts one and two of Article 13 to regulatory acts of the National Commission for State Regulation of Electronic Communications and Postal Services".

In this regard part three shall be deemed part four;

38) in the Law of Ukraine "On the Radio Frequency Resource of Ukraine" (Gazette of the Verkhovna Rada of Ukraine, 2004, No 48, p. 26, with subsequent amendments):

a) in Article 1:

in paragraph eleven words "in telecommunications network" shall be replaced with the words "in electronic communications network";

the term of the following content shall be added to the Article with account to alphabetical order:

"National regulatory authority - the National Commission for the State Regulation of Electronic Communications and Postal Services";

b) in clauses 1, 3 of part four of Article 5, clause 1 of part two of Article 30, part one of Article 31, in paragraph two of part three of Article 34 the words "telecommunication services" shall be replaced with the words "electronic communications services";

c) clause 5 of part two of Article 6 shall be restated as follows:

"5) to deliver payments, rent payments, regulatory fees prescribed by the law";

d) parts one and two of Article 7 shall be restated as follows:

"1. Abiding by the law fine shall be charged for the late delivery of payable regulatory fees to the state budget of Ukraine.

2. Payment of the fine shall not release the user of radio frequency resource of Ukraine from the obligation to pay regulatory fees prescribed by the Law";

e) part two of Article 12 shall be restated as follows:

"2. The national regulatory authority shall engage in state regulation in the field of radio frequency resource of Ukraine; the former shall be created and operate under the Law of Ukraine "On Electronic Communications" and other laws of Ukraine."

f) clauses 9 and 16 of part two of Article 14 shall be restated as follows:

"9) organisation and control over radio frequency monitoring";

"16) preparation and participation in preparation of draft laws and other regulatory acts";

g) clause 3 of part three of Article 16 shall be restated as follows:

"3) engage in radio frequency monitoring of the use of radio frequency resource of Ukraine in accordance with this Law further to the direct order of the national regulatory authority and in compliance with the procedure prescribed thereby";

h) parts four and five of Article 19 shall be restated as follows:

"4. Radio frequency monitoring in public frequency bands shall be performed at the expense of the special fund of the State Budget of Ukraine designated to fund the national regulatory authority under the Law, and in special use frequency bands shall be performed at the expense of special subscribers of the radio frequency resource.

5. UCRF further to the results of radio frequency monitoring shall submit to the national regulatory authority its respective proposals to improve the use of allocated radio frequency bands and amendments to the Plan of Radio Frequency Resource of Ukraine and National Radio Frequencies Allocation Table of Ukraine, as well as other proposals and information in the order and terms prescribed by the national regulatory authority";

i) in part three of Article 31 the word "telecommunications" shall be excluded;

j) in Article 34:

in paragraph one of clause 3 the first word "telecommunications" shall be excluded;

in paragraph three of part two the words "the Law of Ukraine "On Telecommunications"" shall be replaced with the words "the Law of Ukraine "On Electronic Communications"";

in paragraph two of part three the words "telecommunication services" shall be replaced with the words "electronic communications services";

k) part five of Article 44 shall be restated as follows:

"5. The decision to refuse operators to extend the use permit shall be submitted for approval of the national regulatory authority. The validity term of said permits shall be extended automatically before the decision is made by the national regulatory authority";

l) in parts two and three of Article 58 the words "monthly charge" shall be replaced with the words "monthly rental fee";

m) throughout the text of the Law the words "telecommunication services" and the words "National Commission for State Regulation of Communications and Information" in all word forms (cases) shall be replaced with the words "electronic communications services", "national regulatory authority" in respective word forms (cases);

39) in the Law of Ukraine "On the Protection of Information in Informational and Telecommunication Systems" (Gazette of the Verkhovna Rada of Ukraine, 2005, No 26, p. 347, with subsequent amendments):

a) in the title of the Law the words "information and telecommunication systems" shall be replaced with the words "information and communications systems";

b) in the Preamble the words "telecommunication, information and telecommunication systems" shall be replaced with the words "electronic communications, information and communications systems";

c) in Article 1 the words "information and telecommunication system" shall be replaced with the words "information and communications system", and the words "telecommunication system" in all word forms (cases) shall be replaced with the words "electronic communications system" in

respective word forms (cases), and the words "or receipt" shall be replaced with the words "and/or receipt";

d) in Article 10 the words "telecommunication, information and telecommunication systems" shall be replaced with the words "electronic communications, information and communications systems";

40) in paragraph seven of part five and paragraph three of part four of Article 41 of the Law of Ukraine "On the Permit System in the Field of Economic Activity" (Gazette of the Verkhovna Rada of Ukraine, 2005, No 48, p. 483, with subsequent amendments) the words "telecommunication facilities" shall be replaced with the words "electronic communications";

41) in the Law of Ukraine "On Television and Radio" (Gazette of the Verkhovna Rada of Ukraine, 2006, No 18, p. 155, with subsequent amendments):

a) in Article 1:

paragraph six shall be restated as follows:

"multichannel television network (air or cable) is a public electronic communications network intended to broadcast TV and radio programs, as well as to provide other electronic communications and multimedia services, able to perform simultaneous broadcasting of more than one TV and radio program and integrate with other public electronic communications networks";

in paragraph seven the words "telecommunications network" shall be replaced with the words "electronic communications network";

b) part one of Article 39 shall be restated as follows:

"1. Multichannel television networks as electronic communications networks are founded, registered, serviced and protected in accordance with the Law of Ukraine "On Electronic Communications";

c) in part three of Article 70 words "the National Commission for State Regulation of Communications and Informatisation" shall be replaced with the words "the National Commission for State Regulation of Electronic Communications and Postal Services";

d) throughout the text of the Law:

the word "telecommunications" in all word forms (cases) shall be replaced with the words "electronic communications" in respective word forms (cases);

the words "telecommunications operator", "provider or operator of telecommunications" in all word forms (cases) and grammatical numbers shall be replaced with the words "provider of electronic communications services" in respective word forms (cases) and grammatical numbers;

42) in paragraph four of part two of Article 5 of the Law of Ukraine "On Operation of the Fuel and Energy Sector During a Special Period" (Gazette of the Verkhovna Rada of Ukraine, 2006, No 52, p. 526; 2014, No 2-3, p. 41) the words "telecommunication operators" shall be replaced with the word "operators";

43) the words "supervision (control) in the sphere of electronic communications" shall be added to part two of Article 2 of the Law of Ukraine "On Fundamentals of State Supervision (Control) of Economic Activity" (Gazette of the Verkhovna Rada of Ukraine, 2007, No 29, p. 389, with subsequent amendments);

44) in paragraph four of Article 2 of the Law of Ukraine "On Protection of Personal Data" (Gazette of the Verkhovna Rada of Ukraine, 2010, No 34, p. 481; 2014, No 27, p. 914; 2015, No 45, p. 410): the words "information and telecommunication system" shall be replaced with the words "information and communications system";

45) in the Law of Ukraine "On State Register of Voters of Ukraine" (Gazette of the Verkhovna Rada of Ukraine, 2011, No 5, p. 34, with subsequent amendments):

a) in Article 11:

in part one the first words "On Protection of Information in Information and Telecommunication Systems" shall be replaced with the words "On Protection of Information in Information and Communications Systems";

in part two the words "telecommunication channels" shall be replaced with the words "electronic communications channels";

b) throughout the text of the Law the words "information and telecommunication system" in all word forms (cases) shall be replaced with the words "information and communications system" in respective word forms (cases);

46) in the Law of Ukraine "On Regulation of Urban Development" (Gazette of the Verkhovna Rada of Ukraine, 2011, No 34, p. 343, with subsequent amendments):

a) in part one of Article 30 the word "telecommunications" shall be replaced with the words "electronic communications";

b) new paragraph with the following content shall be added to part one of Article 34:

"Construction, reconstruction and modernization project with respect to electronic communications networks that provide for installation of equipment in existing buildings and facilities, in existing cable ducts of electronic communications networks or ones subject to reconstruction, and module-type facilities with transport equipment of electronic communications networks, fixed-line and mobile communications, terrestrial TV and radio broadcasting, shall be implemented without registration of the declarations by the state architectural and construction control provided no construction works shall involve changes to the planning decisions and structural integrity of buildings, additional load thereto, the use other than the designated one, or construction of additions thereto.";

47) clause 34 of the List of Documents of Permitting Nature in Economic Activities Sector approved by the Law of Ukraine "On the List of Documents of Permitting Nature in Economic Activities Sector" (Gazette of the Verkhovna Rada of Ukraine, 2011, No 47, p. 532, with subsequent amendments) shall be excluded;

48) in part twelve of Article 74 of the Law of Ukraine "On Elections of People's Deputies of Ukraine" (Gazette of the Verkhovna Rada of Ukraine, 2012, No 10-11, p. 73, with subsequent amendments) the words "telecommunication operators" shall be replaced with the words "operators";

49) new part shall be added with the following content to Article 46 of the Law of Ukraine "On Civil Service" (Gazette of the Verkhovna Rada of Ukraine, 2012, No 26, p. 273, with subsequent amendments):

"7. "Terms and amount of remuneration of the civil servants of the National Commission for State Regulation of Electronic Communications and Postal Services shall be prescribed by the Law of Ukraine "On Electronic Communications";

50) in Article of the Law of Ukraine "On the System of Emergency Help to the Population under a Single Telephone Number 112" (Gazette of the Verkhovna Rada of Ukraine, 2012, No 49, p. 560; 2013, No 30, p. 340, No 34-35, p. 458):

a) in part one of Article 2 the words "On Telecommunications", "On Protection of Information in Information and Telecommunication Systems" shall be replaced with the words "On Electronic Communications", "On Protection of Information in Information and Communications Systems";

b) in part two of Article 3 the words "telecommunications networks" shall be replaced with the words "electronic communications networks";

c) in part four of Article 6 the words "telecommunication operators" shall be replaced with the words "operators";

51) in clause 1 of part one of Article 18 of the Law of Ukraine "On the Development and State Support to Small and Medium-Size Entrepreneurship in Ukraine" (Gazette of the Verkhovna Rada of Ukraine, 2013, No 3, p. 23) the words "information and telecommunications networks" shall be replaced with the words "information and communications networks";

52) in the Nationwide Target Program for the Protection of the Population and Territories from Technogenic and Natural Emergencies for 2013-2017 approved by the Law of Ukraine "On the Nationwide Target Program for the Protection of the Population and Territories from Technogenic and Natural Emergencies for 2013-2017" (Gazette of the Verkhovna Rada of Ukraine, 2013, No 19-20, p. 173):

a) in sub-clause 29 of clause 2 of Section III "Measures and Program Goals" the words "information and telecommunication system" shall be replaced with the words "information and communications system";

b) in Annex 2 to the Nationwide Target Program for the Protection of the Population and Territories from Technogenic and Natural Emergencies for 2013-2017:

in clause 22 the words "information and telecommunication system" shall be replaced with the words "information and communications system";

in clause 29 the words "information and telecommunication" (adj) shall be replaced with the words "information and communications" (adj), and the words "telecommunications networks" shall be replaced with the words "electronic communications networks";

53) in clause 1 of part one of Article 1 of the Law of Ukraine "On Industrial Parks" (Gazette of the Verkhovna Rada of Ukraine, 2013, No 22, p. 212) the word "telecommunications" shall be replaced with the words "electronic communications";

54) in Article 25 of the Law of Ukraine "On the Principles of the State Language Policy" (Gazette of the Verkhovna Rada of Ukraine, 2013, No 23, p. 218):

the title of the Article shall be restated as follows:

"Article 25. Language in the postal service and the electronic communications spheres";

in part one the words "In the sphere of providing postal service and telecommunications in Ukraine" shall be replaced with the words "In the spheres of providing postal service and electronic communications in Ukraine";

in part three the words "telecommunications networks" shall be replaced with the words "electronic communications networks";

55) in part one of Article 7 of the Law of Ukraine "On Charity and Charitable Organisations" (Gazette of the Verkhovna Rada of Ukraine, 2013, No 25, p. 252; 2014, No 43, p. 2032) the words "electronic communications and telecommunications" shall be replaced with the words "electronic communications";

56) in the Law of Ukraine "On Emergency Medicine" (Gazette of the Verkhovna Rada of Ukraine, 2013, No 30, p. 340):

a) in paragraph eight of part one of Article 6 the words "telecommunication resources" shall be replaced with the words "resources of electronic communications networks";

b) in part one of Article 8 the words "telecommunications networks" shall be replaced with the words "electronic communications networks";

57) in the Law of Ukraine "On Administrative Services" (Gazette of the Verkhovna Rada of Ukraine, 2013, No 32, p. 409, with subsequent amendments):

a) in clause 4 of part two of Article 6 the words "telecommunication facilities" shall be replaced with the words "electronic communications technical facilities";

b) throughout the text of the Law the words "telecommunication facilities" shall be replaced with the words "electronic communications technical facilities" in respective word forms (cases);

58) in paragraph twelve of part one of Article 2 of the Law of Ukraine "On Peculiarities of Procurement in Certain Spheres of Economic Activity" (Gazette of the Verkhovna Rada of Ukraine, 2002, No 17, p. 148 with subsequent amendments) the words "telecommunications networks" shall be replaced with the words with "electronic communications networks", and the words "telecommunications services" shall be replaced with the words "electronic communications services";

59) in part ten of Article 76 of the Law of Ukraine "On All-Ukrainian Referendum" (Gazette of the Verkhovna Rada of Ukraine, 2013, No 44-45, p. 634) the words "telecommunication operators" shall be replaced with the words "providers of electronic communications services";

60) in the Law of Ukraine "On the Unified State Register of Demographic and Proof of Citizenship of Ukraine Identity or her Special Status" (Gazette of the Verkhovna Rada of Ukraine, 2013, No 51, p. 716, with subsequent amendments):

a) in part two of Article 3 the words "in laws of Ukraine "On Protection of Personal Data", "On Information", "On the Protection of Information in Informational and Telecommunication Systems" shall be replaced with the words "in laws of Ukraine "On Protection of Personal Data", "On Information", "On Protection of Information in Information and Communications Systems";

b) in part one of Article 4 the words "information and telecommunication system" shall be replaced with the words "information and communications system";

61) in the Law of Ukraine "On Public Procurement" (Gazette of the Verkhovna Rada of Ukraine, 2014, No 24, p. 883, with subsequent amendments):

a) in part four of Article 2:

paragraph twelve of clause 1 shall be restated as follows:

"insuring operation and use of public fixed-line communications or provision of public (universal) electronic communications services";

in paragraph eight of clause 2 the words "telecommunication services" shall be replaced with the words "electronic communications services";

b) in clause 2 of part three of Article 16, in paragraph two of part three of Article 39 the words "telecommunication services" shall be replaced with the words "electronic communications services".

62) in the Law of Ukraine "On the State Service of Special Communications and Information Protection of Ukraine" (Gazette of the Verkhovna Rada of Ukraine, 2014, No 25, p. 890, with subsequent amendments):

a) paragraph twelve of clause 50, clause 55 and clause 64 of part one of article 14 shall be excluded;

b) throughout the text of the Law:

the words "telecommunication facilities" in all word forms (cases) shall be replaced with the words "electronic communications technical facilities" in respective word forms (cases);

the words "telecommunication operators" in all word forms (cases) shall be replaced with the words "operators" in respective word forms (cases);

the word "telecommunications" (noun) in all word forms (cases) shall be replaced with the words "electronic communications" (noun) in respective word forms (cases);

the word "telecommunications" (adj) in all word forms (cases) shall be replaced with the word "communications" (adj) in respective word forms (cases);

the words "automated information and telecommunication system" in all word forms (cases) shall be replaced with the words "information and communications system" in respective word forms (cases);

the words "telecommunication networks" in all word forms (cases) shall be replaced with the words "communications networks" in respective word forms (cases);

63) in clause 7 of part one of Article 3 of the Law of Ukraine "On Metrology and Metrological Activity" (Gazette of the Verkhovna Rada of Ukraine, 2014, No 30, p. 1008) the words "telecommunication services" shall be replaced with the words "electronic communications services";

64) in clause 3 part two of Article 67 of the Law of Ukraine "On Higher Education" (Gazette of the Verkhovna Rada of Ukraine, 2014, No 37-38, p. 2004) the words "information and telecommunications networks" shall be replaced with the words "electronic communications networks";

65) clause 9 part one of Article 4 of the Law of Ukraine "On Sanctions" (Gazette of the Verkhovna Rada of Ukraine, 2014, No 40, p. 2018) shall be restated as follows:

"9) restriction or termination of provision of electronic communications services and use of public electronic communications networks";

66) in the Nationwide Scientific and Technical Space Target Program of Ukraine for 2013-2017 approved by the Law of Ukraine "On the Nationwide Scientific and Technical Space Target Program of Ukraine for 2013-2017" (Gazette of the Verkhovna Rada of Ukraine, 2014, No 2021, p. 725):

a) in paragraph three of Section "Ways and means for resolving issues" the word "telecommunication" (adj) shall be replaced with the words "electronic communication" (adj);

b) throughout the text of the Program the words "telecommunication services", "telecommunication systems", "telecommunication networks" in all word forms (cases) shall be replaced with the words "electronic communications services", "electronic communications systems", "electronic communications networks" in respective word forms (cases) accordingly;

c) clause 2 of column "Assignment name" of Annex 2 to the Program shall be restated as follows:

"2. Advancement of space electronic communications and navigation systems";

d) clause 2 of column "Assignment name" of Annex 3 to the Program shall be restated as follows:

"2. Advancement of space electronic communications and navigation systems";

67) in part twelve of Article 55 of the Law of Ukraine "On Basic Principles and Requirements for Food Safety and Quality" (Gazette of the Verkhovna Rada of Ukraine, 2014, No 41-42, p. 20-24, with subsequent amendments) the words "information and telecommunication system" shall be replaced with the words "information and communications system";

68) in clause 4 of part three of Article 7 of the Law of Ukraine "On Prevention and Counteraction to Legalisation (Laundering) of the Proceeds from Crime or Terrorism Financing, as well as Financing Proliferation of Weapons of Mass Destruction" (Gazette of the Verkhovna Rada of Ukraine, 2014, No 50-51, p. 2057) the words "telecommunication facilities" shall be replaced with the words "electronic communications technical facilities";

69) in clause 5 of part one of Article 5 of the Law of Ukraine "On Military-Civil Administrations" (Gazette of the Verkhovna Rada of Ukraine, 2015, No 13, p. 87) the words "telecommunication companies" shall be replaced with the words "providers of electronic communications services";

70) in the Law of Ukraine "On Licensing Types of Business Activities" (Gazette of the Verkhovna Rada of Ukraine, 2015, No 23, p. 158):

- a) in paragraph six of part seven of Article 5 the words "telecommunication facilities" shall be replaced with the words "electronic communications";
  - b) in clause 8 of part one of Article 7 the words "telecommunications according to specifics set out in the Law of Ukraine "On Telecommunications" shall be excluded;
  - c) in clause 3 of part one and part three of Article 10 the words "telecommunication facilities" shall be replaced with the words "electronic communications technical facilities";
  - d) part two of Article 21 "Final and Transitional Provisions" shall be excluded;
- 71) in part two of Article 20 of the Law of Ukraine "On Animal By-Products not Intended for Human Consumption" (Gazette of the Verkhovna Rada of Ukraine, 2015, No 24, p. 171) the words "telecommunication and electronic communication facilities" shall be replaced with the words "electronic communications technical facilities";
- 72) in clause 4 of part one of Article 2 of the Law of Ukraine "On Access to Archives of Repressive Agencies of Totalitarian Communist Regime of 1917-1991" (Gazette of the Verkhovna Rada of Ukraine, 2015, No 26, p. 218) the words "telecommunication networks" shall be replaced with the words "electronic communications networks";
- 73) in part one of Article 8 of the Law of Ukraine "On Legal Regime of Martial Law" (Gazette of the Verkhovna Rada of Ukraine, 2015, No 28, p. 250):
- a) in clause 11 the words "telecommunication companies" shall be replaced with the words "providers of electronic communications services";
  - b) in clause 12 the words "telecommunication equipment" shall be replaced with the words "electronic communications equipment";
- 74) in the Law of Ukraine "On Electronic Commerce" (Gazette of the Verkhovna Rada of Ukraine, 2015, No 45, p. 410):
- a) in clause 11 of part one of Article 3 the words "information and telecommunications networks" shall be replaced with the words "electronic communications networks";
  - b) in part two of Article 6 the words and characters "telecommunications operators (providers)" shall be replaced with the words "providers of electronic communications services";
  - c) throughout the text of the Law the words "information and telecommunication system" and the word "telecommunications" in all word forms (cases) shall be replaced with the words "information and communications system" and "electronic communications" accordingly in the respective word forms (cases).

**Chairman  
Verkhovna Rada of Ukraine**

**V. Hroisman**

**DRAFT LAW OF UKRAINE**  
**On amendments to some legislative acts of Ukraine regarding processing of information**  
**in cloud computing systems**

The Verkhovna Rada of Ukraine resolves:

I. To amend the following laws of Ukraine:

1. The Law of Ukraine "On information security in telecommunication systems" (The Official Bulletin of the Verkhovna Rada of Ukraine, 2005, No.26, art. 347; 2009, No. 24, art. 296; No. 32 - 33, art. 485, 2014; No. 17, art.593; No. 22, art. 801, art. 811, art. 816):

1) the preamble shall be supplemented with the words "as well as in cloud computing systems";

2) in article 1:

second, third, sixth to eighth, twelfth, fourteenth to seventeenth paragraphs shall be reworded as follows:

*"blocking of information in the system or cloud computing system"* means actions resulting in prevention of access to information in the system or cloud computing system;

*"information leakage"* means result of actions due to which information in the system or cloud computing system becomes known or available to entities that are not entitled to access it;

*"access to information in the system or cloud computing system"* means gaining a capability for users to process information in the system or cloud computing system;

*"information security in the system or cloud computing system"* means activities aimed at preventing unauthorized activities with regard to information in the system or cloud computing system;

*"destruction of information in the system or cloud computing system"* means actions due to which information disappears in the system or cloud computing system ";

*"user of information in the system or cloud computing system (hereinafter referred to as the "user")"* means physical or legal entity who according to the law or as required by the law, has been granted access to information in the system or cloud computing system";

*"unauthorized activities with regard to information in the system or cloud computing system"* means activities in violation of legal procedure for access to information in the system or the cloud computing system;

*processing of information in the system or cloud computing system* means one or more operations associated with collection, entry, recording, accumulation, conversion, modification, adaptation, renewal, reading, storage, destruction, registration, acceptance, reception, and transmission of information implemented in the system or cloud computing system by means of hardware and software;

*violation of information integrity in the system or cloud computing system* means unauthorized activities related to information in the system or cloud computing system, due to which its content is being changed;

*procedure for access to information in the system or cloud computing system* means requirements that the user has to meet to acquire a capability to process information in the system or cloud computing system and regulations for information processing";

to supplement the Article with paragraphs 20 and 21 to read as follows:

*"provider of cloud services* means a physical entity, including a sole proprietor, legal entity (resident or non-resident), that under the contract concluded with the holder of information or owner of the system, shall undertake to implement information processing in the cloud computing system and/or provide via cloud computing system an access to the use of: applications running in the cloud computing system, computing platforms (operating systems, database management system or package of software products ensuring automation of tasks through configuration or by using built-in programming tools, etc.) based on which it is possible to deploy proprietary application software or those developed by other entities, as well as database supported by the system; infrastructure (resources for processing, storage, network equipment and other computing resources) in virtue of which it is possible to deploy and run a software of one's choice, including operating systems and applications ";

*"cloud computing system means* a system which is based on a model of on-demand remote access to the shared set of dynamically allocated and configurable computing resources (including intersystem networks, servers, data storages, applications, and services) that can be efficiently provided and released through global data networks with minimum administrative efforts from and/or minimal interaction with providers of cloud services";

3) the title and paragraph one of Article 2 after the word "system" shall be supplemented by the phrase "or cloud computing system";

4) in first paragraph of Article 3:

sub-paragraph one after the word "systems" shall be supplemented by the phrase "or cloud computing systems";

insert the following sub-paragraph: "providers of cloud services" after sub-paragraph three.

In this regard, fourth and fifth sub-paragraphs shall be considered as fifth and sixth sub-paragraphs;

5) in Article 4:

title of the Article shall be supplemented with the words "or cloud computing system";

insert the new part after paragraph two to read as follows:

"The procedure for access to information that is being processed in the cloud computing system shall be envisaged in the contract concluded between provider of cloud services and holder of information or owner of the system.

In this regard, paragraph three shall be considered as paragraph four ";

6) in Article 5:

the title of Article shall be reworded to read:

"Article 5. The relationship between a holder of information and owner of system, holder of information or owner of system and provider of cloud services";

to supplement the Article with third paragraph to read:

"A provider of cloud services shall ensure information security in cloud computing system and grant data to the holder of information or owner of the system to protect information in the cloud computing system from internal and external threats, cyber attacks, in accordance with the

procedure and under the conditions stipulated by this Law and the contract for the provision of cloud services";

7) in Article 6:

the title of the Article shall be reworded to read:

"Article 6. The relationship between the owner of the system and user, provider of cloud services and user";

add Paragraph two to read:

"Provider of cloud services shall provide the user with information about rules and operation mode for cloud computing system and grant the latter an access to information in this system on contractual basis.";

8) in Article 8:

the title of the Article shall be supplemented with the words "or cloud computing system";

add paragraph four to read:

"Conditions for processing and protection of certain types of information in cloud computing system shall be stipulated in the contract in accordance with Article 9<sup>1</sup> hereof";

9) in Article 9:

Add words "or cloud computing system" to the title;

Add words "and in cloud computing system - to provider of cloud service" to paragraph one;

Remove words "attempts and/or" from paragraph three;

Add a new paragraph to the article to read:

"A provider of cloud service shall inform the holder of the relevant information or owner of the respective systems about any evidence of unauthorized activity in cloud computing system that led to leakage, destruction, blocking or destroying of integrity of information processed in this system";

10) add Article 91 to read:

"Article 9<sup>1</sup>. Data processing and information security in a cloud computing system

Information, including classified information (except for information classified as the state secret according to the established procedure) that belongs to public authorities, other public authorities, local authorities, authorities of the Autonomous Republic of Crimea and other entities responsible for administrative functions in accordance with the law and whose decisions are binding, state enterprises, institutions and organizations, can be processed in the cloud computing system based on the contract between the provider of cloud services and holder of information or owner of the system.

The contract between the provider of cloud services and holder of information or owner of the system must contain as follows:

scope of the contract and its validity term;

price of services, procedure, timing, and amounts of payments;

processing procedure and information security in cloud computing system;

procedure for access of users to information being processed in the cloud computing system;

liabilities of provider of cloud services for taking measures aimed at preventing unauthorized activity related to information in the cloud computing system;

procedure for granting data on information security in cloud computing system from internal and external threats as well as cyber attacks by the provider of cloud services to the holder of information or owner of the system;

procedure for notification about unauthorized activity in the cloud computing system that led to leakage, destruction, blocking or violation of information integrity, from provider of cloud services to the holder of information or owner of the system;

procedure and conditions for granting access to the computing platform, infrastructure and application programs, including those running in the cloud computing system by using services on access to usage of computing platform and/or infrastructure of other providers of cloud services to the holder of information or owner of the system by provider of cloud services;

procedure for obtaining data that has been processed in the cloud computing system, in case of termination of cloud services by the holder of information or owner of the system;

procedure for removal of information from cloud computing system;

requirements for the average duration of interrupted service of cloud computing system;

procedure for backing up information by provider of cloud services;

guarantees made by the provider of cloud services to prevent information processing in the cloud computing system in the territories of states recognized by the Verkhovna Rada of Ukraine as aggressor state, and states with regard to which the sanctions were imposed according to the Law of Ukraine "On sanctions";

responsibility of contracting parties;

procedure for notification about possible changes in the essential terms of the contract from provider of cloud services to the holder of information or owner of the system;

other conditions agreed by the contracting parties.

Unless otherwise provided by the contract, the provider of cloud services may engage third parties to perform its obligations under the contract concluded with the holder of information or owner of the system.

Processing of information, belonging to public authorities, other public bodies, local authorities, authorities of the Autonomous Republic of Crimea and other entities that fulfil administrative functions in accordance with the law and whose decisions are binding, state enterprises, institutions, and organizations in the cloud computing system, shall be authorized only subject to confirmation of the appropriate level of information security in such a system in accordance with the provisions hereof. Adequate level of information security in the cloud computing system shall be supported by a valid certificate confirming compliance of information security management system that is used in processing of information in the cloud computing system, requirements of ISO/IEC 27001 or DSTU ISO/IEC 27001 or other standards which replace them, issued by the national or foreign authority or conformity assessment organization accredited by the national accreditation body of Ukraine or foreign accreditation body that is a member of multilateral agreement on recognition of the International Accreditation Forum and/or European Co-operation for Accreditation, according to ISO/IEC 17021 or DSTU ISO/IEC 17021 or other standards which replace them.

In the event the provider of cloud services grants users an access to applications that are executed in the cloud computing system by using services that involve use of computing platform and/or infrastructure of other providers of cloud services, the appropriate level of information security shall be confirmed by a valid certificate from these providers of cloud services confirming compliance of information security management system with requirements defined in paragraph three of this Article. In this case, the contract between the provider of cloud services that grants access to applications and the holder of information or owner of the system must include guarantees of the provider of cloud services that the latter has qualified staff with sufficient knowledge and experience needed to provide cloud services, as well as, for the purpose of the

signed contract, has a capability to use cloud computing system which has the appropriate level of information security.

Cloud computing system, where adequate level of information security has been confirmed hereunder, shall be deemed as that where data protection corresponds to paragraphs two and three of Article 8 of this Law. In this case, conformity assessment and the state expertise under Article 8 of this Law are not required.

In case of confirmation of proper level of information security in the cloud computing system under this article, oversight of information security in this system shall be performed exclusively during the inspection of the holder of information or owner of the system with regard to confirmation of the fact associated with conclusion of the contract between the latter and a provider of cloud services, as required by this article, and availability of, in the cloud computing system, a valid certificate of compliance with international and/or national standard in the field of information security as required by this article.

If the proper level of information security is not confirmed in cloud computing system according to paragraphs three and four of this article, cloud services shall be provided in accordance with Article 8 of this Law.

Procedure for protection of cryptographic information transmitted to the cloud computing system in connection with the provision of cloud services to the holder of information or owner of the system, shall be determined by the Cabinet of Ministers of Ukraine.

Peculiarities of using the cloud computing systems by banks shall be envisaged by the National Bank of Ukraine.

11) Add words "or cloud computing systems" after the word "systems" in Paragraph 5 of Article 10

2. Paragraph 3 of Article 4 of the Law of Ukraine "On personal data protection" (The Official Bulletin of the Verkhovna Rada of Ukraine, 2010, No. 34, art. 481; 2013, No. 51, art. 715) shall be supplemented with words "and in case of information processing in the cloud computing system – physical entity, including a sole proprietor, legal entity (resident or non-resident) that under the contract for provision of cloud services processes information in a cloud computing system".

## II. Final provisions

1. This Law shall become effective on the day following the date of its publication.

2. Within three months from the date of enactment of this Law the Cabinet of Ministers of Ukraine shall:

bring its regulatory acts in line with this Law;

ensure revision and bringing relevant regulatory acts in line with this Law by Ministries and other central executive authorities.

**Chairman of the Verkhovna Rada of Ukraine**

## LAW OF UKRAINE

### On the Fundamentals for Ensuring Cybersecurity of Ukraine

This Law establishes the legal and organizational fundamentals for ensuring of protection of the vital interests of a person and a citizen, the society and the state, the national interests of Ukraine in the cyberspace, as well as the main objectives, directions and principles of the state policy in the sphere of cybersecurity of Ukraine, powers and obligations of the state authorities, enterprises, institutions, organizations, persons and citizens in this sphere, the main principles of coordination of their activities to ensure cybersecurity of Ukraine.

#### Article 1. Definition of Terms

In this Law the terms specified below have the following meaning:

*cybersecurity incident (cyberincident)* — an event or number of undesired events of unintentional character (of natural, technical, technological, erroneous character, including human factor) and/or those having possible (potential) signs of a cyberattack, are related to security and cyberprotection of the electronic communication systems, technological process control systems, and create considerable probability of violation of regular functioning of such systems (including disruption and/or blocking of the system work and/or unauthorized management of its resources), threaten the safety (security) of electronic information resources;

*cyberattack* — directed (intentional) acts in the cyberspace that are a cyberthreat to an object (objects) of the cyberprotection which are carried out by using means of electronic communications (including information and communication technologies, software, hardware and software means, other technical and technological means and equipment) and are aimed at achieving one or several of the following goals: violation of confidentiality, integrity, accessibility of electronic information resources which are processed (transferred, stored) within communication and/or technological systems, acquiring unauthorized access to such resources; violation of safety, continuous and reliable operations, regular operations of communication and/or technological systems; use of communication system, its resources and means of electronic communications for execution of cyberattacks on other objects of cyberprotection;

*cybersecurity* — security of the vital interests of a person and a citizen, the society and the state in the cyberspace which ensures sustainable development of information society and digital communicative environment, timely identification, prevention and neutralization of real and potential threats to the national security of Ukraine in the cyberspace;

*cyberthreat* — *current and potential phenomena and factors which create danger to the vital national interests* of Ukraine in the cyberspace, have negative and/or weakening impact on the cybersecurity in Ukraine, cybersecurity and cyberprotection of its objects;

*cyberprotection* — a complex of organizational, regulatory, technical and other acts of rapid identification, reaction, prevention, preservation, neutralization of cyberincidents and cyberattacks, elimination of their consequences and restoration of stability and reliability of operations of communication and technological systems;

*cybercrime* — a socially dangerous faulty act in the cyberspace and/or with its use, responsibility for which is provided for in the legislation of Ukraine on criminal responsibility and/or recognized as a crime by the international legislation;

*cyberspace* — environment (virtual space) which enables (serves the purpose of) communications and/or realization of the public relations, which is established by combining (connecting) communication systems and ensuring electronic communications by using Internet and/or other global data transmission networks;

*crucial infrastructure facilities (critical infrastructure facilities)* —enterprises, institutions and organizations irrespective of their form of incorporation which have the most importance for the economy and industry, functioning of the society and security of the population, crippling or destruction of which may have negative impact on the national security and defence of Ukraine, environment, and result in large financial loss and considerable human losses;

*national electronic information resources (national information resources)* — catalogued electronic information resources which contain information, irrespective of its type, contents, form, time and place of its creation (including public information, state information resources and other information of the state, municipal, private ownership), intended for satisfaction of the vital public needs of a citizen, person, the society and the state. Any information and data, or the complex of such, which is created, recorded, processed or stored in digital or any other non-material form by means of electronic, magnetic, electromagnetic, optical, technical, program or other means is considered electronic information resources;

*national telecommunication network* — a complex of special telecommunication systems (networks), systems of special communication, other communication systems which are used in the interests of the state authorities and local self-government, law enforcement agencies and military formations formed according to the laws of Ukraine, which is designed for circulation (transfer, reception, creation, processing, storage) of the national information resources, enabling protected electronic communications, provision of a range of modern protected information and communication (multiservice) services for the management of the state at peaceful times, in the conditions of emergency state and during the special period, and is a network (system) of dual purpose, whereas part of its resource is used to provide services, in particular, of cyberprotection to other consumers;

*system of electronic communications (communication system)* — systems of transfer, interconnection or routing, equipment and other resources (including passive network elements which enable transmission of signals by means of wire, radio, optical or other electromagnetic means, networks of mobile, satellite communication, electric cable networks where they are used for signal transmission) which enable transfer of electronic information resources, to include computers, other computer equipment, communication means and devices, information and telecommunication systems which have access (are connected) to the Internet and/or other global data transmission networks;

*technological process control system (technological system)* —automated or automatic system constituting to a set of equipment, means, complexes and systems for processing, transfer, reception of electronic information resources, which are organizationally, technically and functionally combined into a single entity, and is intended (applied) for organizational control and/or technological process control (including industrial, electronic, communication equipment and other technical and technological means), irrespective of presence or absence of access (connection) of the system to the Internet and/or other global data transmission networks.

Terms “*national security*”, “*national interests*”, “*threats to the national security*” are used in this law in the meaning determined by the Law of Ukraine “On the Fundamentals of the National Security in Ukraine”.

## **Article 2. Purpose and principles of application of the Law**

1. The purpose of this Law is to define regulations related to ensuring cybersecurity as a component of the national security in Ukraine, activities aimed at protection of the national interests and national information resources in the cyberspace, cyberprotection of systems of electronic communications of the state and local authorities, law enforcement agencies and military formations formed according to the laws of Ukraine, communication and technological systems which are used by critical infrastructure facilities.
2. This Law does not extend on:

- 1) the relations and services related to the contents of information which is transferred (processed, stored) in electronic communication systems and/or in technological process control systems;
- 2) the activities related to protection of information which is the state secret, communication and technological systems designed for its processing;
- 3) social networks, private electronic information resources on the Internet (including blog-platforms, video hosting servers, other web-resources) if such information resources do not contain information, which needs to be protected in accordance with the law, as well as relations and services related to operations of such networks and resources;
- 4) systems of electronic communications which do not interact with public networks of electronic communications, are not connected to the Internet and/or other global data transmission networks.

3. Application of legislation in the sphere of cybersecurity and decisions (measures) of public power entities, adopted in conformance with the standards of this Law have to comply with the following principles of:

- 1) minimum necessary regulation according to which the decision (measures) of public power entities have to be necessary and minimally sufficient for the achievement of goals and tasks defined by this Law;
- 2) neutrality and legal certainty, the greatest possible application of the national and international law to the cyberspace, in particular the International Humanitarian Law;
- 3) ensuring the protection of the rights of users of communication systems and/or consumers of services of electronic communications and/or services on information security, cyberprotection, including the rights concerning non-interference into private life and personal data protection;
- 4) transparency according to which the decisions (measures) of public power entities have to be properly justified and reported to the entities they concern, before coming into effect thereof;
- 5) balance between requirements and responsibility according to which the balance between establishment of responsibility for failure to meet requirements of cybersecurity and cyberprotection from one party and introduction of excessive requirements and restrictions from the other one can be provided;
- 6) non-discrimination according to which the decision, actions, inaction of public power entities may not lead to the legal or actual volume of the rights and duties of the person which is:  
different from the volume of the rights and duties of other persons in similar situations unless such difference is necessary and minimally sufficient for the satisfaction of general public interest;  
similar to the volume of the rights and duties of other persons in different situations if such similarity is not necessary and minimally sufficient for the satisfaction of general public interest;
- 7) matching of the requirements to the ensuring of cybersecurity of critical infrastructure facilities according to which application of legal provisions has to be as equivalent as possible to cyberprotection of communication and technological systems of critical infrastructure facilities, which belong to one sector of economy and/or which carry out similar functions.

The principles specified are applied without the advantage of any of them, taking into account the purpose and tasks of this Law.

### **Article 3. Legal foundations for ensuring cybersecurity of Ukraine**

The legal foundations for ensuring cybersecurity of Ukraine are comprised of the Constitution of Ukraine, the laws of Ukraine related to the foundations of the national security, fundamentals of domestic and foreign policy, electronic communications, protection of the state information resources and information which needs to be protected in accordance with the law, this and other laws of Ukraine, the Convention on Cybercrime, other international agreements, which were

considered as binding by the Verkhovna Rada of Ukraine, the decrees of the President of Ukraine, the acts of the Cabinet of Ministers of Ukraine, and also other regulatory legal acts which are adopted in view of implementation of the laws of Ukraine.

#### **Article 4. Objects of cybersecurity and cyberprotection**

1. The objects of cybersecurity are:

a person and a citizen, their constitutional rights and freedoms;

the society, sustainable development of information society and digital communicative environment;

the state, its constitutional system, sovereignty, territorial integrity and inviolability;

the national interests in all spheres of activity of a person, the society and the state.

2. The objects of cyberprotection are:

communication systems of state, municipal and other forms of ownership in which national information resources are processed and/or which are used in the interests of state authorities and local government authorities, law enforcement agencies and military formations formed according to the laws of Ukraine;

communication and technological systems of critical infrastructure facilities;

communication systems which are used for satisfaction of public requirements and/or realization of legal relationship in the spheres of electronic governance, electronic state services, electronic commerce, electronic document flow.

3. The complex of objects of cyberprotection constitutes to the critical information infrastructure and are subject to be entered into the state register of the objects of critical information infrastructure. The procedure of formation and ensuring of operations of the state register of objects of critical information infrastructure is approved by the Cabinet of Ministers of Ukraine.

#### **Article 5. Subjects of ensuring cybersecurity**

1. The President of Ukraine shall be responsible for overall management in the sphere of cybersecurity of Ukraine as a component of the national security, and determines the strategy of cybersecurity of Ukraine, its priorities and directions.

2. The National Security and Defence Council of Ukraine is responsible for coordination and control of activities of subjects of the security and defence sector which ensure cybersecurity of Ukraine. With this purpose it creates the National Coordination Centre of Cybersecurity as a working entity of the National Security and Defence Council of Ukraine; submits proposals to the President of Ukraine concerning formation and adjustment of the strategy of cybersecurity of Ukraine taking into account the real situation with the cybersecurity in Ukraine and the threats to the national security in the cyberspace.

4. The Cabinet of Ministers of Ukraine ensures the formation and implements the state policy in the sphere of cybersecurity of Ukraine, ensuring the rights and freedoms of a person and a citizen, protection of the national interests of Ukraine in the cyberspace, fight against cybercrime; organizes and provides the national system of cybersecurity with the necessary forces, means and resources; designs the requirements and ensures functioning of a system of audit of the information security of critical infrastructure facilities.

The subjects that are directly involved into activities of ensuring cybersecurity within their jurisdiction are:

ministries and other central executive authorities;

local state administrations and local self-governance authorities;

law-enforcement, intelligence and counter-intelligence agencies of Ukraine, subjects of operational and investigative activities;

the Armed Forces of Ukraine, other military formations formed according to the laws of Ukraine;

enterprises, institutions and organizations that are considered crucial infrastructure facilities;

companies, citizens of Ukraine and associations of citizens, other entities that perform activities and/or provide services related to the national information resources, information electronic services, implementation of electronic legal transactions, electronic communications, information security and cyberprotection.

5. The subjects of ensuring cybersecurity act within the powers determined by the Constitution of Ukraine, this Law, other laws of Ukraine in the corresponding areas, and also regulatory legal acts which are adopted to ensure implementation of the laws of Ukraine.

6. The subjects of ensuring cybersecurity act within their jurisdiction to prevent the use of the cyberspace for military, terrorist and other illegal and criminal purposes, to identify and react to cyberincidents and cyberattacks, and eliminate their consequences; they exchange information concerning actual and potential cyberthreats; develop and realize precautionary, organizational, educational and other activities in the area of cybersecurity and cyberprotection; ensure audit of information security to include audit of subordinated objects and objects which fall under their jurisdiction; other activities to ensure development and safety of the cyberspace.

#### **Article 6. Crucial infrastructure facilities**

1. Critical infrastructure facilities may include enterprises, institutions and organizations irrespective of their form of incorporation which:

- 1) carry out activities and provide services in the fields of power, transport, information and communication technologies, electronic communications, in the banking and financial sector,
- 2) carry out activities and provide services connected with functioning of life support systems for the population, in particular systems of water supply, production and supply of food products, healthcare;
- 3) perform functions of municipal, emergency and rescue services, services of the emergency aid to the population;
- 4) are listed among the enterprises which have strategic importance for economy and safety of the state;
- 5) are objects of potentially dangerous technologies and manufacturing.

2. The criteria and the procedure of listing objects among crucial infrastructure facilities, the list of such objects, general requirements to their cyberprotection and auditing for information security are approved by the Cabinet of Ministers of Ukraine.

3. The responsibility for ensuring cyberprotection of communication and technological systems of critical infrastructure facilities, audit for information security of such objects are entrusted to the owners and/or the heads of enterprises, institutions and organizations listed among the crucial infrastructure facilities.

#### **Article 7. Principles of ensuring cybersecurity of Ukraine**

1. Principles of ensuring cybersecurity are:

the rule of law, legality, respect to the basic rights and freedoms and protection of personal liberties, personal information and personality;

guarantees of the national interests of Ukraine;

openness, availability, stability and security of the cyberspace, development of the Internet and responsible conduct in the cyberspace;

public and private partnership, broad cooperation with the civil society in the sphere of ensuring cybersecurity and cyberprotection;

proportionality and sufficiency of cyberprotection efforts to real and potential risks, exercise of the inalienable right of the state for self-defence in case of certain aggressive acts in the cyberspace;

priority of precautionary measures;

inevitability of punishment for cybercrimes;

priority of development and support of the national scientific, scientific and technical and manufacturing potential;

international cooperation in order to strengthen mutual trust in the sphere of cybersecurity and establishment of common approaches to counteraction of cyberthreats, consolidation of efforts in investigation and prevention of cybercrimes, prevention of use of cyberspace for terrorist, military and other illegal purposes;

ensuring democratic civil control over military formations and law enforcement agencies formed according to the laws of Ukraine which work in the sphere of cybersecurity.

2. The state policy in the sphere of cybersecurity is based on the respect for the regulations and principles of the international law, the protection of the fundamental values determined by the Constitution and the laws of Ukraine, guarantees of the national interests of Ukraine in the cyberspace. Cybersecurity is a component of the national security of Ukraine.

3. Development and safety of the cyberspace, introduction of electronic governance, guarantees of safety of electronic communications and national information resources are one of the priorities of the development of information society and digital communicative space in Ukraine, a component of the state policy in the spheres of electronic communications and informatization.

#### **Article 8. National system of cybersecurity in Ukraine**

1. The national system of cybersecurity is the complex of entities that guarantee cybersecurity and include combined efforts of organizational, legal, political, social and economic, scientific and technical, law-enforcement, defensive, information, educational character, actions on information security and cyberprotection.

2. The main entities of the national system of cybersecurity are the State Service of Special Communication and Information Protection of Ukraine, the National Police of Ukraine, the Security Service of Ukraine, the Ministry of Defence of Ukraine and the General Staff of the Armed Forces of Ukraine, intelligence agencies, the National Bank of Ukraine, which according to the Constitution and the laws of Ukraine are responsible for the following tasks in accordance with the established procedure:

The State Service of Special Communication and Information Protection of Ukraine designs and implements the state policy concerning the protection in the cyberspace of the state information resources and information, that is required to be protected by the law, the cyberprotection of communication and technological systems of critical infrastructure facilities, performs the state oversight in these spheres; coordinates activities of other entities of cybersecurity concerning cyberprotection; designs and ensures proper operations of the national telecommunication network, introduction of the organizational and technical model of cyberprotection; carries out organizational and technical activities on prevention, identification and reaction to cyberincidents and cyberattacks and elimination of their consequences; informs about cyberthreats and the corresponding methods of protection against them; coordinates, organizes and executes vulnerability audit of security of communication and technological systems of critical infrastructure facilities; runs the state centre of cyberprotection for the purposes above;

The National Police of Ukraine ensures the protection of the rights and freedoms of a person and a citizen, the interests of the society and the state against criminal encroachments in the cyberspace; prevents, identifies, stops and investigates cybercrimes, raises awareness of citizens on safety in the cyberspace;

The Security Service of Ukraine prevents, identifies, stops and investigates crimes against the peace and safety of the mankind which are committed in the cyberspace; carries out counter-intelligence, operative-investigative activities, other efforts of rapid reaction and counteraction to the use of means and methods of intelligence operations in the cyberspace (cyberintelligence), the use of the Internet for terrorist activities, in particular technological terrorism (cyberterrorism); prevents cybercrimes that could pose a threat to the national interests of Ukraine;

According to its jurisdiction the Ministry of Defence of Ukraine, the General Staff of the Armed Forces of Ukraine is responsible for preparing the state for repelling of military aggression in the cyberspace (cyberdefence); for military cooperation with the NATO, related to the cyberspace safety and joint protection from cyberthreats;

the intelligence agencies of Ukraine carry out intelligence activities concerning the threats to the national security of Ukraine in the cyberspace, other activities and aspects related to the cybersecurity;

the National Bank of Ukraine designs requirements concerning cybersecurity of critical infrastructure facilities in the banking sphere is responsible for information security audit of such objects.

3. The national system of cybersecurity functions by:

designing and rapidly adjusting the state policy in the sphere of the cybersecurity aimed at the development of the cyberspace, achievement of compatibility with the corresponding standards of the EU and the NATO;

developing regulations and terminology framework in the sphere of cybersecurity, harmonization of normative documents in the sphere of electronic communications, information protection, information and cybersecurity according to the international standards and the standards of the EU and the NATO;

creating a competitive environment in the sphere of electronic communications, providing services on information security and cyberprotection;

using expertise of scientific institutions, professional and public organizations to draft conceptual documents in the sphere of cybersecurity;

having training exercises on emergency situations and incidents in the cyberspace;

ensuring system of audit of information security, introducing best world practices and international standards concerning cybersecurity and cyberprotection;

developing the network of response teams to computer incidents;

developing and improving the system of technical and cryptographic information protection;

meeting the requirements of protection of the state information resources and information, which needs to be protected in accordance with the law;

designing and ensuring proper functioning of the national telecommunication network;

introduction of the organizational and technical model of the national system of cybersecurity, as a complex of activities, forces and means of cyberprotection allocated for rapid (crisis) response to cyberattacks and cyberincidents, introduction of counter-measures, aimed at reducing vulnerability of communication systems;

creating requirements (rules, regulations) on the safe use of the Internet and provision of electronic services by public authorities;

public and private partnership in prevention of cyberthreats to critical infrastructure facilities, response to cyberattacks and cyberincidents, elimination of their consequences, in particular in the event of crisis situations, emergency and military state, during the special period;

regular review of the national system of cybersecurity, development of branch indicators of the cybersecurity;

strategic planning and program support in the sphere of development of electronic communications, information technologies, information protection and cyberprotection;

developing international cooperation in the sphere of cybersecurity, supporting international initiatives in the sphere of cybersecurity which comply with the national interests of Ukraine, increasing cooperation of Ukraine with the EU and the NATO to improve the capabilities of Ukraine in the sphere of cybersecurity, participation in the activities related to the increase of trust in the cyberspace, which are carried out under the aegis of the OSCE;

performing operative-investigative, intelligence, counter-intelligence and other activities aimed at the prevention, identification, stopping and investigation of crimes against peace and safety of the mankind, which are committed in the cyberspace, investigation, pursuit, operative efforts and counteraction to cybercrimes, counteraction to the use of means and methods of intelligence operations, use of the Internet for terrorist activities and for military purposes;

performing military and political, military and technical and other measures for the expansion of opportunities of the Military organization of the state, the sector of safety and defence in the cyberspace, establishing and improving forces, means and tools of the possible response to aggression in the cyberspace which can be applied as a means of deterrence of military conflicts and threats in the cyberspace;

restricting participation in the actions on ensuring information and cybersecurity of any companies that are controlled by the aggressor-state, as recognized by the Verkhovna Rada of Ukraine, or the states and persons that are influence by special economic and other restrictive measures (sanctions), approved on the national or international level due to the aggression towards Ukraine, as well as restricting the use of products, technologies and services of such entities in order to ensuring technical and cryptographic protection of the state information resources, strengthening of the state control in this sphere.

4. The procedure of functioning of the national telecommunication network, criteria, rules and requirements concerning rendering of services, costs of such services for the budgetary sphere, cost recovery of the state budget for the maintenance of the national telecommunication network, are approved by the Cabinet of Ministers of Ukraine.

#### **Article 9. Public-private partnership in the sphere of cybersecurity**

1. Public-private partnership in the sphere of cybersecurity is carried out by:

creating the system of timely identification, prevention and neutralization of cyberthreats, including the involvement of volunteer organizations;

improving digital literacy of citizens and safety culture in the cyberspace, complex knowledge, habits and abilities that are necessary for the support of the aims of cybersecurity, introduction of the state and public projects to increase the level of awareness of the society concerning cyberthreats and cyberprotection;

exchange of information between the public authorities, the private sector and citizens concerning threats to critical infrastructure facilities, other cyberthreats, cyberattacks and cyberincidents;

partnership and coordination of response teams to computer incidents;

involving experts, scientific institutions, professional organizations and public organizations into the preparation of key and industry-specific projects and regulatory documents in the sphere of cybersecurity;

providing consultations and practical assistance related to the response to cyberattacks.

creating initiatives and accredited consultation centres for citizens, industry and business to ensure safety on the Internet;

introduction of the mechanism of public control for the efficiency of ensuring cybersecurity;

holding a regular national summit with professional suppliers of business services, including insurers, auditors, lawyers, defining their role in assistance to the best risk management in the sphere of cybersecurity;

creating the system of vocational training and increase the competence of experts of different spheres related to cybersecurity.

2. Public-private partnership in the sphere of cybersecurity shall be applied with due regard to the features of the legal framework concerning individual entities and spheres.

#### **Article 10. Assistance to entities that are involved in cybersecurity in Ukraine**

State and local authorities, their public officials, enterprises, institutions and organizations irrespective of their form of incorporation, entities, citizens and associations of citizens are obliged to assist the entities that are involved in cybersecurity in Ukraine, to report information which became known to them concerning threats to the national security in the cyberspace, or any other cyberthreats to cybersecurity objects, cyberattacks and/or circumstances the information about which can assist with prevention, identification and elimination of such threats, counteraction to cybercrimes, cyberattacks and minimization of its consequences.

#### **Article 11. Responsibility for violation of the legislation in the sphere of cybersecurity**

Persons found guilty of violation of the legislation in the spheres of the national security, electronic communications and information protection, whereas cyberspace is the location and/or the method of a crime, any other faulty act, responsibility for which is provided for in the civil, administrative and criminal legislation, shall bear responsibility according to the law.

#### **Article 12. Funding of cybersecurity activities in Ukraine**

Funding of efforts and activities related to cybersecurity and cyberprotection shall be made from the state and local budgets, internal funds of companies, loans of commercial banks, funds of the international technical assistance projects and other sources which are not forbidden by the legislation.

#### **Article 13. International cooperation in the sphere of cybersecurity**

1. Ukraine shall cooperate with the foreign states, their law enforcement agencies and special services, and also with the international organizations that are combating international cybercrimes in the area of cybersecurity and in accordance to the international treaties concluded by Ukraine.

2. Being guided by the interests of ensuring of safety of a person, the society and the state, Ukraine shall persecute on its territory any persons involved into cybercrimes and/or crimes involving terrorism in the cyberspace and/or with its use, including the cases when such crimes were either planned or were committed outside of Ukraine, but caused damage to Ukraine, and in other cases provided for in the international treaties of Ukraine, approved as binding by the Verkhovna Rada of Ukraine.

3. According to the international treaties, approved as binding by the Verkhovna Rada of Ukraine, Ukraine may participate in the joint activities of cyberprotection, in particular in joint exercises involving entities in the sector of safety and defence, within the framework of collective defence with the observance of requirements of the laws of Ukraine "On the Procedure of Deploying Units of the Armed Forces of Ukraine to other states" and "On the Procedure of admission of units of armed forces of foreign states and their stay at the territory of Ukraine".

4. According to the legislation of Ukraine in the sphere of the foreign affairs, the entities involved into cybersecurity may, within their jurisdiction, carry out international cooperation in the sphere of cybersecurity directly on a bilateral or multilateral basis.

5. Ukraine shall provide information to a foreign state in all matters related to combating international cybercrimes, subject to the inquiry and in accordance with the requirements of the legislation of Ukraine and its international legal obligations. Such information can also be provided without the prior inquiry of a foreign state if it does not interfere with pre-trial investigation or court proceedings of a case and can help relevant authorities of a foreign state to stop a cyberattack, or rapidly counteract a crime in the cyberspace.

#### **Article 14. Oversight of legality of actions related to cybersecurity in Ukraine**

1. The Verkhovna Rada of Ukraine shall be responsible for oversight of compliance with the legislation of measures related to cybersecurity. Such oversight shall be made within the procedure, envisaged by the Constitution of Ukraine.

2. Oversight of cybersecurity measures of entities in the sector of security and defence, other public authorities shall be made by the President of Ukraine and the Cabinet of Ministers of Ukraine within the procedure, envisaged by the Constitution of Ukraine and the legislation of Ukraine.

3. Supervision of compliance with the requirements of the legislation by public authorities which are involved in cybersecurity is made by the General Prosecutor of Ukraine and the prosecutors authorized by him within the procedure, envisaged by the legislation of Ukraine.

#### **TRANSITIONAL PROVISIONS**

1. This Law shall come into effect in six months after it is published.

2. The Cabinet of Ministers of Ukraine within three months of this Law coming into effect, shall: bring its rules and regulations in conformity with this Law;

execute rules and regulations which follow this Law;

provide for the revision and cancellation by ministries and other central executive authorities of their rules and regulations which are non-compliant with this Law, have relevant authorities execute act which follow this Law.

3. To make following amendments to the Law of Ukraine "On the Fundamentals of the National Security of Ukraine" (The Official Bulletin of the Verkhovna Rada of Ukraine, 2003, No. 39, Article 351, 2006, No. 14, Article 116, 2010, No. 40, Article 527, 2013, No. 14, Article 89, 2013, No. 38, Article 499, 2014, No. 10, Article 119, 2014, No. 22, Article 816, 2015, No. 4, Article 13, 2015, No. 16, Article 110, 2015, No. 39, Article 375):

1) in sub-paragraph 3 of Article 1 add words "cybersecurity and cyberprotection" after the words "information security";

2) in sub-paragraph paragraph 3 of Article 2 in the first and the second sentence after words "The strategy of the national security of Ukraine" add words "The strategy of cybersecurity of Ukraine";

3) add words "The strategy of cybersecurity of Ukraine" to sub-paragraph 5 of Article 9 after the words "The strategy of the national security of Ukraine";

4) add words "The strategy of cybersecurity of Ukraine" to sub-paragraph 3 of Article 10 after words "The strategy of the national security of Ukraine".

#### **Chairman of the Verkhovna Rada of Ukraine**

**DRAFT LAW OF UKRAINE**  
**On state support to cinematography in Ukraine**

This Law defines the basic principles of state support to cinematography in Ukraine that is purposed to create favourable conditions for development of film industry and establish transparent procedures for state funding in order to implement projects in the field of cinematography.

Section I

GENERAL PROVISIONS

**Article 1: Scope of Law**

This Law extends to cinematography entities, legal entities regardless of their form of incorporation, individuals - entrepreneurs and individuals that are engaged in activities, related to cinematography and / or which are engaged in the production, storage, distribution, exhibition, other use of films and other audiovisual works in the territory of Ukraine.

**Article 2: Legislation concerning the state support to cinematography**

1. Legislation concerning the state support to cinematography consists of the Constitution of Ukraine, the Civil Code of Ukraine, this Law, the following Laws of Ukraine: "On culture", "On Cinematography", "On Television and Radio Broadcasting", "On Copyright and Related Rights", "On national assistance to businesses" and other acts of Legislation of Ukraine as well as international instruments, accepted as binding by the Verkhovna Rada of Ukraine.

2. The terms that are used in this Act are defined by this Law and the Law of Ukraine "On Cinematography".

Section II

BASIC PRINCIPLES OF STATE SUPPORT TO CINEMATOGRAPHY

**Article 3: Objective of state support to cinematography**

1. Cinematography is recognized as a cultural sphere, which is supported by the state with due regard for both objectives and principles set forth by this Law and other acts of legislation of Ukraine.

2. The objectives of state support to cinematography are:

- 1) create adequate legal and economic conditions necessary for the development of cinematography;
- 2) the formation of economically self-sufficient and competitive in the international markets of the industry of cinematography, production of films, other audiovisual works;
- 3) creation of an enabling environment and the development of modern infrastructure for the production, demonstration and dissemination of films;
- 4) the creation of a favorable tax regime and the provision of government support for the production, demonstration and distribution of national films in Ukraine and abroad;
- 5) increase tax revenues due to the development of the industry of cinematography;
- 6) the introduction of mechanisms to attract extra-budgetary funds, including foreign investments and funds from foreign entities cinematography;
- 7) to promote Ukrainian values, the Ukrainian language and culture, raising the interest of the mass audience for national films;
- 8) creation of appropriate legal mechanisms for the protection of intellectual property rights;
- 9) creating quality educational base for training highly qualified specialists in the sphere of cinematography;

- 10) creation of conditions for increasing the number of jobs, strengthening of social guarantees for the employees of cinematography;
- 11) development of material-technical base of cinematography, production, demonstration, distribution and promotion of films;
- 12) strengthening of international, intergovernmental, economic cooperation and the improvement of Ukraine's image in the international market as a country having a developed and highly competitive industry of cinematography.

**Article 4. The state support to cinematography is carried out according to the following principles:**

1. The principles of the state policy in the cinematography support sphere are:
  - 1) state protectionism of cinematography, including production, distribution, popularization and demonstration of films, in receiving investments, including foreign investments;
  - 2) making development of cinematography as one of the priorities of the state policy in culture sphere;
  - 3) efficiency of cinematography support, including production, distribution, popularization and demonstration of films;
  - 4) availability of the state support for entities of cinematography;
  - 5) ensuring participation of subjects of cinematography, associations, representing their interests, creative unions in both designing and implementation of the state policy in cinematography sphere;
  - 6) openness and transparency of the procedures to grant state support.

**Article 5. Guidelines of state support to cinematography**

1. The state provides and stimulates the production (creation), distribution, popularization and demonstration of national films in movie theater and video networks, on television, on the Internet etc., preservation, renewal, restoration of national and the best world examples of global cinematographic heritage, makes efforts to return national cinematographic heritage to Ukraine, which is currently located outside Ukraine, and strives towards protection of intellectual property rights.
2. The state support is provided to Cinematography entities regardless of their form of incorporation, which are involved in creation (production), distribution, demonstration, advertising and popularization of national films, promoting of domestic film industry services, basic and applied researches, carry out training and education in the field of cinematography, according to the procedure, envisaged by this Law.
3. The state supports the joint film production with foreign subjects of cinematography, use of the world's scientific and technological achievements in production, distribution, popularization, demonstration, advertising, storage, renewal, restoration of films.
4. The state participates in international and domestic cinematographic programs, organization of international and domestic film festivals, film markets, other activities in the field of movies and television, and works towards participation of cinematography entities of Ukraine in them.
5. The State guarantees the protection of intellectual property rights of all cinematography entities in the territory of Ukraine and other states in accordance with Ukrainian legislation as well as international instruments, accepted as binding by the Verkhovna Rada of Ukraine.
6. The state supports the cinematography, creating favorable conditions in the sectors of tax, custom, currency and other types of regulations.
7. The State supports activities in the field of cinematography by introducing in its legislation special conditions and procedures for public procurement of products, services and works with the state funds, where those are required for production, distribution and demonstration of national films, as well as through other mechanisms envisaged by this Law and other regulatory legal acts.

**Article 6. Basic principles and financial capability of state support to cinematography**

1. The state support to cinematography is carried out at the expense of the State fund of support to cinematography of Ukraine (hereinafter referred to as the Fund), it is managed by the central executive authority that implements the state policy in the sphere of cinematography.

2. The central executive authority that implements the state policy in the sphere of cinematography is the main manager of the Fund, and the it shall use the resources of the Fund solely based on decisions of the Council for the state support to cinematography.

3. The Fund is replenished from the following sources:

1) Funds of the general fund of the State Budget of Ukraine in the amount of at least 0.2 % of general fund expenditures of the State budget of Ukraine for the previous year.

2) other funds of General Fund and Special Fund of the State Budget of Ukraine, received in accordance with the Budget Code of Ukraine, including:

from the sale of property rights to use films, preprint materials of films and motion-picture prints, created at the expense of the State Budget of Ukraine and the Fund's funds, revenues by the entities of cinematography that have received state support for making (production) of films, from property rights to use such films, preprint materials of films and films prints, as well as from the sale of property rights to use films and film shots that are in accordance with the plans of production of Derzhkino of USSR, the Ministry of culture of USSR, and their successors from the period of 1953 to 1991 were made (developed) at the expense of state (budget) funds in state film studios and belonged to the state;

the funds received in accordance with legislation on lotteries;

the funds paid by cinematography entities for processing of applications for subsidies that are envisaged by sub-paragraphs 2-4 of paragraph 1 of Article 7 of this Law;

3) other income that is not prohibited by legislation.

4. Expenses for support of central executive authority activities that implements the state policy in the sphere of cinematography shall be provided in the State Budget of Ukraine according to a separate budget program.

5. In addition to the Fund's sources of financial support to cinematography may also be carried out using:

1) grants, gifts, charitable contributions and donations and other forms of charity;

2) local budget funds;

3) other sources that are not prohibited by legislation.

#### **Article 7. Forms of state support to cinematography**

1. The state support to cinematography is carried out in such forms:

1) public procurement of goods, works and services, required for production (creating) of documentary, education, animated films, films for children's audience (including artistic and cultural significance), films of artistic and cultural significance (author's films) and debut-films in the amount of up to 100% of the total estimated cost of film production;

2) granting of the state subsidy for the production (creation) of the film (story, animated, etc.), the volume of which may not exceed 80% of the total estimated cost of film production. The compulsory condition of such subsidy is certification by the applicant of availability of their own funds, needed to fund the film production, in the amount of at least 20% of the total estimated cost of film production;

3) granting of the State subsidy for the production (creation) of a TV film, TV series the volume of which may not exceed 50% of the total estimated cost of production of a TV film and TV series. The compulsory condition of such subsidy is certification by the applicant of availability of their own funds, needed to fund the production of the TV film and TV series, in the amount of at least 50% of the total estimated cost of production of the TV film and TV series;

4) granting of the State subsidy to return the qualified expenses that were made by the entity of cinematography during film production (creation);

- 5) granting of the State subsidy for the purchase of mobile digital complexes, vehicles for demonstration of national films in small towns, villages, rural settlements with a population of up to 250 thousand inhabitants, or e-films complexes, the volume of which may not exceed 50% of the cost of respective complexes;
- 6) granting of the State subsidy to finance basic and applied researches, as well as training and education (including production (creation) of films by students, studies in Ukraine and abroad, and so forth) in the sphere of cinematography;
- 7) granting of the State subsidy for distribution and (or) popularization of national films with full or partial payment using Fund funds to hold creative meetings, presentations, first shows, advertising (regardless of used advertising devices), and other necessary measures, including the participation of creative groups of films;
- 8) granting of the State subsidy to pay for activities concerning conservation, renewal, restoration and popularization of the national cinematographic heritage, its return to Ukraine from abroad, as well as to pay the manufacturing of archive sets of preprint materials of national films that meet modern technological requirements of prolonged conservative storage in the state film fund of Ukraine, of archive sets of preprint materials, preprint materials, and film copies of all national films;
- 9) compensation of the interest rate to entities of cinematography that were paid according to bank loans, which have been received by such entities for construction and / or reconstruction of buildings, facilities and other infrastructure objects that will be involved in the process of film production, or for the construction and / or reconstruction and / or engineering re-equipment of cinemas, located in inhabited localities with population up to 250 thousand inhabitants;
- 10) granting of the State subsidy for film committee's activities, aimed at promotion of locations in the territory of Ukraine, as an attractive place for creation of cinematographic and audio-visual products.

The list of state support to cinematography that is given in this article is not exhaustive. The Cabinet of Ministers of Ukraine may establish additional forms of state support to cinematography. The forms of the state support envisaged by this article shall be granted on irrevocable basis, unless otherwise provided by this Law.

2. The national films are the objects of state support in the forms, specified by items 1-3 of the first paragraph of this article, and the films that have passed cultural verification, specified in Annex 1 hereto are objects of the state support in the form specified by item 4 of the first paragraph of this article.

3. The amount of funds that is allocated for each budgetary period to finance each form of the state support specified by the first paragraph of this article is determined by the Council for the state support of cinematography and can be changed by decision of the Council within relevant budgetary period.

However, the amount of funds that is allocated for a certain budgetary period to finance the forms of state support specified by items 5-10 of the first paragraph of this article shall be guaranteed at the level of at least 12% of amount, allocated for financing all forms of the state support, specified by items 1-4 of the first paragraph of this article.

#### **Article 8. Conditions for granting state support to entities of cinematography;**

1. The state support is granted to entities of cinematography that are listed in the State Register of producers, distributors and demonstrators of films and meet one of these criteria:
  - 1) they are makers, producers of documentary, educational, animated and author films, films for children audience and debut-films;
  - 2) they are makers and producers of films, tele- and radio organizations that have a valid license for broadcasting, which have their own materials and resources (or use it on other legal grounds) and use it for film production (pavilions and / or equipment) and which during the last three years before the date of application for obtaining of state support completed production of at

least two TV and movie films with the running time of at least 70 minutes each, or two TV series with the total running time of all series is at least 400 minutes, and these films or series have received state certificates with a right of distribution and demonstration in the manner, specified by the law;

3) entities of cinematography, which distribute and / or demonstrate films.

The state support is also granted to business entities that provide higher education to students in the sector of culture and art (cultural and artistic education), and students of higher education in the field of culture and art, who receive state support through the higher education institutions, as well as state subsidy for film committee's activities.

The establishment of additional criteria to be met by the entities of cinematography, other than those specified by the Law, is prohibited.

Article 11 of this Law shall specify features of granting the state support to entities of cinematography, which are not residents of Ukraine.

The list of documents that confirm the compliance of entities of cinematography, which apply for state support, to the criteria specified in paragraph one of this article, is determined by the central executive authority, which ensures formation of state policy in the sphere of cinematography.

2. In order to get state support, the entities of cinematography, envisaged by paragraph one of this article, shall address the central executive authority that implements the state policy in the sphere of cinematography, with appropriate application and submit documents, specified by this Law and other regulations, adopted on the basis of this Law.

Application forms and a list of documents that are added to them are specified by the central executive authority, which ensures formation of state policy in the sphere of cinematography, taking into account the requirements of this Law.

3. On the date of execution of the agreement on granting state support, the entity of cinematography confirms that he/she has the funds required to obtain the state support in the forms, envisage by items 2, 3 and 5 of the first paragraph of Article 7 of this Law, with one of the following documents:

1) bank document, issued by a banking institution of Ukraine, which confirms that there is a required amount of money in the bank account, opened in the name of the subject of cinematography, which applies for state support;

2) credit agreement, loan agreement, guarantee agreement concluded with a bank or other financial institution, which specifies the amount of required funds and terms to provide this money to the entity of cinematography, which applies for state support;

3) agreement with an investor, producer, maker of films, including agreement on joint production of a film, which contains the finance schedule of film production;

4) agreement with a distributor, demonstrator, including television and radio organization, which contains the schedule of receipt by the subject of cinematography, which applies for state support, of necessary funds in the amount, specified by Article 7 of this Law;

5) audit conclusion and budget estimate on actual expenses incurred by the entity of cinematography, which applies for state support, related to production (creation) of the film.

4. The entity of cinematography pays the fee for consideration of application for state subsidies, envisaged by items 2, 3 or 4 of the first part of Article 7 of this Law. Amount and procedure of this fee is envisaged by law.

5. Granting of the State support shall be executed by the relevant agreement, which is concluded between the central executive authority that implements the state policy in the sphere of cinematography, and the entity that is defined by this article. Fundamentals of the contracts on granting state support (depending on the form of state support) are determined by the central executive authority, which ensures formation of state policy in the sphere of cinematography.

If the state support is granted and is subject to be paid back, conditions and repayment amount of such support shall be specified by the contract, envisaged by this paragraph, with due regard to this Law.

6. Agreement envisaged by paragraph five of this Article shall not be concluded in the event when the state support is granted in the form of subsidies for reimbursement of the part of qualified expenditures, made by the entity of cinematography during the production (creation) of films, specified by item 4 of the first paragraph of Article 7 of this Law.

### **Article 9. Council for the state support to cinematography**

1. For the purpose of effective disbursement of the funds of the Fund, the Cabinet of Ministers of Ukraine forms the Council for state support to cinematography (hereinafter referred to as the Council) consisting of nine persons, whose members are appointed for a term of two years. After a two-months term, credentials of all Council staff are terminated automatically. The same person cannot be a member of the Council for more than one consecutive term.

2. The Council includes representatives that are proposed by:

- 1) the central executive authority, which ensures the formation of state policy in the sphere of cinematography - one person;
- 2) the central executive authority, which implements state policy in the sphere of cinematography - one person;
- 3) creative unions, public associations, business associations, the statutory instruments of which envisage activities in the sphere of cinematography and / or television and which are currently active (within the last three years they regularly, at least once a year, organize public events, related to the sphere of cinematography: they initiate public discussions on public matters, public debates in professional sphere, and so forth.), - seven persons, one of which must have higher legal education, and the other must have higher economic education.

3. The representatives, proposed by creative unions, public associations, business associations, must meet the following criteria:

they must have at least three years of experience in the sphere of cinematography, holding at least one of these positions:

- a) head or deputy head of the legal entity involved into production, distribution, demonstration of films;
- b) director/producer;
- c) film producer;
- d) lawyer;
- e) economist (financial expert)
- f) Playwright;
- g) film expert

4. The following persons may not be members of the Council:

- 1) individuals with outstanding criminal record, which has not expunged in accordance with the law;
- 2) individuals holding public servant positions, as well as other individuals that are restricted or constrained from holding more than one office and combine with other activities according to the Law of Ukraine "On Prevention of Corruption", or persons, who have a conflict of interests in accordance with the Law of Ukraine "On Prevention of corruption", and / or, who were held liable for corruption offenses.

5. The powers of a Council member may be terminated early by the Cabinet of Ministers of Ukraine in the following cases:

- 1) application on termination of the powers at one's request;
- 2) leaving abroad for permanent residence;
- 3) availability (inurrence) of grounds, envisaged by paragraph four hereof;
- 4) coming into legal force of a court judgment regarding Council member;
- 5) incapability to hold office for health reasons for three or more months (subject to appropriate medical certificate);

- 6) coming into legal force of a court decision on recognition of Council member as deprived of legal capacity;
- 7) fact of absence at five meetings of the Council, except for cases when such absence was due to treatment, vacation, business trip that is confirmed by relevant documents;
- 8) death.

The list of grounds for early termination of the powers of Council member is exhaustive. Early termination of the powers of a Council member on any other grounds except for those specified, shall be prohibited.

In case of early termination of the powers of a Council member, the Cabinet of Ministers of Ukraine shall appoint a new Council member within one month, pursuant to the terms and procedures, specified by this article;

6. The Council subject to the submission of central executive authority, which implements state policy in the sphere of cinematography, makes decision related to:

- 1) the establishment of expert committees (the decisions of which are advisory in nature) that need to include professional creative people, film experts, producers, economists, distributors, films' providers and other persons who are prohibited from being the Council members. The procedure of establishing and operations of expert committees, as well as their terms of reference shall be approved by the central executive authority, which implements state policy in the sphere of cinematography;
- 2) granting state support to cinematography according to forms, specified by the first paragraph of Article 7 of this Law;
- 3) changes of fundamental parameters of a film in the process of its production upon application of an entity of cinematography, which has obtained state support (full or partial). Fundamental parameters of a film include creative concept of a film, overall estimate, estimate value, director/producer, writer, running time of the film, production terms).

7. Chairman of the Council, Deputy Chairman of the Council and Secretary of the Council shall be elected at its meeting.

In order to ensure the activities of the Council, the duties of the Council secretariat shall be exercised by the secretariat of the central executive authority, which implements state policy in the sphere of cinematography.

8. The Council members are not public servants. For execution of their duties, the Council members receive payment - allowance, paid from the Fund resources. The Cabinet of Ministers of Ukraine establishes both size and procedure of allowance to the Council members.

9. The central executive authority, which implements state policy in the sphere of cinematography, annually but no later than two months after the end of the relevant budgetary period, shall report to the Council on use of the Fund resources.

10. The Council meeting is considered duly constituted if it is attended by at least six members of the Council. The Council's decision shall be deemed adopted if at least five members have voted for it. During the Council meeting, the Council secretary shall keep minutes of the meeting, signed by both chairperson of the meeting and the Council secretary.

11. Council meetings are public. Council meetings may be scheduled or extraordinary. The scheduled meetings are held in accordance with the approved plan at least once a month. Extraordinary meetings are held as requested by the central executive authority, which implements state policy in the sphere of cinematography or Council members.

12. The central executive authority, which implements state policy in the sphere of cinematography shall publish at its official website:

- 1) information on funds credited to the Fund, and their amount - within three working days after the funds are credited;
- 2) applications (without annexed materials) for state support - within three working days after the receipt;

- 3) information on the date and time of the Council meetings with specification of the list of the applications for granting state support, which are planned to be considered at such meeting, and the names of the cinematography entities that have filed such applications - five working days prior to the day of the relevant Council meeting;
- 4) draft decisions (complete transcripts) regarding matters of the agenda of a relevant meeting - five working days prior to the day of the relevant Council meeting;
- 5) decision on granting state support (complete transcript) - within five working days after it is made.

13. Oversight of the targeted use of funds, granted for the production of national films, is implemented according to the legislation by the State government bodies that are authorized to do it.

#### **Article 10: Procedure of granting state support to the cinematography entities;**

1. The state support to the cinematography is granted to cinematography entities of Ukraine based on the Council's decision, which shall be made according to the procedure, specified in Article 9 of this Law, herewith:

1) the Council decision on granting state support in the forms, specified by items 1-3 of the first part of Article 7 of this Law shall be taken based on the results of competitive selection (pitching) after analysis and assessing of the following information added to the application: script; budget; production script; producer vision; marketing strategy; contract on transfer or alienation of exclusive proprietary copyright on the script of the film; contract on transfer or alienation of exclusive proprietary copyright on film dialogues, if they are created separately from the film script; agreement on overall film production (for films that are co-produced with other countries); copies of constituent documents of cinematography entities (if the applicant is a legal entity); information about approximate composition of film crew; letter of guarantee from the applicant as to the absence of the restrictions, specified by Article 12 of this Law; letter of guarantee from the applicant that confirm the availability of his/her own funds that are necessary for timely financing of film production (if required in accordance with paragraph three of Article 8 of this Law) by the date of conclusion of the agreement on granting state support; the document that confirms payment of the fee for processing of the application in cases specified by paragraph four of Article 8 of this Law, as well as other documents that the applicant finds necessary to submit to the Council for processing of his/her application.

When making decision, the Council shall additionally assess and consider:

ingenuity and quality of the script;

the applicant's experience as a producer or a maker of the film of corresponding genre - economic results (in particular, box office sales of produced films), the results of participation in both domestic and international film festivals, awards received in film festivals, economical efficiency of films distribution in Ukraine and abroad, ratings of television review during broadcasting (demonstration) of film (films) by television and radio organizations, efficiency of sales on the Internet and in retail on hard media;

successful work of a director-producer in connection with his/her participation in production (creating) of films - the results of participation in both domestic and international film festivals, awards received in festivals, economical efficiency of films distribution in Ukraine and abroad, study results of television review during broadcasting (demonstration) of film (films), the effectiveness of sales on the Internet and in retail on hard media;

the projected ratio of cost of production (creation) of the film and the quality of produced (created) film, the time schedule for its production (creation).

The procedure and criteria of holding a creative competition (pitching), and the procedure for the decision making by the Council shall be approved by the central executive authority, which ensures the formation of state policy in the sphere of cinematography;

2) the decision of the Council on granting state support for creation of films in the form, specified by item 4 of paragraph one of Article 7 of this Law, shall be taken after considering the results of cultural verification of such films, this verification is provided in attachment 1 hereto and consists of cultural criteria (maximum number of points - 16) and production criteria (maximum number of points - 26). The film is considered to have passed the cultural verification if scored at least 2 points according to cultural criteria and at least 18 points according to the production criteria;

3) the Council decision on granting state support in the form, specified by item 9 of paragraph one of Article 7 of this Law, shall be adopted in accordance with the procedure approved by the Cabinet of Ministers of Ukraine;

4) the Council decision on granting state support in the forms, specified by items 5-8 and 10 of the first paragraph of Article 7 of this Law, shall be adopted in accordance with the procedure approved by the central executive authority, which ensures the formation of the state policy in the sphere of cinematography;

2. If the amount of funds which was actually received by the Fund from the sources, specified by this Law, is insufficient to provide state support, which is granted in the current budgetary period, the funding resumes in the next budgetary period.

If there is a decision to grant state support to the entity of cinematography in accordance with this Law, but due to absence or insufficiency of funds in the Fund, the state support had not been received by such entities of cinematography or has been received in part, the central executive authority that implements the state policy in the sphere of cinematography, issues a certificate on the existing debt to such entity of cinematography. However, the losses incurred by the entity of cinematography due to non-receipt or incomplete receipt of the state support, are not reimbursed.

3. The state support for production (creating) of film is granted in the form of public procurements, or in the form of the state subsidy for production of film or in the form of state subsidy for return of part of qualified expenditures, incurred by the entity of cinematography during the production (creation) of film. In the event the contract for granting of the state support is binding by this Law, then the contract shall be executed with the entity of cinematography to receive the state support, subject to availability of the documents, specified in paragraph three of Article 8 of this Law. Failure to provide such documents to the Council within 90 days from the date of the decision on granting state support may be the ground to refuse to conclude the contract and refusal to grant state support.

4. The film, demonstration and distribution of which is prohibited in Ukraine in accordance with the legislation cannot be the subject of the state support.

**Article 11. The features of the state support to cinematography in the form of state subsidy to return of the qualified expenditures made by the entity of cinematography at the time of production (creation) of the film**

1. In order to create favourable conditions for Ukrainian and foreign entities of cinematography, and for them to produce films on the territory of Ukraine, using scenic-shooting means of production located in Ukraine, as well as stages, places (locations), services of Ukrainian entities of cinematography, hotel services, and so forth, the Ukrainian and foreign entities of cinematography are granted state support in the form of state subsidy for return of part of the qualified expenses incurred by the entity of cinematography at time of production (creation) of the film.

2. The state subsidy to return part of qualified expenses that were incurred by the entity of cinematography during film production (creation) is granted in such amounts:

1) reimbursing part of qualified expenses (payments) which were actually incurred by the entity of cinematography for production (creation) of films - in the amount of 25 percent of the total amount of such qualified expenses (payments);

2) reimbursing part of actual expenses (payments) made by the entities of cinematography - in the amount of 10 percent of the total amount of such expenses, incurred by the entity of cinematography for payment of remuneration to actors and film crew, which are non-residents of Ukraine, carry out their activities and (or) reside outside the territory of Ukraine, in case if such payments are subject to taxation in the territory of Ukraine.

3. The state subsidy specified by item 1 of paragraph 2 of this article may be granted upon condition of abiding to everything of the following:

1) the expenses were fully or partially incurred in Ukraine at the time of production of the film in favour of the person, who does business and is registered as a business entity in the territory of Ukraine;

2) the film meets, at least, one of these requirements:

a) story-based film or animated film intended for demonstration in cinemas, with total running time of at least 74 minutes;

b) story-based TV film or animated film, which has one or several episodes, with total running time of at least 74 minutes;

c) documentary film, intended for demonstration in cinemas and (or) TV, with total running time of at least 52 minutes;

d) TV series or animated TV series, or separate part (episode), with total running time of at least 40 minutes;

e) advertising film (the film that serves as an exclusive advertisement for popularization of a brand name, company name, name of an individual or legal entity) or music video (a film, whose sound track consists of a single music track), intended for TV demonstration, in cinemas, and (or) for placement on the Internet, with a total running time of at least 20 seconds;

3) film has passed the cultural verification, specified by attachment 1 to this Law;

4) producer is an entity of cinematography of Ukraine or a foreign entity of cinematography, which has concluded the contract on film production (or its part) with the entity of cinematography of Ukraine;

5) total amounts of qualified expenses of estimated cost of the film, associated with its production in the territory of Ukraine, on the day of application, specified by paragraph nine of this article, amounts to at least:

seven thousand of minimum wages - for films mentioned in sub-item "a" of item 2 of this paragraph;

one thousand seven hundred fifty of minimum wages - for films mentioned in sub-item "b" of item 2 of this paragraph;

one thousand one hundred of minimum wages - for films mentioned in sub-item "c" of item 2 of this paragraph;

five thousand two hundred fifty of minimum wages - for films mentioned in sub-item "d" of item 2 of paragraph three of this article;

three thousand of minimum wages - for advertising films mentioned in sub-item "d" of item 2 of this paragraph. However, 10 percent of the amount of compensated qualifying expenses of films' production should be sent by the entity of cinematography in support of production of debut-films of Ukrainian filmmakers in the manner, specified by the central executive authority that implements the state policy in the sphere of cinematography.

4. For the purposes of this article the qualified expenses shall mean 80 per cent of payments for the delivered goods, works provided and services rendered, including but not limited to wages, fees, rewards that are directly related to the film, which is produced in the territory of Ukraine, and which are paid to the entity that conducts its business and registered as a business entity in the territory of Ukraine and is a registered tax-payer.

5. For the purposes of this article the following expenses are not considered as qualified:

1) depreciation of fixed assets, other non-current tangible and intangible assets;

- 2) expenses for negotiations;
- 3) financial expenses (including interest on loans);
- 4) operating expenses that are not included in the cost of film production
- 5) expenses to distribute a film;
- 6) travel expenses of members of film crew and actors during set of a film outside the territory of Ukraine;
- 7) wages or any other form of remuneration that is paid (provided) to actors or film crew members, who are non-residents of Ukraine, except for qualified expenses, specified in sub-item "b" of the paragraph four of Article 9 of this Law.

6. The entity of cinematography, which wishes to obtain subsidy to return the part of qualified expenses made during production (creation) of films, envisaged by this Article, shall address before the finalization of film production to the central executive authority that implements the state policy in the field of cinematography, with application to receive a preliminary information whether the film in production (or planned for production) has passed a cultural verification.

The entity of cinematography shall add the following documents to the application for a preliminary information whether the film in production (or planned for production) has passed a cultural verification: director's script of the film, production schedule of the film, budget of the film, contract (contracts) between Ukrainian and foreign entity of cinematography regarding film production (if production of the film is made in cooperation with a foreign entity of cinematography), extract from United state register of legal entities and individuals-entrepreneurs about such entity, copies of its constituent documents, information about composition of film crew, letter of guarantee about the absence of restrictions, specified by article 12 of this Law, the document that confirms payment of a fee for processing of application in accordance with paragraph four of Article 8 of this Law (optional).

7. Within two days from the date of receipt of both application and documents, specified in paragraph six of this article, the central executive authority that implements the state policy in the sphere of cinematography, presents such application to the Council. The Council shall examine the application and documents attached to it and give a preliminary conclusion of the Council regarding cultural verification of the film which is subject to such application within 30 days from the date the application was filed to the Council.

8. The central executive authority that implements the state policy in the sphere of cinematography, within 40 days from the date of receiving an application and documents, specified in paragraph six of this article, subject to a preliminary Council's conclusion, specified in paragraph seven of this article, gives to the entity of cinematography the preliminary conclusion regarding cultural verification of the film, mentioned in the application.

9. Within one year from the date of finishing film production the entity of cinematography, which received the preliminary conclusion about cultural verification of the film for the purpose of obtain the state subsidy for the return of part of qualified expenses, made during the production (creation) of films, should apply to the central executive authority, which implements the state policy in the sphere of cinematography, with an appropriate application.

The following documents (originals or their duly certified copies) shall be attached to the application:

- 1) budget of the film;
- 2) contract (contracts) between Ukrainian and foreign entity of cinematography concerning production of the film (if any);
- 3) act (acts) of performed works (rendered services), highlighting qualified expenses that shall be returned, and primary accounting documents to confirm this amount (if the film was produced with the participation of a foreign entity of cinematography);
- 4) report on film production and incurred qualified expenses;
- 5) letter of guarantee that for the period from the date of application, specified by paragraph six of this article, to the day of applying for the state subsidy, there was no changes to the documents that were submitted in order to receive a preliminary conclusion (specified in paragraph

seven of this article) in particular as on the date of applying for a state subsidy there are not restrictions, specified by Article 12 of this Law. If the documents, specified by paragraph six of this Article, were amended, letter of guarantee shall not be filed, and it is necessary to file amended documents;

6) the audit report, which confirms the rate of qualified expenses, prepared in accordance with the Ukrainian legislation and auditing standards.

10. The Council within 30 days from the date of receipt of the application of the entity of cinematography to the central executive authority that implements the state policy in the sphere of cinematography with attached documents, specified by paragraph nine of this article, shall examine such application and attached documents and give a conclusion on cultural verification by such film and whether there reasons to grant the state subsidy to the entity of cinematography to return part of the qualified expenses incurred by the entity of cinematography at time of production (creation) of the film.

11. The central executive authority that implements the state policy in the sphere of cinematography, within 40 days from the date of receipt of the application and documents, specified by paragraph nine of this article, on the basis and in accordance with the conclusion of the Council, specified by paragraph ten of this article, shall decide on granting state subsidy to the entity of cinematography to return part of the qualified expenses made by the entity of cinematography at the time of production (creation) of the film, or on refusal to grant such subsidy to the entity of cinematography, in whole or in pp.

12. The payment of the state subsidy to return part of the qualified expenses, made by the entity of cinematography at the time of production (creation) of the film is carried out by the central executive authority that implements the state policy in the sphere of cinematography, using the Fund resources, by transferring funds to the bank account of the applicant within 10 banking days from the day of a relevant decision.

13. Foreign entities of cinematography (including producers) receive state support in the form of state subsidies to return part of the qualified expenses, made by the entity of cinematography at the time of production (creation) of the film through Ukrainian entity of cinematography on the basis of contract that is concluded between such entities according to which the Ukrainian entity of cinematography is engaged in the production of the film in the territory of Ukraine.

#### **Article 12. Limitations regarding granting state support to cinematography**

1. The state support to cinematography is not granted to the entities of cinematography:

- 1) which do not meet the criteria, specified in Article 8 of this Law;
- 2) if such entities, their members (shareholders), the ultimate beneficial owners (controllers), or their officers are the residents of the aggressor state or have an active criminal record that has not been expunged in a prescribed legal procedure;
- 3) which are in the process of liquidation, bankruptcy or reorganization of a legal entity or termination of entrepreneurship activity of a sole proprietor;
- 4) which have filed inaccurate information and documents during applying for granting state support or submitted an application to be added to the State Register of producers, distributors and demonstrators of films;
- 5) which have had tax debt for more than two months from the date of its accrual at the time of application;
- 6) which previously received state support, and which was granted unlawfully, as found by court or other relevant authorities;
- 7) which misused the state support and have not voluntarily cured such breaches or permitted non-fulfilment, improper fulfilment or breach of contract terms and conditions on granting state support granting without justifiable reasons, and have not cured such breaches, as evidenced in accordance with the applicable procedure (as demonstrated by factual information);
- 8) which have had arrearage in wages to employees for more than one calendar month.

2. The state support is not granted to the films, authors and performers of which are added to the list of individuals, who pose a threat to national security, and / or which are subject to sanctions in accordance with the Law of Ukraine "On sanctions".

### **Article 13 Intellectual property rights to the films, produced with the state support**

1. In the event a film was produced with the state support in the form, specified by item 1 of paragraph one of Article 7 of this Law, all intellectual property rights to such film shall be transferred (alienated) in favour of a state-owned legal entity, specified by a central executive authority that implements the state policy in the sphere of cinematography, and stated in the contract on granting state support.

2. In the case of film making with state support in the form, specified by paragraphs 2 and 3 of the first part of Article 7 of this Law, the intellectual property rights shall be transferred (alienated) in favour of the entity of cinematography, which has received state subsidy. However, such entity of cinematography throughout the period of validity of copyright to the film is required to pay to the Fund 50 percent of the profits received from rent and / or transfer of rights to the use of such film, but not more than 50 per cent of the amount, received as state support. In case of transfer (alienation) by the entity of cinematography, which has made film with state support, intellectual property rights to the film in full (or in part) the entity that has acquired rights to such film will be obliged to pay in favour of the state the revenues, mentioned in this paragraph, in the same amount.

3. In the event a film was produced with the state support in the form, specified by item 4 of paragraph one of article 7 of this Law, intellectual property rights belong to the entity of cinematography, which created a film and received state subsidy. In the future, such entity of cinematography receives all revenues from the use of such rights, from realization of rights to use such film.

### Section III

#### CONCLUDING AND TRANSITIONAL PROVISIONS

1. This Law shall come into effect on the day following the day of its publication.

2. Prior to specification by the Law the of both amount and procedure of payment for processing applications to grant subsidies, specified by items 2-4 of paragraph one of article 7 of the Law, amount and procedure for such payment shall be specified by the Cabinet of Ministers of Ukraine.

3. Amend the following laws of Ukraine:

1) the Civil Procedure Code of Ukraine (The Official Bulletin of the Verkhovna Rada of Ukraine, 2004, No. 40-42, p. 492):

Add paragraph five to Article 114 to read as follows:

"5. Legal actions arising from breach of intellectual property rights with the use of Internet, shall be made at the location of the central executive authority that implements the state policy in the sphere of intellectual property";

Add item 8 to paragraph 152 to read:

"8) introducing an obligation to ensure that it is impossible for Internet users to access objects of intellectual property rights, the eligibility (placement) of use of which on the Internet is disputable";

2) in the Economic Procedure Code of Ukraine (The Official Bulletin of the Verkhovna Rada of Ukraine, 1992, No. 6, p. 56):.

add item 9 to paragraph one of article 12 to read:

"9) the proceedings in disputes that are within the jurisdiction of economic courts, concerning infringement of intellectual property rights using the Internet";

add a sentence to paragraph four of Article 16 to read: "The proceedings in disputes on infringement of intellectual property rights using the Internet shall be examined by the economic court at the location of the central executive authority that implements the state policy in the sphere of intellectual property";

3) sub-paragraph one of paragraph one of Article 176 of the Criminal Code of Ukraine (The Official Bulletin of the Verkhovna Rada of Ukraine, 2001, No. 25-26, p. 131) shall be amended to read as follows:

"1. Illegal reproduction, distribution of works of science, literature and art, computer programs and databases, as well as illegal reproduction, distribution of renderings, phonograms, videograms and network programs, their illegal duplication and distribution on audio and video tapes, floppy disks and other medias, camcording, cardsharing or other intentional infringement of copyright and related rights, as well as funding of such if it has caused substantial material damage";

4) in the Code of Ukraine on administrative offences (The Official Bulletin of the Verkhovna Rada of USSR, 1984, supplement to No. 51, p. 1122).:

add Articles 164<sup>17</sup> and 164<sup>18</sup> to read:

"Article 164<sup>17</sup>. Breach of conditions and regulations, which determine the termination procedure of infringement of copyright and / or related rights, using the Internet

Breach of conditions and regulations, which determine the termination procedure of infringement of copyright and / or related rights, using the Internet, including failure, by the owner of the web site, a hosting services provider, specified by the legislation on copyright and related rights related to actions aimed at ensuring that it is impossible for Internet users to access objects of intellectual property rights, failure to submit or untimely submission of response to the application of the entity of a copyright and / or related rights by the owner of a website, a hosting service provider, furnishing of designedly inaccurate information in response to the application of the entity of a copyright and / or related rights by the owner of a website, a hosting service provider, as well as the failure by the owners of web sites, hosting service providers to post on their own web sites and in public databases of domain names records (WHOIS) of the reliable information about such owners - Shall be punishable by a fine of five hundred to one thousand tax-exempt minimum wages of citizens.

The same, executed repeatedly within a year after imposition of administrative sanction for one of breaches of law, mentioned in the first paragraph of this article - Shall be punishable by a fine of one thousand to two thousand tax-exempt minimum wages of citizens.

Article 164<sup>18</sup>. Providing knowingly unreliable information in the application for termination of the copyright and / or related rights, committed with use of the Internet

Providing knowingly unreliable information as to the availability of copyright and / or related right, in the application on abating of breaches of copyright and / or related rights with use of the Internet according to the legislation concerning copyright and related rights, - Shall be punishable by a fine of one thousand to two thousand tax-exempt minimum wages of citizens.

in Article 221 numerical symbols "164<sup>5</sup> - 164<sup>16</sup>" shall be replaced with numerical symbols "164<sup>5</sup> - 164<sup>18</sup>"

item 10 of paragraph one of Article 255 after the numerical symbols "164<sup>13</sup>" shall be supplemented with the numerical symbols "164<sup>17</sup>, 164<sup>18</sup>";

5) in the Law of Ukraine "On Cinematography" (The Official Bulletin of the Verkhovna Rada of Ukraine, 1998, No.22, p. 114 as amended):

Articles 3 and 91 shall be amended to read:

"Article 3. Definition of Terms

In this Law, the terms are used in the following meaning:

*author of film* - is an individual, whose own efforts are manifested into the creative concept and / or methods of its implementation in the film;

archived film elements package - the complex of film media of a master-copy of a film, which consists of a negative image (duplicate negative), the reference and theatrical positive image, optical soundtrack, annotation of a film as well as digital source elements of a film, paper and photographic materials and so forth that are intended for life-long storage;

*the exclusive right to a film* - a property right of a legal entity or an individual that gives the right only to this person to use the film in any form and in every authorized way;

*the performer in a film*- an individual, whose own efforts are manifested into implementation of creative concepts of film authors in the process of its creation;

*Filmmaker* - the entity of cinematography, which took over responsibility for the production of the film;

*film production* - the process of creating a film that combines efforts of authors and performers of the film and other entities of cinematography, which consists of periods (stages) of production (development of film projects, development of directors' script, preliminary, shooting, editorial phase);

*preprint materials of film* – physical media of an original product of cinematography, the use of which allows to produce (duplicate) film copies;

*Presenter of a film* – an entity of cinematography, which carries out demonstration (performance) of the film;

*demonstration (performance, public notice and public demonstration) of film* - a professional cinematographic activity, which consists of film exhibition to the audience in the premises that are designated for it (cinemas, other film-spectator facilities), using video units, as well as broadcasting channels of television;

*The aggressor state* - is a state that is in any way occupied the part of the territory of Ukraine or which commits acts of aggression against Ukraine and which is recognized by Verkhovna Rada of Ukraine as the aggressor-state or occupying state;

*The State Film Fund* - the state institution of culture, which carries out archive and research activities for the purpose of development of film fund, renewal, restoration and preservation of works of national and world cinematographic heritage, dissemination of relevant information;

*film dubbing* – creative and production activities, consisting of synchronous reproduction of a language part of a film sound track, using another language through translation that meets integrated articulation of actors;

*film preservation* – an activity aimed at ensuring long-term storage of films preprint materials and film copies and their restoration and preventive treatment;

*shooting period of film's production* – shooting of a film project;

*foreign cinematography entity* - is a legal entity established or registered in accordance with legislation of a foreign country that is located outside Ukraine, which organizes or both organizes and funds the production, demonstration and distribution of a film, and / or which carries out film production;

*film committee* - an institution, division of institutions of state or municipal ownership, the purpose of which is popularization of Ukraine and its regions as attractive locations for filming, as well as the efficient use of the capacity of Ukrainian service industry in the field of cinematography;

editorial phase of a film production – finishing of film footage, including film editing, visual effects, sound recording, creating titles, and so forth;

*a national film* - a film that is created by entities of cinematography, production of which is fully or partially implemented in Ukraine, the main (basic) version of a language part of a sound track is created using Ukrainian and Crimean Tatar language, and whereas such film scored a necessary

amount of points in accordance with point-based system, specified by this Law. In accordance with a motivated decision of the Council for state support to cinematography on the grounds of application of the entity of cinematography, if it is justified by artistic, creative concept of authors of the film, the main (basic) version of a national film (except for children-oriented and animated films) may use other languages in the volume, which may not exceed 10 per cent of a total length of all dialogues of film cast. During demonstration of a national film in Ukraine such dialogues should be dubbed or subtitled using Ukrainian language;

*sound recording of a film* - a creative and production activity, which consists of replacement of film sound track with another, non-synchronous one that transmits the content of a film language track;

*the authorities of the aggressor state* - law enforcement agencies (militia, police, and so forth), armed forces, judicial agencies, internal troops, any special forces, authorities that are responsible for guarding and protection of the state border, authorities that are responsible for implementing tax and customs policy, authorities that are responsible for carrying out interrogation or pre-trial (previous) investigation, public prosecutions authorities, authorities that are responsible for national safety or the safety of top leadership of the aggressor state, units that are responsible for execution of any peace-keeping missions, any other armed, military, quasi-military, paramilitary or other combat units of the aggressor state, their constituent or structural units, including organizations the names of which do not correspond to the official names, adopted in the aggressor state, but which according to performed functions belong to any of the mentioned agencies or organizations;

*preproduction stage of a film production* - development of a shooting project, which may consist of a shooting script and explication, development of separate episodes and scenes, photographic and movie tests, sketches, shooting cards and operator explication, detailed storyboards, splicing and technical developments, photographic materials, sound design explication, calendar-staged plan, general estimate of production expenses and so forth;

*entrepreneurial activity in cinematography* - an activity, associated with production, distribution and demonstration (performance) of films for a profit;

*film producer* - an individual or a legal entity, which organizes or both organizes and funds production and distribution of a film;

*producer system* - a system in the sphere of cinematography, which under the conditions of a film market provides interaction and functioning of all entities of cinematography for the purpose of production, distribution and demonstration (performance) of films;

*promotion of a film* - a dissemination of information about a film in any form and in any manner that is designed to create or support awareness of a viewing audience and its interest towards a film;

*professional cinematographic activity* - an activity which is carried out by the entities of cinematography on a professional basis and is the source of their income;

*soviet agencies of the state security* - are the All-Russian Extraordinary Commission for Combating Counter-Revolution and Sabotage (VCheka, Cheka), All-Ukrainian Extraordinary Commission for Combating Counter-revolution, speculation, sabotage and official crimes (VUCHK), the State Political Directorate (GPU), the United State Political Administration (OGPU), the People's Commissariat of Internal Affairs (NKVD), the People's Commissariat for State Security (NKGB), the Ministry for the State Security (MGB), the Committee for the State Security (KGB), as well as their territorial and structural divisions;

*film project development* - a period of film production, within the scope of which information and methodology on a preparation of a film project to the shooting period is carried out (writing of literary script for a fiction film, storyboard for animation, extended treatment for non-fiction films, creation of a presentation visual material, establishment of production estimate, development of

production expenses, schedule of works, and other documents that are necessary for film production);

*distribution of a film* - a process within the scope of which the entities of cinematography in any manner, directly or indirectly, propose the film to a viewing audience (distribution, renting, promotion, advertising and so forth);

*propagator (distributor, provider) of a film* - an entity of cinematography, which has the right to distribute a film;

*directors' script development* - a development of the on-screen interpretation of literary script by a director-producer and other authors of the film, elaborating of production and creative solutions and specification of technical and economic indicators;

*Cinematography entity* - an individual or a legal entity who is engaged in any kind of professional activity in the sphere of cinematography;

*film subtitling* - a creative and production activity, which consists of translation of a film from its original language into another language, and fixing this translation with inscriptions directly on a film copy;

*scenically-staged means of film production* - objects, devices and facilities, which during the shooting period of film creation (operating cycle) are used by moving their image or images of the process of their transformation (amortization) to the audiovisual work by means that are available to filmmaker;

*participant of a film* - for the purposes of Article 15, the participant of a film is an individual, who has participated in creation of film produced after 1991, as a performer of any role, participant of a documentary (non-fiction) films, performer of music that is used in a film, author of the script and / or texts or dialogues, a director-producer and a producer;

*film* - an audiovisual work (including TV series and their separate episodes), which consists of episodes, connected with each other by a creative concept and image means, and is also a result of joint activity of its authors, performers and producers;

*film copy* - a copy of a film, made with the use of preprint materials of a film."

"Article 9<sup>1</sup>. The central executive authority powers, which ensures the formation of the state policy in the sphere of cinematography

The powers of the central state authority, which provides formation of the state policy in the sphere of cinematography include:

- 1) ensure formation of the national policy in the sphere of cinematography;
- 2) define priority activities of the central state authority that implements the state policy in the sphere of cinematography;
- 3) ensure general access of public to the works of Ukrainian, European and international cinematography;
- 4) establish conditions for the development of all types of cinematography activity;
- 5) promote artistic development of young authors and movie artists;
- 6) support to the development of education, artistic development in the sphere of cinematography;
- 7) promote expansion of cinematography culture, development of cinematography activity, popularization of cinematography;
- 8) any other powers, specified by the law";

Add Article 9<sup>2</sup> to section II to read as follows:

"Article 9<sup>2</sup>. Powers of the central state authority, which implements the state policy in the sphere of cinematography domain

Powers of the central government authority, which implements the state policy in the sphere of cinematography include:

- 1) generalization of practical application of legislation concerning the issues that belong to its jurisdiction, development of suggestions as to the improvement of legislative acts, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine, ministry regulatory acts;
- 2) analysis of the activity of cinematography entities, preparation of conclusions regarding the trends of development of national cinematography;
- 3) preparing suggestions regarding structural improvement and restructuring of a national film industry, development of a producing system;
- 4) execution of a program of film production, economic justification and calculations of limits of state budget expenses;
- 5) development of proposals to the program of creation and distribution of national films;
- 6) conclusion of contracts on purchase of goods, works and services, required for production (creation) of preprint film materials, audiovisual works;
- 7) cooperation with domestic and foreign research institutions and educational institutions for the purpose of exchange of experience regarding implementation of the state policy in the sphere of cinematography;
- 8) assistance with preservation and rational use of national and world cinematographic heritage;
- 9) maintenance of the state register of producers, distributors and film demonstrators;
- 10) maintenance of a film state register;
- 11) issuing state certificates on rights of distribution and demonstration of films;
- 12) participation in organization of tenders on selection of investment and innovative projects in the sphere of cinematography;
- 13) development of suggestions regarding conditions of rent, dubbing, distribution and performance or demonstration of films with indexes that have viewing audience limitation;
- 14) monitoring of quota observation of national film demonstration during the use of the national screen time, distribution conditions and film demonstration, specified by the state license for the right of distribution and demonstration of films, and upon availability of the mentioned state license;
- 15) drafting reports on administrative violations in the sphere of cinematography;
- 16) public oversight (control) in the sphere of cinematography, in accordance with legislation;
- 17) consulting, organizational and methodical assistance in the sphere of cinematography;
- 18) participation in organization and holding of film festivals, cinema exhibitions, film premieres, press conferences, other events, related to popularization of the national film industry;
- 19) participation in preparation of drafts of international agreements, suggestions regarding conclusion and denouncement of such agreements, conclusion of international agreements, enforcement of obligations of Ukraine according to the international agreements related to cinematography;
- 20) cooperation with domestic and foreign film archives;
- 21) granting the status of joint manufacture products in accordance with the international agreements to audiovisual works in Ukraine;
- 22) granting the national status to audiovisual works;
- 23) organization and support of work of the State cinematography support council and examination board on cinematography;
- 24) delivery of draft decisions to the state cinematography support council, as well as implementation of state cinematography support council decisions, regarding:
  - formation of examination boards according to the procedure, specified by the law;
  - granting of the state support to the entities of cinematography according to the procedure and forms, defined by the law, including conclusion of agreements on granting state support;
- 25) any other powers, specified by the law“;

add articles 10<sup>1</sup> and 15<sup>2</sup> to read as follows:

“Article 10<sup>1</sup>. Estimate elements, point-based system for national films

Assessment elements for fiction films (points):

- 1) author film crew:

production director - 3;  
author of the script - 3;  
music maker - 3;  
photography director - 3;  
art director - 3;

2) cast:

first part character - 3;  
second part character - 2;  
third part character - 1;

3) technical film crew (shooting maintenance support team):

sound designer - 1;  
picture editor - 1;  
studio or shooting location - 5;  
mounting location - 3;

4) producer - 3;

total - 34.

Estimate elements for cartoon (animated) movies (points):

Author of the concept - 1;  
author of the script - 2;  
hand artist - developer of characters - 2;  
music maker - 1;  
filmmaker - 2;  
art director and story board writer - 2;  
art director - 2;  
background writer - 2;  
at least 50 percent of expenses for services of the previous scene assembler for animation (layout) in the country - 2;  
at least 50 percent of expenses for services, related to animation in the country - 2;  
at least 50 percent of expenses for visualization services in the country - 2;  
at least 50 percent of expenses for services, related to image arrangement (compositing) in the country - 1;  
mounting location - 1;  
sound designer - 1;  
total - 23.

Estimate elements for documentary films (points):

filmmaker - 3;  
author of the script - 2;  
photography director - 3;  
picture editor - 2;  
shooting location - 2;  
editing place - 2;  
music maker - 2;  
audio producer - 2;  
Total - 18.

When counting a total number of points, a relevant assessment element is taken into account, if:  
individuals, indicated in the paragraphs one, two and three of this article, which participated in creation of the film, are citizens of Ukraine;  
mounting location, mentioned in paragraphs one and three of this article, is located on the territory of Ukraine or at least 50 percent of total expense amount for editing is carried out in Ukraine;  
studio or shooting place, mentioned in paragraphs one and three of this article for the majority of shooting days is located it the territory of Ukraine;

expenses that are mentioned in paragraph two of this article are carried out in favour of Ukrainian cinematography entities, which actually render corresponding services and are not agents or other inter-mediators regarding purchase of corresponding services of their actual representatives;

In item 2 of paragraph one of this article, the first, the second and the third character parts are defined according to a number of production days.

Number of points of an assessment element "producer" is defined taking into account the coefficient, which is calculated as ratio of number of film producers, which have Ukrainian citizenship or located in the territory of Ukraine and a total number of film producers, who participated in film production.

If in accordance with this Law the film is classified as the national, the central state authority, which implements the state policy in the sphere of cinematography, upon application of a producer or a film maker, shall issue a certificate of the national film.

The fact of the national film certificate presumes that film is national and it does not require confirmation for the purposes of the state authorities. This assumption can be overruled in a general procedure, if it turns out that the information and documents supplied by the applicant for obtaining the national film certificate contained unreliable information.

Issuance procedure of the national film certificate shall be defined by the central state authority, which implements the state policy in the sphere of cinematography.

Point based system for national films envisages that according to assessment elements a fiction film should at least get 18 points, at least 8 points - for nonfiction films (documentary), 15 points - for animated (cartoon) films.

"Article 15<sup>2</sup>. Usage of the national screen time

In order to promote the film production in Ukraine, as well as ensure access of spectators to watch works of national cinematographic heritage, television and radio organizations, which are in accordance with the licenses carry out TV broadcasting or multiplexing using radio frequency resource, other demonstrators of films, which are not television and radio organizations, are obliged within a period before 01 January 2022 to demonstrate national films, other films, produced by the cinematography subjects of Ukraine, and national cinematography heritage works for at least 15% of a total monthly time of films demonstration and after 01 January 2022 - at least 30% of total monthly time of film demonstration";

Article 17 shall be amended to read:

"Article 17. Storage of film preprint materials and film copies, consolidating of the state films fund  
Archive package of films preprint materials, film preprint materials, which was created in full or partly at the expense of the Ukrainian state budget, as well as film copies, which were created in Ukraine at the expense of legal entities of private proprietary form and individuals, are stored in the state films fund of Ukraine. The procedure for transfer of films to the State films fund of Ukraine, storage conditions of film preprint materials and film copies as well as provisions on the state films fund of Ukraine shall be approved by the central executive authority, which ensures formation of state policy in the sphere of cinematography.

State ensures preservation and promotes consolidation of film collections (funds) of institution of various proprietary form and individuals in the state films fund of Ukraine, providing its consolidating with national films, films, which were produced in the territory of Ukraine, and other films.

All films and film materials of Ukrainian origin and co-production, which are stored in the state films fund of Ukraine, are the nationwide property of Ukraine – the national cultural heritage.

Production of preprint materials archive package of national films and films, which were produced in the territory of Ukraine in a passing year is provided at the expense of the state budget of Ukraine in the following year according to submission of the state film funds of Ukraine on the basis of decision of the central state executive authority, which provides implementation of state policy in the sphere of cinematography. If creation of archive package containing preprint materials of national films and films that were produced in the territory of Ukraine, is carried out using

resources of legal subjects of private ownership form and individuals, the cost of such creation shall be reimbursed to the maker from state budget of Ukraine.

Production of preprint materials archive package of national films and films, which were produced in the territory of Ukraine in previous years is defined by the central state executive authority, which provides implementation of state policy in the sphere of cinematography, according to submission of collegiate expert body of central state executive authority, which implements the state policy in the sphere of cinematography, taking into account budgetary provisions index-numbers for the passing year.

The central state executive authority, which implements the state policy in the sphere of cinematography, subject to a motion of a collegiate expert body of the central state executive authority, may take a decision on the necessity to establish archive package with film preprint materials, which was produced outside Ukraine with the resources of private or state filmmakers, and that has artistic or historical value and related to Ukraine with its theme, scene of action etc., or the author of which is (was) resident of Ukraine or have Ukrainian origin.

Cooperation with national and foreign film archives is within the jurisdiction of the central state authority, which implements the state policy in the sphere of cinematography, through the state films fund of Ukraine".

The Cabinet of Ministers of Ukraine shall approve provision on national screen time and its use by entities of cinematography and television;

section IV shall be removed;

6) paragraph 2 of Article 12 of the Law of Ukraine "On advertising" (The Official Bulletin of Verkhovna Rada of Ukraine, 2004, No.8, P. 62; 2008, No. 18, P. 197) shall be amended to read:

"2. Social advertising shall not have references to specific products and/or its producer, advertiser (except for cases, when an advertiser is a public association or charitable organization), objects of intellectual property rights, which belong to the product manufacturer or advertiser of social advertising, except for advertising of national films.

Advertising of national films amounts to social advertising and can be placed, as well as distributed, subject to compliance with the requirements, specified in sub-paragraph 12 of paragraph one of article 8 of this Law";

7) in the Law of Ukraine "On copyright and related rights" (The Official Bulletin of Verkhovna Rada of Ukraine, 2001, No.43, P. 214; 2003, No. 35, P. 271; 2004, No. 13, P. 181; 2011, No. 32, P. 314; 2003, No. 21, P. 208; 2014, No. 2-3, P. 41):

article 1 shall be supplemented, taking into account the alphabetical order with definitions of the following content:

"*web-site* - a pool of data, electronic-digital information, other objects of copyright and (or) related rights etc., interrelated and structured within a web-site address and (or) account profile of this web-site owner, access to which is carried out through address on the Internet network, which can consist of a domain name, records on catalogues or requests and / or numeric address in the Internet-protocol;

*web-page* - a component of a web-site, which can include data, electronic (digital) information, other objects of copyright and/or related rights etc.;

*Web-site owner* - an entity that owns the account and establishes the procedure and conditions of a web-site use. Unless indicated otherwise, the web-site owner shall be the entity who registered a corresponding domain name by which access to the website shall be made, and/or receiver of the hosting services;

*Web-page owner* - an entity that owns the account, which is used to publish a web page on the web site, which controls and/or publishes electronic and digital information within this web page. Web-page owner is not a web-site owner, if he/she has an account that enables to upload information to the web page and control it independently from web-site owner;

*hyperlink* – standardized record of the web-site address or its part (web-page, data) in accordance with the Internet network standards. If a hyper-link directs to certain part of a web-site (web-page), then in addition to the domain and/or numeric address in Internet- protocol, it can include records on catalogues or bookmarks and conditions for web-page access, which can be replicated or saved on devices that can read and replicate electronic-digital information on the Internet;

*electronic (digital) information* - audio-visual works, music (with or without text), computer programs, phonograms, videograms, programs (broadcasts) of broadcasting organizations, which are stored in electronic (digital) form that is capable for reading and replication by the computer, which can exist or/and be stored in form of one or several files (parts of files), records in databases of computer storage devices, servers and etc. on the Internet, as well as programs (broadcasts) of broadcasting organizations, which shall be rebroadcasted using the Internet;

*camcording* – a video recording of a audiovisual work during its public demonstration in cinemas and other facilities designed to show film, by entities, located in the the same premises where such public demonstration is taking place, for any intentions without permission of an entity of copyright or related rights;

*Card sharing* - providing access in any form and by any means to program (broadcast) of broadcasting organization, the access to which is limited by the subject of copyright and (or) related rights with use of technical protection means (subscriber card, code and so forth), bypassing such technical protection means, as a result of which the mentioned program (broadcast) can be received or in any other way become accessible without use of technical protection means;

*account* - Internet record on the computer equipment (computers, servers) , standardized according to the Internet standards, connected to the Internet, which is used to identify the user (for example, a web-site owner) on such equipment, includes data on access to certain part of catalogues and software of computer equipment, as well as defines the rights to such access, which provide the account owner with the capability to add, delete, modify electronic (digital) information as well as web-site data, provide access to web-site or its parts, separate data to other entities, discontinue operations of such web-site or its part, within account;

*hosting service provider* – an entity that provides the web-site owners with services and/or resources to put web-sites or their parts on Internet and provides access to them through the Internet. A web-site owner who places its web-site or its part on the Internet using its own resources and/or independently provides access to it through the Internet is a concurrent hosting service provider”;

in Article 50:

in sub-paragraph one words “judicial protection” shall be replaced with the words “protection of such rights, including judicial”;

sub-paragraph “b” shall be amended to:

“b) piracy in the sphere of copyright and (or) related rights - publishing, replication, import to Ukraine's customs territory, export from Ukraine’s customs territory and distribution of infringing works (including computer programs and data bases), phonograms, videograms, illegal disclosure of programs of broadcasting organizations, camcording, card sharing, as well as Internet-piracy, in other words any actions, which in accordance with this article are deemed as violation of copyright and (or) related rights using the Internet”;

complete with paragraph “j” of the following content:

“j) camcording, cardsharing”;

in sub-paragraph two of paragraph one of article 52:

item “c” after the word “claims” shall be supplemented with words “to court”;

item “d” after the word “claims” shall be supplemented with words “to the court”;

add item “k” to read:

"k) ensure protection of a copyright and (or) related rights in accordance with the procedure, specified by article 52<sup>1</sup> of this Law";

add articles 52<sup>1</sup> and 52<sup>2</sup> to read:

"Article 52<sup>1</sup>. Termination procedure of violations of copyright and (or) related rights on the Internet

1. During the violation of a copyright and (or) related rights by any entity, that was committed using the Internet, the entity of copyright and (or) related rights (hereinafter - applicant) shall be entitled to appeal to the owner of the web-site and (or) a web-page, where corresponding electronic (digital) information is placed or in other way used and submit an application on termination of violation. Application on termination of violation shall be submitted in accordance with the procedure envisaged by this article.

Procedure of protection of copyright and (or) related rights, envisaged by this article, is applied to the relations concerning the use of audio and visual works, musical works, computer programs, videograms, phonograms, programs (broadcasts) of broadcasting organizations.

2. Application on termination of violation shall include:

a) information on an entity of copyright and (or) related rights, required for its identification: applicant name (title); residence (stay) or location, e-mail address and postal address, to which the web-site owner or other entity shall send its information in cases provided by the Law; identification data on registration of legal entity in host country, particularly in trade, banking or court register, including register details, registration number;

b) type and name of a copyright and (or) related rights object (type and name of copyright / related rights objects), which is described in the application on violation of the rights;

c) motivated affirmation that the applicant has proprietary rights to intellectual property of an object of copyright and (or) related rights, mentioned in corresponding application, with reference to the foundations of such rights and their validity;

d) hyper-link to the electronic (digital) information, published or in other way used on the web-site.

e) request to block access to electronic (digital) information on the web-site;

f) information on supplier of hosting services, which provides services and (or) resources for publishing of corresponding web-site, namely: name; e-mail or postal address, where the web-site owner or other entities shall send the information in cases that are specified by this Law;

g) affirmation of the applicant that information provided in the application information is reliable, and that the information that the applicant owns rights which were allegedly violated has been verified by the lawyer, through intermediary of which this application is submitted.

An applicant shall file the application on termination of violation exclusively through intermediary of the lawyer. Lawyer sends corresponding application subject to identification of an applicant, establishing of its contact details and confirmation of the fact of availability of applicant rights which were allegedly violated with the documents that are submitted by the applicant.

Application is supplemented with a copy of one of the documents that in accordance with the Law 'On the Bar and legal practice' certifies the powers of the lawyer to provide legal assistance to the applicant.

An applicant (officer of the applicant) shall bear responsibility for submitting intentionally unreliable information concerning its intellectual property rights, the violation of which is described in the application.

An applicant shall send an application on termination of violation to the web-site owner and its copy to the hosting services provider that renders services and (or) resources for uploading a corresponding web-site.

3. In the absence of circumstances, envisaged by paragraph four of this Article, a web-site owner shall immediately and no later than 48 hours from the moment of receiving application on termination of violation, be obliged to terminate the access to electronic and digital information in regard to which application has been submitted, and provide both an applicant and a hosting services provider with information on employed measures in accordance with the requirements of this article.

4. An entity that has received application on termination of violation can refuse to satisfy it, if:
- a) an entity addressed by the applicant to terminate the violation, shall be entitled to use electronic (digital) information mentioned in the application, regarding the use of which the application has been submitted, subject to the delivery of notification on refusal in accordance with the requirements, specified by paragraph five of this article;
  - b) an entity, to whom the application on termination of violation has been addressed, is not the owner of the web-site mentioned in this application;
  - c) application on termination of violation has been prepared in violation of the requirements, specified by this article on the assumption that the entity, which received it, notifies the applicant about it according to the requirements, specified by paragraph 5 of this article.

5. A website owner within 48 hours from the moment of receiving refusal to grant approval of the application on termination of violation on the basis, specified by the items "a" and "c" of paragraph four of this article shall send a refusal message to the applicant and a hosting service provider in accordance with the information, marked in the corresponding application, in accordance with paragraph "e" of paragraph two of this article.

Refusal notification shall include the following information:

- a) sufficient information on a web-site owner to make a statement of claim: web-site owner's name (title); residence (stay) or location, e-mail address and postal address; identification data on registration of a legal entity in a host country, particularly in trading, banking and court register, including register details, registration number;
- b) electronic (digital) information that has been refused to be blocked;
- c) information on corresponding provision of paragraph four of this article, on the basis of which a web-site owner has refused to satisfy the application on termination of the violation.

6. In the event a web-site owner that has received the application on termination of the violation, isn't the owner of a web-page where electronic (digital) information which needs to be blocked is stored, both rights and obligations between web-site owner and the applicant shall be established according to provisions of this paragraph.

Within 24 hours from the moment of receiving of application on termination of the violation a web-site owner shall be obliged to send a copy of the received application by e-mail (or other messaging system approved on the corresponding web-site) to web-site owner. Application shall be sent using contact details provided by the web-page owner to the web-site owner.

Concurrently with sending an application on termination of the violation to a web-site owner, a web-site owner shall send a message to the applicant, notifying the latter that he/she does not own the web-page, specifies the time, when he/she sent the copy of the application to the web-page owner and gives a hyper-link as to the conditions of public legal transaction that identifies rules of web-site use for third parties.

A web-page owner shall consider an application on termination of violation that were received from the web-site owner and shall be obliged to provide a reply to web-site owner in accordance with the procedure and within terms, specified by paragraphs three-five of this article for web-site owner. However, a web-site owner exercise rights and obligations, specified by paragraphs three-five of this article for web-site owner, providing hyperlink to web page, where corresponding electronic (digital) information is stored.

A web-site owner, within 24 hours from the moment of receiving from the web-page owner of answer to the application on termination of the violation, sends it to both to an applicant and a hosting service provider according to details, mentioned in corresponding application. If within 48 hours from the moment of sending application on termination of violation to a web-page owner, a web-page owner fails to provide a web-site owner with answer in the form, specified by paragraphs three-five of this article, a web-site owner shall personally block access to electronic (digital) information that is mentioned in the application on termination of violation. A web-site owner shall notify the applicant and a hosting service provider on applied efforts within 72 hours from the

moment of receiving an application on termination of violation by the web-site owner and provides information about itself to the extent, specified by item "a" of paragraph five of this article. If within 48 hours from the moment of sending an application on termination of violation to a web-page owner, the web-page owner informed on refusal on the ground and in the form, specified by paragraphs 3 and 4 of this article, the copy of such message shall be sent by the web-site owner to the applicant not later than within 72 hours from the moment of receiving by web-site owner of application on termination of violation.

7. An applicant shall be entitled to appeal directly to a hosting service provider that provides services and (or) resources for placement of corresponding web-site, with the application on termination of violation that was made by the web-site owner, if:

- a) a web-site owner, within terms, specified by this article, failed in whole or in part, to take measures, specified by paragraphs 3 and 5 of this article, or if a web-site owner, who is not a web-page owner failed to take measures, specified by paragraph 6 of this article;
- b) a web-site or public record databases on domain names (WHOIS), lacks information on a web-site owner to the extent that allows to contact him with the application on termination of violation, specified by paragraph 2 of this article. Such data includes information with an e-mail and postal addresses to contact a web-site owner.

The application on termination of violation committed by a web-site owner shall include grounds that justify contacting a hosting service provider, specified by items "a" or "b" of paragraph 7 of this article.

An applicant shall appeal directly to a hosting service provider that renders services and (or) resources for placement of corresponding web-site, with a respective application through a lawyer. Lawyer sends corresponding application, subject to identification of the applicant, establishing his/her contact details and verification of documents, submitted by the applicant, that confirm alleged violation of applicant's rights.

The application on termination of violations committed by a web-site owner shall include information, specified in items "a", "d", "e", "f" of paragraph 2 of this article. The application shall be supplemented with a copy of one of the documents that in accordance with the law 'On the Bar and legal practice' certifies the powers of a lawyer to give legal assistance to the applicant. In cases, specified in items "a" of paragraph 7 of this article, application shall include time of sending an application on termination of violation to a web-site owner and a hosting service provider, time, when a web-site owner should have taken measures envisaged by this article, as well as explanation how the applicant has identified the contact details of a web-site owner.

In the event there are no ground to disregard the application on termination of violation by the web-site owner envisaged by paragraph 8 of this Article, a hosting services provider shall be obliged immediately but not later than in 24 hours from the moment of receiving such application, to send its copy to the web-site owner. By sending a copy of application to the web-site owner, the service provider of technical storage shall explain to the web-site owner his/her rights and obligations, related to this application, as well as legal consequences of failure to act as envisaged by this article.

Within 24 hours from the moment of receiving a copy of application on termination of violation by the web-site owner from the hosting services provider, a web-site owner shall take measures envisaged by paragraphs three and five of this article and notifies the hosting services supplier about this by sending a message on applied measure or a notification of refusal.

If case a web-site owner failed to take measures envisaged above within 24 hours from sending a copy of application on termination of violation to the web-site owner, a hosting service provider independently restricts the access to electronic (digital) information that has been specified in the application. A hosting service provider shall notify the applicant and a web-site owner on the applied measure within 48 hours from the moment a hosting service provider received an application on termination of violation by a web-site owner.

8. A hosting service provider shall be entitled to disregard a application on termination of violation by a web-site owner, on such grounds:

- a) the application doesn't meet the requirements, specified by paragraph 7 of this article;
- b) a hosting service provider doesn't render services and (or) resources for web-site mentioned in the application;
- c) an applicant has appealed to a hosting services provider in absence of the grounds, specified by paragraph 7 of this article.

Within 24 hours from the moment of receiving an application a hosting services provider shall notify a web-site owner that application on termination of violations has not been considered, and provide legal grounds for this, as envisaged by this paragraph.

9. A web-site owner shall be entitled to appeal to a hosting services provider from whom he/she have received information on applied measure in accordance with paragraph 7 of this article, with a refusal notification, specified by paragraph 5 of this article, requiring the renewal of access to electronic (digital) information. If such application meets the requirements, specified by paragraph 5 of this article on notification on refusal, a hosting service provider shall promptly, no later than within 48 hours after receiving such notification, forward the copy of this message to an applicant. If the message does not meet the requirements, specified by paragraph 5 of this article on notification on refusal, a hosting services provider shall notify a web-site owner about it.

10. A hosting services provider renews access to information on the tenth working day from the day of sending a copy of message to the applicant, specified by paragraph 9 of this article, unless during this time an applicant provides documents that confirm opening of proceedings on protection of his/her rights to object (objects) of copyright and (or) related rights, regarding which the application on termination of violation was filed.

11. Web-site owners and hosting service providers, except for individuals, which are not entities of business, are obliged to make available their information for public access at their own web-sites and (or) in public records data bases records on domain names (WHOIS). Such information shall include:

- a) full name and title of a web-site owner and a hosting services provider;
- b) full address of residence or location of a web-site owner and a hosting service provider;
- c) contact information of a web-site owner and a hosting service provider, including e-mail address, phone number for express communication.

Individuals, which are not entities of business shall make available contact information about a web-site owner, specified by item "c" of this paragraph by providing free access to it at their own web-sites or in public data bases the records on domain names (WHOIS).

12. Notification on applied measures that are forwarded to the applicant in accordance with this article, among other things shall include reliable and full information mentioned in the application of a web-site owner. In case a hosting services provider sends a notification on applied measures, such notification shall also include information about this provider, as well as full information that has been delivered to him/her by a web-site owner without any changes. Information on a web-site owner shall include its full name (title), residence address (location), postal address, phone number, e-mail address, and if available, other contact information. In the case of receiving a notification refusal from a web-site owner (or a web-page owner in accordance with the procedure envisaged by paragraphs 6 and 7 of this article), its copy shall be attached to the notification of applied measures.

13. This Law allows to restrict access exclusively to electronic (digital) information, specified in the application on termination of violation. If access to electronic (digital) information cannot be restricted due to technical reasons, a web-site owner or a hosting service provider may restrict access to a web page that contains corresponding electronic (digital) information.

14. Application on termination of violation and application on termination of violation by a web-site owner shall be made in writing in paper or electronic copy.

Applications in electronic form are prepared in accordance with legal requirements in the sphere of electronic documents and electronic document flow with obligatory use of technical means of electronic and digital certification of lawyer's signature, which provides legal assistance to an applicant. Concurrently with submission of such application in electronic form, an applicant shall submit its copy to the same address in a regular electronic form without electronic and digital signature. If the application in electronic form that has been prepared with the use of technical means for electronic and digital certification of lawyer's signature is different from the application in a regular electronic form, sent to the same address, such application is considered unfiled. Application in a paper form shall be prepared with mandatory signature of a lawyer and shall be sent by registered mail.

Date and time of receiving applications envisaged by this article are:

- a) in case of sending by e-mail - date and time of sending by electronic means of communication;
- b) in the event of sending by registered mail with notification on delivery - date and time, specified in a delivery note.

If the addressee refuses to receive the application or is not available at specified address, date and time of receipt of the application are the day and date, marked on post mail stamp on refusal of the addressee to accept the application or mark on absence of the addressee at a specified address.

Responses (messages) on applications, forwarding of application copies, specified by this article, shall be put in writing on paper and/or electronic media.

Date and time of receiving response (message) on applications, specified by this article, and/or sent application, are:

- a) in case of sending by e-mail - date and time of sending by electronic means of communication;
- b) in the event of sending by registered mail with notification on delivery - date and time specified in a delivery note.

If the addressee refuses to accept a response (message) on application or is not available at specified address, date and time of receipt of the application are day and date marked on a post mail stamp on refusal of the addressee to accept response (message) to application or mark as to the absence of the addressee at specified address.

15. A web-site, web-page owner doesn't bear responsibility for violation of copyright and (or) related rights on the Internet, if he/she have promptly taken measures envisaged by paragraph 3 of this article

Provisions of the first item of this paragraph shall not apply in the following cases:

- a) a web-site owner, regardless of received and approved applications on termination of violations, has used the same copyright and (or) related rights object on one or several of his web-pages of the same web-site at least twice within three months.
- b) a web-page owner who is not an owner of a web-site, regardless of received and approved applications on termination of violations, has used the same copyright and (or) related rights object on the same web-site at least twice within three months.

Article 52<sup>2</sup>. Obligations of hosting service providers in regard to providing protection of copyright and (or) related rights using the Internet

1. Hosting service providers are obliged to stipulate in their service contracts relevant conditions and rules that prohibit customers from taking actions on publishing electronic (digital) information with violation of copyright and (or) related rights of the third parties, as well as oblige the customers to provide accurate and valid information about themselves, including their contact details, and upon change of such - promptly notify about it according to procedure, specified by the Law.

2. A hosting services provider does not bear responsibility against customers of such services for consequences actions, specified by article 521 of this Law, provided requirements of paragraph one of this Article are fulfilled.

A hosting services provider doesn't bear responsibility for violation of copyrights and (or) related rights, provided requirements of article 52<sup>1</sup> of this Law are fulfilled";

8) section VIII "Final and intermediary provisions" of the Law of Ukraine "On collection and accounting of unified social tax" (The Official Bulletin of Verkhova Rada of Ukraine, 2011, No. 2-3, P. 11; 2015, No. 6, P. 40) shall be supplemented with item 1<sup>2</sup> to read:

"1<sup>2</sup>. Establish that payment of income by a resident of Ukraine to individuals that are non-residents which conduct entrepreneurial activities in the sphere of cinematography outside Ukraine, shall not be subject for accrual of unified social tax";

10) paragraph three of Article 2 of the Law of Ukraine "On public procurement" (The Official Bulletin of the Verkhovna Rada of Ukraine, 2016, No. 9, P. 89) shall be supplemented with sub-paragraph to read:

"goods, works and services that are required for production (creation) of film preprint materials, audiovisual works, expansion, distribution and advertising, storage, renewal, restoration, film demonstration";

9) in the Law of Ukraine "On electronic commerce" (The Official Bulletin of the Verkhovna Rada of Ukraine, 2015, No. 45, P. 410):

add sub-paragraph two and three to paragraph four of article 9 to read:

"Supplier of services of mediatory nature in the information sphere, which provides the services of intermediate (temporary) storage of information, provided by the service receiver, with one purpose - to improve further transfer of information to other services receivers upon their request, doesn't bear responsibility for automatic temporary and intermediate storage of information and for damage, caused as a result of using such services, provided it doesn't alter the content of information, fulfils the conditions of access to information, including statutory access requirements to information on owner of network resource, fulfils the rules as to updating of information in the manner that is recognized and used in the industry, doesn't prevent legitimate use of technologies, which are recognized and used in industry, upon obtaining of data on utilization of information, come to prompt actions in order to prevent access to information, which it stored, as it turned out that information in primary source of transfer has been removed from the network or access to the information is impossible, or there is decision of the court on removal or access impossibility.

Provider of services of intermediate nature in the information sphere, which provides services of continuous storage of information upon the request of services receiver (hosting), doesn't bear responsibility for the content of the transferred or received information, which is stored upon the request of the services receiver, and for the harm, caused as a result of using of results of such services, provided that he doesn't have information on illegal activity or facts or circumstances, which point that the activity has illegal character or in regard to the requirements on indemnification from such illegal activity, and provider upon receiving of such information would promptly undertake measures on terminating of access possibility or termination of access to information, as well as in accordance with the requirements of the legislation on copyright and related rights";

Add paragraph 4 to article to read:

"4. Provider of services of intermediate nature bears responsibility for the content of transferred and received information and for the harm caused as a result of using the results of such services, providing his actions bear no circumstances, which relief him from liability, specified by article 9 of this Law";

11) sub-item "a" of item 4 of article 5 of the Decree of the Cabinet of Ministers of Ukraine "On system of currency exchange regulations and currency exchange control" (The Official Bulletin of the Verkhovna Rada of Ukraine, 1993, No. 17, P. 184) shall be supplemented with sub-paragraph 9 to read:

“transfer of subsidies for partial return of funds, specified by the Law of Ukraine “On the state support to cinematography in Ukraine” by Ukrainian entity of cinematography to a foreign cinematography entity and (or) foreign investor, and (or) other non-resident.’

4. From the date this Law enters into legal force of, laws and other regulatory legal acts shall remain in force to the extent that does not contradict this Law.

5. The Cabinet of Ministers of Ukraine within three-month term from the day of this law publishing shall:

provide acceptance of acts, required for implementation of this Law, including unified state system of electronic ticket recording, sold by cinemas “Unified electronic ticket”;

bring its regulatory legal acts into accordance with this Law;

provide bringing into accordance with this Law regulatory legal acts of ministries and other central executive authorities.

6. National Bank of Ukraine shall within three-month term from the day of this Law publishing:

bring its regulatory legal acts into accordance with this Law;

provide proper, continuous and executive fulfilment by banks of currency operations, related to implementation by subjects of cinematography of their rights and obligations in regard to the funds, which are granted (or received) in form of subsidies and state support to cinematography field (according to this Law), as these actions shall contribute to formation of positive image of Ukraine as business partner and activation of international, interstate and foreign economic cooperation, as well as attracting additional investments in Ukraine.

7. Competitive selection of film projects for formation of program of production and distribution of national films that has started before entry into legal force of this Law shall be complete within terms and upon conditions, specified by the procedure of competitive selection of film projects for formation of the program of production and distribution of national films, approved by central executive authority, which provides formation of the state policy in the sphere of cinematography, and by the Law of Ukraine.

Films which are in production in accordance with the program of production and distribution of national films, per which the central executive authority that provides implementation of state policy in the sphere of cinematography, has signed government contracts as to production of national films upon conditions of state order (contracts of financial support to film production) before entry into legal force of this Law, shall be completed upon conditions, specified by state contracts (agreements) and legislation of Ukraine.

Annex to the Law of Ukraine “On the State support to cinematography in Ukraine”

## CULTURAL VERIFICATION

### Cultural criteria

1. Story line / scenario / central theme of the film are based on events that are related to Ukrainian or European culture / history / mythology / religion - 2 points

(This criterion concerns works, which are based on events or cases related to traditional Ukrainian or European culture / history / mythology / religion)

2. Film is based on a character / personality of Ukrainian / European culture / history / religion or Ukrainian / European community - 2 points.

(This criterion concerns works, which are based on well-known characters / personalities that play a main character in the plot)

3. Film plot line is related to Ukrainian / European environment / place / region / architectonic or cultural environment - 2 points.

4. Story line / scenario / central film theme is based on Ukrainian or European work of literature or on adapted work of other artistic entities of cultural value (visual art, music etc.) - 2 points.

5. Story line / scenario / central theme of the film concentrates on modern cultural / social themes of Ukrainian or European society - 2 points.

6. Film demonstrates important Ukrainian and (or) European value (values): solidarity / equality / protection of human rights / tolerance / natural environment protection / respect to cultural and family traditions / critical thinking / rule of law - 2 points.

7. Film concentrates on Ukrainian / European culture / identity or Ukrainian / European customs or traditions - 2 points.

8. Story line / scenario / central theme of the film concentrates on modern or historical events that have impact on European / Ukrainian society - 2 points.

(This criterion concerns the works that are based on modern or historical situations / cases that have impact on modern European / Ukrainian society)

Production criteria

10. Film makers are the citizens of Ukraine or European Union member-states:

Production director, producer / co-producer, photography director, scenario author, performer of a main character, cast list for supporting roles, author of music, artistic director, costume designer, picture editor, make-up artist, production, editorial phase (post-production) director and visual effects department manager, stage manager (first associate director) - ½ point for each case of conformity, maximum 7 points.

11. At least 51 percent of film crew members (except for those specified in item 10) are citizens of Ukraine or EU countries - 4 points.

12. Shooting takes place on location, indoor scenes or in studios in Ukraine - 4 points:

if shooting last at least one day - 1 point;

If number of shooting days in Ukraine equals to 10% of the total number of shooting days - 2 points;

If number of shooting days in Ukraine equals to 25% of the total number of shooting days - 3 points;

If number of shooting days in Ukraine equals to to 50% of the total number of shooting days - 4 points;

13. Ukrainian services providers have been involved into film production.

For the purpose of this criteria "Ukrainian services providers" shall mean business entities, which are residents of Ukraine.

In case the applicant involved any services provider whose services are directly related to a production process which is rated in accordance with the criteria 13 or 15, points for involving such services providers shall not be awarded.

So, if the film was shot on location (in the field) or in premises (studios, pavilions and etc.) in Ukraine, the points per criterion 14 will be awarded for those services providers that are directly engaged in works (services) during the preparation period.

Points shall be awarded based on the per cent base in accordance with the following approach:

if Ukrainian services providers were engaged in works of the preparation period in Ukraine for at least one day - 1 point;

if Ukrainian services providers were engaged in works (services) of preparation period for at least 10 percent of the total number of days of preparation period - 2 points;

if Ukrainian services providers were engaged in works (services) of preparation period for at least 25 percent of the total number of days of preparation period - 3 points;

if Ukrainian services providers were engaged in works (services) of preparation period for at least 50 percent of the total number of days of preparation period - 4 points;

14. Editing (including editing of picture and sound, putting together a sound track, laboratory placement) is carried out in Ukraine - 0.5-2 points:

if editorial phase took place in Ukraine for at least one day - 0.5 point;

if editorial phase took place in Ukraine for at least 10 percent of the total number of editing days - 1 point;

if editorial phase took place in Ukraine for at least 25 percent of the total number of editing days - 1.5 point;

if editorial phase took place in Ukraine for at least 50 percent of the total number of editing days - 2 point;

15. Computer graphics (CG), including the works on creation of physical processes simulation effects (VFX) that are created in full or partly (at least 50 percent of the total running time of computer graphics or effects) in Ukraine - 1 point.

16. Amount of expenditure from budgeted value of film in the territory of Ukraine - 0,5 - 4 points:

if amount of expenditures from budgeted value of film in the territory of Ukraine exceeds 10 percent of budgeted value - 0,5 points;

if amount of expenditures from budgeted value of film in the territory of Ukraine exceeds 20 percent of budgeted value - 1 point;

if amount of expenditures from budgeted value of film in the territory of Ukraine exceeds 30 percent of budgeted value - 2 points;

if amount of expenditures from budgeted value of film in the territory of Ukraine exceeds 50 percent of budgeted value - 4 points;

## LAW OF UKRAINE

### **On Amendments to Some Laws of Ukraine Concerning Aggravation of Responsibility for Committed Offenses in the Sphere of Information Security and Combating Cybercrimes**

The Verkhovna Rada of Ukraine **resolves**:

**I.** To make amendments to the following laws of Ukraine:

**1.** In the Code of Ukraine on Administrative Offenses (The Official Bulletin of the Verkhovna Rada of the Ukrainian RSR, 1984, appendix to No. 51, p. 1122 as amended):

1) to include Article 188-43 to read as follows:

"Article 188-43. Non-compliance with lawful requirements of public officials of the Security Service of Ukraine

Non-compliance with lawful requirements of public officials of the Security Service of Ukraine, as well as creating obstacles to performance of his/her duties, -

shall be punishable by a fine to public officials of fifty to one hundred tax-exempt minimum wages of citizens.

The same, committed repeatedly during the year after imposing of the administrative penalty for the violation provided for in Part one of this article -

shall be punishable by a fine to public officials of one hundred to one hundred and fifty tax-exempt minimum wages of citizens.";

2) to add figures "18843" after figures "18841" in Article 221;

3) to supplement the sub-paragraph "the authorities of the Security Service of Ukraine" of item 1 of Article 255 with figures "188-43" after the word and figures "Article 172-4-172-9".

**2.** In the Law of Ukraine "On the Operative Investigation Activity" (The Official Bulletin of the Verkhovna Rada of Ukraine, 1992, No. 22, p. 303 as amended):

1) amend Article 1 to read as follows:

"The purpose of the operative and investigation activities is to look for and record actual data about illegal activities of individuals and groups, responsibility for which is provided for in the Criminal Code of Ukraine, intelligence subversive and terrorist activities of the special services of foreign states and organizations, separate groups and individuals for the purpose of prevention of offenses and in the interests of criminal legal proceedings, and also obtaining information in the interests of security of citizens, the society and the state.";

2) to supplement sub-paragraph 3 of Article 5 with the words "counter-intelligence protection of economy of the state, counter-intelligence protection of the interests of the state in the sphere of information security" after the words "military counter-intelligence";

3) to amend sub-paragraph 5 of item 1 of Article 6 to read as follows: "intelligence subversive or terrorist or other activities of the special services of foreign states, organizations and separate groups and individuals against Ukraine";

4) to amend paragraph 4 of Article 8 to read as follows:

"Exclusively for the purpose of prevention, timely identification and prevention of intelligence, terrorist and other infringements of the state security of Ukraine, obtaining of information in the interests of counter-intelligence on the basis of the corresponding counterintelligence case, and also for the purpose of obtaining intelligence information to ensure external security of Ukraine the specified activities can be performed only under the resolution of the investigating judge of without disclosure to the third party, and the activities which do not required the permission of investigating judge - without notifying the prosecutor.";

5) to supplement article 92 with a new item 21 to read as follows:

"2<sup>1</sup>) initiation of the pre-trial investigation based on the materials collected during the operative investigation activities in this case;"

6) to amend sub-paragraph 4 of Article 92 to read as follows: "4) completion of operative investigation, intelligence, counterintelligence activities or exhaustion of opportunities for their implementation;"

**3.** In the Law of Ukraine "On the Security Service of Ukraine" (The Official Bulletin of the Verkhovna Rada of Ukraine, 1992, No. 27, p. 382 as amended):

1) in paragraph 2 of Article 2 replace the words "critical" with the word "national";

2) in Article 24:

to amend item 6 to read as follows:

"6) to carry out the counterintelligence activities is support of the defence complex, the Armed Forces of Ukraine, other military formations deployed in the territory of Ukraine, power, transport, communication and IT entities, and also critical entities in other fields of economy";

to add with new item 6<sup>1</sup> to read as follows:

"6<sup>1</sup>) to carry out counterintelligence protection of the information space of Ukraine";

3) in paragraph one of Article 25:

in sub-paragraph 1 exclude the words "if there is a threat of escape of the suspect or destruction or concealment of evidence of criminal activities";

complement item 1 with the words "and in case of non-execution of the specified requirements to apply the coercion actions provided for in the current legislation" after the words "their belongings and vehicles";

in item 2 replace the word "consideration" with the word "performance", and to replace the word "proposal" with "instruction";

in item 3 replace the words "the head of the appropriate authority of the Security Service of Ukraine" with the words "the heads of the Security Service of Ukraine, its functional units, regional agencies, their deputies or persons who perform their duties";

to add with new items 3<sup>1</sup>, 3<sup>2</sup> to read as follows:

"3<sup>1</sup>) to receive, within the procedure established by the law, unrestricted access to information which is processed in the state electronic information resources (registers, databases and databanks, other data arrays), information, information and telecommunication, telecommunication systems of telecommunication operators and providers, other entities that process information in the electronic form, irrespective of their forms of incorporation, concerning the consumer, that was received at the conclusion of the contract, to include information about provided telecommunication services, including the services received, their duration and contents, transfer routes, and also that is transferred and obtained by the channels of the response team to computer incidents - CERT - UA and with the capabilities of the national contact point 24/7 that functions within the framework of the Convention on Cybercrimes.

In case of threat of loss of information which is stored in the state registers, databases (including private and commercial structures) which is used by public authorities, institutions and organizations - take measures for its preservation including blocking of access to the appropriate information resources;

3<sup>2</sup>) to inspect detained persons suspected of relevant crimes, their belongings, vehicles and to confiscate documents and items which can serve as evidence or be used to harm their health";

To add new items 8<sup>1</sup>, 8<sup>2</sup>, 8<sup>3</sup> to read as follows:

"8<sup>1</sup>) by proxy of an investigator, a prosecutor to carry out or take part in criminal proceedings and to enforce the resolutions of an investigating judge or court judgments about bringing of the suspect, accused or the witness of criminal proceedings within the procedure, envisaged by the Criminal Procedure Code of Ukraine;

8<sup>2</sup>) to make photos, sound recording, video filming, dactyloscopy of the individuals detained on suspicion of crime, arrested, suspected are accused of a criminal offense;

8<sup>3</sup>) to inspect luggage, baggage and examination of passengers of civil air, sea and river transport, as well as railway and motor transport according to the current legislation;";

**4.** In the Law of Ukraine "On the Counter-intelligence Activities" (The Official Bulletin of the Verkhovna Rada of Ukraine, 2003, No. 12, p. 89 as amended):

1) in paragraph 1 of Article 6:

to add words "its economic, scientific and technical and defensive potential, the interests of the state in the sphere of information security" after the words "the integrity of Ukraine" to sub-item 1 of item 1;

in item 2:

in sub-paragraph 2 replace the words "the national communication system" with the words "the entities of the national communication system, IT and the state electronic information resources";

to supplement sub-paragraph 2 with the words "the information space of the state" after the word "secrets";

2) to amend item 6, of paragraph 2 in Article 7 to read as follows:

"6) exclusively for the purposes of prevention, timely identification and prevention of intelligence, terrorist and other infringements of the state security of Ukraine, obtaining of information in the interests of counterintelligence, on the basis of the corresponding counterintelligence case, to carry out secret inspection of publicly inaccessible places, housing or other types of possession of individuals, audio- and video monitoring of individuals, audio- and video monitoring of the place, surveillance of individuals, accessing information from transport telecommunication networks, electronic information networks, arrest of correspondence, its inspection and seizure, establishment of location of the radio-electronic means only under the resolution of the investigating judge, issued upon a motion of the head of the corresponding operational unit or his deputy, without disclosure to the third party, and the activities which do not require the investigating judge's permission can be carried out without notifying the prosecutor. These actions are applied exclusively for the purpose of prevention of serious crimes or treason, prevention of terrorist acts and other encroachments of the special services of foreign states and organizations if it is impossible to obtain information using other methods;";

3) to supplement paragraph 10 of Article 8 with the new item 51 to read as follows:

"5<sup>1</sup>) initiation of the pre-trial investigation based on the materials collected during the operative investigation activities in this case;"

**5.** In the Law of Ukraine "On the Fundamentals of the National Security of Ukraine" (The Official Bulletin of the Verkhovna Rada of Ukraine, 2003, No. 39, p. 351; 2010, No. 40, p. 527; as amended by the laws of Ukraine of May 17, 2012, No. 4711-VI and of September 18, 2012, No. 5286-VI):

1) in Article 1:

in paragraph 2 replace the words "ensuring the freedom of expression and information security" with the words "ensuring the information security, including freedom of expression, cybernetic security and information protection", and to remove the words "information protection";

to supplement the article after sub-paragraph 4 with new sub-paragraphs to read as follows:

"cybernetic security (cybersecurity) -- security of the vital interests of an individual and a citizen, the society and the state in the cyberspace;

cybernetic space (cyberspace) — environment emerging from the operations of information, telecommunication and information and telecommunication systems that are using shared principles and common rules;"

In this regard to consider sub-paragraphs 5 and 6 as sub-paragraphs 7 and 8 respectively;

2) in Article 7:

to supplement the Article after sub-paragraph 11 with the new sub-paragraph to read as follows:

"the threat of use of the cyberspace for the purpose of terrorism;"

In this regard to consider sub-paragraphs 12-77 as sub-paragraphs 13-78 respectively;

to amend sub-paragraph 20 to read as follows:

"possibility of involvement of Ukraine into armed conflicts or opposition with other states, including with the use of the cyberspace;"

to supplement the Article after sub-paragraph 21 with the new sub-paragraph to read as follows:

"use of the cyberspace to prepare for and during armed aggression against Ukraine;"

In this regard consider sub-paragraphs 22-78 as sub-paragraphs 23-79 respectively;

to amend sub-paragraphs 76 and 78 to read as follows:

"use of mass media, and also cyberspace for distribution of violence, cruelty, pornography, promotion of separatism on the basis of ethnicity, language, religion etc";

"disclosure of information which is the state or other secret in accordance with the law, and also the official and confidential information aimed at supporting requirements and national interests of the society and the state;"

to supplement the article after sub-paragraph 78 with new sub-paragraphs to read as follows:

"the inadequate level of reliability and security of the national information infrastructure in the conditions of emergency situations;

the unauthorized activities aimed at violation of integrity and availability of the state information resources;"

In this regard to consider sub-paragraph 79 as sub-paragraph 81;

3) to supplement paragraph 2 of Article 8 with the sub-paragraphs to read as follows:

"improvement of the legislation concerning information security, including cybernetic safety;

prevention of manifestations of computer crime and computer terrorism;

improvement of the means of information protection in information, telecommunication and information and telecommunication systems;

improvement of forms and methods of counteraction to information activities, aimed at sabotaging defensive capabilities of the state;

ensuring full participation of Ukraine in the international cooperation in the sphere of combating computer crime and computer terrorism.";

4) to supplement article 10 after sub-paragraph 14 with the new sub-paragraph to read as follows:

"ensuring information security, including cybernetic safety;"

In this regard to consider sub-paragraph 15 as sub-paragraph 16.

**6.** In the Law of Ukraine "On the Intelligence Agencies of Ukraine" (The Official Bulletin of the Verkhovna Rada of Ukraine, 2001, No. 19, p. 94; 2006, No. 14, p. 116):

1) to amend sub-paragraph 9 of Article 9 to read as follows:

"to act as customers of scientific research, experimental design and other works in the field of development and production of technical means of investigation and the special technical means, that are necessary for intelligence activities, to create, buy and use technical means of intelligence and special technical means in accordance with the procedure, envisaged by the legislation;"

**7.** In the Law of Ukraine "On Telecommunications" (The Official Bulletin of the Verkhovna Rada of Ukraine, 2004, No. 12, p. 155; as amended):

1) to supplement paragraph 1 of Article 39 with new items 18<sup>2</sup> and 18<sup>3</sup> to read as follows:

18<sup>2</sup>) on the basis of the decision of the National Commission which is responsible for the state regulation in the sphere of communication and IT, to limit (to stop, to block) the access of their users to the Internet resources through which the unlawful information is distributed, and to resume such access on the basis of the relevant decision in case of removal of the information specified, or on the basis of the judgment which cancelled the decision concerning restriction of access for users to Internet resources;

18<sup>3</sup>) on the requirement of the authorized agency to provide information about the users and the services consumed / provided to them/him;"

2) to amend paragraph 4 of Article 39 to read as follows:

"4. The operators of telecommunications are obliged to install at their own costs special technical means on telecommunication networks that enable the authorized agencies that carry out operative investigations, counterintelligence or intelligence activities as well as investigative (detective) operations. The operators are also obliged to ensure proper functioning of such technical means, and also within their limits of powers to assist with the special activates mentioned above as well as prevent disclosure of organization and tactical features of such. The operators of telecommunications are obliged to ensure protection of the specified technical means from unauthorized access.";

3) to amend sentences 1 and 2 of paragraph two of Article 65 to read as follows: "Operators, providers of telecommunications have to ensure proper functioning of their infrastructure in the conditions of emergency situations, extraordinary and military state. During emergency situations, extraordinary and military state all means of communication and telecommunication networks irrespective of the form of incorporation are used first of all for the purposes of mobilization and satisfaction of the requirements of the national security, defence, protection of law and order.".

II. This Law shall take effect from the day, following the day of its publication.

**Chairman of the Verkhovna Rada of Ukraine**

**V. GROYSMAN**

**DRAFT LAW OF UKRAINE**  
**On amendments to the Criminal Code of Ukraine regarding introduction of responsibility**  
**for cyberterrorism**

The Verkhovna Rada of Ukraine **resolves:**

I. The Criminal Code of Ukraine (The Official Bulletin of the Verkhovna Rada of Ukraine (VRU), 2001., N 25-26, art. 131) shall be supplemented with article 258<sup>6</sup> to read:

"Article 258<sup>6</sup>. Cyberterrorism

1. Cyberterrorism, i.e., deliberate attack on information processed by a computer, on a computer system or computer networks, which creates risks for life and health of people or leads to other grave consequences if the above actions were committed on political grounds, to violate public security, intimidate population, and to provoke a military conflict – shall be punished by imprisonment for the period of five to ten years with confiscation of property or without it.
2. The same committed repeatedly or upon prior consent of group of persons shall be punished by imprisonment for the period of seven to twelve years with confiscation of property or without it.
3. An act of cyber terrorism which has resulted in injury, disability or death shall be punished by imprisonment for the period of ten to fifteen years, or imprisonment for life, with confiscation of property or without it.
4. A person or group of persons who participated in preparation of the act of cyberterrorism but, who voluntarily informed law enforcement agencies about preparation of such act before its execution, and if their actions led to prevention of the act of terrorism, shall be exempt from criminal responsibility unless there are elements of another crime in their actions".

Final provisions:

II. In sub-paragraph 75 of Article 7 of Law of Ukraine "On fundamentals of national security of Ukraine" (The Official Bulletin of the Verkhovna Rada of Ukraine (BVR), 2003, No. 39, art. 351), the word "computer terrorism" shall be replaced with the word "cyberterrorism".

III. This Law shall take effect from the date of its publication.

**Chairman of the Verkhovna Rada of Ukraine**

## **DRAFT LAW OF UKRAINE**

### **On Introduction of Amendments to the Criminal Code of Ukraine (Concerning Aggravation of Responsibility for Cyberterrorism and Cybercrimes)**

The Verkhovna Rada of Ukraine resolves:

I. In the Criminal Code of Ukraine (the Official Bulletin of the Verkhovna Rada of Ukraine, 2001, Nos. 25-26, Article 131):

1) amend paragraph 2 of Article 258 to read as follows:

“2. The same committed repeatedly or upon prior consent of group of persons or in case such acts involve unauthorized intrusion into operations of electronic computing machines (computers), automated systems, computer networks or telecommunication networks of higher risk facilities or if such acts resulted in considerable property damage or other grave consequences, -

shall be punishable by imprisonment for a period of seven to twelve years with confiscation of property or without it”;

2) add new paragraphs 3 and 4 to Article 361 to read as follows:

“3. Acts envisaged by paragraphs one or two of this Article if they involve unauthorized intrusion into operations of electronic computing machines (computers), automated systems, computer networks or telecommunication networks of higher risk facilities or if such acts resulted in considerable property damage or other grave consequences, -

shall be punishable by imprisonment for a period of seven up to twelve years with confiscation of property or without it.

4. Acts envisaged by paragraphs one, two or three of this Article that resulted into a death of a person, -

shall be punishable by imprisonment for a period of ten to fifteen years or sentence for life with confiscation of property or without it”.

II. This Law shall come into effect from the day of its publication.

**Chairman of the Verkhovna Rada of Ukraine**

### **APPENDIX 3. Types of data to be retained**

#### **Data necessary to trace and identify the source of a communication:**

- (1) concerning fixed network telephony and mobile telephony:
  - (i) the calling telephone number;
  - (ii) the name and address of the subscriber or registered user;
- (2) concerning Internet access, Internet e-mail and Internet telephony:
  - (i) the user ID(s) allocated;
  - (ii) the user ID and telephone number allocated to any communication entering the public telephone network;
  - (iii) the name and address of the subscriber or registered user to whom an Internet Protocol (IP) address, user ID or telephone number was allocated at the time of the communication;

#### **Data necessary to identify the destination of a communication:**

- (1) concerning fixed network telephony and mobile telephony:
  - (i) the number(s) dialled (the telephone number(s) called), and, in cases involving supplementary services such as call forwarding or call transfer, the number or numbers to which the call is routed;
  - (ii) the name(s) and address(es) of the subscriber(s) or registered user(s);
- (2) concerning Internet e-mail and Internet telephony:
  - (i) the user ID or telephone number of the intended recipient(s) of an Internet telephony call;
  - (ii) the name(s) and address(es) of the subscriber(s) or registered user(s) and user ID of the intended recipient of the communication;

#### **Data necessary to identify the date, time and duration of a communication:**

- (1) concerning fixed network telephony and mobile telephony, the date and time of the start and end of the communication;
- (2) concerning Internet access, Internet e-mail and Internet telephony:
  - (i) the date and time of the log-in and log-off of the Internet access service, based on a certain time zone, together with the IP address, whether dynamic or static, allocated by the Internet access service provider to a communication, and the user ID of the subscriber or registered user;
  - (ii) the date and time of the log-in and log-off of the Internet e-mail service or Internet telephony service, based on a certain time zone;

#### **Data necessary to identify the type of communication:**

- (1) concerning fixed network telephony and mobile telephony: the telephone service used;
- (2) concerning Internet e-mail and Internet telephony: the Internet service used;

#### **Data necessary to identify users' communication equipment or what purports to be their equipment:**

- (1) concerning fixed network telephony, the calling and called telephone numbers;
- (2) concerning mobile telephony:
  - (i) the calling and called telephone numbers;
  - (ii) the International Mobile Subscriber Identity (IMSI) of the calling party;
  - (iii) the International Mobile Equipment Identity (IMEI) of the calling party;
  - (iv) the IMSI of the called party;
  - (v) the IMEI of the called party;
  - (vi) in the case of pre-paid anonymous services, the date and time of the initial activation of the service and the location label (Cell ID) from which the service was activated;
- (3) concerning Internet access, Internet e-mail and Internet telephony:

- (i) the calling telephone number for dial-up access;
- (ii) the digital subscriber line (DSL) or other end point of the originator of the communication;

**Data necessary to identify the location of mobile communication equipment**