CENTRE FOR ECONOMIC STRATEGY

POLICY PAPER

«FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES»: MAJOR CHALLENGES FOR UKRAINIAN BUSINESSES

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Date: 30 March 2025

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This publication was prepared with the support of the European Union and the International Renaissance Foundation within the framework of the joint initiative “European Renaissance of Ukraine.” The content represents the views of the authors and does not necessarily reflect the views of the European Union or the International Renaissance Foundation.

1. SUMMARY

The third chapter of negotiations, “Freedom of Establishment and Provision of Services,” is part of the second cluster of the European acquis, which lays the foundations for the full and secure functioning of the EU Internal Market. As part of the legislative harmonisation process, Ukraine must significantly change its approaches to regulating business and services.

To identify key gaps between the Ukrainian and European regulatory frameworks, the Centre for Economic Strategy (CES) conducted a series of in-depth interviews with Ukrainian entrepreneurs, experts and practising lawyers[1]. The study focused on analysing horizontal legislation, i.e. rules governing general conditions for market access and doing business. At the same time, we conducted a targeted analysis of vertical legislation – rules governing specific sectors (media services, medical services, distribution of goods). This provided a better understanding of how structural weaknesses in sectoral regulations reveal general systemic problems and prevent the effective implementation of the requirements of the third negotiation chapter.

In addition, we focused on public-private partnerships and cybersecurity – so-called ‘intersecting’ matters that largely determine Ukraine's ability to implement the acquis of the third chapter of the negotiations.

The analysis showed that the main challenges lie not in the absence of individual laws, but in fundamental differences in regulatory models:

· Ukrainian legislation remains largely declarative and focuses on ‘entry’ controls rather than continuous monitoring of compliance.

· There is no clear implementation of the principle of freedom to provide services and freedom of enterprise.

· Administrative barriers and discriminatory requirements for foreign companies are still present.

· Institutional fragmentation of regulation leads to duplication of functions, slows down decision-making and reduces the effectiveness of control.

· Low transparency of access to the market and public services limits opportunities for business.

2. WHAT CONCERNS UKRAINIAN BUSINESS? KEY ASPECTS OF HORIZONTAL LEGISLATION

Ukraine's process of rapprochement with the European Union requires not only the formal implementation of the acquis communautaire, but also a profound change in the philosophy of public administration and approaches to regulation. The European legal system is based on the principles of transparency, trust in business entities, effective market supervision, consumer protection and minimisation of administrative barriers. In contrast, the Ukrainian legal model remains largely declarative and focused on market entry control rather than supervision of activities. Next, let's consider the main differences more clearly.

- **Lack of a single principle of freedom to provide services**. One of the basic principles of the Services Directive is to guarantee freedom to provide services and freedom of establishment without unjustified administrative or legal barriers. In Ukraine, however, many market access processes remain overly complex, bureaucratic and often discriminatory. Obtaining licences, permits or registrations often requires considerable time and resources, and the rules are not always transparent and predictable. The principle of tacit consent, which should work in the EU to speed up administrative procedures, either does not work in Ukraine or works selectively. Moreover, even tacit consent is often interpreted by public authorities as applying only to other public authorities, which contradicts the core of the European approach.

[1] CES would like to thank Anastasia Apetik (lawyer and cyber security specialist); Mr Serhiy But (commercial director of Lidea Ukraine); Serhiy Tymoshenko (CEO of Mas Seeds Ukraine); Pavlo Kovtonyuk (co-founder of the Ukrainian Health Centre (UHC), Deputy Minister of Health in 2016-2019); Ivan Bondarchuk (member of the board of the Ukrainian Wind Energy Association; partner, head of the Energy & Projects practice at LCF law firm); Anna Pogrebna (partner at INTEGRITES law firm); Yuriy Fomenko (CEO Technica dlia business Ltd. (Equipment for Business)); Anna Bukvich (Deputy Chair of the UBA Committee on International Law, Legal Manager at Alter Domus); as well as representatives of Ukrainian businesses who wished to remain anonymous.

- **Inconsistent regulation of changes in market operators' activities and supervision**. The Services Directive stipulates that, once a market has been opened up, the state must ensure proper monitoring of compliance with the rules without creating excessive regulation. In Ukraine, the situation is the opposite: market entry is difficult and enforcement of the rules is virtually non-existent. This leads to situations where an organisation that initially met the licensing criteria subsequently changes its profile, nature of activity or other key parameters without any consequences. Moreover, the concept of 'substantial change' often remains vague due to the lack of clear and transparent criteria.
- **Administrative barriers and discrimination**. Another significant gap is the persistence of administrative barriers and non-transparent licensing practices, which are contrary to the principle of non-discrimination. Requirements for Ukrainian legal entity status to participate in certain procedures are often imposed, which directly contradicts the idea of equal market access. In the EU, the state creates conditions where all suppliers, regardless of origin, have equal rights to participate in market activities subject to the same standards. In Ukraine, however, market entry is often difficult for foreign participants, which limits competition and innovation.
- **Institutional inconsistency and insufficient coordination**. The structure of horizontal legislation is characterised by a fragmentation of responsibilities among numerous state bodies without a single coordination centre. This applies both to the provision of services (e.g. in the field of cybersecurity or data protection) and to other horizontal issues, such as media ownership transparency or the regulation of online platforms. The lack of clear coordination between authorities leads to duplication of functions, regulatory inconsistencies and procedural delays.
- **Issues of transparency and information for businesses**. According to the Services Directive, the state must ensure that complete and up-to-date information is available to businesses through single points of contact. In Ukraine, attempts to create such systems remain purely formal. The platforms do not provide real access to all necessary information or require offline submission of documents, which contradicts the principles of e-governance and reducing the administrative burden.

3. PUBLIC-PRIVATE PARTNERSHIPS

Concessions, as one of the instruments for attracting private investment in the provision of societally important services, are directly linked to the implementation of the requirements of the third negotiating chapter on ensuring freedom of enterprise, equal access to the market and the development of a competitive environment. Accordingly, harmonising concession rules with EU standards, in particular with Directive 2014/23/EU on the award of concession contracts, is a necessary condition for Ukraine's further integration into the Union's internal market.

In Ukraine, concessions are regulated by the Law of Ukraine 'On Concessions' dated 03.10.2019[2], which replaced the Law 'On Concessions' dated 16.07.1999[3]. The new law was developed taking into account international experience, in particular for the modernisation of port infrastructure, but it still contains a number of gaps that reduce its effectiveness (and the attractiveness of concession contracts for potential investors). According to the Ministry of Economy, as of 1 January 2025, 200 agreements had been concluded under PPP terms, of which 22 are being implemented (including 9 concession agreements)[4]. Compared to EU countries, these figures are quite low. The main reason is the mismatch between legislation and investor needs: poor investment protection guarantees, difficulties for small and medium-sized companies to participate, insufficient cooperation with local communities, etc.

3.1. EXISTING STATE OF NATIONAL LEGISLATION

The previous Concessions Law of 1999 proved ineffective, as evidenced by the only project that was implemented – the Lviv-Krakivets road, which ended in failure. The main problems included:

[2] On concessions | dated 03.10.2019 No. 155-IX

[3] On concessions | dated 16.07.1999 No. 997-XIV

[4] State of PPP implementation in Ukraine. Ministry of Economy of Ukraine

- Lack of availability payments. For example, the Lviv-Krakivets project failed due to the lack of such an instrument as availability payments, which led to the French company Bouygues refusing to sign the agreement, as no bank was willing to provide financing in the absence of availability payments.
- Lack of clear distinction from other forms of PPP. The law did not explain how concessions differed from other types of partnerships, which created legal confusion.
- Lack of mechanisms for assessing the concessionaire's solvency and replacement. In the Lviv-Krakivets project, the concessionaire proved insolvent, but it was impossible to replace it due to the lack of relevant regulations, which led to the project being halted.

These shortcomings prompted the development of a new law with an emphasis on international experience.

The new Concession Law of 2019 was adopted with a view to modernising port infrastructure. It introduced a number of changes, but not all problems were eliminated.

The key negative aspects of this Law are as follows:

- Restrictions on foreign investors. According to paragraph 10 of part 1 of Article 1 of the Law, 'a concessionaire is a legal entity resident in Ukraine that has obtained an object under concession in accordance with this Law and is a party to the concession agreement.' This is a discriminatory requirement, as representative offices of foreign companies are not considered legal entities under Ukrainian law. Therefore, work is currently underway to remove this requirement.
- Transfer of objects to state ownership. Under the old Concessions Law of 1999, at least newly constructed objects could remain in the concessionaire's ownership, but under the new law, all property immediately becomes the property of the state. This complicates financing, as the concessionaire cannot use the property as collateral for loans.
- Environmental impact assessment. Part 2 of Article 26 allows other conditions to be included in the agreement, in particular regarding environmental impact assessment, which could block the project due to bureaucratic delays.

Simplified access to land is beneficial. The land plots required for concessions are already owned by the state or municipalities. This simplifies the process, as there is no need to search for new land or purchase it from private owners. The Land Code of Ukraine has established mechanisms for transferring land for lease, which apply to concessions.

In addition, Article 5 of the Law on Concessions (paragraph 2, part 2) provides that a decision on the feasibility of a concession may include measures to prepare the object for transfer to concession, in particular the formation and/or state registration of real rights to land plots necessary for the implementation of the concession. This means that the state or local authorities are obliged to prepare the land plot in advance. Thus, finding land for investment projects does not pose any difficulties.

However, there are no special procedures for the allocation of utilities for public-private partnerships. Thus, Article 8 of the Law stipulates as one of the conditions of the agreement the concessionaire's obligations to finance the construction of related infrastructure facilities, while Article 20 provides for the possibility of financial support from the state, in particular for the construction of related infrastructure (railways, roads, communication lines, heat, gas, water and electricity supply facilities, engineering communications, etc.) that are not subject to concession but are necessary for the implementation of the project.

In the European Union, concessions are primarily regulated by Directive 2014/23/EU on concessions[5], as well as related acts such as Directive 2011/92/EU[6].

- Directive 2014/23/EU regulates the aspect of residency in such a way as to guarantee non-discriminatory access to concessions for companies from EU Member States and partner countries without a mandatory residency requirement. For example, through subsidiaries or representative offices, which encourages capital investment.
- Directive 2014/23/EU regulates the issue of ancillary infrastructure through risk sharing: the state may bear part of the communication costs if this is necessary for the project.

[5] Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts

[6] Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification)

- Directive 2011/92/EU standardises the environmental impact assessment aspect: clear deadlines (up to 90 days) and electronic procedures are established to minimise delays.

Therefore, in order to improve Ukraine's concession legislation, it is necessary to:

- abolish the residency requirement for concessionaires, allowing foreign companies to participate through representative offices or subsidiaries;
- allow concessionaires to temporarily retain rights to newly constructed facilities until the end of the contract to facilitate financing;
- distribute responsibilities for the development of surrounding infrastructure between the concessionaire and the concession grantor.

The implementation of the proposed changes will have a significant impact on the development of concessions in Ukraine. First of all, the abolition of the residency requirement will open the market to foreign investors, which may increase the volume of attracted investments several times over. In turn, the possibility of temporarily retaining rights to objects will increase the attractiveness of projects for banks, reducing the cost of loans for concessionaires. Also, simplifying environmental procedures will speed up the launch of projects by 6–12 months, which is crucial for infrastructure such as ports or roads. In addition, a clear distribution of costs for related infrastructure will reduce the financial burden on investors, potentially attracting medium-sized businesses to projects, rather than just large corporations. Overall, these steps will help not only to increase the number of concession agreements concluded, but also to raise the share of concessions implemented.

3.2. ASSURANCES FOR CONCESSIONAIRES

The guarantee mechanism for concessionaires in Ukraine, regulated by the Concession Law of 3 October 2019, remains underdeveloped compared to international standards, which increases risks for investors and reduces the attractiveness of public-private partnerships (PPPs). Typical guarantees in EU countries or the US include (depending on the specific country, of course):

- **Stabilisation clause**. The state commits not to make any substantial changes to legislation that could adversely affect the rights or profitability of the concessionaire during the term of the contract. For example, in countries with unstable economies, this may include protection against sudden changes in the tax or regulatory regime. For example, Article 43 of Directive 2014/23/EU allows the parties to amend the concession contract under certain circumstances, but at the same time protects the concessionaire from significant changes in conditions that could affect its rights or profitability. In particular, paragraph 1(c) states that changes are permitted if they are caused by circumstances that the parties could not have foreseen, provided that this does not alter the overall nature of the contract. This effectively ensures the stability of key conditions, such as the regulatory or tax regime, provided that they do not upset the balance of risks. In EU practice, this is interpreted as protection against sudden legislative changes, as confirmed by the principle of 'financial equilibrium';
- **Compensation in case of force majeure**. Compensation in the event of force majeure (war, natural disasters) or actions by the state that violate the terms of the contract (e.g., unilateral termination);
- **Compensation for expropriated property**. A guarantee that the concessionaire's property or rights will not be expropriated by the state without fair compensation. This guarantee is based on international standards (e.g. the UN Convention on the Protection of Investments) and is typical in EU countries and the US, as well as in bilateral investment agreements;
- **Tariff flexibility**. Permission to set tariffs for services independently (in agreement with the state) or a mechanism for indexing them in line with inflation or other economic indicators (in accordance with Article 18 of Directive 2014/23/EU);
- **Return of funds**. Possibility to recover invested funds through a clearly defined concession term or payment mechanisms after its expiry. Article 18 of the Directive specifies that operational risk may include the risk of insufficient revenue from users, but the concessionaire is entitled to revenue from the operation of the facility during the term of the contract. Although there is no explicit reference to the return of invested funds after the end of the concession, the Directive allows for the inclusion of payment or compensation mechanisms (e.g. for the residual value of the facility) in the contract, which is standard practice in EU countries;
- · **Principle of equality**. Equal treatment compared to local entities (this is enshrined in the legislation of WTO and EU member states);

· **Possibility of extending the term of the concession**. If the terms of the agreement are fulfilled, the right to extend the term of the agreement is common practice in cases of long-term projects. Article 43 allows for the amendment of the agreement, including its extension, if this is provided for in the initial terms of the concession and does not distort competition. For example, an extension may be justified by the need for additional time to recover investments or complete the project;

- **Preferential terms**. Grant temporary exemptions from taxes, duties or charges, as is done in developing countries or in special economic zones.

Therefore, it seems expedient to further improve the legislation in the field of concessions by:

- adding a provision that would oblige the state to refrain from making significant changes to legislation (tax, regulatory) that could adversely affect the rights or profitability of the concessionaire during the term of the agreement, unless this is justified by public necessity and accompanied by compensation;
- introducing a guarantee of fair compensation in the event of the state taking away the concessionaire's property or rights, with the source of payment and the deadline for making such payments being specified;
- establishment of a mechanism for compensating the concessionaire for losses in the event of force majeure (war, natural disasters) or actions of the state (unilateral termination) with determination of the amount (e.g., lost income) and payment terms;
- provision for the possibility of return of investments through payments after the expiry of the concession (at the residual value of the object) or a clear distribution of income during the term of the agreement;
- enshrining the principle of non-discriminatory access to concessions for local and foreign entities, excluding the residency requirement;
- introducing the possibility of extending the term of the agreement (e.g., by 5–10 years), subject to the fulfilment of all obligations specified in the agreement.

The implementation of the suggested recommendations to improve guarantees for concessionaires will have a significant impact. For the state, this will mean an increase in the attractiveness of concession projects, which may increase foreign and domestic investment in key sectors (infrastructure, energy). However, this will require clearer budget planning for compensation and incentives. Private investors, particularly foreign companies and SMEs, will benefit from reduced risks and better access to finance thanks to stable conditions, flexible tariffs and the possibility of collateralising assets, which will reduce borrowing costs and speed up project implementation. Banks will become more active in lending to PPPs due to reduced uncertainty and clear repayment mechanisms, increasing competition in the financial market. For communities, these changes will bring faster infrastructure upgrades (roads, communications). Overall, this will raise the share of successful concessions to European levels, strengthening all parties' confidence in the PPP mechanism in Ukraine.

3.3. SME PARTICIPATION IN CONCESSIONS

In the European Union, concessions for small and medium-sized enterprises (SMEs) are governed by the general rules of Directive 2014/23/EU on concessions, as well as other related legislation, such as Directive 2014/24 on public procurement[7]. Small players can participate in these procedures on an equal footing with large companies, but certain benefits are provided for them:

- **Division of contracts into lots** (Article 46 of Directive 2014/24/EU). Concessionaires are encouraged to divide large concession contracts into smaller parts (lots) so that small companies can bid for individual segments rather than competing for the entire project. If no division is made, the concessionaire must justify its decision. For example, a concession for road management could be divided into lots by region or type of work (repair, maintenance), which would facilitate the participation of SMEs;
- **Simplified procedures for small contracts**. For concessions with a value below the threshold (e.g. 5 million special drawing rights), less stringent rules apply;

[7] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement

- **Flexibility in qualification requirements**. Concession grantors are required to set proportionate and reasonable requirements for financial capacity, technical experience, etc., in order to avoid excessive barriers for small players. For example, requirements for a company's turnover should not exceed a reasonable level proportional to the scale of the contract;
- **Direct negotiations for low-value concessions**. Unlike domestic legislation, which provides for direct negotiations only for lessees of state property, i.e. those willing to take on an additional burden, in the EU, this form of concession is used for SMEs to facilitate their access to PPPs;
- **Support for consortia**. SMEs can form consortia to participate in tenders, which allows them to meet the qualification requirements jointly while maintaining their small structure.

Regarding the participation of small concessionaires in PPPs, Ukraine has no specific regulations governing their participation in any form of PPP. In other words, there is no legislative compensation for the difficulties of access to concession projects or other forms of PPP due to the size of such enterprises. Therefore, it would be appropriate to introduce the following special conditions to expand the participation of SMEs in concessions:

- Oblige concessionaires to divide large projects into smaller parts (lots) so that SMEs can participate in the implementation of individual segments rather than competing for the entire object. In case of refusal to divide, require justification;
- Provide simplified procedures for concessions below a certain threshold (e.g. UAH 10 million), reducing the tender period and documentation requirements for SMEs;
- Clarify that the eligibility criteria (financial capacity, experience) for participation in concessions should be proportionate to the project's scale, avoiding excessive barriers for SMEs.
- Allow direct negotiations with SMEs for low-value concessions (e.g. up to UAH 5 million) instead of a full tender as a simplified procedure for concluding a concession agreement;
- Supplement the legislation with a provision encouraging SMEs to form consortia to participate in concessions, allowing them to jointly meet the eligibility requirements without losing their structure;
- Provide state financial support for SMEs in the form of grants, subsidies or loan guarantees for participation in concessions, especially in socially significant projects.

The involvement of SMEs in concessions is crucial for economic development, diversification of the PPP market and ensuring competition. However, the current legislation creates significant barriers to their participation due to the complexity of procedures, high qualification requirements and the lack of adapted mechanisms. The implementation of the proposed recommendations (division of contracts into lots, simplification of procedures for small projects, proportional criteria, direct negotiations, support for consortia and financial assistance) will significantly improve the accessibility of concessions for SMEs. This will contribute to the revitalisation of local economies, job creation and the implementation of projects at the municipal level, such as the management of municipal infrastructure or small transport facilities. Also, the state will gain a wider range of participants, which will increase competition and reduce dependence on large corporations.

3.4. PERFORMANCE ASSESSMENT AND RISK MANAGEMENT

Ukrainian legislation, in particular the Law on Public-Private Partnership and the Law on Concessions, provides for certain risk control instruments, but their effectiveness is questionable due to a lack of specificity and weak practical implementation. Among the available instruments, the following can be highlighted:

- Project performance assessment. Before concluding a contract, the parties must analyse the risks, benefits and feasibility of cooperation. However, the lack of a clear methodology makes this process formal, especially for small projects. Contractual guarantees. The parties may specify the terms of risk allocation in the contract, including compensation in the event of force majeure or early termination.
- However, these provisions depend on negotiations, and the weaker party (e.g., the community) is often unable to enforce them.
- Arbitration. The possibility of resolving disputes through international arbitration is a protective tool, but it is mainly available to large players with foreign investments, rather than local communities or SMEs.

These instruments are not sufficiently effective due to a lack of resources in municipalities for high-quality risk analysis, as well as a weak legal culture, which complicates their practical application. In the EU, for example, Directive 2014/23/EU provides for a broader set of instruments that are lacking in Ukraine:

- **Risk insurance**. In EU countries, concession contracts often include mandatory insurance of operational or financial risks with state participation, which reduces the burden on the private partner.
- **Revision of contract terms**. The Directive allows for the adaptation of the contract in the event of unforeseen circumstances, protecting both parties from uncontrollable risks. In Ukraine, this is only possible with the consent of the parties or through the courts, which complicates the process.
- **Transparent financial guarantees**. In the EU, the state determines the sources of compensation (e.g. through budget funds), while in Ukraine this issue remains unresolved.

Ukraine needs these instruments to reduce uncertainty for private partners and communities, especially in small projects where resources for risk management are limited.

Although provided for by law, standard contracts in Ukraine rarely specify the transfer of risks. For example, the Law on Concessions (Article 26) states that the terms of the contract determine the allocation of risks, but the lack of standardised legal blueprints that clearly regulate this aspect leads to chaos. Although Article 35 clearly states that state support should not cover the majority of operational risk and/or supply risk and cannot exceed the concessionaire's investment. In this respect, Ukrainian legislation is partially in line with Directive 2014/23/EU: it recognises the principles of risk allocation and the transfer of operational risks to the private partner. However:

- there are no clear criteria and standards for risk allocation, which makes the process subjective and contract-dependent.
- there are no flexible mechanisms for adapting conditions (unlike the Directive), which complicates the response to risks.
- shortage of tools (insurance, transparent compensation) and standardised templates, which reduces predictability and attractiveness for investors;
- risk analysis is formal due to the lack of methodology and resources at the local level.

Therefore, although large projects can afford to develop individual contracts with the help of consultants, this is not possible for small projects due to a lack of expertise and funding. Local authorities, like SMEs, usually do not have the necessary qualifications or budgetary resources to conduct a full performance analysis. Engaging consultants is financially prohibitive for them, and their own staff rarely have the specialised knowledge to assess the economic, legal or technical aspects of cooperation. As a result, the performance assessment process in such cases often ends as a formality without proper analysis of risks or potential benefits. This affects the allocation of responsibilities. In small projects, most of the risks are automatically transferred to the private partner. As a result, small PPP projects become unattractive both to private investors, who see no prospects in them, and to local authorities, who have no incentives or opportunities to develop them.

In contrast, typical contracts in the EU often include standardised provisions on risk transfer: operational risks (demand, supply) are transferred to the private partner, while political or regulatory risks are transferred to the state. Such templates simplify the preparation of agreements and ensure predictability.

Greater accountability on the part of the state partner could change the situation. For example, if a tender is challenged due to unfair actions by competitors (complaints, lawsuits), the private partner already suffers losses – preparation costs, downtime, lost opportunities. In the EU, such cases may be covered by state guarantees or compensation if the fault of a third party or the concessionaire is proven. There is no such mechanism in Ukraine, which reduces trust in PPPs. Cooperation with communities could also include the creation of compensation funds or clearer obligations of municipalities towards private investors.

The lack of a standard risk assessment methodology in national legislation has already been mentioned above. In contrast, the EU widely applies unified approaches, such as:

- **Risk matrix**: In the United Kingdom (PF2 standard) and France, risks are classified (construction, operational, financial) and distributed based on their probability and impact. The risk matrix is not directly established by Directive 2014/23/EU, for example, but is left to national regulation as a risk assessment method.
- **Financial modelling:** Used to forecast revenues and costs, taking into account risks, which is mandatory for large projects in the EU.
- **Public consultations**: In Germany and Italy, risk assessment includes the public's opinion, which increases the accuracy of forecasts.

Hence, the guaranteed product purchase mechanism is an effective way to reduce risks for investors participating in PPP or concession projects. It ensures the predictability of sales of manufactured products, which contributes to stable

financial planning and the attraction of additional capital. In particular, in the field of waste management, guaranteed purchase of recycled secondary raw materials can stimulate the development of recycling and processing enterprises.
A similar tool is the guaranteed supply of raw materials, which ensures the uninterrupted operation of production facilities. In the case of long-term concession projects, especially in the infrastructure or environmental sectors, this approach can prevent resource shortages and contribute to the effective implementation of the project.
Despite these mechanisms' obvious advantages, current legislation does not effectively guarantee their use in PPPs. The lack of clearly defined legal norms may deter private investors, as they are forced to independently assess the risks associated with project implementation.
In this regard, it seems appropriate to:

- Introduce mandatory usage of a unified methodology for assessing project effectiveness, including a risk matrix (classified by type: construction, operational, financial, political) and financial modelling for forecasting revenues and expenditures;
- Establish clear criteria for assessing the feasibility of cooperation, including the risk-benefit ratio for both parties, taking into account the needs of small projects;
- Develop standard templates for concession agreements that clearly define the allocation of risks.
- These templates should be mandatory for projects worth, for example, up to UAH 500 million, in order to simplify the preparation of agreements for small and medium-sized entities;
- Include in standard agreements provisions on flexibility to adapt conditions in the event of unforeseen circumstances, with a procedure for review without recourse to the courts;
- Provide for the possibility of including in contracts compulsory insurance of operational and financial risks with the participation of the state or specialised funds. And create a state insurance fund to support small concession projects, to be financed from budgetary sources or international grants. This will reduce the burden on the private partner and increase the attractiveness of projects, especially for SMEs;
- Provide for the possibility of including in contracts mechanisms for guaranteed purchase of products (e.g., secondary raw materials in the waste management sector) and guaranteed supply of raw materials. Define the terms of implementation (volumes, deadlines, prices) to ensure predictability of income and stability of the private partner's operations. Approve the procedure for creating reserve funds to finance such mechanisms at the state or municipal level;
- Introduce a state programme to support municipalities and SMEs in conducting performance assessments, providing free consultations or subsidies to engage experts for projects worth up to UAH 100 million. Develop an online platform with ready-made risk assessment tools (matrices, calculators) accessible to local communities and small investors.
- The implementation of these recommendations will have a broad impact on the public-private partnership and concession system in Ukraine. Overall, however, a clear division of responsibilities and risks and performance assessment will allow the state to focus its efforts only on the most promising projects.

3.5. COOPERATION WITH COMMUNITIES

Cooperation with communities could increase the performance of concessions at the local level by adapting projects to the needs of the population and ensuring their legitimacy, as required by the Aarhus Convention ratified by Ukraine. In order for concession projects within the framework of public-private partnerships (PPPs) to become attractive to investors, the state partner must take responsibility for the entire preparation cycle — from concept development and feasibility studies to environmental impact assessments, land preparation and connection to utilities. However, in Ukraine, this process is complicated by a lack of resources, bureaucracy and corruption. These constraints are particularly noticeable in project preparation times. While a private project without state involvement takes about two years, the preparation of a PPP, particularly concessions, requires an additional year by law, and with bureaucracy, approvals and delays, this can stretch to 2.5–3 years. Though at the same time, investors incur significant costs for negotiations without any guarantee that a contract will be concluded, which makes such projects less profitable, especially for small and medium-sized initiatives. Precisely because cooperation with communities is not only expedient but also desirable for the success of concessions at the local level, it would be appropriate to:

- Introduce a fast-track scheme to attract investors and reduce their risks.

- Involve communities in monitoring contract implementation, ensuring that private partners meet their commitments, and in investing through community funds to receive dividends. This would increase regions' interest in PPP projects.
- Encourage property leases as a simpler alternative to concessions for short-term projects.

Thus, active cooperation with communities, combined with clear procedures and flexibility, could form the basis for the effective development of concessions in Ukraine at the local level.

3.6. SELECTION AND PROCUREMENT IN CONCESSIONS

The threshold value is one of the key elements determining the procedural requirements for concessions. In Ukraine, unlike in the European Union, there is no clearly defined threshold for concessions. In the EU, according to Directive 2014/23/EU, the threshold is 5 million special drawing rights, above which full competitive procedures apply, and below which simplified rules are allowed at the national level. The absence of such a threshold in Ukraine means that all projects, regardless of their value, are subject to equally demanding requirements, which complicates the participation of smaller investors and slows down the process. It would be appropriate to set a certain threshold for simplified procedures.

In this context, flexibility in terms of qualification requirements is an important principle for improving the concession mechanism. Ukrainian legislation establishes a general framework for concluding concession agreements, allowing the parties to determine the terms of cooperation with relative freedom, which increases adaptability to the needs of the state and business. However, this flexibility should not turn into legal uncertainty – transparent decision-making rules and mechanisms to protect the interests of both parties are needed for its effective use.

The lack of clear criteria for conducting concession tenders creates significant risks, including challenges to the results and associated delays. An example is the port of Kherson, where the tender was challenged due to unclear requirements and procedures, resulting in losses for potential investors. In the EU, such problems are minimised by Directive 2014/23/EU, which establishes proportionate qualification requirements, transparent selection conditions and mandatory publication of conditions in the Official Journal of the EU. It would be appropriate to introduce similar rules in Ukraine in the procedure for conducting tenders.

In Ukraine, Cabinet of Ministers Resolution No. 909[8] enshrines changes to concession tender procedures. Thus, projects worth more than UAH 250 million are conducted through the Prozorro system, which promotes transparency and competition, while cheaper projects use Prozorro.Sale, which is mainly intended for the lease or disposal of property. This distinction is positive as it differentiates approaches depending on the scale of the project. However, the lack of a clearly defined threshold value for simplified procedures leaves unresolved the problem of excessive bureaucracy for small initiatives and does not fully take into account the needs of less resource-intensive projects. Therefore, the recommendations are as follows:

- introduction of a clear threshold for concessions below which simplified procedures will apply to facilitate investor participation;
- development of clear and proportionate qualification requirements and selection criteria for concession competitions.

Setting a threshold value for simplified procedures will contribute to greater flexibility in legislation, which needs to be adapted to the needs of investors. This will not only attract smaller investors but also increase the attractiveness of smaller projects in general. By removing excessive bureaucracy, the implementation of local projects will be accelerated.

[8] On the procedure for conducting concession tenders and competitive dialogue in the electronic trading system | dated 20 August 2021 No. 909

3.7. MANAGEMENT AGREEMENTS AS AN ALTERNATIVE

In the context of legal regulation in Ukraine, property management agreements are somewhat similar to concessions, as both mechanisms may provide for the management of state or municipal property by private entities. However, their legal nature, objectives and terms of implementation differ significantly.

According to Article 1029 of the Civil Code of Ukraine[9], under a property management agreement, one party (the management founder) transfers property to the other party (the manager) for a certain period of time, and the other party undertakes to manage this property on its own behalf in the interests of the management founder, or a person specified by it (the beneficiary) in return for payment. However, given the distinctiveness of this instrument from PPP methods, there is a problem with financing under such an agreement.

According to the Civil Code, if the parties have not specified the term of the property management agreement, it shall be deemed to be concluded for five years. However, according to Part 17 of Article 23 of the Budget Code[10], the amount of expenditure for the fulfilment of long-term obligations under public-private partnerships for the relevant budget period shall be established by the law on the State Budget of Ukraine (local budget decision) within the budget allocations of the chief budget administrator for the entire term of the relevant agreement in the amount necessary to fulfil such obligations in each relevant budget period (taking into account the restrictions established by this Code: no more than 30% of the general fund revenues of the local budget (excluding certain tax revenues), until the full fulfilment of such obligations. The financing of the remaining obligations may be limited to a period of one year.

Therefore, although the Civil Code (Article 1030) does not limit the term, the practical implementation of long-term agreements may be complicated if they require budget financing. In such cases, annual coordination of expenditures may create instability, limiting the attractiveness of such projects for private investors.

The EU does not regulate management agreements as a type of PPP centrally, but there are examples of similar forms of PPP in member states. For example, France is one of the countries with the most developed regulation of PPPs and property management agreements. In French law, management agreements are often associated with the concept of 'gestion déléguée' (delegated management), which covers various forms of cooperation between the state and the private sector. The main regulatory act is the Public Contracts Code, which has combined provisions on concessions, procurement and delegated management since 2019. The term of such contracts is usually 5–20 years and depends on the nature of the object and economic feasibility. The manager receives payment from service users, while the state retains control over tariffs and quality. The demand risk remains partly with the public sector, which distinguishes these contracts from concessions. Thus, the French model demonstrates flexibility: management agreements are an intermediate link between leasing and concessions, allowing the state to delegate operational activities without completely transferring risks. It can therefore be concluded that this mechanism is insufficiently regulated in domestic legislation, which has a negative impact on the diversity of PPP forms that allow less large-scale projects to be implemented in EU countries outside the detailed framework of the concession procedure. In addition, this type of PPP could be extremely promising in Ukraine in the context of improving the profitability of unprofitable state-owned enterprises. However, existing difficulties with budget financing, etc., do not allow the full potential of this instrument to be realised; therefore, it is necessary to:

- clearly define management agreements as a separate type of PPP with simplified procedures for concluding projects (e.g., worth up to UAH 50 million);
- regulate the financing of management agreements and allow budget funds to be reserved for the entire term of the agreement;
- develop a model asset management agreement specifying the distribution of operational risks between the parties and allowing for flexible adjustment of terms and conditions.

The development of management agreements in Ukraine is a promising tool for improving the efficiency of state and municipal assets, especially in the context of limited funding and complex concession procedures. Implementing the proposed recommendations will facilitate the implementation of smaller-scale projects without excessive bureaucracy.

[9] Civil Code of Ukraine | dated 16 January 2003 No. 435-IV

[10] Budget Code of Ukraine | dated 08.07.2010 No. 2456-VI

At the same time, the state will be able to maintain control over assets while increasing their profitability and reducing dependence on complex concession mechanisms.

4. CYBERSECURITY

Ensuring cybersecurity is a priority for every country in the context of rapid digital technology development and growing cyber threats. In Ukraine, the existence of several bodies responsible for cyber defence leads to duplication of functions and reduces management efficiency. At the same time, the absence of minimum risk management standards for private companies, as well as the category of 'important' companies that would be subject to cybersecurity legislation, creates gaps in the protection of cyber infrastructure. In addition, there are shortcomings in the regulatory framework for personal data protection and regulation of internet service providers, whose large number complicates effective oversight and control.

Although the issue of critical infrastructure cybersecurity is not directly regulated by the third negotiation chapter, ensuring the reliable protection of the electronic environment is a prerequisite for the realisation of the freedom to provide services, especially in the context of the development of e-commerce. Lack of trust in digital channels, low levels of personal data protection and insufficient security of online platforms can become barriers to the right to establish and freely provide services, contrary to the principles of the Services Directive (2006/123/EC). That is why digital security should be seen not only as a separate policy element, but also as a key factor in creating a favourable environment for business in line with European standards.

These challenges can be addressed by consolidating cybersecurity governance, introducing minimum mandatory standards for businesses, establishing incident reporting requirements for a wide range of economic operators, and harmonising national legislation with EU rules, in particular the NIS2 Directive and the Digital Services Act (DSA).

4.1. CYBERSECURITY MANAGEMENT AUTHORITY

Ukraine lacks a unified state body responsible for cybersecurity, which leads to fragmentation of powers, duplication of functions and inefficiency. Although the State Service for Special Communications and Information Protection of Ukraine is the main body with powers in the field of cybersecurity and crypto protection, there are other state structures that are also relevant to this area. According to Part 2 of Article 8 of the Law of Ukraine 'On the Basic Principles of Ensuring Cyber Security of Ukraine', the main entities of the national cyber security system are:

- State Service for Special Communications and Information Protection of Ukraine;
- National Police of Ukraine;
- Security Service of Ukraine;
- Ministry of Defence of Ukraine and General Staff of the Armed Forces of Ukraine;
- Intelligence agencies;
- National Bank of Ukraine.

In addition, the Presidential Decree established the National Cybersecurity Coordination Centre. This diversity of responsible bodies without proper coordination complicates an effective response to cyber threats. That is why it is crucial to:

- conduct an audit of the powers of all entities within the national cybersecurity system, which will allow for the delineation of the competences of authorised bodies;
- concentrate most powers within the competence of a single coordinating body to comply with EU legislation;
- harmonise Ukrainian legislation with the requirements of Directive 2022/2555/EU (NIS 2)[11] and Regulation 460/2004[12].

[11] Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive)

[12] Regulation (EU) 460/2004 of the European Parliament and of the Council of 10 March 2004 establishing the European Network and Information Security Agency

This will simplify the reporting mechanism for the private sector in the event of a cyber incident and increase the efficiency of the responsible state authorities.

4.2. INTRODUCTION OF UNIFIED RISK MANAGEMENT STANDARDS

In Ukraine, the lack of unified risk management standards for private sector enterprises that do not fall into the critical category creates significant problems in ensuring cybersecurity. Enterprises that do not fall under the definition of critical infrastructure are not required to comply with minimum requirements for risk analysis and assessment, implementation of security policies, protection against unauthorised access, business continuity and staff training, nor are they required to report cyber incidents. This contrasts with the approach of the European Union, where Directive 2022/2555/EU (NIS 2) sets mandatory minimum requirements not only for critical but also for important sectors. The absence of such standards in Ukraine could increase the vulnerability of the private sector to cyber threats, increasing the likelihood of major cyber incidents and damage to the economy. It would therefore be appropriate to:

- introduce a category of 'important' enterprises, define mandatory minimum risk management standards for them, such as risk analysis, security policy, incident management, business continuity and supply chain security, and inform the state authority responsible for cybersecurity about significant incidents;
- establish clear incident reporting procedures, specifying the deadlines and form for reporting cyber incidents;
- introduce control and accountability mechanisms, including a system of fines and other sanctions for non-compliance with cybersecurity requirements;
- define coordination mechanisms between public authorities and the private sector for effective information sharing and response to cyber threats.

This will potentially lead to increased security and competitiveness in the EU market for businesses on the one hand and reduce the economy's vulnerability to attacks for the state on the other.

4.3. PERSONAL DATA PROTECTION AND REGULATION OF INTERNET SERVICE PROVIDERS

In Ukraine, the lack of an effective supervisory authority monitoring personal data protection poses risks to the security of citizens' and businesses' personal information. Low fines for data protection violations and imperfect regulatory mechanisms hinder the effective exercise of data subjects' rights and prevent an adequate response to incidents. The draft law 'On Personal Data Protection' partially addresses these issues but still needs further refinement to bring it closer to European law.

The General Data Protection Regulation 2016/679[13] requires each EU Member State to establish a supervisory authority. This should be an independent body that will monitor data protection in that Member State, advise the government on administrative measures, and initiate court proceedings in the event of a breach of data protection rules (Article 28). At the same time, the Regulation defines concepts such as controller, processor and data subject, regulates the protection of personal data in B2B and B2C relationships, provides for the right to be forgotten and to have data erased, and establishes penalties for violations of the established requirements in the amount of up to 20 million euros or 4% of the annual global turnover for the previous financial year for companies, depending on which is greater, if such provisions are violated (Article 83, paragraph 4), etc.

In Ukraine, however, the penalties for similar offences in the area of personal data under the Code of Administrative Offences are significantly lower. In addition, personal data protection mechanisms remain imperfect, and the 'right to be forgotten' is not provided for at all. The draft law 'On the Protection of Personal Data'[14] should fill this gap, but it does so only partially. It still needs to be revised in terms of the powers of the independent supervisory authority (Articles 58–60), which are limited to imposing fines and exercising control, without a detailed description of investigation procedures, the right to issue orders or international cooperation. In addition, the draft law has a number of other shortcomings, such as the lack of guarantees of independence for the supervisory authority, the lack of detail

[13] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

[14] On the protection of personal data | dated 25 October 2022 No. 8153

on technical standards and procedures, the obligation to configure products for maximum privacy protection by default, and others. Therefore, in order to address the key shortcomings, the following is needed:

- provide clear guarantees of the independence of the supervisory authority, such as prohibiting political or governmental influence on its activities, and establish a transparent mechanism for appointing its management (e.g. by parliament) and sources of funding;
- expand the powers of the supervisory authority provided for in Articles 58–60 of the Draft Law by adding a detailed description of the procedures for investigating violations, the right to issue binding orders to remedy violations, and mechanisms for international cooperation with authorities in other countries;
- introduce an obligation for controllers and operators to ensure the highest level of privacy in default product settings (Article 25 of the Regulation);
- add a clear requirement for software developers and IoT device (gadget) manufacturers to incorporate data protection principles at the product design stage, as provided for in Article 25 of the Regulation;
- amend the draft law to include requirements for technical and organisational security measures (e.g. encryption, pseudonymisation), data protection impact assessments (DPIAs) and data breach notification with clear deadlines (e.g. 72 hours, as in the Regulation).
- include a requirement to conduct DPIA (data protection impact assessments) for operations posing a high risk to the rights of data subjects, and develop a list of types of processing requiring such an assessment (e.g., profiling or mass processing of sensitive data), as in Article 35(part 3) of the Regulation;
- align the draft law with cybersecurity standards, such as the requirements of the NIS 2 Directive.

The rules set out in the General Data Protection Regulation 2016/679/EU also apply to internet service providers. Their activities are also regulated by Directive (NIS2), Directive 2018/1972/EU, Directive 2002/58/EU, Regulation (EU) No. 2015/2120 and other regulatory acts. High efficiency in the management of internet service providers is achieved, among other things, by their small number. In Ukraine, however, the situation is quite the opposite. Moreover, national legislation does not provide a clear definition of net neutrality, mechanisms for monitoring compliance, etc. Given the successful experience of the EU, Ukraine could improve its national approaches as follows:

- introducing the principle of network neutrality into the Law on Electronic Communications with control mechanisms (e.g. through the NCCEC);
- developing an equivalent to ePrivacy to regulate traffic, geolocation and spam;
- strengthening the responsibility of providers for data leaks and cybersecurity breaches, taking into account the provisions of Regulation (EU) No. 2016/679 and Directive NIS 2;
- developing a strategy to reduce the number of small providers (e.g. by encouraging mergers or competition) in order to simplify supervision and improve management efficiency, bringing the situation closer to the European model.

Of course, these changes may increase compliance costs for providers, but this will also increase user confidence, as they will benefit from better privacy protection and access to services.

5. SECTORAL ANALYSIS: VERTICAL LEGISLATION FOR SPECIFIC INDUSTRIES

We have studied vertical legislation for individual sectors in detail to identify systematic challenges that Ukraine faces in implementing the requirements of the third chapter of the negotiations. This approach has allowed us to see how actual regulatory practices affect market access, competition, legal certainty and consumer protection.

A detailed study of sectoral cases confirmed the overall problem: the Ukrainian regulatory environment remains fragmented, often overly bureaucratic, with insufficient guarantees of transparency and a level playing field for market participants. There is a significant gap between the nominal approximation of legislation to the acquis communautaire and its actual implementation. In particular, enforcement of regulatory requirements is largely declarative, mechanisms for verifying the transparency of ownership and origin of services are poorly developed, and the regulatory framework does not provide sufficient predictability for businesses.

The lack of effective instruments for mutual recognition of professional qualifications, problems with the certification of goods and services, unequal access to licensing procedures, and a significant level of market informalisation significantly hamper Ukraine's implementation of the basic principles of the EU internal market. In addition, excessive administrative intervention combined with weak institutional control over permits already issued creates inequality for market participants and undermines trust in the regulatory system.

To meet the requirements of the third negotiation chapter, Ukraine should focus its efforts on deep institutional reform: ensure the effective functioning of market access procedures, establish effective mechanisms for verifying the integrity of operators, introduce transparent and predictable conditions for all participants without discrimination on grounds of nationality, and integrate mutual recognition mechanisms for qualifications and harmonised technical standards.

5.1. MEDIA SERVICES

Media regulation in Ukraine and the EU aims to ensure transparency, content quality and market protection, but Ukrainian legislation faces numerous challenges. These include ineffective enforcement of licensing conditions, which allows content to be changed contrary to the declared formats, the lack of mechanisms to verify the licence status of foreign media, which threatens information security; a declarative approach to ownership transparency, which does not prevent manipulation; and the unregulated status of internet platforms, which contributes to the spread of disinformation. These gaps undermine trust in the media market, complicate consumer protection and the competitiveness of legal players. To address these issues, clear oversight mechanisms, cooperation with European regulators, greater transparency, and adaptation to EU standards are needed.

5.1.1. SUPERVISION OF LICENCE CONDITIONS COMPLIANCE

One of the key problems is the lack of effective control over compliance with licensing requirements. For example, entities that obtain a broadcasting licence with a promise to provide programmes of a certain format, such as news or cultural and educational programmes, may subsequently replace them with content that does not correspond to the stated concept, including entertainment programmes of dubious quality or excessive advertising. This makes it difficult for audiences to access the content they expect, undermines trust in the media market and creates unequal conditions for reputable participants.

Broadcasting licences, in accordance with Articles 50 and 59 of the Law of Ukraine “On Media”[15], are issued and renewed for a period of 10 years. In both cases, this happens if the requirements of the law are met, in particular regarding the programming concept. This includes the obligation of the future licensee to ensure certain minimum volumes of programmes aimed at a specific audience or with a specific theme (as specified in Articles 51(7) and 33 of the Law).

Still, during the licence period, licensees can totally change the content, which breaks the original licence requirements. At the same time, the National Council only has the right to do checks, as mentioned in part 1 of Article 91 of the Law, and not the duty. The grounds for conducting inspections are complaints or substantiated information, as well as the results of monitoring if signs of violations of the law and/or licence conditions have been identified (paragraphs 2, 4, 6 of Part 2 of Article 103), which, incidentally, the National Council carries out without the grounds, principles or obligation established by law (para. 35, part 1, Article 90).

At the same time, it should be noted that, according to part 3 of Article 59, an application for the extension of a licence must contain, among other things, evidence of compliance with the conditions of the licence that is expiring.

The licence conditions are determined by the National Council itself and specified in its decision to hold a competition for the licence. However, the Law does not contain the concept of ‘significant changes’ in the licence conditions, which creates a problem for holding unscrupulous licensees accountable, since the relevant ground is also absent from the list of offences set out in Article 115 of the Law. That is why it is essential to:

- introduce the concept of ‘significant changes’ in the context of licensing conditions,

[15] On Media|dated 13.12.2022 № 2849-IX

- introduce the obligation of the National Council to regularly verify the compliance of licensees' content with licensing conditions (in accordance with the principles of fairness and equality), and
- expand the list of grounds for making changes to the Register to include the nature of the content and the terms of the licence.

This will provide the National Council with the necessary legal grounds to improve the quality of content. This will force licensees to comply more strictly with the law's requirements and, consequently, provide consumers with the content specified in the licence conditions.

5.1.2. VERIFICATION OF FOREIGN MEDIA LICENCE STATUS

There is also a problem with the lack of a mechanism for verifying the licence status of foreign media that are allowed to broadcast in Ukraine under the Convention on Transfrontier Television,[16] allowing linear media to broadcast in Ukraine even if they do not have a licence in the EU. This poses serious risks to the national media environment, as the lack of proper control allows illegal or unverified broadcasters to distribute content that may not meet quality standards, contain disinformation or propaganda, threatening the country's information security. In addition, it undermines the competitiveness of legal media that comply with Ukrainian law and makes it more difficult to protect consumer rights, as audiences may receive content from entities that are not properly regulated. In the long term, this undermines trust in the media market and complicates Ukraine's integration into European media regulation standards.

Article 66 of the Law contains a list of information that must be included in the application for registration of a foreign linear media outlet, including the identification details of the person who holds the licence or is the registrant of the foreign linear media outlet in the relevant country, the country of origin, etc. However, neither the Law on Media nor the National Council Regulations[17] specify how the National Council can verify the licence status of foreign media or whether the National Council is authorised to take any measures in this regard.

In this context, the situation is strikingly different from the approach enshrined in EU legal acts, which established a platform (ERGA - European Regulators Group for Audiovisual Media Services) for the exchange of information between national regulators, ensuring the effective exchange of data on the status of licences. Directive 2018/1808/EU[18] also institutionalised ERGA (Article 30b) as an advisory body to the European Commission, acting as a coordination mechanism between national regulators. In addition, national authorities of Member States may also cooperate with each other on other important issues, such as licensing status.

For example, France has a national media regulatory authority called Arcom. To comply with Article 9 of the Leotard Law[19], France's regulatory authority for audiovisual and digital communications is required to respond within two months to requests for information from the regulatory authority of a European Union member state. Such requests must relate to a service falling within the jurisdiction of France and intended for the public of another Member State. They are submitted in accordance with Article 30a of Directive 2018/1808/EU, which provides for the right of a regulatory authority at any level in a Member State to which the activities of a media service provider are directed to refer the matter to the regulatory authority of the Member State under whose jurisdiction the provider falls. In addition, national regulatory authorities may contact the target Member State in cases where a provider under their jurisdiction has notified them of its intention to provide services in its territory (such requests are made in the context of the exchange of information on the relevant intention).

Therefore, Ukrainian regulators must have clear mechanisms for verifying the licence status of foreign broadcasters broadcasting their programmes in Ukraine, which should consist primarily of:

- concluding bilateral agreements with EU countries whose jurisdiction includes foreign media or cooperating with ERGA (or the European Media Services Council), which would allow information on the existence of a licence to be obtained even without full EU membership;

[16] European Convention on Transfrontier Television (ETS No. 132)

[17] Regulations of the National Council of Ukraine on Television and Radio Broadcasting | dated 20 April 2023 No. 339

[18] Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities

[19] Law No. 86-1067 of September 30, 1986 relating to freedom of communication (Léotard Law)

- launching an electronic register of foreign linear media broadcast in Ukraine, indicating their licence status, country of origin and verification results;
- supplementing the Law with a requirement for foreign media to provide an official document from the regulator of their country of origin (e.g. a copy of the licence or a certificate).

This will contribute to eliminating illegal broadcasters in compliance with the directive's requirements, protecting the national media market from unfair competition, and increasing the level of trust in foreign broadcasters.

5.1.3. OWNERSHIP TRANSPARENCY CHECK

Furthermore, the mechanism for ensuring transparency of media ownership remains declarative – the National Council does not conduct in-depth checks of ownership structures and formally accepts the submitted documents, which creates opportunities for bypassing the requirements of the law.

The Law on Media sets out clear requirements for transparency of ownership structures in the media sector (Article 25). Significant shareholders must be disclosed and cannot include offshore companies or nominal holders. Article 26 provides for the obligation to publish on their website and submit to the National Council a statement on changes to the Register regarding changes in the ownership structure of a media entity, changes in the ultimate beneficial owner, key participants or significant shareholders. To confirm the ownership structure, the National Council has the right to request relevant documents from the entities, but if the documents provided do not allow for transparency, the National Council sends an additional request and sets a deadline for a response. According to Part 6 of Article 27 of the Law, if a media entity fails to provide the information and/or documents requested by the National Council within the established time limits, the ownership structure of the media entity shall be deemed non-transparent and/or not in compliance with the requirements of this Law.

The experience of EU member states in verifying ownership transparency is fairly standard: national regulatory authorities use national company registers (analogous to the Unified State Register of Legal Entities and Individual Entrepreneurs) that contain information about shareholders, etc., and cooperate with national antitrust committees and other state bodies. At the same time, EU regulatory authorities also face difficulties, such as when the real owners are hidden behind nominal holders or offshore companies where access to data is restricted. In such cases, it is necessary to rely on the good faith of the entities (which is encouraged by severe penalties) if there are no grounds for further investigation and recourse to the courts.

At the same time, member countries have broader capabilities through the use of platforms such as OpenCorporates, BORIS, or cooperation through ERGA (soon to be replaced by the Media Council)[20] to access the registers of other member countries. The OpenCorporates platform collects and provides access to information on the ownership structure of companies from over 140 jurisdictions around the world. In addition, the BORIS (Business Registers Interconnection System) platform, established pursuant to Article 30 of AMLD5[21], is designed to exchange data from registers on ultimate beneficial owners and ownership structure in general, which will be accessible to authorised national authorities or the public from 2021. Although Ukraine does not have access to such tools, as it is not an EU member state, there are still some ways to overcome the declarative nature of national legislation requirements regarding the establishment of the ownership structure of media entities, including:

- granting the National Council access to national and international databases (EDRPOU, OpenCorporates, BORIS) to identify owners and verify ownership structures;
- establishing mandatory cooperation between the National Council and the Antimonopoly Committee, the State Tax Service and law enforcement agencies;
- define criteria for nominal ownership and establish sanctions for concealing it;
- classify the offence provided for in paragraph 4 of part 2 of Article 110 of the Law as a gross offence under part 4 of that article;

[20] Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act)

[21] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

- introduce automatic recognition of ownership structures as non-transparent if the owner is registered in jurisdictions with limited access to data (offshore), without the possibility of correction by formal documents alone.

Implementing these recommendations will increase the transparency of media ownership, minimise manipulation of ownership through offshore companies, and thereby strengthen the audience's trust in both media outlets and public authorities.

5.1.4. STATUS OF ONLINE PLATFORMS

Another significant gap is the unregulated status of online platforms, which, having accumulated a large audience, effectively perform the functions of mass media. Such platforms in Ukraine do not have a clearly defined legal status, which complicates their regulation and creates threats, including the spread of disinformation, uncontrolled influence on public opinion and evasion of responsibility.

The Law of Ukraine 'On Media' is limited to the definitions of 'platforms for shared access to information' and 'platforms for shared access to video' (in paragraphs 38 and 39 of Article 1), without granting full legal status to other types of platforms, such as social networks, blogs, cloud storage, etc., and without setting a limit in terms of the number of users or other criteria, upon reaching which such platforms would be considered media outlets and would be subject to the relevant obligations.

In contrast, the EU has the DSA Regulation[22], which covers the activities of internet platforms in a broad sense and defines them as hosting services that store and disseminate information to the public at the request of users, provided that this function is not ancillary. It also regulates online search engines and introduces the concept of 'intermediary services'. Thus, it would be advisable for Ukraine to:

- define in law the legal status of data transmission services and internet platforms depending on their activities (social networks, video hosting, search engines);
- introduce criteria for distinguishing between large and small platforms, similar to the concept of very large online platforms (VLOPs) set out in the DSA Regulation;
- introduce mechanisms for data exchange between the Ukrainian regulator and European authorities monitoring compliance with the DSA Regulation;
- introduce mandatory content moderation and establish responsibility for its dissemination;
- develop a mechanism for appealing and removing content;
- require large platforms to submit annual reports on content moderation and advertising;
- oblige e-commerce platforms (OLX, Rozetka) to monitor sellers and verify the legitimacy of products;
- prohibit 'dark patterns' and take other measures to bring national legislation into line with the DSA Regulation.

5.2. HEALTHCARE

European experience in regulating medicinal products, medical devices and cross-border healthcare services demonstrates the importance of clear harmonised rules for the free movement of goods and services within the EU internal market. For Ukraine, in the context of implementing the requirements of the third negotiation chapter, it is critical to bring its regulatory mechanisms in the field of medicine closer to European standards, in particular by simplifying licence recognition procedures, harmonising quality standards and introducing mechanisms for cross-border access to medical services. Compliance with these requirements will not only facilitate integration into the EU internal market but also increase the competitiveness of Ukrainian producers and the quality of medical services for citizens. At the same time, reforms in these sectors should be part of a broader strategy to develop freedom of enterprise and the provision of services in line with the European Union acquis.

5.2.1. LEVELS OF HEALTH CARE REGULATION IN THE EU

[22] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act)

As a supranational organisation, the EU applies different approaches to regulation depending on the area: some aspects, such as medicinal products, are regulated centrally and in detail at the EU level, while healthcare systems remain largely within the competence of Member States.

Thus, the regulation of medicines in the EU is primarily governed by Regulation (EC) No 726/2004[23], which establishes a single procedure for the approval of medicinal products, and Directive 2001/83/EC[24], which harmonises requirements for the manufacture, labelling, advertising and distribution of medicinal products, including standards of good manufacturing practice (GMP). In Ukraine, regulation is based on the Law of Ukraine "On Medicinal Products"[25], and control is exercised by the State Service of Ukraine on Medicines and Drugs Control.

The healthcare system in the EU is regulated at the national level in accordance with Article 168 of the Treaty on the Functioning of the EU (TFEU)[26], i.e. each Member State has considerable autonomy in determining how to organise, finance and provide healthcare services to its citizens,

while the EU can only amend national health policies but not harmonise them. Euro-wide regulation mainly focuses on coordination, exchange of best practices and support (e.g. through funding programmes such as EU4Health).

However, the EU can sometimes intervene, for example in matters of a cross-border nature, such as combating pandemics, access to healthcare for citizens travelling between countries (Directive 2011/24/EU on patients' rights in cross-border healthcare), or safety standards (e.g. for medical devices). In Ukraine, the healthcare sector is regulated by the Law of Ukraine Fundamentals of Ukrainian Legislation on Healthcare[27] and the Ministry of Health.

Thus, the European approach to healthcare regulation provides both uniform standards for the development, manufacture, testing, registration, labelling and sale of medicines and flexibility in the provision of healthcare services at the national level.

5.2.2. DOCTORS WITHOUT BORDERS

Although the process of referring Ukrainian citizens for treatment abroad is provided for by the state programme, it is complicated by excessive bureaucracy, the lack of unified standards and isolation from the European medical sector. This leads to delays in the provision of critical medical care, especially for complex cases such as oncology or rehabilitation of wounded persons, which has become particularly relevant after 2022. The main reason is that Ukraine is not integrated into initiatives such as the European Health Data Space (EHDS), which complicates the exchange of information, coordination of procedures and financing (incidentally, this programme provides for the integration of third countries starting in March 2034).

The problem can be solved through integration with European systems, simplification of procedures and development of internal infrastructure for faster and more efficient access to cross-border services.

Resolution No. 1079 of the Cabinet of Ministers of Ukraine regulates the procedure for sending Ukrainian citizens abroad for treatment at public expense in cases where the necessary treatment for complex diseases cannot be provided in Ukraine.

The procedure consists of the following stages:

· The patient (or their representative) applies to the Ministry of Health of Ukraine through a medical institution;

· A special commission of the Ministry of Health reviews the application and medical documents and determines whether there are grounds for referral;

· If the decision is positive, the Ministry of Health concludes an agreement with a foreign clinic, and the state pays for the treatment (including transport, accommodation and escort).

The current practice of referring Ukrainians for treatment abroad requires considerable effort on the part of the patient and the state due to the variety of contract requirements in each country, as well as different standards of clinics regarding medical documents and certification. The programme is financed from the state budget: in 2023, UAH 495

[23] Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency

[24] Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use

[25] On Medicinal Products | dated 28 July 2022 No. 2469-IX

[26] Treaty on the Functioning of the European Union | dated 25 March 1957

[27] Fundamentals of Ukrainian legislation on healthcare | dated 19 November 1992 No. 2801-XII

million has been allocated to the programme for the treatment of Ukrainian citizens abroad, according to the passport of the budget programme for 2023[28].

Meanwhile, the European Health Area is a concept aimed at harmonising standards, procedures and systems to ensure free access to healthcare services within the EU. One of its key projects is the EHDS, launched in 2022, which aims to ensure the cross-border exchange of medical data (electronic health records, prescriptions, test results), simplify access for EU citizens to healthcare services in any member state, and create uniform standards for digital systems, such as the coding of diseases, medicines and data formats. The lack of a single space leads to a number of problems for Ukraine:

- First, different standards complicate interaction: for example, in Poland, medical records are kept according to the HL7 CDA standard, while in Ukraine, the international standard HL7 FHIR was used as the basis for developing the central database of the electronic health system (EHS) and, in particular, electronic medical records. Also, drug coding in Italy may differ from that in Ukraine due to different trade names.
- Second, bureaucracy slows down the process: the Ministry of Health of Ukraine has to negotiate with each country and clinic separately. For example, to send a patient to Germany, it is necessary to find a clinic, translate and adapt medical documents to German standards, conclude an agreement, and organise financing, transport and support, which takes a lot of time.
- Third, the lack of cross-border data exchange means that foreign clinics cannot quickly obtain a patient's medical history (tests, allergies, chronic diseases), which complicates diagnosis and increases the risk of errors.
- Fourth, financial barriers add to the difficulties: in Germany, clinics may require prepayment, while in Poland, payment is made after services are provided, forcing the Ministry of Health to adapt to different approaches.

Integration with a single European space could greatly alleviate the situation. Thanks to the EHDS, foreign clinics would have instant access to Ukrainians' electronic medical records, allowing them to immediately take into account previous treatment or allergies. The unification of procedures through common standards would simplify the referral process by making the document format and coding the same for all countries. A single payment mechanism, for example through a European fund, would eliminate financial bureaucracy and reduce the speed of the process from weeks to a few days. Therefore, in order to simplify the procedure for patients receiving treatment outside their country of citizenship, it is advisable to:

- begin the process of integration into the European Health Data Space (EHDS) to ensure cross-border exchange of medical data and simplify access to medical services abroad, and, in the meantime, conclude framework agreements with countries that most often accept Ukrainian patients, such as Poland, Germany and Italy, to standardise referral procedures and reduce bureaucratic delays;
- improve the eHealth system by integrating all medical data into a single platform and standardising data standards so that foreign clinics can quickly access the medical history of Ukrainian patients;
- add an automatic translation function for medical documents into English or the language of the destination country to the ECOS system, which will simplify coordination with foreign clinics;
- establish procedures for compensation for cross-border treatment with EU member states.

Unifying referral procedures and integration with the EHDS will significantly reduce waiting times for treatment abroad (from weeks to a few days) and remove bureaucratic barriers. Accessibility of medical data through a single platform will increase the safety of procedures by taking into account medical history, which will ultimately have a positive impact on the health, longevity and quality of life of patients.

5.2.3. MOBILITY OF MEDICAL PERSONNEL AND QUALIFICATION RECOGNITION

There is a shortage of healthcare workers in Ukraine and the EU, which poses a significant challenge to the functioning of healthcare systems. In Ukraine, this situation could potentially exacerbate the demographic and economic crisis, as:

- a shortage of doctors could reduce the working capacity of the population due to limited access to quality healthcare;
- qualified young professionals are leaving the country, and they are being replaced mainly by older or less experienced workers;

[28] Budget programme passport for 2023. Ministry of Health

- at the same time, Ukraine is suffering financial losses, as the training of a single doctor costs the state a certain amount of money, but the results of this investment are often utilised by other countries to which these specialists migrate.

According to the Ministry of Health, approximately 115,872 doctors[29] worked in Ukraine in 2024, which equates to 3.05 doctors per 1,000 people (based on a population of 38 million), while the EU average was 4.09 in 2022[30]. The personnel shortage is particularly acute in rural areas. The war has only exacerbated the problem: many medical professionals have left the country due to low salaries, difficult working conditions, and danger.

The quality of medical education in Ukraine will improve, which will facilitate the recognition of Ukrainian medical diplomas abroad and lead to another wave of specialists leaving the country. Since 2017, changes in medical education have begun as part of medical reform: for example, Krok has been introduced, a single state qualification exam that tests students' knowledge (similar to the USMLE in the United States). In 2023, the Ministry of Health introduced new standards for residency (internship) to bring them closer to European standards. Such changes improve the quality of training, making Ukrainian graduates more competitive in the international market. If the quality of education in Ukraine improves, training programmes will be more in line with European standards (e.g., more practical hours and modern methods). This will reduce the number of additional exams or requirements for nostrification.

The EU also has a shortage of nurses and primary care doctors: according to OECD data from 2022, the average is 6.5 nurses per 1,000 people. The reasons for the shortage in the EU include an ageing population, ageing medical staff and migration within the Union. It is more profitable for European countries to attract ready-made specialists from non-EU countries, such as Ukraine, than to spend significant funds on training their own personnel.

This situation makes Ukrainian medical professionals an attractive 'target.' Poland, for example, simplified the recognition of Ukrainian diplomas in 2022. Now, all they need to do is pass a simplified exam and know Polish. At the same time, salaries are significantly higher than in Ukraine, where in 2023 a nurse earned 13,500 hryvnia and a doctor 20,000 hryvnia. It is not surprising that, according to some estimates, as of September 2023, about 4,100 doctors had found work in Poland.

Although Ukraine cannot compete with EU countries in terms of salaries for medical workers, it can offer other incentives to retain staff (career prospects, opportunities for development, bonuses):

- introduce clear career paths for medical professionals (e.g., faster access to specialisation and grants for study abroad with a commitment to return). Separately, support for research and participation in international conferences;
- free training courses, access to modern technologies (e.g. simulation centres);
- creation of opportunities for remote work, which would help reduce the workload;
- a package of additional benefits, such as bonuses for working in rural areas, additional payments or compensation, housing for young professionals, preferential loans, medical insurance for families, the possibility of working part-time, etc.

At the same time, Ukraine is already simplifying the conditions for attracting foreign specialists. According to the order of the Ministry of Economy of Ukraine dated 10 June 2024 No. 14554, the following medical workers can obtain a residence permit in Ukraine: doctors, pharmacists, clinical pharmacists, nurses (paramedics). But, a mandatory requirement for obtaining such a permit remains confirmed work experience of at least one year within the last three years and a nostrified diploma of education.

In order to create additional attractive conditions for medical workers, it is also necessary to 'liberalise' the healthcare system, i.e. reduce bureaucracy, give more autonomy to medical institutions and workers, and simplify regulations, for example by allowing doctors to work in several institutions, including private ones, without unnecessary bureaucratic restrictions.

In addition, Ukraine is already a popular destination for foreign medical students. So, when education improves, it may attract even more students. Foreign graduates will be more willing to stay in Ukraine if they are offered a simplified employment procedure, competitive conditions (bonuses, housing, career opportunities), minimisation of language barriers, etc.

[29] Strelchenko et al. (2024). Protection of The Rights of Healthcare Workers in the Light of European Integration Processes. Clinical and Preventive Medicine. 2024, 1: 130–139. https://doi.org/10.31612/2616-4868.1.2024.15.

[30] Healthcare personnel statistics - physicians - Statistics Explained. European Commission

The implementation of these recommendations will reduce the outflow of medical professionals, improve patients' access to quality healthcare, and stabilise the healthcare system. Patients will receive better services, doctors will get more attractive working conditions and career prospects, and the state will save resources and have a modern healthcare system that is balanced in line with the needs of the population and harmonised with European standards.

5.2.4. ELECTRONIC HEALTHCARE SYSTEM

The electronic health system (EHS) in the European Union and Ukraine is a key element in the modernisation of healthcare systems, but its development is inconsistent due to the lack of uniform standards. In the EU, this diversity is driven by national priorities, as healthcare regulation has traditionally been the responsibility of member states. In Ukraine, eHealth, launched in 2017 as part of healthcare reform, is significantly ahead of its European counterparts but faces challenges in harmonising with European systems. Incompatible data formats, exchange protocols and security requirements complicate cross-border interaction, which is a problem for patients, medical professionals and EU and Ukrainian governments seeking effective cooperation.

E-health is developing unevenly in European Union countries. There is no single standard that would unify all aspects (e.g. data formats, information exchange protocols, system interfaces). Each EU member state has its own eHealth system, which depends on specific priorities, infrastructure, funding and historical development. At the same time, the EU is working on standardisation (e.g. through initiatives such as the European Health Data Space (EHDS), launched in 2022), although countries use different coding standards (ICD, SNOMED CT), data formats (HL7, FHIR) and security protocols.

In Ukraine, the eHealth system was launched as part of healthcare reform, in particular to implement the 'Affordable Medicines' programme and primary healthcare. The main component is the eHealth electronic system, which includes:

- Register of patients, medical institutions and doctors;
- Electronic medical records (EMR);
- Electronic prescriptions (e-prescriptions);
- Module for concluding declarations with family doctors.

Unlike many EU countries, where eHealth developed gradually and faced problems integrating older systems (e.g. in Germany or France), Ukraine started from scratch. This allowed it to immediately implement modern technologies such as cloud solutions. In addition, the Ukrainian system uses modern standards such as FHIR, which facilitates integration with other systems.

The unification of eHealth between Ukraine and the EU for cross-border data exchange may be complicated by differences in standards. In the EU, ICD-10 is most commonly used for disease coding, and in some countries, SNOMED CT is used for detailed descriptions, while in Ukraine, ICD-10 is officially used, but not always correctly, and SNOMED CT has not yet been implemented. The ATC classification is used for medicines in the EU, which Ukraine also uses, but the unification of medicine names has not been completed due to different trade names. The biggest problem is the differences in data exchange protocols, formats and security requirements. The EU has strict data protection standards in accordance with the GDPR (Regulation (EU) No 2016/679), which requires consent for data processing, the right to erasure ('right to be forgotten'), default protection and notification of breaches within 72 hours, while Ukraine's Law on Personal Data Protection is less stringent and does not fully comply with these requirements. The draft law on personal data protection in Ukraine aims to bring it closer to European standards, but its implementation is still far from complete. Overall, harmonising Ukrainian eHealth with European systems will require adaptation to the GDPR, which may slow down its development. Meanwhile, Ukraine has already adapted many European dictionaries (ICD-10, ATC), which is a positive step towards future integration. However, without the unification of information system standards, including data formats, exchange protocols and architecture, cross-border interaction will remain limited, and compliance with GDPR requirements will become a key challenge for ensuring security and trust in data exchange with the EU. That is why the following changes should be priority:

- introduction of a unified approach to medical data formats compatible with European standards (FHIR, HL7);
- official introduction of SNOMED CT for detailed coding of diagnoses and procedures, which is already used in some EU countries;
- completion of the adaptation of the drug coding system in accordance with the international ATC classification;
- participation in joint initiatives on the interoperability of medical systems between Ukraine and the EU;

- creation of a single portal for the exchange of medical data between Ukraine and the EU in compliance with confidentiality and security requirements;
- introduction of electronic signatures compatible with eIDAS (EU 910/2014) to ensure the legal validity of digital medical records.

Harmonising the eHealth system between Ukraine and the EU is a necessary step to ensure effective cross-border exchange of medical data and improve the quality of healthcare in the context of uneven development of digital systems. The introduction of common standards such as FHIR, HL7, SNOMED CT, completion of ATC adaptation, participation in joint initiatives, creation of a data exchange portal and use of eIDAS electronic signatures will contribute to Ukraine's integration into the European medical landscape. For the healthcare system, this will mean improved interoperability and security; for doctors, easier access to data and cooperation with colleagues from the EU; for patients, faster and safer access to treatment abroad; and for the state — strengthening international cooperation and moving closer to EU standards, albeit with temporary costs for adapting to the GDPR and other regulations.

5.2.5. MEDICAL GUARANTEES PROGRAMME

The Medical Guarantees Programme (MGP) in Ukraine is a system that guarantees citizens a certain amount of free medical services financed by the state. It faces a lack of funding due to inefficient use of resources, as the number of services does not correspond to the amount of funds available, imperfect functioning mechanisms, and low patient trust due to a lack of transparency in the allocation of funds, among other issues. These problems lead to overcrowding in hospitals and an outflow of patients to the private sector, exacerbating inequalities in access to healthcare. They can be addressed by optimising the hospital network, introducing insurance contributions, and increasing spending transparency.

The PMG operates on the principle that every citizen of Ukraine is entitled to a limited range of medical services (e.g. emergency care), but access to the rest requires a declaration with a family doctor. The Ukrainian system is closer to the Beveridge model (named after William Beveridge), where funding comes from taxes and the state guarantees universal access.

This system has analogues in EU countries such as Italy, Spain, Latvia and Sweden. It is based on declarations with a family doctor – a formal agreement between the patient and the primary care doctor, which is concluded through the eHealth system. This is necessary so that the NSZU can finance services for a specific patient ('money follows the patient').

The healthcare system in Poland is slightly different, as it belongs to the so-called 'continental model' (or 'Bismarck model'). This model is based on compulsory health insurance, which is financed by contributions from employees and employers. In Poland, in order to access healthcare services, citizens must be insured (i.e. pay contributions or be covered by their employer/the state). In Poland, you also need to choose a family doctor, who is the main point of entry into the system, similar to Ukraine. The main difference is that in Poland, the system is based on insurance (employee contributions, as insurance is compulsory for all workers), while in Ukraine it is based on budget financing (taxes).

The main problem with Ukraine's primary healthcare system is a lack of funding. The volume of medical services that the state promises to provide free of charge exceeds the available budget, leading to a deficit. Overall, the budget for primary healthcare for 2025 was UAH 175.5 billion[31]. As a percentage of GDP, the PMG budget in 2023 and 2024 was about 2.2% of GDP, respectively. In 2022, the estimated average health expenditure in EU countries is approximately 10.2% of GDP, depending on the country, according to Eurostat[32].

In addition, Ukraine still has many hospitals dating back to Soviet times, when the system was geared towards a large number of hospital beds rather than efficiency. This leads to inefficient use of resources for their maintenance. At the time of the collapse of the USSR, there were about 13 beds per 1,000 people in Ukraine[33]. By 2020, the number of beds had fallen to 6.3 per 1,000, but this is still too many for a population of 38 million (taking into account migration due to the war), compared to EU countries, where the figure is around 5. Thus, the problem of insufficient funding could be solved by:

[31] The government has allocated ₴175.5 billion for the Medical Guarantees Programme in 2025

[32] Health care expenditure by provider. Eurostat

[33] Hospital beds. World Bank Open Data

- optimising the network of hospitals and other expenses;
- introducing a hybrid model of medical guarantees with elements of financing through insurance contributions;
- increasing the transparency of reports on the use of PMF funds;
- expanding the medical guarantee programme to include preventive services, which could potentially reduce the burden on hospitals;
- introducing partial co-payment for optional (or inexpensive) medical services to optimise costs and attract additional funds to the system;
- strengthening control and penalties for doctors prescribing paid examinations or tests that are included in the PMG, which will increase trust in the healthcare system and promote a favourable perception of MoH initiatives, such as co-financing programmes, etc.

The implementation of the proposed recommendations would bring significant benefits to both patients and the state, creating a more efficient and accessible healthcare system. Optimising the hospital network and reducing the number of beds would avoid the fragmentation of resources in maintaining inefficient facilities and direct funds to priority areas (primary care, prevention). Patients, in return, would receive a wider range of free or partially paid services.

5.2.6. TELEMEDICINE

Telemedicine in Ukraine began to develop actively during the 2017–2020 medical reform and especially during the COVID-19 pandemic, when the need for remote consultations increased sharply. However, its use is still not clearly regulated by law, which leads to a number of negative consequences: the quality of medical services suffers, it becomes impossible to include online consultations in the PMG and, accordingly, to pay doctors for them, the security of personal data is threatened, and the issue of doctors' liability for errors is not regulated. All this hinders the development of telemedicine as a fully-fledged healthcare tool and limits its potential to improve the accessibility of medical services.

The Law of Ukraine 'Fundamentals of Ukrainian Legislation on Health Care' (Article 35-1) defines telemedicine as a set of actions, technologies and measures for providing medical care through remote communication, and Order No. 681 of the Ministry of Health of 19 October 2015[34] establishes certain technical requirements for its implementation. However, these documents do not regulate key aspects such as quality standards, liability, payment or confidentiality, which means that the decision to use telemedicine remains at the discretion of the doctor and with the consent of the patient. As a result, telemedicine is not included in the Medical Guarantees Programme (MGP), is often used informally (e.g. via messengers), and the lack of standards leads to risks of low-quality consultations, data insecurity and uncertainty regarding liability for errors.

In the European Union, telemedicine has a much clearer legal framework that ensures its effective functioning. Directive 2011/24/EU allows the provision of telemedicine services across borders, facilitating cross-border healthcare, while the GDPR (Regulation (EU) No 2016/679) sets strict requirements for the protection of personal data, such as encryption and consent for processing. Directive 2000/31/EC regulates telemedicine as an electronic service if it is provided in this format. In EU countries, telemedicine is paid for through public or insurance systems, certified platforms are used, doctors undergo appropriate training, and their liability for errors is equivalent to that of face-to-face consultations, which guarantees quality and safety for patients.

Ukraine could benefit significantly from the introduction of similar regulations.

Firstly, the inclusion of telemedicine in the PMG with funding from the National Health Service would make it accessible to low-income groups who are currently unable to use such services due to a lack of state support.

Second, setting quality standards (e.g., certified platforms and qualification requirements for doctors) would eliminate the problem of low-quality informal consultations via messengers.

Third, adaptation to the GDPR or similar requirements would improve data security, which is particularly important in a war situation, where information leaks can have critical consequences.

Fourth, clear legal regulation would expand access to telemedicine in rural areas with a shortage of doctors, allowing patients to receive remote and effective consultations.

Thus, regulating telemedicine in Ukraine based on European standards would ensure its funding, quality, security and accessibility, bringing the system closer to EU standards.

[34] On the approval of regulatory documents on the use of telemedicine in healthcare | dated 19.10.2015 No. 681

5.1. DISTRIBUTION OF GOODS BASED ON THE EXAMPLE OF AN ELECTRONICS MARKET

The goods distribution market in Ukraine is characterised by significant challenges that hinder its harmonisation with European standards. According to rough estimates, up to half of the turnover comes from the 'grey' market, which owes its existence to the existence of sole proprietors and, as a result, weak control over cash transactions. In addition, the electronics market is characterised by high concentration, unregulated certification procedures and pressure from law enforcement agencies, which creates unfavourable conditions for the de-shadowing of the industry. Unlike the European Union, where transparency, competition and internal efficiency are priorities, the Ukrainian market is largely focused on bypassing regulatory procedures.

5.1.1. UKRAINIAN ELECTRONICS MARKET MODEL

In general, the Ukrainian equipment market is largely dependent on distribution contracts with manufacturers. In terms of import structure, 50% of goods come from China, with the rest divided equally between America and Europe, and the share of resellers remains insignificant. This dependence on distributors leads to high market concentration: two wholesale companies control about half of the turnover, acting as key players in the supply chain. Instead of creating their own structures for direct sales, manufacturers transfer these functions to distributors, who, thanks to their reputation and well-established sales channels, attract new brands to their portfolio, strengthening their positions. The exception is Samsung. It transfers already cleared products to distributors.

In the EU, this market operates on a direct sales model from manufacturers to consumers through their own stores or official partners, which reduces dependence on distributors. This is regulated by Regulation (EU) No. 330/2010 on vertical agreements, which allows manufacturers to control distribution channels provided that competition is maintained.

The problem of the 'grey' market in the electronics sector is one of the key obstacles to harmonising the Ukrainian business environment with European standards. It consists of a significant share of informal transactions carried out through a simplified taxation system for individual entrepreneurs, cash payments and the lack of proper documentation. The law requires sole proprietors to keep records (Article 296 of the Tax Code of Ukraine), and the law on cash registers (Law of Ukraine 'On the Use of Cash Registers in Trade, Public Catering and Services'[35]) requires the use of cash registers, but in practice this is not enforced due to a lack of resources in the State Tax Service and the widespread use of cash, which makes it difficult to track transactions.

The problem of the economy becoming dominated by sole proprietors creates a 'tax pit', unequal conditions for 'white' businesses, complicates tax accounting and hinders the civilised development of the market. After all, official importers who clear goods in accordance with the Customs Code of Ukraine face higher costs than 'grey' players who avoid customs payments through smuggling or fictitious transactions.

In the European Union, the electronics market operates with significantly greater transparency thanks to clear regulation and control. The main regulatory act is Directive 2006/112/EC[36] on the common system of value added tax (VAT), which establishes uniform rules for taxation, including mandatory accounting and reporting for all economic operators. In Ukraine, digital accounting systems (integration with customs and tax databases) prevent the widespread 'grey' circulation of equipment. Small businesses in the EU also have simplified regimes (e.g. VAT exemption for turnover up to a certain threshold set by national legislation — in France up to €82,800 for goods), but these regimes are accompanied by strict documentation requirements and restrictions on types of activity.

Controls over the informal market are being tightened through Regulation (EU) No 952/2013[37] (EU Customs Code), which regulates imports and combats smuggling, and Directive 2011/83/EU on consumer rights[38], which protects buyers

[35] On the use of payment transaction recorders in trade, public catering and services dated 06.07.1995 No. 265/95-VR
[36] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax
[37] Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code
[38] Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights

from poor-quality goods of 'grey' origin. In countries such as Germany and France, the use of cash is minimised thanks to banking systems and digital payments, and the tax authorities have sophisticated tools for analysing transactions. The grey market exists (e.g. in the trade in second-hand electronics), but its share is much smaller due to effective supervision and high penalties. Unlike Ukraine, European businesses are focused on internal efficiency rather than circumventing regulatory procedures.

In this light, the following initiatives would be highly beneficial:

- strengthening control over the use of cash registers and cash transactions, full fiscalisation of sole proprietors' transactions to eliminate unrecorded cash payments;
- combating smuggling and 'grey' imports. Digitisation of customs procedures and introduction of a 'single window' at customs. Criminalisation of smuggling;
- increasing the transparency of primary documentation. Electronic document management and its integration with tax audits;
- reducing the income threshold for sole proprietors to prevent large players from using the simplified system;
- introducing mandatory electronic primary documentation for sole proprietors trading in electronics, with clear indication of the origin of goods;
- extending the mandatory use of cash registers for all transactions involving electronics, removing exceptions and adding a requirement for real-time electronic reporting.
- encouraging cashless payments by reducing bank fees and offering tax incentives for businesses that refuse to accept cash;
- strengthening customs controls on imports of electronics through the introduction of electronic registers of importers integrated with European systems such as TRACES in the EU;
- introducing criminal liability for the sale of contraband products.

The main ways to solve this problem could be reforming the simplified taxation system, strengthening control over cash transactions, and gradually integrating European practices of transparency and accountability.

5.1.2. CERTIFICATION, LAW ENFORCEMENT PRESSURE AND OTHER INDUSTRY ISSUES

As mentioned above, the electronics market in Ukraine is closed and concentrated with minimal presence of subsidiaries of European companies. One of the reasons is the complex, expensive and non-transparent certification of goods regulated by the Law of Ukraine "On Technical Regulations and Conformity Assessment"[39] and bylaws (e.g., Cabinet of Ministers' resolutions on technical regulations). Certification procedures are unclear, and certification is mandatory even for equipment that has internationally recognised certificates.

The certification (or conformity assessment) procedure in Ukraine is not the same for all products, as it depends on the product category, risk level, and requirements of a particular regulation. It follows the following steps (set out in Articles 23-34 of the Law):

1. Setting of the applicable technical regulation. Each type of electronics or household appliances falls under a specific regulation. For example: Technical Regulations on Radio Equipment (CMU Resolution No. 355 of 24.05.2017) - for smartphones, routers, TVs with Wi-Fi. Technical Regulations on the Safety of Low-Voltage Electrical Equipment (CMU Resolution No. 1067 of December 16, 2015) - for washing machines, refrigerators, microwaves.
2. Choosing a conformity assessment procedure. Technical regulations provide for different assessment modules (Article 14 of the Law):

   2.1. Internal control of production (module A): The manufacturer independently verifies conformity and draws up a declaration of conformity based on internal tests or documents (module A - used mainly for simple appliances such as kettles and toasters) and keeps this document for 10 years. This is the most common option for low-risk appliances (e.g. kettles).

   2.2. Third-party certification: Involving a designated conformity assessment body (CAB) (e.g., Ukrmetrteststandard) for testing and certification or quality control (modules B, C, D, etc.).

[39] On Technical Regulations and Conformity Assessment | dated 15.01.2015 No. 124-VIII

Mandatory for more complex devices such as radio equipment. The manufacturer cannot limit itself to a declaration if the device has wireless functions.

2.3. Production control. For mass production, an inspection of the quality system at the factory may be required (module H).

3. Testing. The manufacturer or importer tests product samples in its own or accredited laboratories to confirm compliance with the standards.
4. Preparation of a declaration of conformity. The manufacturer (or importer) draws up a declaration of conformity, which certifies that the products meet the requirements of the regulations.
5. Labelling. The products are labelled with a mark of conformity with technical regulations.
6. Placing on the market. Products can be placed on the market (sold or transferred to the consumer) only after the conformity assessment and labelling are completed.

In the EU, product certification is standardised through a number of Directives, such as Directive 2014/35/EU on low-voltage equipment (LVD) [40], Directive 2014/30/EU on electromagnetic compatibility (EMC) [41], Directive 2014/53/EU on radio equipment[42], etc. and the CE marking system, which ensures transparency and speed of procedures. An informal market exists, but its share is minimal due to effective customs control (Regulation (EU) No 952/2013) and low levels of cash transactions.

The aspect of consumer protection is generally regulated by the Law 'On Protection of Consumer Rights'[43] quite effectively. However, due to weak accounting systems that do not allow for proper tracking of the origin of goods, as well as the lack of a unified digital system that would integrate data on the origin of goods, their certification and movement from import to final sale, it is still impossible to protect consumer rights in the case of shadow goods due to the inability to prove the purchase of certified goods. By comparison, in the European Union, similar processes are effectively implemented through VAT reporting, regulated by Directive 2006/112/EC[44], which ensures transparency and control at all stages.

In the EU, consumer protection is more effective thanks to Directive 2011/83/EU[45], which guarantees clear information about goods, a 14-day right of return and a mandatory two-year guarantee (Directive 2019/771/EU[46]). The problem of law enforcement actions is even more pressing: searches and seizures of equipment under the guise of combating smuggling and other unlawful actions that put pressure on businesses. In the EU, law enforcement pressure on businesses is minimal, as actions are regulated by Regulation (EU) No 1215/2012 on jurisdiction[47], which clearly defines inspection procedures without arbitrariness.

As regards the profitability of the industry in Ukraine compared to the EU, the high cost of money (high interest rates on loans) and significant operating costs result in higher margins compared to the EU.

Thus, subsidiaries of European companies, accustomed to a stable legal environment and low operational risks, are not inclined to operate in the Ukrainian market. That is why it is important to:

- simplify and align the certification procedure for household appliances and electronics with EU regulations;

[40] Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits (recast)

[41] Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility (recast)

[42] Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment

[43] 'On Protection of Consumer Rights' | dated 12.05.1991 № 1023-XII

[44] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

[45] Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights

[46] Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods

[47] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)

- define a limited scope for business inspections;
- create a simple mechanism for appealing against law enforcement actions through an independent body.

Implementing these recommendations will increase competition in the household appliances and electronics market, ensure that all imported appliances comply with technical regulations, strengthen consumer protection, and create conditions for foreign companies to enter the market through subsidiaries.

6. CONCLUSIONS AND RECOMMENDATIONS

Harmonising Ukrainian legislation with European Union law is not merely a technical process of adapting norms and regulations. It is, primarily, a test of how these norms work in practice. Within the scope of this study, we analysed not only horizontal legislation, but also the specifics of so-called vertical legislation in order to better understand the systemic challenges affecting the entire third chapter of the negotiations. The conclusions we have reached do not concern individual sectors, but general patterns: principles of market access, consumer protection, fair competition and Ukraine's integration capacity as part of the EU internal market.

There are significant differences between the Ukrainian and European models of public administration of entrepreneurship:

- Ukrainian regulation remains declarative and focused on 'entry' control rather than effective supervision of activities.
- There is no single principle of freedom to provide services and freedom of establishment.
- Numerous administrative barriers, discriminatory requirements for foreign companies and a lack of coordination between state bodies remain.
- Institutional fragmentation leads to duplication of functions and ineffective regulation.
- Problems with ensuring transparency, in particular regarding business access to necessary information and services.

In the field of concessions and public-private partnerships, discriminatory restrictions on foreign investors, unregulated guarantees for concessionaires and the lack of favourable conditions for the participation of small and medium-sized enterprises (SMEs) remain.

In the field of cybersecurity, there is a lack of a single management body, insufficient standards for non-state enterprises and unregulated procedures for reporting cyber incidents. In the field of personal data protection and the activities of internet providers, Ukrainian legislation remains far from the requirements of the GDPR and the NIS2 Directive.

To achieve full integration into the EU internal market, it is recommended to:

1. Consider the possibility of reforming horizontal legislation:

- Establish the principle of freedom to provide services as fundamental to all regulations governing business activity.
- Review the concept of 'substantial changes' in the context of licensing requirements.
- Request market access while strengthening monitoring of proper compliance with requirements.
- Introduce an effective 'silent consent' principle in all areas of market access.
- Reduce administrative barriers by removing residency requirements for access to services and markets.
- Ensure equal access to regulatory procedures for Ukrainian and foreign companies.
- Create a single coordination centre for the implementation of policies in the field of services and entrepreneurship.
- Expand the functionality of single contact points for businesses with a transition to fully electronic services.
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2. Modernise concession legislation:

- Abolish the requirement of mandatory residency for concessionaires.
- Establish guarantees of regulatory stability for concessionaires (stabilisation clauses).
- Introduce mechanisms to compensate for losses in cases of force majeure or changes in state policy.
- Expand opportunities for SME participation by mandatorily dividing large projects into lots and simplifying procedures for small concessions.
- Create standardised templates for concession agreements with a clear allocation of risks.
- Introduce state programmes to support municipalities and small concession projects, including subsidies for consultations.

- Involve communities in the evaluation of public-private partnership projects.
- Introduce mechanisms to compensate civil society organisations for their participation in monitoring contract implementation.
- Support local initiatives through streamlined procedures for concluding property management contracts as an alternative to concessions.

3. Strengthen cybersecurity standards:

- Establish a single state body to coordinate cybersecurity policy.
- Introduce mandatory minimum cyber risk management standards for a wide range of businesses.
- Establish mandatory reporting of cyber incidents with clear deadlines and procedures.
- Harmonise Ukrainian legislation with the NIS2 Directive and the Digital Services Act (DSA).

4. Strengthen personal data protection standards:

- Complete the adoption of a new law on personal data protection in line with the GDPR.
- Establish a fully-fledged independent supervisory authority with appropriate powers.
- Set high fines for data protection rights violations and enshrine the 'right to be forgotten'.