

# **The Charm of Compliance: How to Attract More International Businesses in Information Society Services to Ukraine?**

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## **Abstract**

Facilitating international trade is a key issue for economic growth of Ukraine. For this the country needs to create appropriate conditions that must derive from well-developed and effective legal framework. Given the significance of the EU Member States as investors and foreign trade partners such a framework could incorporate elements of EU legislation. This would be part of a compliance strategy where Ukraine is adapting itself to the EU in order to facilitate cross-border trade in electronic and IT services with EU Member States. As the future of the world economy is electronic services oriented, facilitating trade in this sphere and adaptation its information legislation to the EU standards is of a primary advantage for Ukraine.

This research aims at defining existing gaps in the most relevant to trade in e-services branches of legislation, such as intellectual property rights protection, personal data protection, information security and fight against cyber crime. Filling in these gaps is a key issue for creating appropriate legal environment for attracting investment and new trade partners from the EU to the Ukrainian market of electronic services.

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## Introduction

Ukraine, like any other country, is part of today's globalised world and strives to integrate into the global marketplace. Nowadays the core issue for the country is economic growth, which leads to prosperity and high standards of living. According to Mukha, today "Ukrainian economy is completing the first stage of its transition to stabilization" (Mukha, 2005), which means its high motivation to develop and use the benefits of its geopolitical position. Two of the keys to enhanced economic development of a country are international trade and foreign direct investment (FDI). In order to become competitive on the world market, attract FDI and gain benefits from interaction with other countries Ukraine must meet, among others, the international standards in trade and change a qualitative side of its economy.

A country's ability to attract FDI serves as an indicator for the state of economic affairs. Indeed, Crane and Larrabee (2007) explain quite low standards of living in Ukraine compared to other countries in the region by recent closeness of the country to international trade and FDI (Crane and Larrabee, 2007). A major problem of attracting FDI to Ukraine was and still is insufficient reliability of it as a trade partner caused by "poor framework conditions for business" (OECD, 2007). Even though Ukraine is the leading outsourcing destination in Eastern Europe, as the Central and Eastern Europe IT Outsourcing Review (2007) argues, which means growth of FDI in new perspective branches of economy, such as information and communication technologies (ICT) services, this growth is too slow. ICT services usually mean software development and electronic services. The scope of electronic services includes internet banking, e-commerce, online auctions, content production, hosting, web-design and others. FDI in

information technologies and electronic services constitute only a small part of Ukraine's economy compared to other branches, such as heavy industries and agriculture. This may be caused by the unfriendly investment climate and the deficient Ukrainian legislation of international trade in electronic services. Besides this, the economic transition to information society implies that adequate broadband infrastructure at reasonable costs back international competitiveness for electronic services. Strategically, Ukraine should focus on creating the necessary conditions that are prerequisite for its competitiveness in electronic services and for attracting FDI to its national market in electronic services. Such conditions are usually based on appropriate legal framework, which is based on certain international standards. Absence of such a legal environment may be an obstacle for cross-border trade with the partners like the EU that have a well developed legal framework for doing e-business.

The problem of lack of compliance of Ukrainian legislation with the EU standards as a trade barrier to cross-border trade in e-services was not addressed before. Although a number of reports by Council of Europe (CoE), the EU, World Bank and USA were generally dedicated to trade and business environment of Ukraine, they did not specifically focus on the trade in e-services. Ukrainian researches have a vast field of works dedicated to adaptation of Ukrainian legislation to international standards without any regard to trade facilitation.

The contribution of this particular thesis research is looking at the problem of facilitating trade relations between the EU and Ukraine through implementation of certain policies by Ukrainian authorities with relation to the electronic trade in services. With regard to ICT services such a framework should include the branches that provide

e-businesses with secure and reliable environment for their cross-border activities. The purpose of this research is to define existing gaps in Ukrainian legislation and policies that are the most relevant to cross-border trade in e-services. Filling in these gaps is a key issue for creating appropriate legal environment for attracting investment and new trade partners from the EU to the Ukrainian market of electronic services.

This paper will focus on the following policies and regulations that are the most relevant in the context of cross-border trade in e-services:

- intellectual property rights (IPR) protection,
- personal data protection,
- information security and combating computer crimes.

Precisely, because in Ukraine some of these areas are notoriously badly regulated and enforcement of other areas is insufficient for doing business plus the country is struggling with its legacy and reputation the strategy I put forward in this paper relies on the embarkment to the regulatory culture of the EU. Proving an adequate level and correspondence to the EU standards in these legislative branches can be seen as a key to becoming a credible trade partner for companies stemming from the EU Member States and beyond. This pro-European choice is very important as the EU is the most attractive source of FDI in the country. Enhancing Ukraine's credibility will attract more EU attention to its unused potential of and improve bilateral trade between the parties.

In this thesis mostly qualitative methodology applies. One of the methods is collection of data about practical aspects of doing business between the companies from the EU and Ukraine based on the short survey that aims at researching how companies do their business under existing legislative framework. The survey was conducted among 11 Ukrainian companies that specialize in software development and electronic (internet)

services and outsource their production outside Ukraine. Another part of the qualitative methodology are two a deep interviews. The first one with Colette Seyler, a co-ordinator of bilateral issues in DG Trade of the European Commission responsible for Ukraine, and the second one with Olexiy Kozhenkin, the executive director of the IT Association of Ukraine. The purpose of the interviews is to analyze current practice of such e-trade between Ukrainian companies and their foreign partners, primarily those coming from the EU, and point out legal obstacles that arise in this sphere of trade.

Further method is documental analysis that aims at presenting general overview of current geopolitical situation of Ukraine, the pattern of its international trade and justifying importance of trade in e-services for its economy. Finally, comparative legal method applies in this research. Its aim is to analyse legal framework of the EU and Ukraine in order to identify existing legislative gaps of the latter and make conclusions of the needed improvements for facilitating trade in e-services between the parties. In each chapter dedicated to certain policy fields I analyze legal framework of Ukraine and the EU from the comparative perspective. The systematic comparison of legislation is important for this research, as it helps:

- to identify research questions and problems: for example, there is a big body of international, primarily EU, legislation that regulates e-commerce and cross-border data transfer. In this field a gap between these norms and Ukrainian legislation is quite visible. The comparison helps to answer the question “What should be implemented from the EU law in the Ukrainian legislation to fill in the gap and facilitate compliance of Ukraine with the EU standards?”



- to see and prove issues a researcher cannot see and prove without conducting a comparison;

- to theorize, explain and control (like all other methods): for example, on the basis of the comparison I will explain why Ukraine has a bad reputations among its potential investors in the field of electronic trade.

This research defines the status quo of Ukraine's compliance with international and especially EU standards regarding electronic services and proposes policy measures for the improvement. First, I will analyze the current role of Ukraine on the world economic stage and identify the most pertaining problems to integration into international trade. I will analyze current EU and Ukrainian regulation of the issues connected to electronic services from a comparative perspective. These issues include intellectual property rights (IPR) protection, confidential and personal data protection, security and fighting cybercrimes. Finally, I will provide recommendations regarding compliance with the EU standards regarding cross-border trade of electronic services that are of the major importance to facilitate cross-border trade between Ukraine and the EU.

## **Chapter 1: Policies to Facilitate International Trade in Electronic Services**

In order to understand the importance of adopting Ukrainian legislation in IPR protection, personal data protection, information security and fighting cyber crime for facilitation of its trade with the EU, this chapter will give the oversight of the growing role of services and e-services in particular in the world economy and it will identify unused potential of

Ukraine in this sphere. Further, the chapter will give an overview of current geopolitical position of the country and its path towards the world economic community. Moreover, the chapter will present current situation with trade in e-services between the Ukraine and the EU based on the surveys with Ukrainian companies and expert interviews. Finally, the chapter will set forth the argument that current legislation in the three fields mentioned above is the major obstacle to better situation with such trade.

### ***1.1 Ukraine's Place in the World Economy***

Ukraine's economy is determined by international developments and its fairly recent transition to a market based economy. Today's global world's economy has shifted its paradigm from the production-based economy to a service-based. Dunning (1997) confirms this idea by a model for Western economies that states that the late 20<sup>th</sup> century is determined by finance-/knowledge-based capitalism and services. In the case of Ukraine the transition to this kind of economy was disrupted by socialistic era and the radical transformation after the regime failed in 1991. As a matter of fact, the country's economy recently accomplished a very short transitional period to the latest competitive stage. Nowadays Ukraine's economy still has low competitiveness on the world markets which can be partially explained by the fact that Ukraine has inherited the Soviet legacy and Soviet approach towards economy policies. This legacy is represented by traditional orientation of Ukrainian economy at capital based production and trade with raw materials, which is a way to loose the competitiveness in today's knowledge based society which is rapidly changing its orientation to trade in electronic services. Therefore, Ukraine has to reconsider its strategy of economic development and decide on further

policies to improve its foreign trade by putting more value on the trends that can make the country competitive, such as outsourcing in IT services and e-commerce.

Indeed, the role of services grows nowadays (see Annex I) in highly developed countries (Micossi, 1997, Hess and Ross, 1997, Lennon, 2006). Micossi (1997) argues that “value added tends to be in services, not materials” and that services provide more working places than agriculture and industry in the EU. Today services constitute “from 47 percent to 70 percent” (Lennon, 2006) of a country’s GDP due to their income-elastic nature compared to other branches of economy (Hess and Ross, 1997). Hence, services are playing an ever increasing role nowadays both on national and international level, as during last twenty years trade in services increases faster than trade in goods (Lennon, 2006). That is why Ukrainian economic policy makers should put more emphasis on trade with services besides the material production and trade with resources.

Second, international trade has become the major engine of the world economy. Ukraine in an attempt to take the advantage of international trade through its integration into the world economic community finds itself in a highly competitive environment. It has to be able to use its comparative advantage on this world stage in order to enhance exports of services and attract more FDI to its economy. The concept of comparative advantage was introduced by the economist David Ricardo and is further explained by Hess and Ross (1997) as “a nation is said to have a comparative advantage in production of a commodity if it can produce the commodity for a lower opportunity cost than its trading partner”. Indeed, if the production possibilities of a nation are limited and production of a good or service is costly, it is better to purchase cheaper good or service from another nation with better production possibilities. Therefore, Ukraine should

concentrate on those spheres of the economy which it could provide cheaper than in other countries. Such spheres as e-commerce, B2B services and software development create a potential for investment in these sectors, as the labour force in Ukraine is not only cheap, but also well-educated and skilled, which can be an added value if compared to other outsourcing destination, such as India.

Given the growing role of the knowledge based economy the current structure of Ukrainian economy is becoming more and more non-competitive because Ukraine has not yet caught up with state of the art in information technology and in electronic services. This is why one of the motivators for its economy can be growing interest of EU companies in Ukraine as an outsourcing destination. Outsourcing may be regarded as a way to attract FDI in its economy and facilitating trade in services and especially e-services that are the major outsourcing subject. Although labour force in Ukraine is cheap and well-educated, the country is not comparable with the world leading outsourcing destinations because of relatively low correspondence to the international standards, only comparatively recent opening of its borders to outsourcing and unfriendly business environment due to current legislation. .

In order to improve the competitiveness of Ukraine on the international market, policy makers should focus on development appropriate legal background for businesses in the sphere of Information and Communications Technology (ICT) and on corresponding international standards. Such standards are usually set forth by international trade agreements and leading global economies such as the EU and the USA. In order to attract more FDI the country must strive to cooperate with those countries according to the international standards in trade. Although the EU is already

substantial trade partner of Ukraine, these trade relations have particular pattern. For better understanding the position of the country on the world market and outline its potential for attracting FDI, the following subchapter is dedicated to its geopolitical position.

## ***1.2 The Role of the EU as a Trade Partner for Ukraine***

In order to fully understand future strategic implications for a Ukrainian policy for international trade it is important to have an overview over its major trading partners. This survey will also highlight the geopolitical position Ukraine finds itself in with major interests towards Western Europe and towards Russia. According to ProEuropa (2008), the major trade partner of Ukraine is the EU followed by Russia. Moreover, ProEuropa (2008) names the EU “the biggest foreign investor to Ukraine” and provides that in 2006 FDI from the EU to Ukraine was 5,5 billion Euro. This is an increase of 150 percent since 2003 with 230 million Euro FDI stemming from the EU. The feature of the trade relations between Ukraine and the EU is that “[w]hile total EU trade with Ukraine has increased over the last years, growth in imports has exceeded by far growth in exports” (European Neighbourhood and Partnership Instrument. Ukraine. Country Strategy Report 2007-2013). Furthermore, Business Europe (2008) argues that despite constant growth in trade between Ukraine and the EU, this trade is “still far from at its full potential”.

For this research it is imperative to distinguish exported and imported products in goods and services. In the field of trade with goods the EU is the major trade partner of Ukraine. According to Grygorets (2007), export of goods to the EU countries in 2007 was 4,5 bn Euro or 29,9% of the total export, import was 6 bn Euro, or 35,1% of the total

import. The major partners in trade of goods are Germany (export: 801,9, import: 2493,2 mn Euro), Italy (export: 1518,5; import: 770,8 mn Euro) and Poland (805,1 and 1227 mn Euro). However, according to the State Statistics Office (2008) for trade in services Russia is the most significant partner of Ukraine (export: 2,2 Milliard Euro<sup>1</sup>; import: 450 Million Euro), followed by the EU and other European countries (export: 2 Milliard Euro; import: 1,5 Milliard). Export of services of Ukraine to the EU was 1290 mn Euro (33,6 % of the total export) and import was 1046,1 mn Euro (52,8 % of the total import).

In interpreting these statistics it follows that trade relations between the EU and Ukraine is mostly based on traditional trade with raw materials and goods. There is however a positive assumption that the potential of trade in services between the two is not used to the full extent. Although the role of the EU as a trade partner of Ukraine slowly grows, which is a result of a development of Ukrainian economy and better interaction of Ukraine with the EU, the pattern of trade relations is not efficient in the sense that it does not involve all the possible resources and cannot tap effectively into the markets of international trade in services. CASE (2006) states that “Ukraine-EU service flows accounted in 2003 for less than 1% of the total EU external service flows”, which would indicate a vast field for potential growth of the bilateral trade in services.

The statistics demonstrates that there is still a considerable potential for increasing amount of trade in e-services between the EU and Ukraine, which implies removing trade barriers in this field. Among such trade barriers Seyler (2008) names “critical customer service and language requirements” and tendency of the EU companies to outsource within the EU borders. At the same time she claims that the EU is interested in promoting

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<sup>1</sup> For the purpose of the unification of the currencies in this research all the data is presented in euro. The data in Dollar are presented in Euro according to the exchange rate as of June 11, 2008

trade in e-services within bilateral Agreement with Ukraine, which requires the Ukrainian companies “to align with EU acquis in a variety of sectors” (Seyler, 2008). In relation to the trade in e-services the most relevant branches of information law are IPR protection, personal data protection and information security. These three fields of legislation are the pillars for secure and reliable business activities in the digital world, as they provide legal safeguards to operation of such activities and protect confidentiality of online transactions and the end products (software, content). Improving these three branches can boost trade in e-services between the EU and Ukraine and lead the country to a new quality of trade relations with constantly growing role of e-services.

### ***1.3 Ukrainian Policy Implications of International Trade in E-Services***

Although Ukraine has made major steps towards facilitation of international trade, this is only the beginning of the further movement to credibility as a trade partner and better competitiveness on the world stage. Ukraine is pursuing the course of inclusion into the world economy and it is necessary for it to be sustainable on its way and better correspond to its international obligations, which can be beneficial both for the country and the world community.

It is obvious that Ukraine should strengthen its cooperation first of all with its biggest trade partners, such as the EU and the CIS countries. The major focus should be made on facilitating trade with the most attractive world markets, such as the EU member states. International Centre for Policy Studies (2007) argues that the stage-by-stage integration into the world economy is the best strategy for Ukraine. This integration

means first becoming a member of the WTO (which happened in April 2008, the International Herald Tribune, 2008) and then entering into further free trade agreements with important economies. Business Europe (2008) argues that a free trade agreement with the EU “could help realise the vast economic potential”.

Indeed, Free Trade Area (FTA) Agreement would be the next step in the EU-Ukraine relations after the Partnership and Co-operation Agreement (PCA)<sup>2</sup> which finished in 2008. This agreement also aims at enhancing EU-Ukraine relations. Although, as Seyler (2008) provides, “the FTA with Ukraine is at a very early stage of the negotiation”, the International Centre of Policy Studies (2007) stresses that the Agreement will “liberalize Ukraine’s services sector and harmonize its regulatory environment with EU standards”. Thus, harmonizing Ukrainian legislation with the EU norms is an inevitable step not only for the facilitation of the bilateral trade between the EU and Ukraine.

### ***1.3.1 Why the WTO is not enough***

The question remains why Ukraine’s compliance strategy with the WTO aquis is not sufficient for expanding international trade with EU Member States but could be harmonized even further. Although the EU and the WTO both aim at the liberalization of trade, their strategies are different. These strategies are based on their structures and policies. Crucial differences concern the ways and tools to achieve the goal of liberalized trade and the role of institutions. The WTO removes in various ways barriers to trade and

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<sup>2</sup> The Partnership and Cooperation Agreement (PCA) between the EU and Ukraine, 1998, aims at enhancing bilateral political relations, promotion of trade and investment, mutual cooperation and development of democracy and economy of Ukraine (The Partnership and Cooperation Agreement, 1998)



opens up national markets for international trade in goods and services. The EU approach towards liberalization of trade is more efficient as it involves deeper economic integration and harmonization of standards than the WTO. Compliance with the EU standards and further deepening of trade relations between the EU and Ukraine should be seen as a tool to deepening international economic integration of the country.

Moreover, WTO membership does not imply that all problems have fully dissolved and that the threshold of the EU regulation is taken. Even though Ukraine generally corresponds to the TRIPs Agreement<sup>3</sup> requirements, it is still not recognized as a country with a high level of IPR protection and it is also not adequate to harmonised regulation of the EU. This fact causes underdeveloped trade in commodities and services that involve IPR between the EU and Ukraine. Moreover, such essential aspects of trade in electronic services as personal data protection and security are not clearly regulated by the WTO. Thus, the first step, namely the WTO membership, only opens further path for the integration and establishes the general framework for the trade, but it does not mean automatic advance and facilitation of Ukraine's trade in international services. As the EU standards in the legislative fields mentioned above can be considered as the credible and well developed, the second step for the country should be adopting its legislation to these standards, which can substantially contribute to competitiveness of the country.

### ***1.3.2 Current Practice of Trade in E-Services between the EU and Ukraine***

Despite existing divergences between the regulatory regimes of the EU and the Ukraine, the trade in e-services between Ukrainian companies and the EU companies

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<sup>3</sup> The Agreement on Trade Related Aspects of Intellectual Property Rights

takes place. In order to investigate the current situation in this field and reveal the possible barriers to cross-border trade in e-services between the EU and Ukraine I conducted interviews with 11 Ukrainian companies in the field of IT services (software development – 9 companies and internet services – 2 companies).

Although I sent the questionnaire to 50 Ukrainian companies that operate in the field of e-services, only 11 responded. This can be explained by relatively small amount of officially established Ukrainian IT outsourcing companies and the unwillingness of the companies to speak about their activities. Indeed, Olexiy Kozhenkin, the executive director of the IT Association of Ukraine, argues that majority of Ukrainian software development companies that provide EU companies with outsourcing services are still ‘in shadow’ due to deficient legislation.

All of the companies outsource their services, and 7 of them (63,6%) have trade partners in the EU. From those companies that did not maintain a trade relationship with EU partners, 3 companies already tried to establish trade relations with companies from the EU, but their tries were unsuccessful due to a number of reasons: 1 response was that they could not find a common interest, 1 response stated that the hindrance was the gap between the EU and the Ukrainian legislation, and 2 responses provided that the EU company did not want to deal with the Ukrainian legislation. Hence, the practice demonstrates that the Ukrainian legislation is regarded as an obstacle to cross-border trade in e-services with the EU.

The contracts of only 2 companies are based on the Ukrainian legislation, while the contracts of the rest 5 companies are based on the EU legislation. In 5 cases out of 7 EU trade partners put additional contractual requirements to the Ukrainian companies.

The establishing of business relations for Ukrainian companies was not a very difficult issue from the legal point of view, as 4 out of 7 companies asked for external legal help. Finally, as the major challenge in trade with an EU partner Ukrainian regard IPR protection (83,3%), while the rest of issues – personal data protection, confidentiality and data security – are not considered of major concern (16,7% each).

These results indicate that the Ukrainian companies mostly rely on bilateral agreements with the EU companies, and such trade relations are also complicated by the additional requirements that EU companies impose on the Ukrainian companies. Adaptation of the Ukrainian legislation to the EU standards would simplify the trade relations between the companies from the EU and Ukraine and this will excel the trade relations. At the same time, as Olexiy Kozhenkin argues that further adaptation of the rest of Ukrainian legislation (labour, taxation) and adopting of international standards is needed for enhanced trade in e-services and increased number of outsourcing in Ukraine. He stresses that the information legislation should be adopted and enhanced together with other parts of legislation, in other words, the Ukrainian legislation should be enhanced as a whole. This is a reasonable approach, however, it is also worth remembering that IPR protection, personal data protection and security should be given the priority in the process of this complex adaptation.

### ***1.3.3 Possible Pitfalls of Ukraine's Compliance with the EU Standards***

Still, there are several counter-evidences to Ukraine's compliance with the EU regulations. Two major concerns are the threat to sovereignty of the country and possible worsening of its relations with other trade partners.

Further concern is about the sovereignty of Ukraine and the fact that it will comply with rules and laws of another geopolitical entity, namely the EU. Simple adoption of the Ukrainian legislation to the regulations of the EU may put the country into legal and political dependency from the EU. At the same time, the matter concerns only particular branches of legislation with regard to electronic services which is not enough to threaten the sovereignty of the state. In this case the advantage of the competitive participation in the world trade is also prevailing over the political concept of sovereignty.

The final counter-evidence is the threat of worsening relations of Ukraine with its second biggest trade partner Russia. This caveat is purely political, as any step towards the EU integration is perceived in Ukraine as a step away from Russia. From the political point of view, Ukraine was always a buffer zone of political influence spheres between the East (represented by Russia) and the West (represented by the EU). Thus, it is very important to distinguish between the politics and the economy. Therefore, the major aim of the country nowadays should be integration into the world economic community via deepening trade relations with its major trade partners such as the EU by means of compliance with its standards without off-setting formal trade-conditions with Russia.

## ***Conclusion***

Economic growth of Ukraine is determined by its strategy that should be oriented at growing role of trade in e-services with, first of all, such a perspective market as the EU. In order to facilitate such trade it is important to improve country's legal environment relevant to e-businesses and adopt it to the EU standards in order to remove trade barriers between the Union and Ukraine.

## Chapter 2: Policies to Improve IPR Protection

The importance of IPR in today's world is paramount due to increased, first of all, trade in both materialised and dematerialised commodities that embody intellectual properties, like for instance patents, copyrights or trademarks. Chissik and Kelman (2000) claim that in the “post GATT-TRIPs world [countries] strengthen and unify their protection of IPR”. This means that the countries follow the trend of unification protection of IPR worldwide to be able to trade with IPR products easier and to protect such products on the same level in different jurisdictions, which is important now, in the era of a virtually borderless Internet. A country with the level of IPR protection that does not correspond to the international standards is not compatible on the world market of trade with IPR products. Indeed, this is still the case of Ukraine. The European Commission (IPR in Ukraine, 2007) stresses that insufficient IPR protection in Ukraine prevents the country from full integration in the world trade and creates a hindrance for FDI.

Due to a number of factors discussed below Ukraine launched the strategy (Law of Ukraine “On the whole state programme on adaptation of Ukrainian legislation to the legislation of the European Union”) to adaptation of its legislation of IPR to international standards and the EU. This resulted in a considerable progress of Ukraine and its overall correspondence to basic international standards on IPR protection. The evidence can be the fact that Ukraine had to sign a number of international treaties on copyright and related rights protection and adopt its legislation to the TRIPs Agreement requirements.

This chapter will oversee major international norms that concern the trade of electronic services because they bear a relation to IPR protection and the major policies

of Ukraine towards improving IPR protection. Further, the chapter will outline present major obstacles to enhanced trade in electronic services with the EU deriving from the IPR protection in Ukraine and possible ways of overcoming these obstacles. Attention of the research is concentrated on IPR in cyberspace with regard to trade in e-services between the EU and Ukraine. Major focus is the compliance of Ukraine with the TRIPs Agreement norms, specifically regarding copyright and related rights protection, as well as further steps towards compliance with EU norms in IPR protection.

## ***2.1 The TRIPs Agreement and Ukraine***

As Ukraine became a member of the WTO it had to implement basic TRIPs Agreement requirements. The TRIPs Agreement is an international agreement administered by WTO that establishes standards of IPR protection in order to facilitate trade among WTO Members. The WTO defines the aim of the Agreement as harmonising protection of intellectual property rights around the world and filling in the national gaps in IPR protection under the common standards and rules, as well as promoting the technology transfer and technical innovation. Moreover, this Agreement was important for Ukraine as it potentially can help to enhance international trade in e-services that involve IPR commodities. According to the official position of the Supreme Council of Ukraine (Supreme Council Decree, 2007) and the Head of the State Department of Intellectual Property Mykola Palladiy (cit. in Berdychevska, 2007) the Ukrainian legislative compliance with international standards on IPR protection, notably TRIPs, had been already achieved. In order to overcome the Soviet legacy in the sphere of IPR protection, Ukraine had to change its legislation to a great extent. The World Bank

Report on Ukraine (2004) states that between 1995 and 2003 37 laws and about 100 by-laws on IPR were drafted or adopted, as well as “the basic legal codes (civil code, criminal code, customs code, and civil and criminal procedures codes)” were revised “to enforce intellectual property rights”.

Still, enforcement of this legislation in Ukraine does not fully correspond to the highly demanding provisions of the TRIPs Agreement, as not all the details of such “tough but fair” (the WTO, 2008) enforcement of the TRIPs are embodied in the legislation and primarily the Criminal Code of Ukraine. Currently enforcement is the biggest concern on part of the EU regarding IPR protection in Ukraine (European Commission, ‘IPR in Ukraine’, 2007), and full implementation of the TRIPs enforcement norms and adherence to them in Ukraine are the primary step in the adaptation the Ukrainian IPR legislation to the international standards. In a nutshell, enforcement of transpositions of the TRIPs Agreement in national legislation is the crucial step of Ukraine to better protection of IPR.

## ***2.2 The Role of EU Regulation of IPR for Ukraine***

Compliance with the TRIPS Agreement is not enough for facilitation of Ukraine’s trade in electronic services with the EU. It is highly recommended that Ukraine further pursues its strategy to voluntary adaptation to international and primarily EU regulation of IPR protection. The importance of enhancing compliance with EU norms of IPR protection can be explained by the fact that the EU aims at protecting IPR of its citizens and companies established within the internal market, so it must assure that IPR commodities are adequately protected if exported outside the EU. Bocharova (2006)

argues that IPR regulation in the EU is stricter than the international treaties on IPR protection and in some aspects even the USA. Overall, EU legislation on IPR puts more emphasis, sets stricter and provides more detailed requirements to enforcement of IPR and fighting violations of IPR, when compared to legislation of other countries and international organizations. From the point of view of the EU, the TRIPs Agreement is too flexible with regard to these aspects compared to the EU norms and strategies (Matthews, 2008). Notably, the scope of enforcement of the TRIPs Agreement is too limited, and the Agreement also lets WTO members use their own ways to implement the TRIPs Agreement provisions (Matthews, 2008). Out of this reason, the EU preferably relies on bilateral agreements with its trade partners to ensure better protection of IPR within the Union.

The particularities of the EU harmonisation on IPR vice versa the TRIPs agreement are relevant for the Ukrainian compliance strategy. In order to ensure that Ukraine corresponds to high standards of IPR protection in the EU, the country must pay due regard to the essential requirements of the EU that exceed those of the TRIPs Agreement. Moreover, Ukraine is also in a process of negotiation on a new bilateral FTA Agreement<sup>4</sup> with the EU requiring it to introduce relevant policies on better IPR enforcement. Factually, such an Agreement would be a continuation of the PCA. Article 50 of the PCA required Ukraine to “continue to improve the protection of intellectual, industrial and commercial property rights” (PCA, 1998, p.40) so that the country could correspond to “a level of protection similar to that existing in the Community, including effective means of enforcing” (PCA, 1998, p.40) by the end of 2003. So, under the PCA

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<sup>4</sup> European Commission, Bilateral Trade Relations. Ukraine. 2006.  
[http://ec.europa.eu/trade/issues/bilateral/countries/ukraine/index\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/countries/ukraine/index_en.htm)



Ukraine was subjected to international obligations to improve IPR protection legislation and enforcement, which stimulated the country to improve its legislation and incorporate some of the international standards of IPR protection.

Another question that arises in this regard is how successful the incorporation and interpretation of these international norms was. Some authors (Sidenko, 2001) argue that the translation and interpretation of such norms by Ukrainian legislators was not successful and did not improve the legislation as much as it should have done. However, the influence of international norms on the Ukrainian IPR legislation is sizeable, as some positive changes were introduced into the laws and further guidelines for the necessity to adapt Ukrainian IPR legislation to the EU norms in particular were set in Ukrainian legislation<sup>5</sup>. The major international motivators of improvement of Ukrainian legislation on IPR protection apart from the envisioned EU membership of Ukraine were trade sanctions of the USA and inclusion of Ukraine into Special Reports (USTR Special 301 Report Watch List).

By 2006, as Kuchma (2006) provides, the Ukrainian authorities conducted “complex legal analysis on conformity of Ukrainian law with the EU law” and concluded that “the basic principle of Ukrainian legislation in the sphere of IPR protection corresponds to the legislation on EU in general”. The level of adaptation of legislation on software was already high<sup>6</sup> in 2006 (Kuchma, 2006; Kapitsa, 2006). Nowadays the legislation on IPR generally corresponds to the EU legal framework. The last edition of

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<sup>5</sup> Law of Ukraine “On the Whole State Program on Adaptation of Ukrainian Legislation to the Legislation of the European Union”

<sup>6</sup> Kuchma (2006): Approximation of IPR legislation to the EU standards:  
 Legal protection of computer programs - 90% approximation done  
 Harmonization of the terms of protection of copyright and related rights - 80%  
 Copyright and related rights in the information society - 80%

law of Ukraine “On Copyright and Related Rights” took into consideration provisions of the 2001 EU Copyright Directive (Directive 2001/29/EC) and the 2006 EU Directive on Term of Copyright Protection (Directive 2006/116/EC). One of the major novelties of the law “On Copyright...” is the prolonged duration of copyright protection in Ukraine, which is now 70 years instead of 50 (although this provision of the Law “On Copyright...” is not as detailed as the Directive). Still, the law does not have any specific provision on duration of protection of computer software. Other positive changes of the law are more detailed elaboration of digital rights management and wider scope of penalties for infringement of copyright and related rights. Still, the law “On Copyright...” has a number of internal contradictions and ambiguous nature of some provisions. Moreover, the law does not correspond to the EU legislation in the sense that different aspects of copyright protection have different level of specification and way of description in the Ukrainian law and the EU laws. For example, Article 6 the Directive 2001/29/EC provides that the states shall guarantee “adequate legal protection against circumvention of technological measures”, while para. e. of Article 50 of the law “On Copyright...” defines this type of infringement as such that gives the grounds for juridical protection. The proceedings will be only civil, as the Criminal Code of Ukraine has no provisions on this infringement. Thus, the EU Directive provides for more proactive approach and guarantees better prosecution than the Ukrainian law “On Copyright...”.

Another aspect is protection of data bases. The law of “On Copyright...” has provisions on protection of data bases, but unlike in the EU (Directive 96/9/EC) it does not provide for a sui generis protection of data bases that would otherwise fall out of the

scope of application of copyrights. This issue still remains controversial in the EU and generally is not of crucial importance for bilateral trade in e-services between the EU and Ukraine. Nevertheless, incorporation of sui generis right in Ukrainian legislation could contribute to better credibility of Ukraine as a trade partner. The only argument here expressed by Kapitsa (2006) is that as this right does not protect copyright but rather investment and competition, it should be rather included into laws of Ukraine “On Investment Activity” and “On Protection against Unfair Competition”. Overall, the derogations between the Ukrainian and the EU legislation on copyright and related rights are not critical. The same is true as for general IPR legislation that is relevant to trade in e-services.

Concluding, current policies of Ukraine generally aim at adaptation of IPR protection regulation to the EU standards. It is worth to remember that although nowadays the EU membership is a distanced goal, the adaptation of Ukrainian legislation to the EU norms can facilitate conditions for bilateral trade without any membership. The major goal for policy makers should be adaptation of the area of IPR protection that causes the biggest concerns of foreign trade partners. Such an area is not derogations of the legislation itself, but rather its enforcement.

### ***2.3 Ukraine: Enforcement of IPR Legislation***

Indeed, implementation and enforcement of Ukraine’s international obligations regarding IPR protection remain the major concern from the side of the EU and other international trade partners. For instance some companies like iTunes are still not present on the Ukrainian market (HiTech.Expert, 2008), which is attributed to the insufficient

IPR protection in Ukraine and therefore low trust of foreign investors into credibility of Ukraine as a trade partner with regards to commodities and services that involve IPR.

Although, according to the European Commission ('Main issues...', 2007) the EU recognized "the efforts made by Ukraine with regard to the enforcement of intellectual property rights" and the European Commission ('IPR in Ukraine', 2007) acknowledged that Ukraine upgraded its IPR legislation and implemented "the minimum standards of IPR protection" of the TRIPs Agreement, the EC still stressed that counterfeiting and piracy activity were "on a high level". The IIPA 2008 Special 301 Report, Ukraine states that there are still "large quantities of illegal optical disc material imported" and a number of "underground CD-burning operators" in Ukraine. USTR report (2007), the IIPA 2008 Special 301 Report, Ukraine (2008) and the 4th EU-Ukraine IPR Dialogue (2007) designate the following problems of IPR protection in Ukraine: internet piracy that includes ambiguous role of collecting societies, pirate web-sites that usually offer IPR products and services illegally<sup>7</sup> and mail order of pirated IPR commodities via Ukrainian web-sites, as well as pirated business software<sup>8</sup>. Indeed, according to the research by the analytical agency IDC, the level of piracy in Ukraine in the beginning of 2007 was 84% (Bogapov, 2008).

In order to improve enforcement of IPR legislation in Ukraine, it is advisable to take into account the experience of the EU Member States and elaborate a national Ukrainian model of enforcement of IPR legislation. This model should potentially

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<sup>7</sup> The <http://www.mp3.ua> case on illegal use of 36 musical works on the website. The copyright holders won the case. More information can be found in the article of Vlasov, A., "Internet-pirates are in a Knock-down, available (in Russian) at: <http://www.yurpraktika.com/article.php?id=10008269>

<sup>8</sup> According to IIPA 2008 Special 301 Report, Ukraine (2008) "illegal software usage by government agencies (including IPR enforcement entities) sends the wrong signal to the business community and Ukrainian citizens about the value and protection of intellectual property".

include effective legal proceedings with regard to cases of IPR violations, creation of effective collective management of copyright and related rights organizations, as well as increased criminal liability for IPR infringements and better control over pirated commodities and services, especially with regard to electronic trade. There is still scope for improvement with regard of judicial proceedings and penalties which are needed for better enforcement of IPR in Ukraine.

Further steps towards improvement of IPR protection in Ukraine can be educational measures, such as trainings for judges that deal with IPR cases, educating more IPR specialists and developing general culture of IPR perception in the Ukrainian society and raise awareness about economic value of IPR. Moreover, it is also advisable to develop local legal practice with regard to IPR violations and take into consideration international standards in this field, especially judgements of the European Court of Human Rights. Implementation of all these measures is a long run strategy which substantially complements current policies towards improvement of legal protection of IPR in Ukraine. The result of such a combination can be a better enforcement of IPR regulation and, consequently, recognition of IPR protection in Ukraine by the EU as adequate.

## ***Conclusion***

As Ukraine pursues the strategy to adopt its IPR Protection, the major policy will be sustainable following of this strategy in the future. Nowadays the Ukrainian legislation on IPR objects usually involved in trade in electronic services generally corresponds to the provisions of the TRIPs agreement and basic provisions of the EU laws. The major

obstacles to growth in trade in e-services between Ukraine and the EU remain enforcement of the legislation and better measures to protect IPR in practice. Therefore, Ukraine should also elaborate more effective enforcement mechanisms and use the best international practices of IPR legislation implementation.

## **Chapter 3: Compliance with Personal Data Protection Regulations**

As the role of trade in e-services increased, another regulatory framework gains importance, namely, regulation of personal data protection, as these data is in many instances involved when conducted trade in electronic services. The EU puts more emphasis on protection of personal data that outflow its borders and it requires from its trade partners that they provide the same high level of personal data protection as the EU itself. This can be ensured either by legislation of the third countries that satisfies EU requirements or by other means, such as standard contractual clauses or special framework of personal data exchange with the EU (for example., ‘Safe Harbour’ in case of the USA). As Ukrainian legislation on personal data protection does not correspond to the EU norms and its enforcement is not well performed, the only possible way to enable personal data outflow from the EU to Ukraine are standard contractual clauses. They may be regarded by the companies involved in e-business as additional obligations that complicate the exchange of personal information between Ukraine and EU, which could offset trade relationships and chill investments. In this chapter I will compare the data protection frameworks of Ukraine and the EU in order to reveal the gaps that prevent EU

from recognizing Ukraine as a country with the high level of personal data protection sufficient for bilateral trade in e-services.

### ***3.1 The European Union Regulation of Personal Data Protection and Commercial/Personal Data Transfer from the EU to the Third Countries***

The most important regulation of the EU on personal data protection covers the European Parliament and the Council Directive 95/46/EC “On the protection of individuals with regard to the processing of personal data and on the free movement of such data”. In essence the Directive resembles the data protection principles that can be found in the Convention 108<sup>9</sup> (1981) of the Council of Europe and the OECD Guidelines. However, the EU Data Protection Directive goes beyond with “more detailed and specific data protection rules [than Convention 108]” (Lodder, Kaspersen, 2002). The primary goal of the Directive 95/46/EC was to harmonize data protection legislation inside EU. As Ukraine is not a Member State of the EU, there would be no legal duty to comply with the EU internal legislation that applies to the Member States only. Still, the EU maintains unilateral restrictions to the export of personal data outside its territory, which have an impact on international trade relations with the Ukraine and can be regarded as an indirect enforcement mechanism of EU data protection rules. Namely, article 25 of the Directive 95/46/EC provides that data transfer to the third country is possible only in the case that *“the third country in question ensures an adequate level of protection”*. The

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<sup>9</sup> Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data Strasbourg, 28.I.1981

adequacy of protection by a third country is determined by looking at the nature of data subject to cross border transfer, the duration and the aim of such transfer, the originating country and the country of final destination, as well as legislation and security measures with regard of data protection and transfer in a third country (article 25 of the Directive 95/46/EC). The condition requires an “adequate level” of protection, not “comparable level” or similar level” and under it “the determination of “adequate level” can be made by the transmitting country, by another EU member nation, or by the EU staff in Brussels” (The South African Law Reform Commission, 2006). The Article 29 Working Party<sup>10</sup> (1998) explains that the adequacy of personal data protection can be measured according to two basic principles: “the content of the rules applicable and the means for ensuring their effective application”. These basic principles are found in the Directive. Usually, as the Directive contends, the Member States or the European Commission should assess the adequacy of the data protection in the third country. If Ukraine wants not only to promote international trade in services that involve personal information of EU citizens it should consider developing a corresponding data protection framework, which would meet the adequacy test by the European Union. Furthermore, the Eurobarometer (2008) demonstrated in its survey on the number of EU companies that transfer personal data outside the EU that only 10% of the companies do so.

At the moment Ukraine is not recognized as a country with adequate level of personal data protection, but cross-border transactions that involve personal data take place. This is possible due to the fact that Article 26 of the Directive provides for certain derogations from the provision of Article 25 on adequate level of protection. In order to

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<sup>10</sup> “This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC” (Article 29 Data Protection Working Party, 2008).



legally transfer personal information stemming from the EU Ukrainian businesses have to rely on these derogations. The most important derogation for data transfer to a third country without the adequate level of protection is the conclusion of the so called standard contractual clauses, i.e. model contracts the European Commission provides for bilateral agreement on the adequate protection of personal data<sup>11</sup>. Such standard contractual clauses are not “compulsory for businesses nor are they the only way of lawfully transferring data to countries outside the EU” (MEMO/01/228, 2001). Still, such derogation imposes additional burden on companies. Morgan and Boardman (2003) argue that because standard contractual clauses are non-negotiable, they are not the best solution when the companies transfer sensitive personal data, they “do not effectively increase the exporter’s liability” and they might be an additional burden for groups of companies and companies established in several Member States. Moreover, Ukrainian companies usually do not possess information about such contracts and they usually need external legal advice. Standard contractual clauses are not also familiar to the majority of the EU companies that transfer data outside the EU, as only 34% of such companies were familiar with the notion (Eurobarometer, 2008).

Heisenberg (2005) points out that the Commission still expects a third country which uses such derogations to “create the legislative environment that would ultimately enable the EU to make an adequacy finding”. Concluding, the standard contractual clauses can be a temporary measure for bilateral trade in e-services between the EU and Ukraine, but the latter should incorporate the EU requirements into its legislation that will make the process of cross border data transfer easier and will enhance the growth of such

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<sup>11</sup> These standard contractual clauses are available on the webpage of the European Commission for incorporation in bilateral contracts. See model contracts at [http://ec.europa.eu/justice\\_home/fsj/privacy/modelcontracts/index\\_en.htm](http://ec.europa.eu/justice_home/fsj/privacy/modelcontracts/index_en.htm).

bilateral trade. Furthermore this step will make standard contractual clauses and other conditions for legal data transfer imposed by EU law unnecessary and will give more space for companies to concentrate on their initial agreements and trade itself rather than dealing with the additional obligations.

### ***3.2 Ukraine: Legal and Policy Gaps Regarding Personal Data Protection***

The existing regulation of personal data protection in Ukraine covers the Constitutions, several laws and orders of the President. Ukrainian authorities recognize that “The legislation of Ukraine is not brought in correspondence with the European standards in the personal data protection sphere” (the Decision of the Constitutional Court of Ukraine N 5-3П (v005p710-97) as of 30.10.97). In general, Pazyuk (2000) characterizes Ukrainian legislation on personal data protection as such that has a number of controversies, lacks systematic character and terminological conformity. Further I would like to analyze correspondence of this Ukrainian legislation to the basic provisions of the Directive 95/46/EC. Ukraine is a member to both inter-governmental organisations and should in principle also incorporate the commonalities of these data protection framework. It is worth researching how these principles of personal data protection are depicted by Ukrainian laws.

#### ***3.3.1 Legislation***

The Article 29 Working Party identifies 6 content principles of the Directive:

- the purpose limitation principle (collection of data only for a specific purpose);
- the data quality and proportionality principle (collected data must be “accurate, [...], kept up to date, [...], adequate, relevant and not excessive”);
- the transparency principle (an individual “should be provided with information” on her/his data “to ensure fairness”);
- the security principle (a data controller must provide “technical and organisational security measures”);
- the rights of access, rectification and opposition (an individual must have a right to access, rectify (if necessary) information about her/him and oppose such data collection);
- restrictions on onward transfers (data transfer from one recipient to the next is allowed only if the latter is “subject to rules affording an adequate level of protection”).

*The purpose limitation principle and the data quality and proportionality principle*

The purpose limitation principle and the data quality and proportionality principle are not present in the legislation of Ukraine, as there are no provisions regarding purpose of data collection, and the latter principle is not very clear. Still, some minor part of the scope of these principles can be found in the Constitution of Ukraine and the law “On Information” that prohibit collecting information about a person without his/her prior consent, except for the cases foreseen by the law. Some features of these principles can also be traced in the law “On Telecommunications” which includes “the prohibition of

the dissemination of personal data obtained by operators from users” Pazyuk (2006). This law stipulates that individual’s personal data “and data on telecommunication services can be provided to third parties with the data subject's consent or on the conditions provided by law” (EPIC and Privacy International, 2007). However, the law regulates only dissemination of personal data to the third parties and not processing or using for the purposes that an individual is aware of. In order to achieve the adequate level of protection the two principles should be included in the Ukrainian legislation and the existing provisions should be also brought into correspondence with these principles.

*The transparency principle*

The transparency principle is found in articles 23 and 31 of the law of Ukraine “On Information” provides that citizens “must know at the moment of data collection which data about them are collected and what is the purpose of this collection, as well as who uses these data and on which purpose”. Therefore, this provision is not as detailed as Article 10 of the Directive, but it generally corresponds to the transparency principle and can potentially meet the adequacy test of the EU.

*The security principle*

The provision that may potentially correspond to the security principle can be found in the law of Ukraine “On Telecommunications”. Its Article 9 stipulates that operators and providers of telecommunications must protect telecommunication networks and means, and article 34 of the same law provides that they must protect and bear responsibility for data of their consumers. The law does not impose obligations on the providers to protect any other data, for example, stemming from their business partners. Moreover, this law is also limited only to operators and providers, and the Directive’s

scope is wider as it involves a data processor in general. Thus, the security principle of the Directive is not met by this law, as the scope and meaning of the EU principle is different from the interpretation of security in the Ukrainian legislation.

*The rights of access, rectification and opposition*

Articles 23 and 31 of the law of Ukraine “On Information” guarantee an individual the right to access information about him/herself and rectify and oppose such information in case it not correct. Hence, these articles correspond to the principle of the Directive on access to information about him/herself.

*The restrictions on onward transfers*

The restrictions on onward transfers principle is not represented in the Ukrainian legislation in force. However, it is worth stressing that the draft law of Ukraine “On Personal Data Protection” No. 2273 as of 25.03.2008 would significantly improve these shortcoming and fill in legislative gaps identified above. Unfortunately, it has not been ratified due to a number of inconsistencies with Ukrainian legislation and some vague declarations without specifications of their enforcement.

Despite the fact that some of the principles of the Directive 95/46/EC can be found in the Ukrainian legislation, they are mostly not as precise as in the Directive. Moreover, the Ukrainian legal framework does not include such core principles, as data quality and proportionality or the purpose limitation principle, which makes it more urgent for the country to incorporate these principles into its legislation to ensure better environment for data stemming from the EU. Filling this gap in legislation is the first major step to compliance with EU legal requirements as to the adequacy of the level of personal data protection.

### **3.3.2 Enforcement**

The next requirement of the EU to the adequate level of protection concerns enforcement of the legislation. Such enforcement measures can be only found in the Civil Code. Although some effort was made to improve the Civil Code with regard to basic privacy protection principles, these new provisions are not relevant to the cross-border trade in e-services involving personal data transfer. EPIC and Privacy International (2007) stressed that the new edition of the Civil Code of Ukraine (as of 2004) “introduced a number of sectoral privacy-related safeguards” that enable individuals to protect their privacy in courts, control “the publicity of his or her image in photographs, artistic pieces, and movies” and their reputation. There are no provisions in Ukrainian legislation regarding a data controller who is one of the major enforcement tools in the EU, although, as EPIC and Privacy International (2007) mentioned, the draft law “On Personal Data Protection” proposed to create the National Agency on Personal Data Processing Supervision as an enforcement body. It may be concluded that the enforcement of personal data protection, which is an essential component of the adequacy level defined by the Directive 95/46/EC, is not in place in the Ukrainian legislation at all. Therefore, there is a need to fill in this gap first of all on the legislative level and then on the implementation level. Such a step is of a priority importance to meet the adequacy test requirements of the EU.

## **Conclusion**

Nowadays Ukraine does not meet requirements of the EU concerning adequacy of personal data protection due to the legislative and enforcement gap. This results in low amount of trade in electronic services between the EU and Ukraine, as such relations are complicated by additional burdens that the EU imposes on its trade partners. Therefore there is a need for a policy aimed at adaptation of Ukrainian legislation on data protection to the EU standards so that Ukraine can meet the adequacy test. The major step is to improve and to pass the draft law “On Personal Data Protection”. Furthermore, as this process can take time, Ukrainian authorities could provide information assistance and consultancies on requirements of data exchanges with EU Member States, such as standard contractual clauses, for the Ukrainian companies involved in trade with e-services with the EU or willing to establish such relations with partners from the EU.

## **Chapter 4: The Need for Improvement of Security and Protection from Cyber Crimes**

One of the major concerns with regard to trade in electronic services is reliability and security of online transactions. Indeed, growth of the role of the internet and development of internet technologies did not only introduced cheaper and faster way for e-trade, but also caused new threats to security of such trade. Namely, fast widespread of cyber crime (computer forgery and fraud, unauthorized access to confidential information and its interception, computer sabotage, online piracy) made trade in e-services a highly risky business for both providers and their clients. The companies are interested in high

level of security of information and communication systems, because, as Schmitt (2005) argues, their business activity depends on “increasingly complex information systems”. This means that Ukrainian communication systems should ensure credible environment for carrying out e-business to attract EU companies. To achieve this state of arts of the communication systems, Ukraine should excel in order to create trust and confidence in its abilities to secure and protect its infrastructure and the content conveyed and stored.

Due to global nature of cyber crime countries not only strengthen their national policy towards security, prevention and fight cyber crime on national level, but also collaborate on the international level. Such policies include development of high standards of security of online transactions and enforcement of legal measures against cyber crimes. Naturally, low standards of security of online transactions and higher risks for e-activities due to insufficient enforcement of anti-cyber crime legislation in a country may prevent its foreign trade partners from trade involving online transaction with this country. Therefore, if Ukraine aims at better trade in e-services with the EU, it should take into account current EU policies on information security. The following chapter will overview major international trends on information security and the legislation and policies of the EU in this sphere. Further the chapter provides an analysis of the Ukrainian legislation on cyber crime and online security and its correspondence to the EU norms.



## **4.1 International Benchmark on Security Regulation and Fight against Cyber Crimes**

As security of communication networks should be enforced on the international level, there are a number of international legal and policy instruments that are also adopted by the EU. One of the most important issues of current information security legislation is fight against cyber crimes which Thomas and Loader (2000) define as “computer-mediated activities which are either illegal or considered illicit by certain parties and which can be conducted through global electronic networks”. The major document that regulates fight against cybercrime is the Convention on Cybercrime of the Council of Europe (CoE). The CoE claims this document to be “the only binding international instrument” to fight cybercrime and “a framework for international cooperation between State Parties to this treaty”. The aim of the Cybercrime Convention is to elaborate a “common criminal policy aimed at the protection of society against cybercrime, *inter alia*, by adopting appropriate legislation and fostering international co-operation” (the Cybercrime Convention). The scope of the Convention with regard to criminal law includes offences against “the confidentiality, integrity and availability of computer data and systems”, computer related forgery and fraud, offences related to children pornography and copyright and related rights infringement. Moreover, the Convention also includes procedural law provisions on stored computer data and production order. A separate chapter of the Convention is dedicated to international cooperation on fight against cybercrime. The enforcement and implementation of the Cybercrime Convention are carried out on national level by the signatory countries themselves (Rapid, 2007), but the CoE also contributes to ‘soft’ enforcement of the Convention and general promotion

of fight against cybercrime. The CoE has a Project on Cybercrime through which the institution promotes implementation of this Convention (CoE, 2008).

International regulatory framework also includes other documents, such as OECD Guidelines for the Security of Information Systems and Networks, G-8 principles for the protection of critical information infrastructure and UNICITRAL Model Law on e-signatures. Speaking about all the above mentioned international instruments it is worth saying that the EU adopted the OECD Guidelines on security, G-8 principles and signed the CoE Cybercrime Convention (Schmitt, 2005). Although Ukraine also signed the CoE Convention in order to fight growing number of cyber crimes, this was not a significant step towards better security of e-businesses in the country. There are other issues concerning pre-emptive measures towards information security, such as guaranteeing confidentiality of communications, protection of networks and electronic signatures, that do not meet EU standards and this is why may have caused concerns of the EU towards the credibility of digital environment in Ukraine.

## ***4.2 EU Regulation of Cybercrimes and Security***

The EU regulatory framework on information security is still in development, as new challenges of quickly evolving IT technologies stimulate further improvement of the most critical legal issues such as security of online communications and protection of information. At the same time, EU policies are aimed at strengthening information security. Thus, to make these policies better targeted, the European Commission distinguishes three layers of information security regulation: “the fight against cybercrime”, “the regulatory framework for electronic communications” and “specific

network and information security measures” (COM(2006) 251, 31.5.2006). These layers are milestones of information security within the EU and this is why they will be considered in detail further.

Concerning cybercrime, still in the EU “no general legislation on the fight against cyber crime can be expected to be effective at this moment” (MEMO/07/199, 22.05.2007). This is why the EU mostly relies on the third pillar legislation, namely, CoE Cybercrime Convention. The implementation of the Cybercrime Convention by countries inside and outside the EU is supported by the European Commission (European Commission, 2008). The major policy objectives towards active fight against cyber crime, such as enhanced international cooperation and cooperation with industries, enforcement and harmonization of national legislation are found in the European Commission Communication COM(2007) 267, 22.5.2007 “Towards a general policy on the fight against cyber crime”.

Additionally, appropriate conditions for secure trade in e-services are ensured by adequate quality of the network and confidentiality of the communications in the network. The obligation to create such conditions usually lies on electronic communications providers / network operators and is regulated by the Directive 2002/58/EC “On privacy and electronic communications”. This Directive is a sector specific regulation aimed at ensuring the right to privacy “with respect to the processing of personal data” in “the electronic communication sector” (Directive 2002/58/EC). Article 4 of the Directive obliges a provider to “take appropriate technical and organisational measures to safeguard security of its services” and it determines these measures as such that that “shall ensure a level of security appropriate to the risk

presented” (Directive 2002/58/EC). Thus, the provider is obliged to protect e-communication from any kind of threats. Moreover, in case of a risk for the network security the provider “must inform the subscribers concerning such risk” and “possible remedies” (Directive 2002/58/EC). At the same time, the provider is not liable for any information that is transmitted via his network (Directive 2000/31/EC on E-Commerce).

Article 5 of the same Directive obliges Member States to ensure the confidentiality of communications and traffic data in their national laws by means of prohibiting “storage or other kinds of interception or surveillance of communications and the related traffic data by persons other than users, without the consent of the users concerned” (Directive 2002/58/EC). Article 13 Directive 2002/58/EC prohibits spam and other ways of unsolicited communications. Furthermore, Mitrakas (2006) adds that the European Commission “adopted, in January 2004, a Communication to counter spam (COM (2004)28)”.

Another crucial issue for information society and successful trade in electronic services that is widely promoted by the European Commission is guaranteeing security for critical information infrastructure and networks. These are “ICT systems that are critical infrastructures for themselves or that are essential for the operation of critical infrastructures” (COM(2005) 576 final, 17 Nov 2005). On the one hand, proactive policies of the European Commission towards encouraging Member States to ensure high level of critical information structure means better trade relations among them due to the unified standard, but, on the other hand, this may become a hindrance for non-EU countries like Ukraine, unless the country adopts the same standards of critical information structure protection as the EU Member States.

The EU legal framework on information security has another dimension aimed at securing online transactions and giving electronic documents juridical power. This covers the regulation of electronic signatures that now have both technical and legal meaning within the EU (Mitrakas, 2006). This issue is of a paramount importance for business sector that carries out its activities in cyberspace. Dickie (1999) argues that legal framework that regulates e-signatures is “an essential factor for in the development of electronic commerce”. Electronic signatures are covered by the Directive 99/93/EC on a Community framework for electronic signatures. Lodder, Kaspersen (2002) argue that the majority of the Directive regulates one type of e-signatures, namely, ‘digital signatures’ based on public key cryptography. The scope of the Directive covers facilitation of e-signatures use and legal recognition, as well as establishing a legal framework for such signatures (Directive 99/93/EC). Further the Directive defines e-signatures and advanced e-signatures, describes certification and e-signatures products, and provides for legal effects of the e-signatures and liability (Directive 99/93/EC, Lodder, Kaspersen, 2002).

### ***4.3 Ukraine: Regulating Security and Fighting Cyber Crimes***

Information protection legislation in Ukraine is not as specific and detailed as those of the EU, although some aspects of it correspond to the EU legislation.

Ukraine ratified the Cybercrime Convention on 7 September 2005 with minor derogations (para.1 of Art. 6 and para.1 of Art.9, Law of Ukraine on Ratification of the Cybercrime Convention). This means that Ukraine must implement into its national legislation the measures to fight cybercrime that are defined by the Convention. In reality, major provisions on penalties and prosecution of cybercrimes with regards to

offences to computer data, computer related forgery and computer sabotage can be found in para. 6 of the Criminal Code of Ukraine. Despite this legal framework in place and its enforcement, the number of cyber crimes in Ukraine is high (first of all with regard to IPR infringements, which was discussed earlier), due to inefficient measures of fighting against it. Thus, the major problem here, as with other legislation, remains insufficient enforcement which implies relatively low level of combating cyber crimes in the country.

There are a number of laws in Ukraine that regulate security and confidentiality of information in digital environment. Basically, the most provisions of such laws of Ukraine (“On information”, “On state secret”) specifically regulate protection of the information that is defined as secret state information or information with limited access. Still, the law of Ukraine “On information protection in information and communication systems” has article 9 that imposes the responsibility for protection of information in the automated system on the owner of such a system, and article 5 of the same law defines that “the owner of the system guarantees protection of the information in such a system in order and according to the conditions defined in the agreement”. Article 9 of the law “On telecommunications” obliges the providers to protect telecommunication networks. The law “On setting the rules on providing and getting telecommunication services” obliges the providers to “inform the consumers about the breakages on telecommunication systems” and “remove the damages within the period defined by the law”. Obviously, this obligation on informing the consumers is a *post factum* one unlike the one that of the Directive 2002/58/EC that obliges the providers to inform the consumers beforehand on the risks of the networks. In this sense Ukrainian legislation defines the responsibilities of a provider in several laws, and overall scope of their obligations in the Ukrainian laws

correspond to the provisions of the Directive 2002/58/EC. At the same time the Ukrainian legislation does not oblige a provider to guarantee confidentiality of communication.

So far, there are no legal provisions or state policies aimed at better protection of critical information infrastructure, which might be a possible obstacle for credibility of Ukrainian network for doing e-business. In practise, although basic legal protection of networks is in place, the telecommunication systems generally are not technically up-to-date, which is recognized in the law on “The Concept of National Programme of Informatization” as of 03.03.2006. The major concerns raised in the legal strategy are “insufficient transmission capability and reliability of the communication, low quality and insignificant volume of services” (the law on “The Concept of National Programme of Informatization” as of 03.03.2006). Hence, along with technical excel of the physical infrastructure, a legal background for protection of such infrastructure is also needed.

One of the most wide-spread mechanism of information protection of e-business in Ukraine are technical measures such as encryption. Indeed, Belov and Makarenko (2004) argue that a digital certificate based on public key infrastructure is the most effective and widespread way of protecting e-transactions. In Ukraine technical mechanisms, particularly encryption, are regulated by the law “On electronic signatures” as of 2004. This law does not correspond to the Directive 1999/93/EC in a number of provisions. Belov and Martynenko (2004) indicate that e-signature in the Ukrainian law ensures only authentication, while in the Directive it ensures both authentication and comprehensibility. Other major discrepancies also lie in the field of definition, as the definitions in the Directive are more detailed and more notions are defined there, such as advanced electronic signature and qualified certificate. At the same time the Ukrainian

law has a notion “electronic digital signature” that, as Belov and Martynenko (2004) point out, “corresponds to the EU e-signature within cryptography with open keys”. Another concern raised by Belov and Martynenko (2004) with regard of absence of these definitions in the Ukrainian law is that the law “On electronic signatures” cannot be applied to e-commerce, as they rely on the system of public key infrastructure which is based on either advanced or qualified e-signature. Further discrepancies are that the Ukrainian law does not contain any provision on data protection, and the provision on liability is not addressed at certification-service-provider, but generally on the persons who infringe the law on e-signatures; the minimum liability rules are not defined by the Ukrainian law too.

## ***Conclusion***

Generally, despite some discrepancies in definition and protection of confidentiality of communications the security and anti-cybercrime legislation of Ukraine’s corresponds to the EU standards. The policies that can improve the current situation in Ukraine and make online transactions more credible to attract more trade in e-services with the EU partners must include better enforcement of anti-cybercrime measures and implement higher technical standards (ISO) of protection of digital information. Moreover, further improvement of the legislation on electronic signatures is also needed to ensure better legal protection of e-commerce in Ukraine and attract more EU FDI in this sector.



## Conclusion and Recommendations

Economic growth of Ukraine depends on its further strategy of integration into the world community. Ukraine should expand its focus to recent trends of world marketplace, such as trade in electronic services and e-commerce and further develop its comparative advantage based on cheap and highly qualified labour force; therefore, the country should promote and develop its capacity to host outsourcing activities. To this ends the country has the means to define its strategic policy objectives in those areas of legislation that directly impact the ability to assimilate foreign regulations. These are IPR protection, personal data protection, security and cyber crimes.

Some may argue that these three fields of legislation were not considered as of major importance for facilitating international trade of Ukraine and FDI in the country compared to other branches of legislation, such as taxation or fiscal policies. Still, neglecting these three spheres is a major mistake that causes waste of the economic potential of Ukraine in trade in electronic services. Better protection and simplification of online transactions, first of all, by means of legislation is of a major importance today. The countries that can ensure a credible legal field for secure online transactions can become the winners on the global economic scale. Moreover, as the interviews with the Ukrainian companies indicated, adoption of these three fields of legislation to the EU norms will remove such trade barriers as concerns of the EU companies about legislation of Ukraine and additional requirements on Ukrainian companies set forward by the EU companies.

Ukraine is well advised to seek here close reference to the European Union harmonization policies in order to unilaterally remove existent obstacles that might

translate into subtle barriers to trade wherever this is possible without upsetting other international obligations. There are sound reasons for this strategy, such as increasing credibility of Ukraine as a reliable trade partner that can ensure appropriate legal environment for trade in e-services, and, consequently attracting more FDI from the EU into Ukrainian economy.

Although Ukraine generally demonstrated positive approach towards European policies in IPR protection, personal data protection, fight against cyber crime and security, this approach is not cohesive. Different spheres of legislations are differently adopted to the EU standards and Ukraine has varying strategies in each of the three policy areas.

Due to the international pressure and accession to the WTO Ukraine adopted IPR legislation to the international norms better than two other policy areas. The strategy of better compliance of IPR protection with the EU standards is already in place, although this field of legislation is still regarded by the Ukrainian companies as the major concern with regard to cross-border trade between the EU and Ukraine. Hence, the problem here is not the legislation, but its enforcement. This is why it is recommended to develop more effective enforcement mechanisms and ensure their appropriate implementation.

The biggest gap is observed in the personal data protection legislation, as it is not still considered as an important part and Ukrainian policy makers did not aim at compliance with the EU standards in this field. Although trade in e-services that involves cross-border exchange of personal data takes place between the EU and Ukraine, its amount is still low due to the fact that Ukraine does not provide an adequate level of protection and the companies are forced to use standard contractual clauses which may

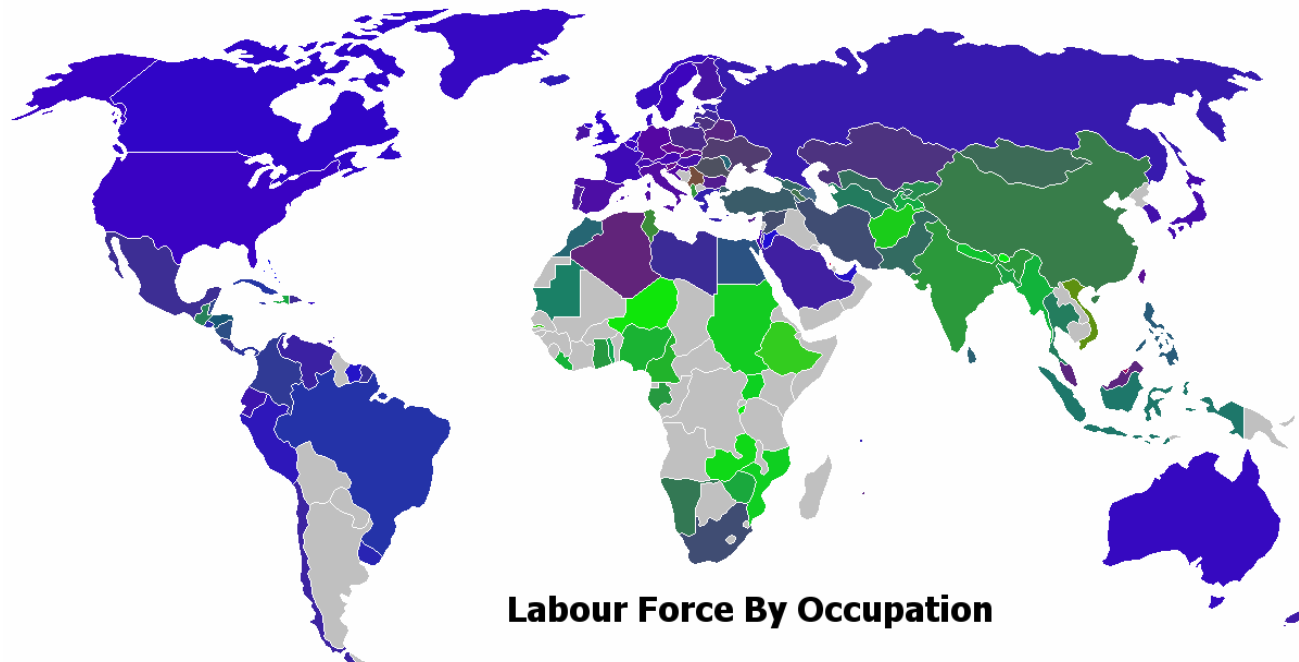
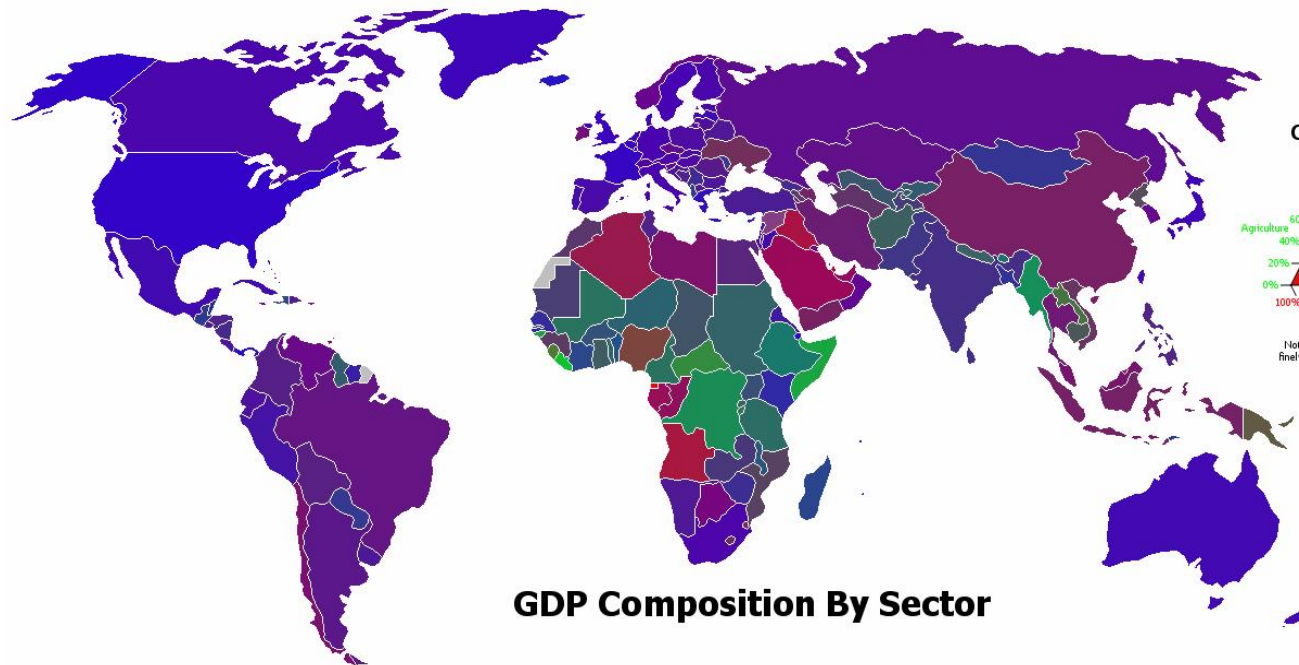
create obstacles to excel of such trade. This is why Ukrainian policy makers should fill in the existing gaps with regard to, first of all, the principles of the Directive 95/46/EC. The first step in this regard will be to edit and pass the draft law “On Personal Data Protection”.

The level of adaptation of Ukrainian legislation on information protection and fight against cyber crime is average. Both the EU and Ukraine are the parties to the CoE Cybercrime Convention. At the same time, also Ukrainian laws puts liability on electronic service providers to protect their services, they are not obliged to guarantee confidentiality of communication unless this concerns state secrets or information with limited access. Other major discrepancies lie in the field of definitions, standardization, and protection of critical information infrastructure. Hence, if these two fields correspond to the legislation of the, this will excel e-business relations between Ukraine and the EU.

Concluding, Ukrainian policy makers must be interested in the country’s prosperity, this is why they should elaborate more cohesive and consistent strategy towards compliance with those fields of EU legislation that are of major value for removing trade barriers in e-services and opening the door to the EU investors. In order to achieve coherence it is necessary that starting from the overall policy objective all affected policy areas are examined and developed in the same context.

## Appendices

### *Appendix I. GDP Composition by Sector*



Source: Wikipedia, [http://en.wikipedia.org/wiki/Service\\_economy](http://en.wikipedia.org/wiki/Service_economy)

**Appendix II. Practical Implications of Trade in E-Services  
between Ukraine and the EU. The Survey among 11 Ukrainian  
Companies**

|   |                  |                |
|---|------------------|----------------|
| 1. What kind of services does your company provide?   |                  |                |
| Answer  | Response percent | Response count |
| IT services, software development   | 81.82%           | 9              |
| Internet services (hosting, design etc.)  | 18.18%           | 2              |
|   |                  |                |
| 2. Do you have trading (commercial) partners from EU countries? Please answer YES or NO. If YES, please proceed to question 5. If NO, please proceed to question 3.   |                  |                |
| Answer  | Response percent | Response count |
| YES   | 63.6%            | 7              |
| NO  | 36.4%            | 4              |
|   |                  |                |
| 3. If you do not have trading partners from the EU countries, have you ever tried to establish trade relations with companies from the EU? Please answer YES or NO.<br>If YES, please answer question 4. If NO, thank you for your cooperation; please, press Done at the bottom of the page. |                  |                |
| Answer  | Response percent | Response count |
| YES   | 60.0%            | 3              |
| NO  | 40.0%            | 2              |
|   |                  |                |
| 4. Why was your attempt unsuccessful?   |                  |                |
| Answer  | Response percent | Response count |

|   |                  |                |
|---|------------------|----------------|
| Could not establish a common business interest  | 25.0%            | 1              |
| Incompatibility of Ukrainian and EU legislation   | 50.0%            | 2              |
| Unwillingness of a company from the EU to deal with Ukrainian legislation   | 75.0%            | 3              |
| Unwillingness of our company to deal with excessive legal requirements from the EU company                                | 0.0%             | 0              |
|   |                  |                |
| 5. Is your agreement based on the legislation of Ukraine or your trading partner's country/ EU legislation?               |                  |                |
| Answer  | Response percent | Response count |
| The legislation of Ukraine  | 28.6%            | 2              |
| The legislation of our trading partner's country/ EU legislation  | 71.4%            | 5              |
|   |                  |                |
| 6. Does your EU partner stipulate additional requirements in the contract/agreement since you are not a member of the EU? |                  |                |
| Answer  | Response percent | Response count |
| YES   | 71.4%            | 5              |
| NO  | 28.6%            | 2              |
|   |                  |                |
| 7. When you launched the trade relations with your EU partner, did you use external legal advice?                         |                  |                |
| Answer  | Response percent | Response count |
| YES   | 57.1%            | 4              |
| NO  | 42.9%            | 3              |
|   |                  |                |

| 8. Do you consider one of the following a legal challenge when dealing with EU trade partners: |                  |                |
|--|------------------|----------------|
| Answer   | Response percent | Response count |
| Personal data protection   | 16.7%            | 1              |
| Intellectual property rights   | 83.3%            | 5              |
| Confidentiality and data security  | 16.7%            | 1              |
| NONE of the above  | 16.7%            | 1              |

### **Appendix III. Interview with Colette Seyler, a co-ordinator of bilateral issues in DG Trade of the European Commission**

- 1) What is your opinion on importance of trade in e-services between the EU and Ukraine?
- 2) Do you have any information on current situation with trade in services (annual amount of such trade transactions) between the EU and Ukraine?
- 3) What are the major obstacles that prevent companies of the EU invest in e-services (outsource) in Ukraine and establish trade relations with more Ukrainian companies?
- 4) Has the European Commission made any steps towards facilitation of trade in e-services with Ukraine?

*Assuming that you refer to the process by which companies or organisations transfer to outside service providers some activities and operations, which, at least to some extent, were previously done internally and whereby the outsourced are transferred abroad (international or offshore outsourcing), e.g. activities like call centres being diverted to Ukraine rather than electronic commerce as such. It is difficult to give a precise data on e-services (outsourcing) because of the difficulties surrounding the classification of such services. However good data as to trade in services with Ukraine and different sub-categories should be found on the Eurostat website. In the WTO/GATS, both the EU and Ukraine have very extensive commitments in sectors related to service outsourcing, like computer and related services, many business service sectors, telecommunication*



*services and others, including cross-border provision of services (mode 1) that all relate to offshore outsourcing. Some of them may be affected by several sectors committed. For instance, services provided by telephone-based call centres are arguably not committed as such but may be considered as covered by the fact that related sectors are. Often the existing remaining barriers to enhancing this type of trade, will be natural barriers, with which it is difficult to deal through legal ways. One of the most obvious barriers is that critical customer service and language requirements of many outsourcing processes, like call centres, are much more difficult to meet in culturally-diverse, multi-lingual Europe. Furthermore, much of the outsourcing potential is likely to happen within the boundaries of the EU internal market. EU countries are both importing and exporting outsourcing services. Ireland and some new Member States are well-known exporters of outsourcing services. Actually, international outsourcing of services within the EU falls within the freedom to provide services, which is one of the fundamental pillars of the EU Single Market. It fully corresponds to the freedom to choose the EU service provider which one prefers regardless of its nationality.*

*Overall, the EU has a clear interest in the promotion of free trade of services, including outsourcing, with appropriate regulation, both in the context of the WTO and bilateral free trade agreements including with Ukraine. One of the specific features of this agreement is the pledge by Ukrainian partners to align with EU acquis in a variety of sectors, some of which may well have positive effects in terms of flow in outsourcing activities.*

*If your question is more broadly on electronic commerce, it has to be stressed that it is already addressed in EU's FTAs. As an illustration, Chapter 6 of the EPA initialled with*

*the Cariforum sets some regulatory provisions as regards electronic commerce ([http://trade.ec.europa.eu/doclib/docs/2008/february/tradoc\\_137971.pdf](http://trade.ec.europa.eu/doclib/docs/2008/february/tradoc_137971.pdf)) sets a basic regulatory framework and commits the parties to engage in a dialogue on a number of related issues. The FTA with Ukraine is at a very early stage of the negotiation but it can be envisaged that similar or comparable provisions may be contained in that Agreement. Something of interest to you may be EU's position on computer services (CPC 84). To understand this position it may be useful to read some of the communications presented at the WTO on that topic (e.g.. TN/S/W/6 S/CSC/W/35, you should find on the WTO website). It is important to notice that for that as many other trading partners the EU considers that there is a distinction between computer services and content services provided through computers.*

## **Appendix IV. Interview with Olexiy Kozhenkin, the executive director of the IT Association of Ukraine**

1) Do you possess any information on current situation with trade in services, namely, number of EU countries that outsource e-services in Ukraine and number of Ukrainian companies that provide EU companies with their services?

Mr. Kozhenkin: *There is no statistics as such, as a lot of Ukrainian companies are in a grey zone, as this is a virtual business. They would like to go out of the shadow, but due to the poor labour and taxation legislation they do not do this. The policy makers do not pay much attention to the information legislation and other legislation relevant for outsourcing business as this is a virtual sphere. The Ukrainian legislation is improving, but very slowly.*

*As for the EU companies, there is also no statistical data, but the biggest amount of the EU and EEA companies that outsource in Ukraine come from Denmark, Germany, France, as well as Norway and Switzerland.*

2) What are the major obstacles, from your point of view, that prevent companies of the EU from investing in electronic services (outsourcing) in Ukraine and establish trade relations with more Ukrainian companies?

Mr. Kozhenkin: *The major obstacles from the Ukrainian side are labour and taxation legislation. The reform of information legislation is slow due to the slow processes in other spheres of legislation. There is a need to reform all the legislation in a bunch. There are positive tendencies in legislation, as the state tried to cooperate with NGOs who lobbied for improvement of legislation. The state is big, this is why it is hard to control all the legislation. Overall, the legislation evolves slowly and there are also positive changes (the law on the e-signatures).*

3) Do you believe that adaptation of Ukrainian legislation on personal data protection,

IPR protection and information security to the EU norms will facilitate trade between Ukraine and the EU? Will this also facilitate growth of outsourcing in Ukraine?

Mr. Kozhenkin: *In order to cooperate with foreign companies the Ukrainian companies must operate according to some standards, and if such standards correspond to the EU norms, this will make the cooperation of the EU companies with the Ukrainian ones easier. Such standards include working conditions and quality of products and services. The foreign companies use their advantage: they give the Ukrainian companies the tasks and then they acquire all the rights (including copyright) on the product or service produced by Ukrainian companies.*

*The amount of outsourcing will grow irrelevant of the legislation, as during the last 5 years the export of outsourcing increased on 50%. Nowadays outsourcing takes 70% of the software market of Ukraine. In any case, this branch [outsourcing of IT services] is the most perspective, innovative and fast developing not only in the world, but also in Ukraine, as the country has been taking part in world processes for more than 10 years already.*

4) Does Ukraine have a potential in outsourcing and if yes, then why?

Mr. Kozhenkin: *Yes, it has. Although Ukraine is more expensive than such popular outsourcing destination as India, the quality of the Ukrainian products is higher than this of the Asian countries. Recently foreign companies bought a number of Ukrainian outsourcing companies on the total sum of 2-3 bil. Euro. The foreign companies have interest in the Ukrainian ones, this is why they buy them.*

# Bibliography

## Literature

- 1) Article 29 data protection working party, 2008. *Working party on the protection of individuals with regard to the processing of personal data* [online]. Brussels. Available from: [http://ec.europa.eu/justice\\_home/fsj/privacy/docs/wpdocs/rules-art-29\\_en.pdf](http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/rules-art-29_en.pdf) [Accessed 19 July 2008]
- 2) Belov, S., Martynenko, S., 2004. Ризикована привабливість (Risky Attractiveness) [online]. *The Contracts*, No. 14, 5 April. Available from: <http://www.business.if.ua/themes/business/material.asp?folder=1984&matID=2062> [Accessed 30 July 2008]
- 3) Berdychevska, M., 2007. *Вашу ідею украли? Не жалуйтесь!* (Your Idea Was Stolen? Do not Complain!) [online]. *Expert Ukraine*, #24 (121), 18 June. Available from: <http://www.expert.ua/articles/18/0/4002/> [Accessed 10 June 2008]
- 4) Bocharova, N., 2006. Права інтелектуальної власності ЄС. Гармонізація з національним законодавством (Intellectual property rights in the EU. Harmonization with national legislation). *Viche*, No.13. Available from: <http://www.viche.info/journal/278/> [Accessed 10 June 2008]
- 5) Bogarov, G., 2008. *Борьба с пиратством создаст рабочие места* (Fight with piracy will create work places) [online]. *ITnews*. Available from: <http://itnews.com.ua/analitics/7.html> [Accessed 10 June 2008]
- 6) Business Europe, 2008. Position Paper. *Businesseurope position on an EU-UKRAINE Free-Trade Agreement (FTA)* [online]. Available from: <http://www.ek.fi/www/fi/kauppapolitiikka/liitteet/FTAs-pp290108.pdf> [Accessed 10 June 2008]
- 7) Center for Social and Economic Research (CASE), 2006. Reports No. 66/2006, *Prospects for EU-Ukraine Economic Relations* [online]. Available from: <http://siteresources.worldbank.org/INTECA/Resources/tradereport-ch5.pdf> [Accessed 15 June 2008]
- 8) Central and Eastern Europe IT Outsourcing Review 2007, 2007 [online]. Available from: <http://www.hi-tech.org.ua/files/f1210749090.pdf> [Accessed 15 June 2008]

- 9) Chissick, M., Kelman, A., 2000. *Electronic commerce: law and practice*. London: Sweet & Maxwell
- 10) Crane, K. and Larrabee, F.S., 2007. *Encouraging Trade and Foreign Direct Investment in Ukraine* [online]. RAND. Available from: [http://www.rand.org/pubs/monographs/2007/RAND\\_MG673.sum.pdf](http://www.rand.org/pubs/monographs/2007/RAND_MG673.sum.pdf) [Accessed 10 June 2008]
- 11) Dickie, J., 1999. *Internet and Electronic Commerce Law in the European Union*. Hart Publishing
- 12) Dunning, J.H., 1997. Technology and the Changing Boundaries of Firms and Governments. In: OECD Proceedings, 1997. *Industrial Competitiveness in the Knowledge-Based Economy. The New Role of Governments*. Paris: OECD Publications
- 13) Electronic Privacy Information Center (EPIC) and PrivacyInternational, 2007. *Privacy and human rights 2006: an international survey of privacy laws and developments*. Washington: Electronic Privacy Information Center; London: Privacy International
- 14) Eurobarometer, 2008. *Data Protection in the EU, data controllers perception* [online]. Available from: [http://ec.europa.eu/public\\_opinion/flash/fl\\_226\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_226_en.pdf) [Accessed 19 July 2008]
- 15) Grygorets T., 2007. *Створення зони вільної торгівлі Україна-ЄС: передумови, перешкоди, перспективи (Creation of a free trade area Ukraine-the EU: prerequisites, obstacles, perspectives)* [online]. The National Institute for Strategic Studies. Available from: <http://www.niss.gov.ua/Monitor/November/9.htm> [Accessed 15 June 2008]
- 16) Heisenberg, D., 2005. *Negotiating privacy: the European Union, the United States, and personal data protection*. Boulder, Colo.: Lynne Rienner Publishers
- 17) Hess, P. and Clark, R., 1997. *Economic Development: Theories, Evidence and Policies*. The Dryden Press
- 18) HiTech.Expert, 2008. *iTunes прийшов в Росію, в планах – Україна (iTunes came to Russia, Ukraine is on the list)* [online]. Available from: <http://expert.com.ua/13029.html> [Accessed 10 June 2008]
- 19) Kapitsa, Yu., 2006. Стан та напрями адаптації законодавства України у сфері охорони інтелектуальної власності до законодавства ЄС (Status and directions of adaptation of Ukrainian legislation on intellectual property protection to the EU legislation) [online]. *Yurgazeta*, No. 8 (68), 28 April. Available from: <http://www.yur-gazeta.com/oarticle/2153> [Accessed 5 July 2008]

- 20) Kuchma, I., 2006. *Basic data on adopting EU legislation in the area of IPR in Ukraine* [online] Available from: <http://eucd.wizards-of-os.org/index.php/Ukraine> [Accessed 5 July 2008]
- 21) Lennon, C., 2006. Trade in Services and Trade in Goods: Differences and Complementarities [online]. Available from: [www.etsg.org/ETSG2006/papers/Lennon.pdf](http://www.etsg.org/ETSG2006/papers/Lennon.pdf) [Accessed 10 June 2008]
- 22) Lodder, A., R. and Kaspersen, H., W., K. (ed.), 2002. *E directives: guide to European Union law on e-commerce: commentary on the directives on distance selling, electronic signatures, electronic commerce, copyright in the information society, and data protection*. The Hague: Kluwer Law International
- 23) Matthews, D., 2008. *The Fight against Counterfeiting and Piracy in the Bilateral Trade Agreements of the EU. Briefing paper*. [online] Brussels: European Parliament. Available from: <http://www.europarl.europa.eu/activities/committees/studies/download.do?file=21459> [Accessed 10 June 2008]
- 24) Micossi, S., 1997. Europe's Industrial Policy: Promoting Openness, Flexibility and Innovation. In: OECD Proceedings, 1997. *Industrial Competitiveness in the Knowledge-Based Economy. The New Role of Governments*. Paris: OECD Publications
- 25) Mitrakas, A., 2006. Information Security and Law in Europe: Risks Checked? [online]. *Information & Communications Technology Law*, Vol. 15, No. 1, March 2006. Available at [http://www.enisa.europa.eu/doc/pdf/LR\\_33-54.pdf](http://www.enisa.europa.eu/doc/pdf/LR_33-54.pdf) [Accessed 5 August 2008]
- 26) Morgan R., Boardman R., 2004. *Data Protection Strategy*. Sweet & Maxwell
- 27) Mukha, V., 2005. *Globalization: The Case of Ukraine* [online]. The John Smith Memorial Trust. Available from: <http://www.johnsmithmemorialtrust.org/web/site/Articles&News/FellowsArticles/Mukha.asp> [Accessed 10 June 2008]
- 28) OECD, 2007. *Economic Assessment of Ukraine 2007: Reducing barriers to growth: the role of institutional and regulatory reform* [online]. Available from: [http://www.oecd.org/document/20/0,3343,en\\_2649\\_201185\\_39106580\\_1\\_1\\_1\\_1,00&en-US\\$01DBC.html](http://www.oecd.org/document/20/0,3343,en_2649_201185_39106580_1_1_1_1,00&en-US$01DBC.html) [Accessed 10 June 2008]
- 29) Pazyuk, 2006. Ukraine. In: European Commission & Internews, 2006. *Final Report: Monitoring of Russia and Ukraine (priority 1) and Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan and Moldova (priority 2): Telecommunications and the Information Society*. London-Brussels-Madrid [online]. Available from:

<http://www.ripe.net/meetings/regional/moscow-2006/presentations/political-intelligence.pdf> [Accessed 19 July 2008]

- 30) Pazyuk, A., 2000. The Right to Privacy [online]. Information Society of Ukraine. Available from: [www.isu.org.ua/catalog/26/30/paz\\_uk.doc](http://www.isu.org.ua/catalog/26/30/paz_uk.doc) [Accessed 5 June 2008]
- 31) Proeuropa, 2008. ЄС та Україна починають переговори про вільну торгівлю (The EU and Ukraine Start Negotiations on Free Trade) [online]. Available from: <http://www.proeuropa.info/news/?id=9138> [Accessed 10 June 2008]
- 32) Schmitt, B. (ed.), 2005. Information security. A new challenge for the EU [online]. Chaillot Paper, 2005, No. 76. Institute for Security Studies. Paris. Available from: <http://www.iss.europa.eu/uploads/media/cp076.pdf> [Accessed 5 August 2008]
- 33) Shumylo O. (ed.), 2007. *Free Trade between Ukraine and the EU: An impact assessment* [online]. International Centre for Policy Studies, Kyiv. Available from: [http://www.icps.com.ua/doc/FTA\\_Impact\\_E.pdf](http://www.icps.com.ua/doc/FTA_Impact_E.pdf) [Accessed 10 June 2008]
- 34) Sidenko, V., 2001. Protection of the intellectual property in Ukraine: problems and solutions [online]. *Zerkalo Nedeli*, No. 43 (367), 3 - 9 November. Available from: <http://www.mw.ua/3000/3050/32785/> [Accessed 10 June 2008]
- 35) The International Herald Tribune, 2008. Ukraine joins WTO, forcing economic reforms and opening new trade channels [online]. *The International Herald Tribune*, 16 May. Available from: <http://www.iht.com/articles/ap/2008/05/16/business/EU-FIN-ECO-Ukraine-WTO.php> [Accessed 10 June 2008]
- 36) The International Intellectual Property Alliance (IIPA), 2008. *Special 301 Report. Copyright Protection and Enforcement around the World*. [online]. Available from: [http://www.ustr.gov/assets/Trade\\_Sectors/Intellectual\\_Property/Special\\_301\\_Public\\_Submissions\\_2008/asset\\_upload\\_file141\\_14486.pdf](http://www.ustr.gov/assets/Trade_Sectors/Intellectual_Property/Special_301_Public_Submissions_2008/asset_upload_file141_14486.pdf) [Accessed 10 June 2008]
- 37) The South African Law Reform Commission, 2006, *Cross-border Information Transfers Discussion Paper 109 (Project 124)* [online]. Available from: [http://www.doj.gov.za/salrc/dpapers/dp109\\_prj124/CH%207%20CROSS-BORDER%20INFORMATION%20TRANSFERS.pdf](http://www.doj.gov.za/salrc/dpapers/dp109_prj124/CH%207%20CROSS-BORDER%20INFORMATION%20TRANSFERS.pdf) [Accessed 19 July 2008]
- 38) The World Bank, 2004. *Report No. 29684-UA. Ukraine. Trade Policy Study. Volume II: Main Report. Poverty Reduction and Economic Management Unit. Europe and Central Asia Region. CHAPTER 5. UKRAINE'S ACCESSION TO THE WTO: COMPLETING THE NEGOTIATIONS AND MAXIMIZING THE BENEFITS OF MEMBERSHIP* [online]. Available from:



<http://siteresources.worldbank.org/INTUKRAINE/147271-1089983407712/20405633/Volume%202.pdf> [Accessed 10 June 2008]

- 39) Thomas, D. and Loader, B., 2000. *Cybercrime: law enforcement, security and surveillance at the information age*. London: Routledge
- 40) USTR (The Office of the United States Trade Representative), 2007. *Foreign Trade Barriers. Ukraine. Trade Summary* [online]. Available from: [http://www.ustr.gov/assets/Document\\_Library/Reports\\_Publications/2007/2007\\_NTE\\_Report/asset\\_upload\\_file305\\_10987.pdf](http://www.ustr.gov/assets/Document_Library/Reports_Publications/2007/2007_NTE_Report/asset_upload_file305_10987.pdf) [Accessed 10 June 2008]
- 41) Vlasov, A., 2007. Интернет-пираты в нокдауне (Internet-pirates are in a knock-down) [online]. *Yurpraktika*, No. 48 (518), 27 November. Available from: <http://www.yurpraktika.com/article.php?id=10008269> [Accessed 10 June 2008]

## **Legislative and Regulatory Acts**

- 1) COM(2005) 576 final, 17 November, 2005. Green Paper on a European Programme for Critical Infrastructure Protection. Available from: [http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005\\_0576en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0576en01.pdf)
- 2) COM(2006) 251, 31.5.2006. Communication from the Commission to the Council, the European Parliament, the European Economic and Social committee and the Committee of the Regions - A strategy for a Secure Information Society - "Dialogue, partnership and empowerment"
- 3) COM(2007) 267, 22.5.2007. Communication from the Commission to the European Parliament, the Council and the Committee of the Regions. Towards a general policy on the fight against cyber crime. Available from: [http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007\\_0267en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0267en01.pdf)
- 4) Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data Strasbourg, 28.01.1981, Council of Europe. Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/108.htm>
- 5) Criminal Code of Ukraine, No. 2341-14, current edition as of 07.05.2008 on the basis of No. 270-17. The Gazette of the Supreme Council of Ukraine 2001, No. 25-26, p.131

- 6) Decision of the Constitutional Court of Ukraine N 5-3п (v005p710-97) as of 30.10.97. Available at: <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2657-12>
  
- 7) Directive 1995/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data Official Journal L 281, 23.11.1995, p. 31–50. Available at: <http://eur-lex.europa.eu/Notice.do?val=307229:cs&lang=en&list=307229:cs,&pos=1&page=1&nbl=1&pgs=10&hwords=95/46/EC~&checktexte=checkbox&visu=#texte>
  
- 8) Directive 1996/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases. Official Journal L 077, 27/03/1996 P. 0020 – 0028. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML>
  
- 9) Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures. Official Journal L 13, 19.1.2000, p. 12–20. Available at: [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&numdoc=31999L0093&model=guichett&lg=en](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&numdoc=31999L0093&model=guichett&lg=en)
  
- 10) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), Official Journal L 178, 17.7.2000, p. 1–16. Available from: [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32000L0031&model=guichett](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32000L0031&model=guichett)
  
- 11) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. Official Journal L 167, 22.6.2001, p. 10–19. Available at: [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=32001L0029&model=guichett](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=32001L0029&model=guichett)
  
- 12) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services. Official Journal L 108/33, 24.4.2002. Available from: [http://eur-lex.europa.eu/pri/en/oj/dat/2002/l\\_108/l\\_10820020424en00330050.pdf](http://eur-lex.europa.eu/pri/en/oj/dat/2002/l_108/l_10820020424en00330050.pdf)
  
- 13) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications). Official Journal L 201/37, 31.07.2002, p. 37-47. Available

from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:201:0037:0047:EN:PDF>

- 14) Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights. Official Journal L 372/12. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:372:0012:0018:EN:PDF>
- 15) Draft law of Ukraine “On Personal Data Protection” No. 2273 as of 25.03.2008. Available at: [http://gska2.rada.gov.ua/pls/zweb\\_n/webproc4\\_1?id=&pf3511=32124](http://gska2.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=32124)
- 16) European Neighbourhood and Partnership Instrument. Ukraine. Country Strategy Report 2007-2013. Available at: [http://ec.europa.eu/world/enp/pdf/country/enpi\\_csp\\_ukraine\\_en.pdf](http://ec.europa.eu/world/enp/pdf/country/enpi_csp_ukraine_en.pdf)
- 17) Law of Ukraine “On copyright and related rights” No. 3792-12, the last edition as of 06.01.2004. The Gazette of the Supreme Council of Ukraine, 1994, No. 13, p.64
- 18) Law of Ukraine “On electronic signatures”, No. 852-15, edition as of 22.05.2003. The Gazette of the Supreme Council of Ukraine, 2003, No. 36, p.276
- 19) Law of Ukraine “On information” No. 2657-12, the last edition as of 22.07.2005 on basis of No. 2707-15 The Gazette of the Supreme Council of Ukraine, 1992, No. 48, p.650
- 20) Law of Ukraine “On information protection in information and communication systems”, No. 80/94-bp, the last edition as of 01.01.2006 on the basis of No. 2594-15. The Gazette of the Supreme Council of Ukraine, 1994, No. 31, p.286
- 21) Law of Ukraine “On Ratification of the Cybercrime Convention”, No. 2824-15, edition as of 07.09.2005. The Gazette of the Supreme Council of Ukraine, 2006, No. 5-6, p.71 <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2824-15>
- 22) Law of Ukraine “On state secret”, No. 3855-12, the last edition as of 05.06.2008 on the basis of No. 293-17. The Gazette of the Supreme Council of Ukraine 1994, No. 16, p.93
- 23) Law of Ukraine “On the Concept of National programme of informatization”, No. 75/98-bp, the last edition as of 03.03.2006 on the basis of 3421-15. The Gazette of the Supreme Council of Ukraine, 1998, No. 27-28, p.182

- 24) Law of Ukraine “On the whole state programme on adaptation of Ukrainian legislation to the legislation of the European Union”. The Gazette of the Supreme Council of Ukraine, 2004, No. 29, p. 367
  
- 25) Law of Ukraine “On telecommunications” No. 1280-15, the last edition as of 01.02.2007. The Gazette of the Supreme Council of Ukraine, 2004, No. 12, p.155
  
- 26) OECD, 1980. OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data. Available at: [http://www.oecd.org/document/18/0,3343,en\\_2649\\_34255\\_1815186\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/18/0,3343,en_2649_34255_1815186_1_1_1_1,00.html)
  
- 27) OECD, 2002. OECD Guidelines for the Security of Information Systems and Networks: Towards a Culture of Security. Available from: <http://www.oecd.org/dataoecd/16/22/15582260.pdf>
  
- 28) Supreme Council of Ukraine, 2007. Decree of the Supreme Council of Ukraine on Recommendations of the parliamentary hearings “Protection of intellectual property rights in Ukraine: the problems of legal guarantee and enforcement”. The Gazette of the Supreme Council of Ukraine, 2007, No. 45, p.524
  
- 29) The Agreement on Trade Related Aspects of Intellectual Property Rights, 1994. Available at: [http://www.wto.org/english/docs\\_e/legal\\_e/27-trips.pdf](http://www.wto.org/english/docs_e/legal_e/27-trips.pdf)
  
- 30) The Convention on Cybercrime of the Council of Europe. 23.11.2001, Budapest. Available from: <http://conventions.coe.int/Treaty/EN/Treaties/Html/185.htm>
  
- 31) The Partnership and Co-operation Agreement between the European Communities and their Member States, and Ukraine, 1998. Available at: [http://trade.ec.europa.eu/doclib/docs/2003/october/tradoc\\_111612.pdf](http://trade.ec.europa.eu/doclib/docs/2003/october/tradoc_111612.pdf)

## **Other Sources**

- 1) CoE, 2008. *Project on Cybercrime* [online]. Available from: [http://www.coe.int/t/DG1/LEGALCOOPERATION/ECONOMICCRIME/cybercrime/cy%20Project/567-d-summary+workplan2008-2009c\\_14aug08.pdf](http://www.coe.int/t/DG1/LEGALCOOPERATION/ECONOMICCRIME/cybercrime/cy%20Project/567-d-summary+workplan2008-2009c_14aug08.pdf) [Accessed 5 August 2008]
  
- 2) European Commission, 2006. *Bilateral Trade Relations*. Ukraine [online]. Available from: [http://ec.europa.eu/trade/issues/bilateral/countries/ukraine/index\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/countries/ukraine/index_en.htm) [Accessed 10 June 2008]

- 3) European Commission, 2007. *IPR in Ukraine* [online]. Available from: [http://ec.europa.eu/trade/issues/sectoral/intell\\_property/ipr\\_ukraine\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/intell_property/ipr_ukraine_en.htm) [accessed 5 July 2008]
- 4) European Commission, 2007. *Main issues discussed in the 4th IPR Dialogue 4th EU-Ukraine IPR Dialogue* [online]. Kiev. Available from: [http://trade.ec.europa.eu/doclib/docs/2007/november/tradoc\\_136851.pdf](http://trade.ec.europa.eu/doclib/docs/2007/november/tradoc_136851.pdf) [Accessed 5 July 2008]
- 5) European Commission, 2008. *Fight against cyber crime* [online]. Available from: [http://ec.europa.eu/justice\\_home/fsj/crime/cybercrime/fsj\\_crime\\_cybercrime\\_en.htm#part\\_2](http://ec.europa.eu/justice_home/fsj/crime/cybercrime/fsj_crime_cybercrime_en.htm#part_2) [Accessed 30 July 2008]
- 6) InvestUkraine, 2008 [online]. Available from: <http://www.investukraine.org/> [Accessed 10 June 2008]
- 7) MEMO/07/199, 2007. *The commission communication "towards a general policy on the fight against cyber crime"* [online]. European Commission. Available from: <http://www.libertysecurity.org/article1461.html> [Accessed 5 August 2008]
- 8) Rapid, 2007. *Defining the Commission's global policy on the fight against cyber crime, IP/07/689* [online]. Brussels. Available from: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/689&format=HTML&aged=1&language=EN&guiLanguage=fr> [Accessed 5 August 2008]
- 9) Seyler, C. (Colette.SEYLER@ec.europa.eu), 15 Septemeber 2008. *Reply: External Trade Information request n° 5470, 04: EU - Russia / CIS, made on 28/08/2008*. e-Mail to M. Morozova (morozova\_maria@student.ceu.hu)
- 10) Standard contractual clauses [online]. Available at: [http://ec.europa.eu/justice\\_home/fsj/privacy/modelcontracts/index\\_en.htm](http://ec.europa.eu/justice_home/fsj/privacy/modelcontracts/index_en.htm) [Accessed 6 August 2008]
- 11) State Statistics Office of Ukraine, 2008 Available at: <http://www.ukrstat.gov.ua/> [Accessed 5 June]
- 12) The WTO, 2008. *Understanding the WTO: the Agreements. Intellectual property: protection and enforcement* [online]. Available from: [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm7\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm) [Accessed 10 June 2008]
- 13) Wikipedia, 2008. Available at: [http://en.wikipedia.org/wiki/Service\\_economy](http://en.wikipedia.org/wiki/Service_economy) [Accessed 5 June]