

# GREEN PAPER ON SOFTWARE DEVELOPMENT MARKET REGULATION

OCTOBER 2017

BETTER REGULATION DELIVERY OFFICE



**FORBIZ**  
Creating better  
business environment



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The Better Regulation Delivery Office (BRDO) was established in November 2015 to promote the effective regulation and better economic freedoms in Ukraine (with priority for small/medium business). For this purpose, we are implementing an inclusive and open process to optimize regulatory relations that will lead to mutual trust and partnership between the state and business.

The document was prepared by the Better Regulation Delivery Office experts.

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# INTRODUCTION

The modern world can not be imagined without software. Software development has become a distinct industry ranking high in the global economy, including Ukraine. In 2016, world expenses on IT-services amounted to **\$1,229 billion**, and this industry is growing each year. In particular, it is expected to grow by **3.2%** in 2017<sup>1</sup>. At the same time, the significance of developing a software product will only increase with the development of technologies, the new technological revolution and the digitalization of the world.

Today, Ukraine is also involved into global processes. Our country is one of the best ones to place orders for outsourcing of business processes and IT, which is confirmed by the **24<sup>th</sup>** place in the ranking of attractiveness<sup>2</sup>. It should be noted that such achievements are largely due to the fact that this market is a completely new one. It began to develop during the independence and doesn't have many flaws inherited by traditional sectors of economy from the Soviet Union: monopolization, exploitation of resources, oligarchy and so on. The software development market is a great example of a new knowledge-based economy that can become a driver for the Ukraine's transition to the post-industrial era, which has long been a reality for developed countries.

Today, the software development market is mostly export-oriented and ranks **third** in terms of revenues, so it is one of the main sources of foreign currency inflow into Ukraine. In 2016, the export-oriented sector of software development amounted to **\$3.2 billion**<sup>3</sup>, which is about **26%** of exports of services for the corresponding period and **7%** of total exports of goods and services<sup>4</sup>. In such a way, the market has a positive impact on the stability of the national currency and prices in the state.

Given the above, the BRDO Office has identified the software development market as a priority one and analyzed it in this Green Paper.

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<sup>1</sup> Gartner Press Release (<https://www.gartner.com/newsroom/id/3672818>)

<sup>2</sup> 2016 A.T. Kearney Global Services Location Index

<sup>3</sup> PwC Data

<sup>4</sup> NBU and PwC Data (<https://bank.gov.ua/doccatalog/document?id=19208301>)

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# 1 | CHARACTERISTICS OF THE SOFTWARE DEVELOPMENT MARKET

## 1.1

### THE SOFTWARE DEVELOPMENT MARKET

The software development market includes many components. Since this is a new industry based primarily on intellectual work, it is rather difficult to identify and distinguish between related processes and services provided in the market. The Green Paper addresses not only the development of software products, but also the testing, IT consulting and other services related to the software development.

Put simply, the market can be divided into companies that develop software for a specific customer – outsourcing companies, R&D centers and companies, which independently assess the market situation and make decisions on the development of a product and its sale – these are startups and product companies. Accordingly, the creation of business processes in these groups is somewhat different.



**ORGANIZATIONAL ACTIVITIES** provide a set of activities in different areas, which allow to start a company. Since the market is based on intellectual work, the main resource is people. The key activity related to the setting up the office is to hire staff, as well as to train and equip specialists with adequate skills and necessary competencies. Other organizational activities include choosing the premises, organizing data storage – using own servers, clouds in Ukraine or abroad, etc. The stability of business conditions, including tax regulation, is a key factor at this stage.

**PRODUCT DEVELOPMENT** includes activities related directly to creating software or providing related services: management of projects, personnel, scientific and technical solutions and so on. The novelty of the market provides a low level of regulation and, accordingly, the active development, and the main issues are related to staff as in the previous stage: the possibility of remote work, flexible working schedule, etc. An important element is the possibility to import prototypes of equipment, for which software is being developed, from abroad.

The third business process on the market is the **SALE OF PRODUCTS/SERVICES**. In this case, we are talking about the transfer or use of rights to developed software inside or outside the country, the sale of products in the open market, etc. Given the prevailing number of foreign orders, important issues are also the foreign currency regulation.

## TYPES OF COMPANIES







A group of companies with the largest number of employees provides software development services to other companies and is usually called "IT outsourcing". Most of them specialize in cooperation with foreign customers. TOP-10 of the largest IT companies of Ukraine in terms of the number of employees<sup>1</sup> belong to this category.

Such companies provide comprehensive solutions to customer problems. These services become especially in demand in the view of entering a new stage in the digital economy, where successful competition is impossible without the so-called business transformation. This includes a set of services: analyzing client business processes, finding out narrow places, preparing proposals for optimization of processes, implementing solutions both in the area of software development as well as in changing processes and procedures in the company, maintaining developed solutions, etc. At the same time, some companies (usually the small ones) can be limited only to programming and software testing services. However, regardless of the business model or specialization, companies only provide their customers with services and, accordingly, do not become owners of developed software products being not able to re-sell the same product.

Another important participant of the software market in Ukraine are R&D centers (research and development), which are estimated to take about 6% of the market<sup>2</sup>. In fact, R&D centers are departments of large international companies established in Ukraine for the purpose of software development. In Ukraine, there are R&D centers of such well-known companies as Wargaming, NetCracker, Magento (eBay), ABBYY, Ubisoft, etc.

They differ from the companies that provide services since they have the only "customer" – the main company. That is, a R&D center is not an independent enterprise looking for clients in the international market of services, it works as part of an international company, developing software for its needs. However, often service companies create separate teams for clients, which operate on a long-term basis while being essentially R&D centers.

### COMPANIES WITH R&D CENTERS IN UKRAINE<sup>3</sup>

<i>Company</i>	<i>Company's place in Fortune Global 500</i>
	15
	60
	66
	83
	280
	419

<sup>1</sup> Dou.ua (<https://jobs.dou.ua/top50/>)

<sup>2</sup> PwC data

<sup>3</sup> IT Ukraine: IT Services and Software R&D in Europe's Rising Tech Nation ([http://www.uadn.net/files/ua\\_hightech.pdf](http://www.uadn.net/files/ua_hightech.pdf))

Product companies and startups are a little bit different in terms of sequence of business processes. This group is represented by TemplateMonster, Depositphotos, Grammarly. A special feature of these companies is that they do not sell their services, but develop a finished product/a standalone service that can be sold unlimited number of times. Such companies are the owners of intellectual property.

At the same time, identifying these companies as a separate category is rather questionable in Ukraine. The matter is that such companies are often called the Ukrainian ones because of the Ukrainian origin of founders of these startups or product companies. However, the head offices, which are copyright holders of the relevant intellectual property items, are usually registered in foreign jurisdictions. The same applies to transactions for the sale of products/payments for services – they are carried out abroad and have nothing to do with legal entities operating in Ukraine. That is why, despite such companies being considered Ukrainian ones, in fact, their Ukrainian offices are R&D centers. In addition, in case of startups, sale/investment transactions are carried out entirely in foreign jurisdictions (corporate rights are sold not by Ukrainian companies, but by companies registered in the United States, etc.).

Typically, all of the groups of companies described here provide a range of services according to the national classification, among which are the following:

Group of services	Statistical classification of products (SCP)	SCP code
Software development	Software publishing services	58.2
	Computer programming services	62.01
Testing	Informatization consulting services	62.02
Other services	Computer facilities management services	62.03
	Services in the area of information technologies and computer systems	62.09
	Services on data processing, information publishing on web sites and related services	63.11

## STAKEHOLDERS IN THE SOFTWARE DEVELOPMENT MARKET

A wide range of parties is interested in the development of the software development market:



**SOFTWARE DEVELOPING COMPANIES.** Their direct interest is related to the possibility to do business safely and increase revenues.



**STATE.** The main government agencies with a direct interest in market development are the Ministry of Finance and the Ministry of Economic Development and Trade (MERT). The Ministry of Finance is interested in increasing tax revenues and social contributions paid by representatives of the sector. The MERT is interested in developing markets with high added value, the main of which are high-tech markets with a high level of intellectual work. There are also the State Agency for E-Governance and the state apparatus as one of the main software users among the interested parties.

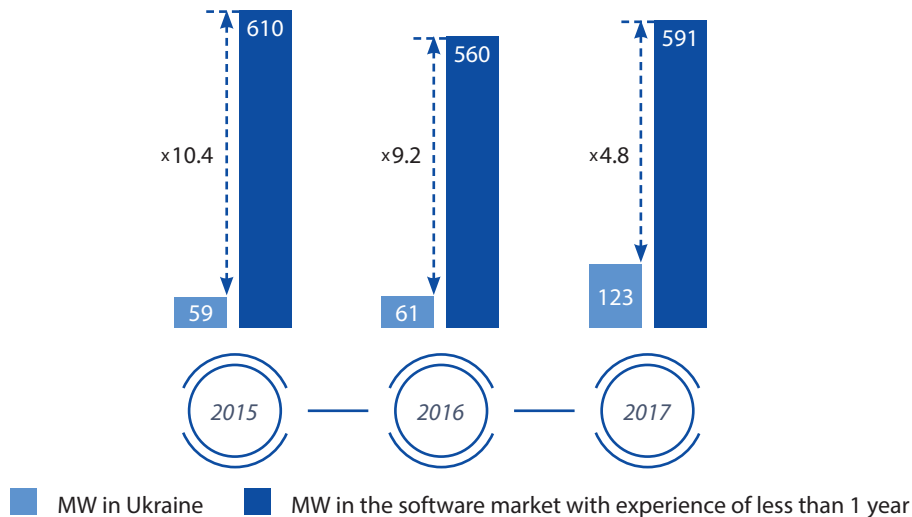


**POPULATION.** The interest is in the growth of the number of software products for consumers that improve the quality of life as well as in the possibility of employment in the market with high incomes compared with other sectors.

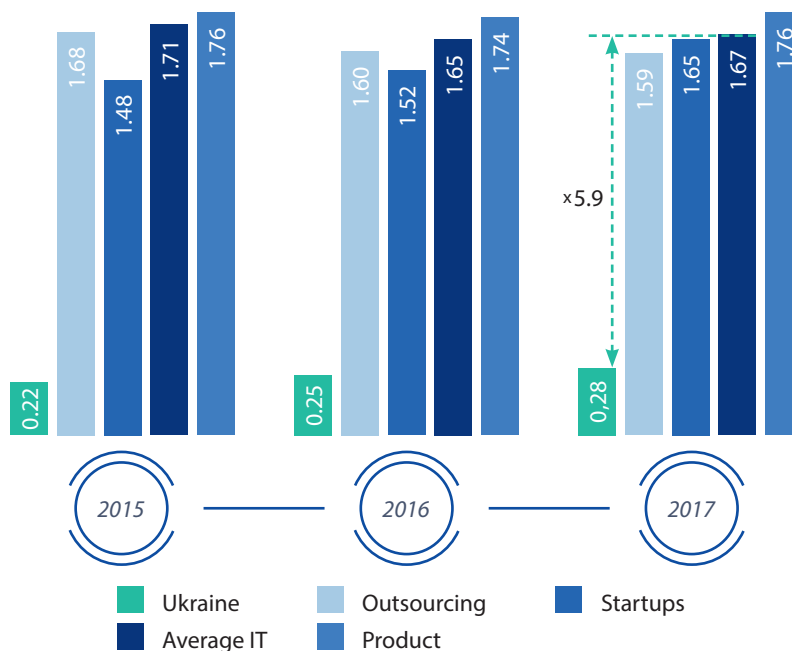
The average wage in the software development market depends on the type of companies, but there is only a minor difference between the largest groups of market representatives and it amounts to about **11%** while the average wage in the market is almost **6 times** more than in Ukraine in general. At the

same time, there is the same significant difference not only for experienced top-ranked specialists, but also for newcomers to the industry. For example, the average wage in software companies with experience of up to **1 year** is **\$591**, which is almost **5 times** higher than the minimum wage established by the state, even after its **double** increase in 2017.

### THE MINIMUM WAGE IN UKRAINE AND IN THE SOFTWARE DEVELOPMENT MARKET WITH EXPERIENCE OF LESS THAN 1 YEAR, USD<sup>1</sup>



### THE AVERAGE WAGE IN UKRAINE IN GENERAL AND IN THE SOFTWARE DEVELOPMENT MARKET, THS. USD<sup>2</sup>



**REPRESENTATIVES OF BUSINESS IN RELATED SECTORS.** The software development market generates a number of externalities that have a positive effect on the economy as a whole. For example, according to the report from the BSA Association and the Economist Intelligence Unit<sup>3</sup>, in the United States, **2.5 million** jobs in the software development market have additionally created **7.3 million** jobs in other areas, that is **1 IT employee creates 2.9** additional jobs.



1 The Law on the State Budget of Ukraine, NBU ([https://bank.gov.ua/control/uk/publish/category?cat\\_id=7693080](https://bank.gov.ua/control/uk/publish/category?cat_id=7693080)), dou.ua (<https://dou.ua/lenta/articles/salary-report-june-july-2017/>)  
 2 The Law on the State Budget of Ukraine, NBU ([https://bank.gov.ua/control/uk/publish/category?cat\\_id=7693080](https://bank.gov.ua/control/uk/publish/category?cat_id=7693080)), dou.ua (<https://dou.ua/lenta/articles/salary-report-june-july-2017/>)  
 3 The \$1 Trillion Economic Impact Of Software ([http://softwareimpact.bsa.org/pdf/Economic\\_Impact\\_of\\_Software\\_Report.pdf](http://softwareimpact.bsa.org/pdf/Economic_Impact_of_Software_Report.pdf))



In such a way, **100 thousand** IT employees in Ukraine can potentially create **290 thousand** jobs in other areas. According to another research<sup>1</sup>, the labor productivity in the United States increased by **1.56%** during 2004-2012, and **0.24%** of this figure was the software contribution. Therefore, the development of the software development market will have a positive impact on other sectors.

In Ukraine, a good example is the real estate market. **The IT sector has been taking leading positions in terms of the demand for office property over the past 4 years.** In 2016, IT companies provided **41%** of demand<sup>2</sup>, while the pharmaceutical industry took the second place with only **21%**.

<sup>1</sup> The U.S. Software Industry As an Engine for Economic Growth and Employment (<http://www.siaa.net/Admin/FileManagement.aspx/LinkClick.aspx?fileticket=ffCbUo5PyEM%3D>)

<sup>2</sup> Colliers International. 2016 Year-End Review ([http://www.colliers.com/-/media/files/emea/ukraine/research/colliers%20real%20estate%20market%20overview\\_2016\\_eng.pdf?la=en-GB](http://www.colliers.com/-/media/files/emea/ukraine/research/colliers%20real%20estate%20market%20overview_2016_eng.pdf?la=en-GB))

## 1.2

### CHARACTERISTICS OF THE SOFTWARE DEVELOPMENT MARKET IN UKRAINE

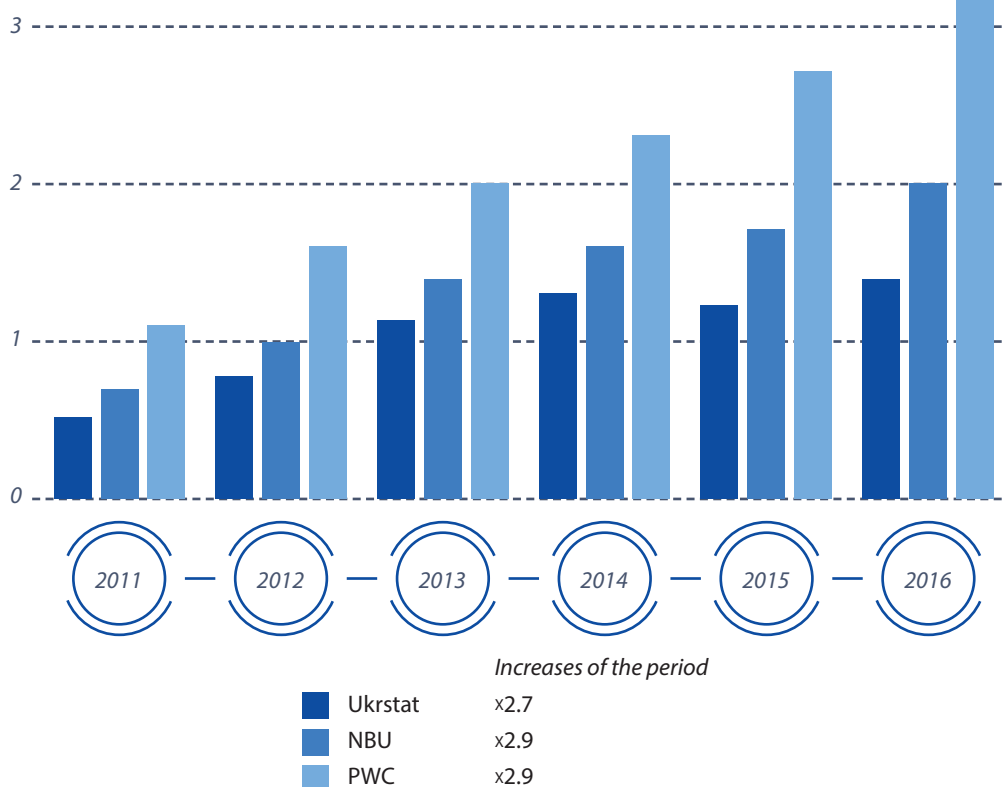
There is no unanimous assessment of the size of the software development market in Ukraine. The majority supports the idea that about **90%** of the market is working on foreign contracts.

One of the reasons that the sector is considered to be export-oriented is the lack of an adequate number of enterprises, which are willing to purchase complicated software solutions, in Ukraine. In addition, the companies, which are leaders in this industry, are virtually not involved in public procurements due to their low volume as well as corrupt and reputational risks.

**In 2016, the export of services was assessed in different ways:**

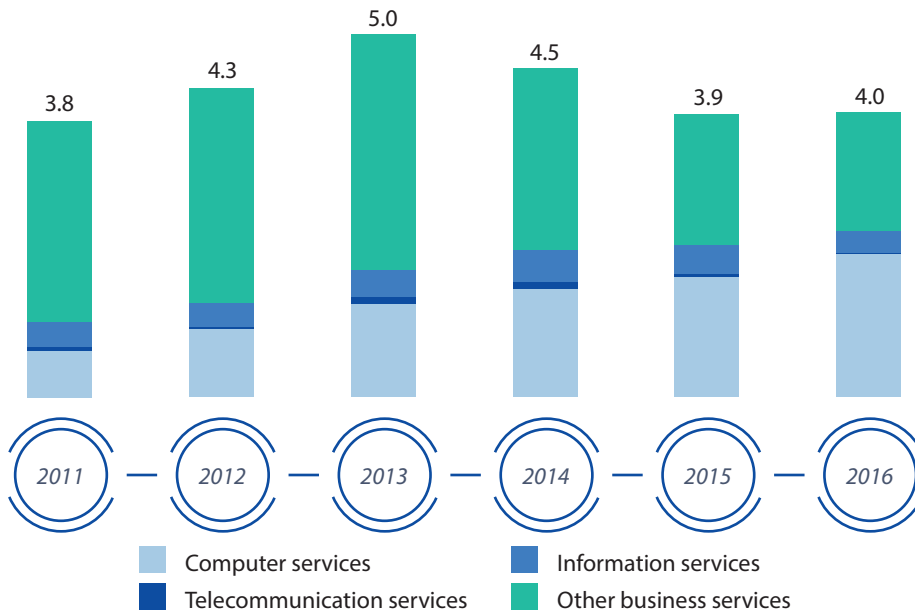
- ◆ The PwC company determined the size of the outsourcing market at the level of **\$3.2 billion**;
- ◆ according to the State Statistics Service, exports of computer and information services amounted to **\$1.4 billion**;
- ◆ according to the NBU, the export of computer and information services amounted to **\$2 billion**.

**EXPORTS OF IT SERVICES FROM UKRAINE, IN BILLION USD**



A negative trend is a significant difference in the assessment of services by the State Statistics Service and the National Bank of Ukraine, which reaches **44%**. Such difference indicates the need for improving classification used by government agencies. The assessment given by the PwC company is based on a cost model that was calculated on the basis of data provided by companies in the market. And in our opinion, it reflects the real state of the market most accurately.

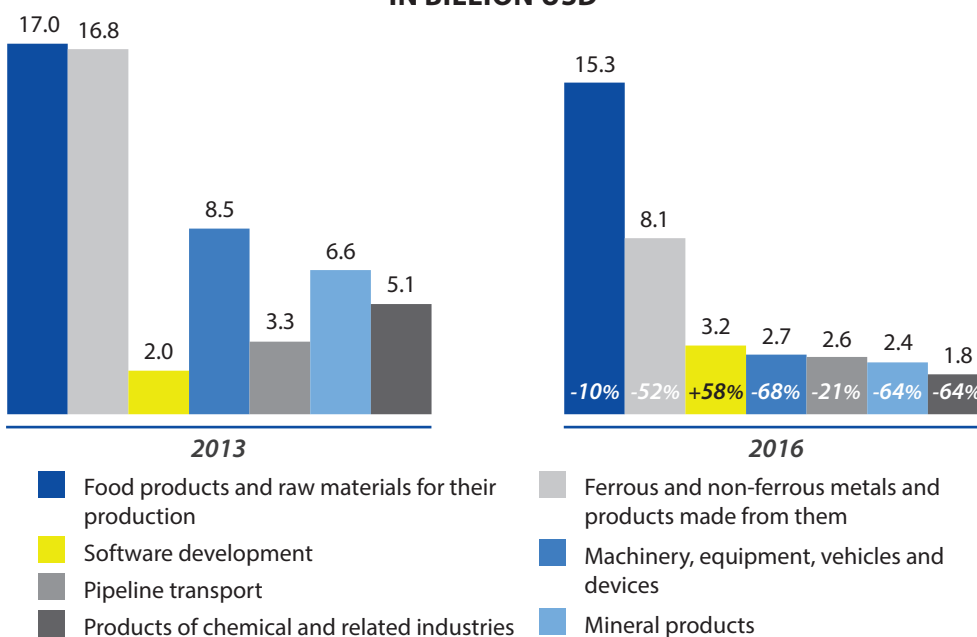
## THE AMOUNT OF ICT SERVICES ACCORDING TO THE WORLD BANK'S METHODOLOGY, IN BILLION USD



The World Bank provides a bit different data. Its methodology uses the data from the National Bank, but besides computer and information services, it adds telecommunication services and "Other business services". Unlike computer and information services, these items have shown multi-directional dynamics in recent years, which has led to a significant difference in data. This methodology also identifies certain flaws in national statistics: it is obvious that some segment of "other business services" is included into the software development market, but it is difficult to determine which one.

However, regardless of the data source, there is consensus on market growth and development in Ukraine. In the period from 2011 to 2016, the market increased: according to Ukrstat – by **2.7 times**, according to the NBU – by **2.9 times** and according to the PwC – also by **2.9 times**. Today the market is the largest foreign currency supplier among services sectors and **the third one** in Ukraine in general, while being behind only the export of food products and raw materials for their production and ferrous and non-ferrous metals and products made from them.

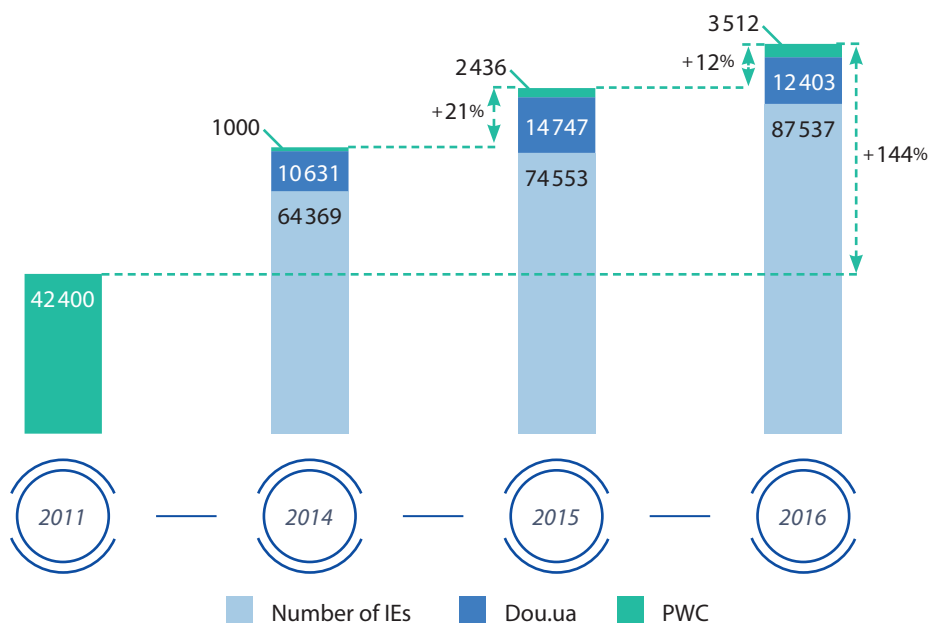
## THE EXPORT VOLUME OF THE LARGEST SECTORS IN UKRAINE, IN BILLION USD<sup>1</sup>



<sup>1</sup> Data of the NBU, the software market assessment – by PwC (<https://bank.gov.ua/doccatalog/document?id=19208301>)

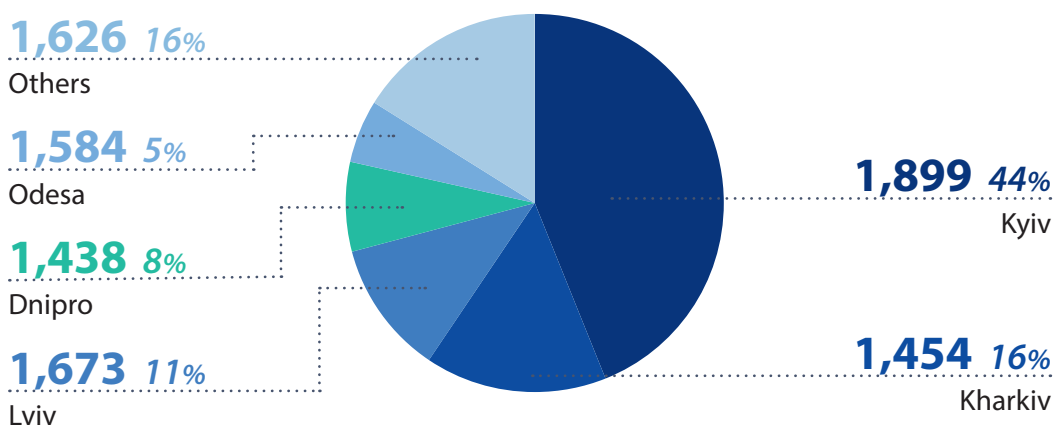
Determining the number of employees and enterprises operating in the market is even more difficult. Most of the companies' employees established relations with large enterprises as individual entrepreneurs (IEs). According to official data, the number of IEs for the above-mentioned codes was **87,537**<sup>1</sup> in 2016. As experts say, the number of persons officially employed in the market is higher: **103,452**<sup>2</sup> people according to the PwC's research and **99,940**<sup>3</sup> according to dou.ua. Accordingly, the average annual growth of employees in the market was **15%** and **17%** in 2014-2016 as reported by dou.ua and official statistics of IEs, and in 2011-2016, according to PwC, the number of employees in the market increased by an average of **20%**.

### THE NUMBER OF EMPLOYEES IN THE SOFTWARE DEVELOPMENT MARKET



It should be noted that the market provides jobs for people in different regions: less than half of the employees involved in this sector live in the capital. Only **13** companies of the TOP-50 companies are located just in Kyiv, that is, **37** leading companies of the market have development offices outside the capital. And **27** companies have offices in **3** and more cities of Ukraine. At the same time, wages in the regions remain high. Such geographical spread helps raising the standard of living and development of regions.

### AVERAGE WAGES, USD AND CONCENTRATION OF EMPLOYEES IN THE MARKET IN REGIONS<sup>4</sup>



<sup>1</sup> Data of the State Fiscal Service

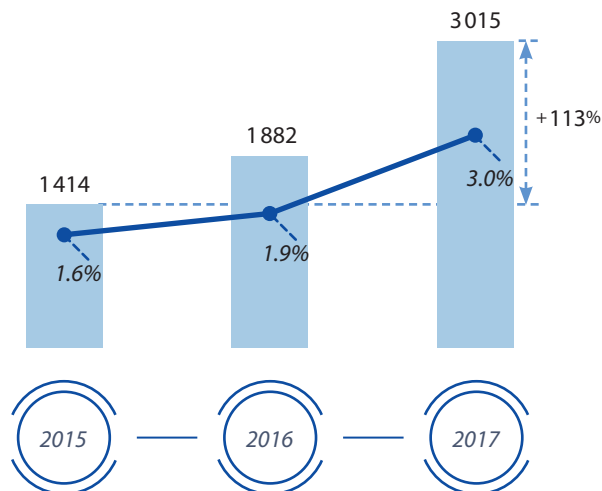
<sup>2</sup> Export-oriented segment of Ukraine's IT services market: Status quo and prospects ([http://www.eba.com.ua/static/export\\_it\\_industryfinal\\_29092016.pdf](http://www.eba.com.ua/static/export_it_industryfinal_29092016.pdf))

<sup>3</sup> Dou.ua (<https://dou.ua/lenta/columns/jobs-and-trends-2015/>)

<sup>4</sup> Dou.ua (<https://dou.ua/lenta/columns/jobs-and-trends-2015/>)

At the same time, there is a large number of open vacancies in the market. As of June 2017, the companies required more than **3,000** new employees<sup>1</sup>, that is, the market faced with a personnel gap of about **3%** of the total number of employed persons. The number and percentage of available vacancies is still growing, which speaks about the prospects of market development.

### THE NUMBER AND PERCENTAGE OF OPEN VACANCIES TO THE NUMBER OF EMPLOYEES IN THE MARKET

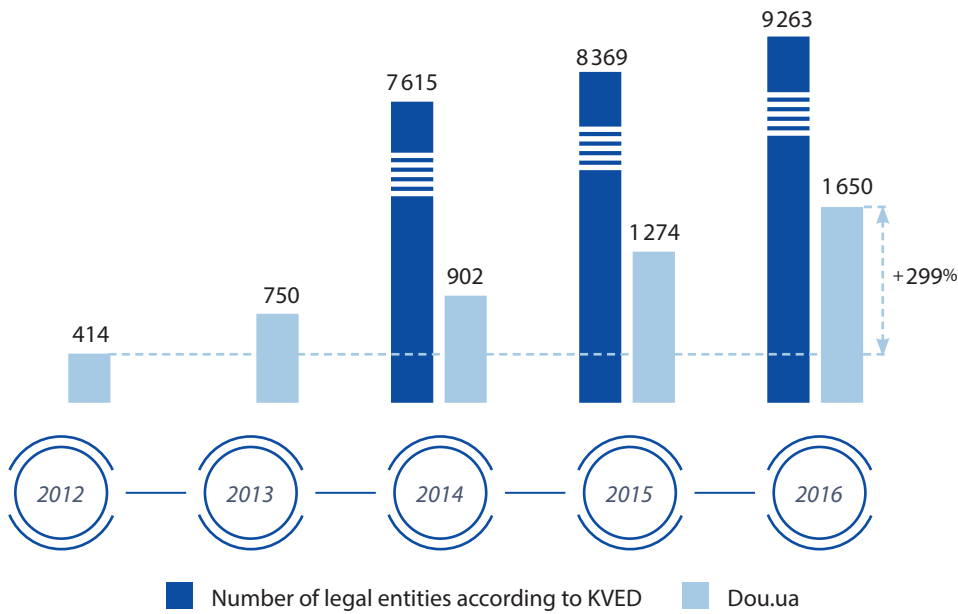


At the same time, there is a problem with filling vacancies. One of the reasons is the outflow of IT graduates, which, according to expert estimates, is about **25-35%**<sup>2</sup>. Another problem is the long period of education and its non-compliance with market requirements. For example, the research says that today it takes **45 to 70** months to train junior specialists. In the case of updating training programs, this time can be reduced by **15-30%** to **31-59** months, which will allow not only to improve the quality of staff training, but also increase the number of graduates providing a resource base for the sector's growth.

It is also difficult to clearly determine the number of enterprises in the market. According to official figures, the number of enterprises-legal entities amounted to **9,263**<sup>3</sup> in 2016. At the same time, the market experts estimated that it was **1,274**. This difference can be largely explained by the fact that companies operating under the same brand register several legal entities. For example, one of the large companies has five existing legal entities registered just at one address: LLC "Company-Consulting", LLC "Company-Ukraine", LLC "Company-MT", LLC "Company Smart Solutions", Corporation "Company". Therefore, to determine a real number of existing companies, it makes sense to use expert assessments, according to which the number of enterprises increased by an average of **41%** each year in 2012-2016 and amounted to **1,650** companies.

<sup>1</sup> Dou.ua (<https://jobs.dou.ua/trends/>)  
<sup>2</sup> PwC, Design of IT program curriculum  
<sup>3</sup> Data of the State Fiscal Service

## THE NUMBER OF COMPANIES IN THE SOFTWARE DEVELOPMENT MARKET<sup>1</sup>

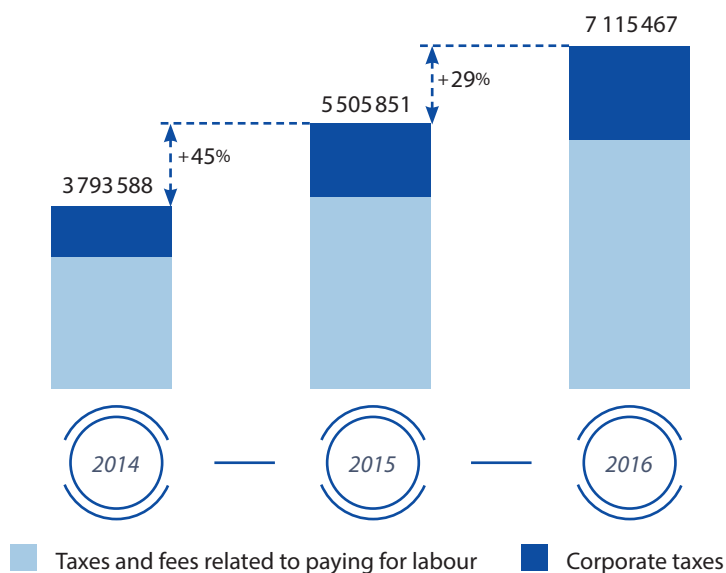


The software development market is an important donor to the state budget. The amount of taxes and fees paid **increased by 88%** in 2016 compared with 2014 and amounted to **7.1 billion hryvnas**. Most of them were related to labor compensation:

- ◆ taxes paid by individual entrepreneurs (first of all, the single tax);
- ◆ the unified social tax (UST) paid by individual entrepreneurs;
- ◆ the UST paid by legal entities;
- ◆ the personal income tax.

Corporate taxes, most of which include the corporate income tax and VAT, provided much less paid-in funds.

## TAXES AND FEES PAID BY MARKET REPRESENTATIVES, THS. HRYVNAS

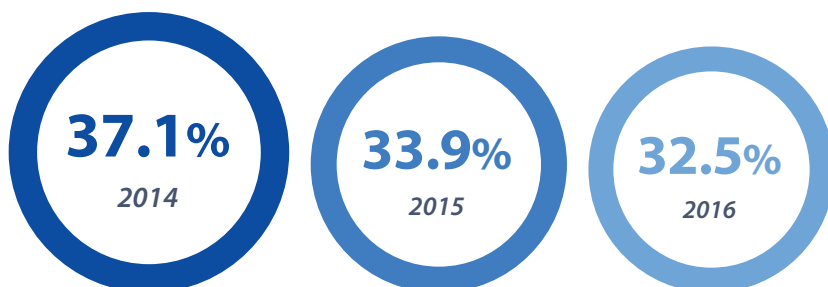


There is significant competition among the existing **1,650** companies. There are **five** largest companies with more than **2,000** employees, and another **five** companies have more than **1,000** employees. In total, the share of employed persons in **25** largest companies is **one third** of the total number and tends to decrease, indicating that there is a healthy competition. It is also illustrative that the increase in the number of

<sup>1</sup> Dou.ua (<https://dou.ua/lenta/articles/jobs-and-trends-2016/>)

companies by **41%** each year significantly exceeds the growth rate of the number of employees by **19%-21%** depending on the data source. This fact also confirms that there is a significant demand for IT specialists along with further prospects for the industry growth.

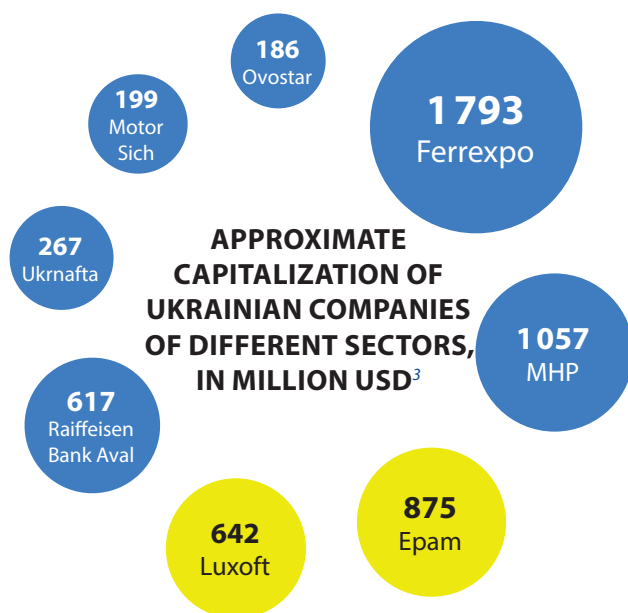
### THE SHARE OF WORKERS EMPLOYED IN THE TOP-25 COMPANIES IN THE MARKET<sup>1</sup>



A separate issue is the capitalization/value of companies operating in the Ukrainian market. Most software development companies are private and do not publish their financial statements. This complicates the process of companies valuation. However, in Ukraine, there are two international companies listed on the New York Stock Exchange: **EPAM** and **Luxoft**. Based on their average share price for **3 months**<sup>2</sup>, the capitalization of these companies amounted to **\$4.3 billion** and **\$2.1 billion** respectively. By applying the indirect evaluation methods, we can approximately estimate the value of their Ukrainian branches.

Since the main factor for companies providing software development services is employees, we will define the value of business in proportion to the number of employees. The use of this method shows that Ukrainian branches of companies can cost about **\$875 million** (EPAM) and **\$642 million** (Luxoft). Totally, the capitalization of the **10** largest Ukrainian companies exceeds **\$4 billion**.

This means that even today the largest enterprises of the sector are leaders in terms of the capitalization among the largest Ukrainian companies. However, unlike resource-based giants or enterprises of traditional industries, their value is based on human capital and expertise obtained during their work.

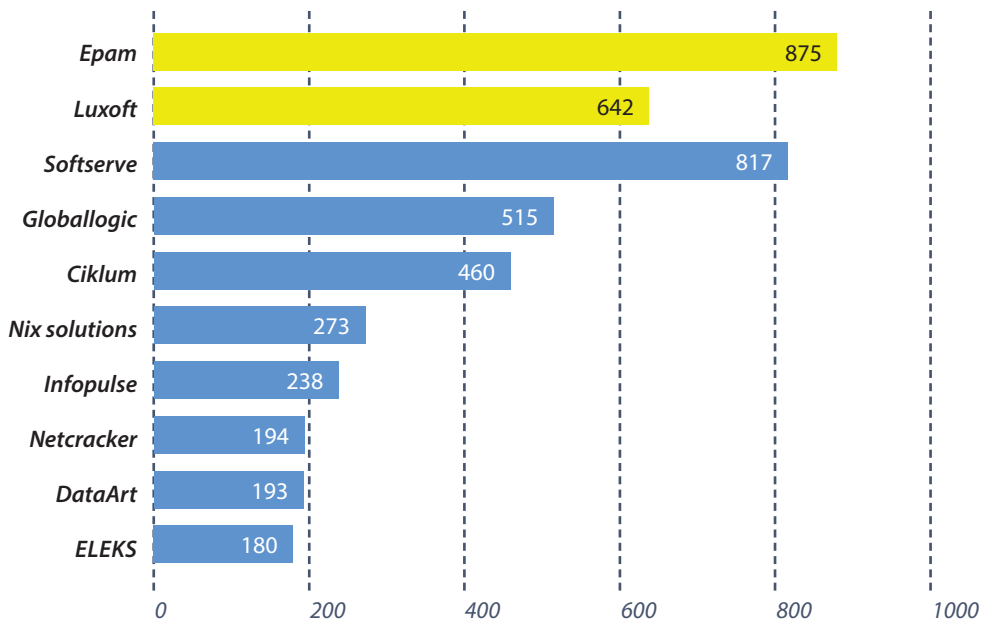


<sup>1</sup> Dou.ua (<https://dou.ua/lenta/articles/top-50-july-2017/?from=doufp>)

<sup>2</sup> As of 31 July, 2017

<sup>3</sup> Eavex Capital ([http://www.eavex.com.ua/media/documents/2017/EAVEX\\_Equity\\_Weekly\\_ENG\\_Jul\\_31.pdf](http://www.eavex.com.ua/media/documents/2017/EAVEX_Equity_Weekly_ENG_Jul_31.pdf))

**APPROXIMATE CAPITALIZATION OF UKRAINIAN IT COMPANIES,  
IN MILLION USD**





## CONCLUSIONS TO SECTION 1:

The software development market is characterized by:

- ◆ a high development level and a significant potential for growth;
- ◆ the development of human capital as a main way to grow;
- ◆ a significant impact on the social situation due to high wages;
- ◆ the wide representation in regions;
- ◆ a significant impact on the economic situation;
- ◆ a focus on global markets;
- ◆ a high level of competition both within the country and abroad;
- ◆ a significant dependence on the stability and predictability of business rules.

## 2 | THE REGULATION OF THE SOFTWARE DEVELOPMENT MARKET

### 2.1

#### GENERAL INFORMATION

First of all, it should be noted that there is no comprehensive sector regulation of the software development market in Ukraine:

- ◆ There is no special regulatory act that would establish requirements for business entities, which are market participants;
- ◆ There is no special regulatory act that would establish requirements for software development services or software as a finished product;
- ◆ Software development is not a licensed type of economic activities<sup>1</sup>.

That is, there are no special acts imposing general requirements for companies, their services or products in the market. At the same time, non-special regulatory acts also do not contain such requirements.

In such a way, the software development market in Ukraine is an area, in which the state didn't establish and doesn't implement its authority to **manage and regulate software development activities** as well as didn't define specific **rights, responsibilities and principles** of responsibility of individuals and legal entities, which are involved in these activities, use software development services or just a software product. The lack of regulatory burden on the market is not a result of deregulation or special reforms: the market was actually developed during the independence of Ukraine and the government didn't introduce any requirements to it. The lack of strict market regulation contributed to its development and did not bring additional risks, therefore, in our opinion, it would be efficient to continue refraining from introducing the special regulation for the software development sector.

However, there are general requirements in the relevant regulatory acts applied to the individual business processes in the market.

The regulation of one of the main stages of market activities – **the hiring of personnel and payment for labor** – requires particular attention. The most important acts regulating this activity are the Labor Code of Ukraine, the Tax Code of Ukraine (TCU), the Laws on Employment of the Population and on Collection and Accounting of the Single Contribution for Mandatory State Social Insurance (the Law on UST). Given the need to attract foreigners to work on export-oriented projects, we should pay particular attention to the process of employment of foreigners in Ukraine, which is regulated by the Law of Ukraine "On Legal Status of Foreigners and Stateless Persons" and the Resolution of the Cabinet of Ministers of Ukraine (CMU) "Order on Issuance, Prolongation and Cancellation of Work Permits for Foreign Nationals and Stateless Persons".

Taking into account the fact that the software development market is functioning not only at the national level, but also globally, attention should be drawn to **the regulation of export operations**, including to the Law "On the National Bank of Ukraine" and, in particular, the requirements for mandatory sale of a portion of foreign currency earnings.

In addition, given the global nature of the market, the regulation of the process of importing prototypes of equipment for testing and developing software for it in

<sup>1</sup> It should be noted that such a specific activity as providing services on cryptographic information security (except electronic digital signature services) and technical information protection is subject to licensing in Ukraine. We will analyze this regulation when analyzing the cybersecurity market

Ukraine should be considered, as this process is an important step for both R&D centers and companies providing software development services. In this context, attention should be paid to the requirements for importing radio electronic devices and emitting devices (RED and ED) in Ukraine, which are regulated by the Laws “On Radio Frequency Resource of Ukraine” and “On Technical Regulations and Conformity Assessment”, as well as the Technical Regulations of Radio Equipment and Telecommunication End-User (Terminal) Equipment and the Technical Regulations of Radio Equipment.

## STATE SUPPORT FOR THE MARKET DEVELOPMENT

In 2012, the Law “On State Support for the Development of the Software Products Industry” (the Law on the Development of the Industry) was adopted in Ukraine. It is aimed to provide state support for the industry of software products by:

- ◆ establishing specific features of taxation for participants of the software development market (the industry of software products);
- ◆ using other forms of state support.

In accordance with the Law on the Development of the Industry, state support is provided on the basis of annual action plans to support the development of the software product industry in Ukraine.

We would like to note that annual plans are not being adopted timely. For example, the Action Plan to support the development of Ukraine’s software products industry for 2016 was approved by the CMU on September 8, 2016, and for 2017 – on May 31, 2017. First, such a delay in the approval of the Action Plan means that special measures are not implemented before its adoption (since they are not planned). Secondly, this indicates a lack of a systematic approach to the implementation of the Law on the Development of the Industry.

At the same time, we believe that the availability of such documents as the annual plan to support the development of the industry is an important mechanism to ensure ongoing government’s efforts to create appropriate conditions for further development of the market.

## 2.3

### IDENTIFYING A LIST OF REGULATORY ACTS THAT REGULATE THE SOFTWARE DEVELOPMENT MARKET

At the time of preparing this Green Paper, we have identified **29 EXISTING REGULATORY ACTS**, which directly form the regulatory framework of the market:

- ◆ the Tax Code of Ukraine;
- ◆ the Economic Code of Ukraine;
- ◆ the Labor Code of Ukraine;
- ◆ 10 Laws of Ukraine;
- ◆ 6 Resolutions of the Cabinet of Ministers of Ukraine;
- ◆ 4 Orders of the Cabinet of Ministers of Ukraine;
- ◆ 2 Resolutions of the National Bank of Ukraine;
- ◆ 1 Order of the Ministry of Incomes and Fees;
- ◆ 2 Orders of the Ministry of Internal Affairs of Ukraine;
- ◆ 1 Order of the Ministry of Justice of Ukraine.

*A full list of acts is provided in the annex.*

*The detailed results of the analysis of regulatory acts that regulate the market are shown in the annex.*

To facilitate the assessment of the effectiveness of market regulation, we will describe the market regulation through the analysis of the regulation of individual business processes, which are important for the software development market.

Since our purpose in the Green Paper is to analyze the effectiveness of regulation in the context of a particular market, we will pay the most attention to the aspects of regulation, which are most important to the software development market.

### ORGANIZATIONAL ACTIVITIES

#### HIRING THE STAFF

One of the **key** aspects of market regulation is the formalization of relations with software developers in the context of the relative tax burden.

This aspect is important because people are the main resource for software development companies, and labor payment expenses are the main expense item and, according to our estimates, amount to **60-80%** of the income.

**Payments to software developers** who have employment contracts in accordance with the labor law are taxed as follows:

Name of payment	Rate	Maximum base amount	Grounds
Personal income tax	18 percent	Paid from the full amount	Art. 163, 164, 167 of the TCU
Military fee (MF)	1.5 percent	Paid from the full amount	Paragraph 16 <sup>1</sup> of subsection 10 of section XX of the TCU
Unified tax for mandatory state social insurance (UST)	22 percent	40,600 hryvnas – 25 subsistence minimums for working people (not paid for a portion of the income that exceeds the specified UST amount)	Art. 4, 7 of the Law on the UST

<sup>1</sup> An individual entrepreneur pays the single tax and the UST independently, but he/she receives the funds for paying from a company he/she is working for. The mechanics of payment is not important for the purpose of the Green Paper

Proceeding from the fact that the average post-tax wage of a developer in Ukraine is **\$1,670** or **43,721 hryvnas and 73 kopecks** at the NBU's exchange rate as of September 19, 2017, an employer generally has to pay **19,852 hryvnas 98 kopecks** for one company's developer:

Item	The way it is calculated	Amount
<i>Pre-tax wage</i>		54,312 hryvnas 71 kop.
TIPI	18% of 54,312 hryvnas 71 kop.	9,776 hryvnas 29 kop.
Military fee	1.5% of 54,312 hryvnas 71 kop.	814 hryvnas 69 kop.
UST	22% of 40,600 hryvnas	8,932 hryvnas
<i>Post-tax wage</i>	Pre-tax wage – TIPI – MF	43,721 hryvnas 73 kop.
<i>Charged taxes and fees</i>	TIPI + MF + UST	19,852 hryvnas 98 kop.

That is, in accordance with labor legislation, when calculating the tax on the average wage of software developers, the total tax burden on employee payments in employment is **36.6%**.

Such a tax burden on employee payments is **excessive** for companies in the software development market, which spend from **60% to 80%** of the income to pay employees. As for traditional sectors of the Ukrainian economy, in this case, employee payments are a small share of expenses and therefore, the wage taxation is not critical to them. For example, in the export of ferrous and non-ferrous metals, employee payments rarely exceed **10%** of the company's income.

If the expenses of the software development company on paying employees with all obligatory fees are **70%** of its income, it pays **18.8%** of its income for taxes and fees related to employee payments to the budget.

At the same time, an enterprise operating in the commodity sector, the expenses of which on employee payments with all obligatory fees amount **10%** of its income, spends about **2.9%** on taxes related to employee payments.

**These calculations show that companies operating in the software development market are particularly sensitive to the tax burden on labor payments.** That is why the most widespread legal form of work in the software development market is the execution of **business contracts** with IT specialists as individual entrepreneurs-contractors paying taxes under the simplified tax system.

This form of interaction allows to significantly reduce the tax burden of companies. In the case of applying a model with IEs, the following taxes are paid (individual entrepreneurs of the third group with the value added tax included into the single tax are taken into account):

Name of payment	Rate	Ground
Single tax	5 percent of the income	Art. 291, 293 TCU
Unified tax for mandatory state social insurance (UST)	22 percent of the minimal monthly wage (704 hryvnas per month as of September 19, 2017)	Art. 4, 7 of the Law on the UST

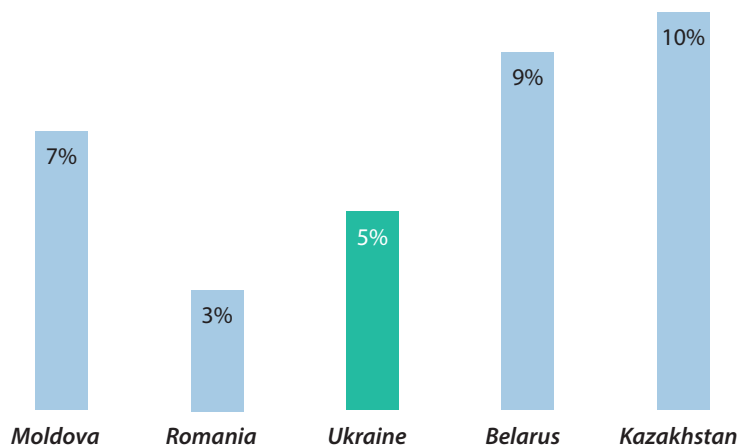
That is, using this model, companies pay for one developer on average **3,042 hryvnas 20 kopecks** per month (**2,338 hryvnas 20 kopecks + 704 hryvnas**)<sup>1</sup>. At the same time, if the total expenses on developers are **70%** of the company's income, the corresponding mandatory payments amount to **4.3%** of the company's income.

<sup>1</sup> An individual entrepreneur pays the single tax and the UST independently, but he/she receives the funds for paying from a company he/she is working for. The mechanics of payment is not important for the purpose of the Green Paper

It is obvious that the model of cooperation of IT companies and specialists as individual entrepreneurs allows companies to reduce their tax burden by applying a single tax of **5%**<sup>1</sup>.

In our opinion, the ability of software development companies to use a model allowing optimizing the tax burden on labor payments is the main factor that gives Ukrainian IT companies a competitive advantage in the world markets in the form of low tax burden on the key expense item and, accordingly, provides a steady growth of the sector. For example, in Poland, the income tax for a simplified regime is **19%**, while in Ukraine – **5%**. Thus, at equal expenses of companies on labor payment, employees in Ukraine can receive up to **17%** more income compared to the work in Poland.

### TAXATION OF INCOMES OF SOFTWARE DEVELOPERS IN DIFFERENT COUNTRIES<sup>2</sup>



However, using the described IE model has **negative consequences** for market companies. First of all, we are talking about the risk of impossibility for companies to continue using the model of interaction with IEs that may occur in different ways:

- 1 re-qualification of economic relations between individual entrepreneurs and companies in the market into labor relations;
- 2 change in the requirements for single tax payers of third group (prohibition for single tax payers to provide software development services);
- 3 change in rules of calculating the financial result of the tax (reporting) period in the context of an increase due to services obtained from individual entrepreneurs.

We believe that the described risk **constrains** the development of the software development market, as companies are limited in the long-term planning, and accordingly, it negatively affects the volume of investments in the development of Ukrainian branches.

A steady and even more rapid development of the software development market would be facilitated by:

- ◆ state guarantees that it is possible for companies to use the IE model for a certain period of time or
- ◆ a significant reduction in the overall tax burden on payments to highly qualified employees.

The state can guarantee the long-term confidence of market participants in stable working conditions at the level of the law or agreements of a company with the state. Similar examples already exist in Ukraine, but not for the software development

<sup>1</sup> In this case, this model does not affect the payment of taxes by other companies (income tax, value added tax, etc.)  
<sup>2</sup> PwC study

market<sup>1</sup>. In our opinion, if a similar long-term guarantee is created for the software development market, the sector will be able to show even more rapid growth.

## EMPLOYMENT OF FOREIGNERS

Speaking about the employment of software developers, special attention should be paid to the employment of foreigners<sup>2</sup>. There are **three** factors specifying the high importance of attracting foreigners to work in companies in the market:

- 1) the Ukrainian software development market is **export-oriented**, clients of Ukrainian companies operate in foreign markets. Therefore, it is necessary to involve experts from the markets of clients (foreigners) to develop solutions aimed at foreign markets;
- 2) in Ukraine, a large part of companies in the market are **international** companies that can transfer specialists from one country to another;
- 3) the qualification of software developers can be implemented **all over the world**, since programming languages are universal regardless of the country, and wages in Ukraine are competitive in the region, so companies in Ukraine are interested in developers from other countries.

First of all, it should be emphasized that foreigners can not be employed in Ukraine without **special permitting procedures**, in particular, their employment requires:

- ◆ obtaining a **work permit** (part 4, art.3 of the Law On Employment stipulates that employees hire foreigners on the basis of a permit for the employment of foreigners and stateless persons (work permit);
- ◆ obtaining a **long-term visa** (part 1, art.52 of the Law On the Legal Status of Foreigners and Stateless Persons stipulates that foreigners and stateless persons are required to obtain a long-term visa in order to obtain a temporary residence permit in Ukraine (residence permit), unless otherwise provided by international treaties);
- ◆ obtaining a **residence permit** (part 4, art.4 of the Law On the Legal Status of Foreigners and Stateless Persons stipulates that foreigners are considered to be legally residing in Ukraine if they, according to the law, arrived in Ukraine for employment and obtained a residence permit).

General requirements and procedures for the employment of foreigners are **standard** for all companies, which operate in Ukraine and are not specific for the software development market.

At the same time, starting from September 27, 2013<sup>3</sup>, certain peculiarities were introduced to obtain a work permit for IT specialists. The Law "On Employment of the Population" provided for a new definition of "foreign IT professionals"<sup>4</sup> classified as a special category of foreigners who apply for employment in Ukraine (para.5, part 2, art.421 of the Law "On Employment of the Population"). In case of the employment of foreign IT specialists, a local agency of the central executive body implementing the state employment and labor migration policies will independently receive information on the registered activity – computer programming – from employers.

Classifying software developers as a special category of foreigners creates **2 softening effects** for them compared to general requirements:

<sup>1</sup> The Law of Ukraine "On Electricity" establishes a "green" tariff until December 31, 2029 (a special tariff to purchase electricity produced on electricity generation facilities)

The Law of Ukraine "On Production Sharing Agreements" provides for the possibility to conclude agreements between investors and the state that creates mutual rights and obligations for parties to the agreement

<sup>2</sup> For the purposes of this section, we define "foreigner" as a foreigner or a stateless person who does not have a permanent residence permit in Ukraine

<sup>3</sup> The date of entry into force of the Law of May 23, 2017 No.2058-VIII "On Amendments to Certain Legislative Acts of Ukraine Regarding Elimination of Barriers to Attract Foreign Investments"

<sup>4</sup> "Foreigners or stateless persons in positions related to the development and implementation of computer programming results (operating system, computer programs and their components, websites, online services) and cryptographic information security tools in legal entities engaged in computer programming as the main type of economic activity in the National Classifier of Types of Economic Activities"



- 1 A work permit is issued for a term of up to **three** years (generally, it is issued for a term of up to **one** year).

The possibility to obtain a work permit for a term of up to **three** years is positive for the market, as it reduces the costs associated with the need to re-issue work permits annually.

The period the permit is issued or extended for	The amount of payment
from 1 to 3 years	Six minimum living wages for able-bodied persons
from 6 months to 1 year	Four minimum living wages for able-bodied persons

Thus, by hiring a foreign software developer for **3** years, due to the special status of IT specialists, a company will spend **6** minimum living wages instead of **12** ones (**4** per year) as in the case when IT specialists were not included into this special category.

- 2 No limitation on the minimum wage of a foreign IT specialist<sup>1</sup> (generally, an employer can get a permit provided that he pays the wage in the amount of at least **ten** minimum living wages).

Proceeding from the fact that the average wage for foreign IT specialists in Ukraine is **43,721 hryvnas 73 kopecks** and the general minimum wage for foreign workers is **32,000 hryvnas**, we can say that this softening effect has no impact on the employment of qualified foreign workers. However, it should be noted that the specified condition will have a positive impact on the Ukraine's competition as for foreigners who are just beginning to work in software development. This aspect is positive in view of the fact that there is the high demand for young Ukrainian IT specialists in neighboring countries and will help compensate for the outflow of IT specialists from Ukraine.

However, despite described softening effects, which are positive for the software development market in the process of foreigners' employment, there are requirements that hinder the attraction of foreign specialists by companies in the market. The point is that foreigners are currently forced to leave Ukraine after receiving a work permit and return to register a residence permit in the process of employment.

This applies to foreigners who:

- ... need to obtain a long-term visa to get a residence permit;
- ... do not need a long-term visa to get a residence permit.

## OBTAINING A LONG-TERM VISA FOR A RESIDENCE PERMIT

Obtaining a residence permit requires a long-term visa in accordance with:

- ◆ Part 1, art.52 of the Law "On Legal Status of Foreigners and Stateless Persons" when foreigners are required to obtain a long-term visa in order to get a temporary residence permit in Ukraine (residence permit) unless otherwise provided by international treaties;
- ◆ paragraph 6 of the Procedure for applying for, processing and issuing permanent residence permits and temporary residence permits approved by the CMU Resolution No.251 of March 28, 2012 (hereinafter – the Procedure for obtaining residence permits No.251);

<sup>1</sup> Part 4, art.421 of the Law "On Employment of the Population"

- ◆ paragraph 3.2 of the Temporary procedure for the consideration of applications to obtain permanent residence permits and temporary residence permits approved by the Order of the Ministry of Internal Affairs No.681 of July 15, 2013 (hereinafter – the Temporary procedure of the MIA No.681).

That is, after obtaining a work permit, a foreigner should obtain a long-term visa (visa D), and only then he can apply for a residence permit.

However, a long-term visa is issued only by Ukrainian diplomatic agencies abroad. This is provided for in paragraph 4 of the Rules of obtaining visas for entry into Ukraine and transit through its territory approved by the Resolution of the Cabinet of Ministers of Ukraine No.118 of March 1, 2017 (hereinafter – the Rules of obtaining visas). Thus, after obtaining a work permit, foreigners should:

- 1) go abroad;
- 2) obtain a long-term visa in a diplomatic agency of Ukraine;
- 3) return to Ukraine and apply for a residence permit.

That is, the impossibility to obtain a long-term visa on the territory of Ukraine leads to the fact that after obtaining a work permit, foreigners are forced to go abroad to get a visa and only after that they return to Ukraine to apply for a residence permit.

This complicates the process of employment of foreign IT specialists, increases the time and expenses required for the employment of foreigners.

In our opinion, providing foreigners with an opportunity to obtain a long-term visa in the Department of Consular Service of the MIA **in Ukraine** could be a possible solution to this problem.

#### **FOREIGNERS WHO OBTAIN A RESIDENCE PERMIT WITHOUT LONG-TERM VISAS**

Citizens of some countries (Belarus, the Russian Federation and others), with which relevant international agreements are concluded, obtain a residence permit without getting a long-term visa.

However, after obtaining a work permit and before applying for a residence permit, such foreigners should leave the territory of Ukraine and return to obtain a residence permit. In such a case:

- ◆ they do not receive any additional documents;
- ◆ they can go to any country;
- ◆ the purpose of this action is the date of crossing the border after the date of getting a work permit.

The situation described above does not have any clear regulatory explanation and happens due to the fact that the State Migration Service of Ukraine (SMS) **refuses** to accept documents for a residence permit from foreigners without a long-term visa, if the date of entry into Ukraine is prior to the date of obtaining a work permit.

The officials explain their actions by the necessity to fulfil provisions of the Temporary procedure of the MIA No.681, namely: “The following categories have the right to obtain a temporary residence permit: 1) foreigners and stateless persons who, according to the law, have arrived in Ukraine for employment”. Currently, the law enforcement practice regarding this rule shows that the SMS refuses to accept documents for a residence permit in the described case, since if the date of arrival in Ukraine is prior to the date of obtaining a work permit, it means that a foreigner arrived in Ukraine not for employment.

In this context, we would like to note that the grounds for denial of residence permits are defined in the Procedure for obtaining residence permits No.251. Such grounds

as “purpose of arrival” or “purpose of travel” are not included into their list, and other reasons for denial of Residence permits can be established only by the laws (sub-paragraph 6 of paragraph 17).

Accordingly, this barrier also complicates the process of employment of foreign IT specialists, increases the time and expenses necessary for the employment of foreigners.

In our opinion, this barrier does not have a proper legal basis and can be removed by changing the wrong law enforcement practice.

## FOREIGNERS-INDIVIDUAL ENTREPRENEURS

As noted above, one of the main factors contributing to the development of service companies in the market is the ability to use the simplified taxation system.

Correspondingly, the dynamic growth of the sector through the hiring of foreign developers depends on the possibility of inviting them to Ukraine for cooperation under an economic agreement as with individual entrepreneurs. However, unfortunately, this is impossible under the current legislation<sup>1</sup>.

To allow a company to cooperate with a foreign software developer on the territory of Ukraine within the framework of the IE model, the following **two requirements** should be met:

- ◆ a foreigner should be legally staying in Ukraine;
- ◆ a foreigner should be registered in Ukraine as an IE.

In accordance with the Law on the Legal Status of Foreigners (para.7, part 1, art.1 of the Law): **foreigners who are legally staying in Ukraine** are the foreigners who:

- ◆ permanently reside on its territory;
- ◆ temporarily reside on its territory;
- ◆ temporarily stay in Ukraine.

At the same time, according to Art.1 of the Law on the Legal Status of Foreigners, the permanent residing requires obtaining a permanent residence permit; the temporary residing requires obtaining a temporary residence permit; the temporary stay is limited to the visa duration or the period specified by the international treaty (usually this period is up to **90** days).

That is, in order to stay in the territory of Ukraine for a long time (and this is necessary for cooperation between a company and a developer), a foreigner should obtain a **permanent or temporary residence permit**<sup>2</sup>.

However, the arrival for cooperation with an IT company (or any other) as an IE **is not a ground** for a foreigner to obtain a permanent or temporary residence permit<sup>3</sup>. Along with this, the arrival of foreigners for employment in the company **is a ground** for obtaining a temporary residence permit.

In addition to the above-mentioned barrier to the legal stay of a foreigner-IE in Ukraine, there is also a barrier in the process of registering a foreigner as an IE.

To be registered as an IE, in addition to other documents, a person should submit an application for state registration, the form of which is approved by the Ministry of Justice<sup>4</sup>. The current form of this application approved by the Order of the Ministry of Justice No. 3268/5 of November 18, 2016 provides for filling the column “Place of residence/location of an individual entrepreneur”. Taking into account that, in

<sup>1</sup> This refers to foreigners who do not have a temporary or permanent residence permit in Ukraine

<sup>2</sup> A full list of grounds for staying foreigners on the territory of Ukraine is defined in Article 4 of the Law on Legal Status of Foreigners

<sup>3</sup> Art.4 and 5 of the Law on Legal Status of Foreigners

<sup>4</sup> According to Art. 15 and 18 of the Law “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations” (Law on State Registration)

accordance with the Law on State Registration, the unified state register contains information on IEs “Location (place of residence or other address to contact with an individual entrepreneur), we can conclude that foreigners can add any address, which they will be located at, in the application when registering as IEs.”

However, in practice, registrars interpret this provision as the duty of foreigners to have a registered place of residence in the meaning of the Law “On Freedom of Movement and Free Choice of Residence in Ukraine”. In this case, information about the place of residence of foreigners is included into a limited list of documents<sup>1</sup>, namely:

- ◆ a permanent residence permit;
- ◆ a temporary residence permit;
- ◆ a refugee identity card;
- ◆ an identity card of a person in need of additional protection;
- ◆ a temporary protection identity card.

In such a way, registering a foreigner as an IE requires to have a residence place, which in turn requires a temporary residence permit.

The above aspects create the requirements, under which foreigners can not come to Ukraine and register as IEs, and, accordingly, they can not work with software development companies as IEs registered in Ukraine.

In our view, the possibility of cooperation between software development companies and foreigners as IEs will allow to attract a significant number of foreign developers. Such a possibility is particularly important in terms of compensating the outflow of Ukrainian developers abroad. As noted in the first section, the percentage of open vacancies is steadily increasing, and the attraction of foreign specialists will help to control the labor shortage in the domestic market. Thus, solving the problem of foreigners’ employment will allow to keep high growth rates of the market in the future.

## THE SOFTWARE DEVELOPMENT

### IMPORTING PROTOTYPES OF EQUIPMENT

The software development for equipment requires the direct interaction of a company with the prototype equipment, for which a software component is developed. In this case, prototypes of such equipment often are radio electronic devices and emitting devices (RED and ED). The import of such prototypes for software development in the Automotive sector, in which Ukrainian software development companies are actively operating, is especially important.

However, importing RED and ED to Ukraine requires a conformity document. In particular, Art. 291 of the Law “On Radio Frequency Resource of Ukraine” provides for the following: “The import of radio electronic devices and emitting devices that can be used in Ukraine within public radio-frequency bands, and their customs registration by customs bodies is carried out ... if a business entity importing them from abroad has a conformity document”.

According to Art. 1 of the Law “On Radio Frequency Resource of Ukraine”, “a conformity document is a declaration (including a declaration of conformity), a protocol (including a test protocol), a report, a conclusion, a testimonial letter, a certificate (including a certificate of conformity) or another document confirming the fulfillment of certain requirements relating to conformity assessment items”. This regulation does not pose a problem for batch production, as producers of RED and ED produced in series can provide a conformity document.

However, in case of the software development, only the prototypes of equipment are imported to Ukraine, and its producers are not able to provide a conformity document.

<sup>1</sup> Paragraph 9 of Article 3 of the Law “On freedom of movement and free choice of place of residence in Ukraine”

The Law “On Technical Regulations and Conformity Assessment” defines the principles of conformity determination and stipulates that “technical regulations and conformity assessment procedures, the application of which is provided for by the technical regulations, may set specifics to regulate the relations, which this Law applies to”. That is, the specifics of conformity assessment are set by technical regulations.

In Ukraine, the Technical Regulations of Radio Equipment and Telecommunication End-User (Terminal) Equipment approved by the CMU Resolution No.679 of June 24, 2009 is in force until April 1, 2018. Starting from April 1, 2018, the Technical Regulations of Radio Equipment approved by the CMU Resolution No.355 of May 24, 2017 (developed on the basis of Directive 2014/53/EC) will come into effect in Ukraine. These documents define the requirements for radio equipment, the conformity assessment procedure for such equipment and the rules for its tagging and introduction into operation. At the same time, producers and companies in the market are not interested in carrying out the conformity assessment in Ukraine, since usually RED and ED prototypes are imported in the amount of 1-2 items only to test the software products.

Currently, in Ukraine, there is no rule for prototypes that would allow to import such RED and ED without a declaration of conformity with the requirements of the Technical Regulations. This is due, inter alia, to the fact that the Procedure for importing from abroad and selling radio electronic devices and emitting devices is not still approved in Ukraine.

The relevant draft document was developed by the National Commission for the State Regulation of Communications and Informatization and provides for the following:

Item No.	Product name (RED or ED)	Special procedure for registration			
		Item of import (recipients)	Purpose of import and/or exploitation	Quantity limitations	Other special conditions
4.7.2.	Personal computers (automated information processing machines and their units) and other electrical household appliances, game consoles containing RED (including other equipment and supplies required for testing and development)	Business entities and other legal entities	To conduct special studies in Ukraine (medical, scientific tests, software development, etc.) or humanitarian aid)	Not more than 10 pcs. of each type (model)	Without a declaration of conformity with requirements of the Technical Regulations on radio equipment and/or the entry of relevant information on RED (products) into the Unified Register of RED. The purpose of import is determined (confirmed) by a foreign economic agreement (contract) with a product consignor's. Recognition of products as humanitarian aid is confirmed in accordance with the Law of Ukraine «On Humanitarian Aid»

This rule would allow to import a limited number of RED and ED prototypes to Ukraine for companies in the market for the purpose of software development.

In addition, the Technical Regulations of Radio Equipment (which will enter into force starting from April 1, 2018) specifies that its effect does not apply to custom-made kits that will be used exclusively for scientific and research facilities because they are not available in the market. Accordingly, if prototypes of equipment that can be imported by companies for software development are excluded from the scope of the Technical Regulations of Radio Equipment, their import will not require a conformity document. However, this will depend on their designation as items that will be used exclusively in scientific research facilities.

In our opinion, no exceptions for the need to provide a conformity document for equipment prototypes imported in the amount of several items for software testing purposes is a barrier for software developers and should be revised.

## THE SOFTWARE SALE

### FOREIGN CURRENCY EARNINGS

Since most of the software development market is export-oriented, the export regulation is important for the market.

We would like to note that in Ukraine, business entities may be restricted in their rights to manage currency earnings from foreign economic activity. This restriction is provided for by the following provisions:

- ◆ Art.387 of the Commercial Code “After payment of taxes and charges (mandatory payments) envisaged by the law, entities carrying out foreign economic activity shall dispose of foreign currency earnings from performed transactions independently, save for the cases of introducing the requirement on the National Bank of Ukraine regarding the mandatory sale of a portion of foreign currency proceeds.
- ◆ Art. 25 of the Law “On the National Bank of Ukraine” stipulates that the introduction of the requirement regarding the mandatory sale of a portion of foreign currency proceeds for a term of up to **six** months is one of the main economic instruments and methods of monetary policy. According to Art. 44 of this Law, the NBU’s responsibilities include establishing the procedure for mandatory sale and the amount of foreign currency proceeds.

At present, the NBU has exercised its authority and restricted the rights of business entities to dispose foreign currency earnings. The Resolution of the NBU Board No.45 of May 30, 2017 established the requirement for legal entities and IEs to sell **50%** of foreign currency proceeds.

This mandatory sale of foreign currency proceeds is carried out without the client’s order the next working day after crediting such earnings to a clearing account (para.5 of the NBU’s Resolution No.45).

We would like to note that in spite of the fact that Art.25 of the Law on the National Bank of Ukraine provides for this restriction on a temporary basis and the NBU’s Resolution No.45 remains in force until December 13, 2017, we can’t say that this obligation is temporary. This is due to the fact that, in practice, the requirement for mandatory sale of foreign currency proceeds have been valid in Ukraine for many years, as the NBU adopts a new resolution immediately after the expiration of the previous one. At the same time, the NBU de jure complies with the requirement for a six-month period of the restriction, but this restriction is de facto in effect for more than six months.

As noted above, software development companies spend **60-80%** of their income to pay to developers. Since these payments are made within Ukraine, they should be made in hryvnas. Therefore, we believe that this regulatory tool does not restrain the development of service companies in the market and has no negative impact on them.

At the same time, we think that product companies selling their products/services in the global market are very sensitive to such regulatory instruments. In our opinion, this requirement has a negative impact on the development of product-oriented companies.

## TAXATION OF VAT

### TAX INCENTIVES FOR SUPPLY OF SOFTWARE PRODUCTS

There is a special **tax incentive**, which stimulates the supply of finished software products, for companies in the market: operations on the supply of software products shall be exempt of paying the value added tax from January 1, 2013 to January 1, 2023. The relevant rule is provided for in the para.26 of subsection 2 of section XX of the TCU.

This incentive is applied both to the supply of software products created by Ukrainian companies and to the supply of products of international companies (including operating systems).

#### ***VAT TAXATION ON ROYALTIES***

**Royalty** is any payment received as a reward for using or granting the right to use any intellectual property, including computer programs (sub-subparagraph 14.1.225 of paragraph 14.1 of Article 14 of the TCU).

According to Art.196 of the TCU, transactions on paying royalties in cash is not subject to VAT.

#### ***VAT TAXATION ON EXPORT OF DEVELOPMENT/TESTING SERVICES***

According to Art.185 of the TCU, operations on the supply of goods, the place of supply of which is located in the customs territory of Ukraine, are subject to VAT taxation. That is, **the place** of supply of services is of key importance.

At the same time, in accordance with para.186.3 of Art.186 of the TCU, the place of supply of software development/testing services, data processing services and services on providing advice on informatization, providing information and other services in the field of informatization, including the ones related to the use of computer systems is considered to be the place, at which where a service recipient is registered as a business entity.

That is, operations on export of software development services and related services are not subject to VAT taxation, since their place of supply is located outside the customs territory of Ukraine.

Based on the above, we can conclude that VAT almost does not affect the companies in the software development market. In the light of the general volatile VAT situation in Ukraine, we believe that such regulation is favorable for all market participants.

## ASSESSING THE NEED AND LEGALITY OF REGULATORY ACTS

Each regulatory act has a filled in card, in which the answers to the questionnaire questions regarding the determination of the importance and legality of the act were recorded as Table 8.

Based on the results of the assessment conducted, we received a conclusion indicating that there are **8 acts** that could be classified as **outdated**. Relevant lists with explanations are shown in the table in annexes.

At the same time, we would like to note that outdated Orders the Cabinet of Ministers of Ukraine specified in the table **are not** the regulatory acts.

All other regulatory acts that have been analyzed contain **no signs** that could classify them as illegal and/or outdated ones.

### DETERMINING OUTDATED ACTS

#### OUTDATED ACTS ON THE GROUND OF NON-COMPLIANCE WITH THE LEGISLATION:

- 1 The Resolution of the Cabinet of Ministers of Ukraine No.437 of May 27, 2013 "Issuance, Prolongation of the Validity Term and Annulment of Permits for the Use of Labor of Foreigners and Stateless Persons".

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On May 27, 2017, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Reducing Barriers to Attract Foreign Investments (regarding cancellation of registration of foreign investments and amendments to the rules)", which came into force on September 27, 2017, was adopted. This Law entirely amends Part 3 of Article 42 of the Law of Ukraine "On Employment of the Population", which stipulated that the procedure for issuing, extending and annulling the permit to employ foreigners and stateless persons along with the amount of fee for issuing the permit should be defined by the Cabinet of Ministers of Ukraine. Thus, the above issues (the grounds for obtaining a permit, the list of documents for obtaining a permit by employees, the validity period of the permit and its form, making amendments, cancellation of the permit, etc.), which were previously determined by the Resolution of the Cabinet of Ministers of Ukraine No.437 of May 27, 2013 "Issuance, Prolongation of the Validity Term and Annulment of Permits for the Use of Labor of Foreigners and Stateless Persons", are currently regulated by Articles 42-1 to 42-14 of the adopted Law.

- 2 The Order of the Ministry of Internal Affairs of Ukraine No.681 of July 15, 2013 "On approval of Temporary procedure of consideration of applications for issuing permanent residence permits and temporary residence permits".

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The Order became outdated due to the adoption of the Law "On Amendments to Certain Legislative Acts of Ukraine on Eliminating Barriers to Attract Foreign Investments" No.2058-VIII of May 23, 2017. This Law changed the regulation of the procedure for obtaining residence permits. For example, today according to Art.5-3 of the Law "On Legal Status of Foreigners and Stateless Persons": "A temporary residence permit shall be issued within **ten days** from the date of receiving the application for obtaining or extending the validity of the residence permit". However, the Temporary Procedure provides for another



term to consider the documents: "Based on the results of consideration of the application within no more than **fifteen days** from the date of submitting all documents specified by this Temporary Procedure, the Head of the SMS (or, in his absence, the Deputy Head of the SMS) or the head of the territorial body or the SMS department or his deputy shall make a decision on the issue or refusal of the residence permit".

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- 3) The Order of the Ministry of Internal Affairs of Ukraine No.1077 of November 22, 2012 "On Approval of the Procedure for Registration of the Place of Residence and Place of Temporary Stay of Individuals in Ukraine and Forms of Documents Required".
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The Order was adopted in accordance with the provision of the Law "On Freedom of Movement and Free Choice of Residence in Ukraine": *"The central executive body, which ensures the formation of state policies in the field of registration of individuals, approves, in accordance with the law, the procedure for registration of the place of residence and place of temporary stay of persons in Ukraine, forms of documents required for registration and de-registration of the place of residence and place of temporary stay"*. The current version does not contain the grounds for the adoption of the act.

Currently, the Law provides for that *"The rules for registering the place of residence, forms of documents required and the procedure for transferring information to the Unified State Demographic Register by registration bodies shall be established by the Cabinet of Ministers of Ukraine"*. In turn, the Cabinet of Ministers of Ukraine approved the Resolution No.207 of March 2, 2016 "On Approval of the Rules for Registration of the Place of Residence and the Procedure for Transferring Information to the Unified State Demographic Register by Registration Bodies" to implement this provision.

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- 4) The Order of the Cabinet of Ministers of Ukraine No.959-p of December 4, 2013 "On Approval of the Action Plan to Support the Development of the Software Products Industry for 2013-2014" became outdated due to the actual expiration of the act.
- 5) The Order of the Cabinet of Ministers of Ukraine No.338-p of April 8, 2015 "On Approval of the Action Plan to Support the Development of the Software Products Industry for 2015" became outdated due to the actual expiration of the act.
- 6) The Order of the Cabinet of Ministers of Ukraine No.655-p of September 8, 2016 "On Approval of the Action Plan to Support the Development of the Software Products Industry for 2016" became outdated due to the actual expiration of the act.

#### **OUTDATED ACTS ON THE GROUND OF THE PERIOD OF ADOPTION:**

- 1) The Labor Code of Ukraine No.322-VIII of December 10, 1971 was adopted before the independence of Ukraine. Accordingly, this Code is outdated on the ground of the period of adoption.
- 2) The Code of Ukraine on Administrative Offenses No.8073-X of December 7, 1984 was adopted before the independence of Ukraine. Accordingly, this Code is outdated on the ground of the period of adoption.

## **ASSESSING THE LEGALITY OF REGULATORY ACTS**

**There are no regulatory acts with signs of being illegal.**

## REGULATORY BARRIERS IN THE SOFTWARE DEVELOPMENT MARKET

The analysis of the regulation of the software development market conducted made it possible to identify the following regulatory barriers that hinder the development of the market in Ukraine:

- 1) There is no medium-term confidence of the market companies that it is possible to have low taxation for developers' wages, which are a key item in the expenses of companies in the market. This is due to two problems: a) high tax burden on wages; b) there is a risk that companies will not be able to use a model of interaction with IEs.

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We recommend to consider the possibility of developing a legal mechanism that guarantees for companies fixed and low taxes on developer's costs for a specified period of time.

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- 2) It is impossible for foreigners in Ukraine to register as an individual entrepreneur to cooperate with a company in the market and obtain a temporary residence permit in Ukraine on this ground. This is due to:
  - ... the requirement to indicate a place of residence in the application for state registration (the Order of the Ministry of Justice No.3268/5 of November 18, 2016), which is included only into the temporary residence permit (Paragraph 9 of Article 3 of the Law "On Freedom of Movement and Free Choice of Residence in Ukraine");
  - ... according to Article 4 of the Law on the Legal Status of Foreigners, a foreigner-individual entrepreneur working in the software development market has no grounds to obtain a residence permit and, accordingly, no grounds to stay in Ukraine legally.
- 3) Foreigners need to leave Ukraine after obtaining a work permit and before obtaining a temporary residence permit. This is due to:
  - ... All foreigners (except citizens of the CIS countries) need to obtain a long-term visa after obtaining a work permit to apply for a temporary residence permit. Currently, a long-term visa is issued only by a foreign diplomatic institution of Ukraine. This is stipulated by paragraph 4 of the Rules of obtaining visas for entry into Ukraine and transit through its territory approved by the Resolution of the Cabinet of Ministers of Ukraine No.118 of March 1, 2017.
  - ... There is a requirement of the SMS for citizens of the CIS countries that the date of entry into Ukraine was after obtaining a work permit. The SMS representatives explain this requirement with the necessity to implement the provisions of the Temporary Procedure of the Ministry of Internal Affairs No.681, namely: "The following categories have the right to obtain a temporary residence permit: 1) foreigners and stateless persons who, in accordance with the law, have arrived in Ukraine for employment".
- 4) There is no exception for prototypes of equipment when it comes to the requirement of having a conformity document to import RED and ED to Ukraine. Art. 291 of the Law "On Radio Frequency Resource of Ukraine" provides for that: "The import of radio electronic devices and emitting devices that can be used in Ukraine within public radio-frequency bands, and their customs registration by customs bodies is carried out ... if a business entity importing them from abroad has a conformity document".

## GOALS AND INSTRUMENTS OF STATE REGULATION

### A LIST OF GOALS:

- ◆ Stability of Ukrainian currency unit;
- ◆ Efficient and rational use of the radio frequency resource of Ukraine;
- ◆ Creating high-performance jobs;
- ◆ Attraction of investments;
- ◆ Increase in production of high-tech products;
- ◆ Growth of high-technology exports;
- ◆ Higher employment of citizens;
- ◆ Official communications and delivery of official correspondence;
- ◆ Proper calculation and timely and full payment of taxes.

### A LIST OF INSTRUMENTS:

- ◆ Mandatory sale of foreign currency earnings
- ◆ Permit for the employment of foreigners and stateless persons;
- ◆ Temporary residence permits;
- ◆ Long-term visa for obtaining a temporary residence permit;
- ◆ Registration of the place of residence of the person;
- ◆ Vat exemption on operations related to the supply of software products;
- ◆ Conformity document;
- ◆ State registration of an individual entrepreneur;
- ◆ Registration of individuals in the State Register of Individual Tax Payers.

## CONCLUSIONS TO SECTION 2:

In Ukraine, relations in the software development market are not regulated as separate social relations. In addition, the software development process is almost not regulated and not controlled by government bodies. At the same time, the market is growing rapidly both in terms of jobs and in terms of exports: only the software development has shown growth among the **seven** largest export industries in Ukraine over the past **three** years.

Currently, the key regulatory issues for the market are:

- ◆ tax burden on wages;
- ◆ regulation of relations concerning cooperation with the developers registered as individual entrepreneurs, who are single tax payers;
- ◆ employment of foreigners (obtaining a work permit, a long-term visa and a temporary residence permit);
- ◆ the possibility for foreigners to work in Ukraine as individual entrepreneurs (IE registration, obtaining a temporary residence permit);
- ◆ import of equipment prototypes without conformity assessment (in the amount of up to **3-10** items);
- ◆ Mandatory sale of foreign currency earnings.

However, the analysis showed that a **tax burden** on payments to software developers plays the **most important** role for the market, while the obligation on mandatory sale of foreign currency earnings do not have a significant impact on market participants.

In Section 2, we reviewed **30** acts providing the regulation for the software development market. In our opinion, such an amount of acts is normal for market regulation in view of the complexity of social relations arising in the market.

In our opinion, the market regulation is quite stable. However, the exception is a risk of impossibility to use the described IE model that has negative consequences for companies in the market. We think that the impossibility of long-term planning of taxation on wages for software developers constrains the market development.

The following measures would help to ensure the steady and even more rapid development of the software development market:

- ◆ guaranteeing by the state the possibility of using the IE model for companies for a certain period of time

*or*

- ◆ reducing the overall tax burden on wages for highly qualified employees significantly.

Most importantly, the analysis identified two regulatory problems, which are barriers to the development of the software development market.

## 3 | ANALYSIS OF REGULATORY CASES

### CASE 1

**BUSINESS PROCESS:**

Organizational activities.

**GOAL OF THE REGULATION:**

Higher employment of citizens.

**REGULATORY INSTRUMENT:**

Permit for the employment of foreigners and stateless persons.

**PROBLEM:**

The risk of higher unemployment due to the dominance of foreign workers in the market.

**CONCLUSION:**

The instrument was well chosen, it is used effectively – the demand for market specialists exceeds the supply, the percentage of vacancies in the market is steadily increasing. A lack of personnel even hinders the market growth.

**POSSIBLE WAYS TO IMPROVE THE SITUATION:**

It is expected that the amendments that came into force on September 27, 2017, will reduce the personnel gap and improve the situation in the market.

### CASE 2

**BUSINESS PROCESS:**

Organizational activities.

**GOAL OF THE REGULATION:**

Not defined.

**REGULATORY INSTRUMENT:**

Long-term visa for obtaining a temporary residence permit.

**PROBLEM:**

The instrument was used without defining a specific purpose.

**CONCLUSION:**

The first problem is that there is no purpose of using the instrument defined, which is unacceptable for efficient state policy. In this case, due to the complicated mechanism of issuing a visa, foreigners staying in Ukraine are forced to cross the border to obtain a visa, obtain this visa in a foreign diplomatic institution of Ukraine and then return. This makes the cost of using the instrument excessive.

**POSSIBLE WAYS TO IMPROVE THE SITUATION:**

The possibility to obtain a visa in Ukraine, for example, in the MIA Department of Consular Service.

## CASE 3

### **BUSINESS PROCESS:**

Organizational activities.

### **GOAL OF THE REGULATION:**

Not defined.

### **REGULATORY INSTRUMENT:**

Temporary residence permit.

### **PROBLEM:**

The instrument was used without defining a specific purpose.

### **CONCLUSION:**

As in the previous case, the first problem is that there is no purpose of using the instrument defined, which is unacceptable for efficient state policy. Just like in the case with visas, citizens of countries that do not require a long-term visa, mainly citizens of the CIS countries, are forced to leave Ukraine, indicate a new purpose of the entry into Ukraine and then return. This makes the cost of using the instrument excessive.

### **POSSIBLE WAYS TO IMPROVE THE SITUATION:**

Since it is obvious that foreigners need to reside in Ukraine when obtaining a work permit, we propose to combine the granting of a work permit with the issuance of a temporary residence permit.

## CASE 4

### **BUSINESS PROCESS:**

Organizational activities.

### **GOAL OF THE REGULATION:**

Official communications and delivery of official correspondence

### **REGULATORY INSTRUMENT:**

Registration of the place of residence of a person.

### **PROBLEM:**

The need for official correspondence.

### **CONCLUSION:**

The regulatory instrument solves the problem and achieves the goal of regulation.

### **POSSIBLE WAYS TO IMPROVE THE SITUATION:**

The registration of the place of residence as a way to achieve the goal of official correspondence had virtually no alternatives before new information and communication technologies appeared. Currently, the stated goal of regulation can be achieved by other, more flexible means of communication, and, accordingly, by other regulatory instruments.

## CASE 5

### **BUSINESS PROCESS:**

Organizational activities.

### **GOAL OF THE REGULATION:**

Proper calculation and timely and full payment of taxes.

### **REGULATORY INSTRUMENT:**

Registration of individuals in the State Register of Individual Tax Payers, state registration of individual entrepreneurs.

### **PROBLEM:**

The need to control the payment of taxes.

### **CONCLUSION:**

The instrument was well chosen, it is used effectively – the number of market participants is increasing as well as the revenues. In 2016, there were **26%** more legal entities and **36%** more individual entrepreneurs officially registered in the market than in 2014. Market revenues were **90%** higher in 2016 than in 2014.

### **POSSIBLE WAYS TO IMPROVE THE SITUATION:**

It is advisable to preserve the existing situation.

## CASE 6

### **BUSINESS PROCESS:**

Organizational activities.

### **GOAL OF THE REGULATION:**

Attraction of investments, increase in production of high-tech products.

### **REGULATORY INSTRUMENT:**

Simplified tax system.

### **PROBLEM:**

High tax costs.

### **CONCLUSION:**

The instrument was well chosen, it is used effectively – the software development market is the only one, which has shown significant growth in recent years, despite the crisis events in Ukraine, and it makes our country competitive in the global market. Tax revenues from market players are increasing.

### **POSSIBLE WAYS TO IMPROVE THE SITUATION:**

It is advisable to preserve the existing situation.

## CASE 7

### **BUSINESS PROCESS:**

Product development.

### **GOAL OF THE REGULATION:**

Efficient and rational use of the radio frequency resource of Ukraine.

### **REGULATORY INSTRUMENT:**

Conformity document.

### **PROBLEM:**

The need for effective use of a limited resource – the radio frequency spectrum.

### **CONCLUSION:**

The instrument was well chosen, it is used effectively, however, the cost of this regulation is too high. In case of prototypes of equipment, the import of which in Ukraine is necessary for software development and testing, obtaining a conformity document is unreasonable and too expensive.

### **POSSIBLE WAYS TO IMPROVE THE SITUATION:**

Providing exceptions for a limited number of equipment units that will be used in the software development process in the market, as provided for by the Technical Regulation of radio equipment, which will come into effect on April 1, 2018.

## CASE 8

### **BUSINESS PROCESS:**

Product sale.

### **GOAL OF THE REGULATION:**

Not defined.

### **REGULATORY INSTRUMENT:**

Vat exemption on operations related to the supply of software products.

### **PROBLEM:**

The instrument was used without defining a specific purpose.

### **CONCLUSION:**

The first problem is that there is no purpose of using the instrument defined, which is unacceptable for effective state policy. We can assume that the goal is to develop the information society in Ukraine, more active use of digital capabilities. In this case, the instrument is used effectively, because it reduces the cost of software, and its level of use by enterprises and citizens is increasing.

### **POSSIBLE WAYS TO IMPROVE THE SITUATION:**

It is advisable to preserve the existing situation with defining the goal of regulation.



## CASE 9

### **BUSINESS PROCESS:**

Product sale.

### **GOAL OF THE REGULATION:**

Stability of Ukrainian currency unit.

### **REGULATORY INSTRUMENT:**

Mandatory sale of foreign currency earnings

### **PROBLEM:**

The need for balancing the state balance of payments.

### **CONCLUSION:**

The instrument was well chosen, it is used conditionally effectively – the software development market is one of the main sources of currency inflows into Ukraine. The cost of regulation also does not create barriers for the market: labor expenses require significant funds in hryvnia, which allows to fulfill the requirements for mandatory sale of currency without excessive burdens. However, it should be noted that the instrument should be implemented on a temporary basis, whereas in practice it has been used for many years, re-entering into effect after the date of expiry its validity term is over. This formal compliance with the requirements negatively affects the ability to plan long-term activities and the investment attractiveness of Ukraine.

### **POSSIBLE WAYS TO IMPROVE THE SITUATION:**

Bringing the practice of using the instrument in line with the law.

# ANNEXES

## LIST OF LEGISLATIVE ACTS THAT REGULATE THE MARKET

No.	Legislative act	Title of legislative act	Number, date
1	Law	On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations	No.755-IV of 15/05/2003
2	Law	On Employment of the Population	No.5067-VI of 05.07.2012
3	Law	On Technical Regulations and Conformity Assessment	No.124-VIII of 15/01/2015
4	Law	On State Support for the Development of the Software Products Industry	No.5450-VI of 16/10/2012
5	Law	On Legal Status of Foreigners and Stateless Persons	No.3773-VI of 22/09/2011
6	Law	On Collection and Accounting of the Single Contribution for Mandatory State Social Insurance	No.2464-VI of 08/07/2010
7	Law	On Freedom of Movement and Free Choice of Residence in Ukraine	No.1382-IV of 11/12/2003
8	Law	On Immigration	No.2491-III of 07/06/2001
9	Law	On Radio Frequency Resource of Ukraine	No.1770-III of 01/06/2000
10	Law	On the National Bank of Ukraine	No.679-XIV of 20/05/1999
11	Code	Code of Ukraine on Administrative Offenses	No.8073-X of 07/12/1984
12	Code	Tax Code of Ukraine	No.2755-VI of 02/12/2010
13	Code	Economic Code of Ukraine	No.436-IV of 16/01/2003
14	Code	Labor Code of Ukraine	No.322-VIII of 10/12/1971
15	Resolution of the Cabinet of Ministers of Ukraine	Issuance, Prolongation of the Validity Term and Annulment of Permits for the Use of Labor of Foreigners and Stateless Persons	No.437 of 27/05/2013
16	Resolution of the Cabinet of Ministers of Ukraine	On Approval of Technical Regulations of Radio Equipment and Telecommunication End-User (Terminal) Equipment	No.679 of 24/06/2009
17	Resolution of the Cabinet of Ministers of Ukraine	On Approval of the Rules for Registration of the Place of Residence and the Procedure for Transferring Information to the Unified State Demographic Register by Registration Bodies	No.207 of 02/03/2016
18	Resolution of the Cabinet of Ministers of Ukraine	On Approval of the Procedure for applying, processing and issuing permanent residence permits and temporary residence permits and technical description of their forms and amendments to the Resolution of the Cabinet of Ministers of Ukraine No.1983 of 26 December 2002	No.251 of 28/03/2012
19	Resolution of the Cabinet of Ministers of Ukraine	On Approval of Rules for obtaining visas for entry into Ukraine and transit through its territory	No.118 of 01/03/2017
20	Resolution of the National Bank of Ukraine	On the imposition of the mandatory sale of foreign currency earnings and the determination of the amount of the mandatory sale of these earnings	No.45 of 30/05/2017
21	Resolution of the National Bank of Ukraine	On Approval of the Regulation on Application of Enforcement Measures by the National Bank of Ukraine	No.346 of 17/08/2012
22	Order of the Ministry of Justice	On Approval of application forms in state registration of legal entities, individual entrepreneurs and public organizations	No.3268/5 of 18/11/2016
23	Order of the Ministry of Incomes and Fees	On Approval of the Regulation on the registration of individuals in the State Register of individual tax payers	No.779 of 10/12/2013
24	Order of the Ministry of Internal Affairs	On Approval of the Temporary procedure for the consideration of applications to obtain permanent residence permits and temporary residence permits	No.681 of 15/07/2013
25	Order of the Ministry of Internal Affairs	On Approval of the Procedure for Registration of the Place of Residence and Place of Temporary Stay of Individuals in Ukraine and Forms of Documents Required	No.1077 of 22/11/2012
26	Order of the Cabinet of Ministers of Ukraine	On Approval of the Action Plan to Support the Development of the Software Products Industry for 2015	No.338-p of 08/04/2015
27	Order of the Cabinet of Ministers of Ukraine	On Approval of the Action Plan to Support the Development of the Software Products Industry for 2013-2014	No.959-p of 04/12/2013
28	Order of the Cabinet of Ministers of Ukraine	On Approval of the Action Plan to Support the Development of the Software Products Industry for 2016	No.655-p of 08/09/2016

No.	Legislative act	Title of legislative act	Number, date
29	Order of the Cabinet of Ministers of Ukraine	On Approval of the Action Plan to Support the Development of the Software Products Industry for 2017	No.367-p of 31/05/2017
30*	Resolution of the Cabinet of Ministers of Ukraine	On Approval of Technical Regulations of Radio Equipment (the entry into force will be on 01/04/2018)	No.355 of 24/05/2017

## LIST OF OUTDATED REGULATORY ACTS THAT REGULATE THE SOFTWARE DEVELOPMENT MARKET

No.	Regulatory act	Result of the assessment based on the criteria of relevance	The ground, on which the decision was made
1	Code of Ukraine: Verkhovna Rada of the Ukrainian SSR No.322-VIII of 10/12/1971 "Labor Code of Ukraine"	Outdated	On the ground of the period of adoption
2	Resolution of the Cabinet of Ministers of Ukraine No.437 of 27/05/2013 "Issuance, Prolongation of the Validity Term and Annulment of Permits for the Use of Labor of Foreigners and Stateless Persons"	Outdated	On the ground of non-compliance with the legislation
3	Order of the Cabinet of Ministers of Ukraine No.655-p of 08/09/2016 "On Approval of the Action Plan to Support the Development of the Software Products Industry of Ukraine for 2016"	Outdated	On the ground of non-compliance with the legislation
4	Order of the Cabinet of Ministers of Ukraine No.338-p of 08/04/2015 "On Approval of the Action Plan to Support the Development of the Software Products Industry for 2015"	Outdated	On the ground of non-compliance with the legislation
5	Order of the Cabinet of Ministers of Ukraine No.959-p of 04/12/2013 "On Approval of the Action Plan to Support the Development of the Software Products Industry for 2013-2014"	Outdated	On the ground of non-compliance with the legislation
6	Order of the Ministry of Internal Affairs of Ukraine No.681 of 15/07/2013 "On approval of Temporary procedure of consideration of applications for issuing permanent residence permits and temporary residence permits"	Outdated	On the ground of non-compliance with the legislation
7	Order of the Ministry of Internal Affairs of Ukraine No.1077 of 22/11/2012 "On Approval of the Procedure for Registration of the Place of Residence and Place of Temporary Stay of Individuals in Ukraine and Forms of Documents Required"	Outdated	On the ground of non-compliance with the legislation
8	Code of Ukraine: Verkhovna Rada of the Ukrainian SSR No.8073-X of 07/12/1984 "Code of Ukraine on Administrative Offenses (Articles 1 – 212-21)"	Outdated	On the ground of the period of adoption On the ground of non-compliance with the legislation

