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Ukraine IP-FSS Project

Cashless Economy: Legal-Regulatory Ecosystem Assessment

23 May 2016

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1. Background

Ukraine's economy lags many others in Europe in the transition from cash-based to cashless (which includes bank-to-bank transfers, credit/debit cards, online and electronic transactions via mobile phones). The National Bank of Ukraine (NBU)¹ is leading the Government of Ukraine (GoU) initiative to move towards a Cashless Economy. Recently, a new Head of the NBU Payment Systems and Innovative Development Department was appointed and he has both a strong understanding of the path towards cashless as well as a strong commitment to take the steps necessary to achieve it.

Equally important, the National Parliament (Verkhovna Rada) also has legislative leaders who understand technology and Digital Financial Services (DFS) and are sincerely committed to accelerating Ukraine's progress towards cashless.

In a notable break from the past, both the NBU and the Parliamentary Committees have also recently adopted postures of greater openness and transparency. For example, the NBU Regulatory department recently organized and led a half-day workshop on the Cashless Economy, which was attended by 60 active members of the DFS ecosystem (banks, payment intermediaries and Mobile Network Operators); it was the first NBU public consultation in close to a decade.

It is clear from discussions with many of the players in the ecosystem that there is a strong appetite to aggressively roll-out innovative DFS to consumers in Ukraine, and this can only begin once the enabling environment, in the form of several key laws and regulations, is in place.

This document is a companion to the USAID IP-FSS Project "Component 4: Initial Assessment Report (mobile banking/payments, technology and innovation to restore formal financial transactions in underserved areas)" and reflects discussions conducted with the key stakeholders in Kyiv, from 4-15 April 2016.

¹ NBU official website (English): http://www.bank.gov.ua/control/en/publish/article?art_id=37384

2. Legal-Regulatory Institutions and Framework for DFS in Ukraine

Digital Financial Services (DFS) are provided at the intersection of two distinct industry sectors: financial services (including banking, credit, insurance and various forms of money transfers) which is regulated by the NBU; and information & communications technology (ICT – including computers, telephony and Internet) which is separately regulated by the National Commission for the State Regulation of Communications and Informatization (NCSRCI).

Fortunately for the DFS sector and the Ukrainian consumers, a protocol was recently signed² wherein the NCSRCI confirmed no statutory authority over DFS, therefore giving NBU the unambiguous jurisdiction over all financial services – whether transacted electronically or otherwise. Nevertheless, the NCSRCI has a potentially important role to play as well – namely, to promote further rapid expansion of wireless connectivity. In practice, this primarily means mobile phones with 3G or better bandwidth to enable Internet access, but it also could include alternative solutions for broadband Internet access, including WiFi “hotspots” (typically limited to 50 meters), WiMax (WiFi that can reach close to a kilometer) but also emerging solutions such as high-altitude balloons (currently being trialed by Google and Microsoft).

Helping to further shape the legal-regulatory enabling environment for DFS is a wide range of sector associations, including the following:

- a. Association of Ukrainian Banks³
- b. Independent Association of the Banks in Ukraine (NABU)⁴
- c. Ukrainian Interbank Payment System Members Association (EMA)⁵
- d. Ukrainian Union of Members of Payment Market (SUPR)⁶
- e. Association of Mobile Network Operators (TELAS)⁷

These associations have professional staff that is dedicated to continuously monitoring legislative and regulatory activities, and also play a role in consumer education and protection.

2.1. National Parliament (Verkhovna Rada)

Ukraine adopted payments legislation in the 1990s and since the new regime in 2014, several Committees are actively drafting and considering wide-ranging overhaul:

² NCSRCI mentioned this protocol and offered to provide a copy, but this had not been received during the period of performance ending 22 April 2016; a request was subsequently made via e-mail.

³ AUB official website: <http://aub.org.ua/index.php?lang=en>

⁴ NABU official website: <http://nabu.ua/en/about/mission-vision-and-values.htm>

⁵ EMA official website: <http://ema.com.ua/en/>

⁶ SUPR official website: <http://supr.com.ua/ua/>

⁷ TELAS official website: <http://telas.kiev.ua/>

- Informatization & Communications Committee: Primarily the DFS infrastructures
- Financial Policy & Banking: Primarily financial services and service licensing
- Taxation & Customs Policy Committee.

In addition, several Committees will be considering broader topics (such as amending legislation to conform to European Union standards, such as the Electronic Commerce Directive⁸) that will contain (small but significant) elements pertaining to DFS:

- European Integration Committee
- Preventing and Combating Corruption Committee: Promoting transparency via electronic communications, as well as Anti-Money-Laundering and Counter Terrorism Financing.

2.2.National Bank of Ukraine (NBU)

NBU recently reorganized and its Payments department now has a unit tasked with implementing its Cashless Economy initiative, which is working very actively with the Regulation Department. This is a very positive development because until that point there seemed to be a significant policy gap between the two, particularly with respect to DFS. In addition, many key leadership positions relevant to DFS are now headed by new personnel, recently in senior positions at commercial banks. For example, the Head of the Retail Payments Department demonstrated a deep understanding of DFS and indeed is a strong proponent of the Cashless Economy.

2.3.National Commission for the State Regulation of Communications and Informatization (NCSRCI)

The NCSRCI is currently a budget department (funded by the Treasury). Pursuant to leading international practices and WTO guidelines and benchmarks for the ICT sector, the regulation of private sector licensees (including MNO and Internet Service Providers – ISP) and the national frequency spectrum for wireless services will be spun off to a new, independent organization, as envisioned in the draft Law on Electronic Communications. According to NCSRCI board members, the new institution will also be self-funded (not deriving operational funds from the national treasury, rather being sustained on the basis of annual regulatory fees). This new structure will provide the regulator greater independence from political interference. It is possible that certain other ICT policy and service provision responsibilities will remain within the Ministry, including for example, supervision of GoU networks, cybersecurity and management of the Internet domain of Ukraine (“dot ua”).

⁸ EU eCommerce Directive: http://ec.europa.eu/internal_market/e-commerce/directive/index_en.htm

3. Assessment of the Current Legal-Regulatory Barriers to Expanded DFS

Discussions with the Parliament as well as both sector regulators (financial services and ICT services) revealed a very keen awareness that Ukraine's legal-regulatory framework for DFS is outdated and requires a complete overhaul and expansion. In addition to achieving domestic policy objectives (greater economic efficiency, reducing corruption), there was also very strong awareness that changes are needed immediately to become regionally competitive, as well as laying the foundation for EU accession.

This awareness comes in a specific political context and with a very strong mandate. A new slate of political leaders was elected in 2014, coalesced around the themes of reform, modernization and closer economic integration with Europe. In November 2014, the cabinet approved and President Petro Poroshenko signed a Decree "On the Strategy for Sustainable Development "Ukraine – 2020," which includes explicit targets and indicators for success. Under the Decree, the Cabinet of Ministers must approve the plan on the implementation of the provisions of the Strategy by 15 February of each year and publicly inform on the progress made towards the fulfillment of the plan, on a quarterly basis. Numerous elements of this strategy pertain directly to the financial services sector and the ICT sector.

As the primary implementer of the financial services elements of the National Strategy, the NBU Board adopted its own "Comprehensive Program of Ukraine Financial Sector Development Until 2020" (hereinafter "NBU 2020") on 18 June 2015. NBU 2020 sets a high priority for the accelerating the adoption of DFS, to reach key European standards of a "Cashless Economy" by 2020:

"(The) Share of cash payments and share of cash in the money supply (is to be) decreased through the introduction of open procedures and principles of operation, regulation of payment systems in Ukraine and creation of favorable conditions for the use of electronic means of payment."⁹

NBU 2020 cites 41 laws and regulations that need to be amended, revised or drafted. For this Assessment Report, the following were discussed, reviewed and analyzed to the extent time allowed:

1. The Law on Electronic Commerce¹⁰
2. The Law on Electronic Communications
3. The Law on Payment Systems and Funds Transfer in Ukraine¹¹
4. The Law on Digital Signatures (DRAFT)¹²
5. The Law on Electronic Trust Services (DRAFT)¹³
6. Amendments to the Law on the Implementation of Automated Payment System in Public Transportation¹⁴

⁹ NBU Board Decree, 18 June 2015, page 6.

¹⁰ Parliament official website: <http://zakon2.rada.gov.ua/laws/show/675-19>

¹¹ Parliament official website: <http://zakon1.rada.gov.ua/laws/show/2346-14>

¹² Parliament official website: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=57079

¹³ Parliament official website: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=56317

¹⁴ Parliament official website: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=58244

The Parliament and the two sector regulators (NBU and NCSRCI) are still in fairly early stages of the legislative process – but at least the tasks have been identified and put on the legislative calendar; based on international experience with similar legislation, it typically takes up to 18 months for the entire cycle to complete. Parliamentary actions take the longest, while the corresponding normative acts can often be accomplished in a matter of months.

It must be emphasized that the promulgation of laws and regulations is only the “enabling act” which must then be followed by overhaul of procedures and the revision of existing licenses – or the issuance of new licenses. In all cases, leading international practices suggest that each legislative activity include public consultations for transparency and then a public awareness campaign to ensure consumer protection and market adoption.

The NBU requires precisely-targeted technical assistance to implement its ambitious Cashless Economy initiative. As noted earlier, some of the senior leadership have newly arrived with strong private sector credentials and management style, but the majority of the professional staff still has traditional views. There has also been an organizational restructuring which favors innovation and progress.

As an immediate priority, the regulatory department requires support to draft, promulgate and implement the Electronic Money Regulation (EMR). Implementation in this case means issuance of new licenses without bureaucratic delay (in addition to moving up the learning curve quickly on monitoring, reporting and supervision), so support should be continuous and instill the staff with confidence to sustain this policy direction.

In the longer term, several key pieces of primary legislation are taking shape at the Parliament. Different legislative standing committees have the lead responsibilities (and constituencies), which makes the task of providing support much harder. The Committee on Information and Communication is sponsoring two draft laws most relevant to DFS: one on Digital Signatures and one on Electronic Trust. It also has the lead for the Law on Electronic Communications, which ultimately governs telephony and Internet, and in this case is important because it will make the telecom regulator (NCSRCI) fully independent, pursuant to EU Directives. Other committees are working on legislation affecting DFS, including Committee on European Integration, Committee on Taxation and the Committee on Financial Policy and Banking. Also, it is worth noting that the matter of Internally Displaced Persons (IDP) has a high degree of political visibility, and several Members of Parliament voiced support for innovative DFS as a channel to address this, in conjunction with IOM, UNHCR and NGO charities.

The Parliamentary Committees working on DFS-related legislation seem to be already working with the NBU, the NCSRCI as well as the relevant civil society institutions on their respective drafts, but progress will need to be accelerated greatly if Ukraine is to reach the stated goal of pervasive DFS adoption by 2020.

3.1.National Parliament (Verkhovna Rada)

There was broad consensus among the members of the DFS ecosystem that Ukraine’s legislation is outdated and requires overhaul. The following laws and draft legislation were discussed with the Chair of the Parliamentary Committee for Informatization and Communications (ICT), as well as with the NBU and the DFS ecosystem:

- The Law on Electronic Commerce¹⁵
- The Law on Electronic Communications
- The Law on Payment Systems and Funds Transfer in Ukraine¹⁶
- The Law on Digital Signatures (DRAFT)¹⁷
- The Law on Electronic Trust Services (DRAFT)¹⁸
- Amendments to the Law on the Implementation of Automated Payment System in Public Transportation¹⁹
- Cabinet of Ministers Resolution 878 of 29 September 2010²⁰ (set to expire in May 2016): requires merchants to utilize POS terminals (was never enforced by tax office).

As was noted above, at least three Parliamentary Committees have a degree of responsibility for the development of DFS, with each approaching the topic from very different perspectives and intent.

3.2. National Bank of Ukraine (NBU)

As the regulator with the sole responsibility for the governance of DFS, NBU's public promotion of the Cashless Economy is a very positive signal for rapid development of DFS in the near future.

In preparation for this Assessment Report, NBU staff prepared a list of the main questions it had with respect to legal-regulatory barriers to DFS; these are presented in Appendix B. While these questions were indeed discussed, many of them traced back to an apparent confusion over statutory authority over MNOs and certain products or services provided by (or being explored by) them. In reality, a protocol adopted between the NBU and the telecom regulator had actually already resolved this perceived "gap" and it clarifies the NBU's supremacy with respect to all financial services – whether conducted in person or electronically. This suggests that the NBU staff would benefit from substantial capacity building on the "state of the art" in terms of DFS technologies (mobile money, electronic vouchers, eCommerce) and learn from the "state of play" among other emerging markets in successfully adopting certain DFS; indeed, the point was made during discussions that DFS is evolving so rapidly because the underlying technologies are changing much faster than regulators in most countries can predict or keep pace.

The NBU staff stated that work had recently begun on preparing an Electronic Money Regulation (EMR), but there was no document available for review during this assessment period. However, in discussion with staff, it was emphasized that the conceptual framework for the EMR should be shifted towards addressing the requirements of consumers in rural and remote areas, and especially those in Eastern

¹⁵ Parliament official website: <http://zakon2.rada.gov.ua/laws/show/675-19>

¹⁶ Parliament official website: <http://zakon1.rada.gov.ua/laws/show/2346-14>

¹⁷ Parliament official website: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=57079

¹⁸ Parliament official website: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=56317

¹⁹ Parliament official website: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=58244

²⁰ Parliament official website: <http://zakon3.rada.gov.ua/laws/show/878-2010-%D0%BF>

Ukraine, because it is those consumers who presently have few alternatives to the use of cash in all transactions. Widespread mobile cellular coverage reaches more than 80% of the population and therefore presents a unique opportunity for supply to meet demand.

Numerous laws and NBU policies, regulations, procedures and licenses were discussed with staff (during the assessment period) and these were identified as crucial for in-depth review and modification to remove potential barriers to expanded DFS:

- The Law on the National Bank of Ukraine (NBU)
- The Law on Banks and Banking
- NBU Board Resolution No.481 from 4 November 2010 as to regulation On Electronic Money in Ukraine (NOTE: This is being completely overhauled by NBU as of April 2016)²¹
- NBU Board Resolution No.750 from 5 November 2014 as to transaction using electronic means of payment²²
- NBU Board Resolution No. 43 from 4 February 2014 as to regulation On the procedure of registration of payment systems, payment system participants and payment infrastructure service providers²³
- NBU Board Resolutions No. 480 from 24 July 2015 on Amendments to Some Regulations of the National Bank of Ukraine²⁴ (terms and conditions for international online payment systems (for example, PayPal and Apple Pay)

3.3.National Commission for the State Regulation of Communications and Informatization (NCSRCI)

As noted above, the NCSRCI has effectively removed the one barrier that could potentially have delayed the expansion of DFS, namely the legal uncertainty over the role of MNOs, ISPs and others in offering remote electronic access to financial services. The protocol confirms that NBU has sole legal authority over DFS, in line with EU Directives and long-standing international best practices that separates “conduit” versus “content” in electronic commerce.

Likewise, the EU has a long-standing Directive requiring interoperability among all licensees of public communications services, specifically including wireline and wireless telephony; Internet is interoperable by definition, on the basis of the Internet Protocol standard which forms the basis of the World Wide Web.

²¹ Parliament official website: <http://zakon2.rada.gov.ua/laws/show/z1336-10/paran19#n19>

²² Parliament official website: <http://zakon3.rada.gov.ua/laws/show/v0705500-14>

²³ Parliament official website: <http://zakon2.rada.gov.ua/laws/show/z0348-14>

²⁴ Parliament official website: <http://zakon2.rada.gov.ua/laws/show/v0480500-15>

4. Recommended Action Items

4.1. Greater Transparency Through Increased Public Consultation

On 8 April 2016, NBU conducted a public consultation on the Cashless Economy at the AmCham in Kyiv, which was attended by around 60 participants from the DFS ecosystem. NBU opened the event with an hour-long “stage setting” introduction that covered the recent organizational restructuring within NBU, briefly described various policy priorities and then led a detailed discussion of its future plans and activities to facilitate the Cashless Economy. The remainder of the session was highly interactive and was geared at identifying perceived barriers to wider DFS adoption and recommended steps for progress.

Numerous participants remarked that this was the first such event in more than a decade, and they explicitly welcomed more in the future. It would be mutually beneficial for NBU to socialize the forthcoming Electronic Money Regulation, once the draft is ripe for broader industry input.

In addition, several participants encouraged NBU to form a Payments Council, where the ecosystem can share experiences from the DFS in Ukraine, as well as across Europe and elsewhere, in order to avoid potential pitfalls, experiences and adopt solutions that have already achieved success.

4.2. Electronic Money Regulation

The NBU has begun drafting a new Electronic Money Regulation, with the explicit objective of broadening the ecosystem to include more non-bank providers, and also enable private investment from experienced service providers outside of Ukraine. The Deloitte advisors provided some initial guidelines for key elements that would achieve a vibrant DFS industry, including the following:

- Strive to address the requirements of the “Bottom of the Pyramid” consumers, especially those in remote and rural parts of Ukraine;
- Implement risk-based thresholds of KYC, cash transfer and cash-out;
- Address international transfers (who, how much, reporting);
- Mobile interoperability
- Agents should be agnostic (serving multiple providers, as opposed to exclusive to a single one);
- Special parameters for agents of NBFIs, credit unions, MFIs, to maximize cash in/out locations;
- Consider including a path to “full-service” provision of other financial services (branchless banking);
- Consider allowing additional currencies (for example, the Euro).

As noted above, NBU should consider public consultations to solicit the views from the ecosystem, once the draft Regulation is ripe for broader external exposure.

4.3. Support Legislation

The Parliament is presently considering a fairly robust portfolio of legislation, some of it entirely focused on DFS, while others include small elements pertaining to payments (for example, transportation sector) as well as disbursements. This list is comprehensive based on discussions with many ecosystem players, but not necessarily exhaustive and drafts were not available in English during the period of performance

(and reportedly subject to minor changes on weekly basis at this stage); the discussion below is sequenced according to importance and relevance.

4.3.1. Law on Digital Signatures

The law is needed in order to give equivalency between signatures on paper documents with those “signed” in the digital or electronic realm, for example, by authorizing a credit card charge at an online retailer secure website (like Amazon). Technically, the process of equivalency requires security via an encrypted electronic connection between the user (on phone or computer, via Internet) and the retailer or bank, plus verifiable protocols of authentication and non-repudiation. Most Western countries have adopted such legislation in the late 1990s, and the specialized United Nations institution for trade (UNCITRAL) issued a Model Law on Digital Signatures in 2001 designed for emerging markets, so adoption and application in Ukraine should not be deemed controversial (but long overdue).

4.3.2. Law on Electronic Trust

The law is needed to facilitate domestically-based electronic commerce in Ukraine, and is complementary to the Law on Digital Signatures. Basically, it will establish a GoU entity that will issue and manage the encryption keys that are at the heart of electronic commerce. It will provide confidence to consumers in Ukraine that transactions are legitimate and also provides domestic legal recourse for failed transactions and wire fraud. It may also have taxation implications, for the benefit of the GoU treasury (as more transactions are conducted domestically online)²⁵.

4.3.3. Law on Electronic Commerce

This law is needed to ensure that all laws that presently govern commerce are revised to reflect the electronic (online) sales channel, for example, the validity of contracts. As with the preceding two laws, UNCITRAL published a Model Law on eCommerce (1996) with explanatory guidelines to help emerging markets navigate this process efficiently and effectively; it is unlikely to be a controversial process in Ukraine.

4.3.4. Tax Committee

At least two leading players in the DFS ecosystem noted that the Tax Committee was considering DFS legislation, but there was insufficient time during the period of performance to track this down. In addition, a follow-up meeting with a Member of Parliament was cancelled at the last minute, and therefore this will require further research.

4.3.5. Finance Committee

One of the players in the DFS ecosystem noted that the Finance Committee was considering DFS legislation, but there was insufficient time during the period of performance to track this down. In addition, a follow-up meeting with a Member of Parliament was cancelled at the last minute, and therefore this will require further research.

²⁵ In the Czech Republic, 24% of the country’s total turnover is conducted via the online channel (2013).

4.4. Clarify Law/Regulation Scope on Agency

In order for the NBU Electronic Money Regulation to have its maximum impact in reaching the “Bottom of the Pyramid” consumers in remote and rural parts of Ukraine, it will be important to empower agents to act on behalf of the eMoney service providers. At present, it is not clear whether Ukraine’s Commercial Code adequately addresses this form of commercial relationship;²⁶ in any event, NBU should consider its own Regulation to articulate specific legal activities, including the performance of KYC, accepting deposits on behalf of licensees as well as potentially “branchless banking” whereby an agent may offer a wider portfolio of financial products, such as insurance.

4.5. Allow “Know Your Customer” (KYC) Verification by Remote Electronic Transactions

For some electronic transactions, such as international transfers, NBU regulations currently require KYC verification to be performed at bank branch (or online, in case of eCommerce transactions via pre-verified bank accounts). NBU should consider allowing interbank platform²⁷ which is similar to “Sign in with Facebook” and is approved by central banks in Scandinavia and North America.

In addition, NBU should consider adopting a new KYC regime, in tandem with new agency regime, which will allow remote KYC via secure electronic means. For example, Kyivstar is exploring the acquisition and deployment of a kiosk system developed by the Ukrainian manufacturer RENOME²⁸ that includes a built-in scanner (similar to those increasingly being used by major airlines as the first step for check-in, which scans and compares driver license or passport).²⁹ In addition, the kiosk has a live video link plus a phone handset that enables real-time interaction with a CSR. This kiosk could also be utilized for other GoU CCT enrollments, including IDPs. In addition, the current state of technology allows for more efficient methods of identification. Kiosks are obsolete and expensive, which is why they are rarely utilized in Western Europe. One bold option would be for NBU Regulations to recognize other forms of initial KYC done through mobile phone technology or online. Equivalent solutions have been adopted and approved in the EU (for example, IDnow, Postdent).

4.6. Government Should Consider Divesting PROSTIR Domestic Payments Platform

In early 2016, NBU rebranded its national payments platform as PROSTIR and has given it a central role in achieving key Cashless Economy initiative targets by 2020. PROSTIR currently has around 1.5 million users, mainly GoU salary payment debit cards. NBU documents purport the rationale for its heavy emphasis of PROSTIR is because, as a state-owned enterprise, it can rapidly deploy and scale, and also exert price pressure on commercial cards.

²⁶ The Law of Ukraine “On state registration of legal entities and physical persons – economic agencies” is slated for amendment to “ensure further development of non-cash circulation and development of retail non-cash payment through ePayment means.”

²⁷ BankID Interbank platform: <http://bankid.org.ua>

²⁸ RENOME KYC remote data acquisition with real-time CSR support: <http://www.renome-smart.com/en/banking/equipment/ITT/>

²⁹ The RENOME kiosk could also be offered as one solution to the registration of Internally Displaced Persons (IDP).

While this may be true, from a legal-regulatory perspective, this presents a clear conflict of interest, and arguably could prevent private solutions from actually entering and competing in an important market segment. NBU should take care to not foreclose competitive entry, either due to pricing, administrative practices or procedures. NBU should explore market-opening approaches, including opening the platform to become a consortium, with the ultimate objective of withdrawing state ownership over a reasonable timetable.

4.7. Other Policy Actions

In discussions with leading players in the DFS ecosystem, a few suggestions were made to accelerate DFS adoption and strengthen the market:

4.7.1. Consider Regulation That Creates Incentives to Merchants to Deploy POS and Utilize DFS

Discussions with private credit card systems surfaced pleas for a re-evaluation of the current interchange scheme. For example, VISA strongly advocates a high interchange fee, because this will provide incentives to banks and financial institutions to invest into expanding the DFS market by:

- Financial literacy campaigns
- Introducing loyalty campaigns
- Public awareness campaigns.

VISA stated that in Europe, EU only very recently mandated lowering the interchange fee to 0.2% ceiling. However, ten years ago, Europe had on average a 2.2% interchange fee. In Ukraine, the interchange fee is presently 1.5%. At this level, it barely covers the costs of deploying the needed infrastructure.

The fact remains that Ukraine is still quite early in the DFS adoption cycle, and NBU should at this stage not lose focus on the proportionately larger benefits that DFS could provide to BOP consumers, for whom even 1.5% is not insignificant – and in economic terms, could be the marginal cost that prevents shifting to non-cash payments.

4.7.2. Educate Consumers (financial literacy and financial inclusion)

In addition to the industry-funded activities noted above, NBU should consider its own campaign to educate consumers, in tandem with its Cashless Economy strategy and in particular the implementation of the Electronic Money Regulation.

5. Recommended Timetable for Action Items

Not much progress can be made to achieve the NBU's ambitious DFS targets under its Cashless Economy initiative until the suitable enabling legal-regulatory instruments have been promulgated and then service licenses issued to commercial providers. Therefore, the immediate focus must be on the Electronic Money Regulation (EMR), which includes drafting, public consultations, adoption, and issuance of licenses. It is recommended that assistance be provided to NBU to kick off this process with a public consultation in July, which will potentially allow the issuance of licenses by the end of 2016. Additional tasks and illustrative work plan is found in Appendix C.

Appendix A – List of Meetings

USAID

American Embassy Kyiv – USAID

4 Igor Sikorsky Street

Kyiv 04112 Ukraine

<http://ukraine.usembassy.gov/>

<http://ukraine.usaid.gov/>

Steve Gonyea, USAID Director Office of Economic Growth (OEG)

O: +380-50-469-7466

Direct US dial: +1-301.985-8659 x5494

sgonyea@usaid.gov

Natalia Berezhna, USAID OEG – FSN of the Year 2013

Program Manager – Financial Sector (finance, pensions, investment)

O: +380 44 521-5715

M: +380 50 352-9872

Direct US dial: +1-301-985-8659 x5715

nberezhna@usaid.gov

Timothy Dubel, USAID eGov Advisor

Regional Mission for Ukraine, Belarus, Moldova & Cyprus

M: +380-50-310-1790

tdubel@usaid.gov

Parliament (Verkhovna Rada)

Cabinet of Ministers

Verkhovna Rada of Ukraine (Parliament)

12/2 Hrushevskoho Str (Committee office annex)

Kyiv

www.rada.gov.ua

Oleksandr Danchenko, Chair

Committee for Informatization & Communications

O: +380-44-255-2609

Danchenko.oleksandr@rada.gov.ua

National Bank of Ukraine (NBU)

National Bank of Ukraine (NBU)

9 Instytutska Street

Kyiv 01601 Ukraine

www.bank.gov.ua

Vladyslav Rashkovan, NBU Deputy Governor (DG)

O: +380-44-230-1915

Vladyslav.rashkovan@bank.gov.ua

Sergiy Shatskyi, NBU Director of Retail Payments Department - Leader of the NBU Cashless Project

M: +38 050 382 82 89

serhii.shatskyi@bank.gov.ua

Natalia Lapko, NBU Director of the Payment Systems Department - NBU Cashless Project team

M: n/a

email: n/a

Julia Liakh, NBU Office for Banking System Strategy and Reform - Project Manager – Cashless project

M: +38 096 714 38 46

Yuliia.Liakh@bank.gov.ua

Tatiana Rulcheva, NBU Head of International TA Coordination and Bilateral Relations

O: +38 044 230 18 39

rta@bank.gov.ua

Inna Protsko, NBU Division of Bilateral Cooperation

O: +380-44-230-1839

Inna.protsko@bank.gov.ua

National Telecom Commission (NCCIR)

National Commission for the State Regulation of Communications & Informatization (NCCIR)

22 Khreshchatyk Street (Main Post Office Building – 7th floor)

Kyiv 01001

www.nkrzi.gov.ua

Alexander Skliarov, PhD, Member of NCCIR

O: +380-44-278-9795

M: +380-50-310-0234

o.skliarov@nkrzi.gov.ua

Victor Lagoshin, Member of NCCIR

O: +380-44-278-9796

M: +380-67-400-0115

v.lagoshin@nkrzi.gov.ua

Plus: 2 NCCIR attorneys, one NCCIR economist and International Relations liaison

Professional Sector Associations

Ukrainian Interbank Payment System Member Association (EMA)

Mykilsko-Slobidska Street, 2B – entrance 5(1), 15th floor, office 177

Kyiv 02002 Ukraine

www.ema.com.ua

Oleksandr Karpov, EMA Director

O: +380-44-568-5838

M: +380-50-311-6721

aKarpov@ema.com.ua

Diana Gubska, EMA Attorney

O: +380-44-568-5838

M: +380-93-549-2830

dg@ema.com.ua

Ukraine Telecom Association – TELAS

3 Solomjanska Str #808

Kyiv 03110

www.telas.kiev.ua

Leonid Osherov, TELAS Head of Council

O: +380-44-248-9171

astelas@ukrpack.net

DFS Ecosystem

Kyivstar (MNO)

53 Degtyarivska Street

Kyiv 03113 Ukraine

www.kyivstar.ua

Mr Taras Gorkun, Kyivstar Head of Treasury & Mobile Financial Services

M: 380-67-225-2110

Taras.gorkun@kyivstar.net

VISA (Ukraine)

Kyiv 03113 Ukraine

Dmytro Krepak, VISA Country Manager

dkrepak@visa.com

UniCredit Bank

Zhylyanska St., 9/11

Kyiv, Ukraine, 01033

<http://www.unicredit.com.ua>

Dmytro Kovalenko, First VP, Head of Marketing & Segments

M: + 380-67-877-8855

Dmytro.kovalenko@unicredit.ua

Liubov Syrovatska, Head of Service, Clients & Segments Department, Retail Division

O: +38 044 289 01 73, int. 88250 54 64

M: +38 050 442 59 14

Liubov.Syrovatska@unicredit.ua

Appendix B – NBU Regulatory Dept. Consolidated Questions for Discussions

Part 1: Technical Assistance Request, Mobile Banking

1. Which authority is responsible for state regulation of MTOs? What legislation are the MTOs subject to in terms of extending money transfer services (laws and regulations in the area of payments and payment systems or specialized legislation)?
 2. Do central banks regulate activities of MTOs?
 3. Is regular business of MTOs separated from money transfer activities thereof? If so, in what way?
 4. How is the right of MTOs to render money transfer services confirmed (through registration, licensing etc.)?
 5. Licensing/registration/permit procedure for MTOs to render money transfer services.
 6. Are money transfer activities of MTOs regulated in the same way as e-money issuing and using?
 7. Procedure for authorizing (granting permit to) MTOs to issue and use e-money.
 8. How are the funds, obtained by MTOs for transfer, recorded: on a separate account or same account whereon money paid for telecom services are recorded?
 9. Recommendations as to mobile payments implementation in Ukraine. For your information, please, find attached short summary of regulatory landscape in the area of mobile payments in Ukraine.
 10. Proposals as to a model for regulating mobile payments, which may be implemented in Ukraine (including division of authorities between regulators).
 11. Typical risks related to mobile payments implementation. Challenges or obstacles arising in regulating MTOs in terms of money transfer activities thereof.
 12. “Lessons learned” based on your own experience in developing mobile payments.
 13. Recommendations/proposals to the NBU Cashless project team and management related to the above issues and further regulation of MTOs’ money transfer activities.
-

Part 2: Regulatory Landscape in Ukraine in the Area of Mobile Payments

1) Performing their activities, Mobile Telecommunication Operators (MTOs) are subject to the Law of Ukraine *on Telecommunications*, whereunder they are authorized to extend telecom services. This law does not provide for money transfer services to be provided by MTOs.

2) The Law of Ukraine *on Telecommunications* does not provide for customers' money prepaid for telecom services to be paid for services other than telecom.

Under Article 68 of the Law of Ukraine *on Telecommunications* payments for telecom services shall be made, provided a customer has been rendered the service he/she ordered and prepaid. If prepayment was not used over a billing period, the remaining balance will be credited to the next billing period, unless otherwise defined in the contract. Debiting balance of customer's account by MTOs or mobile network operators (MNOs), including for their own benefit, is not allowed.

3) Pursuant to Articles 4 and 5 of the Law of Ukraine *On Financial Services and State Regulation of Financial Services Markets* (hereinafter referred to as the *Law On Financial Services*), money transfers are financial services that can be provided by financial institutions.

General procedure for money transfers within Ukraine is determined by the Law of Ukraine *on Payment Systems and Money Transfers in Ukraine* (hereinafter referred to as the *Law on Payment Systems*).

In accordance with Article 9 of the *Law on Payment Systems*, money transfers in Ukraine can be performed via domestic and international payment systems. Banks and other financial institutions, licensed by the National Bank of Ukraine for money transfers without opening accounts, can be members of payment systems.

Specifics of e-money issuing is determined in Article 15 of the *Law on Payment Systems*, whereunder only banks are authorized to issue e-money.

4) Operations of MTOs and money transfer activities are regulated by different authorities:

- Money transfer activities are subject to regulating by the National Bank of Ukraine (Article 21 of the *Law on Financial Services*);

- Regulatory authority in the area of telecommunications is the National Commission for the State Regulation of Communications and Informatization (Article 17 of the *Law On Telecommunications*).

5) Ukrainian legal framework has no requirements and does not designate any authority to perform state regulation and supervision over MTOs in the area of financial monitoring.

The National Bank of Ukraine performs state regulation and supervision over resident non-bank financial institutions that are payment institutions and/or members or participants of payment systems, with regard to money transfer financial services which they extend under a special license, in particular, under that of the National Bank of Ukraine (except for postal service operators with regard to money transfer services provided by them), branches of foreign banks and banks (Article 14 of the *Law of Ukraine On Preventing and Counteracting Legalization (Laundering) of the Proceeds from Crime, Terrorism Financing and Financing Proliferation of Weapons of Mass Destruction*).

Appendix C – Proposed Work Plan (June – December 2016)

Objective 4: Mobile banking/payments, technology and innovation to restore formal financial transactions in underserved areas. The main objective of this activity is to support formulation of regulations for e-payments and cashless economy, developing e-payments and their infrastructure, transition of government benefits, humanitarian aid assistance, payroll, and supplier payments from cash to electronic. This component will engage in the following activities:

Work Plan: Legal-Regulatory Support, Jun - Dec 2016 (Proposed)											
	Jun	July	Aug	Sept	Oct	Nov	Dec				
TASK 1: Greater Transparency Through Increased Public Consultation											
Provide support to re-activation of the Payments Council, to coordinate legal-regulatory actions amongst Parliament, NBU and DFS ecosystem											
TASK 2: Electronic Money Regulation											
Assist drafting EMR											
Assist Public Consultation on EMR											
Assist Promulgation of EMR											
Assist Licensing Process											
Assist Public Awareness Campaign											
TASK 3: Clarify Law/Regulation Scope on Agency											
Conduct legal-regulatory review to verify current framework for agency and propose recommendations to NBU (and possibly Parliament)											
TASK 4: Facilitate “Know Your Customer” (KYC) Verification by Remote Electronic Transactions											
Conduct review of KYC requirements and propose options for flexibility, particularly to address IDP population											

Deloitte Consulting LLP
1919 N. Lynn Street
Arlington, VA 22209
Phone: +1 571 882 5000
Fax: +1 571 882 5100