Reforming the Security of Classified Information in Ukraine

From 2014 to 2023, the Verkhovna Rada of Ukraine received six draft laws on state secrecy. Four of these draft laws were registered during the eighth convocation of the Parliament, while the remaining two were during the ninth. A notable feature of these legislative initiatives was the focus on establishing a special protocol for classified information security, extending the scope of the regulation to military authorities, and limiting the number of people with access to state secrets. The latter restriction was mainly intended for individuals with dual citizenship (in Ukraine, only one citizenship is legally allowed). However, the beginning of the full-scale war and the increasing risk of classified information leaks highlighted the need for more comprehensive and consistent changes in regulating this sphere in Ukraine.

As of today, the most relevant and systematic is the draft law №8394 “On the Security of Classified Information.” It was initiated by a group of MPs led by Fedir Venislavsky and registered by the Verkhovna Rada in January 2023. This draft law proposes the following changes:

1. Introduction of the term “Classified information”. The new term will replace the concepts of “state secret” and “official security information.”
2. Establishment of the State Secrets Classifier, an act summarizing the categories of information classified as state secrets and their respective classification levels.
3. The period of verifying the individuals seeking access to classified information is to be extended. The reasons for denying access to such information are to be broadened. This provision includes differentiation of the scope of the verification depending on the degree of secret information. Additional reasons for denying access include requirements of financial, anti-corruption legislation, and other factors that make a person vulnerable to pressure from foreign special services, terrorist, and criminal groups, etc.
4. Implementation of new approaches to the physical security of restricted information. This can be achieved by dividing the circulation zones based on the storage conditions of the secret information’s physical medium.
5. Changing the procedures for classifying information. In the draft law, the classification of secret information is carried out by high-ranking officials of Ukraine, such as the President, the Head of the Verkhovna Rada, etc.
6. Refining the role of state experts on the security of classified information and narrowing their functions to exclusively analytical ones. In the current version of the law, experts have the authority to classify information as secret. However, in draft law №8394, experts are only provided with analytical and advisory functions.

7. Establishing mandatory briefings for individuals who have access to classified information. Such briefing includes the rules for using and protecting secret information.
8. Supplementing information related to state secrets with information on cyber security, cyber protection of critical information infrastructure, and special purpose mail. At the same time, information related to the economy, science, and technology fields, specifically about the extraction of strategic raw material reserves and state reserves of monetary group precious metals, was removed from the list.

It is worth noting that these changes are primarily based on the National Security Strategy of Ukraine, approved in 2015. The Strategy is a response to the outdated system of state secret protection. Therefore, it envisages reforming the system of state secrets security and the safety of state information resources, considering the practices of NATO and EU member states.

According to the National Security Strategy, Ukraine's state secrets protection system should align with the standards of NATO. Thus, it is essential to mention the main NATO document on classified information security – C-M(2002)49. This document outlines the following principles that must be adhered to when dealing with classified information: depth, centralization, need-to-know, and Personnel Security Clearance (PSC). These principles are partially integrated into Ukrainian legislation, precisely the principles of centralization and depth. However, it cannot be said the same about the "need-to-know" and PSC approaches, recognized as priorities in NATO countries.

Regulation of the Security of Classified Information in Ukraine

Currently, the state secret security sphere in Ukraine is regulated by the Law of Ukraine "On State Secret". Additional provisions regarding state secrets are included in the Ukrainian Laws "On Information" and "On Access to Public Information". In turn, state secrets refer to classified information in the fields of defense, economy, science, technology, foreign relations, state security, and law enforcement. The disclosure of such information could potentially harm Ukraine's national security.

State secret include information on:

- the military operations and readiness of the Armed Forces of Ukraine;
- the use and the development of new weapons;
- the personnel of the Armed Forces of Ukraine;
- mobilization plans;
- production of strategic raw materials;
- defense procurement;
- information on the organization and procedure for the protection of state facilities, etc;
- state secrets also include secret information received from a foreign state or international organization.

Information classified as a state secret is categorized into three levels: "especially important", "top secret", and "secret". On its part, the Security Service of Ukraine regulates access to the state secret based on various factors. For example, access may be denied due to the absence of necessity, affiliations with foreign structures, participation in banned political parties, mental health conditions,

convictions for serious crimes, provision of false information, residence abroad, or failure to fulfill responsibilities.

One area for improvement for now is the inclusion of declarations of the Security Service of Ukraine employees in the list of confidential information. Notably, the Security Service of Ukraine itself determines the types of confidential information and decides whether to grant the declarations of its employees the status of state secret. The determination and classification of declarations of employees of the Security Service of Ukraine as secret information prohibits open access to them, which makes such essential elements of the anti-corruption policy as public control over current and past offenses impossible. The lack of control by the civil society creates serious corruption risks in the activities of the Security Service of Ukraine.

Known Instances of Classified Information Leaks

The issue of protecting and managing classified information is not highly relevant in Ukrainian media or even the expert community. Yet paradoxically, the practice of intercepting classified information began long before February 2022. Remarkably, the public is aware of at least three notorious incidents, as follows:

1. The editors of “Ukrainska Pravda” obtained an unauthorized development program for the Ukrainian military-industrial complex, which they subsequently published in an article. As a result, the Ukrainian Security Service identified a violation of state secrets, which led to the article’s removal from public access.
2. During the search at the editorial office of the online media source “Strana”, a certain hard drive was seized. It contained information from the Ministry of Defense of Ukraine and might have included state secrets.
3. The most famous example of potential classified information leakage is the case of a PMC “Wagner”, known as “Wagnergate”. According to testimonies from some civil servants, the operation’s “failure” was caused by leaks of information about its preparation and implementation by high-ranking officials. Some authorized persons accused the Office of the President of Ukraine of leaking secret information. Meanwhile, the temporary investigative commission concluded that there was no evidence of information leakage from the Ukrainian side. The lack of further investigations into the possibilities and persons involved in the leak of classified information at various stages of the public discussion of the “Wagner” case demonstrates an imperfect level of screening of persons for granting access to classified information, protection of secret information, and further investigations. Despite the new draft law №8394 proposal to create briefings on classified information, some high-ranking Ukrainian officials still manage to access this secret information. Hence, the “Wagnergate” incident is an example of how this access doesn’t prevent information leakage.

About this update on Ukraine's Verkhovna Rada

Ukraine's democratically elected officials continue to perform their duties while enduring Russia's unprovoked and horrific invasion. These briefing notes provide the latest information about the legislative activities of the Verkhovna Rada.

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