European Business Association

WITH THE SUPPORT

INTERNATIONAL RENAISSANCE FOUNDATION

MOVING FORWARD TOGETHER

PROPOSALS

FOR THE ECONOMIC RECOVERY OF UKRAINE AND ITS INTEGRATION INTO THE EU SINGLE MARKET

2024

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INTRODUCTION

The economic recovery of Ukraine after the large-scale military aggression of the Russian Federation is an urgent need to ensure the country's sustainable development and integration into the European space. The European Business Association is deeply convinced that Ukraine and the European Union should unite their efforts to create a favourable business environment that will allow the Ukrainian economy to recover quickly, attract investment, and ensure sustainable development.

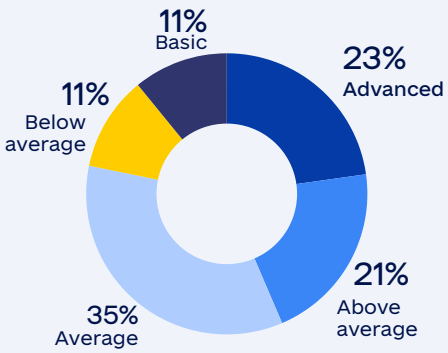
This document outlines the key challenges faced by businesses in critical sectors of the economy, such as taxation, trade, energy, and agriculture. The suggested changes are aimed at strengthening transparency, combating the shadow economy, introducing tax incentives, and modernizing the legislative framework.

We call on the Government of Ukraine, together with the European Union, to urgently develop and implement the necessary reforms that will contribute to the stabilization of the economy, the strengthening of public finances, and the integration of Ukraine into the European economic space. Timely and effective implementation of these reforms is key to Ukraine's recovery, attracting foreign investment, and ensuring sustainable development in the post-war period.

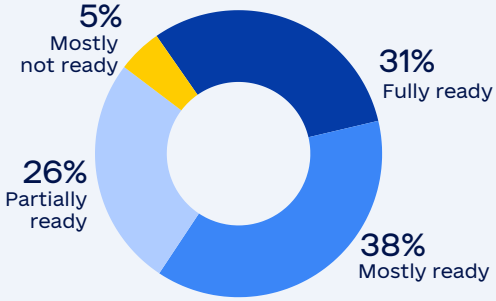
Only through joint efforts and decisive steps will we be able to build a successful future for Ukraine as an equal member of the European community.

BUSINESS CONFIRMS ITS COMMITMENT TO THE EUROPEAN INTEGRATION COURSE

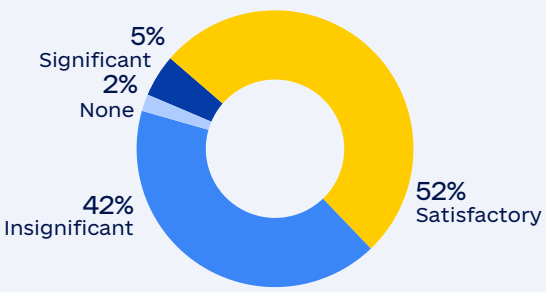
LEVEL OF BUSINESS AWARENESS OF EU REQUIREMENTS



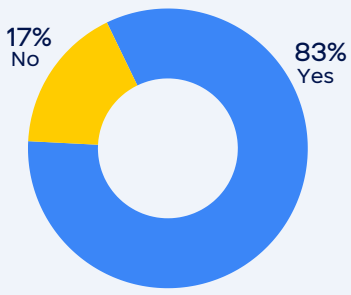
READINESS TO OPERATE IN THE EU MARKET



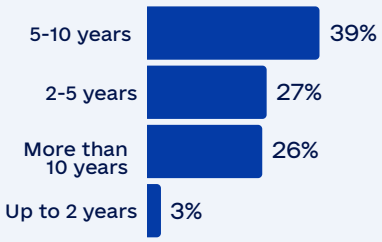
UKRAINE'S PROGRESS IN FULFILLING EU INTEGRATION COMMITMENTS



FORMING A NEGOTIATING POSITION



MEMBERSHIP PERSPECTIVE



The results of **The Impact of the European Integration Movement of Ukraine on Business** special survey, conducted among the member companies of the European Business Association, demonstrate mostly positive assessments of the impact of European integration on the work of companies and their willingness to participate in the development of Ukraine's negotiating position.

According to the survey, the majority of companies, namely 71%, positively assess the impact of the European integration movement of Ukraine on their business, while 21% do not feel any impact, and 8% assess this impact as negative.

It should be noted that 83% of businesses are ready to join the formation of Ukraine's negotiating position on accession to the EU.

The surveyed companies mostly testify to their readiness to work in the European Union market. Thus, 31% believe that they are fully ready to conduct activities in the EU, 38% are mostly ready, 26% are partially ready. Only 5% are currently not ready for the most part to work according to European rules and standards.

At the same time, 44% of survey participants highly appreciated the level of awareness in their company of EU rules and requirements. 35% of companies have an average level of awareness, 11% have a lower than average level of awareness, and 11% have an initial level of awareness.

Estimates of overall progress in the implementation of Ukraine's European integration commitments are more polarized. In general, 52% of respondents believe that Ukraine's progress in this area is satisfactory, and 5% consider it significant. At the same time, another 42% assess Ukraine's European integration efforts as insignificant, and 2% believe that there is no progress at all.

If we talk about individual directions, the survey participants see the greatest progress in the field of digital transformation and media, transport policy, agriculture, and the development of rural areas. Ukraine demonstrates the least achievements in the direction of the judiciary and fundamental rights; justice, freedom, and security.

According to the survey participants, business has the best dialogue on European integration issues among state authorities with the Cabinet of Ministers of Ukraine (2.92 points), followed by other Central Government Authorities (2.81 points), the Verkhovna Rada (2.53 points) and local authorities (2.46 points out of 5 possible).

According to business, Ukraine's faster implementation of its European integration obligations is hampered by low institutional capacity, including a lack of resources and professional personnel, insufficient expertise of public authorities, the public and business, and a lack of political will.

According to 39% of respondents, it will take Ukraine from 5 to 10 years to become a full member of the EU. Another 30% believe that we will be able to join the EU within the next 5 years, and 26% assume that it will take more than 10 years.

For reference:
The survey was conducted from 25 June to 22 August 2024, among the member companies of the European Business Association. Among the surveyed companies, 59% supply goods or services to the EU market, 58% import goods or services from the EU market, 8% plan to enter the market.
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EXECUTIVE SUMMARY

This document contains recommendations on the key reforms necessary for the stabilization and recovery of the Ukrainian economy. The main focus areas of this document are tax policy, import, trade, energy, and agriculture. The European Business Association (hereinafter referred to as the Association) has prepared a number of specific proposals to improve the business environment and attract investment.

1. TAX REFORM:

- Problems of taxation of individuals: There is a need to reduce the tax pressure on individuals and introduce tax incentives for households. Currently, the system raises questions about its fairness, which creates conditions for tax evasion.
- Taxation for Ukrainians abroad: In connection with migration due to the war, it is important to avoid double taxation of Ukrainian citizens and to coordinate their tax residency status with other countries.
- Transparency in CFCs and transfer pricing: It is important to adopt comprehensive tax advice to address issues with controlled foreign companies (CFCs) and transfer pricing.
- Combating smuggling and the shadow economy: Strengthening the fight against the illegal market and the unshadowing of the Ukrainian economy as a whole is proposed.

2. ENERGY AND ECOLOGY:

- Proposals for the development of green energy: It is necessary to develop laws and regulations that will contribute to the development of green energy and the integration of Ukraine into European energy markets.
- Energy efficiency: Investments in projects related to increasing energy efficiency will be able to reduce energy resource costs and reduce Ukraine's dependence on fuel imports.
- Green transition and protection of domestic producers: Introduction of an emissions trading system in Ukraine, taking into account European experience and military realities, defending the position on the release of Ukrainian exporters to the EU from the Carbon Border Adjustment Mechanism (CBAM), reforming the waste management sector, and introducing the principles of a circular economy.

3. AGRICULTURE:

- Investments in the restoration of the agricultural sector: Measures are needed to increase agricultural productivity, in particular by modernizing infrastructure and providing tax incentives for farmers.

4. HUMAN RESOURCES AND RECONSTRUCTION:

- The problem of labour shortage: The war and migration processes have led to a significant reduction in the labour force in Ukraine, which poses risks to the rapid economic recovery. It is important to develop a comprehensive programme for the reintegration of IDPs and veterans, improving the skills of employees, and encouraging the return of Ukrainians from abroad.
- Education and training of personnel: It is necessary to invest in training programmes and professional training to provide business with qualified personnel, especially in areas of strategic importance for the reconstruction of the country (construction, energy, infrastructure).
- Pension reform: The introduction of a sustainable pension system is an important element for ensuring social stability and supporting older segments of the population, which can contribute to reducing labour migration.

In general, the Association's document emphasizes the need to improve the current legislation, ensure the transparency of the business environment, and introduce incentives for economic recovery under martial law and post-war reconstruction.

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TAX MATTERS

The Need to Amend the Current Legislation in the Field of Personal Income Tax

According to the Association's experts, the current system of taxation of income of employees (individuals) is somewhat excessive and raises questions about its effectiveness. On the one hand, there is a high tax burden (personal income tax—18% [1], unified social tax—22% [2], military fee—1.5% [3]), and on the other hand, there is a disproportionately low social security on the part of the state for the general population of Ukraine. In addition, the draft Law On Amendments to the Tax Code of Ukraine on the Peculiarities of Taxation during the Period of Martial Law No. 11416-д dated 30 August 2024 proposes to increase the military fee rate to 5%. At the same time, the member companies of the Association note that the existing taxation system allows the use of tax evasion schemes by dishonest taxpayers, which significantly worsens the competitive environment for transparent business, due to which it is more appropriate to focus efforts not on raising taxes, but on combating tax evasion.

Solution:

To develop and adopt a law to amend the Tax Code of Ukraine (hereinafter referred to as the TCU) in terms of personal income taxation, which will introduce a transparent system of tax incentives for conscientious taxpayers, as well as tax discounts for socially vulnerable categories. One such incentive may be the introduction of a household taxation system. However, it is necessary to reasonably and carefully introduce changes, without violating the principle of stability of tax legislation.

At the same time, changes to the Tax Code should both encourage taxpayers to pay personal income tax in good faith and prevent existing schemes of tax evasion.

We consider it appropriate to introduce a risk-oriented system that would take into account well-known schemes for minimizing the tax burden on the wage fund. This, first of all, will affect those business entities that resort to minimizing the payment of personal income tax.

The Need to Avoid Double Taxation of Incomes of Ukrainian Citizens

Due to the armed aggression of the Russian Federation during the period of the legal regime of martial law, starting from 24 February 2022, numerous citizens of Ukraine were forced to leave the territory of Ukraine. Given this, there is a problem in determining their status as tax residents. At present, the absence of an unambiguous position at the state level on determining the status of a tax resident of an individual who is a citizen of Ukraine (including, but not limited to, those citizens registered as individual entrepreneurs) often leads to the recognition of such persons as tax residents of the receiving countries and, as a result, may lead to double taxation of income of these persons, which will contradict international treaties on avoidance of double taxation.

[1] Personal income tax, the tax rate are provided for in clause 167.1 of Article 167 of the Tax Code of Ukraine.
[2] Unified social tax, the amount of which is provided for in Part 5 of Article 8 of the Law of Ukraine On Collection and Accounting of the Unified Social Tax for Compulsory State Social Insurance No. 2464-VI dated 8 July 2010.
[3] The rate of military fee is provided for in subclause 1.3 of clause 161 of subsection 10 of Section XX of the Tax Code of Ukraine.

Solution:

The Government of Ukraine has to coordinate with the competent authorities of the countries with the largest concentration of Ukrainian temporarily displaced persons, approaches to the practical application of acquiring the status of tax resident, taking into account the above.

We also consider it necessary to simplify the crediting of taxes paid abroad in Ukraine.

The Need to Clarify the Tax Legislation of Ukraine on the Application of the Rules on Controlled Foreign Companies (hereinafter referred to as the CFCs), Introduced by the Law of Ukraine On Amendments to the Tax Code of Ukraine on Improving Tax Administration, Eliminating Technical and Logical Inconsistencies in Tax Legislation No. 466-IX Dated 16 January 2020, as Part of the Implementation of the Anti-Erosion and Profit Shifting (BEPS) Plan.

Despite numerous clarifications of the TCU, an ambiguous understanding of the existing norms on transfer pricing to the CFCs leads to their different application in practice. In addition, some of the approaches laid down in the mentioned tax rules seem unreasonably burdensome.

Solution:

To clarify the practical application of the current transfer pricing rules to the CFCs, it is necessary to develop and adopt a draft generalized tax consultation (hereinafter referred to as the GTC) or a number of such consultations. According to the information of the Association's member companies, a group of experts of the Expert Council on the GTC Preparation (hereinafter referred to as the Expert Council) under the Ministry of Finance of Ukraine (hereinafter referred to as the MoF) has prepared a draft that is awaiting approval by the MoF.

As a long-term solution, it is necessary to adopt a draft law on amendments to the CFC rules in order to eliminate the identified contradictions and discrepancies regarding these rules and in order to generally improve the CFC rules.

The Need to Approve Generalized Tax Consultations on the Practical Use of Certain Provisions of Tax Legislation

Given the ambiguity of certain provisions of the tax legislation, there is a need for the Expert Council under the MoF to provide recommendations and proposals for the adoption of a number of draft GTCs.

Among the issues regarding the practical application of tax legislation rules, which require official clarification in the relevant GTCs: the procedure for applying penalties for failure to report on CFCs; preparation of primary accounting documents in electronic form; methodology for determining profits for foreign companies that have permanent establishments in Ukraine; methodological explanations on recent changes in transfer pricing.

Solution:

Development and adoption of draft GTCs:

- Draft GTC on CFC reporting.
- Draft GTC on taxation of royalties for items of intellectual property.
- Draft GTC on the use of simple digital signatures in the preparation of personnel documents and primary accounting documents.
- Draft GTC on accounting, reporting, and audits of foreign companies and their representative offices.
- Draft GTC on transfer pricing.
- Draft GTC on constructive dividends.
- Draft GTC on the write-off of fixed assets, inventory items (hereinafter referred to as IIs), other assets from the balance sheet, control over which has been lost by the business entity as a result of the temporary occupation of some territories of Ukraine and/or if they are located in the territories of active hostilities.

Annual Amendments to the TCU and Some Legislative Acts of Ukraine to Ensure the Filling of the Revenue Side of the Budget

The government annually initiates an increase in tax rates for integral businesses, while leaving out the real fight against the shadow sector of the economy. Thus, it is becoming economically unprofitable to engage in fair business in Ukraine

Solution:

- Facilitating the adoption of amendments to the TCU, which relate to the clarification of the current rules of the TCU regarding Diia-City in terms of calculating the average monthly remuneration for the employees and gig specialists involved in accordance with the actual number of days of work.
- Prevention of violation of the principle of stability of tax legislation, the terms of introduction of changes must comply with the requirements of Article 4 of the TCU.
- Prevention of a selective significant increase in the tax burden on certain industries (in particular, the tobacco industry, the mining and metallurgical complex and gas production, banks).
- Preventing an increase in the value added tax rate (hereinafter referred to as VAT).
- Preventing an increase in taxation on personal income for fair businesses and combating income hidden from taxation.

Prevention of the Cancellation of the Increase in the Amount of Fines for Non-issuance of Fiscal Checks Introduced for the Purpose of Unshadowing the Economy

The Association supported the adoption of the Law of Ukraine On Amendments to the Law of Ukraine On the Use of Registrars of Settlement Transactions in the Field of Trade, Catering, and Services and other laws of Ukraine on the unshadowing of settlements in the field of trade and services No. 128-IX dated 20 September 2019 and the Law of Ukraine On Amendments to the Tax Code of Ukraine on the Unshadowing of Settlements in the Field of Trade and Services No. 129-IX dated 20 September 2019 (hereinafter referred to as Law No. 128-IX and Law No. 129-IX, respectively), as well as increasing the responsibility of businesses for failure to issue fiscal checks. Full application of the provisions of Laws No. 128-IX and No. 129-IX, in the opinion of business representatives, should in the future contribute to bringing the Ukrainian economy out of the shadow and create equal conditions for doing business.

At the same time, the Association is concerned about the registration of a number of legislative initiatives aimed at the complete abolition of the progressive provisions of Laws No. 128-IX and No. 129-IX or their significant reduction, for example, by excluding from their action e-commerce or excluding the requirement for mandatory sales of household appliances and electronics with a fiscal check.

Solution:

The Association considers it inappropriate to adopt the draft Law On Amendments to the Tax Code of Ukraine on the Unshadowing of the Economy and the Equitable Use of Payment Transaction Registrars by Individual Entrepreneurs (PEs) and the Income Accounting Book No. 4468 dated 7 December 2020, the draft Law On Amendments and Supplements to the Tax Code of Ukraine and Other Laws of Ukraine for the Purpose of Unshadowing the Economy and the Equitable Use of Payment Transaction Registrars by Individual Entrepreneurs (PEs) No. 4468-1 dated 21 December 2020.

Improving the Functioning of the Unified Register of Tax Invoices

Solution:

- To consider not applying penalties for violation of the terms of registration of tax invoices and/or calculations of tax invoice adjustment during the period of incorrect functioning of the Unified Register of Tax Invoices.
- To apply automatic mailing to taxpayers in real time about technical malfunctions of the VAT invoice registration system.

The Need to Amend the Current Legislation on the Taxation of Charitable Assistance of Enterprises in Favour of Non-Profit Organizations

Since 24 February 2022, since the beginning of the full-scale war in Ukraine, which was unleashed by aggressor country Russian Federation, new priorities for Ukrainian business have become not only the security of their employees and their families, and the continuation of activities, but also assistance to the military in the defence of the country and affected citizens. Despite shelling, missile attacks, limited energy resources, logistical constraints, and many other wartime challenges, businesses in Ukraine are working to save jobs, pay taxes, and provide charitable assistance.

At the same time, to date, participation in charitable activities of enterprises is limited to 4% of the assessable profits of the previous reporting year, because in case of exceeding this limit, the taxpayer must increase its financial result before tax in accordance with the requirements of subclause 140.5.9 of clause 140.5 of Article 140 of the TCU. Business faces cases when it is impossible to import military goods on its own at the request of the defenders, so it donates funds to the benefit of non-profit organizations (foundations) that have the necessary licence and qualifications to purchase such goods. In this case, the provision of sub-clause 69.6 of clause 69 of subsection 10 of section XX of the TCU, which provides for the non-application of the adjustment specified in sub-clause 140.5.9 of clause 140.5 of Article 140 of the TCU, does not apply, so the benefactors bear additional significant tax costs, which significantly limits their ability to help.

In addition, as business representatives note, a significant number of large and medium-sized enterprises suffered losses in 2023. The shortage of electricity, emergency and stabilization schedules forced industrial enterprises to reduce or even suspend production, and commercial enterprises and the service sector had to significantly increase the cost of providing electricity. As a result, according to the results of the full year 2023, the share of unprofitable enterprises will become much larger. Under such conditions, business will not be able to apply sub-clause 140.5.9 of clause 140.5 of Article 140 of the TCU, which is provided only for profitable enterprises.

Solution:

To adopt the draft Law On Amendments to Section XX ‘Transitional Provisions’ of the Tax Code of Ukraine on Encouraging the Provision of Charitable Assistance in Favour of Non-Profit Organizations No. 9177 dated 3 April 2023 (hereinafter referred to as Draft Law No. 9177), which provides for an increase to 10% of the assessable profits of the previous reporting year for the non-application of the adjustment provided for in sub-clause 140.5.9 of clause 140.5 of Article 140 of the TCU. In addition, we suggest providing in Draft Law No. 9177 for the opportunity for enterprises that have suffered losses not to apply the adjustment provided for in sub-clause 140.5.9 of clause 140.5 of Article 140 of the TCU for charitable assistance at a cost not exceeding 2% of the net income from the sale of products (goods, works, services) of the previous reporting year.

Introducing a System of Operational Exchange and Processing of Tax and Non-Tax Information about Taxpayers according to the standard audit file (SAF-T) online

Solution:

To postpone the introduction of mandatory exchange of information with the tax authorities solely to this format, since there are a number of technical reasons that require significant funds and time to be eliminated by both the State Tax Service of Ukraine (hereinafter referred to as the STSU) and companies.

Elimination of a Legal Conflict of the Assignment of the Taxpayer's Risk Status and the Riskiness of Transactions

Experts of the Association believe that since the Tax Code of Ukraine does not contain the concept of ‘risky taxpayers’ or ‘risky transactions’, the by-laws should not further define this status and highlight violations that are not provided for by the Tax Code of Ukraine. As a result, such by-laws create grounds for blocking the activities of taxpayers without conducting documentary audits.

Вирішення:

It is necessary to determine at the level of the Tax Code that the tax service may decide to block tax invoices only after conducting a documentary audit.

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CUSTOMS MATTERS

Counteraction to the Sale of Smuggled Products Online

Solution:

It is necessary to amend the legislation in the field of consumer protection and e-commerce, in particular, to regulate at the legislative level the activities of such players in the field of e-commerce as marketplaces and price aggregators, as well as to determine clear provisions on the rights and obligations of each e-commerce entity and to provide effective mechanisms for prosecuting violations of the law. This, in turn, will both strengthen the protection of consumer rights and help reduce the volume of sales of smuggled and counterfeit products

The Problem of Illegal Import

Solution:

It is necessary for the State Customs Service of Ukraine to audit the procedures in order to reduce the time for customs clearance of goods. The introduction of the procedure for customs clearance based on the back office principle (the distribution of customs declarations for clearance should be random, taking into account the workload of the authorities and their key competence), regardless of the customs office of delivery.

Development of an Appropriate Effective Operation Procedure of Customs Inspectors. Introduction of digitalization of all stages of communication between declarants and representatives of the State Customs Service of Ukraine (hereinafter referred to as the SCS). This will make it possible to avoid corruption risks in the field of customs control.

Solution to the Problem of the Lack of High-Quality Customs Post-Audit

To reduce the time of customs clearance when crossing the customs border, part of the inspection done by the SCS inspectors can be postponed to the following periods.

Solution:

It is necessary to develop and adopt laws and regulations to regulate the procedure for conducting a customs post-audit.

The Need to Create Legal Regulation for the Introduction of the Free Customs Zones Regime

Solution:

Adoption of by-laws of the Ministry of Finance of Ukraine, which will determine the procedure for recording the movement of goods in accordance with Chapter 21 of the Customs Code of Ukraine, namely, the regime of free customs zones.

Lack of a Separate Customs Clearance Procedure for the Importation of Used Personal Belongings

Currently, the customs legislation of Ukraine in force considers the import of personal belongings in unaccompanied baggage as a second-hand or import of new goods with the need to declare each item separately, indicating weight and cost characteristics.

Council Regulation (EC) No. 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty (hereinafter referred to asRegulation No. 1186/2009) provides for relief from import duty for personal effects of individuals who change their place of residence from a third country to a Community country.

Solution:

Development of ways to implement Regulation No. 1186/2009.

Discrepancies in the Terms of the Customs Regime (IM-74 ' customs warehouse') and the terms of currency control by the National Bank of Ukraine

Solution:

To apply to the National Bank of Ukraine, the Ministry of Finance of Ukraine, and the SCS with a proposal to amend the software of the National Bank of Ukraine and the SCS to agree on the correct display of information on goods that are on the territory of Ukraine in the ‘customs warehouse’ mode for 3 years.

Simplification of Customs Procedures in Seaports

Currently, there is a very outdated procedure (USSR rules) for documenting the passage of goods at sea checkpoints. A significant number of internal documents are drawn up in paper form, which creates corruption risks and significantly slows down the circulation of goods.

Solution:

Introduction of a maritime register of the BCP with the possibility of providing and exchanging information between customs and all participants in the supply chain of goods. Amendments to laws and regulations on the regulation of customs procedures.

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TECHNICAL
REGULATION

Signing of the ACAA Agreement Between Ukraine and the EU

Solution:

The Association supports the immediate signing of the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) between Ukraine and the European Union in the first three priority areas and its expansion into new areas, including the restriction of the use of hazardous substances, radio equipment, ecodesign, energy labelling, medical devices, etc.

Prevention of the Adoption of the CMU Resolution on the Creation of the Register of Confirmed Compliance Documents

The Ministry of Economy of Ukraine has prepared a draft resolution of the CMU On the Functioning of the State Register of Confirmed Compliance Documents (hereinafter referred to as the Draft Resolution), which, among other things, proposes to approve the Procedure for Maintaining and Using the Register of Confirmed Compliance Documents (hereinafter referred to as the Draft Resolution, the Draft Procedure, and the Register, respectively).

The Register is proposed to be created in order to strengthen the counteraction to falsification and illegal circulation of conformity documents issued by manufacturers, distributors, importers, conformity assessment bodies, and other authorized bodies that confirm the compliance of products with the requirements of technical regulations, standards, technical specifications, and other legislative norms. At the same time, the Association's member companies do not support the adoption of the Draft Resolution in view of the following.

1. The legislation of the European Union (hereinafter referred to as the EU) does not provide for the creation of registers of confirmed compliance documents. At the same time, paragraph 5 of Article 56 of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, dated 27 June 2014, stipulates that **'Ukraine shall refrain from amending its horizontal and sectoral legislation listed in Annex III to this Agreement, except in order to align such legislation progressively with the corresponding EU acquis, and to maintain such alignment'.** Therefore, the adoption of the Draft Procedure, according to business representatives, does not fully comply with the legislative principles and approaches of the EU in the field of technical regulation and market supervision, and also does not contribute to the fulfilment by Ukraine of its obligations to align its national legislation with the EU legislation. In addition, according to the member companies of the Association, the adoption of the Draft Procedure may adversely affect the prospects for Ukraine to sign the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA Agreement) with the EU.

It is also worth noting that, according to the Association's experts, the practice of maintaining a register of issued certificates of conformity and declarations of conformity exists in the states of the Eurasian Economic Union. Thus, business representatives see some inconsistency in such a step, given Ukraine's declared course towards European integration.

2. Also, according to the experts of the Association Committee, the adoption of the Draft Procedure will not contribute to the approval of effective technical regulation and market supervision, as well as the optimization of state supervision (control). Instead, business representatives see that the adoption of the Draft Procedure may lead to additional costs for business entities related to the need to register in such a Register, and, therefore, to an increase in the cost of products for the end user.

Solution:

In view of the above, we recommend not to support the adoption of the Draft Resolution.

Development of By-Laws for the Full Application of the Technical Regulation on Cosmetic Products

Resolution No. 65 of the CMU dated 20 January 2021 approved the Technical Regulation on Cosmetic Products, which entered into force on 3 August 2024 (hereinafter referred to as the TR on Cosmetic Products). At the same time, for the correct application of the TR on Cosmetic Products, it is necessary to adopt a number of additional by-laws and solve a number of problematic issues.

Solution:

It is necessary to translate and adopt some of the key methodological recommendations for the application of the TR on Cosmetic Products, including: recommendations on frame formulation that apply to the ranges of the formulation of cosmetic products; methodological recommendations on the qualification of experts allowed to sign reports on the compliance of products with the requirements of the TR on Cosmetic Products. It is also appropriate to adopt a unified approach to inform consumers, for example, regarding animal testing or the medicinal properties of cosmetics.

The Need to Unify the Deadlines for the Entry into Force of the Technical Regulations (Hereinafter Referred to as the TRs) on Energy Labelling and on Ecodesign for Each Individual Type of Equipment at the Same Time 12 Months after the Date of the Relevant Decision

The member companies of the Association drew the attention of representatives of state bodies to the unacceptability of the situation when the new TRs with requirements for the ecodesign of certain types of equipment were to enter into force 6 months after the end of martial law, and TRs on energy labelling of the same types of equipment were to enter into force after 6 months from the date of adoption of the relevant decisions. The experts of the Association Committee drew the attention of representatives of state bodies to the fact that no manufacturer or importer of washing machines, refrigeration devices, dishwashers, or electronic displays in Ukraine can currently comply with the requirements of the TRs on labelling set by new orders that were to enter into force in 6 months, taking into account the following.

1. Experts of the Association state that the new TRs for energy labelling of household washing machines and household washer-dryers, approved by the order of the Ministry for Communities, Territories and Infrastructure Development of Ukraine (hereinafter referred to as the MoI) No. 991 dated 30 October 2023, TRs for energy labelling of refrigeration devices, approved by the order of the MoI No.796 dated 8 September 2023, TRs for energy labelling of household dishwashers, approved by the order of the MoI No.795 dated 8 September 2023, TRs for energy labelling of electronic displays, approved by the order of the MoI No. 1106 dated 6 December 2023, provide for adding an energy label to a product, containing the mandatory element of a QR code leading to the database of energy consumption products, which the State Agency on Energy Efficiency and Energy Saving of Ukraine (hereinafter referred to as the SAEEES and the Database, respectively) was supposed to established in accordance with the current requirements of the legislation.

2. In order to apply information to the energy label and meet the requirements of these new technical regulations on labelling, **equipment manufacturers are supposed to use the calculations set by the technical regulations on ecodesign, for example, the Technical Regulations on Ecodesign Requirements** for Household Washing Machines and Household Washer-Dryers, approved by Resolution No. 834 of the CMU dated 8 August 2023 (hereinafter referred to as the TRs on Ecodesign for Washing Machines). At the same time, all adopted technical regulations on the ecodesign of a new type for the relevant products **will enter into force only six months after the termination or repeal of martial law in Ukraine.**

The experts of the Association Committee note that the simultaneous entry into force of technical regulations setting requirements for ecodesign and energy labelling for a particular type of product, including washing machines, dishwashers, refrigeration products, and electronic displays, is critical for business.

3. We would like to note separately that manufacturers cannot foresee the time of repeal of martial law, and therefore, include in their production plan the output of products under the new technical regulations on energy labelling and ecodesign. Moreover, as business representatives state, given the fact that the EU already has updated regulatory acts on both energy labelling and ecodesign, whereas Ukraine still has 'old' technical regulations in place, manufacturers have to adapt their product line exclusively to the Ukrainian market, although our country is considered by the manufacturer as part of the European market. From an economic point of view, it would be more effective for the manufacturer to unify production for the EU and Ukraine, which, in turn, will reduce the costs and value of products for the end user, as well as contribute to the expansion of the range of goods. Also, according to the member companies of the Association, in some cases, it is impossible to test the equipment for compliance with the outdated requirements of the technical regulations on ecodesign and energy labelling both in the EU laboratories and in Ukraine.

Solution:

To amend the draft government resolutions in order to unify the deadlines for the entry into force of the TRs on energy labelling and on ecodesign for each particular type of equipment at the same time 12 months after the date of the relevant decision.

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MANPOWER

Today, the basis of labour legislation is the Labour Code of Ukraine, adopted in 1971. The basis of this document was the administrative-command system, which practically implied quite limited opportunities for changing the employee's place of employment. In this regard, such aspects as dismissal, secondment of an employee, leave system, etc. were not regulated in a balanced way, and taking into account the current realities of the labour market, they became even more outdated.

Solution:

Amendments to labour legislation through revision and updating. The key issues the regulation of which has to be improved in labour legislation are: facilitation of obtaining work permits, facilitation of conclusion of labour contracts and increase in their role in the process of regulation of labour relations, deregulation of the powers of trade unions, improvement of the system of authorities supervising and regulating the compliance with labour legislation, creation of conditions for the formation of an open, competitive labour market in Ukraine by unshadowing labour relations and increasing the volume of labour supply (including through the return of forced migrants to Ukraine and expansion of opportunities for the use of women's labour), as well as, in particular, by prioritizing the development of the labour market in the regions affected by the war.

Bringing the Legislation in Line with International Standards and EU Requirements

After 24 February 2022, a number of acts were already adopted aimed at optimizing and simplifying the regulation of labour relations, in particular for the period of martial law. At the same time, given the acquisition by Ukraine of the status of a candidate for EU membership, there is an urgent need to bring the legislation in line with international standards and directly with EU requirements. Ukraine needs a more dynamic reform of legislation: (1) on labour, (2) on employment, and (3) on occupational health and safety, which will meet the requirements of the time and the tasks of economic recovery in the postwar period, and will also be understandable to investors. At the same time, the main course towards the liberalization of labour legislation should be maintained.

Solution:

According to the Association's experts, further reform of labour legislation should include the adoption of legislative acts aimed at:

- Providing opportunities for agreement between the employee and the employer on working conditions convenient for them within the framework of individual employment contracts, increasing the role of such contracts in the regulation of labour relations (such norms should be in force not only during martial law, but also in the postwar period, and at the same time, ensure a balance of the rights and interests of employees and employers).
- Expansion of the scope of application of fixed-term employment contracts, as well as employment contracts with specific forms of employment: remote, home, incomplete, seasonal, etc. (including for persons with disabilities) with a simplified conclusion mechanism through the use of electronic document management services and systems.

Solution (continuation):

- Ensuring equal opportunities for women and men in labour relations, in the process of work and during employment, lifting restrictions on the use of women's labour in certain types of work (including underground work).
- Reducing the influence of trade unions on the regulation of labour relations in order to prevent abuses by trade unions of their rights and powers through the wider introduction of principles for resolving labour disputes using tools such as mediation and other conciliation procedures between the parties to social dialogue.
- Improving the rules for obtaining permits for the use of foreigners' labour, creating a simplified mechanism for issuing permits to foreigners who are sent to Ukraine to perform functions important for the post-war recovery of the economy of Ukraine or are investors in real property (except for agricultural land), intellectual property rights in the amount of at least EUR 100,000.00.
- Increased emphasis on the implementation of the service function of the State Labour Service of Ukraine in comparison with the control functions, implementation of a risk-based approach to the safety and health of employees.
- Strengthening the client-oriented approach of the State Employment Service, with a focus on increasing the level of satisfaction with the services of clients of all categories (especially vulnerable/disadvantaged categories of the population) and on increasing the efficiency of the service by expanding the range of active employment programmes for certain categories of citizens in order to increase their competitiveness in the labour market.
- Simplification of conclusion, re-conclusion, and termination of employment contracts with employees engaged in remote and home-based work, by introducing electronic document management without the need for a personal visit to the employer's location. Introduction of the possibility of concluding such employment contracts with employees who are outside Ukraine, provided that they have the status of a tax resident of Ukraine.
- Introduction of the possibility of conclusion, re-conclusion, and termination of employment contracts with underage employees engaged in remote and home-based work with flexible workplace hours.
- The creation of the Unified Register of Qualifications (Classifier of Professions) by combining the Classifier of Professions National Classifier of Ukraine, the Directory of Qualification Characteristics of Professions of Employees, and the Register of Qualifications, with the subsequent transfer of the newly created register into electronic format with online access for all business entities. Harmonization of the Unified Register of Qualifications with the relevant EU register based on the codes of the International Standard Classification of Occupations ISCO-08 in order to create a common labour market with the EU and attract EU citizens for employment in Ukraine. The transfer of powers to maintain the Unified Register of Qualifications (Classifier of Professions) to the National Qualifications Agency.

A set of Measures to Influence the Demographic Situation in the Country and the Volume of Supply in the National and Regional Labour Markets

Solution:

- Simplification of the procedure for acquiring citizenship of Ukraine for ethnic Ukrainians born outside the state, and the status of a tax resident of Ukraine with the acquisition of the right to a pension in Ukraine for foreigners and stateless persons who have been employed by Ukrainian companies (including jobs of such companies physically located abroad) with the prospect of obtaining a work permit in Ukraine.
- Introduction of the institution of dual citizenship for persons whose citizenship of Ukraine is a second citizenship in relation to the citizenship of the country of origin, subject to the conclusion of a bilateral security agreement between Ukraine and this country, as well as submission by such persons in accordance with the established procedure of an application for the acquisition of citizenship of Ukraine for the purpose of permanent residence or long-term employment in Ukraine, or obtaining a simplified work permit in Ukraine. It is also proposed to introduce the status of a tax resident of Ukraine for these persons with special conditions for the taxation of income received in Ukraine, which will exclude the withholding of a military fee.
- Introduction of the institution of dual citizenship for persons whose citizenship of Ukraine is a second citizenship in relation to the citizenship of the country of origin, provided that such persons entered military service in the Armed Forces of Ukraine (hereinafter referred to as the AFU) during martial law for a period of at least 12 months and submitted an application for the acquisition of citizenship of Ukraine in accordance with the established procedure.
- Granting the status of a tax resident of Ukraine with the right to pension in Ukraine to persons who have ceased to be citizens of Ukraine in connection with the acquisition of citizenship of other countries, but have returned to Ukraine for permanent residence.
- After the completion or termination of the legal regime of martial law, it is proposed not to apply administrative and criminal liability to persons who violated the procedure for crossing the state border of Ukraine, the rules of military registration, or the passport regime, provided, for example, that they pay a special fine to the State Budget of Ukraine from each able-bodied person (refusal of administrative and criminal prosecution of violators in order to attract labour and investment resources for the post-war reconstruction of Ukraine).
- Recognition at the national level of documents on obtaining secondary, professional, professional pre-higher, and higher education obtained by Ukrainian schoolchildren and students abroad, without the need for their additional nostrification in Ukraine, in order to attract additional candidates to the national labour and educational service market and increase the level of competitiveness of these markets.
- Advocacy for the possibility of free/preferential education of Ukrainian schoolchildren and students under the temporary protection programme in the EU, in foreign educational institutions, provided that they attend remote courses and take an annual test in the Ukrainian Language, Ukrainian Literature, and History of Ukraine. The purpose is to ensure the further smooth integration of such schoolchildren and students who are temporary migrants into the educational environment and the labour market of Ukraine for further active participation of young people in the reconstruction of the country.
- Establishment of the National and Regional Startup Financing Funds, which will allow attracting foreign countries, corporate and private non-resident investors to participate in their financing. The main goal is to provide investment support to veteran start-ups, as well as other start-ups with preferences for young people, regions of hostilities, and temporarily occupied territories of Ukraine (hereinafter referred to as TOTs), which will contribute to the development of innovative entrepreneurship in the country and regions.

Liberalization of Labour Relations and Expansion of Opportunities for the Introduction of More Flexible Working Conditions

Solution:

Improvement of legislation on part-time employment of employees, in particular, provision of simultaneous temporary employment both in Ukraine and abroad.

Improvement of legislation on the application and simplification of the conclusion of fixed-term employment contracts, as well as employment contracts with seasonal employees.

Introduction of mechanisms for rapid response to labour needs in the areas of critical infrastructure through the organization of temporary employment and the introduction of flexible remuneration terms.

Revision of the trade union functions—redirecting employer contributions in the amount of at least 0.3% of the payroll fund intended for cultural, mass, sports, and recreational work in labour collectives to the needs of post-war reconstruction.

Revision of the principles for the formation of the structure of state and regional orders for the training of specialists, as well as the corresponding financial support for these orders in accordance with the needs of the post-war labour market.

Implementation of government programmes to stimulate the employment of the unemployed, with a focus on creating jobs in the small and medium-sized enterprises (SMEs) sector: providing grants to start their own business and replenish the working capital of existing enterprises.

Creation of regional and sectoral training programmes, as well as other decentralized mechanisms of retraining and advanced training for persons who lost their jobs due to the war, as well as demobilized veterans, self-employed persons, and workers who suffered significant health damage as a result of the war.

Facilitating the Return of Forced Migrants to Their Places of Permanent Residence

Solution:

Involvement of private companies (employers) in the construction of housing for their employees by introducing tax preferences for investors financing such construction.

Providing additional sources of funding from the state and local budgets for the priority reconstruction of temporary housing in order to facilitate the return of migrants to Ukraine, since their prolonged stay abroad reduces the likelihood of their return.

Solution (continuation):

Preferential lending for the purchase, repair, or construction of housing for internally displaced persons when they return to their places of permanent residence. Establishment of differentiation of lending programmes depending on the region in which the internally displaced person lives upon return, with the provision of preferential lending conditions for TOTs and combat zones.

Prioritization of housing and infrastructure restoration projects based on the criterion of creating new jobs.

Amendments to the Mobilization Legislation

During martial law, the proper functioning of the economy as a whole and especially business entities that are critical for the economy and ensuring the livelihood of the population is important for ensuring the country's defence capability.

In this regard, the procedure for exemption from active duty of military conscripts, which is established, in particular, by the CMU, should ensure the possibility of exemption from active duty of all employees of critical business entities, without which such entities cannot normally implement their economic activity, provide services, and perform work.

Solution:

To provide in the Procedure for Exemption from Active Duty of Military Conscripts During Martial Law, approved by Resolution No. 76 of the CMU dated 27 January 2023, the possibility of exemption from active duty by enterprises, institutions, and organizations that are critical for the functioning of the economy and ensuring the livelihood of the population during the special period, of conscripted employees in the amount of up to 50 per cent of the number of all employees of the enterprise, institution, and organization of the company's choice on the date of submission of the list or on the date of the beginning of a large-scale invasion of Ukraine.

To provide alternative ways to exempt from active duty of employees of critical enterprises beyond the established exemption limits, for example, with the payment of a certain monetary compensation for the exempt employee.

STATE POLICY

ON VETERANS AND SOCIAL PROTECTION OF CITIZENS AS A TOOL FOR SOLVING THE DEMOGRAPHIC PROBLEM AND PROVIDING THE ECONOMY WITH LABOUR RESOURCES

Given the current challenges of martial law and post-war development of the state, it is important to create a model for the return of war veterans and affected citizens who were in the TOTs, in the combat zone, were subjected to captivity or forced deportation, to social processes and communities at the local, regional, and state levels. According to the Association's experts, the main focus of this model should be on the implementation of policies that would form a proactive position among veterans and affected citizens.

Such a model should be implemented in parallel with the maintenance and development of the existing social security system, which should also be aimed at:

- Ensuring attractive social protection conditions that will facilitate the return and retention in Ukraine of able-bodied citizens and their families as important participants in the post-war reconstruction of the state, through modernization and targeted, rather than mass, distribution of social benefits and guarantees.
- Simplification of the procedure for passing the examination by the Military Medical Commission by veterans and registration of relevant medical conclusions and recommendations for medical and labour rehabilitation. This will allow, in particular, to intensify the participation of veterans in the Recovery and Rehabilitation Programmes, including in order to use the currently opportunities for cooperation with international partners in this direction.
- Promoting the restoration of the full-fledged functioning of the labour market in TOTs (after their release) and in combat zones (after the end of hostilities) by introducing at the legislative level surcharges for work in these regions (similar to surcharges for work in difficult geological and geographical conditions, for example, in mountainous areas). This issue is relevant taking into account the existing migration processes and future European integration intentions of Ukraine, which may become challenges for the national labour market in the context of personnel outflow.
- Overcoming the demographic crisis by stimulating the birth rate in Ukrainian families and improving the conditions for education, in particular through Ukraine's participation in European programmes for the protection of children and support for young people by obtaining vocational education and professional training according to the standards of EU educational programmes.
- Making targeted social payments in accordance with modern European standards at the expense of reparations received from the aggressor country, Russian assets confiscated by the EU, and financial assistance from foreign partners for persons affected by hostilities.

Solution:

To update the Law of Ukraine On the Status of War Veterans, Guarantees of Their Social Protection No. 3551-XII dated 22 October 1993 (hereinafter referred to as Law No. 3551-XII), taking into account the need to include volunteer servicemen (including foreigners and stateless persons), members of volunteer formations of the territorial communities (VFTCs) and the Territorial Defence Forces of the AFU.

To update the lists of benefits and statuses of veterans in national legislation, in particular in order to complete the desovietization of the regulatory framework.

To develop and adopt the Procedure for Determining and Reimbursing Employees and Employers for Employment-Related Money Lost as a Result of Armed Aggression Against Ukraine, provided for by Part 2 of Article 15 of the Law of Ukraine On the Organization of Labour Relations Under Martial Law No. 2136-IX dated 15 March 2022.

To launch a National Legal Aid Programme to facilitate the standardized mass filing of lawsuits by Ukrainian citizens against the aggressor country to recover compensation payments in favour of affected citizens and communities.

Solution (continuation):

To initiate amendments to the labour legislation on economic incentives for employers to employ veterans in Ukraine, as well as graduates of educational institutions (both domestic and foreign) in order to create an inclusive environment in the national labour market, retain young specialists in Ukraine and attract them from abroad (for example, providing subsidies from the State Employment Service after 3, 6, 9, and 12 months of employment of an employed veteran or young specialist).

To make appropriate changes to the by-laws in order to facilitate obtaining work permits for foreigners and stateless persons who served in the AFU for 12 months or more during the period of the legal regime of martial law in Ukraine, as well as to expand the social protection system for these categories of persons on the territory of Ukraine, which will contribute to the post-war involvement of labour resources.

The following should be considered:

- Introduction of a system of preferences for graduates of secondary schools who will continue their studies in vocational education institutions to obtain vocational professions. These measures should be aimed at retaining young people in the regions of Ukraine covered by hostilities or temporary occupied, and may include: long-term preferential mortgage lending, granting the right to preferential privatization of land plots, issuing vouchers for further training for obtaining a vocational profession (including a second profession).
- Differentiation of taxation of citizens' incomes and the amount of pension savings for regions affected by hostilities in relation to affected regions.
- Inclusion of the period of stay under occupation in the insurance period of work, subject to further residence in the same settlement or region for 10 years after the completion or termination of the legal regime of martial law.
- Prioritizing the development of the social infrastructure of the de-occupied territories, introduction of a system of preferential mortgage lending, which will apply both to the construction of new housing and to the secondary real property market in cities affected by hostilities (it is advisable to determine the list of such cities by a separate CMU resolution).
- Creation of favourable conditions for the lease of state and communal property, as well as issuing grants to private enterprises providing medical services in order to increase competition and the effectiveness of programmes in the provision of medical services in the de-occupied territories and in the former combat zone. Promotion of the expansion of the network of medical educational institutions in central and eastern Ukraine in order to provide qualified medical personnel to the most war-affected territories.
- Development and announcement, after the completion of public discussion, but not later than 1 year after the end or termination of the legal regime of martial law, of a long-term programme of post-war reconstruction of the affected regions. The purpose of this programme is to raise awareness of business prospects, the labour market, and labour needs in specific regions of local communities and investors, including foreign ones.

Solution (continuation):

Development of effective mechanisms for socio-economic rehabilitation and integration of veterans into peaceful life, as well as assistance to families of persons killed as a result of hostilities, by implementing the following measures:

- Simplification of legal procedures for heirs of persons killed as a result of hostilities, in particular, optimization of legal mechanisms created in case of death of a serviceman (spreading the practice of establishing the death of missing persons in courts as part of separate proceedings throughout the territory of Ukraine during martial law; inclusion in the list of recipients of one-time monetary assistance of children conceived during the lifetime of a deceased serviceman; disqualifying in court for one-time monetary assistance in case of death of a serviceman of those persons who evaded the obligation to maintain the deceased or committed a criminal offence in respect of the deceased during his/her lifetime; renewal of Article 161 'Persons Entitled to Allocation and Receipt of One-Time Monetary Assistance' of the Law of Ukraine On Social and Legal Protection of Servicemen and Members of Their Families No. 2011-XII dated 20 December 1991, in the wording in force until 25 August 2022).
- Expansion of the range of services for veterans in the Administrative Service Centres at the place of their residence, as well as the introduction of a mandatory requirement for the appointment of a certain percentage of former servicemen to positions in the newly established Institute of Veteran's Assistant or the creation of service offices for veterans' affairs with their participation.
- Introduction of the National Programme 'Housing for Veterans' or inclusion of veterans in preferential mortgage lending programmes, the terms of which will be differentiated by regions, in order to develop war-affected cities, communities, and territories and to expand local and regional labour markets through the involvement of demobilized veterans.
- Introduction of the National Support Programme for the Development of Small Farming for veterans who have purchased land plots for the appropriate purpose or have used their right to prioritize land plots for individual housing, gardening, and vegetable gardening, provided for in clause 14 of Part 1 of Article 12 of Law No. 3551-XII and settled in rural areas in order to start their own farm (preferential lending rates for all veteran private farms owned by veterans, or at least for those located in the de-occupied territories).
- Implementation of state and international programmes for civil demining of agricultural lands in the de-occupied territories and in the zones of former hostilities, with the active involvement of former (demobilized) servicemen as full-time employees.
- Provision of grants for the creation of green generation facilities of local scale in the de-occupied territories, including on land plots that have been privatized by veterans.
- Provision of grants for higher education (including foreign higher education) for veterans and children of deceased servicemen, which are distributed on a competitive basis with the election of grant recipients exclusively among persons of these categories.
- Creation of specialized programmes and involvement of subjects of the insurance medicine system in the process of physical rehabilitation of veterans, as well as private medical institutions to ensure the functioning of the state health care system for servicemen in peacetime.
- Providing functioning medical institutions with means for physical rehabilitation of victims of hostilities through participation in international humanitarian programmes.
- Formation of a network of rehabilitation centres within the general system of medical care and development of centralized training and response programmes in this area.

Solution (continuation):

- Launching projects to provide crisis psychological support, in particular the National Anti-Crisis Hotline, to prevent suicides and provide emergency assistance to Ukrainian citizens in critical psychological condition.
- Providing effective tools for psycho-emotional rehabilitation and socio-psychological support for veterans and employees by creating a National Programme for Psycho-Emotional Safety in the Workplace, which would be developed on the basis of ISO 45003:2021 'Occupational Health and Safety Management —. Psychological Health and Safety at Work — Guidelines for Managing Psychosocial Risks' with the participation of all stakeholders.
- Employment of project management approaches in the implementation of initiatives aimed at the labour and economic rehabilitation of veterans in the post-war period (replacement of unlimited-term programmes that provide care for veterans, projects with deadlines, clear key performance indicators that will contribute to more effective social self-realization of veterans in the post-war period).
- Creation of a labour market for military specialities in Ukraine to complete a professional army of a modern type with competitive conditions of payment for service, social guarantees, and conditions of employment, in order to maintain the combat capability of the AFU and other law enforcement agencies of Ukraine in peacetime.

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PENSION REFORM

Introduction of a Funded System of Compulsory State Pension Insurance and Development of a System of Voluntary Non-State Pension Provision

Business representatives are convinced that due to demographic trends in Ukraine, only the solidarity system of compulsory state pension insurance is not able to provide an acceptable level of pensions to the elderly today, and this situation will only worsen in the future.

Instead, in most countries of the world, solidarity pension systems are supplemented by funded ones. In addition to additional pensions for people, this approach provides the economy with long-term investment resources. Of the 77 countries studied by the Organization for Economic Cooperation and Development and having funded pension systems, Ukraine occupies the last place in terms of assets.

At the same time, voluntary savings have been operating in Ukraine for more than 19 years now. According to the Association's experts, about 900 thousand people have more than UAH 3.5 billion in savings in non-state pension funds [4] (hereinafter referred to as NSPF). The large-scale war only emphasized how important the functioning of the NSPFs is for both the people and the state. According to the member companies of the Association, pension savings are invested by the NSPFs during wartime, including in military bonds of Ukraine, which is an additional contribution to supporting the state economy.

Solution:

According to the member companies of the Association, the plan of measures for the post-war reconstruction and development of Ukraine should include the introduction of the second level of the pension system—mandatory pension savings through the redistribution of the unified social tax while maintaining the current rate of 22% and the development of the third level—voluntary pension savings, increasing the coverage of people with them through the implementation of state programmes at the third level:

- Funded pensions for employees of socially important professions (doctors, teachers, social workers, military, police officers—in stages from 2025).
- Funded pensions for employees of industries with harmful and difficult working conditions (from 2025).
- Funded pensions to employees of state-owned enterprises, banks, privatized enterprises.

[4] Data as of 2021: https://uaapf.com/index.php?option=com_content&view=article&id=474:-1--2021---------100---&catid=1:2009-09-24-10-44-06&Itemid=2

PERMIT SYSTEM

Simplification of the Procedure for Obtaining Licences for Import/Export of Goods Containing Fluorinated Greenhouse Gases

In practice, according to the member companies of the Association, the procedure for obtaining licences for the import/export of goods containing fluorinated greenhouse gases is significantly complicated by the need to add to the application for the relevant licence a foreign economic contract and all annexes thereto, including invoices, on which trade and economic activities were carried out under such a contract. At the same time, international companies established in Ukraine usually cooperate with their parent companies on the basis of multi-year contracts, which in turn forces business representatives to either re-sign foreign economic contracts or attach copies of all invoices that have been used under the terms of such a contract for years (actually, it can be thousands of pages) to the application for a licence.

Solution:

It is necessary to simplify the procedure for applying for licences for the import/export of goods containing fluorinated greenhouse gases, in particular, to exclude from the list of documents to be submitted for obtaining a licence, foreign economic contracts and invoices.

It is important to note that paragraph 3 of Part 1 of Article 5 of the Law of Ukraine On Administrative Services No. 5203-VI dated 6 September 2012 establishes that the list of and requirements for documents necessary for obtaining administrative services are established exclusively by laws that regulate public relations regarding the provision of administrative services. At the same time, Article 16 of the Law of Ukraine On Foreign Economic Activity No. 959-XII dated 16 April 1991 does not directly establish the obligation of business entities to submit copies of foreign economic contracts and/or invoices for obtaining licences for the import/export of goods containing fluorinated greenhouse gases. Regarding the requirement to submit a foreign economic agreement (contract) and annexes thereto specified in the Customs Code of Ukraine, in accordance with the requirements of this Code, such documents are submitted by business entities to representatives of the customs authority if it is necessary to confirm the customs value of goods or for other customs purposes, and are not related to the issuance of licences to business entities. Moreover, Part 1 of Article 1 of the Agreement on Import Licensing Procedures of the World Trade Organization dated 15 April 1994 (hereinafter referred to as the 1994 WTO Agreement) provides that 'For the purpose of this Agreement, import licensing is defined as administrative procedures used for the operation of import licensing regimes **requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body** as a prior condition for importation into the customs territory of the importing country'. Part 5 of Article 1 of the 1994 WTO Agreement clearly states that **'Application forms** and, where applicable, **renewal forms shall be as simple as possible. Such documents and information as are considered strictly necessary for the proper functioning of the licensing regime may be required on application'.**

In view of the above, the requirement to add to the application for a licence for the import/export of goods containing fluorinated greenhouse gases, foreign economic contracts and all annexes thereto, including all invoices, in the opinion of the member companies of the Association, is not only burdensome for business, but also does not fully comply with the requirements of current regulations and international agreements ratified by Ukraine.

Cancellation of Duplicate Reporting in the Field of Waste Generation

The adopted Law of Ukraine On Waste Management No. 2320-IX dated 20 June 2022 retains the obligation for enterprises to submit a waste declaration on an annual basis under certain conditions. At the same time, in accordance with the Order of the State Statistics Service of Ukraine (hereinafter referred to as the SSS) On Approval of the Form of State Statistical Observation No. 1–Waste (Annual) Report on Waste Generation and Management No. 167 dated 2 May 2023 (hereinafter referred to as Order No. 167), business entities are obliged to annually submit data on generated waste to the SSS. According to business representatives, such a situation can lead to duplication of reporting, which in turn will cause additional costs for business, as well as administration by state bodies.

Solution:

To cancel Order No. 167.

Cancellation of Requirements for Licensing the Construction of Facilities that, According to the Class of Consequences (Liability), Belong to Facilities with Medium (CC2) and Significant (CC3) Consequences

Solution:

Clause 9 of Part 1 of Article 7 of the Law of Ukraine On Licensing of Economic Activities No. 222-VIII dated 2 March 2015 should be excluded.

Simplification of Licensing Procedures in the Field of Construction of Facilities Aimed at Restoring Industry and Infrastructure of Ukraine:

- If a complex (structure), according to the unified design and estimate documentation, includes objects belonging to different classes of consequences (liability), it should be made possible to obtain a permit for construction works on individual objects of such a complex (structure).
- The list of preparatory works should be expanded that can be performed on the basis of a notification before obtaining a permit for construction works.
- The procedure for attracting foreign specialists to work in Ukraine should be simplified.

Solution:

1) To amend Part 4 of Article 32 of the Law of Ukraine On Regulation of Urban Development No. 3038-VI dated 17 February 2011 (hereinafter referred to as Law No. 3038-VI) to read as follows:

'4. The complex (building) may include objects, the construction of which is carried out according to a unified design and estimate documentation. **If a complex (structure), according to the unified design and estimate documentation, includes objects belonging to different classes of consequences (liability), state registration of the right to build each of such objects may be carried out at the request of the customer separately from other objects, in accordance with the procedure established by law for the corresponding object'.**

2) To amend Part 1 of Article 35 of Law No. 3038-VI to read as follows:

'1. After acquiring the right to the land plot and in accordance with its intended purpose, the customer may perform the following preparatory work with the notification of the state architectural and construction control authority:
1) Dismantling (demolition), relocation of houses, buildings, structures and their parts.
2) Arrangement of fencing of the construction site.
3) Dislocation of improvement objects within the land plot.
4) Engineering survey works.
5) Construction of temporary production and household facilities necessary for the organization and maintenance of construction.
6) Dismantling, relocation of access roads, motor roads, railway tracks.
7) Supply of temporary engineering networks.
8) Removal of engineering networks.
9) Removal of greenery.
10) Works on the protection of the territory and surrounding buildings (groundwater level reduction, soil consolidation, construction of retaining walls, drainage and anti-filtration structures).
11) Arrangement of pits, piling, installation of retaining walls'.

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CONSUMER PROTECTION

Ensuring the Implementation of the New Law of Ukraine On Consumer Protection

On 10 June 2023, the VRU adopted the Law On Consumer Protection No. 3153-IX (hereinafter referred to as Law No. 3153-IX), in the development of which the Association's experts took an active part. This legislative initiative contains provisions on the regulation of electronic commerce, defines modern players, such as a marketplace, a price aggregator, and provides for effective sanctions for failure to provide information that would identify an online seller as a business entity. Law No. 3153-IX also takes into account a number of proposals of the Association on the delineation of requirements for the provision of information about a product or service to the consumer, in particular, what information should be indicated directly on the product, and what information can be provided in the accompanying documentation, or otherwise.

The Association is involved in the development of the necessary by-law regulatory framework, in particular, provides proposals for drafts of such regulations. The Association's experts also plan to participate in the development of an additional draft Law, which will enter into force simultaneously with Law No. 3153-IX and will allow taking into account additional proposals of the Association to increase the warranty repair period to 30 days, the possibility of labelling goods and computer interfaces in English, similar to the current practices in the EU member states.

Solution:

Work on an additional draft Law, which will clarify the provisions of Law No. 3153-IX in terms of labelling and warranty repairs, as well as further work on by-laws to implement Law No. 3153-IX.

The Need to Amend the Law of Ukraine on Electronic Commerce

The current version of the Law of Ukraine On Electronic Commerce No. 675-VIII dated 3 September 2015 (hereinafter referred to as Law No. 675-VIII) is, in the opinion of business representatives, actually declarative in nature and does not provide for effective sanctions for violation of its provisions.

Solution:

It is necessary to amend Law No. 675-VIII, in particular, to provide for mechanisms for suspending access to websites that, on the one hand, violate the law and sell dangerous or counterfeit products, and on the other hand, violate the requirements of Law No. 675-VIII and do not provide information that would make it possible to identify them as business entities, and therefore, check and, if necessary, prosecute them.

The Need to Amend the Law of Ukraine on Ensuring the Functioning of the Ukrainian Language as the State Language

Part 2 of Article 27 of the Law of Ukraine On Ensuring the Functioning of the Ukrainian Language as the State Language No. 2704-VIII dated 25 April 2019 (hereinafter referred to as Law No. 2704-VIII) establishes that equipment sold in Ukraine must have a user interface in the state language, which must contain no less information in terms of volume and content than foreign versions of such an interface. At the same time, in some cases, this requirement is technically impossible to fulfil, for example, when it comes to installed segment displays or matrix indicators, through which only segment pre-configured information is displayed in Latin letters, such as ON, OFF, etc.

In addition, the mandatory application of the provision of this article will potentially make it impossible for Ukrainian consumers to legally purchase the most modern models of goods that are not in high demand, and, accordingly, to increase the number of illegal imports of such goods into Ukraine.

Solution:

It is necessary to amend Part 2 of Article 27 of Law No. 2704-VIII, in particular, by stating it to read as follows: 'A computer programme with a user interface installed on goods sold in Ukraine must have a user interface **in the state language and/or in English, or in other official languages of the European Union'.**

In our opinion, the presence of the user interface in the state language on goods sold in Ukraine should be a competitive advantage of such goods rather than a prerequisite for its legal import to and sale in Ukraine.

Amendments to the Procedure for Warranty Repair (Maintenance) or Warranty Replacement of Technically Complex Household Goods, approved by Resolution No. 1251 of the CMU Dated 28 April 2023 (Hereinafter Referred to as Procedure No. 1251)

Solution:

The Association at one time initiated the adoption of a new Procedure No. 1251 and took an active part in developing proposals. At the same time, the current version of the Procedure has certain inaccuracies, as well as does not regulate certain important points, in particular, does not define the concepts of warranty repair and maintenance, does not regulate the issue of delivery of repaired goods by courier services or post offices, etc. In view of the above, the Association's experts prepared a number of proposals for Procedure No. 1251 and sent them by an official letter to the Ministry of Economy of Ukraine.

EBA
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INTELLECTUAL PROPERTY

The Need to Introduce a National Principle of Exhaustion of Intellectual Property Rights

This will create an opportunity for effective protection of trademarks, which is an important issue in terms of investment attractiveness of Ukraine, especially for those goods where the trademark is the main asset with which the reputation, quality and safety of the relevant product is associated.

The introduction of the national principle will significantly expand the rights of right holders to independently control the goods market and create additional tools for judicial and extrajudicial protection of their rights and thereby have a positive effect on solving the problem of selling smuggled and counterfeit products in Ukraine. The application of this principle will also provide more effective protection for the Ukrainian market from the import of low-quality or counterfeit products directly when importing certain goods into Ukraine.

In addition, the introduction of the national principle will contribute to an increase in the volume of legal imports, and therefore, an increase in revenues to the State Budget of Ukraine. Moreover, according to the Association's experts, the growth of the 'official market' of Ukraine will minimize the cost per unit of production and will help reduce the price for the end user in the medium term.

In addition, we note that the EU has repeatedly recommended Ukraine to adopt the national principle, since, **'the introduction of the international principle will have [a number of negative consequences for Ukraine, in particular,] a negative impact on investments, the amount of customs and tax revenues, the localization of production, the number of employed people, the quality of goods and services, and the last but not least, on competition'** (from the letter of the EU Delegation to Ukraine).

Solution:

It is necessary to enshrine in Ukrainian legislation the national principle of exhaustion of intellectual property rights. To this end, it is proposed to amend paragraph 3 of Part 6 of Article 16 of the Law of Ukraine On the Protection of Rights to Marks for Goods and Services No. 3689-XII dated 15 December 1993 to read as follows: **'The use of a trademark for goods introduced under this trademark into civil circulation in Ukraine by the holder of the certificate or with the holder's consent, provided that the holder of the certificate does not have reasonable grounds to prohibit such use in connection with the subsequent sale of the goods, in particular in case of change or deterioration of the condition of the goods after its introduction into civil circulation'.**

The Need to Reform the System of Paying Royalties for Private Copying and Reprographic Reproduction

The Association has repeatedly drawn the attention of representatives of state authorities to the fact that, in the opinion of business representatives, the current system of paying royalties for private copying and reprographic reproduction is outdated and ineffective. The existing system of raising funds for private copying (reproduction) at home was developed back in the days of using analogue devices. This system does not take into account the principle of fair remuneration, since it is physically impossible to identify each subject of such copyright and/or related rights, the result of the creative work of which was used by making a 'private copy', and therefore, it is impossible to ensure the payment of fair remuneration to each of such subjects.

At the same time, over the past 20 years, there have been significant changes in society, including those related to the development of digital technologies. In modern realities, the conclusion of a licence agreement between the user and the copyright holder can be quick and convenient, even if the user and the copyright holder are at a considerable distance from each other, since digital technologies enable them to conclude a licence agreement remotely. Similarly, digital technologies make it possible to protect any item from private copying without the consent of the author and, accordingly, without paying him a fair remuneration.

In addition, today, a significant amount of equipment that is the subject of payment of deductions cannot be used to reproduce works and record them on a certain tangible medium, and even when recorded on a tangible medium, such works can be re-reproduced only on the equipment on which they were recorded. For example, according to the Association's experts, most TV manufacturers currently use special technical means to limit the functionality of such equipment to reproduce. In particular, manufacturers can use such a technical means of copyright protection as Digital Rights Management, which does not allow creating unauthorized digital copies of content and makes it impossible to play and view content on other equipment, including a TV or computer. Similar protection mechanisms can be installed by manufacturers in MP3 players, music centres, radios, DVD players, TVs, monitors that have the function of recording to a tangible medium such as flash memory (flash cards).

Solution:

The adoption of the draft Law On Amendments to Certain Laws of Ukraine on the Improvement and Enhancement of Transparency in the Effective Management of the Property Rights of Copyright Holders in the Field of Copyright and/or Related Rights No. 4537 dated 24 December 2020, which is aimed at protecting rights holders and consumers from the negative consequences associated with the lack of an effective and transparent mechanism for the distribution of remuneration by collective management organizations.

EQUAL OPPORTUNITIES AND DIVERSITY POLICY

Within the framework of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, dated 27 June 2014, Ukraine must harmonize its legislation with European labour requirements, in particular with regard to combating discrimination. This refers to Council Directive 2000/78/EC dated 27 November 2000 establishing common rules for equal treatment in employment and occupation (hereinafter referred to as Directive 2000/78/EC). It is a framework document that prohibits discrimination in employment and occupation on the following four grounds: religion or belief, age, disability, and sexual orientation. Partially, certain provisions provided for by Directive 2000/78/EC have already been implemented in Ukrainian legislation, but are not properly implemented in practice. For this reason, the most vulnerable categories in the labour market, according to business, are persons with disabilities.

In addition, please note that on 14 April 2021, CMU Order No. 366-r approved the National Strategy for Barrier-Free Environment in Ukraine for the Period up to 2030 (hereinafter referred to as Strategy No. 366). One of the strategic goals of the Economic Barrier-Free direction, defined by Strategy No. 366, is to increase the level of employment of vulnerable categories of the population in the labour market, which, in particular, include persons with disabilities.

It is important to finalize and adopt the draft Law On Amendments to Certain Laws of Ukraine on Ensuring the Rights of Persons with Disabilities to Work No. 5344-d dated 18 November 2022 (hereinafter referred to as Draft Law No. 5344-d).

At the same time, the main challenges to the implementation of the inclusion policy are the insufficient level of practical knowledge of the business regarding the selection of candidates with disabilities and their support at the workplace, the low level of qualifications, and lack of motivation to work for candidates with disabilities, the high interest of specialized institutions in collecting sanctions for failure to create jobs, the dissemination of the standard for the employment of persons with disabilities in workplaces with difficult, harmful, and dangerous working conditions, the obligation of the employer to independently search for persons with disabilities for employment and bear financial responsibility in the absence of those wishing to work for this employer.

Solution:

To adopt Draft Law No. 5344-d in the field of stimulating the employment of persons with disabilities.

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ENERGY

Creation of Conditions to Stimulate Investment in Energy Storage Facilities (Hereinafter Referred to as ESFs)

Currently, member companies of the Association, which are producers of electricity from renewable energy sources (hereinafter referred to as RES) and could be interested in installing ESFs on existing facilities, note a number of problematic legal and economic aspects.

In general, the existing architecture of the electricity market does not provide enough economic incentives to invest in the construction of ESFs. This situation is complicated by the need to strengthen the safety of such facilities, which is why the budget for the project implementation is growing.

One of the possible solutions that can partially solve this issue, according to business representatives, is the abolition of upper limit prices (hereinafter referred to as Price Caps) in the wholesale electricity markets.

In addition, it is important to simplify the procedures for obtaining permits and ensure the flexibility of regulatory requirements. Thus, obtaining permits for construction, according to the Association's experts, should be significantly simplified for at least some ESFs, for example, if such a facility is remote from the settlement and is not located on the lands of the nature reserve fund and lands of other nature protection purposes.

The process of obtaining other permits and incorporating the ESFs should be simple and predictable. In case of delay in issuing a permit or approval, it is appropriate to apply the principle of 'tacit consent', according to which, if the permitting authority does not provide a response within a specified period, the permit is considered to be automatically issued, and the relevant permitting authority is obliged to issue it.

To increase regulatory flexibility, it is advisable to allow the ESF operator to independently choose the mode of operation, for example, as part of a RES facility with the possibility of separation and a transparent and predictable procedure for obtaining all the necessary permits to start work. Such an approach, according to which the RES producer itself can choose the mode of operation, will partially compensate for the losses caused by legal uncertainty.

For the medium-term period of energy storage, special attention should be paid to the further development and protection of energy storage facilities.

Solution:

Implementation of the necessary economic, technical, and legislative solutions for the construction of ESFs, including on the basis of rechargeable batteries (hereinafter referred to as BESS) on an industrial scale. However, the implementation of such a task, according to the Association's experts, also depends on the full launch and operation of the auxiliary services mechanism provided by Private Joint-Stock Company 'National Power Company "Ukrenergo"' (hereinafter referred to as NPC 'Ukrenergo').

The first steps taken by NPC 'Ukrenergo' are long-term specialized auctions for the procurement of ancillary services for balancing the energy system.

Thus, according to the results of the first long-term special auction for the purchase of frequency support reserves, which took place on 15 August this year, the first 99 MW were purchased. On 22 August, 500 MW were purchased for a period of 5 years.

Solution (continuation):

Two types of automatic frequency recovery reserve services were purchased at the auction (hereinafter referred to as AFRR):
i. 579 MW for load services, i.e. the ability of electrical installations to support the power grid by increasing the output of electricity to the grid.
ii. 421 MW for a symmetrical reserve, that is, the ability of electrical installations to be unloaded and loaded, depending on the needs of the power system of Ukraine.

According to the report on the official website of NPC 'Ukrenergo', these measures are aimed at ensuring stable and synchronous operation of the European and Ukrainian energy systems [5].

At the same time, it is estimated that building a system resistant to potential attacks in the next few years in Ukraine requires:

1. 4 GW of capacity of new wind power plants.
2. 3.8 GW of solar power plants.
3. 1.4 GW of gas generation capacity.
4. 1.1 GW of capacity of new biofuel-powered thermal power plants.
5. 0.8 GW of ESF capacity.

In this context, the Association's experts note the importance of stimulating the population and industrial consumers who have their own generation capacities to install ESFs, in particular BESS, for autonomous energy supply. It is important to create financial mechanisms so that the owners of these facilities are interested in integrating into the general network.

In order to eliminate difficulties in ordering imported equipment, we offer:

1. Full exemption from import duty and VAT of operations for the supply of ESF equipment.
2. Increase in the deadline for settlements on imports of ESF equipment up to 1 year from the date of payment. According to the member companies of the Association, such a need is due to the fact that the currency control of the National Bank of Ukraine between the payment for the delivery and the actual importation of the goods into Ukraine is currently 180 calendar days, at the same time, manufacturers usually report the terms from 6 to 8 months for the manufacture of the relevant equipment from the time of prepayment. Therefore, the Association's experts propose to increase the allowed period for the import of equipment up to 1 year from the date of payment.

Resolving Problematic Issues of Settlements in the Field of RES

Settlements with RES for the supplied electricity are carried out at the expense of two sources:

1) Funds of State Enterprise 'Guaranteed Buyer' (hereinafter referred to as SE 'Guaranteed Buyer') from the sale of electricity on the market.
2) Funds of NPC 'Ukrenergo' collected in the transmission tariff, which it pays to SE 'Guaranteed Buyer' as payment for the RES development service.

[5] https://ua.energy/electricity-market/ukrenergo-prydbalo-500-mvt-shvydkyh-rezerviv-na-5-rokiv/

In 2022, the Ministry of Energy of Ukraine (hereinafter referred to as the MoEn) issued Order No. 140 On Settlements in the Electricity Market dated 28 March 2022 (hereinafter referred to as Order No. 140) and Order No. 206 On Settlements with Producers under the Green Tariff dated 15 June 2022 (hereinafter referred to as Order No. 206), which established advance rates for transferring funds for making payments for purchased electricity produced from alternative sources.

By Order No. 140, the MoEn artificially limited the level of settlements with RES producers to 15% and 16%. The remaining funds of SE 'Guaranteed Buyer' were to be used for settlements with Joint-Stock Company 'National Nuclear Energy Generating Company "Energoatom"' [6] (hereinafter referred to as NNEGC 'Energoatom', JSC) and NPC 'Ukrenergo'. At the same time, in the decision of the Joint Chamber of the Commercial Court of Cassation of the Supreme Court dated 21 June 2024 in case No. 910/4439/23, [7] it was indicated that Order No. 206, like the previous Order No. 140, 'in no way limits the right of the plaintiff as a producer of electricity under the green tariff to receive the full value of the sold electricity, established by the contract concluded by the parties in the case, and also does not change the timing of the occurrence and fulfilment of the monetary obligations of the guaranteed buyer to conduct final settlements under the contract and in accordance with clause 10.4 of Procedure No. 641'.

Order No. 206 increased the advance payment rate for solar power plants and wind power plants to 18%, which would contribute to the ability of producers to produce electricity from alternative sources during the critical period. At the same time, SE 'Guaranteed Buyer' considered its provisions as an opportunity to make partial settlements with producers under the green tariff. This led to a situation in which SE 'Guaranteed Buyer' developed a debt to producers and faced a number of litigations on the recovery of funds from SE 'Guaranteed Buyer', 3% of annual and inflationary costs, which were accrued on the amount of debt.

In the context of this situation, the decision, which was adopted on 11 April 2024 by the Supreme Court, consisting of the panel of judges of the Commercial Court of Cassation in case No. 910/9100/22, is important [8]. Thus, the court concludes that Order No. 206 regulates the distribution of funds specifically for the payment of advance payments, and this order does not release SE 'Guaranteed Buyer' from the obligation to make the final settlement with the sellers with 100% payment for the supplied electricity. It should be noted that on 1 May 2024, Order No. 206 was declared invalid by the relevant order of the MoEn [9].

At the same time, as noted by the member companies of the Association, the situation with settlements for services to ensure an increase in the share of electricity production from RES over the past two years has remained very difficult.

As of 1 August 2024, the debt of NPC 'Ukrenergo' to SE 'Guaranteed Buyer' on the service of ensuring an increase in the share of electricity production from alternative sources amounted to approximately UAH 26 billion [10].

Experts of the Association emphasize that this debt extends across the chain to the entire electricity market, in particular, to producers from RES. As of 1 September, the amount of debt of SE 'Guaranteed Buyer' to RES electricity producers exceeds UAH 32.2 billion [11]. It should be noted that such an amount of debt, in particular, is due to the debt of NNEGC 'Energoatom' to SE 'Guaranteed Buyer' on the service of ensuring the availability of electricity for household consumers.

[6] At that time, State Enterprise 'National Nuclear Energy Generating Company "Energoatom"'.
[7] https://reyestr.court.gov.ua/Review/120065336
[8] https://reyestr.court.gov.ua/Review/118393334
[9] Order of the MoEn On Invalidation of Order No. 206 of the Ministry of Energy of Ukraine dated 15 June 2022 No. 136 dated 1 April 2024.
[10] https://www.gpee.com.ua/news_item/1407
[11] https://www.ukrinform.ua/rubric-economy/3755298-artem-nekrasov-vo-direktora-dp-garantovanij-pokupec.html

Business representatives believe that solving the described problem is an extremely important and urgent issue that requires the maximum involvement of all stakeholders. According to the Association's member companies, one of the options for a quick solution to this problem, which is being discussed in expert circles, is to use the high liquidity of Ukrainian banks to provide targeted financing to NNEGC 'Energoatom'. The result of such lending may be a rapid repayment of the debt to SE 'Guaranteed Buyer' and the planned repayment of loan funds by the borrower at the expense of income from current activities.

In addition to the above, representatives note a number of other ambiguous decisions that actually negatively affected the development of the industry.

Thus, the decision of the National Commission for State Regulation of Energy and Public Utilities (hereinafter referred to as the NCREPU) to suspend in 2022 the adjustment of the green tariff in accordance with changes in the euro exchange rate is not consistent with Article 91 of the Law of Ukraine On Alternative Energy Sources No. 555-IV dated 20 February 2003, which, among other things, entrusts the NCREPU with the obligation to adjust tariffs on a quarterly basis at the average official exchange rate of the NBU. Thus, as of the end of 2021, the green tariff was calculated at the rate of UAH 30.77/EUR, and as of 1 August 2022, the euro rate was already UAH 37.34/EUR. Thus, according to the Association's experts, there is a risk that the RES sector will short receive, as a result of the devaluation of UAH, about 21% of the funds at the expense of which foreign currency loans should be returned. The green tariff has actually been reduced due to unprecedented fines for imbalances. To a large extent, the reason for such fines is the inability of SE 'Guaranteed Buyer' to sell the entire amount of electricity in the organized market segments and under bilateral agreements, as well as significant amounts of RES restrictions by NPC 'Ukrenergo'.

Solution:

1. To ensure full repayment of debt to RES electricity producers, taking into account the submitted proposals.
2. To amend the legislation in order to reduce the liability of RES producers for imbalances.

Further Steps on the Transition to the Green Premium

The Law of Ukraine On Amendments to Certain Laws of Ukraine on the Restoration and Green Transformation of the Energy System of Ukraine No. 3220-IX dated 30 June 2023 (hereinafter referred to as Law No. 3220-IX) introduced the concept of a feed-in-premium mechanism.

This mechanism applies to the winners of the auctions, as well as to all producers under the green tariff who have already left or will leave the balancing group of SE 'Guaranteed Buyer' in the future.

According to business representatives, in fact, the market premium mechanism provides for the manufacturer to work on the market under contracts concluded at its discretion and to compensate it for the green or auction tariff within the difference between the established tariff and the cost of electricity at which it sold the electricity produced.

In order to implement the provisions of this Law No. 3220-IX, the NCREPU amended the Resolution of the NCREPU On Approval of Regulations Governing the Activities of the Guaranteed Buyer and Purchase of Electricity under the Green Tariff, Purchase of the Service under the Feed-in-Premium Mechanism No. 641 dated 26 April 2019 (hereinafter referred to as Resolution No. 641 of the NCREPU).

At the same time, the member companies of the Association note that today, there are still legislative and regulatory gaps regarding the regulation of this mechanism.

Firstly, the bonus is not accrued on the unissued volumes due to the need to execute the commands of the transmission system operator (hereinafter referred to as the TSO) for unloading. The non-inclusion in the volumes of electricity in respect of which the feed-in-premium is accrued of the volumes of unsupplied electricity due to the execution of the TSO's commands in the balancing market puts the premium mechanism at a disadvantage compared to sales under the green tariff.

Also, according to the Association's member companies, for a number of RES electricity producers, most commands for unloading in the balancing market are provided marked as aimed 'to handle systemic limitations'. The execution of such commands has specific consequences—it is necessary to purchase electricity that has not been supplied to the buyer because of this limitation on the prices of the day-ahead market. In order to fulfil their contractual obligations to sell electricity in accordance with the Market Rules, electricity producers [12] purchase the corresponding amount of balancing electricity on the balancing market. At the same time, due to pricing flaws in the balancing market, such operations usually lead to negative financial results for producers.

In addition, as business representatives note, the TSO began to apply rather unpredictable and long-lasting restrictions to individual producers, who at one time risked taking advantage of the opportunity and entered the market to sell electricity on a general basis. In other words, the transition to market mechanisms for the green producer implies significantly higher restrictions and encourages it to return to sales under the green tariff. We can also talk about certain unequal conditions for producers operating under the feed-in-premium mechanism compared to producers under the green tariff, because the latter are more limited. According to the Association's experts, in the future, such a situation may contribute to the mass return of producers to the balancing group of SE 'Guaranteed Buyer' with a corresponding increase in the financial burden on the tariff for the electricity transmission service. Taking into account the above, we propose to extend the accrual of the premium to the volumes of balancing electricity not released by producers as a result of the execution of the TSO's commands for unloading in the balancing market, including to handle systemic limitations.

Secondly, the lack of advance payments for producers providing services under the feed-in-premium mechanism under the same conditions as making advance payments for producers under the green tariff for sold electricity is still an unresolved issue. The reason for the introduction of advance payments is long delays in approving the cost of the service of ensuring an increase in the share of electricity production from alternative sources, which is provided by the TSO to SE 'Guaranteed Buyer' to finance the green tariff and the feed-in-premium mechanism. The member companies of the Association note that without the approval of this service, SE 'Guaranteed Buyer' cannot make any payment under the feed-in-premium mechanism and the last payment under the green tariff.

The Association's experts cannot but note positive changes, such as the adoption of legislative changes on the application of the cash method for producers of electricity from RES operating under the feed-in-premium mechanism.

Solution:

1) To approve the payment of advances by NPC 'Ukrenergo' to SE 'Guaranteed Buyer' for the RES development service at the expense of funds from the tariff for the transmission of electricity and additional sources (loans, funds from the distribution of the intersection).
2) To amend the Law of Ukraine On the Electricity Market No. 2019-VIII dated 13 April 2017, NCREPU Resolution No. 641 in order to resolve the above issues.

[12] Approved by NCREPU resolution No. 307 dated 14 March 2018.

Further European Integration of the Ukrainian Gas Transmission System (Hereinafter Referred to as the GTS) and Strengthening the Security of Natural Gas Supply to Ukraine

Solution:

Establishment of guaranteed (sustainable) capacities for the transportation of natural gas from the EU Member States to Ukraine, namely from Poland and Hungary.

In 2023, Ukraine received more than 4.3 billion cubic metres of natural gas from the EU and Moldova. This is more than twice as much as was transported in 2022. The main volumes were received in the 'customs warehouse' mode during the season of gas injection into underground storages.

According to the Association's experts, currently only from the Slovak direction there are guaranteed gas transportation capacities to Ukraine from the EU countries. Accordingly, first of all, from the point of view of security of supply, it is important for Ukraine to create guaranteed capacities on the border with other neighbouring EU member states, in particular with Poland and Hungary, whose gas corridors, according to the Association's member companies, provide access to new sources of natural gas supply:

- Via the LNG terminal on the island of Krk, Croatia (Hungarian corridor).
- Via the LNG terminal in Świnoujście, Poland.
- Via the LNG terminal in Klaipeda, Lithuania (Polish corridor).
- Baltic Pipe (Polish corridor).

In addition, Ukraine has joined the Vertical Corridor initiative, which envisages the expansion of the Trans-Balkan gas pipeline, making it possible to transport natural gas from Greece to Moldova and further to underground storage facilities in Ukraine.

In the context of European integration and support for Ukraine from European partners, the fight against russian aggression through economic means, in particular through the imposition of sanctions, is still essential. The next (14th) package of sanctions was approved by the European Council on 24 June 2024. It is known that work is already underway on a 15th package of sanctions, which will mean an increase in the EU's energy independence and serious economic consequences for the aggressor state.

Activation of the Trans-Balkan Gas Corridor

According to materials from open sources, in particular, publications on the website of Gas Transmission System Operator of Ukraine, LLC, in 2023, more than 550 million cu m of gas were pumped through the Trans-Balkan gas pipeline; the main volumes were stored in Ukrainian underground gas storage facilities (hereinafter referred to as UGSFs). The assessment of market demand, which was jointly conducted by the GTS operators of Ukraine, Romania, and Moldova, showed the need for 20 million cu m per day for transportation by the Trans-Balkan route to Ukrainian UGSFs. This route is a strategically important link connecting the liquefied natural gas (hereinafter referred to as LNG) market of Southern Europe with Eastern and Central Europe, as well as connecting with Ukrainian UGSFs.

Ukraine also relies on active participation in the new gas hub that is being formed in South-Eastern Europe. This will happen through the development of LNG terminal facilities in Greece, the expansion of Azerbaijani exports, and the development of gas production in Romania. Over 5 years, at least 10 billion cubic metres of gas surplus will arise in this direction. It can enter Ukraine, be stored in gas storages in the west of the country until winter, and be transported to the west in winter—to Slovakia, Austria, and other European countries.

Solution:

To increase the economic feasibility of gas transportation through the Trans-Balkan Gas Corridor, according to the Association's experts, it is necessary to take the following steps:

- To increase the number of interstate connection points on the border with Romania, which, according to business representatives, is currently being worked on, so there is a significant need for an active position of the state when interacting with the Romanian side.
- To develop cooperation with Moldova in accordance with the provisions of the Third Energy Package, in particular, to launch a virtual reverse.

Further Integration of the Slovak and Ukrainian Gas Markets

Despite the declarations of the top leadership of Ukraine that there is no intention to continue the agreement with the russian federation on gas transit through its territory and the statement of Robert Fico, Prime Minister of Slovakia, about the consequences if Kyiv does not resume the transit of Russian Lukoil oil, Slovakia is still an important energy partner of our state. As noted by Oleksii Chernyshov, Chairman of the Board of Joint-Stock Company 'National Joint-Stock Company "Naftogaz of Ukraine"', in the context of discussing cooperation between Ukraine and Slovakia to strengthen common energy security in the face of modern challenges, 'for Slovakia, it is about a stable supply of energy resources for the population, for Ukraine, it is about strengthening national security by promoting the diversification of Europe's energy supply sources' [13].

At the same time, there are certain obstacles to deepening this cooperation. According to the Association's experts, the Slovak side does not distribute power through auctions at the points of connection with Ukraine and does not agree on the creation of a single virtual point of interstate connection, which can become effective tools for integrating markets and their further development.

At the same time, as business representatives note, the European model of booking gas transportation capacities provides for their distribution through auctions, in particular on such platforms as the Regional Booking Platform (RBP) and the Gas System Auction Platform (GSA). Such an approach, based on the use of auctions for the distribution of capacities, ensures free and equal access of customers of transportation services to the capacities of main gas pipelines.

The advantages of creating a single virtual point of interstate connection with the Slovak Republic, according to the member companies of the Association, are:

- Reducing the use of fuel gas required for the operation of compressor stations during the physical transportation of natural gas for both parties, which will contribute to reducing greenhouse gas emissions into the atmosphere.
- Facilitation of business for customers of transportation services, in particular, improvement of the situation with access to underground gas storage facilities in Ukraine.

[13] https://www.radiosvoboda.org/a/news-fitso-chernyshov-zustrich/33098238.html

The advantages of capacity distribution through auctions, according to the Association's experts, are:

- Establishment of transparent and non-discriminatory access of third parties to the capacities of gas transportation infrastructure—development of the regional natural gas market (at the same time, an active position of the state in negotiations with Slovak partners is necessary).
- Further Integration of the Romanian and Ukrainian gas markets at the Tekovo/Mediaşu Aurit point (at the same time, an active position of the state in negotiations with Romanian partners is necessary).

Solution:

- Creation of a single virtual point of interstate connection jointly with the Slovak Republic.
- Implementation of auction distribution of capacities at the points of connection with Ukraine and Slovakia in accordance with the European model.

Development of the Transportation of Hydrogen and Other Renewable Gases

After the publication of the EU Water Strategy 2050 by the European Commission on 8 July 2020, the issues of transportation and storage of renewable gases (hydrogen, biomethane, and synthetic methane) have become of [14] particular importance, in which the EU considers Ukraine as a promising and reliable partner. In addition, according to business representatives, a significant part of the capacity of main gas pipelines is currently not used and can be used to transport renewable gases to consumers in Ukraine and Europe. Thus, according to the Association's experts, determining the possibility of transportation and storage of renewable gases should be one of the priorities for Ukraine.

Solution:

- Creation of technological and legal conditions for transportation and accounting of biomethane supplied/taken to/from the GTS.
- Creation of technological and legal conditions for transportation of a mixture of natural gas with different concentrations of hydrogen, as well as pure hydrogen.
- Creation of technological and legal conditions for the transportation of synthetic methane and other renewable gases.
- Research work to study the technical capacity of the GTS to ensure the safe and reliable transportation of renewable gases and the implementation of relevant pilot projects.
- Use of assets of the GTS operator and other power equipment (turbo-expander plants, gas turbine plants, OSC turbines, steam turbine plants, cooperative plants) in order to generate electricity for its own needs and participate in the market of auxiliary services (using equipment not involved in transport work or using equipment that uses residual heat and flow force to generate electricity).

[14] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions «A hydrogen strategy for a climate-neutral Europe» (COM/2020/301 final)

Solution (continuation):

In addition, on 21 October 2021, the VRU adopted the Law On Amendments to the Law of Ukraine On Alternative Fuels on the Development of Biomethane Production No. 1820-IX, which is designed to create a legislative framework for the verification of purified biogas (biomethane), the physical and technical characteristics of which meet natural gas standards, which may create prerequisites for the development of the biomethane market, in particular for its export to the EU.

It should also be noted that on 17 May 2024, the draft Hydrogen Strategy of Ukraine until 2050 [15] (hereinafter referred to as the Draft Hydrogen Strategy) was published on the official website of the MoEn, which, among other things, provides for the development of industrial production of hydrogen, its storage and transportation, as well as the use of hydrogen to provide clean energy in construction, heating, and cooling.

This document is important for further development of the industry, as it outlines the necessary steps for the development of the national regulatory framework and the introduction of innovative technologies for the large-scale integration of hydrogen into various sectors of the economy. The Draft Hydrogen Strategy provides that hydrogen and its derivatives can be directly used in various sectors that have their own characteristics, in particular in industrial, electricity, heat supply, and transport sectors.

Along with the adoption of this document, the adoption and implementation of national hydrogen standards and guarantees of origin is expected, which, according to the Association's experts, will contribute to ensuring the compliance of the Ukrainian hydrogen industry with EU standards and increasing its competitiveness in the world market.

Creation of Conditions for Increasing the Number of Green Bonds and Investments that Take into Account Environmental, Social, and Governance Aspects (Hereinafter Referred to as ESG)

The Association's experts predict a significant growth in the market of green bonds and investments in the ESG sphere by the end of 2024. This trend indicates the interest in and focus of the investment community on sustainable development and social responsibility. Investors are increasingly looking for opportunities that not only provide financial returns, but also contribute to the achievement of environmental and societal goals. This growing interest is expected to lead to the emergence of more innovative financial products in the green bond and ESG sectors, opening up new opportunities for investors seeking to attract and maintain sustainable initiatives at the global level.

In this context, business representatives note that the NBU has taken some important steps in this direction. In particular, in 2021, the Sustainable Finance Development Policy 2025 was adopted, which outlined the implementation of ESG criteria in the activities of financial institutions. This document, developed in collaboration with the International Finance Corporation (IFC), aims to shape the future sustainable finance landscape in Ukraine. It contains a detailed description of the tasks and new tools for bringing the activities of Ukrainian financial institutions closer to the best world standards for integrating ESG criteria into financial services. The document also emphasizes that Ukraine has supported the European Green Deal at a high political level, the purpose of which is to achieve climate neutrality of the European continent by 2050. According to the Association's member companies, an updated version of this document is currently being developed.

[15] https://www.mev.gov.ua/proyekt-normatyvno-pravovoho-aktu/povidomlennya-pro-oprylyudnennya-proyektu-vodnevoyi-stratehiyi

In addition, in March 2021, the Cabinet of Ministers of Ukraine approved the National Economic Strategy for the period up to 2030, which notes the need for the country to achieve climate neutrality no later than 2060. A separate important document is the Decree of the President of Ukraine On the Sustainable Development Goals of Ukraine for the Period up to 2030 No.722/2019 dated 30 September 2019, which determines that the Sustainable Development Goals are guidelines for the development of regulations and programme documents aimed at ensuring the balance of the economic, social, and environmental dimensions of the country's development. EU legislation is actively developing in the field of ESG, in particular, in this context, the Corporate Sustainability Reporting Directive (CSRD) [16] and the Non-Financial Reporting Directive (NFRD) should be distinguished [17], which oblige companies with a significant staff to report on sustainable development.

The Association's experts note that Ukrainian legislation in the field of ESG is still being formed, and as of 2024, there are no separate regulatory climate risk management requirements for banks. At the same time, according to the results of a survey conducted by the NBU in April this year of 33 largest banks on their approaches to climate risk management, about a third of banks have made the most progress in managing climate risks and integrated them into the risk management system, primarily credit and operational risks [18]. According to business representatives, most of these banks belong to international groups, where the incentive for a deeper analysis of climate risks is the policy of the parent banks, developed at the request of the regulators of the relevant jurisdictions.

The member companies of the Association emphasize that in the context of integrating ESG principles into the financial sector, an important step is the development of green financial instruments, in particular green bonds. Business representatives note that the key projects for which funds from green bonds are allocated are related to sustainable energy, environmentally friendly buildings, and improving transport efficiency. Such a mechanism is attractive to investors, especially in the post-war period of the country's recovery, due to transparency and expected profits. Legislative acts, including the Law of Ukraine On Capital Markets and Organized Commodity Markets No. 3480-IV dated 23 February 2006 and the Recommendations on the Implementation or Financing of Environmental Projects through the Issue of Green Bonds, approved by the National Securities and Stock Market Commission decision No. 493 dated 7 July 2021, laid the foundation for the development of this market.

At the same time, the green bond mechanism needs to be more clearly regulated to prevent potential risks. One of the key challenges, according to the Association's experts, is ensuring that projects funded/refinanced by green bonds comply with international standards and the EU standards, in particular the EU Taxonomy for Sustainable Activities. Issuers must adhere to certain features to avoid misclassification of bonds as green. Failure to comply with these criteria can lead to greenwashing—the practice of misleading investors and government agencies about the environmental friendliness of projects (areas of use of the amount of funds received from the issue of green bonds).

Solution:

For the further development of the green bond market in Ukraine, it is necessary to develop and adopt relevant regulations of the NBU, in particular, taking into account the best international practices to protect the interests of investors and stimulate the growth of investments in ESG projects.

[16] Directive (EU) 2022/2464 of the European Parliament and of the Council dated 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC, and Directive 2013/34/EU as regards corporate sustainability reporting.
[17] Directive 2014/95/EU of the European Parliament and of the Council dated 22 October 2014 amending Directive 2013/34/EU as regards the disclosure of non-financial and diversity information by certain large undertakings and groups.
[18] https://bank.gov.ua/admin_uploads/article/FSR_pr_2024-H1.pdf?v=7

Reducing the Risks of Imbalances in Connection with the Abolition of the Mechanism for Imposition of Special Obligations (PSO) in Favour of Heat Producers

Solution:

Amendments to the GTS Code and the Rules for the Supply of Natural Gas [19] to provide for the application of the 'last resort' supplier mechanism to heating utilities.

Ensuring the possibility of issuing documentation for the implementation of construction actions (including reconstruction) at the GTS facilities

The legislation of Ukraine entrusts the GTS Operator with the obligation to implement a set of measures aimed at modernizing and reconstructing the GTS facilities for the implementation of the Gas Transmission System Development Plan for 2022–2031 of the Gas Transmission System Operator—Limited Liability Company 'Gas Transmission System Operator of Ukraine', approved by Resolution No. 545 of the NCREPU dated 31 May 2022 (hereinafter referred to as the Development Plan) in accordance with the requirements of the Law of Ukraine On the Natural Gas Market No. 329-VIII dated 9 April 2015 (hereinafter referred to as Law No. 329-VIII). The measures included in the Development Plan are extremely important to ensure the performance of the functions of the GTS operator in terms of safe and trouble-free operation of the GTS.

The implementation of these measures, as noted by business representatives, involves obtaining permits, in particular, in accordance with the requirements of the Law of Ukraine On Regulation of Urban Development No. 3038-VI dated 17 February 2011 (hereinafter referred to as Law No. 3038-VI).
The provisions of Law No. 3038-VI stipulate that the permit documentation is issued subject to the availability of documents certifying the right of ownership or use of the land plot, or a superficies agreement.

However, according to the Association's member companies, today, part of the state-owned land plots on which the GTS facilities are located are in constant use of the previous licensee—Joint-Stock Company 'Ukrtransgaz'. According to the Association's experts, the property rights to almost 50% of the land plots are not registered in accordance with the requirements of the current legislation, and the data on them are not formed in the State Land Cadastre; to certify the rights to such plots, it is necessary to develop land management documentation.

Solution:

Amendments to Law No. 3038-VI should provide for the possibility of registration of urban planning conditions and restrictions, and permits for construction works on the basis of documents certifying the right of economic management to the state-owned real property item.

[19] Approved by NCREPU resolution No. 2496 dated 30 September 2015

Introduction of Best Practices for Gas Consumption Metering in Energy Units

There is a different system of natural gas consumption metering in Ukraine and the EU: for example, in the EU, units of energy (kWh) are used for this, rather than cubic metres. In turn, according to business representatives, the use of cubic metres in metering and payments for natural gas is inherent in the post-Soviet space.

Accounting for natural gas in units of energy (kWh) allows taking into account its energy value in settlements with consumers. According to the Association's experts, in Ukraine, the calorific value of gas can vary up to 20% depending on the source of origin.

Solution:

Full-fledged introduction of natural gas consumption metering in energy units (kWh) (implementation of the Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine on the Introduction on the Natural Gas Market of Consumption Metering and Calculations by Gas Volume in Energy Units No. 1850-IX dated 2 November 2021).

Increase in Gas Consumption Rates

Law No. 329-VIII establishes that if household consumers have no natural gas metres, they consume natural gas according to the rates established by law.

That is, if there is no gas metre in the house or apartment, the consumer pays for the consumed gas in accordance with the established rate.

At the same time, according to energy sector experts, the current rather underestimated gas consumption rates make it profitable to consume gas without metering.

Solution:

Setting of reasonable rates of natural gas consumption based on data on actual consumption and provision of sufficient funds in the tariffs of gas distribution network (hereinafter referred to as GDN) operators for the installation of individual gas metres for consumers.

Accounting for Natural Gas under Standard Conditions, Taking into Account European Experience

According to the Association's experts, the vast majority of household gas metres are not equipped with temperature correctors, which means that the measurement of gas by such metres is affected by temperature changes (cold and warm air, depending on the time of year), which distort the indicators of gas consumption. Such metres do not take into account temperature changes, and therefore, their indicators may provide unreliable data on the volume of actual gas consumption.

Due to the state policy, for a long time, gas suppliers did not bill consumers while taking into account the reduction of gas consumption to standard conditions. This created the prerequisites for the accumulation of supplier imbalances in the framework of imposing special obligations on the natural gas market.

It should be noted that the volumes of gas supplied to household consumers were metered and are metered by the GDN operators, taking into account their reduction to standard conditions as per the legislation.

Solution:

Consumption metering of natural gas under standard conditions for all natural gas consumers, similar to Commission Regulation (EU) 2015/703 dated 30 April 2015, which introduces the Network Code on Interoperability and Data Exchange Rules, with the removal of the corresponding volumes of gas from the production and technological costs of GDN operators, the adjustment of tariffs for all consumers, and the application of a single temperature of 0°C when bringing natural gas to standard conditions.

Currently, according to industry experts, 0°C in standard conditions is used in Austria, Belgium, Italy, the Netherlands, Germany, and other EU countries. In Ukraine, the temperature of bringing gas to standard conditions is +20°C.

Setting of an Economically Justified Tariff for the Distribution of Natural Gas

Solution:

Setting of a break-even tariff for natural gas distribution and the transition to incentive tariff setting in the natural gas distribution sector, which will attract investment and modernize gas distribution systems and their components, taking into account the economic interests of consumers and European environmental requirements.

Liberalization of Energy Markets with Market Coupling Based on the Competitive Model of Nominated Electricity Market Operators (Hereinafter Referred to as NEMO)

The integration of the unified energy system of Ukraine into the European Network of Transmission System Operators (ENTSO-E) has increased the reliability and sustainability of the power system, expanded the possibilities of electricity exchange between neighbouring countries.

At the same time, business representatives note that the Ukrainian electricity market is not part of the single pan-European market, and the existing market shortcomings hinder its development and lead to an increase in market debt.

According to the Association's experts, the current market model does not fully contribute to the effective use of the interstate crossing and the development of cross-border electricity trade in the organized markets in the spot trade segment.

Solution:

Full implementation of the rates of the EU 4th Energy Package, and, in particular, the Electricity Integration Package into national legislation, which will allow the integration of the electricity market of Ukraine into the single pan-European market. This will ensure the functioning of the electricity market of Ukraine on the basis of common principles and rules applicable in the liberalized markets of the EU Member States and the Energy Community.

In addition, to achieve effective integration of day-ahead and intraday markets within the framework of a common market coupling, it is necessary to ensure close cooperation between the existing transmission system operators and NEMO at the regional and national levels. The conditions of activity in the electricity market should ensure sustainable economic development and guarantee the energy security of Ukraine, support the development of and participation in the market of RES electricity producers and new participants (distributed generation, aggregators, ESFs), promote competition between market participants and between NEMO to introduce innovations and attract investments in the electricity industry.

Development of Organized Exchange Trading in Natural Gas

According to the Association's experts, the volume of exchange trade in natural gas in 2023 amounted to 1.3 billion cu m, which indicates the limited liquidity of the exchange market. Most of the transactions in the market were concluded outside the organized market segments. Formation of national market indicators and increasing transparency is critical for further development of the Ukrainian natural gas market and its further integration into European markets.

Solution:

Amendments to the legislation on improving the mechanisms of exchange trade in natural gas in order to increase the liquidity and transparency of pricing in the organized commodity market of natural gas in accordance with certain practices applied in the markets of the EU countries.

Development of the Market of Guarantees of Origin of Electricity Produced from Renewables (Hereinafter Referred to as Guarantees of Origin) and Their Recognition in the EU Countries

Guarantees of origin are an important tool to support the production of electricity from RES, reduce greenhouse gas emissions, and stimulate the development of sustainable and environmentally friendly energy.

In addition, the recognition of guarantees of origin in the EU countries contributes to the creation of favourable conditions for international trade in green electricity and the achievement of goals to increase the use of RES.

According to the Association's experts, at the initial stage of introducing the circulation of guarantees of origin in Ukraine, the demand for them will be limited, which will not contribute to the development of trade in guarantees of origin in the domestic market.

Solution:

- Introducing the necessary amendments to the legislation to introduce tools to stimulate domestic demand for guarantees of origin of Ukrainian producers.
- Fulfilment of the necessary requirements of the European Commission for the mutual recognition of guarantees of origin from Ukraine in the EU countries.

Facilitation of the Regulation of Strategic Environmental Assessment (Hereinafter Referred to as SEA) and Environmental Impact Assessment (Hereinafter Referred to as EIA)

Ukraine fulfils its international obligations in the field of environmental law, in particular, it has implemented the provisions of the Convention on Environmental Impact Assessment in a Transboundary Context dated 25 February 1991 (Espoo Convention), Directive 2011/92/EU of the European Parliament and of the Council dated 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification) (hereinafter referred to as Directive 2011/92/EU), and Directive 2001/42/EC of the European Parliament and of the Council dated 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (codification) (hereinafter referred to as Directive 2001/42/EC).

The legislation of Ukraine in the field of EIA and SEA, adopted in accordance with the provisions of Directive 2011/92/EU and Directive 2001/42/EC, provides for a rather long time to undergo EIA and SEA procedures, which significantly complicates the restoration of critical infrastructure that is constantly destroyed as a result of hostilities. In this context, the Association's experts believe that in order to solve these problems under martial law, it is advisable to temporarily reduce or simplify the procedures of EIA and SEA while respecting Ukraine's international environmental obligations.

Solution:

To develop a legal mechanism to simplify EIA and SEA procedures during martial law, which will reduce the time for conducting these assessments for critical infrastructure facilities without violating Ukraine's international obligations.

Cancellation of Price Caps in the Electricity Market

Rules provided for by European legislation.
Directive 2019/944 of the European Parliament and of the Council dated 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (hereinafter referred to as Directive 2019/944), in particular, outlines the following provisions on the formation of principles for tariff setting and price regulation. It should be noted that when it comes to setting tariffs based on tariff methodologies, this directly concerns the areas of natural monopolies—for setting tariffs for TSO services and for the services of the distribution system operator.

Recital 81 of Directive 2019/944 states that: **'Regulatory authorities should be able to fix or approve tariffs, or the methodologies underlying the calculation of the tariffs, on the basis of a proposal by the transmission system operator or distribution system operators, or on the basis of a proposal agreed between those operators and the users of the network. In carrying out those tasks, regulatory authorities should ensure that transmission and distribution tariffs are non-discriminatory and cost-reflective, and should take account of the long-term, marginal, avoided network costs from distributed generation and demand-side management measures'.**

Recital 20 of Directive 2019/944 states that **'Market prices should give the right incentives for the development of the network and for investing in new electricity generation'.**

The Association's experts note that the principles of the activities of national regulatory authorities, generally outlined in the preamble of Directive 2019/944, are reflected in Article 59 of Directive 2019/944. Thus, with regard to the responsibilities of regulatory authorities, Article 59 (1) of Directive 2019/944 states that **'the regulatory authority shall have the following duties: (a) fixing or approving, in accordance with transparent criteria, transmission or distribution tariffs or their methodologies, or both; <...>'.** Also, clause 7 of the said Article of Directive 2019/944 provides that **'The regulatory authorities <...> shall be responsible for fixing or approving sufficiently in advance of their entry into force at least the national methodologies used to calculate or establish the terms and conditions for: <...> (b) the provision of ancillary services which shall be performed in the most economic manner possible and provide appropriate incentives for network users to balance their input and off-takes, such ancillary services shall be provided in a fair and non-discriminatory manner and be based on objective criteria; <...>'.**

Taking into account the above, the Association's experts conclude that the provisions of Directive 2019/944 explicitly authorize regulatory authorities to develop and approve tariff methodologies and regulated tariffs for natural monopoly enterprises, rather that fix and regulate market prices and/or introduce regulated prices where such prices are to be established by market mechanisms.

At the same time, as business representatives state, price restrictions are applied in practice in EU jurisdictions. However, their main role is to prevent significant fluctuations in market prices. Determination of price limits is based on an economic approach. Price limits are usually multiple of the market price, so price limits are rarely reached.

Thus, the Association's experts note that the current price caps do not contribute to the possibility to attract imports in sufficient volumes due to higher electricity prices in the EU.

Solution:

The abolition of price caps in the electricity market, which, according to the member companies of the Association, will contribute to the integration of the Ukrainian energy market into the European one, as well as ensure the stability of energy supply due to more favourable conditions for electricity imports from the EU, which is critical in the face of aggression from the russian federation.

Bringing the Amount of the Tariff for the Transmission of Electricity to an Economically Justified Level

NPC 'Ukrenergo' plays an important role in ensuring stable energy supply in Ukraine. However, business representatives note that for many years, the company has been operating under a deficit tariff for electricity transmission, which is its main source of income. Underfunding leads to the need to attract credit funds to repay debt.

The Association's experts note that ensuring a sufficient level of tariff is critical for NPC 'Ukrenergo' in order to purchase the necessary equipment to replace damaged or destroyed equipment. The provision of electricity to all consumers in Ukraine, both domestic and industrial, depends on this.

In addition, in recent years, there has been a debt of NPC 'Ukrenergo' to SE 'Guaranteed Buyer' for the service of ensuring an increase in the share of electricity generation from alternative sources, which is part of the tariff for electricity transmission services (hereinafter referred to as the Transmission Tariff), which is approved by the NCREPU with a significant deficit. The deficit of the transmission tariff and failure to resolve the issue of repayment of such debt results in SE 'Guaranteed Buyer' inability to fulfil its obligations to RES electricity producers in full.

Solution:

To ensure that NPC 'Ukrenergo' fulfils its obligations to SE 'Guaranteed Buyer', it is advisable to approve the costs of fulfilling special obligations to ensure an increase in the share of electricity generation from alternative sources in the structure of the transmission tariff at a level sufficient to make full settlements with SE 'Guaranteed Buyer' and universal service providers.

In addition, it is necessary to apply a quarterly mechanism for reviewing the volume of costs for the implementation of special responsibilities for RES, which are included in the structure of the transmission tariff.

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ENERGY EFFICIENCY

Implementation of Energy Efficiency (including in Construction) in Ukraine

On 22 June 2017, the Law of Ukraine On Energy Efficiency of Buildings No. 2118-VIII was adopted, which determined the legal, economic, and organizational principles of energy efficiency of buildings. In 2020, by Order No. 260 of the Ministry of Communities and Territories Development of Ukraine, the Minimum Requirements for the Energy Efficiency of Buildings were approved, and by Order No. 88-r of the CMU, the Concept for the Implementation of the State Policy in the Field of Ensuring the Energy Efficiency of Buildings in terms of increasing the number of buildings with close to zero energy consumption was approved, and the National Plan for Increasing the Number of Buildings with Close to Zero Energy Consumption was approved, on 29 December 2021, by Order No. 1803-r of the CMU, the National Energy Efficiency Action Plan for the Period up to 2030 was approved and the relevant Implementation Action Plan for 2021–2023 was approved.

In 2023, the State Fund for Decarbonization and Energy Efficient Transformation was established to finance energy efficiency programmes and projects. Also, in 2023, the following documents were approved: Strategy for Thermal Modernization of Buildings of Ukraine until 2050, Operational Action Plan for 2024–2026, and Concept of the State Economic Target Programme for Supporting Thermal Modernization of Buildings until 2030.

In addition, in December 2023, the European Parliament and the Council of the European Union reached a preliminary agreement on amending the Energy Performance of Buildings Directive, in order to promote decarbonization and increase the EU's energy independence.

Solution:

To develop a legal mechanism that would allow to simultaneously implement these procedures under a simplified scheme, while not violating Ukraine's international obligations.

To address the issue of chimneys in multi-storey apartment heated buildings to improve energy efficiency and building safety

According to the Association's member companies, in accordance with the existing requirements of state building codes, in cases of apartment heating in multi-storey buildings using collective smoke exhaust systems with installed conventional convection (turbocharged) boilers, there is no possibility of replacing such a boiler with a new energy-efficient (condensing) boiler. That is, the collective chimney, laid in a multi-storey building and having such boilers connected to it, does not provide an opportunity to connect a new condensing boiler to it in the event of a failure or critical failure of an ordinary non-energy-efficient boiler.

At the same time, on 29 August 2022, certain requirements of the Technical Regulations on the Ecodesign Requirements for Room Heaters and Combined Heaters, approved by Resolution No. 1184 of the Cabinet of Ministers of Ukraine dated 27 December 2019 (hereinafter referred to as the TR for Heaters), came into force, in particular, the introduction into the Ukrainian market of conventional convection (turbocharged) boilers, which respectively have a low level of energy efficiency, was prohibited.

Therefore, **after 29 August 2022, residents of multi-storey buildings with individual apartment heating with a collective chimney, in the event of a failure of an old non-energy-efficient (convection) boiler, can neither purchase a similar non-energy-efficient boiler, nor connect a new energy-efficient (condensing) boiler without reconstructing the collective chimney, since, according to the Association's member companies, a connection without reconstruction will lead to a rapid decommissioning of such a chimney and may pose a risk to the health and life of residents.**

Therefore, according to business representatives, it is critical to find funding, potentially from the state budget, if there is such an opportunity, or under certain grant programmes for the reconstruction of such chimneys, as well as the gradual installation of more energy-efficient (condensing) boilers in multi-storey buildings with individual apartment heating.

It is also worth noting that, according to the Association's experts, the transition to new efficient boilers will help to significantly improve energy efficiency and reduce energy consumption. In particular, Table 1 shows the calculations of the Association's experts on energy savings in the event of a transition from a traditional (convection) to a new energy-efficient (condensing) boiler.

Table 1

Type of Boiler		Traditional Convection Gas Boiler	Modern Condensing Gas Boiler
Higher heat of combustion	Lower heat of combustion	100%	100%
	Water vapour energy	11%	11%
Loss	Heat loss with exhaust gases	6%	2%
	Loss due to radiation	1%	1%
	Heat loss as water vapour	11%	None
Boiler efficiency (useful heat)		93%	108%

In other words, replacing a standard (convection) boiler with a condensing boiler **adds +15% to the efficiency.**

At the same time, the Association's experts note that condensing boilers, when used in the old heating system, will not give a full effect of 15% as indicated in Table 1. The problem is that condensation occurs efficiently under certain conditions (coolant temperature of about 45 degrees), which cannot be achieved without the reconstruction of the heating system. But in any case, even without reconstruction, replacing a standard (convection) boiler with a condensing boiler can give an increase in efficiency by 8-9% due to heat extraction from flue gases and at least partial condensation.

It is also worth noting that in these calculations, business representatives assumed that the traditional (convection) boiler was relatively modern and had an On/Off thermostat. That is, the boiler turns off when the set temperature in the room is reached, and turns on again when the temperature decreases by 3-4 degrees. At the same time, according to the Association's member companies, in the case of Ukraine, 50–60% of installations do not have any thermoregulation. That is, the consumer sets a fixed temperature of the coolant and adjusts the room temperature by opening/closing the window, or by turning on/off the boiler. These are manual operations that the consumer performs only from time to time, and this usually causes excessive gas consumption.

If we evaluate the increase in the efficiency of the boiler operation when applying thermoregulation, then, depending on the automation, according to the calculations of the Association Committee experts, we will get the following efficiency gains:

+ 5%—Mechanical thermostat. It turns on the boiler and gives the heat carrier a fixed temperature when the room temperature is 1-2 degrees lower than the desired one and turns off the boiler when the room temperature is 1-2 degrees higher than the desired temperature set by the consumer on the thermostat.

+7%—Programmable mechanical thermostat. Different desired temperature is programmed for different time of the day and day of the week (while people are at work, the room temperature decreases, and fuel is saved).

+8%—Electronic room temperature sensor. A sensor that measures the temperature in the room and transmits data to the boiler in real time. The boiler, having the appropriate control logic, modulates the operation of the burner (changes the temperature of the coolant smoothly) and modulates the revolutions of the circulation pump (changes the flow rate), thereby achieving optimal operating conditions.

+9%—programmable electronic thermostat. It interacts with the boiler in a similar way to an electronic room temperature sensor, but different desired temperatures are programmed for different time of the day and day of the week.

+10%—Electronic programmable thermostat + electronic outdoor temperature sensor (or outdoor temperature data is obtained online). The boiler can additionally take into account the change in temperature outside and adjust the parameters of the heating system in advance, due to which the modulation is smoother and more energy efficient.

Thus, the use of a modern condensing boiler instead of the conventional boiler, along with the reconstruction of the heating system for optimal operation of the condensing boiler (low-temperature heating systems, coolant up to 45 degrees), as well as with the use of modern automation, will allow, according to the Association's experts, to increase efficiency by up to 25% and, accordingly, reduce gas consumption.

At the same time, taking into account the wear and tear of the old fleet of boilers and circulation pumps and suboptimal modes of their operation, the real increase in efficiency, according to the Association's experts, can reach up to 30% or even higher.

It is also possible to achieve significant energy savings by installing a heat pump. A heat pump converts energy stored in the air, water, or underground into heat to heat homes, using electricity to operate. This is not a new technology—it has been used around the world for decades. Heat pumps are the best renewable solution for heating and cooling systems of residential and commercial buildings. Heat pumps also need electricity, but by spending 1 kW of electricity on the operation of the compressor and pumps, one can get 3-5 kW of thermal energy. At the same time, in the summer, the heat pump, in the presence of a reverse mode of operation, can cool the air in the room. Heat pumps are much safer than heating systems using fossil fuels. They are cheaper to operate than solid fuel, gas and electric boilers. Long service life—up to 30 years depending on the type and model. Heat pumps do not require permits compared to gas boilers.

It is also worth noting that the most energy-efficient and environmentally friendly method for heating water and partially heating the house is the use of solar systems. The use of clean solar energy for the operation of the solar system makes it possible to provide the user with a completely hot water supply and inexpensive and not too demanding heating without the use of gas. At the same time, there is no need to pay for the sun's energy; in addition, it will never exhaust. The main condition for effective operation is bright sunlight. In addition to the pump, control panel, and fuses, the system is equipped with two elements: a solar collector and a storage tank. Year-round systems make it possible to save up to 60% of energy carriers on hot water supply in winter and provide households with completely hot water. The service life can be 15–20 years or more.

Solution:

When developing state programmes to support the population in order to switch to more energy-efficient solutions and/or when attracting international financial assistance for the above purposes, we suggest including the costs for the reconstruction of chimneys in these programmes, as well as partial compensation for citizens when buying more energy-efficient boilers and automation for them, as well as heat pumps and solar systems. This, in turn, according to the member companies of the Association Committee, will not only significantly reduce the consumption of gas and electricity by the population, but also solve the issue of safe use of **new boilers in multi-storey buildings with individual apartment heating with a collective chimney.**

Also, as one of the possible options for partial settlement of the problem with the chimneys is the introduction of collective responsibility of all residents for the reconstruction of the collective chimney when replacing the first convection boiler with a condensing boiler. To do this, it is necessary to develop and fix the relevant provision in the State Building Regulations on the methodology for the reconstruction of collective chimneys when residents replace convection boilers with condensation boilers (calculations of the required diameter of the chimney, allowed chimney materials, features of the design of the 'condensation' collective chimney, the method of connecting the condensation boiler to the collective chimney, calculations for the selection and rules for the use of condensate neutralizers, etc.).

The need to restore state market supervision and control over the compliance of business entities with the requirements of the Technical Regulations on Ecodesign Requirements for Space Heaters and Combination Heaters

On 29 August 2022, certain provisions of the Technical Regulations on the Ecodesign Requirements for Space Heaters and Combination Heaters, approved by Resolution No. 1184 of the CMU dated 27 December 2019 (hereinafter referred to as the TR for Heaters), came into force, which prohibited the introduction into the Ukrainian market of non-energy-efficient standard convection (turbocharged) boilers that have a low level of energy efficiency.

Such an innovation corresponds to the course of Ukraine's integration into the EU and will contribute to improving the energy efficiency and security of our state. Thus, according to the Association's experts, the use of a modern condensing boiler instead of the conventional boiler, along with the reconstruction of the heating system for optimal operation of the condensing boiler, as well as with the use of modern automation, will make it possible to increase efficiency and, accordingly, reduce gas consumption up to 25%.

Accordingly, the supply of cheaper but inefficient boilers had to be discontinued. At the same time, due to the moratorium on inspections and, as a result, due to the lack of state market supervision and control, some market players continue to import cheaper non-energy-efficient goods that do not meet the TR requirements for Heaters. As noted by the member companies of the Association, this results in the following negative consequences:

- Increased gas consumption compared to the situation if legally allowed equipment was used.
- The need for further reconstruction of smoke exhaust and heating systems in the short term due to the fact that non-energy efficient boilers have significant technical differences in design and operation compared to energy efficient boilers, which will require significant investment from consumers and in some cases subsidies from the state.

- In fact, failure to fully comply with the already agreed and introduced TR requirements for heaters, which is an integral part of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, dated 27 June 2014, will not contribute to the fulfilment of further requirements for heaters provided for by the TR for heaters (in accordance with the current provisions, they should enter into force in 2024 and 2025), which may generally negatively affect the European integration process of our state.
- Loss of market share and a significant share of turnover by law-abiding market players due to a significant difference in the price of energy-efficient and non-energy-efficient boilers, which makes them less competitive. In turn, this will lead to a decrease in the tax base and the loss of jobs created by these companies. Also, taking into account that companies that comply with the TR requirements for heaters, for the most part, are of European origin, there may be an increase in the number of potential complaints about the transparency of business.

Solution:

We suggest restoring state customs control over the compliance of business entities with the requirements of TR for heaters.

Amendments to the Technical Regulations on the Ecodesign Requirements for Space Heaters and Combination Heaters

The TR for heaters establishes the requirements for the energy efficiency of boilers and gradually prohibits the introduction into the Ukrainian market of conventional convection (turbocharged) boilers. In particular, the introduction into circulation of standard boilers has been prohibited since 29 August 2022, and, as noted by the Association's experts, since 1 January 2024, the introduction into circulation of heat generators, which are a key part in the repair of a conventional boiler, has been prohibited. In addition, chimneys laid in apartment buildings often do not allow replacing an old non-energy-efficient boiler with a new one. Therefore, on the one hand, the consumer does not have the opportunity to purchase a new or repair an old non-energy-efficient conventional boiler, and on the other hand, the consumer does not have the technical ability to connect a new energy-efficient (condensing) boiler, since the chimney laid in the house will not be able to function with an energy-efficient boiler.

Specifically, we would like to emphasize that Part 5 of Article 6 of the Law of Ukraine On Consumer Protection No. 1023-XII dated 12 May 1991 stipulates that 'The manufacturer (contractor) is obliged to **provide maintenance and warranty repair of products, as well as their release and delivery** to enterprises engaged in maintenance and repair, in the required amount and range of **spare parts throughout the entire period of its production, and after discontinuation—during the service life, in the absence of such a period—within ten years'.** Thus, even after the cessation of the introduction of non-energy-efficient heaters into circulation from 29 August 2022, their manufacturers and suppliers are obliged to supply parts to the Ukrainian market for a long time to maintain the operation of already put into circulation boilers.

Solution:

It is necessary to clarify the issue of the TR of heaters, in particular, to allow the import of spare parts, including heat generators, for the repair of conventional convection (turbocharged) boilers until 29 August 2032.

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FINANCIAL SERVICES

Creating a Market and Ensuring the Possibility of Attracting Investments for Financial Institutions, Through which Companies will be Able to Develop

Financial companies can currently attract investments only from professional organizations and funds, while accepting funds from private investors is prohibited by law. Similar restrictions apply to the formation of the authorized capital of a company, which can be formed only at the expense of the founders' own funds, rather than borrowed funds. This significantly limits the available sources of financing for the creation and development of companies.

In particular, Part 3 of Article 13 of the Law of Ukraine On Business Associations No. 1576-XII dated 19 September 1991 (hereinafter referred to as Law No. 1576-XII) prohibits **'the use of budget funds, funds received on credit and on pledge, bills, property of state (communal) enterprises, which, in accordance with the law (decision of a local government body) is not subject to privatization, and property under the operational management of budgetary institutions, unless otherwise provided by law, for the formation of the authorized (joint-stock) capital of a business association'.** Part 4 of Article 6 of the Law of Ukraine On Payment Services No. 1591-IX dated 30 June 2021 (hereinafter referred to as Law No. 1591-IX) provides that **'payment service providers (other than banks) are prohibited from engaging in activities to attract financial assets with an obligation to refund them, except as specified by legislative acts of Ukraine and regulations of the National Bank of Ukraine'.**

Thus, the attraction of financing for the implementation of projects for the implementation of innovative technological solutions from investors by increasing the authorized capital of a financial company is not provided for and is expressly prohibited by the current legislation of Ukraine.

Solution:

It is necessary to develop the investment market for the financial sector of the economy by creating new investment instruments where companies will be able to attract financing for the implementation of projects for the introduction of innovative technological solutions.

At the same time, the use of such an instrument is possible only if the relevant amendments are made to the current legislation of Ukraine, in particular, to Law No. 1576-XII, namely:

- In Part 3 of Article 13 of Law No. 1576-XII, the following words should be excluded: **'<...> funds received on credit and on pledge, bills <...'.**

Simplification of Over-Regulation of the Non-Banking Financial Sector

According to business representatives, the NBU pursues a policy of over-regulation of the non-banking financial sector, which leads to a slowdown in its development. The feasibility of such enhanced regulation is somewhat ambiguous, especially under martial law and taking into account the practice of regulating such services in the EU countries. For example, the microcredit or financial leasing sector in many EU countries is much less overregulated than in Ukraine.

Also, as noted by the Association's experts, Law No. 1591-IX establishes higher requirements for banks and non-bank financial institutions, in particular, for the submission of more reports than provided for by the current regulation in the EU.

Solution:

Comprehensive reassessment of the necessary level of regulation of the non-banking financial sector by the NBU, taking into account the practice of the EU member states, and making appropriate amendments to the legislation.

Renewal of Audit and Evaluation of Large Privatization Objects

The Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine on the Promotion of the Processes of Relocation of Enterprises under Martial Law and the Economic Recovery of the State No. 2468-IX dated 28 July 2022 (hereinafter referred to as Law No. 2468-IX) amended, in particular, paragraph 5 of clause 1 of Part 2 of Article 14 of the Law of Ukraine On Privatization of State and Communal Property No. 2269-VIII dated 18 January 2018 (hereinafter referred to as Law No. 2269-VIII), which abolished the requirement for the auditor to confirm the financial statements of a legal entity, which is a potential buyer of large-scale privatization objects.

In addition, Law No. 2468-IX supplemented Section V 'Final and Transitional Provisions' of Law No. 2269-VIII with clause 7^4, which, in particular, provides that for the period of the legal regime of martial law, audit, environmental audit, inventory, evaluation of the object of privatization (its components) are not done.

At the same time, business representatives believe that the abolition of the requirement for the auditor to confirm the financial statements of a potential buyer of large privatization objects may cause the risk of financial abuse, non-fulfilment of investment obligations, violation of the interests of the state, and, as a result, the ineffectiveness of privatization as a whole.

The abolition of the requirement to audit and evaluate the object of privatization (its components) does not fully correlate with the buyer's right to be aware of the object of privatization and may lead to the refusal of potential investors to participate in the privatization or the sale of such objects at a significantly lower price to less reliable buyers.

Solution:

To cancel the above changes and restore the provision on the auditor's confirmation of the financial statements of the legal entity, which is a potential buyer of the objects of large-scale privatization, as well as on the audit and evaluation of the object of privatization, including during martial law.

The Need to Cancel the Reduction of the Criteria for Auditors

The Law of Ukraine On Amendments to the Law of Ukraine 'On Audit of Financial Statements and Audit Activities' on Ensuring Audit Activities for the Period of Martial Law and Post-War Recovery of the Economy No. 2285-IX dated 31 May 2022 suspended paragraph 5 of Part 1 of Article 23 of the Law of Ukraine On Audit of Financial Statements and Audit Activities No. 2258-VIII dated 21 December 2017 (hereinafter referred to as Law No. 2258-VIII), in particular, in terms of involving at least two persons who must confirm their qualifications in accordance with Article 19 of Law No. 2258-VIII or have valid certificates (diplomas) of professional organizations confirming a high level of knowledge of international financial reporting standards, for the period of martial law, as well as within twenty-four months after its termination or cancellation, but no later than 31 December 2024.

Taking into account the need to ensure a sufficient level of qualification and experience of auditors and personnel involved in the provision of services in accordance with international auditing standards, as well as in order to comply with the requirements of the Association Agreement, which, in particular, provides for the introduction of international standards in the field of accounting and auditing at the national level, we believe that the suspension of paragraph 5 of Part 1 of Article 23 of Law No. 2258-VIII negatively affects the staffing of audit activities and the quality of audit services.

The Association's experts note that the requirements for the qualifications and experience of auditors are of particular importance during the martial law and post-war recovery of the country, since the need for an audit in accordance with international standards will increase significantly during this period and, in the opinion of business, a high-quality audit cannot be conducted by auditors who do not have the proper qualifications and experience, and do not understand international financial reporting standards at a sufficient level.

Solution:

To restore paragraph 5 of Part 1 of Article 23 of Law No. 2258-VIII in the previous wording.

Updating the Deadlines for Submitting Financial Statements Together with the Audit Report

As noted by the Association's experts, the Law of Ukraine On the Protection of the Interests of Reporting Entities and Other Documents During the Period of Martial Law or During the War No. 2115-IX dated 3 March 2022 (hereinafter referred to as Law No. 2115-IX) in its current wording does not fully comply with the principle of systematic legislation, and also contains somewhat discriminatory conditions for its non-distribution to certain business entities (banks, financial institutions, persons operating in the financial services markets, whose state regulation and supervision are carried out by the NBU, in particular, in terms of submitting other reporting than financial statements and audit reports based on the results of the mandatory audit of the annual financial statements), and distribution to others.

Also, subparagraph 4[1] of paragraph 1 of Law No. 2115-IX postponed the submission and publication, in particular, of the annual financial statements together with the corresponding audit report for up to three months after the termination or cancellation of martial law or a state of war. As a result, business has concerns that some business entities may have a misconception about the possibility of non-fulfilment of obligations to prepare and audit financial statements for the period of martial law.

Solution:

According to business representatives, it is advisable to discuss the possibility of amending this Law No. 2115-IX in order to resolve existing problematic issues.

Preparation of a Report on the Management of Small Enterprises in the Extractive Industry

In accordance with the current wording of Part 3 of Article 14 of the Law of Ukraine On Accounting and Financial Reporting in Ukraine No. 996-XIV dated 16 July 1999 (hereinafter referred to as Law No. 996-XIV), **'<...> economic entities operating in the extractive industries shall, no later than 30 April of the year following the reporting period, publish the annual financial statements and annual consolidated financial statements together with the relevant audit reports, management report, consolidated management report, report on payments in favour of the state, consolidated report on payments in favour of the state on their web page or website (in full)'.**

At the same time, in accordance with Part 7 of Article 11 of Law No. 996-XIV, 'microenterprises and small enterprises are exempted from submitting a management report'. In this regard, the Methodological Recommendations for the Preparation of a Management Report, approved by Order No. 982 of the MoF dated 7 December 2018, do not contain recommendations for the preparation of a report on the management of small enterprises and microenterprises.

Thus, the Association's experts conclude that microenterprises and small enterprises operating in the extractive industries, in accordance with the current wording of Part 3 of Article 14 of Law No. 996-XIV, are not exempted from the obligation to publish a management report and, accordingly, must prepare it.

Solution:

Development and adoption by the MoF of methodological recommendations for the preparation of a management report for microenterprises and small enterprises that are business entities and operate in the extractive industries, as well as the consolidation of the provision on the presence or absence of such business entities' right not to reflect non-financial information in the management report.

Recognition of Foreign Electronic Trust Services

Given the large number of foreign economic contracts, it is extremely important for Ukrainian business to extend the recognition of electronic trust services provided in developed democratic countries of the world (such as the United States, Canada, the United Kingdom, Australia, Japan, etc.), also to civil (contractual) relations.

Solution:

To recognize at the level of Ukrainian legislation the electronic trust services (electronic signatures) provided in the United States, Canada, the United Kingdom, Australia, Japan, and other industrialized democratic states of the world, in particular signatures created using the international DocuSign platform. To make appropriate amendments to the Commercial Code of Ukraine, the Law of Ukraine On Electronic Identification and Electronic Trust Services No. 2155-VIII dated 5 October 2017, to conclude agreements on mutual recognition of electronic trust services.

Confirmation of Rendering Services Without Signing the Certificate

The current legislation of Ukraine does not provide for standard primary documents for registration of transactions for the provision (receipt) of services. As a rule, such a document is a certificate of services rendered. At the same time, according to the member companies of the Association, in the international practice, the signing by the parties to the contract of the certificate of services rendered is not considered mandatory to confirm the provision of services. In particular, in accordance with Part 2 of Article 6 of the Law of Ukraine On Foreign Economic Activity No. 959-XII dated 16 April 1991 (hereinafter referred to as Law No. 959-XII), **‘<...> In the event of exported services (with the exception of transport services), a foreign economic agreement (contract) may be made by way of acceptance of a public proposal (offer) or by way of exchange of electronic messages or otherwise, in particular, by way of issuance of an invoice, including in electronic form, for the services rendered. <...>’.** Based on the analysis of this norm, the Association’s experts conclude that invoicing after rendering the services is a confirmation of the fact of concluding a foreign economic agreement, and, accordingly, the payment of such an invoice after the full rendering of services can be considered a confirmation of the agreement fulfilled (services rendered).

In addition, according to letter No. 31-11410-06-5/4339 of the MoF dated 16 February 2017, **‘<...> A properly issued invoice can be the basis for reflection in the accounting of a business transaction for the supply of goods, works (services) without drawing up an acceptance certificate only if it is paid, which is confirmed by the relevant documents <...>’.**

At the same time, the Verkhovna Rada of Ukraine is considering a draft law On the Use of Invoices in Work (Service) Transactions No. 8125 dated 13 October 2022 (hereinafter referred to as Draft Law No. 8125), which provides for the settlement of relations related to the circulation of invoices when performing work (providing services).

Solution:

To adopt Draft Law No. 8125 and supplement Article 6 of Law No. 959-XII with a provision that will provide that a properly issued invoice for the services rendered under a foreign economic agreement (contract), on the basis of which the payment was made, which is confirmed by the relevant documents, can be the basis for reflection in the accounting of a business transaction for the supply of goods, works (services) without drawing up an acceptance certificate, unless otherwise provided by a foreign economic agreement (contract).

Improvement of the Financial Monitoring System

In general, the main problems of the current financial monitoring system and ways to solve them are set out in the Action Plan aimed at preventing the occurrence and/or reducing the negative consequences of the risks identified by the results of the third national risk assessment in the field of prevention and counteraction to legalization (laundering) of proceeds from crime, financing of terrorism, and financing of proliferation of weapons of mass destruction, for the period up to 2026, approved by CMU Order No. 1207-r dated 27 December 2023.

Among the key problems, the Association's member companies consider it necessary to highlight the following:

1. Low efficiency of investigation of crimes related to the legalization of proceeds from crime and the financing of terrorism.
2. Insufficient effectiveness of financial monitoring due to insufficient implementation of the risk-based approach (both at the level of primary and state financial monitoring entities).
3. Insufficient quality of laws and regulations of some state financial monitoring entities. Thus, only recently, the MoF approved by Order No. 282 dated 7 June 2024 an updated Regulation on the Implementation of Financial Monitoring by Primary Financial Monitoring Entities, which are the subject of state regulation and supervision by the Ministry of Finance of Ukraine (hereinafter referred to as the Regulation). At the same time, according to the Association's member companies, the Regulation does not take into account in many aspects the specifics of activities of designated primary financial monitoring entities (auditors, accountants, tax consultants) and makes the latter's compliance with its requirements quite burdensome.

Business representatives understand that one of the main reasons for such problems is the limited resources (insufficient funding and qualified human resources) to ensure the proper implementation of the legislation on financial monitoring.

Solution:

Comprehensive review of the regulatory framework in the field of financial monitoring in order to strengthen the focus on the risk-based approach in legal regulation and supervision of compliance with the legislation on financial monitoring.

Currency Liberalization

The member companies of the Association note that after the end of the war and the moderate stabilization of the balance of payments of Ukraine, the NBU should continue the course for restoration of currency liberalization established by the Law of Ukraine On Currency and Currency Transactions No. 2473-VIII dated 21 June 2018 (hereinafter referred to as Law No. 2473-VIII). In addition, even during the war, it is important to follow the basic principles laid down in Law No. 2473-VIII.

Thus, it should be noted that Part 5 of Article 3 of Law No. 2473-VIII provides as follows: **'If the provision of this Law or a regulation of the National Bank of Ukraine issued on the basis of this Law, or the provisions of other regulations of the National Bank of Ukraine allow ambiguous (multiple) interpretation of the rights and obligations of residents and non-residents in the field of currency transactions or the powers of currency supervision bodies, such a provision shall be interpreted in the interests of residents and non-residents'.** At the same time, as business representatives note, in practice, servicing banks adhere to the opposite position, and the NBU, in turn, does not exercise the function of pre-trial settlement of disputes on currency supervision, which often leads to ambiguous understanding of some norms by servicing banks, and, as a result, leads to violation of the rights and interests of business.

Solution:

To empower the NBU with the authority/function of pre-trial resolution of currency supervision disputes between servicing banks and their clients.

Easing of Currency Restrictions Imposed by the NBU after 24 February 2022

On 3 May 2024, the NBU adopted a resolution On Amendments to Resolution No. 18 of the Board of the National Bank of Ukraine dated 24 February 2022 (hereinafter referred to as Resolution No. 56), which introduced the largest easing of currency restrictions since the beginning of the full-scale war. The implementation of these changes will contribute to improving the business environment in Ukraine, opening new markets for domestic business, supporting economic recovery, and attracting new investments. However, as noted by the member companies of the Association, the set limits do not fully cover the needs of large enterprises. Resolution No. 56, among other things, allows the following:

1) Residents are allowed to transfer foreign currency in favour of a foreign investor / non-resident in order to pay dividends on corporate rights or shares accrued on the basis of performance in the period starting from 1 January 2024, within the limits of only EUR 1 million per month.

2) Transfer of funds is allowed in order to pay interest on a loan received by a resident borrower from a non-resident under a loan agreement concluded between them, under the terms of which the date of payment of the relevant interest payment falls on dates after 24 February 2022, and in case of delay of interest payment as of 1 May 2024, transfer of funds is allowed only in an amount not exceeding EUR 1 million per quarter.

Solution:

To consider expanding the easing of currency restrictions for large industrial businesses, in particular increasing the limits on the payment of loans, dividends, and bonds (until their complete abolition when possible, given the overall macroeconomic situation in the country).

Restoration of the Infrastructure of the City, Village, Settlement, Social Facilities on Their Territory Through the Introduction of Targeted Bonds

Unfortunately, as a result of hostilities, many cities, villages, and settlements of our country have been destroyed, devastated, and need great financial support today. One of the mechanisms in operation for attracting financial resources is the issuance of municipal bonds of local communities (bonds of internal local loans), in particular, these may be targeted bonds for the restoration of the infrastructure of a city, village, settlement, social facilities on their territory. Such projects require raising funds for a long period: 5–10 years. As noted by the Association's member companies, there are potential institutional investors in Ukraine—NSPFs, which can provide such funds, because the assets of the NSPFs can be used as long-term investments. At the same time, as the Association's experts note, the rather complex procedure for registering the issue of municipal bonds becomes an obstacle to the use of this mechanism.

Solution:

Facilitation of the procedure for registering the issue of municipal bonds, reducing the time of registration of municipal bonds would contribute to a faster flow of the necessary resources to finance such projects. To better protect investors, additional guarantees should be the support of such projects by the state, not only by local authorities, but also by the MoF.

Additional Protection from the State, Reducing Risks and Increasing Guarantees of Refunds to Investors

State institutions can also become issuers of securities to support and restore certain sectors of the economy. For example, the state represented by the State Mortgage Institution or the Restoration Fund of Ukraine specially created for such needs may issue green, energy, mortgage bonds, etc. According to business representatives, such a mechanism will allow obtaining additional protection from the state, reducing risks, and increasing guarantees of refunds to investors. Government guarantees are one of the important criteria for choosing instruments for investment.

Solution:

Facilitation of registration of the issue of bonds, reducing the time of registration of green, energy, mortgage bonds, etc., with additional state guarantees.

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ELECTRONIC PAYMENTS

Progressive Implementation of the Regulation on Authentication and the Application of Strong Customer Authentication (or SCA) in the Payment Market

Resolution No. 58 of the NBU Board dated 3 May 2023 approved the Regulation on Authentication and the Application of Strong Customer Authentication in the Payment Market (hereinafter referred to as Resolution No. 58 and the Regulation, respectively), which established requirements for payment service providers to apply authentication of payment service users, application/non-application of strong customer authentication, protection of confidentiality and integrity of vulnerable payment data, and electronic interaction on the payment market of Ukraine between payment transaction entities.

The member companies of the Association are actively working to ensure the implementation of the requirements of Resolution No. 58 as soon as possible, but given the complexity of the relevant processes, they emphasize that additional time is needed for their implementation. Thus, as the Association's experts note, an increase in the period is necessary for the proper completion of settings and/or modifications of automated systems and proper adaptation of business processes.

In addition, payment market participants have got a lot of questions and proposals for clarifying certain provisions of the Regulation in order to ensure phased and systematic implementation of regulatory requirements.

Solution:

Amendments to Resolution No. 58 and the Regulation in order to increase the time for implementation of the Regulation and ensure proper compliance with its requirements by banks.

Taking into Account the Proposals of Business and the Population During the Further Implementation of the State in a Smartphone Concept

Business is ready to participate in the implementation of projects to integrate additional services into the web portal of public services and the Diia application (hereinafter referred to as the Diia web portal), in particular, in the field of public transport, municipal services, parking space management, etc. Thus, the member companies of the Association suggest introducing through the Diia web portal the option of remote registration of an hourly payment for a parking space or the possibility of issuing an electronic parking pass.

Solution:

Regular meetings of the Ministry of Digital Transformation of Ukraine with representatives of the business community in order to receive proposals from business on the integration of additional services into the Diia web portal and application, and discussing the possibility and prospects of this integration, as well as the timing of the implementation of relevant initiatives.

Creation of Conditions for Voluntary Legalization of Self-Employed Individuals

According to business representatives, it is necessary to create attractive conditions that will contribute to the voluntary legalization of self-employed persons. Thus, the Association's experts propose to extend the institution of a tax agent to banks that serve individuals who are self-employed and carry out their activities, in particular, through online platforms, are not registered as individual entrepreneurs, but wish to transfer their activities to the legal plane. Business representatives suggest introducing a declarative principle of starting economic activities for such self-employed persons, instead of registering as individual entrepreneur, and exempting self-employed persons from the necessity of keeping records of income and expenses, and compiling tax reports.

At the same time, it is proposed to determine an exclusive list of activities to which a special tax regime will apply, in particular, these may be home services, childcare, tutoring, courier activities, drivers to order, etc.

At the same time, the Association's experts believe that the implementation of the above proposals is possible by introducing a mechanism for opening a separate special bank account of a self-employed person with subsequent deduction of income tax and sending tax reporting by the agent bank in automatic mode.

Also, the National Revenue Strategy until 2030, approved by CMU Order No. 1218-r dated 27 December 2023, provides for a complete reform of the simplified taxation system for individuals. The new system of personal income taxation will be comprehensive for all existing groups and will not provide for the need to register as an individual entrepreneur. At the same time, differentiated tax rates will be introduced. Also, potentially, banks will be entrusted with the function of tax agents for all individuals engaged in business activities, but the technological parameters of this process are still unagreed.

At the same time, according to the Association's experts, a draft law is being developed to implement the provisions of Council Directive (EU) 2021/514 dated 22 March 2021 amending Directive 2011/16/ EU on administrative cooperation in the field of taxation (DAC7) (hereinafter referred to as Directive 2021/514), according to which digital platforms must identify their customers and report their income to the tax authorities.

Solution:

Involvement of business representatives in the development and discussion of the draft law on the implementation of Directive 2021/514 into national legislation, in order to ensure that the proposals of the business community are taken into account.

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HEALTH CARE

Defining the Strategy for the Development of the Pharmaceutical Industry of Ukraine as Part of the European Community and Market

The movement towards full membership of Ukraine in the European Union requires determining the place of the pharmaceutical industry of Ukraine in the pharmaceutical market of the European Union, including making decisions on priority investments in national production.

Solution:

Negotiations with the European Union on the definition of Ukraine as a component and participant in the Pharmaceutical Strategy for Europe, coordination of joint projects to implement European Union legislation and practices in the regulation and functioning of the pharmaceutical industry of Ukraine, in particular, within the framework of the EU4Health project, other international technical assistance projects. The development of the Pharmaceutical Strategy for Ukraine on this basis.

Implementation of the Law of Ukraine On Medicinal Products No. 2469-IX Dated 28 July 2022 (Hereinafter Referred to as Law No. 2469-IX)

Law No. 2469-IX contains fundamental changes to the current provisions in the field of creation and circulation of medicinal products, as well as a number of innovations that require significant further processing at other levels of legal regulation, in particular regarding:

- Adaptation of Ukrainian legislation to the provisions and practices of EU regulation.
- Digitalization of the industry.
- Creation of a new unified state regulatory and supervisory body in the field.
- Improving access to selected groups of medicinal products.

Solution:

The Association submitted key proposals for consideration by the Committee of the Verkhovna Rada of Ukraine on National Health, Medical Care, and Medical Insurance, the Ministry of Health of Ukraine, the State Service of Ukraine on Medicines and Drug Control, and SE ‘State Expert Centre of the Ministry of Health of Ukraine’ (hereinafter referred to as the SEC), in particular regarding:

- Improving the mechanism of simplified registration of medicinal products to ensure effective and accelerated access to the Ukrainian market for innovative treatment.
- Priority of the state policy on attracting clinical trials to Ukraine, their procedural simplification and removal of barriers.
- Bringing the provisions on the exclusivity of the data of the registration dossier for a medicinal product in line with the requirements of the Association Agreement Between Ukraine and the EU.
- Final implementation of the eCTD format, the transition to full-fledged electronic interaction between business and government as the main components of digitalization.
- Reorientation of the state control function to combat counterfeiting, illegal, or uncontrolled circulation of medicinal products, gray imports.

Solution (continuation):

- Ensuring the proper functioning of the procedure for confirming the compliance of medicinal product production conditions with the requirements of good manufacturing practice, including within the framework of the procedure for 'recognition' of GMP certificates from countries with a strict regulatory environment.
- Introduction of modern requirements for confirmation of therapeutic equivalence (bioequivalence, if applicable) for all generic medicinal products that are on the market.
- Building a new regulatory body based on the principles of transparency, financial stability, competitive principles, complete digitalization of all services and processes, defining mechanisms for public control over the activities of the body (for example, through the formation of a public control council) and eliminating conflicts of interest.
- Implementation of a modern system for the prevention of counterfeiting of medicinal products—a system for the verification of medicinal products in full institutional and technical compliance with the EU system.
- Strengthening integration and interaction with EU countries and states with strict regulatory authorities (SRAs) (Conclusion with the EU of the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA Agreement), movement towards Ukraine's membership in the International Council for Harmonization of Technical Requirements for Pharmaceuticals for Human Use (ICH)).

Full Digitalization of Registration Procedures for Medicinal Products and Approval of Clinical Trials

Currently, Ukraine has begun the process of introducing modern international and European standards for digital interaction (submission and processing of documents) of pharmaceutical market entities with the Ministry of Health of Ukraine and the SEC during state registration (re-registration) of medicinal products, making changes to registration materials during the validity of the marketing authorization, as well as approving clinical trials and significant amendments to clinical trial protocols. Such a basic modern mechanism for the digitalization of these processes is the introduction of the electronic common technical document (eCTD) format and the eSubmission system in the interaction of representatives of the pharmaceutical business with state regulatory authorities.

Solution:

To continue the implementation of the eCTD format and the eSubmission system in Ukraine and updating the regulatory and technical regulation, including taking into account the provisions of Law No. 2469-IX. To coordinate with the European Medicines Agency (hereinafter referred to as EMA) the requirements for the eCTD format and the eSubmission system, with a view to their further integration with the EMA system.

Confirmation of Compliance of Medicinal Product Production Conditions with the Requirements of Good Manufacturing Practice (Hereinafter Referred to as GMP Confirmation) in Ukraine – Implementation of European Approaches

Experts of the Association emphasize that the current format of the procedure for confirming the compliance of medicinal products production conditions with GMP requirements and obtaining a GMP Conclusion is not fully effective, causes unnecessary bureaucratic burden on business, and does not correlate with the approaches applied in the EU to the recognition procedures and the scope of GMP certificates as such.

The Association's member companies state that the EU does not issue a separate document and does not carry out a separate regulatory procedure for confirming GMP for countries that are recognized (on the basis of the country's membership in the EU, the presence of separate international treaties, etc.). In such cases, during the regulatory procedures, the applicant submits to the authorized bodies the original GMP Certificate of the country of recognition, the regulatory authority of which issued it, which is a sufficient document and the basis for its adoption and application. The authorized body does not conduct any additional examination of such a document and does not issue a document confirming such a document. The responsibility of the applicant for the submitted document is covered by the general provisions on the validity of official documents, as well as the licensing system for the manufacture and import of medicinal products. At the same time, GMP confirmation is one of the requirements for obtaining a production licence.

In accordance with the Licensing Conditions for the Production of Medicinal Products, Wholesale and Retail Trade in Medicinal Products, Import of Medicinal Products (except for Active Pharmaceutical Ingredients), approved by Resolution No. 929 of the Cabinet of Ministers of Ukraine dated 30 November 2016, verification that the production is carried out in accordance with the GMP requirements is the duty of the authorized person during the import of medicinal products.

At the same time, in Ukraine, the State Service of Ukraine on Medicines and Drug Control (hereinafter referred to as the SMDC) is obliged to verify the original GMP Certificates originating from recognition countries by conducting a specialized examination and issuing a GMP Conclusion.

Please note that the implementation of this procedure requires companies to not fully justify the use of their own financial and human resources to duplicate the GMP confirmation carried out by the company in the countries of recognition. According to business representatives, depending on the product portfolio, companies are forced to appoint at least one individual employee on a permanent basis, who specializes exclusively in supporting GMP confirmation processes, an approximate minimum cost of which is UAH 50,000–100,000 per month.

The experts of the Association Committee generally state that the conceptual inconsistency of approaches to GMP confirmation in the EU and Ukraine leads to the following undesirable results for the Ukrainian medicinal product market:

- The need to submit documents in Ukraine that are not required in the EU for the purposes of confirming GMP, and, accordingly, the irrational use of human resources of both manufacturers operating in Ukraine and the SMDC.

- Significant bureaucratization of processes that do not provide proven additional guarantees of patient safety. According to the Association's member companies, the absolute majority of comments during the specialized examination of GMP certificates of manufacturers located in the EU or other countries of recognition are of an administrative nature, that is, they relate either to the set of documents provided or to the execution of the documents provided. In addition, there is no information that any of the submitted applications were rejected due to non-compliances that could affect the quality or safety of the products (for example, non-compliance with the scope of authorized operations, etc.), as a result, GMP Conclusions were obtained for all GMP Certificates. Thus, the rationality of conducting such a complex and long examination and its final effectiveness from the point of view of the risk management concept is questionable.
- Inability to synchronize the receipt of GMP confirmation for the same site in the EU and Ukraine and, accordingly, significant delays in other procedures that depend on the GMP confirmation procedure.
- The inability to extend the validity of the GMP Conclusion in time / to obtain a new GMP Conclusion in Ukraine, which delays the decision of EU manufacturers to import medicinal products to Ukraine, leads to complications in conducting part of the registration procedures (in particular, throughout the life cycle of the medicinal product, manufacturers must regularly amend the marketing authorizations for medicinal products, which is impossible without submitting the GMP Conclusion, which may also require an extraordinary update) and, ultimately, delays access to the necessary medicines for patients.

It is also worth noting that the EudraGMP database operates within the EU [20], which is available for use by any persons, which excludes the need to obtain paper documents in most cases, as well as eliminates doubts about the origin of the relevant GMP Certificates and their validity.

Thus, in the opinion of the experts of the Association Committee, for proper confirmation of the compliance of production conditions with GMP requirements that occurs in Ukraine during the procedure for registration of medicinal products, licensing of activities for the manufacture and import of medicinal products, and state quality control of medicinal products, it is reasonably sufficient for the applicant to submit the original GMP Certificate of the country of recognition or direct access of the relevant regulatory authorities of Ukraine to the EudraGMP database and/or open databases of foreign states (associations of states) where such GMP Certificates are posted electronically.

Solution:

An appeal of the Association was sent to the Ministry of Health of Ukraine, the Ministry of Economy of Ukraine, and the SMDC with a request to consider cancelling the GMP Conclusions as an ineffective regulatory document and the procedure for obtaining it, providing for the direct application of GMP Certificates issued by the regulatory authorities of the countries of recognition, within the framework of licensing and registration procedures for medicinal products, determining the form and procedure for applying such GMP Certificates by the authorized bodies of Ukraine during regulatory procedures in the format of their direct application.

The Association also sent proposals to the draft Procedure for GMP in Ukraine, which provides for a mechanism for automatic recognition of GMP certificates issued by authorized bodies of countries with strict regulation, to the SMDC in August 2024 as part of work on by-laws to implement the Law of Ukraine On Medicinal Products No. 2469-IX dated 28 July 2022. This proposal is under consideration by the SMDC. This document establishes a mechanism for fully updating the approaches to confirming the compliance of medicinal product production conditions with the requirements of good manufacturing practice, in order to harmonize it with the legislation and practices of the European Union, and as part of the preparation for the harmonization of mutual recognition of GMP documents between Ukraine and the EU.

[20] http://eudragmdp.ema.europa.eu/inspections/displayWelcome.do;jsessionid=I0E8-Z7AFiN6o7nN3nhsle5IYyuyk9xGOjk_OsVqGEWFhR1YdDRb!-1896089308

Introduction in Ukraine of European Practices Used

in the Registration/Re-Registration of Medicinal Products and Amendments to the Registration Materials (Procedures for Duplication of Changes, Worksharing, Do and Tell, Cancellation of the Provision of an Opinion on the Confirmation of Compliance of the Conditions for the Production of Medicinal Products with the Requirements of Good Manufacturing Practice (GMP)).

Solution:

To process and amend the Procedure for Examination of Registration Materials for Medicinal Products Submitted for State Registration (Re-Registration), as well as Examination of Materials on Amendments to Registration Materials During the Validity of the Marketing Authorization, approved by Order of the Ministry of Health of Ukraine No. 426 dated 26 August 2005, in order to harmonize the current legislation of Ukraine with EU legislation, as well as optimize the current procedure.

The State's Further Plans for the Signing of the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) in the Field of Medicinal Products and Medical Devices

Solution:

We draw your attention to the significance and necessity of concluding the ACAA Agreement in the field of medical devices. The field of medical devices was included in the list of products of the third priority for the conclusion of the ACAA Agreement. At the same time, there is no unambiguous understanding of plans for further work on this issue.

To date, Ukrainian legislation does not provide for simplifications in undergoing conformity assessment in Ukraine for manufacturers of those medical devices, the compliance with the requirements of European legislation of which has already been confirmed. In particular, this applies to leading international manufacturers of medical devices. As a result, certain high-tech medical products do not reach the population of Ukraine.

In addition, it is necessary to initiate the introduction in the ACAA Agreement of provisions on the mutual recognition by Ukraine and the EU of documents confirming the compliance of medicinal product production conditions with GMP requirements, which will ensure the mutual simplification of the activities of pharmaceutical manufacturers and guarantee the stability of providing patients in Ukraine with high-quality and safe medicinal products.

The conclusion of the ACAA Agreement by Ukraine would provide an opportunity to supply Ukraine with more and more new innovative products, which could have a positive impact on the quality and life expectancy of our citizens. We ask you to consider transferring medical devices to sectors of the second priority as part of the future expansion of the ACAA Agreement and inclusion in the Agreement of the issue of mutual recognition of documents confirming GMP for medicinal products, in order to facilitate the practical conclusion of the ACAA Agreement in the field of medical devices and medicinal products as soon as possible.

Cancellation of Duplication of State Control of Quality and Licensing of Import of Medicinal Products

In accordance with EU regulation, the licensing of import of medicinal products was updated in Ukraine in 2016 [21]. Each licensee must implement a quality management system, and its authorized person is responsible for the creation, implementation, and operation of the quality system, and is also responsible for issuing a permit for the release (sale) of each batch of imported medicinal product. At the same time, despite this, since 2005, there has been a widespread state quality control of each batch of medicinal products imported into Ukraine, the content of which, as the Association's experts note, is similar to the powers and obligations of the licensees' authorized persons. We emphasize that the introduction of licensing for the circulation of certain products is usually the basis for changing the focus of state control from the stage of putting products into circulation to the stage of selling products to end users. Thus, the purpose of state control, including sampling at this stage, is to identify interference with the circulation of unlicensed or unconscionable subjects. Unfortunately, in fact, this approach is almost not applied by the SMDC to the circulation of medicinal products.

It should be noted that Article 117 of Law No. 2469-IX introduces a risk-oriented approach to the state quality control of medicinal products, which is consistent with the EU approaches set out in Section XI 'Supervision and Sanctions' of Directive 2001/83/EC of the European Parliament and of the Council dated 6 November 2001 on the Community code relating to medicinal products for human use (hereinafter referred to as Directive 2001/83/EC).

Such a parallel existence of the two systems has not only a theoretical contradiction, but also leads to significant complications in the process of supplying medicinal products to Ukraine. Thus, according to the Association's experts, the state quality control procedure involves a number of actions that are absent in the EU, as well as the submission of documents that are not characteristic of this stage of medicinal product circulation. We emphasize that it is not possible to make 'superficial' changes to the relevant regulation, because its conceptual difference from the approaches in the EU makes it impossible to solve such problematic issues.

Solution:

We suggest abolishing the mandatory state quality control of each batch of medicinal products imported into Ukraine, if the batch is released in the territory of countries with strict regulatory bodies, replacing it with a risk-oriented approach, when the licensee will be responsible for the quality of the products, and the control will be focused on the stage of the final sale of the products to consumers.

Please note that Article 114 of Directive 2001/83/EC expressly provides for the grounds for exercising such control in the EU, which are much narrower than those specified in Ukraine.

[21] https://zakon.rada.gov.ua/laws/show/929-2016-%D0%BF#Text

Establishment of a New Body of State Control

In accordance with paragraph 3 of clause 6 of Section XII 'Transitional Provisions' of Law No. 2469-IX, the Cabinet of Ministers of Ukraine was instructed to establish a new state control body before the entry into force of this Law. In our opinion, the establishment of this body will be a central component of the reform of the entire system of regulation and control over the circulation of medicinal products and the implementation of EU regulation in the pharmaceutical sector. At the same time, this is a complex process that requires the involvement of a large number of resources for its implementation. Experts of the Association sent proposals to the MoH for the establishment of a new body, which, in particular, include the following proposals:

- Establishment of a body of state control from the ground up, rather than by transforming existing state institutions.
- Ensuring the competitive selection of the Chairman of the newly established body and all other employees of the institution.
- Ensuring the functioning of the body on the basis of transparency and reporting, in particular, laying the need for the establishment of a Public Council.
- Ensuring the activities of the state control body in accordance with the norms of European legislation.

Solution:

We suggest considering initiation by Ukraine, within the framework of further negotiations with the EU, the resumption [22] or launch of a new EU technical assistance project for Ukraine on the establishment of a new body of state control and updating of sectoral legislation regulating its activities. We are confident that this approach will significantly facilitate the process of European integration of the industry, ensure the implementation of the best standards and practices of the EU in the field, and improve the conditions for its functioning, as well as investment attractiveness. To ensure a transparent process for the establishment of the body, taking into account the proposals of the business community.

Strengthening Counteraction to Falsification and Gray Import of Pharmaceutical Products

The Law of Ukraine No. 4908-VI dated 7 June 2012 ratified the Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes Involving Threats to Public Health, which resulted in increased responsibility for the introduction and sale of counterfeit medicinal products in Ukraine.

At the same time, according to the Association's experts, Ukraine has not properly implemented responsibility for the falsification of medical devices and does not provide for effective mechanisms to combat the gray import and circulation of medicinal products and medical devices.

This situation significantly affects the image of Ukraine as a reliable partner for manufacturers and importers of medicinal products and medical devices, and does not contribute to ensuring patients' access to safe and effective medical devices.

[22] Since 2016, there has been a technical assistance project called 'Consulting on Regulatory Changes in the Pharmaceutical Sector of Ukraine' of the European Bank for Reconstruction and Development with the participation of the Ministry of Health of Ukraine, SEC, and representatives of the pharmaceutical industry, which resulted in recommendations. The Association is not aware of the current status of the project. Link to the latest recommendations provided:
https://moz.gov.ua/uploads/ckeditor/%D0%B4%D0%BE%D0%BA%D1%83%D0%BC%D0%B5%D0%BD%D1%82%D0%B8/%D0%9F%D0%BB%D0%B0%D0%BD%20%D1%80%D0%BE%D0%B7%D0%B1%D1%83%D0%B4%D0%BE%D0%B2%D0%B8%20%D1%96%D0%BD%D1%81%D1%82%D0%B8%D1%82%D1%83%D1%86%D1%96%D0%B9%D0%BD%D0%BE%D1%97%20%D1%81%D0%BF%D1%80%D0%BE%D0%BC%D0%BE%D0%B6%D0%BD%D0%BE%D1%81%D1%82%D1%96/20190329_InstitutionalCapacityBuildingPlan_UPDATED_UKR.pdf

Solution:

To develop and adopt amendments to criminal, administrative, and other legislation in order to introduce effective mechanisms for preventing and combating the counterfeiting of medicinal products and medical devices, as well as their circulation.

Promoting the Development of the Pharmaceutical Industry in Ukraine, Focusing on Encouraging Investment in Research and Development, Promoting the Attraction of International Clinical Studies (Trials) to Ukraine

Solution:

To develop and adopt the Law of Ukraine On Clinical Studies to harmonize national legislation on clinical studies (hereinafter referred to as CSs) of medicinal products, medical devices, etc. with EU legislation.

To contribute to the restoration of the CS sphere, which was critically affected during the full-scale invasion of the russian federation in Ukraine, by updating the current legislation and optimizing the conditions for the approval and conduct of CSs in Ukraine.

To update the current legislation on clinical studies (CSs)—to adopt amendments to regulations in accordance with the provisions of Law No. 2469-IX and Regulation (EU) No. 536/2014 of the European Parliament and of the Council dated 16 April 2014 on clinical trials on medicinal products for human use and repealing Directive 2001/20/EU (hereinafter referred to as Regulation No. 536/2014), in particular to the Order of the MoH On Approval of the Procedure for Clinical Trials of Medicinal Products and Examination of Clinical Trial Materials and the Model Regulations on the Ethics Commissions No. 690 dated 23 September 2009:

- To update the terminology regarding CS.
- To shorten the terms for approval of interventional CSs and establish a general period for approval of CSs, including examination of CS materials and making a decision by the MoH allowing interventional CSs, from the date of submission to the MoH by the applicant/sponsor of the relevant application and a certain package of documents attached to the application, and includes a period for examination of such documents of up to 25 calendar days for international multicentre CSs of phases II-III, the protocols of which are agreed/approved in countries with strict regulatory authorities (SRAs) or under a centralized procedure by the competent authority of the European Union for conducting on the territory of such countries or states which are members of the European Union; up to 50 calendar days for interventional CSs; up to 20 calendar days for low-interventional CSs.
- To update the section on labelling of studied medicinal products in accordance with Regulation No. 536/2014, which will enable the sponsors to optimize the use and prevent the destruction of unused innovative studied medicinal products.
- To update the requirements for the participation in the CSs of persons under the age of 18, in particular infants or minors, infants or minors deprived of parental care, an adopted child or an orphan, incapacitated or partially incapacitated persons, etc.

Solution (continuation):

- To regulate the possibilities of introducing the latest CS technologies in Ukraine (the introduction of decentralized CSs, the use of telemedicine, conducting procedures and providing services within the CSs at the place of residence/stay of the study subjects, remote monitoring and verification of data, etc.).

The Association's experts have identified certain mechanisms and proposals for reducing the period of CS approval, which, in their opinion, will contribute to improving the situation with the involvement of new CSs in Ukraine, namely:

- To introduce online submission of the application and at the same time materials of the CS/MD in electronic form through the Administrative Service Centre of the Ministry of Health 'Single Window'.
- To simplify and reduce the examination of CSs that are approved/carried out in countries with strict regulatory authorities in accordance with the terms declared in Law No. 2469-IX and ensure the observance of such terms.
- To simplify/shorten the internal procedures for organizing the payment for the examination in SE 'State Expert Centre of the MoH of Ukraine' (hereinafter referred to as the SEC) (referral from the Administrative Service Centre of the Ministry of Health 'Single Window' to the SEC, issuing an invoice, confirmation of payment), including the option of advance payment for the examination of the CS/MD.
- To establish the priority of passing the CS approval procedures, access programmes for study subjects (patients) to the studied medicinal product after the completion of the CS and expanded access programmes for patients to unregistered medicinal products.

It is also seen as advisable for business representatives to take the following steps in order to increase the attractiveness of the CS sphere in Ukraine for potential investments:

- To adopt legislation to stimulate the development of the CS sphere—to adopt amendments to the Tax Code of Ukraine: to exempt from VAT the importation into the customs territory of Ukraine and/or operations for the supply of studied medicinal products and concomitant therapy medicinal products, medical devices and related materials imported for the CS in Ukraine; to exempt from VAT the services within the CS (scientists, medical researchers, service organizations) for a period of 10 years; to regulate the taxation of researchers (without the introduction of additional benefits), etc.
- To introduce a moratorium for 5 years on the cost of the examination of SE 'State Expert Centre of the MoH of Ukraine' to make decisions on the CSs and approve significant amendments in UAH at the price level, which were applicable in February 2022.
- To legislatively regulate and introduce tax benefits for international and domestic applicants/sponsors conducting CSs in Ukraine—the proportion of benefits in accordance with the level of investment in Ukraine, which corresponds to the direction of attracting investments in the form of international multicentre CSs in Ukraine, in particular, international multicentre CSs in Ukraine. To introduce a tax calculator for investments in research and development, in particular for international CSs.
- To develop and implement a plan for the development of national infrastructure for the CSs, including through public-private partnerships.
- To ensure constant access of CS experts to advanced training in Ukraine.
- To assess the effectiveness of the tools introduced to stimulate international investment, in particular through the involvement of international CSs in Ukraine.

To regulate the compassionate provision of medicinal products to patients

On 15 February 2022, the Verkhovna Rada of Ukraine adopted the Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine on the Regulation of the Compassionate Provision of Medicinal Products to Patients No. 2054-IX (hereinafter referred to as Law No. 2054-IX), which entered into force on 30 April 2022. Law No. 2054-IX provides for the creation in Ukraine of conditions for patient access to innovative treatment and the implementation of programmes for compassionate provision of patients with medicines through the regulation of legal relations in this area and taking into account the practices of the European Union member states in national legislation. For the practical implementation and application of the provisions of Law No. 2054-IX, Order No. 1525 of the MoH of Ukraine dated 24 August 2022 approved the Procedure for Approval and Implementation of the Expanded Access Programme for Patients to Unregistered Medicinal Products and the Access Programme for Study Subjects (Patients) to the Studied Medicinal Product after the Completion of the Clinical Trial (hereinafter referred to as Procedure No. 1525 and the Access Programme, respectively). Given that the approval and implementation of access programmes in accordance with the adopted legislation was introduced in Ukraine for the first time, it is necessary to analyse the effectiveness of this regulation to make the necessary adjustments to the relevant regulations.

Solution:

Based on the already existing experience of approval of access programmes, the Association's experts identified problematic aspects and prepared proposals for amendments to Procedure No. 1525, in particular:

- To clearly determine the need for approval of access programmes for study subjects (patients) to the studied medicinal product after the completion of the clinical trial until the end of the CS as a whole, in order to allow patients who have completed participation in the relevant CS to continue treatment outside this study.
- To add provisions on granting by the MoH to the applicant together with the access programme refusal, the SEC's conclusion with comments, based on which such a programme was not approved.
- To clearly determine the possibility of approval in the access programme of several medicinal products that were used in one CS, or several CSs that were carried out using the same studied medicinal product, to ensure the continuation of treatment for patients, which was carried out as part of the CS, etc.

It is also important for the MoH to monitor compliance with the deadlines for approving access programmes.

It is necessary to continue monitoring the implementation of access programmes and, if necessary, propose additional amendments to the relevant regulations.

Article 321 [2] of the Criminal Code of Ukraine 'Violation of the Established Procedure for Preclinical Study, Clinical Trials, and State Registration of Medicinal Products' actually establishes the same criminal liability for offences with varying degrees of public danger

According to business representatives, such an approach does not correspond to the principle of justice as part of the constitutional principle of the rule of law. In addition, criminal liability, including for procedural violations, introduced by Article 3212 of the Criminal Code, according to the Association's experts, has no analogues in European legislation and international practice. In addition, the presence of the relevant article of the CCU creates opportunities for abuse by law enforcement agencies and, in combination with other barriers, significantly impairs the investment attractiveness of Ukraine in the international market of clinical trials.

Solution:

The adoption of the draft Law On Amendments to the Criminal Code of Ukraine on the Improvement of Liability for Violation of the Established Procedure for Preclinical Study, Clinical Trials, and Admission to the Market of Medicinal Products No. 11181-1 dated 3 May 2024, registered with the VRU, which was developed with the participation of the Association's experts, representatives of patient organizations, and taking into account the comments of representatives of law enforcement agencies.

Digitalization in the Field of Clinical Trials

There have already been the first positive changes in terms of digitalization in the field of CSs, in particular, changes in accordance with the Order of the MoH of Ukraine On Approval of Amendments to the Procedure for Clinical Trials of Medicinal Products and Examination of Clinical Trial Materials No. 538 dated 28 March 2022.

Further introduction of digitalization can significantly improve the conditions for conducting CSs and improve the attractiveness of Ukraine for attracting international clinical studies, given the critical impact of martial law and active hostilities on the territory of Ukraine.

According to business representatives, insufficient or no digitalization elements have been implemented in the field of clinical trials, which would cover the relevant activities in the CS process and are directly related to the digitalization of the healthcare sector, namely the introduction of eHealth.

Solution:

To prepare proposals and identify relevant regulations for the inclusion of elements of digitalization for the conduct of CSs, namely the introduction of the use of the patient's electronic cabinet for the purposes of CSs, in particular, the electronic form of primary medical documentation with the examination data and results of treatment of the patient, including reports of adverse reactions and other reports on the safety of medicinal products, as well as ensuring access to primary medical documentation in the electronic information systems of the health care system of Ukraine regarding the CSs, by representatives of CS sponsors, regulatory authorities of other countries for conducting CS audits and inspections, storage of CS materials/documents in archives in electronic information systems for the time specified by international requirements and legislation of Ukraine, as well as the introduction of telemedicine capabilities, etc., which will correspond to the general processes of digitalization both in the world and in the field of health care.

Preservation of the Transition Period for the Application of the Provisions of Part 2 of Article 42 of the Law of Ukraine On Medicinal Products No. 2469-IX Dated 28 July 2022 (Hereinafter Referred to as Law No. 2469-IX)

The Association's experts note that, to date, the importation into the territory of Ukraine of studied medicinal products (hereinafter referred to as SMPs) and related materials can be carried out by the sponsor, the applicant, and/or a legal entity or individual acting under a power of attorney provided by the sponsor or the applicant for the importation of SMPs (registered or unregistered) and related materials (medical devices, medical equipment, etc.) intended for use within the framework of a certain CS. Typically, importation into the territory of Ukraine of SMPs is provided by logistics companies on behalf of the applicant/sponsor of the CS. The activity of importing SMPs into the territory of Ukraine from any state is not subject to licensing. Unlike the current legislation, Law No. 2469-IX provides that SMPs will be imported into the territory of Ukraine:

- By the wholesale distributor (wholesale of medicines) or sponsor from the states of the European Union (hereinafter referred to as the EU) and the European Free Trade Association, which is a party to the Agreement on the European Economic Area (hereinafter referred to as the EFTA).
- By an importer of medicinal products, in particular SMPs, from non-EU and non-EFTA countries (hereinafter referred to as Third Countries).

It is important that a logistics company can obtain a licence for economic activities in the wholesale trade of medicinal products, provided that it meets the licensing conditions, from the State Service of Ukraine on Medicines and Drugs Control (hereinafter referred to as the SMDC) before the entry into force of Law No. 2469-IX and import into the territory of Ukraine of SMPs from the EU and EFTA countries after the entry into force of Law No. 2469-IX as a wholesale distributor on the basis of the said licence. Also, according to Law No. 2469-IX, the importation into the territory of Ukraine of SMPs from the EU and EFTA states can be assumed by the sponsor of the relevant CS without the requirement to obtain a licence for wholesale of medicinal products or another licensee for wholesale of medicinal products.

At the same time, according to Law No. 2469-IX, the right to import SMPs into the territory of Ukraine from third countries (including countries with a strict regulatory system such as the United States, Japan, Australia, etc.) will belong exclusively to an economic entity that has a licence for economic activities for the import of medicinal products, in particular SMPs (except for active pharmaceutical ingredients), issued only by a state control body (hereinafter referred to as SCB) or a body entrusted with the authority to issue such a licence before the establishment of the SCB. The current legislation does not provide for the importation of SMPs from third countries on the basis of a licence for the import of medicinal products issued by the SMDC. Accordingly, in order to avoid a possible blocking of the importation into Ukraine of SMPs from third countries, Law No. 2469-IX provides for a transitional period for licensing these operations, which will avoid interruption of supplies in the absence of a licence for the import of SMPs. Thus, clause 1 of Section XI of Law No. 2469-IX determines that Part 2 of Article 42, which stipulates that **'the import of studied medicinal products (other than APIs) in the territory of Ukraine is subject to licensing'**, shall enter into force on 1 January 2028.

At the same time, according to business representatives, an initiative is currently being considered by state authorities to accelerate the entry into force of Law No. 2469-IX as a whole. Taking into account the above, the member companies of the Association have concerns about the possible abolition of the transitional period for Part 2 of Article 42 of Law No. 2469-IX and the provision for the simultaneous entry into force of the entire Law No. 2469-IX and Part 2 of Article 42, or the entry into force of Part 2 of Article 42 of Law No. 2469-IX with the establishment of the SCB. In this case, logistics companies that import SMPs from third countries into the territory of Ukraine for already started CSs will not have a transitional period for obtaining the appropriate licence (the procedure for issuing the licence under Law No. 2469-IX lasts up to 90 days). Thus, access of study subjects (patients, healthy volunteers) to SMPs imported to Ukraine from third countries may be limited, which may potentially lead to violation of the requirements of the CS protocols and the rights of study subjects with the risk of adverse reactions or events.

Solution:

In case of consideration by the Verkhovna Rada of Ukraine of the draft law, by which Law No. 2469-IX will come into force earlier than the terms established for today, to postpone the entry into force of Part 2 of Article 42 of Law No. 2469-IX for at least one year from the date of entry into force of Law No. 2469-IX or the establishment of the SCB.

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LOGISTICS AND INFRASTRUCTURE

The Need to Adapt National Transport Legislation to EU Legislation. Adoption of a Law that Will Regulate the Railway Transportation Market with the Operation of Private Traction (Locomotives) on it

Ensuring the adaptation of national transport legislation to EU legislation in accordance with the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, dated 27 June 2014, and opening the private traction market is another step towards European integration. Experts of the Association's Logistics Committee are convinced that competition in the locomotive traction market will contribute to the establishment of a market price for rail transportation.

Solution:

Adoption of the new Law of Ukraine On Railway Transport of Ukraine, taking into account the proposals of the business community.

At the same time, it is necessary to begin the development of by-laws necessary for the proper implementation of the provisions of the relevant draft law after its adoption.

Reforming the Structure of Ukrzaliznytsia, JSC

Solution:

It is necessary to complete the reform of the structure of Ukrzaliznytsia, JSC in particular, through the financial and organizational division of Ukrzaliznytsia, JSC into separate segments by types of activity with singling out of competing companies within Ukrzaliznytsia, JSC in the form of joint-stock companies in each segment (except for infrastructure), which will create prerequisites for increasing transparency, improving the quality of service, and increasing the efficiency of railway transportation.

Failure to Establish the National Commission for State Regulation of Transport (Hereinafter Referred to as the NCSRT)

Solution:

To develop and adopt a law that will establish the NCSRT and determine the main principles of its operation and powers, in particular, to regulate the activities of natural monopolies and related markets that operate in the transport services markets. According to business representatives, the NCSRT should become a collegial independent body that will not be part of the system of central executive bodies. The principle of independence as the basis for the functioning of the regulator is provided for by EU law (for example, Article 55 of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area).

Adoption of the Methodology for Calculating the Rates of Port Fees and the Procedure for Collection, Accounting, and Use of Funds from Port Fees

Solution:

The member companies of the Association expect a reduction in the rates of port fees, which, in particular, will be conditioned on the adoption of a reasonable Methodology for Calculating the Rates of Port Fees, together with the relevant Procedure for their Collection and Use, which will take into account the comments and suggestions of the Association's experts.

Adoption of the Procedure and Conditions for Concluding Contracts, on the Basis of which Compensation is Made for Investments Made by Business Entities in Strategic Port Infrastructure Facilities

Solution:

On 28 March 2024, the draft resolution of the CMU Certain Issues of Compensation for Investments Made by Business Entities in Strategic Port Infrastructure Facilities that are State-Owned Facilities (hereinafter referred to as the Draft Compensation Procedure) was published on the official website of the Ministry for Communities, Territories and Infrastructure Development of Ukraine (hereinafter referred to as the MoI).

Experts of the Association's Logistics Committee generally support the Draft Compensation Procedure and welcome the initiative of the MoI to adopt it, but at the same time, they want to note that the issue of compensation for the cost of underwater hydraulic structures built through private investment before the entry into force of the Law of Ukraine On Sea Ports of Ukraine No. 4709-VI dated 17 May 2012, remains relevant for the business community and needs to be regulated by a separate regulation.

The Need to Simplify the Licensing Procedure for Construction Works in the Waters of Seaports and on the Lands of Inland Waterway Transport

Solution:

The Verkhovna Rada of Ukraine registered a draft Law On Amendments to Certain Legislative Acts of Ukraine on Construction on Land Occupied by Public Waterways No. 9664 dated 1 September 2023.

Experts of the Association's Logistics Committee emphasize the need for its adoption with a mandatory revision between the first and second reading and taking into account the proposals of the Association's experts.

Assignment of State Enterprise ' Maritime Search and Rescue Service' to the Management of the State Emergency Service of Ukraine

Solution:

To amend clause 1 of the CMU Resolution On Ensuring the Functioning of the Unified Search and Rescue System at Sea No. 1069 dated 20 October 2011 and delete clause 5 of the CMU Resolution On Restoring the Unified Search and Rescue System at Sea No. 158 dated 24 February 2016.

Development of Lease and Privatization Processes in Seaports to Facilitate Investment Attraction (along with concession)

Solution:

Member companies of the Association deem it necessary to continue privatization processes in all domestic ports. At the same time, it is important to improve the legislation on privatization and lease of state property, since the current regulations do not fully take into account the current needs of the development of the port industry and hinder the attraction of large-scale investments in the port sector.

Promoting the Development of Existing and Attracting New Multimodal Cargo Transportation Through the Cargo Terminal of SE ' Chisinau International Airport'

Experts of the Association emphasize that a significant number of companies that are transport agents and use Chisinau International Airport as a transfer airport face the issue of storage fees, the amount of which is formed on the basis of the cost of cargo, which increases the cost of warehouse terminal services. Payment for cargo terminal services, which is charged from the time the cargo is delivered to the warehouse, increases the cost of services for companies that are transport agents and use SE 'Chisinau International Airport' as a transfer airport. This, in turn, reduces airport transfer flows in favour of European airports, where customers have a grace period for carrying cargo.

Solution:

One of the possible solutions offered by business representatives is to provide a benefit for the period of storage of cargo in the cargo terminal of the airport (the first 72 hours of free storage). In addition, the member companies of the Association believe that changing the payment method by eliminating the calculation of the tariff based on the cost of the cargo, and instead introducing an approach according to which the calculation is proposed to be carried out solely on the basis of volume and weight, will have a positive impact on the attraction of goods to Chisinau International Airport.

Implementation of Electronic Consignment Notes (Hereinafter Referred to as CMRs and e-CMRs, Respectively) in Ukraine

The Association's experts support the intentions aimed at Ukraine's accession to the single digital market of the European Union and, accordingly, the introduction of CMRs in electronic form and the initiation of the transition from paper document circulation to digital solutions, reflected in the draft Law On Amendments to the Law of Ukraine On Road Transport Regarding the Introduction of a Consignment Note in Electronic Form No. 6534 dated 20 January 2022, which, however, was withdrawn from consideration.

Solution:

The business community of the Association considers this issue extremely relevant and proposes to speed up the process of registration with the VRU and consideration of the updated draft law on this issue, taking into account the submitted business proposals.

Introduction of the Term of Consolidated Transportation into the Law of Ukraine On Road Transport No. 2344-III Dated 5 April 2001 (Hereinafter Referred to as Law No. 2344-III)

Solution:

Experts of the Association emphasize the need to expand the list of basic terms in Article 1 of Law No. 2344-III with definitions of consolidated transportation, consolidated cargo, and consolidated transportation route by making appropriate amendments to Law No. 2344-III during the development of the relevant legislative initiative.

Taking into account the peculiarities of the organization of the processes of transportation of consolidated cargo, according to the member companies of the Association, they must be considered separately to further optimize the processes of document circulation. In addition, as business representatives note, this is necessary for the transparent functioning of consolidated transportation, because currently consolidated transportation is not properly regulated, although its share is increasing every year.

CONSTRUCTION

Development and Implementation of a War/Investment Risk Insurance Mechanism

Currently, the construction industry needs a significant amount of investment. At the same time, in the context of military aggression and martial law, investors, in particular foreign ones, are not ready to invest in the implementation of residential and non-residential (commercial) real property construction projects. This is due to the risks of a constant threat of destruction of such facilities, suspension of construction, falling under temporary occupation, etc. The relevant proposals on this issue were sent by the Association, but have not yet been taken into account by the Cabinet of Ministers of Ukraine (hereinafter referred to as CMU) (in particular, the MoE)).

Solution:

It is necessary to develop at the legislative level an effective special mechanism for war risk insurance, as well as a special state war risk insurance fund related to the implementation of new construction or reconstruction (restoration) projects of residential real property (in particular, housing for internally displaced persons or other persons who have lost their homes as a result of hostilities) and non-residential (commercial) real property (including infrastructure projects). By analogy, we propose to consider using the experience of the CMU related to air carrier risk insurance in February 2022.

It should also be noted that on 21 December 2023, the President of Ukraine signed the Law On Amendments to the Law of Ukraine On Financial Mechanisms for Stimulating Export Activities on Insurance of Investments in Ukraine against War Risks No. 3497-IX dated 22 November 2023, which amended the Law of Ukraine On Financial Mechanisms for Stimulating Export Activities No. 1792-VIII dated 20 December 2016, in particular, eliminated the gaps that limited the possibility of insuring domestic investments by the Export and Credit Agency (hereinafter referred to as ECA), including in the context of hostilities and post-war recovery. At the same time, as business representatives note, currently the ECA resources for investment insurance are very limited, therefore, it is important to increase the number of available investment insurance programmes and increase the ECA resource for such insurance.

The Use of superficies for the reconstruction of residential and non-residential real property, social infrastructure, and other real property items

In Ukraine, a big problem is the issue of unfinished and long-term construction. As representatives of the business community note, this is often due to problems with financing construction projects, unlawful actions of individuals, etc. In the context of the armed aggression of the russian federation against Ukraine, the martial law, broken logistics chains, the risk of building halt of facilities increases significantly.

Solution:

It is necessary to intensify the issue of the use of superficies at the national and regional levels for the reconstruction of residential and non-residential real property, social infrastructure, and other real property items with imperative conditions for the rapid transfer of ownership of the result of the work of a person who cannot fulfil his/her obligations on time.

Continuation of Active Work on the Development and Implementation of Programmes for the Comprehensive Restoration of Regions and Territorial Communities (Their Parts)

The Law of Ukraine On Amendments to Certain Laws of Ukraine on Priority Measures for Reforming the Sphere of Urban Planning No. 2254-IX dated 12 May 2022 (hereinafter referred to as Law No. 2254-IX) introduced the concept of a 'comprehensive restoration programme for the region, the territory of the territorial community (part of it)'. This is a regional or local territorial restoration programme that defines the main spatial, urban planning, and socio-economic priorities of the restoration policy and includes a set of measures to ensure the restoration of the territory of the relevant region, the territory of the territorial community (part of it) affected by the armed aggression against Ukraine or in which socio-economic, infrastructural, environmental, or other crisis phenomena are concentrated.

According to the data announced at one of the meetings of the Working Group of the Committee on the Organization of State Power, Local Government, Regional Development, and Urban Planning of the Verkhovna Rada of Ukraine on determining priorities and measures for comprehensive restoration of territories, the number of territorial communities that began to develop programmes for comprehensive restoration increased during 2024.

Member companies of the Association note the importance of continuing this process, in particular, continuing to work in the appropriate direction and further implementation of relevant programmes.

Solution:

It is necessary to continue active work on the development and implementation of programmes for the comprehensive restoration of territorial communities. This, according to the Association's experts, will contribute to the restoration of the construction industry, as it will allow to effectively plan and implement large-scale construction and infrastructure projects.

Ensuring the Publicity and Transparency of Urban Planning Documentation and the Implementation of Registration and Permitting Procedures

Business representatives note that ensuring the publicity and transparency of urban planning documentation at all levels, as well as the implementation of registration and permitting procedures in the field of construction, was before the war and still is rather ambiguous.

Much of the urban planning documentation is non-digital. Often, there are no tools to obtain up-to-date information on urban planning documentation in certain settlements. The documentation on urban planning conditions and restrictions is not issued automatically (it has subjective and other factors, including corruption-related ones). Experts of the Association note that, in general, the permitting system has undergone positive changes, but it has a number of shortcomings (in particular, in the work of state architectural and construction control bodies).

Solution:

Development of regulatory and technical prerequisites for the implementation of the state-level urban planning cadastre, in which all other urban planning cadastres and registers are integrated. A separate issue is the technical support for the automatic issuance of urban planning conditions and restrictions using the software of the urban planning cadastre in the form of an appropriate document (extract).

An effective mechanism for automating the registration of permits for construction works, as well as the commissioning of such facilities, should be developed.

Creation of Conditions for the Technical Readiness of the Conformity Assessment System in the Field of Construction

With the adoption in 2020 of the Law of Ukraine On the Provision of Construction Products on the Market No. 850-IX dated 2 September 2020, the provisions of Regulation of the European Parliament and of the Council No. 305/2011 dated 9 March 2011, laying down harmonized conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (hereinafter referred to as Regulation No. 305/2011) were implemented into national legislation.

Fulfilment of these requirements is ensured, among other things, through the use of construction products with proper performance characteristics during construction. The Association's experts note that the assessment and verification of the stability of performance should be carried out by manufacturers together with the designated assessment bodies of conformity to the requirements of Regulation No. 305/2011. At the same time, there are currently no designated conformity assessment bodies. The situation is also complicated by the lack or shortage of equipment in the existing laboratories necessary for testing construction products.

Solution:

Expansion of the infrastructure for assessing the compliance of construction products with the requirements of Regulation No. 305/2011: (1) the formation of an expert environment necessary for the accreditation of new and re-accreditation of existing bodies for the assessment and verification of the stability of construction products indicators: the appointment of experts and auditors for the accreditation of conformity assessment bodies; (2) accreditation of conformity assessment bodies for the performance of tasks as a third party in the process of assessing and verifying the stability of construction products indicators, etc.

Provision of the Maximum Number of People with Shelters Protecting Them from Dangerous Injuries as a Result of Hostilities

According to business representatives, there is currently an insufficient number of civil protection structures and shelters for the entire population in Ukraine. A significant part of such shelters is formally included in the funds of civil protection structures, but does not meet the statutory conditions. There are frequent cases when shelters are closed or used for other purposes that intended.

Solution:

First of all, it is necessary to carry out an inventory and audit of existing civil protection structures.

The fund of civil protection structures has to be expanded at the expense of existing buildings and structures that can be used as dual-use structures.

A new effective approach to the planning of territories and the construction of buildings and structures should be created and implemented aimed at ensuring the protection of the maximum number of civilians.

These measures should be accompanied by: (1) the definition of liability for non-compliance with civil protection requirements by the authorities during the design, construction, and control during the commissioning of construction facilities; (2) ensuring the proper use of the existing fund of protective structures.

Construction of Affordable and Energy-efficient Housing to Reduce Energy Consumption

Due to the war in Ukraine, the number of internally displaced persons (hereinafter referred to as IDPs) is increasing. As part of the reconstruction process, the Government plans to start large-scale construction of affordable housing for such persons. At the same time, in the context of continuous shelling of energy facilities by enemy missiles, the issue of optimal use of energy resources, according to the Association's experts, is undoubtedly one of the key issues to be taken into account during construction.

According to the Association's member companies, Ukrainian residential buildings currently use about twice as much energy per square metre as similar buildings in the European Union. In addition, buildings with high energy consumption contribute to a much greater emission of greenhouse gases into the air during operation, which has a negative impact on both the environment and human health.

Solution:

When building housing for IDPs, the Government and donor organizations need to take into account not only the aspect of accessibility, but also energy efficiency. The creation of energy-efficient housing will help save resources, as well as significantly reduce the emission of greenhouse gases and other pollutants into the atmosphere.

Adoption of the Draft Law On the Principles of Restoration of Ukraine

Solution:

It is necessary to adopt a separate law that would regulate the basic legal, organizational, and financial principles for the effective, transparent, and accountable recovery of Ukraine, including the functioning of the DREAM system.

The Use of Building Materials of Ukrainian Origin During the Reconstruction of Ukraine

Solution:

In order to accelerate the reconstruction, as well as to create additional incentives for the domestic industry (not only construction, but also related industries, in particular, the production of building materials, structures, and equipment), it is advisable to introduce preferences within the framework of reconstruction programmes (for example, priority during state tenders), for the use of Ukrainian-made construction materials, as well as other construction components with a localization level of more than 50%.

It is necessary to use design solutions that will give preference to the resources available in the country (for example, steel construction, building mixtures made in Ukraine and from Ukrainian raw materials, bricks from national manufacturers, domestic crushed stone for concrete and road construction, technological sands obtained from sludge and overburden rocks of mining production, thermal insulation materials, wall sandwich panels, etc.).

It is also advisable to introduce programmes for the integrated development of destroyed settlements, according to the projects of prefabricated buildings made of domestic components (for example, steel modular construction, monolithic frame buildings, etc.). According to the Association's experts, this will contribute to significant savings on both the cost of production and logistics costs for the delivery of construction materials, as well as reducing the time of construction projects implementation.

Economic incentives for investors should be implemented (for example, the introduction of preferential conditions for the allocation of land plots) to create in Ukraine the production of that nomenclature of building materials, the need for which is currently fully provided by imports (for example, window glass).

Settlement of Land Issues for Reconstruction Projects

Solution:

In order to accelerate post-war reconstruction, it is necessary to significantly simplify and accelerate the procedures for land allocation and transfer of rights to land plots for construction. To this end, it is advisable to give the executive bodies of village, settlement, and municipal councils, on a temporary basis, the authority to dispose of land plots for construction within settlements. At the same time, it should be envisaged that the functions of control over the simplified process of disposal of land plots for construction should be entrusted to the relevant local councils.

Experts of the Association also emphasize the need to significantly simplify the procedure for seizure (purchase) of land for public needs.

Simplification of Mechanisms for Creating New Settlements for Their Use in Case of Economic Inexpediency of Restoring Completely Destroyed Existing Habitats

Solution:

To create a mechanism for integrated planning and coordination of projects for the creation of villages, settlements, and towns with the necessary infrastructure, instead of the phased growth of settlements according to inertial scenarios.

To ensure the involvement of employers' consortia in the construction of new settlements in order to ensure the economic basis for the development of future settlements as target customers for their development, provided that they undertake investment commitments for the economic development of a particular settlement by creating jobs and filling local budgets with taxes and fees at the level specified in the investment agreement.

Compensation for Lost Property of the Population

Solution:

It is important to develop preferential lending programmes for affected persons (both state and international, as well as from the private banking sector), through which such persons will be given the opportunity to buy housing on their own.

To create an exchange housing stock, in particular by purchasing housing in already built facilities and facilities under construction.

Procurement of Equipment, Ils, and Services for Reconstruction Needs

Solution:

To optimize procurement mechanisms, including public procurement (both tender and direct), by introducing shortened procedures for typical projects involving private financing, as well as develop mechanisms for state compensation for actually made private investments in public and social infrastructure.

To simplify licensing procedures in the field of urban planning, in particular, it is advisable to reduce the terms of issuance of urban planning conditions and restrictions, technical conditions, etc.

It is also necessary to update state building codes and other state standards, norms, and rules, taking into account the challenges of wartime.

ENVIRONMENTAL MATTERS

Settlement of Waste Management in Ukraine

On 9 July 2023, the Law of Ukraine On Waste Management No. 2320-IX dated 20 June 2022 (hereinafter referred to as Law No. 2320-IX) came into force. Currently, the process of reforming the waste management system in Ukraine is still underway. In this context, the member companies of the Association note that, to date, a number of by-laws have not yet been adopted, as well as amendments to existing laws, and sectoral legislative documents that are necessary for the proper implementation of the requirements of Law No. 2320-IX have not been developed.

Solution:

- To develop and adopt amendments to Law No. 2320-IX, as well as to the Law of Ukraine On Scrap Metal No. 619-XIV dated 5 May 1999, in order to regulate the management of scrap metal, which is a critical raw material for the domestic industry.
- To finalize and adopt the draft Law On Packaging and Packaging Waste on the basis of the draft law No. 10066-1 dated 29 September 2023, taking into account the proposals of the Association, in particular, to reduce the targets for waste collection and recycling, etc.
- To take into account the proposals of the Association when finalizing the draft Law On Waste from Electrical and Electronic Equipment (EEE), which was published by the Ministry of Environmental Protection and Natural Resources of Ukraine, in particular, in terms of requirements for labelling and provision of information on the content of hazardous substances in EEE.

To finalize the draft Law On Waste Management of the Extractive Industry, published by the Ministry of Environmental Protection and Natural Resources of Ukraine on 20 February 2024, in terms of exclusion of waste from the oil and gas sector due to the fact that Directive 2006/21/EC of the European Parliament and of the Council dated 15 March does not take into account the specifics of this industry in Ukraine, which is the production of hydrocarbons on land (and not on the continental shelves) in the amount of 18 billion cu m of gas.

Improvement of the Environmental Impact Assessment (Hereinafter Referred to as EIA) Procedure

Companies that regularly carry out EIA note that the procedure is imperfect and needs to be updated. Among the main problems are: the unification of the EIA process as a permitting procedure in accordance with the current legislation of Ukraine, the need to undergo several EIA procedures in the process of implementing one business project, in particular during the development of the field, for such types of planned activities as deep drilling and mining, as well as in the case of launching eco-modernization projects; a long period of obtaining an EIA conclusion as a permitting document; lack of industry standards for the structure and content of the EIA report and post-project monitoring.

The Law of Ukraine On Amendments to Certain Laws of Ukraine on the Improvement and Digitalization of the Environmental Impact Assessment Procedure No. 3227-IX, adopted on 13 August 2023, did not resolve the above-mentioned issues.

Solution:

To amend the Law of Ukraine On Environmental Impact Assessment No. 2059-VIII dated 23 May 2017, in particular:

- To determine the grounds that will allow making changes to the EIA conclusion, in particular, in terms of coordinates within a reasonable error, information on the subsoil use object, and the way and method of development, which is similar to that specified in the EIA conclusion, the customer, etc., which will replace the need to perform the EIA procedure again to change the information that can be corrected by making changes.
- To exclude the provision on the inadmissibility of carrying out the planned activities on the basis of the existence of prohibitions or restrictions established by law and provide for the mandatory determination of environmental conditions under which the implementation of the planned activities will be permissible in such territories.
- To provide for the possibility of discussing the environmental conditions of EIA conclusions with a business entity before approval.
- To develop a list of unified science-based measures aimed at preventing, averting, avoiding, reducing, eliminating the impact on the environment, taking into account discussions with business and the public, as well as methods for implementing such measures.
- To implement the requirements of Art. 8a of Directive 2011/92/EU and provide for exemptions from post-project monitoring of enterprises that monitor the effects on the environment in accordance with current environmental legislation, which takes into account the effects on atmospheric air, aquatic environment, soils, flora and fauna.
- To leave the post-project monitoring procedure only for facilities that have a separate location and in areas where there was no anthropogenic impact.
- To define and consolidate the individual screening procedure to determine the need to undergo the EIA procedure instead of the current common approach.
- To provide for the possibility of a simplified EIA procedure for eco-modernization projects of enterprises and for enterprises of the extractive industry.
- To formulate a clear definition of the term ‘significant negative impact on the environment’.
- To regulate the implementation of the EIA procedure for the period of martial law, in particular the postponement of the fulfilment of the conditions of EIA conclusions and post-project monitoring.

Reform of State Environmental Control

According to business representatives, the system of state environmental control in Ukraine is not sufficiently effective and needs to be reformed. Now, in the implementation of control measures, there are risks of abuse by the relevant regulatory authority of its powers, and corruption risks are often reported in relation to its work. On 15 July 2021, the draft Law On State Environmental Control No. 3091 dated 19 February 2020 (as amended on 22 March 2021, hereinafter referred to as Draft Law No. 3091) was passed in its first reading. The document is intended to ensure a total reset of the regulatory authority and the introduction of European approaches to the implementation of control. Despite numerous comments from stakeholders, including businesses, the document, according to the Association’s experts, contains even greater levers of pressure on business and no strengthening of the areas, the abuse of which causes the greatest damage to the state—poaching, illegal logging and mining.

Solution:

To take into account the Association's proposals in the revised version of Draft Law No. 3091, in particular:

- To coordinate Draft Law No. 3091 with the current legislation on state supervision (control) over the implementation of economic activities (3-stage gradation of enterprises depending on the degree of risk from the implementation of economic activities; the obligation to indicate in the order on the planned/unplanned measure of state environmental control the name of the business entity in respect of which the measure will be implemented; establishment of the right of the business entity not to be admitted to the implementation of the state environmental control measure on reasonable grounds specified in the document).
- To clearly define the responsibility of representatives of the regulatory authority for damage caused as a result of professional errors during the implementation of state environmental control measures.
- To exclude provisions that may lead to duplication of powers of the State Service for Maritime, Inland Waterway Transport and Shipping of Ukraine by the State Environmental Inspectorate of Ukraine.
- To establish a clear list of grounds for imposing administrative and economic sanctions for non-admission of representatives of state environmental control bodies to carry out the state environmental control measure.
- To postpone the entry into force of some provisions of the document, in particular, regarding the obligation to install automated monitoring systems within 6 months after the entry into force of Draft Law No. 3091.
- To exclude provisions for automated monitoring of emissions (subject of the law on industrial pollution).
- To establish the possibility of conducting unscheduled inspections on weekends, non-working days, holidays, and/or at night only if there are 4 hours for the arrival of the head, as well as to establish that the inspection does not begin without the head or after the expiration of 4 hours.
- To set the maximum period for conducting scheduled inspections of 10 days.
- To provide that in case of suspension of the inspection, inspectors must leave the territory of the enterprise, as well as provide for provisions under which inspectors can request documents no more than 2 times per inspection.
- To provide for a provision on the entry into force of the decision on the fine after 30 days, and in case of appeal to the court, after the court decision enters into force (if the decision is not cancelled).
- To exclude provisions on the extension of the powers of the State Environmental Inspectorate in the field of subsoil use.
- To exclude provisions for the involvement of local government bodies in carrying out environmental control measures in respect of legal entities.
- To determine that the implementation of the obligation of unimpeded admission of inspectors is carried out only if there are legal grounds / full package of documents.
- To exclude the provision on the exemption of the State Environmental Inspectorate from paying the court fee.
- To exclude the possibility of unscheduled inspections of business entities on the basis of an appeal from the pre-trial investigation bodies within criminal proceedings.
- To ensure the strengthening of control in the field of protection of special protected areas.
- To exclude provisions that introduce economic and administrative sanctions for business entities.

To update the Regulations on the State Environmental Inspectorate of Ukraine, approved by CMU Resolution No. 275 dated 19 April 2017, in terms of requirements for state inspectors. In addition, it is important to update the performance indicators for state inspectors (these should not be fines imposed).

Determining the Procedure for Negotiations on the Postponement of the Application of the Carbon Border Adjustment Mechanism (Hereinafter Referred to as CBAM) to Ukrainian Importers

On 10 May 2023, Regulation (EU) 2023/956 of the European Parliament and of the Council establishing a carbon border adjustment mechanism (hereinafter referred to as the CBAM Regulation) was adopted. Since 1 October 2023, there is a transitional period for the introduction of the Carbon Border Adjustment Mechanism (hereinafter referred to as CBAM), during which the importer only reports on CO2 emissions and has no financial obligations. From 1 January 2026, the mechanism will work fully, namely: the manufacturer of a product subject to CBAM, when it is imported into the EU, must pay for the CO2 emissions released as a result of its production, by purchasing CBAM certificates at a price that will form the EU greenhouse gas emission allowance trading market (hereinafter referred to as the EU ETS). In the first stage, CBAM will cover iron and steel, aluminium, cement, organic chemicals, fertilizers, electricity, and hydrogen. By 2030, CBAM is expected to cover all sectors covered by Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (hereinafter referred to as Directive 2003/87/EC). Even before the full-scale invasion of the russian federation, the EU identified Ukraine as one of the countries that will be most affected by the introduction of CBAM. According to various estimates, the additional burden on imports from Ukraine will be from EUR 300 million to EUR 1.2 billion annually [23][24][25][26]. However, given the high cost of electricity and capacity reduction, the dependence of Ukrainian importers on the EU market will increase, which will increase the impact of CBAM.

Solution:

- To ensure the presence of CBAM issues in the focus of Ukraine's representation to the EU, diplomatic missions in key member states, as well as countries that are Ukraine's largest trading partners.
- Based on the provisions of the CBAM Regulation on force majeure (exceptional and unprovoked circumstances):

- To organize work with the European Commission in order to initiate appropriate changes to the regulation of CBAM and the application of the provisions on exceptional and unprovoked circumstances to imports from Ukraine.

- To actively cooperate with the European Commission in order to recognize the EU data on greenhouse gas emissions formed as a result of the activities of the national system for monitoring, reporting, and verification of greenhouse gas emissions of Ukraine, for all EU goals and mechanisms, including for the purpose of using CBAM.
- To develop a mechanism similar to the CBAM for importing products to Ukraine from countries that do not have an emissions trading system.
- To ensure that EU financial institutions provide access to sources of financing to Ukrainian enterprises for projects to introduce technologies that reduce CO2 emissions, on conditions not worse than for EU enterprises.

[23] https://forbes.ua/money/vugletseviy-podatok-mozhe-koshtuvati-ukraini-300-mln-po-yakikh-virobnikakh-vin-vdarit-naysilnishe-rozrakhunki-ey-22032023-12550
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Introduction of a Greenhouse Gas Emission Allowance Trading System (Hereinafter Referred to as GHG EATS) as a Market-Based Carbon Pricing Tool

In June 2024, the draft Strategy for the Implementation of the Greenhouse Gas Emission Allowance Trading System in Ukraine for the Period up to 2033 and the Operational Implementation Plan for 2024–2026, the Strategy for the Implementation of the Greenhouse Gas Emission Allowance Trading System in Ukraine for the Period up to 2033 (hereinafter referred to as the Draft Strategy and the Draft Plan, respectively) were published on the official website of the Ministry of Environmental Protection and Natural Resources of Ukraine. The business community is clearly aware of and supports the non-alternative nature of the green energy transition and the reduction of GHG emissions, as this is an important prerequisite for maintaining market competitiveness and market positions in the future. At the same time, according to the Association's experts, the goals for reducing emissions should be subordinated to the goals of economic growth and post-war reconstruction. Therefore, the main goal of GHG EATS in Ukraine should be the gradual adaptation of both the Ukrainian economy and the relevant participants to the next stage—the unification with the EATS of the European Union (hereinafter referred to as the EU) or the extension of the EU EATS to Ukrainian enterprises and sectors.

Solution:

- To provide for the introduction of EATS in Ukraine in several stages: 1) pilot stage of operation—2027–2028; 2) the first stage of operation—2028–2031, which aims to target an economically justified price; 3) the second stage of operation—2032–2037, which provides for the transition to the European price level; 4) the third (final) stage of operation—from 2037, which provides for full compliance and integration with the EU EATS.
- Also, in order to ensure the capabilities of the Ukrainian economy during the war and post-war recovery, in particular, to ensure affordable prices for cement, electricity, steel, and other products, the corresponding cost per ton of CO2 should be targeted, depending on the period:

- In the first 5 years of full-fledged EATS operation (stage 2 and the first year of stage 3)—from EUR 1 to EUR 10 per ton of CO2.
- The next 5 years of full-fledged EATS operation (stage 3)—up to EUR 30 per ton of CO2.
- The next 5 years of full-fledged EATS operation (stage 4), i.e. from the time of integration with the EU EATS—up to EUR 50 per ton of CO2. Thus, the first 15 years of full-fledged EATS operation in Ukraine will have a softer pricing policy and will allow the Ukrainian economy and enterprises to recover. In addition, it will also reduce Ukraine's dependence on grants and assistance from partner countries.

- To ensure the full-fledged functioning of the improved monitoring, reporting, and verification system in order to obtain relevant information from all installations covered by the EATS, in accordance with the requirements provided for by the legislation in the fields of MRV and EATS in 2025–2026.
- To develop and submit to the Cabinet of Ministers of Ukraine a draft Law on Amendments to the Tax Code of Ukraine on the abolition of the tax on carbon dioxide emissions for taxpayers who are EATS participants in 2026–2027.
- To develop and submit to the Cabinet of Ministers of Ukraine draft Laws on Amendments to the Tax Code of Ukraine and the Customs Code of Ukraine on the Introduction of a Mechanism for Reimbursement of the Cost of Greenhouse Gas Emissions by National Producers When Exporting to Countries Without Carbon Pricing Systems and a Mechanism for Border Carbon Adjustment of Imports of Goods to the Customs Territory of Ukraine in 2026–2027.
- To exclude from the Draft Strategy the provision on the urgency of its adoption in connection with the need to avoid or mitigate the consequences of the introduction of CBAM for export-oriented industries, including the electricity sector.

Improving the Procedure for Creating/Expanding the Nature Reserve Fund and Regulating the Emerald Network Territories

Projects for the creation or expansion of NRF sites are often prepared without the consent of the owners and users of the relevant land plots and business entities that carry out activities in the relevant territories on the basis of current permits and contracts. As a result, it actually makes the activities of enterprises impossible. This issue can potentially be deepened by the draft Law No. 4461 On the Territories of the Emerald Network dated 4 December 2020 (hereinafter referred to as Draft Law No. 4461) and the alternative draft Law No. 4461-1 On the Preservation of Natural Habitats and Species of Natural Flora and Fauna Subject to Special Protection (On the Territories of the Emerald Network in Ukraine) dated 26 July 2021 (hereinafter referred to as Draft Law No. 4461-1), registered in the VRU. The provisions of these documents do not provide for real mechanisms to take into account the interests of landowners / land users or primary users of natural resources and may lead to a large number of corruption risks and unfavourable conditions for various sectors of the economy. Due to constant changes in the regulatory field regarding the expansion of such territories and the lack of clear regulation of the issue, large enterprises are forced to curtail investment projects. And this, in turn, leads to a reduction in jobs, reduces investment attractiveness, and creates prerequisites for a significant decrease in deductions to the state and local budgets.

Solution:

To finalize Draft Law No. 4461 and Draft Law No. 4461-1, taking into account such proposals of the Association.

- To ensure that the Emerald Network Impact Assessment (hereinafter referred to as ENIA) procedure is merged with the EIA procedure.
- To ensure that there are clear rules on the impossibility of establishing any prohibitions or restrictions on the planned activities (economic activities) that are already carried out in the relevant territory at the time of entry into force of the law.
- To determine in Draft Law No. 4461 and Draft Law No. 4461-1 the criteria for assessing the presence/absence of negative impact of planned activities in the Emerald Network and a clear list of activities that will be limited and prohibited in the Emerald Network.
- To provide for exceptions to the general rules for limiting and prohibiting the planned activities for the category of projects of public interest.
- To determine a clear list of activities in respect of which the ENIA is required.
- To exclude the need for ENIA for enterprises that have received permits, but have begun planned activities after the entry into force of Draft Law No. 4461 and Draft Law No. 4461-1.
- To exclude the need for ENIA before obtaining a special permit for subsoil use.

To amend the Law of Ukraine On the Nature Reserve Fund of Ukraine No. 2456-XII dated 16 June 1992 and include in the category of primary users of natural resources enterprises operating in the relevant territory on the basis of a lease agreement or a special permit for the use of subsoil.

Also, in order to ensure energy interests in the field of national security of Ukraine, it is advisable to amend the Law of Ukraine On Oil and Gas No. 2665-III dated 12 July 2001, regarding the possibility of carrying out certain types of work on the lands of the nature reserve fund in order to operate oil and gas production facilities by owners of special permits for the use of oil and gas potential subsoil in agreement with the administration of the territories and sites of the nature reserve fund.

Development of Economic Incentives for the Conservation and Restoration of Flora and Fauna

As part of their activities, enterprises implement, on a voluntary basis and at their own expense, various measures to preserve biodiversity and ecosystems: arrangement or transfer of bird nests from power line poles and installation of bird protection devices, transfer of red-book plant species from the places of planned activity, restoration of quarries, etc. Given the lack of a systematic and integrated approach to such activities for all users of natural resources, the effect of these measures is not long-lasting.

Solution:

- To develop a methodology for calculating compensation for environmental protection, depending on the total cost of the site for areas of special environmental importance.
- To provide for the possibility of subsidies and tax benefits in the agricultural sector for business entities that take measures to reduce the use of pesticides and fertilizers, the wider use of integrated management systems and the promotion of organic farming.

Introduction of the Principles of a Circular Economy

On 18 March 2024, the Cabinet of Ministers of Ukraine approved the Plan for Ukraine Facility (hereinafter referred to as the Plan), which will become the basis for the implementation of the programme of financial support for Ukraine from the European Union (hereinafter referred to as the EU) for 2024–2027. The reforms in the Plan relate to 3 main blocks of issues: basic reforms, economic reforms, as well as key sectors, including, in particular, green transition and environmental protection. Thus, Chapter 15 ‘Green Transition and Environmental Protection’ of the Plan states, in particular, that **‘Ukraine undertakes to carry out reconstruction on the basis of green, that is, low-carbon, circular, nature-saving, and zero pollution approach and in accordance with EU standards, which will lead to greater prosperity and competitiveness in the short and medium term, invaluable benefits for the health of citizens, flora and fauna, as well as increase resistance to natural disasters and the negative effects of climate change’.**

Experts of the Association Committee welcome the inclusion of the principle of circularity in the Plan as a document that determines the country’s development priorities for the coming years. At the same time, representatives of the business community emphasize the need to introduce some regulatory changes to facilitate the implementation of the Plan. After all, there are currently no incentives for the development of a circular economy in Ukraine. The current legislation in the field of waste management does not offer mechanisms that would ensure the implementation of a waste management system in accordance with the hierarchy of waste defined in the EU.

In Ukraine, the state levies an environmental tax for waste disposal, while not providing significant incentives for compliance with the hierarchy of waste management and, in particular, the development of the recycling sector.

Solution:

- To amend the Law of Ukraine On Public Procurement No. 922–VIII dated 25 December 2015 regarding the establishment of the obligation to use secondary raw materials (industrial waste) during the construction and provision of services for the current repair of public roads in areas located at a distance of 100–200 km from metallurgical plants and thermal power plants.
- To amend the Law of Ukraine On Standardization No. 1315-VII dated 5 June 2014 and include the principle of ensuring the maximum replacement of primary raw materials with secondary raw materials (waste) when developing new and/or revising existing technical norms, rules, standards, etc.
- To approve the concept of the state target economic programme for the construction of public roads with cement-concrete coating.
- To expand the coverage by the CMU Order On the Use of Industrial Waste in Road Construction No. 1420-r dated 4 December 2019 to those regions of Ukraine where industrial enterprises are present.
- To develop a mechanism for compensating the costs of transporting industrial waste by rail, because currently, according to the member companies of the Committee on Industrial Ecology and Sustainable Development of the Association, transport costs make up a significant part of the final cost of secondary resources.
- To provide preferential tax conditions at the level of the state and local communities for enterprises that use secondary raw materials and waste in their planned activities.
- To create a list of priority areas and sectors of the economy in which enterprises, subject to technical/technological feasibility and economic feasibility, should use secondary raw materials (waste) in their activities to replace primary raw materials.
- To exempt from CO2 emission taxation biomass plants in full and in part due to the amendments to the draft Law On Amendments to the Tax Code of Ukraine on the Establishment of a Zero Tax Rate for Carbon Dioxide Emissions for Units That Carry Out Such Emissions as a Result of Biofuel Combustion No. 9596 dated 09 August 2023.

To develop a standard for alternative fuels Refuse Derived Fuel (hereinafter referred to as RDF), harmonized with the European one, and create an appropriate heading code for RDF in the Ukrainian Customs Commodity Classification Codes for Foreign Trade, similar to code 19.12.10 of the European List of Waste, and for Solid Recovered Fuel (SRF), respectively.

AGRICULTURE

The Gray Grain Market and the Export Support Regime

In recent years, the gray grain market has reached such proportions that it claims to become the main threat not only to the agricultural sector, but also to the entire economy of the country. According to the Association's experts, before the beginning of the full-scale war, its share reached 40% of the entire grain market. Two Laws (the Law of Ukraine On Amendments to the Tax Code of Ukraine and Other Laws of Ukraine on the Peculiarities of Exports of Certain Types of Goods During the Period of Martial Law No. 3706-IX dated 9 May 2024 (hereinafter referred to as Law No. 3706-IX) and the Law of Ukraine On Amendments to the Customs Code of Ukraine on the Peculiarities of Exports of Certain Types of Goods During the Period of Martial Law No. 3707-IX dated 9 May 2024), the purpose of which is to minimize common tax evasion schemes for the export of certain grains and oilseeds, are likely to create corruption risks due to the possible establishment of a manual regime for the regulation of agro-exports. Law No. 3706-IX retained the provisions on the possibility of blocking export tax invoices, which in the context of this mechanism would mean blocking the physical export of goods (in contrast to the current mechanism for blocking tax invoices within the country, when such blocking does not stop the movement of goods, but only results in non-receipt of a tax credit by the buyer). Business representatives warn that the result of the physical blocking of exports may be the collapse of the entire system of Ukrainian seaports, which may generally jeopardize the export of Ukrainian agricultural products.

Solution:

First of all, it should be noted that control measures should be appropriate to the signs of riskiness of a particular transaction. Based on this, law-abiding companies with a world name, long experience in the Ukrainian market, which faithfully comply with currency legislation throughout their work, cannot be subject to the same stringent measures as other companies, since they have already proved their integrity for years. In this regard, we consider it necessary to note that proper control over the receipt of foreign exchange earnings should be one of the main tasks, and the discipline of companies in this direction should be a key criterion for establishing a risk profile. Therefore, clear criteria should be established for determining the potential riskiness of transactions based on the characteristics of the parties involved.

Conversion of the Circulation of Warehouse Documents for Grain into Electronic Form

According to representatives of the Association's Grain and Oilseed Committee, every year, agribusiness loses significant amounts of money due to thefts at grain warehouses. This problem has long been a concern for agricultural companies, but until now, businesses did not have effective tools to combat fraud. However, with the development of digitalization, new opportunities are emerging to prevent illegal grain circulation schemes. Business complains about the 'historically' high level of fraud in grain trading operations in grain warehouses, which are usually accompanied by a significant list of papers and rather burdensome document circulation. It is this that creates the prerequisites for various kinds of manipulations with goods in the warehouse, as a result of which companies suffer losses in kind and in cash. According to the Association's experts, most of the problems associated with grain storage, including frequent cases of theft, arise precisely because warehouse documents are in paper form. This problem has become even more critical with the beginning of the full-scale war in Ukraine, since, according to the member companies of the Association, the sale of grain at the grain warehouse requires the physical presence of the parties to the contract of sale, that is, to carry out trade operations with grain, the parties have to travel hundreds of kilometres daily only to ensure the physical presence for the signing of documents.

At the same time, the introduction of electronic procedures for grain operations in grain warehouses would optimize the processes of registration of grain transactions and reduce the opportunities for fraud with physical documents. Therefore, in order to counteract cases of fraud with documents that lead to grain theft, it is necessary to convert the circulation of warehouse documents and operations for the registration of grain movement in grain warehouses to electronic form.

Solution:

- To adapt the current legislation for the circulation of warehouse documents and conducting operations with grain at elevators in electronic form.
- To create software for the conversion of all warehouse documents and the procedure for registration of grain transactions on elevators into an electronic format, which will allow re-registration, shipment, verification of grain quality, and registration of grain transactions in the electronic register of warehouse documents, which will be transformed into an electronic cabinet of the grain owner (depositor), similar in functionality to the electronic cabinet of the taxpayer.

Adoption of By-Laws Necessary for the Implementation of the Provisions of the New Law of Ukraine On Veterinary Medicine No. 1206-IX Dated 4 February 2021 (Hereinafter Referred to as Law No. 1206-IX)

Law No. 1206-IX provides for quite significant changes in the field of veterinary medicine in general and control over the registration and circulation of veterinary medicines in particular. It determined the development of more than 80 by-laws, most of which have never been applied in Ukraine. Currently, there are potential risks of not developing new rules and procedures before the entry into force of Law No. 1206-IX. In case of their absence, the veterinary industry of Ukraine expects the risk of a complete halt in the import of veterinary drugs, as well as the impossibility of using existing ones.

Solution:

To develop regulations that will ensure the full implementation of the provisions of Law No. 1206-IX from the date of its entry into force, which will allow not to block the livestock industry at the appropriate time.

Opening of Ukrainian Pork Exports to the EU and Japan

In 2022, thanks to the initiative of profile associations, the Ministry of Agrarian Policy, as well as the SSUFSCP, Ukraine officially announced its intention to start supplying pork to the EU markets.

Since the beginning of 2023, the Food and Agriculture Organization of the United Nations and the European Bank for Reconstruction and Development have been providing technical support in the preparation of domestic processing enterprises for pork exports to the EU, in particular as part of the Animal Health, Food Safety and Quality Assurance Programmes in Ukraine and Moldova programme.

With the help of international technical experts, self-questionnaires of compliance with EU standards for Ukrainian pork processing enterprises were developed. Organizations also provide individual advice during compliance audits to businesses that have declared their willingness to export pork to the EU. At the same time, obtaining an EU permit is a difficult and lengthy process that requires the assistance of the state.

State assistance also requires the opening of exports of pork of Ukrainian producers to Japan.

Solution:

Assistance of the Ministry of Agrarian Policy and the SSUFSCP in obtaining permission for the export of pork of Ukrainian origin to the EU and Japan as soon as possible, and the conclusion of relevant international treaties, if necessary.

EBA
European Business Association

NUTRITIONAL MATTERS

Introduction of State Regulation That Would Create a Reliable Basis for Protecting the Health and Interests of Consumers, as well as Harmonizing National Legislation in the Field of Materials in Contact with Food Products with EU Legislation

Solution:

Adoption of all necessary by-laws to meet the requirements of the Law of Ukraine On Materials and Objects Intended for Contact with Foodstuffs 2718-IX dated 3 November 2022.

Complex Settlement of Problematic Issues of the Food Industry

Solution:

The adoption of by-laws to the Law of Ukraine On Amendments to Certain Laws of Ukraine on the Improvement of State Regulation of Food Security and Livestock Development No. 3221-IX dated 30 June 2023, taking into account the suggestions of the Association.

Combating Counterfeiting of Dairy Products

As noted by the Association member companies, the practice of replacing milk components (milk fat, milk protein, lactose) in dairy products, including the replacement of dairy fats with vegetable, animal (non-dairy) fats, and cases of misleading consumers by unfair labelling of such products within the meaning of the terms and their definitions provided for by the Law of Ukraine On Milk and Dairy Products No. 1870-IV dated 24 June 2004, is still common among dishonest business representatives.

Solution:

Strengthening control by the competent authorities over prevention of falsification of dairy products.

EBA
European Business Association

IMPORT AND TRADE OF ALCOHOLIC BEVERAGES

Combating the Illegal Circulation of Alcoholic Beverages (Including 'Bag in Box')

According to the Association's experts, the alcohol industry is in the shadow within 40%, and budget losses from the illegal market of distilled beverages amount to UAH 9 billion annually.

Solution:

- To promptly complete the Programme for the Reform and Development of the Alcohol Industry for 2020–2023 [27], in particular the privatization of state-owned alcohol plants, which should significantly reduce the production of illegal alcohol and unaccounted vodka.
- To ensure transparency of procedures for handling confiscated alcoholic beverages (at all stages from their confiscation to the disposal), involvement of representatives of the Association (manufacturers and/or importers of alcoholic beverages) in the destruction of confiscated alcoholic beverages. To approve the register of business entities entitled to disposal of confiscated alcoholic beverages.
- To introduce transparent and equal conditions for the sale of alcoholic beverages online.
- To deepen the cooperation of state bodies with legal players of the alcohol market in order to modernize and facilitate the regulatory impact on business, which in the future will increase the revenues to the budget of excise tax and other related taxes from business activities in the field of alcoholic beverages circulation.

Ambiguity in the Wording Regarding the Application of Penalties for the Sale of Alcoholic Beverages at Prices Below the Established Minimum Wholesale or Retail Prices

According to Article 17 of the Law of Ukraine On State Regulation of the Production and Circulation of Ethyl Alcohol, Alcohol Distillates, Alcoholic Beverages, Tobacco Products, Liquids Used in Electronic Cigarettes, and Fuel No. 481/95-BP dated 19 December 1995 (hereinafter referred to as Law No. 481/95-BP), when applying financial sanctions for the wholesale or retail sale of alcoholic beverages at prices lower than the established minimum wholesale or retail prices for such beverages, the amount of the penalty is determined on the basis of the received batch of goods without specifying the specific operation and the range of goods. Such ambiguous understanding potentially creates risks for abuse by regulatory authorities.

Solution:

It is necessary to amend Law No. 481/95-BP by clarifying the wording of the method for determining the amount of the penalty, in particular, by stating the relevant paragraph of part 2 of Article 17 of Law No. 481/95-BP in the following wording:

'Financial sanctions in the form of fines are applied to business entities (including foreign business entities acting through their registered permanent representative offices) in the following cases:
<...>
wholesale or retail trade in cognac, alcoholic beverages, vodka, distilled beverages, and wine at prices lower than the established minimum wholesale or retail prices for such beverages—100 per cent of the cost of **goods sold at prices lower than the minimum wholesale or retail prices**, calculated on the basis of the minimum wholesale or retail prices, but not less than UAH 10,000'.

[27] Approved by CMU Resolution No. 699 dated 12 August 2020.

Cancellation of the Use of the Consignment Note of Form No. 1-TN/Alcoholic Beverages/ as a Separate Special Document for the Movement of Alcoholic Beverages

Clause 1.4 of Chapter 1 of the Instruction on the Use of Forms of Consignment Notes for the Movement of Ethyl Alcohol, High-Octane Oxygen-Containing Impurities, and Alcoholic Beverages, approved by Order No. 154 of the Ministry of Transport and Communications of Ukraine dated 28 April 2005 (hereinafter referred to as Instruction No. 154), stipulates that **'products are transported by road within Ukraine subject to the availability of a properly drawn up corresponding consignment note of the established form No. 1-TN/alcohol/, No. 1-TN/HOOCl/ or No. 1-TN/alcoholic beverages/'.** Clause 1.5 of Instruction No. 154 establishes that the consignment note is drawn up on ordinary forms made by typographic printing or other means of printing, that is, in paper form. The obligation to draw up such a paper note puts the operators of the alcoholic beverages market in less favourable conditions, because in accordance with Chapter 1 of the Rules for the Carriage of Goods by Road in Ukraine, approved by Order of the Ministry of Transport of Ukraine No. 363 dated 14 October 1997 (hereinafter referred to as Rules No. 363), the consignment note can be drawn up in paper and/or electronic form.

Cancellation of the special form of the consignment note for the transportation of alcoholic beverages will allow the operators of the alcoholic beverages market, at their request, to supplement the consignment notes that they currently use when delivering goods, with the necessary details in order for them to simultaneously be consignment notes, or to use the consignment note of any form with the mandatory details provided for in Rules No. 363.

Solution:

To abolish the use of the consignment note of the established form No. 1-TN/alcoholic beverages/ as a separate special document for the movement of alcoholic beverages.

Revision of the Current Approach to the Payment of Excise Tax in Advance

In accordance with subclause 222.2.2. of clause 222.2 of Article 222 of the TCU, **'In case of importation of labelled excisable products into the customs territory of Ukraine, the tax shall be paid when purchasing excise stamps <...>'.**

This approach puts importers at a financial disadvantage, because, according to business representatives, 2 months pass from the time of filing an application for the purchase of excise stamps to the granting of stamps, and an average of 3 to 6 months pass before the import of products labelled with such stamps.

Solution:

Revision of the mechanism for the payment of excise tax in advance, namely: the transfer of the obligation to pay excise tax on imported alcoholic beverages at the time of submission of the customs declaration for the customs clearance of imported excisable goods (provided that it is not possible to implement the approach to the payment of excise tax at the time of sale of excisable goods to the final consumer).

Lack of Rules for Retail Trade in Alcoholic Beverages Online

Solution:

It is necessary to develop and adopt an appropriate law regulating the rules of retail trade in alcoholic beverages online. In particular, according to business, it is necessary to introduce at the legislative level a single register of websites through which alcoholic beverages are sold, indicating the licences for the retail sale of alcoholic beverages issued to the relevant business entities. It is also important to develop a mechanism for blocking websites that will not be on such a register.

Simplification of the Procedure for Registration of Places of Storage of Alcoholic Beverages Provided for by Law No. 481/95-BP

Solution:

Experts of the Association consider it appropriate to consider simplifying the procedure for registration of places of storage of alcoholic beverages, in particular, that such a procedure should take place on the basis of declaration—solely by informing the STSU bodies in the electronic office of the business entity about the address/location of the premises of storage of alcoholic beverages, without the need to obtain a certificate of entry of the storage place in the Unified State Register of Storage Places or any other additional approval from the STSU.

Cancellation of the Need to Obtain Licences for Wholesale/Retail Trade in Alcoholic Beverages in Paper Form in accordance with Law No. 481/95-BP

Thus, Article 18 of Law No. 481/95-BP provides that **‘For the licensing of activities provided for by this Law, uniform forms of licences established by the Cabinet of Ministers of Ukraine shall be used’**.

Solution:

The Association's experts see it as expedient to transfer the Register of Licences for the Wholesale/Retail Trade in Alcoholic Beverages to electronic form only with open access, with the option of receiving extracts from this register (if necessary).

Amendments to Part 52 of Article 15 of Law No. 481/95-BP Regarding the Grounds for Revocation of the Licence (Return to the Wording that Was In Force Before 1 January 2022) in order to prevent abuse by regulatory authorities

On 1 January 2022, amendments to paragraph 6 of Part 52 of Article 15 of Law No. 481/95-BP [28] came into force, according to which **'The licence shall be cancelled by adopting an appropriate order by the body that issued the licence on the basis of: <...>** establishing the fact of trade by a business entity (including a foreign economic entity acting through its registered permanent representative office) in alcoholic beverages or tobacco products without excise stamps;' and not on the basis of a court decision, as provided for in the previous wording of this provision.

According to the member companies of the Association, after the entry into force of these amendments, abuse by regulatory authorities of their rights began to happen. In particular, the basis for the revocation of the licence could be isolated cases of unintentional damage to the excise tax stamp on products.

Taking into account the above, the Association's experts propose to amend Part 52 of Article 15 of Law No. 481/95-BP and return to the previous wording of the relevant paragraph. The proposed amendments should significantly reduce cases of abuse by regulatory authorities of their rights, since the direct intent of the business entity to trade in alcoholic beverages without excise stamps will need to be proved in court.

Solution:

Paragraph 6 of Part 52 of Article 15 of Law No. 481/95-BP shall be amended to read as follows:

'a court decision to establish the fact of trade by a business entity (including a foreign economic entity acting through its registered permanent representative office) in alcoholic beverages or tobacco products without excise stamps.'

[28] Introduced by the Law of Ukraine On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine on Ensuring the Balance of Budget Revenues No. 1914-IX dated 30 November 2021.

Uncertainty of the Terms of Obtaining by the Business Entity of an Order to Revoke the Licence

Thus, the current wording of Part 53 of Article 15 of Law No. 481/95-BP does not provide for a period within which the body that issued the licence must adopt an order to revoke the licence and notify the relevant business entity about it. As a result, the business entity cannot predict and anticipate the actions of the regulatory authority to revoke the licence. Thus, on the day of receipt of the order to revoke the licence, the business entity is in a situation of prohibition to carry out economic activities for the sale of excisable goods. The proposed amendments will allow not to suspend the economic activities of the company, minimize economic losses, and provide the opportunity to prepare the necessary documents for obtaining a new licence without harming the business.

Solution:

To amend Part 53 of Article 15 of Law No. 481/95-BP to read as follows:

'The licence shall be cancelled and shall be deemed invalid **after the expiry of 15 calendar days following the date of receipt by the business entity** (including a foreign economic entity acting through its registered permanent representative office) of an order to cancel the licence in electronic form by electronic means'.

Lack of Information on Enterprises that Have the Right to Dispose of Confiscated Alcoholic Beverages, and the Need to Remove the Rule on Processing

Solution:

It is necessary to amend the resolutions of the Cabinet of Ministers of Ukraine On the Procedure for Accounting, Storage, Evaluation of Confiscated and Other Property Becoming the Ownership of the State and Disposal of Such Property No. 1340 dated 25 August 1998, On Approval of the Procedure for Disposal of Property Confiscated by a Court Decision and Transferred to the Bodies of the State Enforcement Service No. 985 dated 11 July 2002 On the Procedure for Accounting, Storage, Evaluation of Property Seized by Customs, in Respect of which a Court Decision on Confiscation was Rendered, Transfer of this Property to the Bodies of the State Enforcement Service and Disposal of Such Property No. 1724 dated 26 December 2001 on the treatment of confiscated property and the removal of rules for the processing of alcoholic products, as well as to approve the register of enterprises entitled to the disposal of confiscated alcoholic beverages, and ensure transparency of handling confiscated alcoholic beverages (at all stages from the time of confiscation the disposal).

PROPOSALS FOR THE PERIOD OF MARTIAL LAW:

We suggest considering non-payment of the excise tax liability for the lost excisable goods (products) in case the excisable goods (products) are destroyed (lost) during the martial law, introduced in accordance with the legislation.

TOBACCO INDUSTRY MATTERS

Increase of the Regulatory Burden on Business

Member companies of the Association note an increase in the regulatory burden on the tobacco industry. In particular, we draw attention to the following rules and initiatives of public authorities that may significantly affect the cost of products and/or reduce market volumes:

- Draft Law On Amendments to the Tax Code of Ukraine on the Revision of Excise Tax Rates on Tobacco Products No. 11090 dated 18 March 2024, which provides for the definition of the euro as the monetary unit of measurement of the excise tax rate on tobacco products, and an increase in rates, respectively.
- Law of Ukraine On Amendments to the Tax Code of Ukraine and Other Laws of Ukraine in Connection with the Introduction of Electronic Traceability of the Circulation of Alcoholic Beverages, Tobacco Products, and Liquids Used in Electronic Cigarettes No. 3173-IX dated 29 June 2023 (hereinafter referred to as Law No. 3173-IX) regarding the introduction of an electronic excise stamp, which requires significant additional investment.
- Draft Law On Amendments to the Law of Ukraine 'On Measures to Prevent and Reduce the Use of Tobacco Products and Their Harmful Effects on Public Health' on the Prohibition of Consumer-Visible Placement of Tobacco Products and Certain Other Products in Retail Outlets.

In addition, the member companies of the Association draw attention to the situation regarding the unreasonable imposition of penalties by the State Service of Ukraine on Food Safety and Consumer Protection on business entities that trade in tobacco products for the placement of tobacco products/devices for the consumption of tobacco products without their combustion in places of trade in them. Thus, according to business representatives, the authorized persons of the State Service of Ukraine on Food Safety and Consumer Protection, based on the results of inspections of business entities, impose significant financial sanctions, in connection with which companies successfully challenge these fines in court. Despite this, the State Service of Ukraine on Food Safety and Consumer Protection continues to impose penalties for the same actions that have already been repeatedly challenged in court by other business entities, which creates an unreasonable burden on the business.

Timely Adoption of Laws and Regulations in Accordance with the Requirements of Law No. 3173-IX

On 27 July 2023, Law No. 3173-IX came into force.

In accordance with clause 5 of section II 'Final and Transitional Provisions' of Law No. 3173-IX, the Cabinet of Ministers of Ukraine was instructed to ensure the development and adoption of regulations provided for in Law No. 3173-IX within six months from the date of entry into force of Law No. 3173-IX.

The above-mentioned term has expired, however, as of today, a significant part of the necessary regulations provided for by Law No. 3173-IX has not yet been adopted.

The introduction of an electronic excise stamp is a technologically complex and time-consuming process, which, among other things, will require manufacturers of tobacco products to purchase, register, install, and configure new equipment, install new software, test the manufacture of products with the application of an electronic excise stamp, etc. In the absence of relevant regulations, manufacturers will not have time to ensure the technological compliance of production processes with the requirements of Law No. 3173-IX. As a result, there may be a suspension of the production of tobacco products.

Solution:

To amend section II 'Final and Transitional Provisions' of Law No. 3173-IX in order to postpone its entry into force, as well as to symmetrically postpone all the terms specified in clause 2 of section II 'Final and Transitional Provisions' of Law No. 3173-IX for 6 months.

Regarding the Legislative Initiative to Prohibit the Consumer-Visible Placement of Tobacco Products in Retail Outlets

Pursuant to Order No. 24822/3/1-23 of the First Vice Prime Minister of Ukraine – Minister of Economy of Ukraine dated 6 October 2023, the State Service of Ukraine on Food Safety and Consumer Protection developed a draft Law On Amendments to the Law of Ukraine 'On Measures to Prevent and Reduce the Use of Tobacco Products and Their Harmful Effects on Public Health' Regarding the Prohibition of the Consumer-Visible Placement of Tobacco Products and Certain Other Products in Retail Outlets (hereinafter referred to as the Draft Law of the SSUFSCP), which proposes to establish a ban on the visible placement of tobacco products, herbal products for smoking, electronic cigarettes, refill containers and liquids used in electronic cigarettes, devices for the consumption of tobacco products without their combustion in their retail outlets. According to experts of the Association, the adoption of the Draft Law by the SSUFSCP will result in a significant reduction in the retail industry, an increase in unemployment among the population, and an increase in the share of illegal trade through unlicensed distribution channels, which has already reached 25%.

Based on the results of internal approval, the Ministry of Economy of Ukraine (hereinafter referred to as the MoE) expressed reasonable reservations to the Draft Law of SSUFSCP. By decisions No. 1 dated 1 January 2024 and No. 61 dated 1 March 2024, the State Registration Service, reasonably refused twice to approve the Draft Law of SSUFSCP.

Solution:

To discontinue the order of the First Vice Prime Minister of Ukraine – Minister of Economy of Ukraine No. 24822/3/1-23 dated 6 October 2023 as not requiring implementation.

Combating the Illegal Circulation and Production of Tobacco Products

According to the Kantar Ukraine study, in October 2023, the level of illegal trade in tobacco products in Ukraine was 25.7%, which was the highest in the history of research since 2011. In 2024, this indicator decreased significantly to 14.6% [29], which indicates progress in the fight against the illegal market. At the same time, business representatives note that the problem is still significant, because even such a level of the illegal market causes significant losses for the Ukrainian budget, as well as negatively affects the shaping of the international image of Ukraine, attracting the attention of representatives of foreign states and international institutions, including European partners, due to the illegal export of tobacco products to the EU.

Solution:

1. A prudent and predictable policy on tobacco excise tax rates.
2. Development, approval, and implementation of a new comprehensive strategy in the field of combating the illicit production and circulation of tobacco products and an action plan for its implementation.
3. Reducing the regulatory burden on law-abiding business.
4. Strengthening and coordinating the efforts of law enforcement and regulatory authorities in order to actually reduce the percentage of illegal trade in tobacco products.

[29] https://www.kantar.com/ua/inspiration/ait/ait-wave-3

WOODWORKING
INDUSTRY

Increase in the Volume of Final Felling Operations, Which Will Increase the Procurement of High-Quality Wood for Woodworking Enterprises and Ensure the Optimal Structure of Deforestation

The total area of forest plantations (forests) in Ukraine is 9.6 million hectares, or 15.9% of the country's territory. According to the Economic Efficiency of Wood Processing in Ukraine (2020) study, conducted by SE 'Ukrpromzovnishekspertyza', the total timber reserves are estimated at 2.1 billion cu m, or an average of ~221 cu m/ha; the annual increase in timber is ~39 million cu m/year; total timber harvesting in Ukraine during 2015–2019 amounted to 20.9–22.6 million cu m/year, or <60% of the annual increase in timber in Ukrainian forests.

The structure of timber harvesting by species is dominated by pine, oak, spruce, and beech, with a total share of ~82% of harvested timber. The share of birch and alder harvesting used in the production of plywood decreased from 8% to 6%, which increased tensions in the veneer raw material market.
The qualitative structure of timber harvesting in Ukraine during 2015–2019 deteriorated, in particular, the volume of merchantable timber harvesting decreased by 7.3%: to 17.9 million cu m in 2019, while the volume of non-merchantable timber harvesting increased by 12%: to 2.98 million cu m in 2019. The deterioration in the quality structure of timber harvesting is caused by an increase in the share of sanitary felling (from 47% to 49%) and a decrease in the share of final felling operations (from 41% to 38%).

Insufficient volumes of final felling operations lead to the following problems:

1. Overgrowth of the forest and the resulting deterioration of the quality of wood.
2. Shortage of raw materials and the resulting increase in prices for it, to a decrease in the competitiveness of the woodworking industry.

Implementation of Comprehensive Timber Market Regulation in Ukraine

The woodworking industry needs legislatively enshrined rules for the sale of wood, focused on providing raw materials to domestic woodworking enterprises, stimulating in-depth wood processing, and efficient use of forest resources.

Industry representatives note that the sale of wood cannot be considered in isolation, because it is a component of a complex phenomenon. The sale of wood, in particular prices and methods, affects not only woodworking, but also related industries, such as the chemical industry, logistics, furniture and construction industries, trade, etc. This, in turn, is directly reflected in the number of jobs, deductions to the state and local budgets, infrastructure development, investment attraction, and economic development in general.

Solution:

- To enshrine in law the rules for the sale of wood, focused on the priority provision of raw materials to domestic woodworking enterprises.
- In order to ensure equal competitive conditions, it is suggested to restructure the branches of SE 'Forests of Ukraine' by separating their woodworking divisions for their further participation as separate woodworking enterprises in the procurement of wood on equal terms with all woodworking enterprises.
- To introduce a single and transparent mechanism for the formation of the cost of wood.
- To provide for effective mechanisms for bringing to justice entities that violate the established rules for the sale of wood.

Mandatory Maintenance of the Electronic Timber Accounting System by all Permanent Forest Users

Solution:

Development and adoption of the Law on the creation of a system for monitoring and tracking the circulation of wood on the market from harvesting to sale, through the operation of a unified state system of electronic timber accounting, which is mandatory for all permanent forest users.

SUGGESTIONS FOR THE PERIOD OF MARTIAL LAW:

According to business representatives, before the war, the Ukrainian woodworking industry was one of the most promising sectors of the economy, increasing the production and export of finished products every year. According to the Association's member companies, hundreds of thousands of Ukrainians work in the country's woodworking industry at thousands of enterprises. In 2021 alone, exports of products under group 44 'Wood and Wood Products' of the Ukrainian Customs Commodity Classification Codes for Foreign Trade (UKTZED) amounted to about USD 2 billion, which is 42% more compared to 2020 and accounts for about 3% of total exports in 2021 [30]. Ukrainian manufacturers supply products to global retail leaders: IKEA, JYSK, XXLUZ, HOMECENTER, and others.

Russian military aggression in Ukraine had an extremely negative impact on the work of woodworking enterprises: for example, a large number of production facilities were stopped, logistics routes were damaged, it became impossible to fulfil obligations under most international contracts. Currently, economic entities are making every effort to resume production, find logistics routes for sending finished products and supplying raw materials.

The business community understands the importance of functioning of the economy in wartime, preserving jobs, paying taxes and supporting exports.

At the same time, state support is needed to establish the effective operation of the woodworking industry, which has a significant potential for rapid restoration of production, preservation and creation of new jobs for Ukrainians, including for internally displaced persons.

1.The high level of prices for raw materials makes it extremely difficult to restore the efficiency of woodworking enterprises. Since unprocessed wood is currently sold on commodity exchanges using electronic trading systems, where, according to business representatives, the initial prices are set by the branches of SE 'Forests of Ukraine', and the participant who offered the highest price is recognized as the buyer, **we ask you to recommend SE 'Forests of Ukraine' and its branches to form an affordable level of starting prices, taking into account the difficult financial condition of domestic woodworking enterprises, which** will optimize the cost of raw materials and help restore the operation of business entities in the woodworking industry.
2. **We ask you to guarantee the most transparent work of the State Forest Resources Agency of Ukraine (hereinafter referred to as the SFRAU) and SE 'Forests of Ukraine' reporting to it regarding the FSC and PEFC certification of Ukrainian forests and harvested wood.** Having lost the opportunity to buy and use certified Ukrainian wood, manufacturers of plywood and chipboards, furniture companies will not be able to fulfil contracts for the export of products.
3. **The woodworking industry has to be recognized as strategic for the effective functioning of the economy, and a working group should be formed to promptly solve the problematic issues of restoring the production of woodworking enterprises. The representatives of the relevant ministries, the SFRAU, SE 'Forests of Ukraine', and the Association should be involved in the work of the group.**

[30] According to the State Statistics Service of Ukraine 'Commodity Structure of Foreign Trade of Ukraine in 2021' http://www.ukrstat.gov.ua/operativ/operativ2021/zd/tsztt/tsztt_u/tsztt1221_ue.xls

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EXTRACTIVE INDUSTRY MATTERS

The Need to Continue High-Quality Reform in the Field of Subsoil Use

Due to the war (closure of ports, lack of financial and human resources, destroyed capacities, as well as active hostilities and occupation of territories where deposits are explored), Ukraine has lost its place in the world supply chains, and also cannot fully meet domestic demand in the mining and metallurgical sector. Separately, the Association's experts would like to note the extreme importance of increasing domestic oil and gas production for energy independence from the aggressor state, as well as the use of waste from the extractive industry as a secondary raw material in road construction and the production of building materials during post-war reconstruction. At the same time, the increase in energy production and the development of the mineral resource base is a key challenge for the processing industry in the conditions of war and post-war reconstruction. According to the Association's experts, the processes of issuing permits in the field of subsoil use are quite complex and create additional burdens for subsoil users, which has a negative impact on transparency in the industry. At the same time, business representatives hope that the adoption of the Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine on the Improvement of Legislation in the Field of Subsoil Use No. 2805-IX dated 1 December 2022 (hereinafter referred to as Law No. 2805-IX) and the by-law regulatory framework to meet the requirements of Law No. 2805-IX will contribute to positive changes in the field of subsoil use. At the same time, the adoption of by-laws took place without taking into account the proposals submitted by the Association's experts to the relevant draft regulatory acts, which were published for public discussion.

Solution:

Tracking the effectiveness of adopted regulatory acts. Improvement of by-laws by amending them on the basis of proposals submitted by the Association's experts to ensure the rights of subsoil users and the effectiveness of the norms.

Improvement of the Methodology for Calculating the Cost of Geological Information and End-to-End Permit

Contradictory methodology for calculating the cost of geological information in case of obtaining a special permit (hereinafter referred to as SP) for the use of subsoil, limited access to geological information of previous subsoil users on the site (area), an unclear procedure for calculating the cost of an end-to-end permit, etc. create a number of inconveniences for many business entities in the field of subsoil use.

Solution:

- Improvement of the methodology for calculating the cost of geological information in the event of receipt of an SP for subsoil use in terms of the amount of information taken for calculation, standardization of the formula, and determination of clear coefficients affecting its cost.
- Development and adoption of a methodology for calculating the cost of an end-to-end permit.
- Establishing the procedure for the redemption of geological information (compensation for the costs of obtaining geological information) from a subsoil user who has carried out a geological study of a subsoil plot at hits own expense and was unable for any reason to obtain a SP for the use of subsoil within the established period, which the latter will not be able to use in its activities.
- Development of a methodology for calculating the cost of geological information, the right of access to which was acquired by the subsoil user upon receipt of an SP for subsoil use as a result of the alienation of subsoil use rights in accordance with Article 161 of the Subsoil Code of Ukraine (hereinafter referred to as SCU).

Mining Allotment

The member companies of the Association note that subsoil users are still obliged to obtain a mining allotment act, which, in fact, duplicates the functions of the SP for the use of subsoil for some types of work, despite the amendments to the SCU in accordance with Law No. 2805-IX. In particular, the provisions of the Law of Ukraine On Oil and Gas No. 2665-III dated 12 July 2001 (hereinafter referred to as Law No. 2665-III) have not been brought in line with recent changes. According to the Association's experts, this tool of state regulation does not allow controlling the completeness of the development of the subsoil area, and is also not a means of ensuring safety during mining operations. In addition, this complicates business, causes risks of abuse, additional financial burdens on business entities in the process of obtaining a land plot mining allotment act.

Solution:

Bringing the provisions of Law No. 2665-III in line with the current version of the SCU.

The need to carry out several EIA procedures

In the special conditions of a special permit for the use of subsoil, the business entity is obliged to undergo the EIA procedure and obtain an EIA conclusion in case of purchase of a special permit for the geological study of oil and gas-bearing subsoil, including experimental industrial development of deposits, with the subsequent extraction of oil, gas (industrial development of deposits) and/or extraction of minerals. In addition, after the creation of a preliminary project as part of the planned activity, companies carry out EIA directly for specific activities, for example, drilling a well, as well as for the creation of infrastructure facilities, for example, the arrangement of fields, the construction of a hydrocarbon treatment plant, etc. Thus, the member companies of the Association Committee note that enterprises are forced to undergo the EIA procedure several times, which in no way simplifies the conduct of business. Moreover, the environmental impact assessment is carried out taking into account the regulatory guidelines in force in Ukraine, which are not fully correlated with each other, or are cancelled, and new ones have not yet been agreed.

Also, according to the analysis of the Association's member companies, the EIA procedure takes at least 120 calendar days, and with all related procedures (tender procurement, signing of a contract for public discussion of the planned activities, pre-project monitoring of the state of the environment of individual components of the environment) it takes 240 calendar days. At the same time, drilling a 3,500 m deep well takes an average of 100 calendar days.

Solution:

- To develop amendments to the legislation in order to optimize the number of EIA procedures that business entities have to undergo.
- To combine the EIA procedure with obtaining a special permit for subsoil use.
- To develop unified recommendations for organizers, companies, the public on public discussion during the second stage of EIA.
- To record an exhaustive list of methodologies for environmental impact calculations.

Provision of Access to Subsoil Areas Provided for Exploration and Extraction of Minerals

In accordance with the Land Code of Ukraine (hereinafter referred to as the LCU), plots of all forms of ownership and categories are granted to owners of special permits by concluding agreements for exploration in accordance with Article 97 of the LCU and establishing land easements. At the same time, the conclusion of the easement agreement is possible either when the parties reach an agreement on all its terms, or by court decision. We are talking, in particular, about the amount of payment for the use of a land plot, which is not regulated by law. For the placement of objects of the mining industry and registration of the relevant land plots on communal property lands, a company must obtain the decision (permission) of local government bodies, and on private property lands—the approval of the owner/user of the land plot. At the same time, land owners and land users are reimbursed for losses and damages (including lost income). In case of failure to reach an agreement, the amount of damages is determined by a special commission under local executive bodies. This situation increases the risk of bias against potential subsoil users and may block the entry of new companies into the market.

Thus, according to the Association's member companies, there are cases when the subsoil user receives a permit for subsoil use, and cannot obtain title documents for the land plot, since the land owner or land user does not provide access to the plot or requires an unreasonably high fee for access to it. In addition, the inability to register a land plot often becomes the reason that the subsoil user cannot start the work on time, as well as carry it out within the maximum economically justified terms, which are implemented by the revised version of the SCU.

Since the drilling site is determined taking into account geological information, such a position often makes it impossible to start developing promising areas. In this case, according to business representatives, it is necessary to legally regulate the issue of access of mining companies to land plots with compensation for all costs to the land user.

Experts of the Association are convinced that amendments to the legislation in the field of subsoil use will accelerate the access of oil and gas companies to the subsoil.

For this purpose, the state should reform the management system in the field of land relations and remove artificial restrictions to simplify access to land plots, provide land management documentation with the status of public, open, and publicly available data; integrate and unify land management, topographic, geodetic, and cartographic activities; reduce the cost of work and time resources spent on procedures related to land management, which, in turn, will reduce corruption risks in the implementation of relevant procedures.

Solution:

Experts of the Association suggest amending the land and subsoil legislation, which should provide for:

- The term of preparation and conclusion by the parties of contracts for the use of land plots, as well as determining the amount of the contract.
- Securing the obligation of the owner of the land plot to provide access to land plots to legal entities that are owners of special permits for the use of oil and gas potential subsoil or participants in (operators of) production-sharing agreements.

Solution (continuation):

- Cancellation of prior approval of land owners / land users for geological exploration with subsequent compensation for losses.
- Obtaining a permit for construction works on the basis of an agreement concluded in accordance with Article 97 of the LCU.
- Carrying out work on the construction, placement, and operation of oil and gas production facilities and field arrangement on forestry land plots without obtaining the consent of the land managers while notifying them within three days after the commencement of such work and subsequent compensation for losses after completion of work in the manner prescribed by law.

Simplification of the Procedure for Approving and Signing Production-Sharing Agreements (Hereinafter Referred to as PSAs)

The legislation regulating the issue of mining is, according to the Association's experts, quite over-regulated. Certain issues may be provided for by several regulations, which may sometimes contain discrepancies.

During tenders for the conclusion of PSAs and the preparation of the texts of these agreements by the member companies of the Association, a number of problems related to the application of the Law of Ukraine On Production Sharing Agreements No. 1039-XIV dated 14 September 1999 (hereinafter referred to as Law No. 1039-XIV) were identified, which complicates the process of signing and implementation of PSAs. In particular, business representatives report the presence of a bureaucratic component during the conclusion of the PSAs by the state, since during the processing of the texts of agreements between public authorities, inconsistencies and difficulties often arise, which often leads to a delay in time.
In 2019, the CMU held 9 tenders for the conclusion of PSAs, which involve attracting investments in large projects for the exploration and development of oil and gas areas in Ukraine with a total area of 11,400 sq km.

The Interdepartmental Commission for the Organization of the Conclusion and Implementation of Product Sharing Agreements in July 2019 determined the winners of the tenders. Among the minimum obligations of investors under PSAs for the first 5 years are the drilling of almost 40 wells and 3D seismic on an area of 3,800 sq km, which amounts to an investment of USD 430 million.

Thus, PSAs can be an effective mechanism for attracting significant investments in the extractive sector of the domestic economy.

Improving the provisions of Law No. 1039-XIV is important for maintaining the investment climate in Ukraine, especially in today's difficult economic conditions.

As of today, according to industry experts, martial law and the deepening of the global economic crisis can completely stop investment activities in the sector and lead to a weakening of Ukraine's energy security.

Solution:

Amendments to Law No. 1039-XIV, which should provide for:

- Establishment of clear criteria for determining the winner of the tender for the conclusion of the PSA.
- Establishment of a requirement that the evaluation of the submitted proposals is carried out openly (publicly).
- Establishment of a period for preparing proposals (applications for participation in the tender) of at least 90 days and reduce the period for approval of PSA projects (determining the winners of tenders).
- More detailed regulation of the organizational aspects of the activities of the Interdepartmental Commission for the Organization of the Conclusion and Implementation of Product Sharing Agreements.

Development of the Mining Industry and Preservation of Natural Objects

In the course of the activities of domestic subsoil users, there are often cases when there may be NRF facilities within the area specified by a special permit for use, that is, on the lands of which it is prohibited to carry out activities that adversely affect or may adversely affect the state of natural, historical and cultural complexes and objects or prevent their use for their intended purpose, in accordance with Part 3 of Article 7 of the Law of Ukraine On the Nature Reserve Fund of Ukraine No. 2456-XII dated 16 June 1992 (hereinafter referred to as Law No. 2456-XII). At the same time, the business entity, guided by the imperative norm, does not carry out economic activities on the lands of the NRF, however, for example, with the continuation of the special permit, the authorized bodies will be able to issue for formal reasons an EIA conclusion about the inadmissibility of the planned activities within the entire territory of the special permit. Moreover, the issue of approval by the Ministry of Environmental Protection of subsoil areas that intersect with NRF or forest fund objects for their further sale at an auction is still unresolved. In addition, there is still a tendency that in the subsoil plots that were acquired by the company at auction, NRF objects may appear over time, the agreement of the creation of which with the company is not provided for by law. This, in turn, as experts of the Association Committee note, complicates the work of companies and causes significant additional costs, and does not contribute to attracting investors, in particular foreign ones.

Solution:

- Conducting an audit in order to establish the availability of territories in which it is planned to create or expand NRF sites in the list of sites that are put up for auction in order to sell special permits for the use of such subsoil sites.
- Exclusion of territories in which it is planned to create NRF sites from the lists of subsoil areas, special permits for the use of which are put up for auction.
- Amendments to Law No. 2456-XII and inclusion in the list of primary users of natural resources of enterprises operating on the basis of a lease or a special permit for the use of subsoil. This will create a mechanism for coordinating with enterprises the projects of new NRF sites, if such territories intersect with areas for which special permits for subsoil use have been issued or which are leased.
- Development and approval of the procedure for reimbursing investors for losses caused as a result of the creation of NRF and Emerald Network sites, as well as due to the establishment of prohibitions and restrictions on business activities within the territories of such sites.

Waste Generated in the Process of Subsoil Use

As of today, there is a lack of official licensed companies in Ukraine that are engaged in the disposal and processing of industrial waste. In addition, there is no systematic control over the disposal of industrial waste and a growth tendency in the number of companies engaged only in the collection, transportation, and storage of such waste. The member companies of the Association note that there is a high risk of an increase in the number of unauthorized waste dumps, man-made deposits, the real volume of which is difficult to assess as of today. These objects have a detrimental effect on the environment (pollution, littering of land, water), which is more relevant than ever in the current conditions of industrial development. This risk is due to the cost of waste disposal (the cost of waste collection and storage is lower than the cost of recycling or disposal, which requires resource costs).

Solution:

- Establishment of effective mechanisms for regulating the issuance of licences for the processing of industrial waste, which is guided by the availability of certified equipment and means of disposal, as well as the settlement of the issue of concluding a contract for disposal with those enterprises that have the necessary equipment for waste processing or disposal.
- Improvement of the control mechanism of the relevant authorities.
- Development and adoption of the Law On Waste Management of the Extractive Industry.

Access to Subsoil, the Reserves of which are Located under Forest Plantations

Today, Ukraine has many mineral deposits, the reserves of which are located under forest plantations. According to the Association's experts, there are often cases when subsoil users cannot cut down trees and shrubs to gain access to minerals, the right to use which is certified by a special permit. The Procedure for Cutting Down Trees and Shrubs and Using the Wood Obtained applies, in the event of a change in the purpose of forest land plots or the establishment of an easement for their use for purposes not related to forestry, and the transfer of forest land plots to non-forest lands, approved by Resolution No. 105 of the Cabinet of Ministers of Ukraine dated 4 February 2023 (hereinafter referred to as Procedure No. 105), only to cases of cutting down trees and shrubs on land plots on which an easement has been established, and does not provide for conditions for cutting down trees and shrubs for their use for purposes not related to forestry, on land plots in respect of which Exploration and Mining Agreements have been concluded (hereinafter referred to as the Agreement). Therefore, a situation has emerged in which the Agreement has become a document that does not grant rights to proper use of land, since the subsoil user who uses the land plot located within the forest plantations, on the basis of the Agreement, does not have legal grounds for cutting down trees and shrubs, and, accordingly, does not have access to land.

Solution:

Development and adoption of a draft law that will amend Articles 58 and 70 of the Forest Code of Ukraine, as well as amendments to Procedure No. 105.

The List of Subsoil Areas (Mineral Deposits) that Are of Strategic Importance for the Sustainable Development of the Economy and the Defence Capability of the State, Which will Be Provided for Use Through Auctions for the Sale of Permits

Paragraph 2 of the Procedure for an Auction (Electronic Auction) for the Sale of a Special Permit for the Use of Subsoil, approved by CMU Resolution No. 993 dated 23 September 2020, provides that **'the list of subsoil areas (mineral deposits) that are of strategic importance for the sustainable development of the economy and the defence capability of the state, which will be provided for use through auctions for the sale of permits, is approved by the Cabinet of Ministers of Ukraine, taking into account the list of metal ores and non-metallic minerals that are of strategic importance for the sustainable development of the economy and the defence capability of the state, approved by the decision of the National Security and Defence Council of Ukraine dated 16 July 2021 On Stimulating the Search, Extraction, and Enrichment of Minerals that are of Strategic Importance for the Sustainable Development of the Economy and the Defence Capacity of the State, enacted by Decree No. 306 of the President of Ukraine dated 23 July 2021.**

Experts of the Association draw attention to the fact that due to the lack of a list of subsoil plots (mineral deposits) approved by the CMU, which are of strategic importance for the sustainable development of the economy and the defence capability of the state, which will be provided for use through auctions for the sale of permits, it is currently impossible to obtain such subsoil plots (mineral deposits) for use through an auction. This significantly slows down the attraction of investments in the field of subsoil use in Ukraine, causes the state to receive less budget revenues from the sale of such special permits, and also does not contribute to the development of both the extractive industry and technological industries, and ensure the independence of industries critical for state security from imported raw materials.

Solution:

Approval of the list of subsoil areas (mineral deposits) that are of strategic importance for the sustainable development of the economy and the defence capability of the state, which will be provided for use through auctions for the sale of permits.

Declassification and Removal of the Status of ' For Official Use' from Geological Information to Facilitate Investment in Subsoil Use, in Particular During Martial Law

The Order of the Ministry of Environmental Protection and Natural Resources of Ukraine No. 367 dated 16 December 2020 (hereinafter referred to as Order No. 367) defines the list of confidential, official, and state secret information, in particular, information on mineral reserves and resources. Article 2.6.6. of Chapter 2 of Section II of the Summary of State Secret Information, approved by Order No. 383 of the Security Service of Ukraine dated 23 December 2020 (hereinafter referred to as the Summary of Information), defines as state secret information on the prospects for exploration or extraction of minerals in general in relation to Ukraine, the disclosure of which may harm national security.

In addition, Article 2.6.5 of Chapter 2 of Section II of the Summary of Information defines as state secret information in general about Ukraine's balance reserves in its subsoil: minerals separately regarding diamonds, gold, piezooptical raw materials, lithium, niobium, tantalum, titanium, zirconium, scandium, platinum, iridium, osmium, palladium; scattered elements (together with reserves of those non-ferrous, rare, or noble metals in the ores of which these elements are present), separately regarding gallium, ganium, indium, cadmium, rhenium, rubidium, selenium, thallium, telurium, caesium.

In accordance with paragraph 86 of the Standard Instruction on the Procedure for Accounting, Storage, Use, and Destruction of Documents and Other Material Carriers of Information Containing Proprietary Information, approved by Resolution No. 736 of the Cabinet of Ministers of Ukraine dated 19 October 2016 (hereinafter referred to as the Standard Instruction), the status of 'For Official Use' shall be cancelled in the absence of legal grounds for restricting access to proprietary information that existed earlier.
Among the sectors of the economy identified by the Ministry of Economy of Ukraine as able to provide the highest GDP growth for the recovery of the economy of Ukraine, in particular through the attraction of foreign investment, there are critical raw materials. Industry representatives note that, taking into account the provisions of the 'Protection of Restricted Access Information During International Cooperation' section of the Standard Instruction, the procedure for cooperation with international organizations and prospective investors is greatly complicated.

First of all, only documents are provided for review, from which information of 'For Official Use' status has been removed. In addition, the transmission of information to international investors abroad is prohibited, which generally has an aggravating effect for potential investors in the field of subsoil use. Hostilities on the territory of Ukraine and restriction of this information on potential deposits does not contribute to attracting foreign investors to the industry.

Solution:

- Making a decision by the state expert on secrecy on the declassification of the information specified in Article 2.6.5 of Chapter 2 of Section II of the Summary of Information, making appropriate amendments to it and amendments to Order No. 367.
- After the above amendments, adoption of the decision of the Commission on Dealing with Proprietary Information in the State Service of Geology and Mineral Resources of Ukraine on cancellation of 'For Official Use' status of documents containing information on the volume of explored and approved reserves of certain deposits (areas) of minerals.

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PROPOSALS

FOR THE ECONOMIC RECOVERY OF UKRAINE AND ITS INTEGRATION INTO THE EU SINGLE MARKET

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