

PROPOSALS

OF THE EUROPEAN BUSINESS
ASSOCIATION CONCERNING
THE RECOVERY OF UKRAINE'S
ECONOMY

2023



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INTRODUCTION

The full-scale war has had an extremely serious impact on the business climate in Ukraine. Active hostilities in certain regions and the threat of shelling throughout Ukraine have significantly complicated the business environment due to the destruction of infrastructure, loss of assets, population migration, shrinking domestic markets, interruption of supply chains, reduced production, and changes in the economic environment. Businesses have to divert significant resources to address acute security issues and adapt to new challenges instead of focusing on development, innovation, or increasing competitiveness. Adapting to the new realities requires considerable flexibility and creativity on the part of Ukrainian entrepreneurs, and we are pleased to say that most of them are succeeding.

The EBA business community is showing a steady recovery trend, as since February 2022, most companies have been able to resume full operations, continue to support their employees, and are increasing their support for the armed forces and the population. Despite all the challenges and difficulties, a third of the EBA companies have implemented or are planning large new investment projects in Ukraine since February 2022. These projects include, for example, the opening of new plants or expansion of existing facilities, construction of warehouses and production facilities, farms, registration of new drugs, expansion of the land bank, and investments in IT.

Ukraine needs private investment - it will be key to the country's post-war recovery. However, it is important to attract investors' funds even before the end of hostilities. Investor interest in Ukraine is very high, but the risks of investing in the country during the war are also high, so we need to address this issue comprehensively. Investment insurance mechanisms and investment guarantees can cover these risks and revive investor activity, increasing their confidence and interest in investing in Ukraine.

According to the EBA experts, the development and effective implementation of such mechanisms will help attract private investment even in times of uncertainty. Therefore, it is important to continue working with foreign governments to implement such mechanisms, and it is also necessary to develop an effective special mechanism for insurance of war risks at the legislative level to eliminate gaps that limit the possibility of insurance of domestic investments, including in the context of military actions and post-war recovery.

The number of challenges and tasks Ukraine is currently facing is extremely high. However, we are confident that with the joint efforts of the state, business, and active civil society, with the support of international partners and the entire civilized world, we will be able to rebuild the country and make a significant leap forward in development. The EBA business community will be actively involved in these processes and hopes that the proposals outlined in this document will contribute to long-term positive changes in the country's business climate!

Tax Issues





It is necessary to make changes to the current legislation in the field of personal income taxation

According to the experts of the European Business Association (hereinafter - the Association), the existing taxation system concerning the incomes of employees (natural persons) is somewhat excessive and its effectiveness is questionable. On the one hand, there is a high tax burden (personal income tax - 18%^[1], Single Social Contribution - 22%^[2], military duty - 1,5%^[3]), on the other hand - disproportionately low social welfare from the state to the wider public in Ukraine. In addition, the existing taxation system makes it possible to use tax evasion schemes by unscrupulous taxpayers, which significantly worsens the competitive environment for transparent business.

Solution:

A law should be drafted and approved to introduce changes to the Tax Code of Ukraine (hereinafter TCU) in the section referring to the taxation of natural persons in order to establish a transparent system of tax incentives for conscientious taxpayers, as well as tax discounts for the vulnerable social groups of citizens.

One of such incentives may be the introduction of a household taxation system. However, it is necessary to be cautious and carefully introduce changes not to violate the principle of stability of the tax legislation.

Moreover, the changes to the TCU are to both stimulate the taxpayers to conscientiously pay personal income tax and thwart the existing schemes of tax avoidance. We consider it expedient to introduce a risk-oriented system that would take into account well-known schemes for minimizing the tax burden on the payroll fund. This will, first of all, affect those business entities that resort to minimizing personal income tax payment.

It is necessary to avoid double taxation of the income of Ukrainian citizens

A lot of Ukrainian citizens were forced to leave the territory of Ukraine due to the armed aggression of the Russian Federation when the legal regime of martial law was enforced, starting from February 24, 2022. Taking this into consideration, there is a problem in determining their status as tax residents. Currently, there is no unambiguous position at the state level regarding the determination of the tax resident status of a natural person - a citizen of Ukraine (including, but not exclusively, those citizens who are registered as natural persons-entrepreneurs) and this may lead to the recognition of such persons as tax residents of the countries of residence or to double taxation of the incomes of the specified persons, which would contradict the international agreements on the avoidance of double taxation.

Solution:

The Government of Ukraine, having taken into account all of the above, has to coordinate the approaches to the practical application of acquiring the status of a tax resident with the competent authorities of the countries where there are large groups of Ukrainian temporarily displaced persons now.

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

[1] Tax on the income of natural persons, the tax rate is provided for in Clause 167.1 Article 167 of the TCU.

[2] Single social contribution, the amount is provided for in part 5 Article 8 of the Law of Ukraine "On the collection and accounting of the single contribution to obligatory state social insurance" No. 2464-VI of July 8, 2010.

[3] The rate of the military duty is provided for by Subclause 1.3 Clause 161 Subsection 10 Section XX of the TCU.



It is necessary to clarify the tax legislation of Ukraine regarding the application of the rules on controlled foreign companies (hereinafter - CFC), which were introduced by the Law of Ukraine "On Amending the Tax Code of Ukraine on Improving Tax Administration, Eliminating Technical and Logical Inconsistencies in Tax Legislation" No. 466-IX of January 16, 2020, as part of the implementation of the Plan to combat tax base erosion and profit shifting (BEPS)

Despite numerous clarifications of the TCU, the practical use of the existing norms regarding the rules on CFC causes different interpretations. In addition, some approaches laid down in the mentioned tax rules appear to be unreasonably burdensome.

Solution:

In order to clarify the issues of practical application of the current rules, it is necessary to develop and adopt a project of a summarising tax consultation (hereinafter referred to as the STC) or a series of such consultations regarding the CFC. Currently, according to the information of the Association's member companies, a group of experts of the Expert Council on the Preparation of the STC (hereinafter - the Expert Council) under the Ministry of Finance of Ukraine (hereinafter - the Ministry of Finance) has prepared a project that is awaiting approval by the Ministry of Finance.

As a long-term solution, there has to be a draft law developed on introducing changes to the rules for CFC for the purpose of eliminating the discovered contradictions and ambiguity, and overall refinement of the rules for CFC.

It is necessary to approve summarising tax consultations concerning practical application of certain provisions of the tax legislation

Considering the ambiguity of certain norms of tax legislation, there is a need for the Expert Council under the Ministry of Finance to provide recommendations and proposals regarding the adoption of several projects of STC. The issues related to the practical application of the norms of tax legislation, which require official clarification in the relevant STC include the following: the procedure for applying fines for failure to submit a notification in the 20-OPP[4] form; creating primary accounting documents in electronic form; methodology for determining profit for foreign companies that have permanent offices in Ukraine; methodological clarifications regarding the latest changes in transfer pricing.

[4] This is a form for Notifying about tax objects or objects, related to taxation or through which the operation is executed (Form No. 20-OPP), approved by decree of Ministry of Finance "On Approving the Procedure for Accounting Taxpayers and Fees" No. 1588 of December 9, 2011 (Supplement 10 to the Procedure for Accounting Taxpayers and Fees (Clause 7.2)).



Solution:

Projects of STC are to be developed and approved regarding the following:

- a project of STC regarding submitting information in 20-OPP form;
- a project of STC regarding usage of basic digital signature while writing personnel records and primary accounting documents;
- a project of STC regarding accounting, reports and inspections of foreign companies and their representative offices;
- a project of STC regarding transfer pricing;
- a project of STC regarding constructive dividends.

It is necessary to introduce changes to TCU and some other legislative acts of Ukraine

Solution:

- to facilitate adoption of changes to the TCU pertaining to the implementation of Diya-City;
- to prevent limiting of the right to carry forward losses of past periods for large taxpayers;
- to prevent cutting shorter the terms for registration of tax invoice payers of value added tax (hereinafter referred to as VAT) and appealing the decision to block such registration;
- to prevent cutting shorter the terms for appealing the decisions of the State Tax Service of Ukraine (hereinafter STSU);
- to prevent the violation of the stability of tax legislation principle, as terms of introducing changes must meet the requirements of Article 4 of the TCU;
- to prevent selective fashion of applying a significant increase of the tax burden on certain industries (in particular, the tobacco industry, the mining and metallurgical complex, and gas extraction).

It is necessary to exempt from VAT the operations on supply and import of medicines/ medical devices/ equipment to be used in clinical trials

Solution:

Introduce changes to Paragraph 3 Subclause "c" Clause 193.1 Article 193 of TCU regarding exemption from VAT for operations of supply to the customs territory of Ukraine and importing to the customs territory of Ukraine the medicines/ medical devices/ equipment to be used in clinical trials.



It is necessary to cancel financial (penal) sanctions in the case when the corporate income tax payer, on his own, clarifies information on controlled transactions in the clarifying report, and fines for not submitting a report after paying a fine for incomplete reporting on controlled transactions

Solution:

It is necessary to draft and approve a law amending the TCU regarding the cancellation of the application of financial (penal) sanctions (i) in the case of the economic entity clarifying on its own, the information about controlled transactions in the clarifying report and (ii) for not submitting a report after paying a fine for incomplete reporting on controlled operations based on the results of a documentary check.

It is necessary to prevent the cancellation of the increase in the amount of fines for failure to issue fiscal checks, introduced to de-shadow the economy

The Association supported the adoption of the Law of Ukraine “On Amendments to the Law of Ukraine “On the Application of Registrars of Settlement Operations in the Sphere of Trade, Public Catering and Services” and other laws of Ukraine on De-Shadowing of Settlements in the Sphere of Trade and Services” No. 128-IX dated September 20, 2019 and Law of Ukraine “On Amendments to the Tax Code of Ukraine on De-Shadowing of Settlements in Trade and Services” No. 129-IX of September 20, 2019 (hereinafter - Law No. 128-IX and Law No. 129-IX respectively), as well as increasing business responsibility for not issuing fiscal checks. The comprehensive application of the norms of Laws No. 128-IX and No. 129-IX, as business representatives assert, should in the long run contribute to bringing Ukraine’s economy out of the shadow and create equal conditions for doing business.

At the same time, the Association is concerned to see a number of legislative initiatives registered to bring about complete cancellation of the progressive norms of Laws No. 128-IX and No. 129-IX or significantly reduce them, for example, by removing electronic commerce out of their scope or excluding the requirement to conduct sales of household appliances and electronics with a mandatory fiscal check.

Solution:

The Association deems it injudicious to adopt the Draft Law “On Amendments to the Tax Code of Ukraine on De-Shadowing of the Economy and the Fair Use by Individual Entrepreneurs (PPOs) of Settlement Transaction Registrars and the Book of Income Accounting” No. 4468 of December 7, 2020, the Draft Law “On Amendments and Additions to the Tax Code of Ukraine and other laws of Ukraine with the Aim of De-Shadowing the Economy and the Fair Use by Individual Entrepreneurs (PPOs) of Settlement Transaction Registrars” No. 4468-1 of December 21, 2020 and the Draft Law “On Amendments to the Tax Code of Ukraine and Other Laws of Ukraine regarding the Promotion of the Economic Activity of an Individual Entrepreneurs Without the Use of a Registrar of Settlement Operations (software registrar of settlement operations) and Preservation of the Right to Use the Income Accounting Book” No. 4490 dated December 11, 2020.



It is necessary to enhance the work of the Unified Register of Tax Invoices

Solution:

- Increase the duration of the operating day for registering tax invoices and/or calculations of adjustment of tax invoices (hereinafter - TI and CA, respectively).
- TI and/ or CA submitted outside the operating day are not to be rejected, but listed “in a queue” for registering and be registered during the next operating day.
- Consider the possibility of not using the penalising sanctions for violating the terms for registration of TI and/ or CA during a period of incorrect functioning of the Unified Register of Tax Invoices.
- Set up an automatic mailing function to inform taxpayers in real time about technical malfunctions of the VAT invoice registration system.

As for the opportunity to register TI and/ or CA when the manager of the business entity changes

According to business representatives, there are situations happening when TI and/ or CA, which are registered during the period of change of the management of the company (or an authorized person), are sent for registration in STS (State Tax Service of Ukraine), but their further registration or rejection is not carried out. The problem occurs due to the lack of a transitional period for the use of electronic digital signatures of the relevant persons. Thus, if the TI/CA was issued on the last day of work of the previous manager (or an authorized person), then such TI/CA cannot be registered the day after his dismissal and appointment of a new manager. In turn, the new manager cannot sign and send the TI/CA for the previous period.

Solution:

To grant the right to business entities to register such TI and/or CA for the previous period signed by the new manager.

It is necessary to amend the current legislation on the taxation of enterprises' charitable help in favor of non-charitable organizations

Beginning February 24, 2022, from the start of the full-scale war in Ukraine, which Russian Federation, the aggressor country, waged on Ukraine, the Ukrainian businesses became preoccupied with not only the safety of their employees and their families and the continuation of their activities, but also with new priorities - assistance to the military in the defense of the country and to the injured citizens. Despite shelling, missile attacks, limited energy resources, logistical constraints, and many other wartime challenges, businesses in Ukraine are working to preserve jobs, pay taxes, and provide charitable assistance.

At the same time, as of now, charitable activities of enterprises are limited to 4% of the taxable profit of the previous reporting year, because in the case of exceeding the specified limit, the taxpayer must increase his financial result before taxation in accordance with the requirements of Subclause 140.5.9 Clause 140.5 Article 140 of the Tax Code of Ukraine.



For the martial law period, Subclause 69.6 Clause 69 Subsection 10 section XX of TCU provides for not applying the adjustment specified in Subclause 140.5.9 Clause 140.5 Article 140 of the TCU regarding the sums or the cost of special personal protective equipment (helmets, body armor manufactured in accordance with military standards), technical means of surveillance, medicines and medical products, personal hygiene products, food products, items of material provision, as well as other goods, works performed, services provided according to the list determined by the Cabinet of Ministers of Ukraine (hereinafter - the CMU), which are voluntarily listed (transferred) in favor of a clear list of subjects. However, firstly, Subclause 69.6 Clause 69 Subsection 10 chapter XX of the TCU does not cover charitable assistance for the benefit of non-profit organizations in general, and secondly, the list of types of charitable assistance for not applying the adjustment is quite limited, because the CMU has not yet approved the list of "other goods, performed works, rendered services", so for operations on the voluntary transfer of other goods, performed works, rendered services, the list of which is not defined in Subsection 69.6 Clause 69 Subsection 10 chapter XX of the TCU, the provisions of this Subsection do not apply until there is the approval of such a list.

In addition, as business representatives note, in 2022 a significant number of large and medium-sized enterprises suffered a loss. Electricity shortages, emergency and stabilization schedules in the fourth quarter led to industrial enterprises being forced to reduce production or to temporarily stop altogether, and commercial enterprises and the service sector had to significantly increase the costs due to efforts to provide electricity. As a result, according to the results of the full year 2022, the share of unprofitable enterprises is going to become much larger. Under such conditions, the business will not be able to apply Subsection 140.5.9 Clause 140.5 Article 140 of the TCU, which is provided only for profitable enterprises.

Solution:

Approve the Draft Law "On Amendments to Section XX "Transitional Provisions" of the Tax Code of Ukraine on Stimulating the Provision of Charitable Aid for the Benefit of Non-Profit Organizations" No. 9177 of April 3, 2023 (hereinafter - Draft Law No. 9177), which provides for an increase to 10% of taxable income profit of the previous reporting year to be fit for non-application of the adjustment provided for in Subclause 140.5.9 Clause 140.5 Article 140 of the TCU. In addition, we propose to provide in Draft Law No. 9177 the possibility for enterprises that have suffered losses not to apply the adjustment provided for in Subclause 140.5.9 Clause 140.5 Article 140 of the TCU for charitable assistance with a value not exceeding 2% of the net income from the sale of products (goods, works, services) of the previous reporting year.

ISSUES

OF IMPORT AND TRADE IN ALCOHOLIC BEVERAGES





Fighting illegal circulation of alcoholic beverages (including "bag in box")

According to the estimates of the Association's experts, approximately 40% of the alcohol industry is in the shadow, and the budget losses from the illegal liqueur-vodka market amount to 9 billion hryvnias annually.

Solution:

- to promptly complete the program of reform and development of the alcohol industry for 2020-2023[5], in particular the privatization of state distilleries, which should significantly reduce the production of illegal alcohol and unaccounted for vodka;
- to ensure the transparency of procedures for dealing with confiscated alcoholic beverages (at all stages from the moment of their confiscation to the moment of disposal); to involve the representatives of the Association (manufacturers and/or importers of alcoholic products) in the procedure for destruction of confiscated alcoholic beverages; to approve the register of business entities that have the right to dispose of confiscated alcoholic beverages;
- to introduce transparent and equal conditions for the sale of alcoholic beverages on the Internet;
- to deepen the cooperation of state bodies with legal players of the alcohol market in order to modernize and ease the regulatory impact on business, which in the long run will contribute to an increase in revenues to the budget of excise tax and other related taxes from conducting business activities in the sphere of circulation of alcoholic beverages.

There is an ambiguity of the wording regarding imposing fines for selling alcoholic beverages at prices lower than 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, Cognac and Fruit Alcohol, Alcoholic Beverages, Tobacco Products, Liquids Used in Electronic Cigarettes, and Fuel" No. 481/95-BP of December 19, 1995 (hereinafter - Law No. 481/95-BP) when financial sanctions are imposed for wholesale or retail trade in alcoholic beverages at prices lower than the established minimum wholesale or retail prices for such beverages, the amount of the fine is determined on the basis of the received batch of goods without specifying a specific operation and product nomenclature. Thus, there is room for ambiguous understanding, which potentially creates risks for abuse of power by regulatory authorities.

Solution:

It is necessary to amend the Law No. 481/95-BP by specifying the way the amount of fine is calculated, in particular, rewording the corresponding paragraph of Part 2 of Article 17 of Law No. 481/95-BP as follows:

"Financial sanctions in the form of fines are imposed on business entities (including foreign business entities operating through their registered permanent representative offices) in the event of:

*<...>
wholesale or retail trade in cognac, alcoholic beverages, vodka, liqueur-vodka products and wine at prices lower than the established minimum wholesale or retail prices for such drinks - 100 percent of the value of the goods sold at prices lower than the minimum wholesale or retail prices, calculated on the basis of minimum wholesale or retail prices, but not less than 10,000 hryvnias".*

[5] Approved by resolution of CMU No. 699 of August 12, 2020.



Regarding the cancellation of use of the consignment note 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 Instructions on the application of the forms of consignment notes for the movement of ethyl alcohol, high-octane oxygen-containing admixtures and alcoholic beverages, approved by the order of the Ministry of Transport and Communications of Ukraine No. 154 dated April 28, 2005 (hereinafter - Instruction No. 154), defines that *“transporting the products by road transport within the borders of Ukraine is carried out on the condition that there is a duly executed and appropriate consignment note of the established sample form No. 1-TN/alcohol/, No. 1-TN/vkd/ or No. 1-TN/alcoholic beverages/”*. Clause 1.5 of Instruction No. 154 defines that a consignment note is drawn up on ordinary application forms produced by a typographic method or other means of printing, i.e. in paper form. The obligation to draw up such an invoice in paper form puts the operators of the alcoholic beverages market in less favorable conditions, because in accordance with Chapter 1 of the Rules for transportation of goods by road transport in Ukraine, approved by the order of the Ministry of Transport of Ukraine No. 363 of October 14, 1997 (hereinafter - Rules No. 363), the consignment note can be drawn up in paper and/or electronic form.

The abolition of the special form of the consignment note for the transportation of alcoholic beverages will allow the operators of the alcoholic beverages market to decide whether to supplement the expense invoices, which they are currently using while delivering goods, with the necessary details, so that they simultaneously act as the consignment notes, or to use a waybill in an any form with mandatory details required by Rules No. 363.

Solution:

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

Regarding the revision of the existing approach to paying the excise tax in advance

According to Subclause 222.2.2 Clause 222.2 of Article 222 of the TCU *“In the case when marked excise goods are imported into the customs territory of Ukraine, the tax is paid at the time of purchase of excise tax stamps <...>”*. This approach puts importers in a disadvantageous financial position, because, according to businesses, it takes 2 months to wait for the stamps to be issued from the moment of submitting an application-calculation for the purchase of excise tax stamps, and another 3 to 6 months, on average, till the moment the products marked with such stamps are imported.

Solution:

To review the mechanism for paying the excise tax in advance, that is: transfer the obligation to pay excise tax on imported alcoholic beverages at the time the customs declaration is submitted to have the customs clearance procedure of imported excise goods (if it appears to be not possible to implement the payment of excise tax at the time the excise goods are sold to the end consumer).



Regarding absence of regulation on selling alcoholic beverages on the Internet

Solution:

It is necessary to develop and approve an appropriate law that would regulate the rules of retail trade of alcoholic beverages on the Internet. In particular, according to the business, it should be at the legislative level that there is a unified register of sites through which alcoholic beverages are sold, with an indication of the licenses for retail trade of alcoholic beverages issued to the relevant business entities. It is also important to develop a mechanism for blocking sites that will not be in such a register.

Regarding simplifying the procedure of registration of spaces for storing alcoholic beverages, which is provided for by the Law No. 481/95-BP

Solution:

The experts of the Association deem it judicious to consider the possibility of simplifying the procedure of registration of storage places for alcoholic beverages, in particular, that such a procedure should take place on the basis of declaration - exclusively by notifying the State Tax Service authorities in the electronic office of the business entity about the address/location of the premises/premises for storing alcoholic beverages, without the need of obtaining a certificate for submitting the information about the place of storage into the Unified State Register or any other additional approval from the STSU.

Regarding the abolition of the obligatory licenses in paper form for the right of wholesale/retail trade in alcoholic beverages in accordance with Law No. 481/95-BP

Indeed, Article 18 of Law No. 481/95-BP states that *“For the licensing of activities provided for by this Law, the license forms of a unified type, established by the Cabinet of Ministers of Ukraine, are to be used.”*

Solution:

The Association experts consider it judicious to transfer the register of licenses for the right to conduct wholesale/retail trade in alcoholic beverages exclusively to the electronic form with open access, so there is a possibility to receive extracts from the register (if necessary).



Regarding amendments to Part 52 of Article 15 of Law No. 481/95-BP concerning the grounds for canceling a license (return to the version that was effective before January 1, 2022) in order to prevent abuses by regulatory bodies

Beginning January 1, 2022, amendments to Paragraph 6 of Section 52 of Article 15 of Law No. 481/95-BP[6] entered into force, according to which *"The license is canceled by the body that issued the license approving a relevant resolution on the basis of: <...> upon establishing the fact of a business entity (including a foreign business entity operating through its registered permanent representative office) trading in alcoholic beverages or tobacco products without excise tax stamps";* and not on the basis of a court decision - as was provided for in the previous version of the specified norm.

According to the information of the member companies of the Association, it was with the mentioned changes coming into force that the controlling bodies started to abuse their rights more and more often. In particular, some individual cases of unintentional damage to the excise tax stamp on products were considered to be the reason for canceling the license.

Taking into account the above, the experts of the Association propose to amend Part 52 of Article 15 of Law No. 481/95-BP and return to the previous version of the corresponding paragraph. The proposed changes should significantly reduce the number of cases when the controlling authorities abuse their rights, as the direct intention of the business entity to trade in alcoholic beverages without excise tax stamps will have to be proven in a court of law.

Solution:

Paragraph 6 of Section 52 of Article 15 of Law No. 481/95-BP should have the wording as follows:

"a court decision that establishes the fact of a business entity (including a foreign business entity operating through its registered permanent representative office) trading in alcoholic beverages or tobacco products without excise tax stamps".

Regarding the uncertainty of the terms for a business entity to receive the order concerning the cancellation of the license

Thus, the current wording of Part 53 of Article 15 of Law No. 481/95-BP does not provide for a period during which the authority that issued the license must issue an order to cancel the license and notify the relevant business entity. As a result, the business entity cannot predict and foresee the actions of the supervising authority regarding the cancellation of the license. Thus, on the day of receiving the order canceling the license, the business entity finds itself in a situation where it is forbidden to carry out business activities related to the sale of excise goods. The proposed changes will allow the company to continue its economic activity, minimize economic losses and provide an opportunity to prepare the necessary documents for obtaining a new license without harming the business.

[6] 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 of November 30, 2021.



Solution:

Section 53 of Article 15 of Law No. 481/95-BP should be worded as following:

*“License is canceled and is deemed invalid **after 15 calendar days expire following the date when the business entity** (this also refers to a foreign business entity acting through its registered permanent representative office) **received the order notifying about the cancellation** in the electronic form by means of electronic communication.”*

Regarding the absence of information about the enterprises who have the right to dispose of the confiscated alcoholic beverages; and the need to drop the norm for processing

Solution:

It is necessary to make changes to the resolutions of the CMU “On the Procedure for Accounting, Storage, Assessment of Confiscated and Other Property that Becomes State Property, and its Management” No. 1340 of August 25, 1998, “On Approval of the Procedure for the Management of Property Confiscated by Court Decision and Transferred to the Bodies of the State Executive Service” No. 985 dated July 11, 2002, “On the Procedure for Accounting, Storage, Assessment of Property Seized by Customs, in respect of which a Court Decision has been Issued on Confiscation, Transfer of this Property to the Bodies of the State Executive Service and its Management” No. 1724 dated December 26, 2001 regarding the handling of confiscated property and the scrapping of norms regarding the processing of alcoholic products, and to approve the register of enterprises that have the right to dispose of confiscated alcoholic beverages, and to provide for the transparency of procedures for handling confiscated alcoholic beverages (at all stages from the moment of their confiscation to the moment of their disposal).

PROPOSALS FOR THE PERIOD OF MARTIAL LAW:

- Consider the possibility of not paying the excise tax liability for the lost excise goods (products) in the event of the excise goods (products) being destroyed (lost) during the martial law imposed in accordance with the law.

CUSTOMS ISSUES





Regarding counteractions to sale of contraband products on the Internet

Solution:

It is necessary to make changes to the legislation in the field of consumer rights protection and e-commerce. In particular, it is at the legislative level that the regulation should be introduced of the activities of such players in the field of e-commerce as marketplaces and price aggregators. There should be clear provisions defined regarding the rights and obligations of each subject of e-commerce trade and effective prosecution mechanisms provided for in case violations of the requirements of the law occur. This, in turn, will both strengthen the protection of consumer rights and help reduce the volume of sales of contraband and counterfeit products.

Regarding criminalisation of goods contraband

The Verkhovna Rada of Ukraine supported in the first reading the Draft Law "On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine regarding the Criminalization of Smuggling of Goods and Excise Goods, as well as Dishonest Declaration of Goods" No. 5420 dated April 23, 2021 (hereinafter - Draft Law No. 5420), to which the Association's experts have a number of comments.

Solution:

Overall the Association supports the idea of criminalizing smuggling of a number of categories of products, for example, excise goods, medicines, household appliances and electronics, etc. At the same time, according to the Association's experts, Draft Law No. 5420 needs substantial elaboration. Thus, business representatives are concerned about the addition to the Criminal Code of Ukraine (hereinafter referred to as the CCU), proposed by Draft Law No. 5420, of a new article of 201⁴ "Dishonest declaration of goods", the provisions of which, according to the experts of the Customs Committee of the Association, are ambiguous and therefore should be excluded from Draft Law No. 5420. Thus, according to the experts of the Customs Committee of the Association, the provision of Article 201⁴ of the CCU allows for the possibility of bringing business entities to criminal liability even for unintentional errors in customs declarations. In addition, amendments to articles 201, 201¹, 201² propose to impose criminal liability on "actions aimed at illegal movement or with a goal to conceal from customs control", which in turn creates grounds for pressure on honest business by law enforcement agencies. At the same time, actions that should be qualified as a crime, which gives unlimited powers to law enforcement agencies to bring a person to criminal responsibility, are not specified.

Draft Law No. 5420 does not specify the subject of criminal liability for dishonest declaration and actions aimed at illegal movement of goods. From the current wording of the norms, it is not clear who should be accused of committing a crime - the head of the enterprise, the declarant, the customs broker, the carrier, etc.

The threshold of criminal responsibility for smuggling excise goods is unreasonably low - **UAH 113,500 worth of smuggled items, which means about UAH 35,000 in unpaid customs** payments calculated at the highest rates. According to business representatives, Draft Law No. 5420 unreasonably understates the level of criminalization of offenses in the field of economic activity, which hampers the development of entrepreneurship.

The experts emphasize that the investigation of economic smuggling cases must be determined exclusively by the Bureau of Economic Security of Ukraine.



Regarding the issue of illegal import

Solution:

It is necessary that the State Customs Service of Ukraine conducts an audit of procedures in order to reduce the time for customs clearance of cargo. Introduction of the customs clearance procedure based on the back-office principle (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 where the cargo will be delivered to. A suitable and effective procedure for the work of customs service inspectors should be developed. Digitization of all stages of communication between declarants and representatives of the State Customs Service of Ukraine should be implemented. This will help avoid corruption risks in the field of customs control.

Regarding the need to implement the New Computerized Transit System (NCTS)

Solution:

It is necessary to develop the procedure for issuing financial guarantees for the payment of customs payments.

Regarding the necessary changes to the financial stability criteria of companies which are applying for the status of authorized economic operators (hereinafter - AEO)

Solution:

It is important to amend the Customs Code of Ukraine in the sections referring to the terms of compliance with the "stable financial condition" criterion for the purpose of authorizing and acquiring the AEO status by enterprises. There should be bylaws developed with the aim to effectively implement the AEO institute.

Regarding solving the problem associated with the lack of high-quality customs post-audit

In order to shorten the customs clearance terms when crossing the customs border, part of the inspection work done by inspectors of the State Customs Service can be postponed to the following periods.

Solution:

It is necessary to develop and adopt normative legal acts on the regulation of the customs post-audit procedure.



Regarding the need to create regulatory and legal regulation for the introduction of the regime of free customs zones

Solution:

It is necessary to adopt subordinate legal acts of the Ministry of Finance of Ukraine, which will determine the procedure for documenting the movement of goods in accordance with Chapter 21 of the Customs Code of Ukraine, namely, the regime of free customs zones.

Regarding absence of a separate customs clearance procedure for importing used personal items

Now, the current customs legislation of Ukraine considers the import of personal belongings in unaccompanied luggage as second-hand or import of new goods with the need to declare each item separately with an indication of weight and value characteristics.

Council Regulation (EC) No. 1186/2009 of November 16, 2009, which sets out the Community system for reliefs from paying customs duties (hereinafter - Regulation No. 1186/2009), provides for exemption from payment of import duties for personal things of natural persons who change their place of residence from a third country to a Community country.

Solution:

It is necessary to work out ways to implement the Regulation No. 1186/2009.

Regarding the discrepancies between terms for customs regime (IM-74 "customs warehouse") and terms for currency control by the National Bank of Ukraine

Solution:

It is necessary to contact the National Bank of Ukraine, the Ministry of Finance of Ukraine and the State Customs Service of Ukraine with a proposal to make changes to the software of the National Bank of Ukraine and the State Customs Service of Ukraine in order to agree on the correct display of information about goods that are on the territory of Ukraine in the "customs warehouse" mode for 3 years.



Regarding simplifying the customs procedures in the sea ports

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:

It is necessary to introduce the maritime logbook of the checkpoint with the possibility of providing and exchanging information between the customs and all participants in the supply chain of goods. There should be corresponding amendments to normative legal acts on the regulation of customs procedures made.

CONSTRUCTION SPHERE





Regarding development and implementation of the mechanism to insure against war/ investment risks

Currently, the construction industry requires a significant amount of investment. At the same time, under the conditions 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 estate construction projects. This is due to the risks of the constant threat of destruction of such objects, halts in construction, falling under temporary occupation, etc. 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 - the CMU) (in particular, the Ministry of Economy of Ukraine (hereinafter - the Ministry of Economy)).

Solution:

It is necessary to develop at the legislative level an effective special mechanism for insurance against war risks, as well as a special state fund for insurance against war risks that are related to the implementation of projects of new construction or reconstruction (restoration) of residential real estate objects (in particular, housing for internally displaced persons or other persons, who lost their homes as a result of hostilities) and non-residential (commercial) real estate (including infrastructure projects). We suggest considering the possibility of using the experience of the CMU related to the insurance of air carrier risks in February 2022.

Also, we propose to adopt the Draft Law "On Amendments to the Law of Ukraine "On Financial Mechanisms for Stimulating the Export Activity" on Insurance of Investments in Ukraine Against War Risks" No. 9015 dated February 14, 2023, which proposes to amend the Law of Ukraine "On Financial Mechanisms for Stimulating the Export Activity" No. 1792-VIII of December 20, 2016, in particular to eliminate the gaps that limit the possibility of insuring domestic investments by the Export Credit Agency, including in the conditions of military operations and post-war reconstruction.

Regarding the use of the right of superficies for reconstruction of residential and non-residential real estate, social infrastructure, and other real estate

In Ukraine, the issue of uncompleted buildings and long-term building works is a big problem. As representatives of the business community point out, this is often related to problems with the financing of construction projects, illegal actions of individuals, etc. In the conditions of the armed aggression of the Russian Federation against Ukraine, martial law, broken logistics chains, the risk of halting the construction works increases significantly.

Solution:

At the national and regional level, it is necessary to intensify the issue of using the right of superficies for the reconstruction of residential and non-residential real estate, social infrastructure, other real estate with the imperative conditions for quick transfer of ownership to the result of the work of a person who cannot fulfill his obligations on time.



Regarding the acceleration of the development and implementation process for programs of comprehensive restoration of regions and territorial communities (parts thereof)

The Law of Ukraine “On Amendments to Certain Laws of Ukraine Regarding Priority Measures for Reforming the Sphere of Urban Development” No. 2254-IX of May 12, 2022 (hereinafter - Law No. 2254-IX) introduced the concept of “comprehensive rehabilitation program of the region, the territory of the territorial community (its parts)”. This is a regional or local program for the restoration of territories, which 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 (its part), which suffered as a result of armed aggression against Ukraine or where the socio-economic, infrastructural, environmental or other crisis phenomena are concentrated.

Solution:

It is necessary that the heads of regional administrations, local self-government bodies intensify the process of preparation for the development of integrated recovery programs. According to the experts of the Association, this will contribute to the restoration of the construction industry, as it will allow effective planning and implementation of large-scale construction and infrastructure projects.

Regarding ensuring the publicity and transparency of urban planning documentation and ways the registration and permit procedures are implemented

Business representatives note that, before the war and now as well, it has been quite an ambiguous process to ensure the publicity and transparency of urban planning documentation at all levels, as well as the implementation of registration and permit procedures in the field of construction.

A significant part of urban planning documentation is not digitized. There are often no tools to obtain up-to-date information on urban planning documentation in certain settlements. Issuance of town planning conditions and restrictions is not carried out automatically (it has subjective and other, including corruption-inducing, factors). The experts of the Association note that, in general, the permit system has undergone positive changes, but it has a number of disadvantages (in particular, in the work of state architectural and construction control bodies).

Solution:

It is necessary to create regulatory and technical prerequisites for implementing an urban planning cadastre at a state level, which would integrate all other urban planning cadastres and registers. A separate issue is the technical support for the automatic issuance of town planning conditions and restrictions with the help of town planning cadastre software in the form of a relevant document (excerpt).

It is important to develop an effective mechanism for automating the process of registering the documents for construction works, as well as procedures for final acceptance.



Regarding the creation of conditions to have the conformity assessment system in the field of construction technically ready

As in 2020 the Law of Ukraine “On Providing Construction Products on the Market”. No. 850-IX of September 2, 2020 was approved, the provisions of Regulation of the European Parliament and Council No. 305/2011 of March 9, 2011 were implemented into national legislation, thus establishing harmonized conditions for the provision of construction products on the market and repealing Council Directive 89/106/EEC (hereinafter – Regulation No. 305/2011).

Meeting these requirements is provided for by the use of construction products during the construction process with appropriate operational characteristics. The experts of the Association note that the assessment and verification of the stability of operational characteristics should be carried out by manufacturers together with the appointed bodies for assessing compliance with the requirements of Regulation No. 305/2011. However, currently there are no designated conformity assessment bodies. The situation is also complicated by the absence or understaffing of the existing laboratories with the equipment necessary for testing construction products.

Solution:

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

Regarding the provision of shelters for the maximum number of the population to provide protection from serious injuries as a result of military actions

As business representatives point out, Ukraine currently has insufficient quantity of civil protection structures and shelters for the entire population. A significant part of such shelters is formally included in the funds of protective structures of civil protection, but does not meet the legally established requirements. There are frequent cases when the shelters are closed or not used for their intended purpose.

Solution:

First of all, it is necessary to compile an inventory and carry out an audit of existing civil defense facilities.

What should be looked into is expansion of the number of protective structures of civil defense at the expense of the existing buildings and structures that can be used as dual-purpose structures.

It is important to create and implement a new effective approach to territory planning and the construction of buildings and structures, aimed at ensuring the protection of the maximum number of civilians.

The specified measures must be accompanied by (1) the process of defining the responsibility for non-compliance with the requirements of civil protection by subjects of authority during the design, construction stages and implementation of control function during the commissioning of construction objects; (2) ensuring the proper use of the existing fund of protective structures.



Regarding 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 steadily 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 conditions of the enemy constantly shelling energy facilities, the issue of optimal use of energy resources, according to the Association's experts, is undoubtedly one of the key issues that will need to be taken into account during construction.

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

Solution:

It is necessary that when building housing for IDPs the Government and donor organizations take into consideration not only the aspect of accessibility, but also energy efficiency. Creating energy-efficient housing will help save resources, as well as significantly reduce the amount of greenhouse gases and other pollutants released into the atmosphere.

LOGISTICS AND INFRASTRUCTURE





Regarding the absence of provisions that would regulate the rail transport market with the operation of private traction (locomotives) on it

Opening the private traction market is another step on the way to European integration. Experts of the Logistics Committee of the Association claim that competition in the market of locomotive traction will contribute to the establishment of the market price for railway transportation.

Solution:

It is necessary to adopt the Draft Law “On Railway Transport of Ukraine” No. 1196-1 dated September 6, 2019 (hereinafter - Draft Law No. 1196-1) taking into account the proposals submitted by business.

At the same time, it is necessary to start developing the subordinate legal acts necessary for the proper implementation of the provisions of Draft Law No. 1196-1 after its adoption.

Regarding reforming the structure of JSC “Ukrzaliznytsia”

Solution:

It is necessary to complete the reform of the structure of JSC “Ukrzaliznytsia”, in particular by dividing it financially and organizationally into separate segments by types of activities with setting up subsidiaries, competing companies within JSC “Ukrzaliznytsia” in the form of joint-stock companies in each segment (except for infrastructure), thus creating prerequisites for increasing transparency, improving the quality of service and increasing the efficiency of railway transportation.

Regarding the fact that there has not been a National Commission for State Regulation in the Field of Transport (hereinafter - NCRT) created.

Solution:

Develop and adopt a law that will establish the NCRT and define the basic principles of its activities and powers, in particular, regarding the regulation of the activities of natural monopolies and related markets that operate in the transport services markets. According to business representatives, NCRT 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 of the regulator’s functioning is provided for by EU legislation (for example, Article 55 of Directive 2012/34/EU of the European Parliament and of the Council of November 21, 2012 on the establishment of a single European railway area).



Regarding adoption of the Methodology for calculating port dues rates and the Procedure for charging, accounting and using funds from port dues

Solution:

The member companies of the Association expect port dues rates to be reduced, which, in particular, will occur due to the adoption of a well-founded Methodology for calculating port dues rates together with the corresponding Procedure for charging and use, which will take into account the comments and suggestions of the Association's experts.

Regarding approval of the Procedure and conditions for concluding contracts, based on which the compensation for investments made by business entities in strategic port infrastructure facilities is granted (hereinafter referred to as the Compensation Procedure)

Solution:

A relevant project of the Compensation Procedure has been developed with the participation of the Association, State Enterprise "Administration of Sea Ports of Ukraine" and the Ministry of Infrastructure of Ukraine. Business representatives hope that their propositions will be taken into account during the development and adoption of relevant regulatory and legal acts.

Regarding the need to simplify the permitting procedure for construction works in the water areas of seaports and on the lands of inland water transport

Solution:

The relevant project of the Law "On Amendments to Certain Legislative Acts of Ukraine Regarding Construction Works on Lands Occupied by Inland Waterways of Public Use" was developed by the Association's experts and sent to the Ministry of Infrastructure of Ukraine for processing.



Regarding the assignment of the Public Enterprise "Maritime Search and Rescue Service" to the State Emergency Service of Ukraine sphere of management

Solution:

It is important to make appropriate changes to paragraph 1 of the CMU Resolution "On Ensuring the Functioning of the Unified Search and Rescue System at Sea" No. 1069 of October 20, 2011 and exclude paragraph 5 of the CMU Resolution "On the Restoration of the Unified Search and Rescue System at Sea" No. 158 of February 24, 2016.

Regarding the development of leasing and privatization processes in seaports to facilitate investment (along with concession)

Solution:

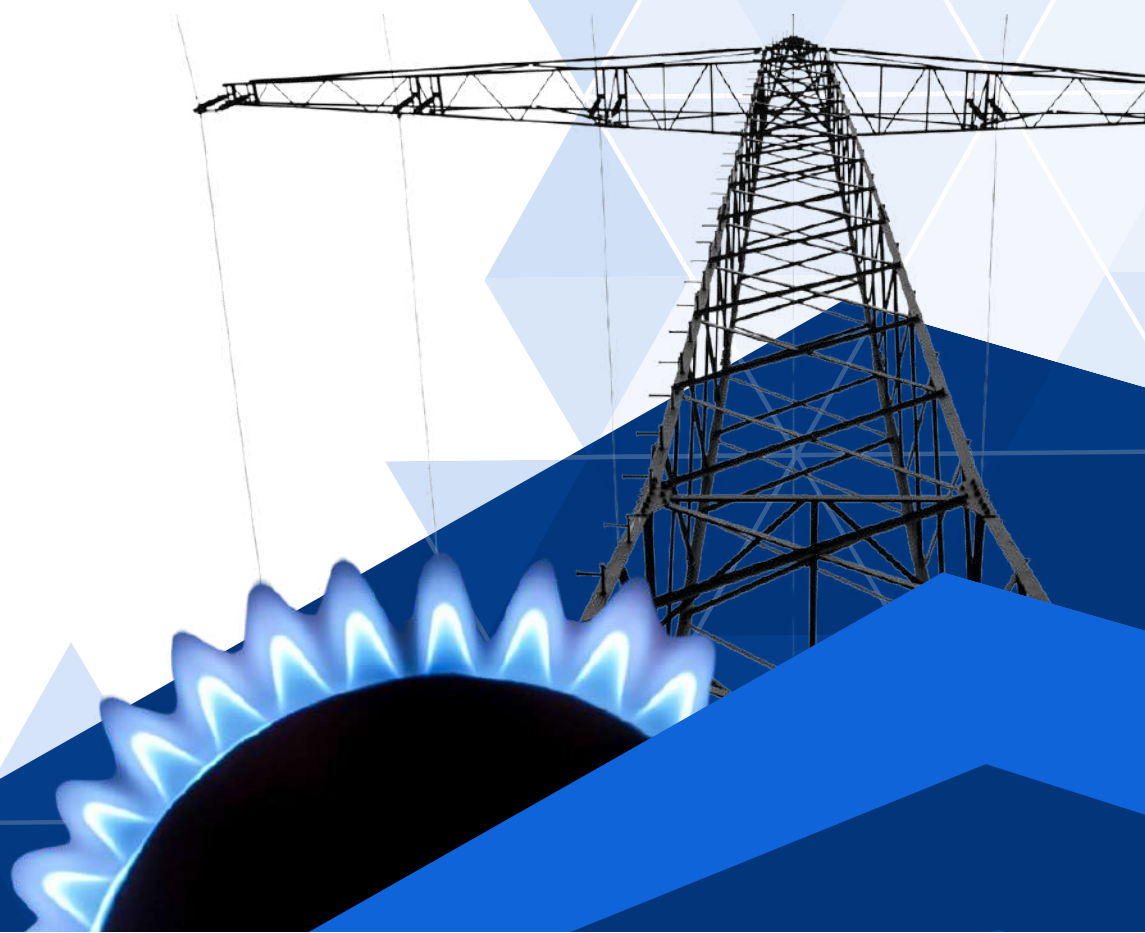
The Association's experts consider it necessary to make a political decision at the level of the CMU, the Ministry of Infrastructure of Ukraine and the State Property Fund of Ukraine to initiate privatization processes in all domestic ports. At the same time, it is important to improve the legislation on privatization and leasing of state property, as the current legal acts do not fully take into account the modern needs of development of the port industry and hinder the process of drawing large-scale investments in the port sector.

Regarding the introduction of the term collective transportation to the Law of Ukraine "On Road Transport" No. 2344-III dated April 5, 2001 (hereinafter - Law No. 2344)

Solution:

The Association's experts draw attention to the need to expand the list of basic terms in Article 1 of Law No. 2344-III with definitions of collective transportation, *consolidated cargo* and the *route of collective transportation* by making relevant proposals to the project of the Law "On Amendments to the Law of Ukraine "On Road Transport" regarding the introduction of consignment note in the electronic form" No. 6534 dated January 20, 2022. Taking into account the peculiarities of organizing the processes of transportation of collective cargoes, according to the conviction of the Association's member companies, they should be considered separately for further optimization of document flow processes. In addition, as business representatives note, this is necessary for transparent functioning of collective transportation, because currently collective transportation is not properly regulated, while its share is increasing every year.

ENERGY SECTOR





Regarding eliminating the artificial obstacles for payments in the Renewable Energy Sources industry (RES) in order to prevent bankruptcy of the industry

Settlements in RES industry for the consumed electricity are made at the expense of two sources:

- 1) funds of the State Enterprise “Guaranteed Buyer” (hereinafter - SE “Guaranteed Buyer”) from the sale of electricity on the market;
- 2) the funds of the Private Joint-Stock Company “National Power Company “Ukrenergo” (hereinafter - NPC “Ukrenergo”), collected through the transmission tariff, which it pays to the SE “Guaranteed Buyer” as payment for RES development services.

Since March 2022, the Ministry of Energy of Ukraine by Order No. 140 of March 28, 2022 (hereinafter referred to as the Ministry of Energy and Order No. 140, respectively) artificially limited the level of settlements with RES producers to 15%–16%. The rest of the funds SE “Guaranteed Buyer” was to use for settlements with the State Enterprise “National Nuclear Power Company “Energoatom” and NPC “Ukrenergo”. In addition, the order of the Ministry of Energy “On settlements with producers according to the “green” tariff” No. 206 of June 15, 2022 (hereinafter - Order No. 206) of the Ministry of Energy left a low level of payment to RES producers in the amount of 18%, but obliged the State Enterprise “Guaranteed buyer” to direct all funds to settlements exclusively with “green” generation. As of August 1, 2022, the level of settlements with the renewable energy sector since March 2022 did not exceed 30%.

At the same time, as business representatives note, since March 2022, NPC “Ukrenergo” has not made any payment in favor of SE “Guaranteed Buyer” for the service of ensuring an increase in the share of electricity production from RES. At the same time, according to the estimates of the Association’s member companies, the ability of NPC “Ukrenergo” to make settlements with RES amounts to about UAH 16-18 billion, which would allow it to settle with RES by almost 100% according to the results of 2022. In addition, NPC “Ukrenergo” began to settle with RES producers for limiting the capacity only beginning June 2022, but only 21% haven been covered so far, in other words this amount is just enough to fulfill the obligations of RES producers in paying value added tax and income tax.

In addition to the above, there are other ambiguous decisions that are negatively impacting the development of the industry and may lead to the bankruptcy of many companies in the RES sector.

Thus, the decision of the National Commission that carries out state regulation in the fields of energy and communal services (hereinafter - NCRECS) to stop in 2022 the adjustment of the “green” tariff in accordance with the euro exchange rate fluctuations is not consistent with Article 91 of the Law of Ukraine “On Alternative Energy Sources” No. 555-IV of February 20, 2003, which, among other things, obliges the NCRECS to make quarterly adjustments of tariffs according to the average official exchange rate of the NBU. Also, as of the end of 2021, the “green” tariff was calculated at the exchange rate of UAH 30.77/euro, and as of August 1, 2022, the euro exchange rate was already 37.34 UAH/euro. So, according to the estimates of the Association’s experts, there is a risk that the RES sector, due to the devaluation of the hryvnia, will not receive about 21% of the funds that should be used to repay foreign currency loans. The “green” tariff has actually been reduced due to unprecedented fines for imbalances. To a large extent, the reason for such fines is SE “Guaranteed Buyer” not being able to sell the entire amount of electricity on organized market segments and under bilateral agreements, as well as significant amounts of renewable energy restrictions on the part of NPC “Ukrenergo”.

Solution:

1. Canceling Order No. 140 and Order No. 206.
2. Repeal the resolution of NCRECS “On Amendments to Certain Resolutions of the NCRECS” No. 363 of March 31, 2022.
3. It is necessary to agree on the NPC “Ukrenergo” paying advances to SE “Guaranteed Buyer” for the RES development service at the expense of funds from the transmission tariff and additional sources (loans, funds from the distribution of the intersection).



Regarding the problem of renewable energy producers not being able to put generating facilities into operation and start electricity production on time

The Law of Ukraine “On the Electricity Market” No. 2019-VIII of April 13, 2017 (hereinafter - Law No. 2019-VIII) guarantees the validity period of electricity purchase and sale agreements (Pre-PPA) at the “green” tariff for renewable energy producers, which introduced their objects into operation:

- Solar Power Plant (SPP) till December 31, 2021;
- other RES till December 31, 2022.

In the case the deadlines for putting facilities into operation are violated, such contracts become invalid, and therefore, the purchase of electricity by SE “Guaranteed Buyer” under the “green tariff” will not take place.

At the same time, business representatives point out that, currently, meeting the deadlines for putting RES facilities into operation by the end of 2022 is a much more complicated process and is practically impossible due to active military actions and the introduced martial law. Simultaneously, in connection with force majeure, it is possible to state that RES producers have lost at least 6-12 calendar months out of the period of time necessary in order to complete the construction of their own facilities. It is worth noting that the customers and SE “Guaranteed Buyer” cannot independently extend the terms of putting facilities into operation and the validity of contracts for the purchase and sale of electricity at the “green” tariff.

Also, business representatives indicate that there is a problem of fulfilling the technical conditions of Connection Contracts (i.e. connection of the constructed generation facilities to the power grids of the system operator). The technical conditions determine the list of technical measures that must be taken by the company to connect the power generating facilities to the power grids of the system operator. According to the current version of Law No. 2019-VIII, the technical conditions are valid until December 31, 2022. After that, it is impossible to connect the RES power plant to the networks of the system operator, and, accordingly, the generated electricity will not be sold and will not be released into the network. Thus, RES producers are deprived of the opportunity to complete the construction of their facilities by December 31, 2022 due to military operations, because contractors cannot continue construction work necessary under the concluded contracts.

Solution:

1. It is necessary to make relevant changes to the legislation regarding extending the validity period of the agreements on purchase-sale of electricity at the “green” tariff for RES for 1 year;
2. It is necessary to make changes to the legislation regarding the extension of the terms of technical conditions for 1 year in order to complete construction works by RES producers and the system operator, as well as technical measures to connect the built generation facilities to the power grids of the system operator.



Regarding the further European integration of the Ukrainian gas transportation system (hereinafter referred to as the GTS) and strengthening of security of natural gas supply to Ukraine

Solution:

It is important to create guaranteed (sustainable) capacities for natural gas transportation from EU member states to Ukraine, namely from Poland and Hungary.

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

- through LNG-terminal on Krk island (Hungarian corridor);
- through LNG-terminal in Świnoujście, Poland;
- through LNG-terminal в Klaipeda, Lithuania (Polish corridor);
- Baltic Pipe (Polish corridor).

Therefore, it is necessary that our country have an active position in negotiations with Polish and Hungarian partners to establish cooperation.

Regarding activating the Transbalkan gas corridor

Solution:

In order to make the gas transportation through the Trans-Balkan Pipeline economically feasible, according to the experts of the Association, it is necessary to take a number of steps:

- increase the number of interstate connection points on the border with Romania, which, according to the business representatives, is currently well under way, therefore there is a great need of state having an active position in talks with the Romanian side;
- develop cooperation with Moldova in accordance with the provisions of the Third Energy Package, in particular, launch a virtual reverse.



Regarding the further integration of the Slovak and Ukrainian gas markets

According to the Association's experts, the Slovak side does not allocate capacity at the points with Ukraine through auctions and does not agree to the creation of a single virtual point of interstate connection, which can become an effective tool for the integration of markets and their further development.

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

- reduced amount of fuel gas used for the operation of compressor stations during the physical transportation of natural gas for both parties, which will contribute to the reduction of greenhouse gas emissions into the atmosphere;
- conducting the business made easier for customers of transportation services, in particular, improving the situation with accessibility to underground gas storages of Ukraine;

According to the experts of the Association, advantages of the distribution of capacities through auctions are:

- transparent and non-discriminatory access of third parties to gas transport infrastructure capacities – development of the regional natural gas market (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/Mediaş Aurit point (it is necessary that the state display an active position in negotiations with Romanian partners at that).

Regarding the development of the sphere of transportation of hydrogen and other renewable gases

After the publication of the EU Hydrogen Strategy until 2050[7] by the European Commission on July 8, 2020, the issues of transportation and storage of renewable gases (hydrogen, biomethane, and synthetic methane) have become of 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 main gas pipelines capacities is currently idle and can be used to transport renewable gases to consumers in Ukraine and European countries. Thus, according to the experts of the Association, determining the possibility of transportation and storage of renewable gases should be one of the priority tasks for Ukraine.

Solution:

- Creation of technological and legal terms and conditions for transportation and accounting of biomethane supplied/removed to/from the GTS;
- Creation of technological and legal terms and conditions for transporting a mixture of natural gas with different concentrations of hydrogen, as well as pure hydrogen;
- Creation of technological and legal terms and conditions for transportation of synthetic methane and other renewable gases;
- Conducting scientific and research work on the study of the technical capacity of the GTS to ensure safe and reliable transportation of renewable gases and the implementation of relevant pilot projects;
- The use of the assets of the GTS operator and other energy equipment (turboexpander units, gas turbine units, turbine DNOs, steam turbine units, cooperative units) to generate electric energy for its own needs and participate in the auxiliary services market (using equipment not used in transport work or using equipment, which uses residual heat and flow power to generate electricity).

In addition, on October 21, 2021, the Verkhovna Rada adopted the Law "On Amendments to the Law of Ukraine "On Alternative Energy Sources" Regarding the Development of Biomethane Production" No. 1820-IX, which is designed to create legislative principles for the verification of purified biogas (biomethane), physical and technical characteristics which meet the standards for natural gas that can create prerequisites for the development of the biomethane market, in particular for its export to the EU.

[7] 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)



Regarding reducing risks of forming imbalances that occur due to cancelling the mechanism of imposing special obligations in favor of heat energy producers

Solution:

It is necessary to amend the GTS Code and the Rules for Natural Gas Supply[8] to provide for the use of the mechanism of the “last hope” supplier to the thermal utility companies.

Regarding ensuring the possibility of drawing up documentation for the implementation of construction activities (including reconstruction) at the GTS facilities

The legislation of Ukraine imposes the obligation on the operator of the gas transmission system to implement a set of measures aimed at modernization and reconstruction of the gas transmission system facilities so as to implement the Gas Transmission System Development Plan for 2022-2031 of the Gas Transmission System Operator of the Limited Liability Company “Operator of the Gas Transmission System of Ukraine”, approved by the resolution NCRECS No. 545 dated May 31, 2022 (hereinafter - Development Plan) in accordance with the requirements of Law No. 329-VIII. The measures included in the Development Plan are extremely important for ensuring the execution of the GTS operator’s functions in terms of safe and accident-free operation of the GTS.

According to the representatives of the business, to implement the mentioned measures it is required to obtain permitting documents, including ones in accordance with the requirements of the Law of Ukraine “On Regulation of Urban Planning Activities” No. 3038-VI of February 17, 2011 (hereinafter - Law No. 3038-VI).

In accordance with the provisions of Law No. 3038-VI, it is provided that the permitting documents are issued if there are documents certifying the right of ownership or use of the land plot, or a superficies contract.

However, according to the data of the Association member companies, currently part of the state-owned land plots where GTS facilities are located are in permanent use by the previous licensee - Joint Stock Company “Ukrtransgaz”. The Association’s experts say that property rights for almost 50% of the land plots are not registered in accordance with the requirements of current legislation, and the data on them are not registered in the State Land Cadastre; in order to certify the rights to such plots, one has to develop land management documentation.

Solution:

There should be amendments to Law No. 3038-VI to provide for the possibility to issue town planning conditions and restrictions and permits for conducting construction works on the basis of documents that certify the right of economic ownership of a real estate object of state ownership.

[8] approved by NCRECS resolution No.2496 of September 30, 2015



Regarding the implementation of the best practices in tracking gas in energy units

Ukraine and the EU have a different measuring system for natural gas: yes, in the EU energy units (kWh) are used for this, not cubic meters. In turn, according to business representatives, the use of cubic meters in measuring and calculating natural gas is characteristic of the post-Soviet space.

Measuring natural gas in units of energy (kW*h) allows taking into account its energy value in calculations with consumers. According to the experts of the Association, in Ukraine, the calorific value of gas can vary by up to 20%, depending on the source of origin.

Solution:

It is necessary to fully implement measuring of natural gas in units of energy (kWh) (implementation of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Introduction of Measuring and Calculating of Gas Volume in Units of Energy on the Natural Gas Market" No. 1850-IX of November 2, 2021).

Regarding increase of gas consumption standards

Law No. 329-VIII establishes that household consumers, in the absence of natural gas meters, consume natural gas according to the norms established by law.

That is, if a house or an apartment does not have a gas meter, the consumer pays for the gas consumed in accordance with the established norm.

At the same time, according to experts in the energy sector, the current rather low gas consumption standards make it profitable to consume gas without measuring it.

Solution:

It is necessary to establish justified natural gas consumption standards based on data on actual consumption and allocate sufficient funds in the tariffs of the gas distribution network operators for installation of individual gas meters for consumers.

Regarding metering of the natural gas under standard conditions, taking into consideration European experience

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

As a result of the current state policy, for a long time gas suppliers have not been issuing invoices to consumers with the reduction of gas consumption volumes to standard conditions taken into account. This created the prerequisites for the accumulation of supplier imbalances in terms of the imposed special obligations on the natural gas market.



It should be noted that the volumes of gas supplied to household consumers were and are being measured by gas distribution network operators, taking into account their bringing to standard conditions, in accordance with the provisions of the law.

Solution:

It is necessary to conduct natural gas measurement under standard conditions for all natural gas consumers, similar to Commission Regulation (EU) 2015/703 of April 30, 2015, which sets out the Network Code on the rules of interaction and data exchange, with the removal of relevant volumes of gas from the production and technological costs of gas distribution network operators, adjusting tariffs for all consumers and applying a single temperature of 0°C when bringing natural gas to standard conditions.

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

Regarding setting the economically justified tariff for natural gas distribution

Solution:

It is important to set a break-even tariff for the distribution of natural gas, and transition to ways of making tariffs stimulating in the natural gas distribution sector, which will allow attracting investments and modernizing gas distribution systems and their components, taking into account the economic interests of consumers and European environmental requirements.

ENERGY EFFICIENCY





Regarding solving the issue of chimneys in high-rise buildings with per-apartment heating to improve the situation with energy efficiency and safety of buildings

According to the information of the member companies of the Association, in accordance with the existing requirements in public construction regulations, in the cases when there is individual apartment heating available in multi-storey buildings that use collective smoke removal systems with installed conventional convection (turbulent) boilers, there is no possibility of replacing such a boiler with a new energy-efficient (condensing) boiler. That is, a collective chimney constructed in a multi-storey building and to which such boilers are connected does not provide the opportunity to connect a new condensing boiler to it in the event of failure or critical breakdown of a conventional non-energy-efficient boiler.

At the same time, on August 29, 2022, came in force separate requirements of the Technical Regulation regarding ecodesign requirements for space heaters and combined heaters, approved by Resolution of the Cabinet of Ministers of Ukraine No. 1184 of December 27, 2019 (hereinafter referred to as TR for heaters), in particular, the prohibition to introduce in circulation on the Ukrainian market ordinary convection (turbocharged) boilers, which have a low level of energy efficiency.

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

Thus, according to business representatives, it is critically important to find financing, potentially, if possible, from the state budget or certain grant programs for the reconstruction of such chimneys, as well as gradual installation of more energy-efficient (condensing) chimneys in multi-storey buildings with individual apartment heating boilers.

Separately, it is worth noting that, according to the calculations of the Association's experts, the transition to new efficient boilers will help to significantly improve energy efficiency and reduce the consumption of energy resources. In particular, Table No. 1 shows the calculations of the Association's experts regarding the saving of energy resources in the case of switching from a traditional (convection) to a new energy-efficient (condensation) boiler.

Table 1

Boiler type		Traditional convection gas boiler	Modern condensing gas boiler
Higher heat of combustion	Lower heat of combustion	100%	100%
	Water vapor energy	11%	11%
Losses	Heat losses with outgoing gases	6%	2%
	Losses due to radiation	1%	1%
	Heat losses in the form of water vapor	11%	None
Boiler efficiency (useful heat)		93%	108%



In other words, changing a standard (convection) boiler to a condensation one adds +15% to efficiency.

At the same time, the experts of the Association note that condensing boilers when used in the old heating system will not give off the 15% effect as indicated in Table No. 1. The problem is that condensation occurs effectively under certain conditions (temperature of the heat carrier is around 45 degrees), which cannot be achieved without reconstruction of the heating system. But in any case, even without reconstruction, replacing a standard (convection) boiler with a condensing one can increase efficiency by 8-9% due to removing heat 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 is relatively modern and has an On/Off type thermostat. That is, the boiler turns off when the set temperature in the room is reached, and turns on again when it drops by 3-4 degrees. However, according to the Association's member companies, in the case of Ukraine, 50-60% of installations do not have any thermoregulation. This means that the consumer sets a fixed temperature of the heat carrier and regulates the temperature in the room by opening/closing the window or turning the boiler on/off. These are manual manipulations 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 with thermoregulation in use, then depending on the automatic mechanism, according to the calculations of the experts of the Association Committee, we will get the following increases in efficiency:

+ 5% - Mechanical thermostat. Turns on the boiler and gives the heat carrier of the fixed temperature when the room temperature is 1-2 degrees below the desired one and turns off the boiler when the room temperature is 1-2 degrees above the desired temperature set by the consumer on the thermostat.

+7% - Programmable mechanical thermostat. A different desired temperature is programmed for different times of the day and day of the week (while at work, the temperature of the room 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. Having an appropriate control logic, the boiler modulates the operation of the burner (smoothly changes the temperature of the heat carrier) and modulates the revolutions of the circulation pump (changes the flow rate), thus achieving optimal operating conditions.

+9% - Programmable electronic thermostat. It interacts with the boiler just like the electronic room temperature sensor does, but a different desired temperature is possible to be programmed for different times of the day and day of the week.

+10% - Programmable electronic thermostat + electronic outdoor temperature sensor (or outdoor temperature data is obtained from the Internet). In addition, the boiler can take into account the change in outside temperatures and adjust the parameters of the heating system in advance, which allows to have modulation done in a smoother way and achieve more energy efficiency.

This way, using a modern condensing boiler instead of a standard one together with the reconstruction of the heating system for optimal operation of the condensing boiler (low-temperature heating systems, heat carrier up to 45 degrees), as well as using modern automation, it will be possible, according to the calculations of the Association's experts, to increase efficiency by up to 25% and, reduce gas consumption accordingly.

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

It is also possible to save electricity significantly by installing a heat pump. A heat pump, using electricity to operate, converts energy stored in the air, water or underground into heat for heating buildings. This is not a new technology - it has been used all over the world for decades. Heat pumps are the best renewable solution for residential and commercial heating and cooling systems. Though heat pumps also need electricity, by spending 1 kW of electricity for the operation of the compressor and pumps, you can get 3-5 kW of heat energy. At the same time, in the summer, the heat pump, if there is a reversible mode of operation available, can cool the air in the room. Heat pumps are much safer than heating systems that use fossil fuels. They are also cheaper to operate compared to solid fuel, gas and electric boilers. Heat pumps have a long service life - up to 30 years, depending on the type and model. They do not require permit documentation unlike gas boilers.



Another method that should be mentioned as the most energy-efficient and ecological method for heating water and partially heating the house - the use of solar power systems. The use of clean energy from the sun for the operation of the solar system allows the user to enjoy a full 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 energy of the sun, and besides, it is always there. The main condition for effective work is bright sunlight. Beside the pump, the control panel and fuses, the system also has two more elements: a solar collector and a storage tank. Year-round systems allow users to save in winter up to 60% of energy carriers in hot water supply and provide households with hot water for all necessary needs. Lifespan of the solar power system may be 15-20 years and more.

Solution:

We suggest **that when developing state programs to support the population in order to switch to more energy-efficient solutions and/or when attracting international financial assistance for the above-mentioned purposes, the specified programs should contain expenses for the reconstruction of chimneys, as well as partial compensation of funds to citizens for purchasing more energy-efficient boilers, automatic mechanisms for them, as well as heat pumps and solar power systems.** This, in turn, as the member companies of the Association Committee believe, will not only significantly reduce the consumption of gas and electricity by the population, but will also solve the issue of safe use of **new boilers in high-rise buildings with individual apartment heating with a collective chimney.**

Also, one of the possible options to partially solve the problem with chimneys is the introduction of collective responsibility of all residents for reconstruction of the collective chimney when replacing the first convection boiler with a condensing one. For this, it is necessary to develop and set out a relevant provision in the State Building Regulations regarding the method of reconstruction of collective chimneys when residents replace convection boilers with condensing boilers (calculations of the required diameter of the chimney, permitted materials of the chimney, features of the design of the "condensing" collective chimney, the method of connecting the condensing boiler to the collective chimney, calculations for selection and rules for using condensate neutralizers, etc.).

It is necessary to restore state market supervision and control over compliance by economic entities with the requirements of the Technical Regulation on eco-design requirements for room heaters and combined heaters

On August 29, 2022 certain provisions of [Technical Regulation on eco-design requirements for room heaters and combined heaters](#), approved by the Resolution of the Cabinet of Ministers of Ukraine No. 1184 of December 27, 2019 (hereinafter referred to as TR for heaters), which prohibited the introduction of non-energy-efficient standard convection (turbocharged) boilers that have a low level of energy efficiency.

Following this path of innovation is in line with Ukraine's course of integration into the EU and will contribute to the improvement of energy efficiency and security of our state. Thus, according to the calculations of the Association's experts, the use of a modern condensing boiler instead of a standard one, together with the reconstruction of the heating system for optimal operation of the condensing boiler, as well as the use of modern automation, will increase efficiency by up to 25% and, consequently, reduce gas consumption.



Logically, the supply of cheaper, but less efficient boilers had to be stopped. At the same time, due to the moratorium on inspections and, as a result, the lack of state market supervision and control, some market players continue to import cheaper non-energy-efficient goods that do not meet the requirements of the TR for heaters. As the member companies of the Association note, this is what leads to such negative consequences.

- Currently, gas consumption is higher compared to the situation if legal equipment was used.
- There is a need for further reconstruction of flue 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 implemented requirements of the TR 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 June 27, 2014, will not contribute to fulfilling further requirements for heaters provided for in the TR for heaters (according to the current provisions, they must take effect in 2024 and 2025), which can generally negatively affect the process of European integration of our state.
- We see 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. As a result, this will lead to a reduction in the tax base and the loss of jobs created by these companies. Also, considering the fact that the companies that comply with the requirements of TR for heaters are overwhelmingly of European origin, potentially, there is an increase in the number of complaints regarding the transparency of doing business.

Solution:

We propose that state market supervision and control over the fulfillment by business entities of the requirements of TR for heaters be restored.

Regarding the proposal for a possible rapid restoration of destroyed/damaged heating systems by using electric boilers

We would like to emphasize that this proposal does not refer to the full-scale reconstruction of the existing heating systems. It only offers a way for possible quick restoration of heat supply to the homes in places where existing heating systems (including centralized ones) are destroyed/damaged, and lays the foundation for future steps. A quick transition from destroyed central heating to individual heating using gas boilers or heat pumps, taking into account the scale of the destruction and the cost of reconstruction, may sometimes be impossible to implement within short time frame before the beginning of the heating season, and people using various types of heating devices chaotically (convectors, radiators, fan heaters, etc.) without any control and regulation by the state will significantly increase electricity consumption and make this consumption uneven with large peak loads. An alternative solution can be the installation of electric boilers. Therefore, it is already necessary to analyze the available capacities of power supply systems, their ability to withstand such loads, and, if necessary, carry out the appropriate modernization of the infrastructure (replacement or modernization of transformer substations, other necessary steps).



An electric boiler, on the one hand, is not energy efficient. Thus, according to the experts of the Association Committee, the seasonal efficiency in gas boilers should not be lower than 86%, while for electric boilers the seasonal efficiency is not lower than 30%. On the other hand, in certain regions of our country, where it is not so about efficiency, but about viability and energy security, the installation of simple and cheap electric boilers and state support for the modernization of power supply systems can become an alternative for the rapid restoration of the destroyed heating system. In the future, having a prepared electricity supply infrastructure and applying support programs, it will be possible to replace low-efficiency electric boilers with innovative high-efficiency heat sources such as heat pumps and solar power systems.

Solution:

It is important to foresee that when a need arises to rapidly restore certain regions of Ukraine in order to ensure energy security and viability of certain regions, state support programs should provide funds for assistance in installing electric boilers and costs for the restoration and modernization of power supply systems.

Regarding making amendments to the Technical Regulation on ecodesign requirements for space heaters and combined heaters

TR for heaters sets out requirements for the energy efficiency of boilers and gradually prohibits the introduction of ordinary convection (turbocharged) boilers into circulation on the market of Ukraine. In particular, the introduction of standard boilers is prohibited from August 29, 2022, and, as the experts of the Association note, beginning January 1, 2024, the heat generators, which are a key spare part in the repair of a conventional boiler, will no longer be allowed to enter the circulation. In addition, chimneys laid in multi-apartment buildings often do not allow replacing an old, inefficient boiler with a new one. Therefore, the consumer will be able to neither purchase a new one or repair an old non-energy-efficient conventional boiler, nor have a technical possibility to connect a new energy-efficient (condensing) boiler, since the chimney laid in the house will not be able to work with an energy-efficient boiler.

In addition, we would like to draw your attention to the fact that Part 5 of Article 6 of the Law of Ukraine "On the Protection of Consumer Rights" No. 1023-XII of May 12, 1991 provides that ***"The manufacturer (contractor) is obliged to provide technical maintenance and warranty repair of products, as well as manufacture and supply them for enterprises that carry out technical maintenance and repair, in the necessary volume and assortment of spare parts during the entire period of its production, and after withdrawal from production - during the service life, in case there is not term for service life period set - for next ten years"***. Thus, even after the introduction of non-energy-efficient heaters into circulation was stopped on August 29, 2022, for a long time their manufacturers and suppliers would be obliged to supply the Ukrainian market with spare parts for maintaining the operation of boilers already in circulation.

Solution:

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



Regarding the cancellation of price regulation on gasoline and diesel fuel

The Association welcomed the decision of the CMU to adopt a resolution “On suspension of Paragraph 41⁴ of the Cabinet of Ministers of Ukraine of December 9, 2020 No. 1236” No. 594 of May 17, 2022 (hereinafter - Resolution No. 594), which stopped the state regulation of the level of surcharge on petrol and diesel, which was implemented during the quarantine restrictions due to Covid-19).

According to the Association's member companies, the adoption of Resolution No. 594 made it possible to somewhat improve the situation on the fuel market in Ukraine. At the same time, the mandatory declaration of changes in retail prices for petrol and diesel fuel, which was implemented by the CMU resolution “On Amendments to the Resolution of the Cabinet of Ministers of Ukraine dated April 22, 2020 No. 341” No. 450 of March 29, 2021, remains valid. The Association's member companies are convinced that the declaration of fuel prices causes certain negative consequences for the oil and gas industry in the conditions of a fuel shortage, a hampered well-being of the population and the economy of Ukraine as a whole in view of this.

1. The Association's experts note that the formation of fuel prices is influenced by numerous factors, such as the purchase price of products, oil prices, the exchange rate, and others. Establishing state regulation for prices, through their declaration, has led to fuel market entities not being able to quickly adapt their prices to market factors that are constantly changing (the cost of oil, exchange rates, fuel prices from suppliers). This, as business representatives point out, leads to business entities not being able to timely provide fuel for retail sale and finance expenses at the expense of profit.

2. The Association's member companies note that, in their opinion, the mandatory declaration of changes in retail price can potentially negatively impact market competition, since all market players know in advance the future retail price of fuel for each other before starting its sale in retail networks.

3. Resolution No. 594 suspended the state regulation of the level of trade surcharge on petrol and diesel fuel. In this context, the Association's experts believe that the logical step to overcome the fuel shortage is to suspend the regulation of retail prices for petrol and diesel fuel by declaring them.

Solution:

We propose to amend the resolution of the CMU “On measures to stabilize prices for goods of essential social significance, goods of anti-epidemic purpose” No. 341 dated April 22, 2020 and to cancel the regulation of retail prices for petrol and diesel fuel by declaring them.

AGRICULTURE





Regarding "gray" market of grain and regime of export support

In recent years, the "gray" grain market has reached a scale that may become the main threat not only to the agricultural sector, but also to the entire economy of the country. According to the estimates of the Association's experts, before the start of the full-scale war, its share reached 40% of the entire grain market. On January 12, 2023, the Law of Ukraine "On Amendments to the Tax Code of Ukraine and some Legislative Acts of Ukraine regarding the Application of the Regime of Export Securement during the period of Martial Law, State of Emergency" No. 2881-IX (hereinafter - Law No. 2881-IX) was adopted. Its purpose is to ensure countermeasures against abuse in the relevant sphere with the aim of returning foreign exchange earnings and regulating Ukraine's balance of payments at the export of goods classified under codes 1001, 1003, 1005, 1201, 1205, 1206, 1512, 2306 in accordance with the UCT of the ZED, by establishing the authority for the Cabinet of Ministers of Ukraine to introduce the regime of export securement during the period of martial law and state of emergency. A number of provisions of Law No. 2881-IX, which are important for the grain industry, need improvement, according to business representatives. In particular, Law No. 2881-IX does not define the mechanism for determining and establishing such minimum export prices. Nevertheless, this issue is critical for achieving the goals set by Law No. 2881-IX, and therefore it is considered necessary to establish the procedure (mechanism) and/or criteria for the CMU to determine minimum export prices for goods subject to the export security regime at the level of subordinate legal acts.

Solution:

It is necessary to determine in a subordinate regulatory legal act that the minimum export price should be determined by the CMU on the basis of information collected from authoritative professional agencies that have had a proven reputation on the market for many years. It is appropriate to include in the relevant list of such agencies the following: Consulting Agency "Ukragroconsult", Information and Analytical Agency "APK-Inform", State Enterprise "State Information and Analytical Center for Monitoring External Commodity Markets" of the Ministry of Economy of Ukraine, Refinitiv. In this context, it is necessary to determine the possibilities, grounds and conditions for providing such information by relevant agencies for the purposes of the state. In addition, it should be established which bases the CMU collects, in order to avoid risks regarding the possibility of determining the bases and periods at its own discretion.

Regarding the transfer of circulation of warehouse documents for grain into electronic form

As representatives of the Grain and Oil Crops Committee of the Association report, agribusiness annually loses significant sums of money due to thefts in grain warehouses. This problem has been a concern of agricultural companies for a long time, but until now the business did not have effective tools to fight fraud. However, with the development of digitalization, there are new opportunities to prevent illegal grain circulation schemes. The business complains that it's been a "historical" practice, those high levels of fraud in trade transactions with grain at grain warehouses, which are usually accompanied by a large list of papers and a rather cumbersome document flow. This creates the prerequisites for various manipulations with goods in the warehouse, as a result of which companies suffer losses in kind and money. According to the experts of the Association, most of the problems related to grain storage, including frequent cases of theft, arise precisely due to the fact that warehouse documents exist in paper form. This problem became even more critical with the beginning of the full-scale war in Ukraine, because, as reported by the Association's member companies, the sale of grain at a grain warehouse requires physical presence of the parties to the purchase and sale agreement, i.e., to carry out trade transactions with grain, the parties have to travel hundreds of kilometers every day just to ensure physical presence to sign documents. Thus, the introduction of electronic procedures for transactions with grain at grain warehouses would optimize the processes of registering transactions with grain and reduce opportunities for fraud with physical documents.



Therefore, in order to counteract cases of fraud with documents that lead to the theft of grain, it is necessary to transfer to electronic form the circulation of warehouse documents and operations related to the registration of the movement of grain in grain warehouses.

Solution:

- Adapt the current legislation to the fact that circulation of warehouse documents and conduct of operations with grain at elevators is done in electronic form.
- Create software for transferring all warehouse documents and the process of registering operations with grain at elevators into electronic format, which will allow re-registration, authorise shipment, conduct quality checks of grain, and carry out registration of operations with grain in the electronic register of warehouse documents, which will be turned into an electronic office of the grain owner (depositor), functionally similar to the electronic office of the taxpayer.

Regarding the adoption of subordinate legal acts necessary for the implementation of the provisions of the new Law of Ukraine "On Veterinary Medicine" No. 1206-IX dated February 4, 2021 (hereinafter - Law No. 1206-IX)

Law No. 1206-IX calls for quite significant changes in the field of veterinary medicine in general and control over the registration and circulation of veterinary medicinal products in particular. It brings about the development of more than 80 regulatory and legal by-laws, most of which have never been applied in Ukraine. At the same time, the transition period is quite short and this creates corresponding risks of not developing new rules and procedures in time. In the case of their absence, the veterinary industry of Ukraine faces the risk of being halted in terms of import of veterinary drugs, as well as the use of the existing ones.

Solution:

It is important to develop legal acts that will ensure full implementation of the provisions of Law No. 1206-IX beginning the date of its coming into force, which will allow the livestock industry not to be blocked at a certain time.

ecOLOGICAL ISSUES





Regarding settling the issue of waste management in Ukraine

On July 9, 2023, the Law of Ukraine “On Waste Management” No. 2320-IX of June 20, 2022 (hereinafter - Law No. 2320-IX) entered into force. This is the document that sets out the framework, on the basis of which the necessary by-laws, new sectoral laws, as well as amendments to some existing laws should be developed. As of mid-May 2023, draft resolutions of the Cabinet of Ministers of Ukraine (hereinafter referred to as the CMU) regarding the national waste classifier, the procedure for terminating waste status, the procedure for recognizing by-products, licensing conditions for hazardous waste management, the Draft Law “On Packaging and Packaging Waste”, etc., have been published for public discussion. At the same time, the Association’s experts draw attention to the lack of information on the state of development of amendments to the legislation on scrap metal and the draft law, which will regulate the procedure for handling waste in the mining industry in accordance with the requirements of Directive 2006/21/EC of the European Parliament and the Council of March 15, 2006 on the management of waste from the mining industry, and which makes changes in Directive 2004/35/EC.

Solution:

- It is necessary to develop and adopt amendments to the Law of Ukraine “On Scrap Metal” No. 619-XIV of May 5, 1999 in order to regulate the management of scrap metal, which is a critical raw material for domestic industry.
- Develop and approve Methodological recommendations on waste classification, as well as tables of waste conforming to the current classifier and the European one.
- Transpose the requirements of the Regulation of the European Parliament and the Council No. 1013/2006 of June 14, 2006 on the transportation of waste in terms of ensuring the compliance of the codes of waste from Yellow and Green list of waste, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 1120 of July 13, 2000, which was adopted to fulfill Ukraine’s international obligations arising from its participation in the Basel Convention on the Control of Transboundary Transportation of Hazardous Materials and Their Disposal from March 22, 1989.
- Finalise and adopt the draft resolution of the CMU “Certain issues of classifying substances or objects as by-products” taking into account the Association’s proposals, in particular, regarding the possibility of using by-products for internal needs of the enterprise within one legal entity, relieving the end user of the duty to use by-products within a 3-year period, the possibility of applying the status of by-products to already existing materials.
- Finalise and adopt the draft resolution of the CMU “On Approval of Licensing Terms and Conditions for Carrying out Economic Activities in the Management of Hazardous Waste” taking into account the Association’s proposals.
- Finalise and adopt the draft order of the Ministry of Environment “On Approval of the Procedure for Verifying the Compliance of the Material and Technical Base of the License Applicant (licensee) with the Technological Requirements for the Carrying out Economic Activities in Hazardous Waste Management, with the Rules for Technical Operation of Equipment and Technological Regulations.”
- Finalise and adopt the Draft Law “On Packaging and Packaging Waste” taking into account the Association’s proposals regarding compliance with the hierarchy of waste management and implementation of the principle of extended producer responsibility. It is important to take into account the Association’s proposals when revising the Draft Laws “On Waste from Electrical and Electronic Equipment” No. 2350 dated October 30, 2019 and the Draft Law “On Batteries and Accumulators” No. 2352 dated October 30, 2019 that address the issue of waste from electronic equipment and expired batteries, which, according to the Association’s member companies, are currently withdrawn from list of issues to be worked through. It is necessary to develop and adopt the Law “On Waste Management in the Extractive Industry” in accordance with the requirements of Directive 2006/21/EC of the European Parliament and the Council of March 15, 2006 on the management of waste from the extractive industry and on amendments to Directive 2004/35/EC in terms of exempting certain classes of inert (safe) waste landfills from the obligation to provide post-operational care for at least 30 years and defining forms of financial guarantees.



Regarding reforming the permitting system in the field of industrial pollution and implementation of the best available technologies and management methods (hereinafter - BATs)

Currently, industrial enterprises must obtain at least three environmental permits - for emissions of pollutants into the atmosphere, for special water use and discharge of industrial wastewater into centralized drainage systems, and for operations in the field of waste management. According to 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, as of June 27, 2014, Ukraine must implement the provisions of Directive 2010/75/EU of the European Parliament and of the Council of November 24, 2010 on industrial emissions (hereinafter referred to as Directive 2010/75/EU), namely: the integrated permit with the aim to prevent the transfer of pollution from one source to another.

On November 17, 2021, a meeting of the Committee of the Verkhovna Rada of Ukraine on Environmental Policy and Nature Management (hereinafter referred to as the VRU Committee and VRU, respectively) was held in the format of a video conference. During the meeting, the VRU Committee considered a number of draft laws in the field of industrial pollution, namely: Draft Law "On Integrated Prevention and Control of Industrial Pollution" No. 6004 dated September 7, 2021, Draft Law "On Prevention, Reduction and Control of Pollution Resulting from Industrial Activity" No. 6004-1 dated September 7, 2021 and Draft Law "On Ensuring the Constitutional Rights of Citizens to an Environment Safe for Life and Health" No. 6004-2 dated September 22, 2021. According to the minutes of the VRU Committee meeting dated November 17, 2021, the VRU Committee decided to create a working group to work on the specified draft laws with the possibility of involving specialists and experts, representatives of the public[9]. By letter No. 72/2022/02 dated February 1, 2022, the Association appealed to the chairman of the VRU Committee and the Ministry of Environmental Protection and Natural Resources of Ukraine (hereinafter - the Ministry of Environment) with a request to involve representatives of the Association Committee in the working group. However, the answer was not given, and on December 28, 2022, at a VRU Committee meeting the consolidated project of the Law "On Ensuring the Constitutional Rights of Citizens to an Environment Safe for Life and Health"[10] was approved, followed by registration in the VRU as a draft of the Law "On Ensuring the Constitutional Rights of Citizens to an Environment Safe for Life and Health" No. 6004-d of January 4, 2023 (hereinafter - Draft Law No. 6004-d).

On May 29, 2023, Draft Law No. 6004-d was adopted by the Verkhovna Rada as a basis. The document takes into account the previous proposals and comments of the Association, in particular, regarding the establishment of a transition period for the energy sector in accordance with the National Plan for Reduction of Emissions from Large Combustion Plants (hereinafter referred to as the NPRE), the implementation of conclusions of the best available technologies and management methods (hereinafter referred to as BATs) no earlier than 4 years after the end of martial law, etc. It should also be noted that on the official website of the Ministry of the Environment the reference documents on BATs are published for public discussion, in particular on glass production[11], ceramic production[12], ferrous and non-ferrous metallurgy[13], iron and steel production[14], cement, lime and magnesium oxide production[15], and energy efficiency[16].

However, Draft Law No. 6004-d still contains provisions that need to be finalised.

[9] http://komekolog.rada.gov.ua/news/main_news/75695.html

[10] <https://drive.google.com/drive/folders/1ZsWfnr0ov2KCQBmAUCud7pvxdwsPcovX>

[11] <https://mepr.gov.ua/vyrobnytstvo-skla-manufacture-of-glass/>

[12] <https://mepr.gov.ua/keramichne-vyrobnytstvo-ceramic-manufacturing-industry/>

[13] <https://mepr.gov.ua/mindovkilliya-publikuye-nastupni-perekladeni-dovidkovi-referentni-dokumenty-z-najkrashhyh-dostupnyh-tehnologij-ta-metodiv-upravlinnya-brefs/>

[14] <https://mepr.gov.ua/dovidkovi-dokumenty-z-ndtm-vyrobnytstvo-chavunu-i-stali/>

[15] <https://mepr.gov.ua/dovidkovi-dokumenty-z-ndtm-vyrobnytstvo-tsementu-vapna-i-oksydu-magniyu/>

[16] <https://mepr.gov.ua/dovidkovi-dokumenty-z-ndtm-energoefektyvnist/>



Solution:

It is necessary to work through the Draft Law No. 6004-d with the Association's propositions taken into consideration.

- To postpone the period of transitioning to carrying out activities only on the basis of an integrated permit to the post-war time, in particular, to ensure the possibility of obtaining the permit within four years after the end of martial law.
- To eliminate the possibility of issuing an integrated permit based on the requirements of the BATs conclusions before they are approved.
- To regulate the requirement to establish terms for updating the conditions of the integrated environmental permit based on the decision of the permitting authority, in particular by direct implementation of Part 2 of Article 21 of Directive 2010/75/EU, i.e. to establish that the requirement for making changes is fulfilled when the operator has submitted a corresponding application (or the submission of the application interrupts the course of the established term).
- To set the same deadline for submitting applications for obtaining integrated environmental permits in general (according to the text of Draft Law No. 6004-d, it is currently 12 months) and for installations that are being decommissioned - 3 years.
- To establish the rule that the conditions of the integrated permit are determined on the basis of the current technological standards of emissions provided by the valid permitting documents.
- To provide that for the equipment that are planned to be completely withdrawn from industrial operation (in accordance with the requirements of the Draft Law, environmental regulations, other current legal acts) within a short period of time (2-3 years) after Draft Law No. 6004-d comes into force, the requirements for installing automated monitoring systems do not apply.

It is important to ensure participation of business, the public, the Ministry of Finance of Ukraine and the Ministry of Economy of Ukraine in the process of developing and approving BAT

It seems appropriate to extend the effect of all current technological standards until BATs come into force.

It is necessary to create an interdepartmental working group with the participation of business, the public, the Ministry of Finance of Ukraine, the Ministry of Economy of Ukraine and the Ministry of Environmental Protection and Natural Resources of Ukraine to develop and approve BATs.

It is necessary to define the mechanisms of state and international support for enterprises implementing BATs, as a key prerequisite for the introduction of BATs in Ukraine.

It should be ensured that Ukraine, in particular the state and business, participate in the Seville process of development of new and updating of the existing BATs in the EU.



Regarding improvement of the environmental impact assessment procedure (hereinafter referred to as EIA)

Companies that regularly carry out EIA note that the procedure is imperfect and needs to be updated. Among the main problems are the unified nature of the EIA process as a permit procedure in accordance with the current legislation of Ukraine; the need to go through several EIA procedures during the implementation of one business project, in particular during the development of a deposit, for such types of planned activities as “deep drilling” and “extraction of minerals”, as well as in the case of launching eco-modernization projects; a long period of obtaining a conclusion from the EIA as a permit document; lack of industry standards regarding the structure and content of the EIA report and post-project monitoring.

The Law of Ukraine “On Amendments to certain Laws of Ukraine on improvement and digitalization of the Environmental Impact Assessment procedure” No. 3227-IX, adopted on July 13 2023 didn't change the situation.

Solution:

Make amendments to the Law of Ukraine “On Environmental Impact Assessment” No. 2059-VIII of May 23, 2017, in particular:

- to determine the grounds that will allow changes to be made to the EIA conclusion, in particular, in the part of coordinates within a reasonable error, information about the subsoil use object and the means 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 just in order to change the information that can be adjusted by making changes;
- to scrap the provisions on the inadmissibility of the planned activity on the basis of the presence of prohibitions or restrictions established by law and provide for the mandatory definition of environmental conditions under which the implementation of the planned activity will be permitted in such territories;
- to provide for an opportunity to discuss the environmental conditions of the EIA conclusions with the business entity before approval;
- to develop a list of unified scientifically proven measures aimed at preventing, diverting, 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 Article 8a of Directive 2011/92/EU and provide for the exemption from post-project monitoring of those enterprises that monitor the impact on the environment in accordance with the current environmental protection legislation, which takes into account the impact on the atmospheric air, water environment, soils, flora and fauna.
- to leave the post-project monitoring procedure only for entities that have a separate location and are located in territories where there had been no man-made influence.
- to define and set out the individual screening procedure in regards to determining the need to undergo the EIA procedure instead of the current generalized approach;
- to provide for the possibility of a simplified EIA procedure for projects on eco-modernization of enterprises and for enterprises in the extracting industry;
- to provide a clear unequivocal definition of the term “significant negative impact on the environment”;
- to regulate the implementation of the EIA procedure for the period of martial law, that is to postpone the fulfillment of the conditions of EIA conclusions and post-project monitoring.



Regarding the reform of the state environmental control

According to business representatives, the system of state environmental control in Ukraine is not effective enough and needs to be reformed. Currently, when carrying out controlling measures, the specialized control body can abuse its powers, and corruption risks are often reported in relation to its work. On July 15, 2021, the Draft Law "On State Environmental Control" No. 3091 of February 19, 2020 (in the revised version on March 22, 2021, hereinafter referred to as Draft Law No. 3091) was adopted in the first reading. The document should ensure a total reboot of the control body and the introduction of European approaches to control. Despite the numerous comments of stakeholders, including business, the document, according to the Association's experts, contains even greater levers of pressure on business and lacks firming up of the directions, abusing which the greatest damage is caused to the state - poaching, illegal logging and mining.

Solution:

It is necessary to take into account and add the proposals of the Association to the revised version of the Draft Law No. 3091, in particular:

- to attune Draft Law No. 3091 with the current legislation on state supervision (control) of economic activity (3-level gradation of enterprises depending on the degree of risk they pose by conducting their economic activity; the obligation to indicate the name of the economic entity in the Order to Implement the planned/unplanned measures of state environmental control, which is going to be the subject of controlling measures; stipulate the right of the economic entity to prevent the implementation of the state environmental controlling measures with justified grounds defined by the document);
- to clearly define the responsibility of the control body representatives for the damage caused as a result of the professional mistakes during the implementation of state environmental control measures;
- to scrap the provisions that may lead to duplication of powers of the State Service of Sea and Inland Water Transport and Shipping of Ukraine by the State Environmental Inspection of Ukraine;
- to set out a clear list of grounds for imposing administrative and economic sanctions for preventing representatives of state environmental control bodies from conducting state environmental control events;
- to postpone the implementation of some provisions of the document, in particular, regarding the obligation to install automated monitoring systems within 6 months after the Draft Law No. 3091 comes into force;
- to scrap the provisions on automated monitoring of emissions (the subject of the law on industrial pollution);
- to ensure a possibility of conducting unscheduled inspections on weekends, non-working days, holidays and/or at night only if there are 4 hours for the manager to arrive, and also stipulate that the inspection does not start without a manager or after 4 hours have passed;
- to set the maximum period of scheduled inspections - 10 days;
- to ensure that in case the inspection gets suspended, inspectors must leave the territory of the enterprise; there should also be provisions according to which inspectors can request documents no more than 2 times per inspection;
- to provide for the norm regarding a Resolution on a Fine entering into force after 30 days, and in the case of an appeal to the court - after the entry into force of the court decision (if the resolution has not been canceled);
- to scrap the provisions on extending powers of the State Environmental Inspection in the field of subsoil use;
- to scrap provisions on local self-government bodies being involved in carrying out environmental control measures for legal entities;
- to state that implementation of the duty of unimpeded access of inspectors is carried out only in the presence of legal grounds/a complete set of relevant documents;
- to scrap the norm on the State Environmental Inspection being exempt from paying the court fee;
- to eliminate the possibility of carrying out unscheduled inspections of economic entities based on the appeal of pre-trial investigation bodies within the framework of criminal proceedings;
- to ensure the strengthening of control in the field of protection of special nature protection territories;
- to scrap the provisions that introduce economic and administrative sanctions for business entities.

Bring up to date the Regulations on the State Environmental Inspection of Ukraine, approved by the CMU Resolution No. 275 of April 19, 2017, in the part about the requirements for state inspectors. In addition, it is important to update performance indicators for state inspectors (these should not be the fines they impose).



Regarding determining the order of negotiations on postponing the application of the Carbon Border Adjustment Mechanism (hereinafter - CBAM) to Ukrainian importers

On April 18, 2023, the European Parliament adopted the Regulation on Border Carbon Adjustment (hereinafter referred to as the CBAM Regulation). From October 1, 2023, there will be a transition period for CBAM, during which the importer only reports on CO2 emissions and does not have any financial obligations. Beginning January 1, 2026, the mechanism will be fully operational, namely: the producer of a product subject to the CBAM, upon importing it into the EU, must pay for the CO2 emissions released during its production by purchasing ETS certificates at a price set by the EU greenhouse gas emissions trading market (hereinafter referred to as the EU ETS). In the first stage, the action of CBAM will extend to iron and steel, aluminum, cement, organic chemicals, fertilizers, electricity and hydrogen. It is expected that by 2030, the CBAM should cover all sectors covered by Directive 2003/87/EC of the European Parliament and of the Council of October 13, 2003 establishing a greenhouse gas emission allowance trading system within the Union and amending Council Directive 96/61/EC (hereinafter - Directive 2003/87/EC). Even before the war, the EU identified Ukraine as one of the countries that would be most affected by the implementation of the CBAM. According to various estimates, the additional load on imports from Ukraine will be from 300 million euros to 1.2 billion euros [17][18][19][20] every year. However, given the logistical restrictions caused by the closure of ports due to the war, the dependence of Ukrainian importers on the EU market will increase, which will also increase the influence of CBAM.

Solution:

- It is necessary to ensure that the problems of the CBAM are in the focus of the representative office of Ukraine to the EU, of diplomatic missions in key member countries, as well as the countries that are the largest trade partners of Ukraine.
- Based on the provisions of the CBAM Regulation on force majeure (exceptional and unprovoked circumstances):
 - work with the European Commission should be organized to initiate appropriate changes to the regulation of CBAM and apply the provisions on exceptional and unprovoked circumstances to imports from Ukraine..
- It is important to actively cooperate with the European Commission in order to make sure the EU recognizes data on greenhouse gas emissions that is formed based on the results of the activities of the national system of monitoring, reporting and verification of greenhouse gas emissions of Ukraine, for all purposes and mechanisms of the EU, including for the purposes of applying CBAM.
- A mechanism similar to CBAM should be developed for importing products into Ukraine from countries that do not have an emissions trading system.
- It is crucial to ensure that EU financial institutions provide access to sources of financing to Ukrainian enterprises for projects on implementing the technologies that reduce CO2 emissions, on conditions no worse than for EU enterprises.

[17] <https://forbes.ua/money/vugletsevjiy-podatok-mozhe-koshtuvati-ukraini-300-mln-po-yakikh-virobnikakh-vin-vdarit-naysilnishe-rozrakhunki-ey-22032023-12550>

[18] https://gmk.center/wp-content/uploads/2020/09/Ocena_vliyanija_CBAM_na_ukrainskij_eksport_compressed.pdf

[19] https://kse.ua/wp-content/uploads/2021/12/211115-KSE_CBAM_for-publication.pdf?fbclid=IwAR1R4Aj6re4aH4T_BxtfRYHZy7nmXEhb--jgUTXHDP9jyShxu_RaIpEn0

[20] <https://eba.com.ua/ponad-1-mlrd-yevro-podatku-na-vuglets-shhoroku-splachuvatymut-ukrayinski-eksportery-v-yes-v-ramkah-svam/>



Regarding reforming the environmental taxation

In Ukraine, unlike the EU, eco-tax is mostly fiscal in nature. A significant part of it is a source of income to the general fund of the state budget, and not a financial instrument for supporting and stimulating the implementation of environmental protection measures and modernization of enterprises. At the local level, as business representatives note, the environmental tax is formally directed to a special fund of budgets at various levels, but in practice these funds are not used for their intended purpose or are just placed in deposit accounts.

Solution:

- It is necessary to adopt a draft law that will allow enterprises to use up to 70% of the eco-tax for investing in environmental protection measures.
- In the case the emissions trading system is introduced, the taxation of greenhouse gas emissions should be scrapped for enterprises that buy quotas in the greenhouse gas emissions trading system.
- It is important to make changes to the Budget Code of Ukraine with the goal to limit the possibility of placing funds received from the eco-tax in deposit accounts.
- It is necessary to make changes to the List of Activities Considered to be Environmental Protection Measures, approved by the Resolution of the Cabinet of Ministers No. 1147 of September 17, 1996, and to update the list of relevant activities that can be financed from the funds of the eco-tax.

Regarding the investment policy reform in the field of ecological modernization of enterprises

It is difficult for enterprises to raise funds on foreign markets due to Ukraine's low credit rating, which causes high interest rates. State institutions do not allocate financial resources. Therefore, enterprises do not have other financing tools, except for their own funds, which significantly reduces the number of environmental protection projects and their positive impact on improving the condition of the environment.

Solution:

- Establish a mandatory purposeful use of funds received as income from eco-taxes.
- Create the necessary legislative framework for launching financial instruments for stimulating and supporting the ecological modernization of enterprises.
- Create an institution that will be responsible for attracting international financing for the ecological modernization of enterprises.
- To ensure access of enterprises to financing programs for ecological modernization by involving international financial institutions and organizations.

Regarding improvement of the procedure of creation/expansion of the Nature Reserve Fund (hereinafter - NRF) and regulating of the territories of the Emerald Network

The preparation of projects for creating or expanding NRF facilities often takes place without agreement with the owners and users of the relevant land plots and business entities that conduct activities in the relevant territories on the basis of valid permit documents and contracts. As a result, the operation of the enterprises is practically impossible. This problem can potentially be aggravated by due to Draft Law "On Territories of the Emerald Network" No. 4461 of December 4, 2020 (hereinafter - Draft Law No. 4461) registered in the VRU and the alternative Draft of the Law "On Preservation of Natural Habitats and Species of Natural Flora and Fauna Subject to Special Protection (about the territories of the Emerald Network in Ukraine)" No. 4461-1 of July 26, 2021 (hereinafter - Draft Law No. 4461-1), as well as the Draft Law "On Amendments to Certain Legislative Acts of Ukraine on Improving the Management of Objects of the Nature Reserve Fund of Ukraine" No. 9136 of March 21, 2023 (hereinafter - Draft Law No. 9136).



The provisions of these documents do not provide for real mechanisms for taking into account the interests of landowners/land users or primary users of natural resources and may lead to the emergence of a large number of corruption risks and unfavorable 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 cancel investment projects. And this, in turn, leads to job cuts, reduces investment attractiveness and creates prerequisites for a significant reduction in revenues of the state and local budgets.

Solution:

Work through Draft Law No. 9136, taking into consideration the following:

- It is important to ensure that business entities that conduct activities in the relevant territories on the basis of valid permit documents and contracts or whose activities directly affect such territories are equated to primary users of natural resources and, accordingly, must be also included in the process of approving requests for the need to create or declare territories and objects of NRF.
- If there is a landowner/land user who legally uses the relevant territory for its intended purpose, it is advisable to take into account the possibility of further use of the territory by such landowners/users with certain restrictions, losses resulting from which will be compensated in accordance with the established procedure.
- Ensure that the information of the State Cadastre of Territories and Objects of the NRF should not contradict the information of the State Land Cadastre (hereinafter referred to as the SLC), and in the event it happens, the information of the SLC should have priority.
- Do not exclude documents confirming and supplementing the justification for the need to create or declare territories or objects of the nature reserve fund from requests for the need to create or declare territories and objects of the NRF.

Finalise Draft Law No. 4461 and Draft Law No. 4461-1, taking into account the following proposals of the Association:

- to provide for unification of the Impact Assessment Procedure on the territory of the Emerald Network (hereinafter referred to as IAPEN) with the EIA procedure.
- to ensure that there are clear norms regarding the impossibility of imposing any prohibitions or restrictions on the planned-out activity (economic activity) that is already being carried out in the relevant territory at the time the law enters into force.
- to define in Draft Law No. 4461 and Draft Law No. 4461-1 the criteria for assessing the presence/absence of negative impact of planned activities on the territory of the Emerald Network and a clear list of activities that will be restricted and prohibited on the territories of the Emerald Network.
- in case the project falls into the category "Projects of public interest" an exception to the general rules regarding restrictions and prohibitions to conduct planned activities should be provided.
- to determine a clear list of activities for which it will be necessary to carry out IAPEN.
- to eliminate the need to carry out IAPEN for enterprises that received permits, but started planned activities after Draft Law No. 4461 and Draft Law No. 4461-1 came into force.
- to eliminate the need to carry out IAPEN before obtaining a special permit for the use of subsoil.

Amend the Law of Ukraine "On the Natural Reserve Fund of Ukraine" No. 2456-XII of June 16, 1992 in the part defining the category of primary users of natural resources by including there the enterprises that carry out their activities in the relevant territory on the basis of a lease agreement or a special permit for the use of subsoil.

In addition, in order to ensure energy interests in the field of national security of Ukraine, it is deemed judicious to amend the Law of Ukraine "On Oil and Gas" No. 2665-III dated July 12, 2001 regarding the possibility of carrying out certain types of work on the lands of the nature reserve fund for the purpose of exploitation of oil and gas production facilities by holders of special permits for the use of oil and gas-bearing subsoils in agreement with the administration of the territories and objects of the nature reserve fund.



Regarding development of economic incentives for preserving and restoring flora and fauna

Often, while carrying out their activities, enterprises implement various measures to preserve biodiversity and ecosystems on a voluntary basis and at their own expense: arranging or moving bird nests from power line poles and installing bird protection devices, moving red-listed plant species from places of planned activity, renovating quarries, etc. Given there is a lack of a systematic and comprehensive approach to such activities among all the users of natural resources, the effect of these measures is not long-lasting.

Solution:

- It is necessary to develop a methodology for calculating compensation for environmental preservation efforts depending on the total value of the plot for territories that have special environmental protection status;
- It would be beneficial to provide for the possibility of providing subsidies and tax benefits in the agricultural sector for the economic entities that implement measures to reduce the use of pesticides and fertilizers, the wider use of integrated management systems, and the promotion of organic farming.

Regarding implementation of circular economy principles

There are no incentives for the development of a circular economy in Ukraine. Current legislation in the field of waste management does not offer mechanisms that would ensure the implementation of the waste management system in accordance with the waste hierarchy defined in the EU. In Ukraine, the state collects environmental tax for emplacing waste, without 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 of December 25, 2015 regarding the establishment of the obligation to use secondary raw materials (industrial waste) during construction works and the provision of services for the current repair of public highways in the areas that are located 100-200 km away from metallurgical plants and thermal power plants.
- to amend the Law of Ukraine “On Standardization” No. 1315-VII dated June 5, 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-oriented economic program for the construction of public highways with a cement concrete surface.
- to extend the effect of the order of the CMU “On the Use of Production Waste in Road Construction” No. 1420-r of December 4, 2019 to the regions of Ukraine where industrial enterprises are present.
- to develop a mechanism for compensating the costs of transporting industrial waste by railway, because currently, as reported by member companies of the Association’s Industrial Ecology and Sustainable Development Committee, transport costs make up a significant part of the final cost of secondary resources.



Solution (continuation):

- to provide preferential tax conditions at the level of the state and local communities for the enterprises that use secondary raw materials and waste in their planned-out activities.
- to make changes to the Procedure for the formation of tariffs for household waste management services, approved by the Resolution of the CMU No. 1010 of July 26, 2006, in the part of calculating the payment for waste processing as a component of waste management (gate fee).
- to create a list of priority areas and sectors of the economy where the enterprises, provided there are technical/technological possibilities and economic feasibility available, should use secondary raw materials (waste) in their activities to replace primary raw materials.
- to exempt from taxation of CO₂ emissions the equipment operating on biomass, in whole and in part, by introducing amendments to the Draft Law "On Amendments to the Tax Code of Ukraine regarding the Establishment of a Zero Tax Rate for Carbon Dioxide Emissions for Equipment that Produce such Emissions as a Result of Burning Biofuel".
- to develop a standard for the alternative fuel - Refuse Derived Fuel (hereinafter referred to as RDF) - and harmonize it with the European one; to create in the Ukrainian classifier of goods of foreign economic activity (hereinafter - UCG FEA) the corresponding product item code for RDF, by analogy with code 19.12.10 of the European List of Waste, and for Solid Recovered Fuel (SRF), respectively.
- to ensure the introduction of restrictions on the export of scrap metal from Ukraine, similar to the restrictions currently being developed in the EU.

ISSUES

OF THE EXTRACTIVE INDUSTRY





Regarding the continuation of the qualitative reforms in the field of subsoil use

Due to the war (closure of ports, lack of financial and human resources, destroyed capacities, as well as the active warfare and the occupation of territories where deposits are explored), Ukraine has lost its place in global supply chains, and it cannot fully satisfy domestic demand in the mining and metallurgical sphere. It is worth noting separately that the Association's experts would like to emphasize the extreme importance of increasing domestic oil and gas extraction to be energy independent from the aggressor country, as well as the use of waste from the mining industry as secondary raw materials in road construction and the production of building materials during post-war reconstruction. At the same time, the increase in the production of energy carriers and the development of the mineral and raw material base is a key challenge for the processing industry in the conditions of war and post-war reconstruction. According to the experts of the Association, the processes of issuing permitting documents in the field of subsoil use are quite complicated and create additional burdens for subsoil users, which has a negative impact on transparency in the activities of the industry. At the same time, business representatives hope that the adopted Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Improvement of Legislation in the Field of Subsoil Use" No. 2805-IX dated December 1, 2022 (hereinafter - Law No. 2805-IX) and regulatory framework to fulfill the requirements of Law No. 2805-IX will contribute to positive changes in the sphere of subsoil use. However the adoption of regulatory acts was executed without taking the suggestions provided by the Association's experts to the relevant projects of regulatory acts, which were published for public discussion into consideration.

Solution:

Monitoring the effectiveness of adopted regulatory acts. To improve the regulatory acts by amending them basing on suggestions provided by the Association's experts in order to ensure the rights of subsoil users and the effectiveness of acts.

Regarding enhancing the methodology of calculating the cost of geological information and "end-to-end permission"

The controversial method of calculating the cost of geological information in the case of obtaining a Special Permit (hereinafter - SP) for using subsoil, the limited access to geological information of previous subsoil users on the site (area), the unclear procedure for calculating the cost of the "end-to-end permit", etc. create a number of inconveniences for many business entities in the field of subsoil use.

Solution:

- to improve the methodology for calculating the value of geological information in the case of obtaining a license for the use of subsoil, namely provide clear specifications regarding the amount of information taken for calculation, standardize the formula, determine clear coefficients affecting its value;
- to develop and adopt a methodology for calculating the cost of "end-to-end permission";
- to set out a procedure for purchasing geological information (compensation for the costs of obtaining geological information) from a subsoil user who carried out a geological study of a subsoil area at his own expense and was unable, for some reason, to obtain a license to use the subsoil within the prescribed period, thus he will not be able to use it in his activity;
- to develop a methodology for calculating the value of geological information, which the subsoil user got the right to access upon receiving a license to use subsoils as a result of the alienation of rights to use subsoils in accordance with Article 161 of the Code of Ukraine on Subsoils (hereinafter - CUS).



Oil mining site

The Association's member companies point out that subsoil users are still required to obtain an Act on Granting a Mining Permit, which, in fact, duplicates the functions of the SP for the use of subsoil for some types of work, despite the amendments to the CUS according to Law No. 2805-IX. In particular, the provisions of the Law of Ukraine "On Oil and Gas" No. 2665-III of July 12, 2001 (hereinafter - Law No. 2665-III) have not been brought into line with recent changes. According to the experts of the Association, this instrument of state regulation does not allow to control the degree to which the development of a subsoil area occurred, and it is also not a means of ensuring safety during mining operations. In addition, it complicates the conduct of business, causes risks of abuse, additional financial burdens on economic entities in the process of obtaining the Act on Mining a Land Plot.

Solution:

It is important to bring the provisions of Law No. 2665-III in line with the current version of the CUS.

The need to carry out several EIA procedures

In the special conditions of a Special Permit for using subsoils, the business entity is required to undergo the EIA procedure and obtain a conclusion on EIA in the case of purchasing a special permit for the geological study of oil and gas-bearing subsoils, including exploratory and industrial development of deposits, with subsequent extraction of oil, gas (industrial development of deposits) and/or extraction of minerals. In addition, after the creation of a preliminary project within the framework of the planned-out activity, the companies carry out EIA directly for a specific activity, for example, drilling a well, as well as for creating infrastructure facilities, for example, setting up trades, for construction of a unit for preparing hydrocarbon raw materials, etc. Thus, the member companies of the Association Committee note that enterprises are forced to go through the procedure with the EIA several times, which does not simplify business in any way. Most of this environmental impact assessment is carried out taking into account normative methodological recommendations in force in Ukraine, which are not fully correlated with each other, or have been canceled, and new ones have not yet been agreed upon.

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

Solution:

- to work out changes to the legislation in order to optimize the number of EIA procedures that business entities must go through;
- to combine the EIA procedure with obtaining a special permit for subsoil use;
- to develop unified recommendations for organizers, companies, and the public regarding public discussion during the second stage of EIA;
- to fix a comprehensive list of methodologies used to calculate the environmental impact.



Regarding granting access to subsoil areas provided for mineral exploration and extraction

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 the owners of special permits by concluding agreements for exploration works in accordance with Article 97 of the LCU and establishing land easements. At the same time, the conclusion of an easement contract is possible either when the parties reach an agreement on all its terms, or by a court decision. We are talking, in particular, about the amount of the fee for the use of the land plot, which is not regulated by law. In order to locate mining industry facilities and register relevant land plots on communally owned lands, the company must obtain a decision (permit) from local self-government bodies, and on privately owned lands, the consent of the owner/user of the land plot. Concurrently, land owners and land users are compensated for damages and losses (including lost income). If an agreement is not reached, the amount of damages is determined by a special commission under local executive authorities. Such a situation increases the risk of prejudice against potential subsoil users and may block the entry of new companies into the market.

Thus, according to the information of the Association's member companies, there are quite a few cases when a subsoil user receives permission to use the subsoil, but cannot obtain title documents for a plot of land, because the landowner or land user does not provide access to the plot or demands an unreasonably high fee for access to it. In addition, having no possibility 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 were introduced by the new version of the CUS.

Since the drilling site is determined based on geological information, this position often makes it impossible to start developing the promising areas. This is precisely the case when, according to business representatives, it is necessary to legislate the issue of mining companies accessing land plots with compensation of all costs to the land user.

The Association's experts are convinced that the change in legislation in the field of subsoil use will speed up the access of oil and gas producing companies to the subsoil.

That is why the state should reform the management system in the field of land relations and remove artificial restrictions to simplify access to land plots, grant public status to the land management documentation, making this data open and publicly available; integrate and unify land management, topographic-geodetic and cartographic activities; reduce the cost of work and time resources spent on performing procedures related to land management, which, in turn, will reduce corruption risks when performing the relevant procedures.

Solution:

The experts of the Association propose to make changes to the land legislation and the legislation on the subsoil, so as to address the following:

- the term for preparing and concluding land use contracts by the parties, as well as determining the amount of the contract;
- impose an obligation on the land plot owner to provide access to land plots to legal entities, holders of Special Permits that allow them to use oil and gas-bearing subsoils or that are participants (operators) of production sharing agreements;
- cancel prior approval of landowners/land users for conducting geological exploration works with subsequent compensation for the damages;
- obtain the permit to perform construction works on the basis of an agreement concluded in accordance with Article 97 of the LCU;
- perform works on construction, placement and operation of oil and gas production facilities and accommodating a deposit on land plots of forestry purposes without obtaining the consent of land plot managers, notifying them within three days after the start of such works and subsequent compensation for damages after the completion of the works in compliance with the procedure determined by the law.



Regarding the simplification of the procedure for agreeing and signing Agreements on the Distribution of Products (hereinafter - ADP)

According to the experts of the Association, the legislation governing the issue of mineral extraction is over-regulated. Certain issues may be covered by several normative legal acts, which may sometimes contain discrepancies.

During the tenders for the conclusion of the ADP and the preparation of the texts of the specified agreements by the member companies of the Association, a number of problems related to the application of the Law of Ukraine "On Agreements on the Distribution of Products" No. 1039-XIV of September 14, 1999 (hereinafter - Law No. 1039-XIV) were identified, which complicates the process of signing and executing the ADP. In particular, business representatives faced a bureaucratic component during the conclusion of the ADP by the state, since inconsistencies and difficulties often arise during the processing of the texts of agreements by different state authorities, which often leads to delays.

In 2019, the CMU held 9 tenders for the conclusion of ADPs, which entail attraction of investments in large projects related to the exploration and development of oil and gas sites in Ukraine with a total area of 11,400 sq. km.

In July 2019, the Interdepartmental Commission on Organizing the Conclusion and Implementation of Product Distribution Agreements determined the winners of the tenders. Among the minimum obligations of investors under the ADP for the first 5 years - drilling of almost 40 wells and 3D seismic on an area of 3,800 sq. km, which is an investment of USD 430 million.

Thus, ADPs 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 crucial for maintaining the investment climate of Ukraine, especially nowadays, in such difficult economic conditions.

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

Solution:

Amendments to Law No. 1039-XIV to accomplish the following:

- to set clear criteria for determining the winner of the tender for concluding the ADP;
- to impose a requirement that the evaluation of submitted proposals is carried out openly (publicly);
- to set a deadline of at least 90 days to prepare proposals (applications for participation in the competition) and to reduce the deadline for approval of ADP projects (determining of competition winners);
- to stipulate the organizational aspects of the activity of the Interdepartmental Commission for Organizing Conclusion and Implementation of Agreements on Distribution of Products.



Regarding the development of the extractive industry and preservation of natural objects

Experience of operation of many domestic subsoil users has numerous examples when NRF objects are located within the area defined by a special permit for use, that is, on the lands where it is prohibited to carry out activities that negatively affect or may negatively affect the state of natural and 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 of June 16 1992 (hereinafter - Law No. 2456-XII). So, the business entity, guided by the imperative norm, does not carry out economic activities on the lands of the NRF, however, for example, when the Special Permit is extended, the authorized bodies, due to some formal reasons, will be able to issue an EIA conclusion on inadmissibility of the planned activity within the entire territory of the Special Permit. Moreover, at the moment, unresolved is the issue regarding the approval by the Ministry of Environment of subsoil areas that intersect with the objects of the NRF or the forest fund, and that are meant to be later sold at an auction. In addition, there is still a tendency that over time NRF objects, the creation of which is not required by law to be agreed with the company, may appear on the subsoil plots that were purchased by the company at an auction. This, in turn, as noted by experts of the Association Committee, complicates the work of companies, causes significant additional costs, and does not contribute to the attraction of investors, in particular foreign ones.

Solution:

- to conduct an audit in order to establish which territories where it is planned to create or expand NRF objects are in the list of plots that are put up for auction, so that special permits to use such subsoil plots are sold;
- to exclude territories where it is planned to create NRF objects from the lists of subsoil areas, which special permits for use are put up for auction;
- to amend Law No. 2456-XII and include in the list of primary users of natural resources enterprises that are carrying out their activities on the basis of a lease or a special permit for the use of subsoil. This will make it possible to create a mechanism for approving the projects of new NRF facilities with enterprises, if such territories intersect with areas for which special permits for the use of subsoil have been issued or which are under lease;
- to develop and approve the procedure for indemnifying investors for losses incurred as a result of creating NRF and Emerald Network objects, or due to imposing prohibitions and restrictions on the conduct of economic activities within the territories of such objects.

Regarding the waste that was 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 utilization and processing of industrial waste. In addition, the process of disposal of industrial waste is not systematically monitored, and there is a tendency to increase the number of companies that only collect, transport and store such waste. The Association member companies note that the risk of an increase in the number of unauthorized waste dumps is very high, the real volume is currently difficult to estimate. These objects have a detrimental effect on the surrounding natural environment (pollution-littering of land and 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 collecting and storing waste is lower than the cost of processing or disposal, which requires resource costs).



Solution:

- to create effective mechanisms for regulating the issuance of licenses for processing industrial waste, so that it is governed by the availability of certified equipment and means of disposal, as well as settling the issue of concluding a contract for disposal with the enterprises that have the necessary equipment for processing or disposal of waste;
- to improve the control mechanism of relevant bodies;
- to develop and adopt the Law “On Waste Management of the Extractive Industry”.

Regarding the access to subsoil reserves, which are located under forests

Today, Ukraine has a large number of mineral deposits, which are located under forest plantations. As the experts of the Association note, there are frequent cases when subsoil users cannot cut down trees and bushes to gain access to minerals, though their right to use them is certified by a special permit. The Procedure for felling trees and shrubs and using the resulting wood in the case of changing the purpose of land forest plots or establishing an easement for the purpose of their use for purposes not related to forestry management, and the transfer of land forest plots to the category of non-forest lands, approved by Resolution of the Cabinet of Ministers of Ukraine No. 105 of February 4, 2023 (hereinafter - Procedure No. 105) applies only to the cases of felling trees and shrubs on land plots where an easement has been established, and does not provide terms for felling trees and shrubs for the purpose of using them for purposes not related to forestry management, on the land plots that had Agreements on Conducting Exploration and Mining Operations (hereinafter - the Agreement) concluded for them. Therefore, there appears a situation when the Agreement became a document that does not grant rights to proper use of the land, since the subsoil user who uses a plot of land located within the boundaries of forest plantations, based on the Agreement, does not have legal grounds for cutting down trees and shrubs, and accordingly, access to the land.

Solution:

- to develop and adopt a draft law that will amend Articles 58 and 70 of the Forest Code of Ukraine, as well as amend Order No. 105.

WOOD INDUSTRY





Regarding an increase in the amount of the main use felling, which will contribute to an increase in harvesting quality wood for woodworking enterprises and will ensure an optimal structure of forest cutting

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 data of the study "Economic efficiency of wood processing in Ukraine (2020)" carried out by the SE "Ukrpromzovnisheksperyza", the total wood reserves are estimated at 2.1 billion m³, or an average of ~221 m³/ha; the annual growth of wood is ~39 million m³/year; the total volume of wood harvesting in Ukraine during 2015-2019 was 20.9-22.6 million m³/year, or <60% of the annual growth of wood in Ukrainian forests.

Pine, oak, spruce, and beech dominate the structure of wood harvesting by species, with a total share of ~82% of harvested wood. The share of harvested birch and alder, which is used in the production of plywood, has decreased from 8% to 6%, which has increased the tension in the plywood market.

Quality-wise, the wood harvesting in Ukraine deteriorated during 2015-2019, namely, the volume of liquid wood harvesting decreased by 7.3%, to 17.9 million m³ in 2019, while the volume of non-liquid wood harvesting increased by 12%, to 2.98 million m³ in 2019. Deterioration of the quality of wood harvesting is caused by an increase in the share of sanitary felling (from 47% to 49%) and a decrease in the share of main use felling (from 41% to 38%).

Insufficient amounts of main use felling have lead to the following problems:

- Overcooling of forests and, as a result, deterioration of wood quality.
- A shortage of raw materials, and, as a result of the price increase, a decrease in the competitiveness of the woodworking industry.

Regarding the introduction of comprehensive regulation of the wood market in Ukraine

The woodworking industry needs legally established rules for the sale of wood, aimed at providing raw materials to domestic woodworking enterprises, stimulating in-depth wood processing and efficient use of forest resources.

Representatives of the industry note that the issue of wood sales cannot be considered independently, because it is a component of a complex phenomenon. Realization 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, the field of trade, etc. And this, in turn, is directly reflected in the number of jobs, deductions to state and local budgets, infrastructure development, attracted investment and the development of the economy as a whole.

Solution:

- to legislatively establish the rules for the sale of wood, focused primarily on providing raw materials for domestic woodworking enterprises.
- in order to ensure equal competitive conditions, it is proposed to restructure the branches of SE "Forests of Ukraine" by separating their woodworking units for their further participation in the process of purchasing wood as individual woodworking enterprises, on equal terms with all woodworking enterprises;
- to introduce a single and transparent mechanism for forming the cost of wood;
- to provide effective mechanisms for prosecuting persons who violate the established rules for the sale of wood.



Regarding mandatory maintenance of the electronic wood accounting system by all permanent forest users

It is important to develop and adopt a Law regulating the creation of a system of control and tracking of the circulation of wood on the market from the moment it is harvested to its sale, by means of a unified state electronic wood accounting system that is mandatory for all permanent forest users.

PROPOSITIONS FOR THE PERIOD OF MARTIAL LAW:

The Ukrainian woodworking industry, according to business representatives, was one of the most promising sectors of the economy before the war, increasing production and export of finished products every year. According to the information of the Association's member companies, hundreds of thousands of Ukrainians work in the country's woodworking industry at thousands of enterprises. Only in 2021, the export of products in accordance with group 44 according to the UCG FEA "Wood and wood products" amounted to about 2 billion US dollars, which is 42% more compared to 2020 and is about 3% of the total volume of exports in 2021[1]. Ukrainian manufacturers supply products to world retail leaders: IKEA, JYSK, XXLUZ, HOMECENTER and others.

Russian military aggression in Ukraine has had an extremely negative impact on the work of woodworking enterprises: thus, a large number of production facilities were stopped, logistical routes were damaged, and it became impossible to fulfill obligations under most international contracts. Currently, business entities are sparing no effort to resume production, find logistical connections for sending finished products and supplying raw materials.

The business community understands the utmost importance of the functioning economy in wartime, saving jobs, paying taxes and maintaining export volumes.

At the same time, in order to set up effective operation of the woodworking industry, which has a significant potential for the rapid recovery of production, to preserve and create new jobs for Ukrainians, including internally displaced persons, state support is crucial.

1. The high level of prices for raw materials makes it extremely difficult to restore the operation of woodworking enterprises. Since raw wood is currently sold on commodity exchanges using electronic trading systems, where, according to business representatives, initial prices are set by branches of SE "Forests of Ukraine", and the buyer is recognized as the participant who offered the highest price, **we ask that SE "Forests of Ukraine" and its branches are recommended to form an affordable level of starting prices, taking into account the difficult financial condition of domestic woodworking enterprises**, which will allow optimizing the cost of raw materials and contribute to economic entities in the woodworking industry resuming their work.

2. **We ask that it is guaranteed that the State Agency of Forest Resources of Ukraine (hereinafter - SAFRU) and the SE "Forests of Ukraine", which is accountable to it, conduct work most transparently regarding FSC and PEFC certification of Ukrainian forests and harvested wood.** Having lost the opportunity to buy and use certified Ukrainian wood, the manufacturers of plywood and chipboards, the furniture companies will not be able to fulfill contracts for the export of products.

[21] According to the data of the State Statistics Service of Ukraine "Ukraine's foreign trade structure by goods in 2021» http://www.ukrstat.gov.ua/operativ/operativ2021/zd/tsztt/tsztt_u/tsztt1221_ue.xls



PROPOSITIONS FOR THE PERIOD OF MARTIAL LAW (continuation):

3. We ask to be facilitated to have the number of permits (quotas) increased for Ukrainian carriers traveling through the territory of foreign countries during the transportation of goods by road transport in international traffic (hereinafter - permits). As an alternative, we ask that the possibility of introducing a permit-free regime with the maximum number of EU countries be considered. According to the Association's experts, due to the hostilities, European transport companies refuse to provide any services (including rent of vehicles) both directly to Ukrainian companies and on the territory of Ukraine. As a result, international transportation is carried out only by Ukrainian carriers, which very quickly use all available permits.

4. It is crucial to recognize the woodworking industry as strategic for the efficient functioning of the economy and to create a working group for the prompt solution of the problematic issues of reviving the production of woodworking enterprises. We consider it judicious to involve in the work of the group representatives of relevant ministries, SAFRU, SE "Forests of Ukraine" and the Association.

FOOD ISSUES



Regarding harmonization of the Ukrainian legislation in the field of child nutrition with the legislation of the EU

Solution:

It is necessary to develop and adopt normative and sub-legislative acts to the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding Bringing the Legislation of Ukraine in the Field of Child Nutrition into Compliance with the Requirements of the European Union Legislation" No. 1822-IX dated October 21, 2021.

Regarding ensuring the implementation of the provisions of Articles 18-19 of the Law of Ukraine "On Feed Safety and Hygiene" No. 2264-VIII of December 21, 2017 regarding the creation of the State Register of Feed Additives and the simplified procedure for registering feed additives in Ukraine

Solution:

It is important to legislate a decision to recognize the system of registration of feed additives in the EU as equivalent to the requirements for state registration of feed additives operating in Ukraine. It is necessary to ensure the full creation and functioning of the State Register of Feed Additives.

Regarding the introduction of state regulation that would create a reliable basis for protecting the health and interests of consumers, as well as for the harmonization of national legislation with EU legislation in the field of materials coming in contact with food products

Solution:

It is necessary to adopt subordinate regulatory legal acts to fulfill the requirements of the Law of Ukraine "On Materials and Objects Intended to be in Contact with Food Products" 2718-IX dated November 3, 2022.

Regarding the comprehensive resolving of problematic issues of the food industry

Solution:

Adoption of the Draft Law “On Amendments to Certain Laws of Ukraine Regarding the Improvement of State Regulation of Food Safety and Development of Animal Husbandry” No. 8290 of December 19, 2022, with the Association’s propositions taken into account.

Battling against falsification of dairy products

As the member companies of the Association note, it remains a widespread practice among unscrupulous business representatives to replace milk components (milk fat, milk protein, lactose) in dairy products, including replacing milk fats with vegetable fats, animal (non-dairy) origin, as well as cases of misleading consumers with unfair labeling of such products in the sense of the terms and their definitions provided by the Law of Ukraine “On Milk and Dairy Products” No. 1870-IV of June 24, 2004.

Solution:

It is necessary to strengthen control by the competent authorities to prevent the falsification of dairy products.

Regarding the need to amend the CMU Resolution “On Measures to Stabilize Prices for Goods of Essential Social Significance, Anti-epidemic Products” No. 341 dated April 22, 2020 (hereinafter - Resolution No. 341) and the price declaration procedure in general

As reported by the member companies of the Association, as a result of the price declaration process introduced by Resolution No. 341, pharmacies have faced difficulties with the availability of medicines, antiseptics, disinfectants and personal protective equipment, which are included in the List of anti-epidemic goods, approved by Resolution No. 341, which are necessary to prevent the spread of the acute respiratory disease COVID-19, caused by the SARS-CoV-2 coronavirus, if they actually are in stock. This is due to the deadlines that must be met after the declaration of new prices for goods and until the moment when they can be sold at such prices. During this time, the pharmacy does not have the right to sell the specified goods at the new prices, thus, in fact, is forced to keep them in the warehouse. In turn, consumers cannot purchase such goods. In this context, the Association’s experts consider it appropriate to note that pharmacies do not change retail markups for drugs used in the treatment of acute respiratory disease COVID-19, and retail prices on the shelves change only due to changes in the purchase price from suppliers.

The situation is similar with the retail prices of goods included in the List of goods of essential social significance, approved by Resolution No. 341 (hereinafter - the List of socially significant goods): they are also affected by the price at which the subject of retail trade bought the goods from a supplier. Taking into account that the terms for changing the price by the supplier are not regulated by legal acts, the experts of the Association note that the subject of retail trade cannot properly react to the price change by the supplier. The situation is getting aggravated by the fact that certain goods have a short shelf life. In this regard, the member companies of the Association consider it judicious to consider the possibility of reducing the terms for starting the sale of such goods having declared a price increase, otherwise such situations may lead to a shortage of goods that are subject to regulation. Also, in the opinion of business representatives, it is necessary to review the goods included in the List of socially significant goods and to separate them from the goods that belong to the goods of the higher price segment, as well as goods whose price did not increase by more than 5% throughout the entire time Resolution No. 341 is in action.

In addition, the Association's experts point out that the declaration mechanism proposed by the State Service of Ukraine for Food Safety and Consumer Protection is too complex to easily use and does not allow automating the process.

Solution:

It is necessary to make changes to Resolution No. 341 and to the price declaration procedure in general, namely:

- to reduce the period after which the business entity can start selling goods to 3 days after declaration;
- automate the transfer of information to the site where the price is declared;
- review the List of socially significant goods and exclude the goods which seem to have general characteristics of the groups of goods defined in it, but actually belong to a higher price segment, as well as goods whose price did not increase by more than 5% during the period when Resolution No. 341 is in action.

TECHNICAL REGULATION





Regarding signing of the ACQA between Ukraine and the EU

Solution:

The Association acclaims the soonest possible signing of the Agreement on Conformity Assessment and Acceptability of Industrial Goods (ACAA) between Ukraine and the European Union in the first three priority areas and its expansion to new areas, including restrictions on the use of hazardous substances, radio equipment, eco-design, energy labeling, medical products etc.

Regarding amendments to the Technical Regulations on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment, approved by CMU Resolution No. 139 dated March 10, 2017 (hereinafter referred to as TR RoHS)

According to business representatives, the European Commission is currently reviewing the expiration dates of the exceptions to the restrictions specified in Annex III to Directive 2011/65/EU of the European Parliament and of the Council dated June 8, 2011 on the restriction of use of certain hazardous substances in electrical and electronic equipment (hereinafter - Directive 2011/65/EC). In accordance with Article 5 of Directive 2011/65/EU, it is stipulated that during the period when the European Commission is considering application of an extension of the term of this or that exception, such exception remains valid until a relevant decision is taken by the European Commission. Unfortunately, the above provision of Directive 2011/65/EC was not implemented in the TR RoHS.

Solution:

The association supports the need to develop and adopt a draft resolution of the Cabinet of Ministers of Ukraine on amendments to the TR RoHS adopted in Ukraine, to ensure full harmonization with the requirements and the latest changes in EU legislation being taken into account.

Regarding the development of by-laws so that the Technical Regulation on cosmetic products may be fully applied

Resolution of the CMU No. 65 of January 20, 2021, approved the Technical Regulation on cosmetic products, which will enter into force in August 2024 (hereinafter - TR of cosmetic products). At the same time, for TR on cosmetic products to be correctly applied it is necessary to adopt a number of additional by-laws and resolve a number of problematic issues.

Solution:

Prior to the date of TR on cosmetic products coming into force, it is necessary to develop a notification procedure and create a notification portal following the suit of a similar portal existing in the EU. The Association's experts also note that it is necessary to approve a list of national standards to confirm compliance with the requirements of TR on cosmetic products. It is necessary to translate and adopt some of the most key methodological recommendations for the application of TR on cosmetic products, including: recommendations for frame formulation, which apply to ranges of formulation of cosmetic products; methodological recommendations on the qualification of experts who can sign reports on the compliance of the product with the requirements of TR on cosmetic products. It is also appropriate to adopt a unified approach to informing consumers, for example, regarding animal testing or medicinal properties of cosmetics.

CONSUMER RIGHTS PROTECTION





Regarding the adoption of the new version of the Law of Ukraine "On Protection of Consumer Rights"

On June 10, 2023, the VRU adopted the Law "On the Protection of Consumer Rights" No.3153-IX (hereinafter - Law No.3153-IX), which was developed with the Association's experts active participation. This legislative initiative contains provisions on the regulation of electronic commerce, including the definition of modern players such as "marketplace", "price aggregator" and provides for effective sanctions for failure to provide information that would allow identification of one or another online seller as a subject of entrepreneurial activity. Also, Law No.3153-IX takes into account a number of proposals of the Association regarding the differentiation of requirements for providing information about a product or service to the consumer, in particular, which information should be indicated directly on the product, and which information can be provided in the accompanying documentation or some other way.

The Association plans to join the work on the development of the necessary by-law regulatory framework. The Association's experts also plan to take part in drafting an additional draft of the Law, which will enter into force at the same time as Law No.3153-IX and will take into account the Association's additional proposals regarding the extension of the warranty repair period to 30 days, the possibility of labeling goods and computer interfaces in English, following the existing practice in EU member states.

Solution:

It is important to continue working on an additional draft of the Law, which will clarify the provisions of Law No.3153-IX in terms of labeling and warranty repair, as well as keep up the work on subordinate regulations to the new Law of Ukraine "On the Protection of Consumer Rights", including the new procedure for warranty repair.

Regarding the necessity to amend the Law of Ukraine "On Electronic Commerce"

According to business representatives, the current version of the Law of Ukraine "On Electronic Commerce" No. 675-VIII of September 3, 2015 (hereinafter - Law No. 675-VIII) is in fact declarative in nature and does not provide for effective sanctions for violating its provisions.

Вирішення:

It is necessary to make changes to Law No. 675-VIII, and among other things, to provide mechanisms for suspending access to sites 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 allow their identification as subjects of entrepreneurial activity, and therefore be checked and, if necessary, prosecuted.



Regarding the need to amend the Law of Ukraine "On Ensuring the Functioning of the Ukrainian Language as a 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 April 25, 2019 (hereinafter - Law No. 2704-VIII) establishes that the equipment sold in Ukraine must have a user interface in the state language, which in scope and content should contain no less information than foreign language versions of the interface. At the same time, in some cases, this requirement is technically impossible to fulfill, for example, when it comes to the installed segment displays or matrix indicators that are used to display only segment preset information in Latin letters, such as "ON", "OFF" and others.

In addition, the mandatory application of the provisions of this article will potentially lead to Ukrainian consumers not having a possibility to legally purchase the most modern models of goods, which are not in great demand, and, accordingly, to the increase in 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 rewording it as follows: "A computer program with a user interface installed on goods sold in Ukraine must have a user interface **in the state language and/or English language, or other official languages of the European Union**". In our opinion, the presence of a user interface in the national language on goods sold in Ukraine should be a competitive advantage of such goods, and not a prerequisite for their legal import and sale in Ukraine.

Regarding the amendments to the Procedure for Warranty Repair (maintenance) or warranty replacement of technically complex household goods, approved by Resolution No. 506 of the Cabinet of Ministers of Ukraine dated April 11, 2002 (hereinafter referred to as Procedure No. 506)

Solution:

It is necessary to make changes to the outdated Procedure No. 506, in particular, it is necessary to adapt it to modern business processes, cancel outdated forms, provide for the possibility of issuing guarantees in electronic form, etc.

LICENSING SYSTEM





Regarding simplification of the procedure for obtaining licenses for the import/export of goods containing fluorinated greenhouse gases

In practice, as reported by the Association's member companies, the process of obtaining licenses for the import/export of goods containing fluorinated greenhouse gases is significantly complicated as while filing the application to obtain the corresponding license there is a requirement to add a foreign trade agreement and all its annexes, including bills (invoices) to confirm trade and economic activity carried out within the framework of such an agreement. 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 resign foreign economic contracts, or to attach to the license application form copies of all invoices that were used in accordance with the terms of such a contract over the years (in practice, it can be thousands of pages).

Solution:

It is imperative to simplify the procedure for submitting an application for licenses for the import/export of goods containing fluorinated greenhouse gases, in particular, to exclude foreign economic contracts and invoices from the list of documents that must be submitted for obtaining a license.

It is important to note that Clause 3 of Part 1 of Article 5 of the Law of Ukraine "On Administrative Services" No. 5203-VI of September 6, 2012 establishes that the list and requirements for documents necessary for obtaining administrative services are established exclusively by laws that regulate public relations regarding provision of administrative services. At the same time, Article 16 of the Law of Ukraine "On Foreign Economic Activity" No. 959-XII of April 16, 1991 does not directly establish the obligation of business entities to submit copies of foreign economic contracts and/or accounts (invoices) for obtaining licenses for import/export of goods, containing fluorinated greenhouse gases. As for the requirement to submit a foreign economic agreement (contract) and its annexes, which is specified in the Customs Code of Ukraine, such documents are submitted by business entities to representatives of the customs authority, in accordance with the requirements of this Code, in case it is necessary to confirm the customs value of goods or for other customs purposes, and is not are related to the issuance of licenses to business entities. Moreover, Article 1, Part 1, of the Agreement on Import Licensing Procedures of the World Trade Organization of April 15, 1994 (hereinafter referred to as the 1994 WTO Agreement) provides that *"For the purposes of this Agreement, import licensing shall be defined as the administrative procedures used to implement import licensing regimes, **which require an application or other documentation (other than that required for customs purposes) to be submitted** to the relevant administrative authority as a precondition for entry into the customs territory of the importing member."* Section 5 of Article 1 of the 1994 WTO Agreement clearly states that *"The forms of applications and, where appropriate, the forms of applications for extension **shall be as simple as possible. When submitting an application, such documents and information may be required, which are considered exclusively necessary for the proper functioning of the licensing regime.**"*

In view of the above, the Association's member companies are convinced that the requirement to supplement the application for obtaining a license for the import/export of goods containing fluorinated greenhouse gases, with foreign economic agreements and all their annexes, including all bills (invoices), is not only onerous for business, but also is not fully correlated with the requirements of current legal acts and international agreements ratified by Ukraine.



Regarding the cancellation of duplicating of reports in the field of waste generation

The adopted Law of Ukraine “On Waste Management” No. 2320-IX dated June 20, 2022 retains the obligation for enterprises to submit under certain conditions a waste declaration on an annual basis. At the same time, in accordance with the order of the State Statistics Service of Ukraine (hereinafter referred to as the State Statistics Service) “On the approval of the state statistical observation form No. 1-waste (annual) “Report on generation and management of waste” No. 167 of May 2, 2023 (hereinafter - Order No. 167), business entities are required to annually submit data on generated waste to the State Statistics Service. As business representatives point out, this situation can lead to duplication of reports, which in turn will lead to additional costs on the part of business, as well as require state bodies’ resources for additional administering.

Solution:

Revoke the Order No. 167.

Regarding canceling of requirements for licensing the construction of facilities that, by the class of consequences (responsibility), 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 Types of Economic Activity” No. 222-VIII dated March 2, 2015 should be deleted.

Regarding the simplification of permit procedures in the field of construction of objects aimed at the restoration of industry and infrastructure of Ukraine:

- in the case when a complex (several buildings) includes objects assigned to different classes of consequences (responsibility) according to the unified design and estimate documentation, it should be made possible to obtain a permit to perform construction work on individual objects of such a complex (several buildings);
- to expand the list of preparatory works that can be carried out on the basis of a notification before obtaining a permit for construction works;
- to simplify the procedure for involving foreign specialists to work in Ukraine.

Solution:

1) To word Part 4 of Article 32 of the Law of Ukraine “On Regulation of Town Planning Activities” No. 3038-VI dated February 17, 2011 (hereinafter - Law No. 3038-VI) as follows:

“4. The complex (several buildings) may include objects, the construction of which is carried out according to a single design and estimating documentation. If the composition of the complex (several buildings) according to the unified design and estimating documentation includes objects assigned to different classes of consequences (responsibility), the state registration of the right to build each of such objects can be performed at the request of the customer separately from other objects, in accordance with the procedure established by legislation for the relevant object.”



Solution (continuation):

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

"1. After acquiring the right to the land plot and in accordance with its intended purpose, the customer can perform the following preparatory works with the notifying the state architectural and construction control body:

- 1) dismantling (demolition), relocation of houses, buildings, structures and their parts;*
- 2) arrangement of construction site fencing;*
- 3) destruction of public improvement objects within the land plot;*
- 4) engineering research works;*
- 5) construction of temporary production and household facilities necessary for the organization and maintenance of construction;*
- 6) arrangement of dismantling, relocation of access roads, highways, railway tracks;*
- 7) installation of temporary engineering networks;*
- 8) removal of engineering networks;*
- 9) removal of vegetation;*
- 10) performing works to protect the territory and surrounding buildings (lowering the level of groundwater, soil consolidation, construction of retaining walls, drainage and anti-filtration facilities);*
- 11) arrangement of pits, driving of piles, installation of retaining walls."*

INTELLECTUAL PROPERTY





Regarding the need to introduce a national principle of intellectual property rights exhaustion

This will create an opportunity for the effective protection of trademarks, which is an important issue from the point of view of Ukraine's investment attractiveness, especially for those goods where the trademark is the main asset with which the reputation, quality and safety of the corresponding product are associated.

The introduction of the national principle will significantly expand the rights of rights holders regarding their independent control of the goods market and create an additional tool for judicial and extrajudicial protection of their rights and thereby have a positive effect on the solution to the problem of contraband and counterfeit sale of products in Ukraine. Also, the application of this principle will make it possible to more effectively protect the Ukrainian market from the import of low-quality or counterfeit products directly when certain goods are imported into Ukraine.

In addition, the introduction of the national principle will contribute to the increase in the volume of legal imports, and therefore to the growth of revenues to the State Budget of Ukraine. Moreover, according to the estimates of the Association's experts, the growth of Ukraine's "official market" volumes will make it possible to minimize the costs per unit of production and in the medium term will contribute to the reduction of the price for the final consumer.

Additionally, we note that the EU has repeatedly recommended that Ukraine 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, as well as the last, but not least, on competition"* (from the letter of the EU Representation in Ukraine).

Solution:

It is necessary to legislate the national principle of exhaustion of intellectual property rights in Ukrainian legislation. To do this, Paragraph 3 of Part 6 of Article 16 of the Law of Ukraine "On the Protection of Trademark Rights for Goods and Services" No. 3689-XII of December 15, 1993 is proposed to be worded as follows: *"the use of a trademark for goods introduced under this trademark into civil circulation in Ukraine by the owner of the certificate or with his consent, provided that the owner of the certificate does not have valid reasons to prohibit such use in connection with the further sale of the goods, in particular in the case of a change or deterioration of the condition of the goods after it is introduced into civil circulation"*.

Regarding the need to reform the system of levying a charge 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 existing system of levying a charge for private copying and reprographic reproduction is outdated and ineffective. The existing system of collecting funds for private copying (reproduction) at home was developed back in the days of analog devices. The specified system does not take into account the principle of fair remuneration, since it is physically impossible to determine each subject of such copyright and (or) related rights, the result of whose creative work was used by making a "private copy", and therefore it is impossible to ensure the payment of fair remuneration to each of such subjects objects



At the same time, over the past 20 years, significant changes have taken place in society, including those related to the development of digital technologies. In modern realities, concluding a license agreement between a user and a right holder can be done quickly and conveniently, even if the user and the right holder are at a considerable distance from each other, since digital technologies allow concluding a license agreement remotely. Similarly, digital technologies allow protecting any object from private copying without the consent of the author and, accordingly, without paying him a fair remuneration.

Also today, a significant amount of equipment that is subject to the payment of levy cannot be used to reproduce works and fix them on a specific tangible medium, and even when fixed on a tangible medium, such works can only be reproduced on the equipment on which they were recorded. For example, according to the Association's experts, currently most TV manufacturers use special technical means to limit the functional ability of such equipment to perform playback. In addition, manufacturers can use such a technical means of copyright protection as Digital rights management, which prevents the creation of unauthorized digital copies of the content and makes it impossible to play and view the content on other equipment, in particular, a TV or a computer. Similar protection mechanisms can be installed by manufacturers in MP3 players, music centers, radios, DVD players, TVs, monitors that have the function of recording on a material medium such as flash memory (flash cards).

Solution:

Adoption of the Draft Law "On Amendments to Certain Laws of Ukraine on Improving and Increasing the Transparency of Effective Management of the Property Rights of Rights Holders in the Field of Copyright and (or) Related Rights" No. 4537 of December 24, 2020, which is aimed at protecting rights holders and consumers from negative consequences, related to the lack of an effective and transparent mechanism for the distribution of remuneration by organizations of collective management.

HEALTHCARE





Regarding defining the development strategy 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 regarding priority investments in national production.

Solution:

It is necessary to conduct negotiations with the European Union so as to identify Ukraine as a component and participant of the Pharmaceutical Strategy for Europe, to coordinate joint projects with the aim of implementing the legislation and practices of the European Union in the regulation and functioning of the pharmaceutical industry of Ukraine, including the work within the framework of the EU4Health project, as well as other projects of international technical assistance. This has to be the basis for the development of the Pharmaceutical Strategy of Ukraine.

Regarding the implementation of the Law of Ukraine "On Medicinal Products" No. 2469-IX of July 28, 2022 (hereinafter - 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 development at other levels of legal regulation, in particular regarding:

- Adaptation of the legislation of Ukraine to the regulations 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 certain groups of medicines.

Solution:

The Association submitted some key proposals for consideration of the Committee of the Verkhovna Rada of Ukraine on National Health, Medical Aid and Medical Insurance, the Ministry of Health of Ukraine, the State Service of Ukraine for Medicinal Products and Narcotics Control and SE "State Expert Center of the Ministry of Health of Ukraine" (hereinafter - SEC), in particular regarding:

- Improvement of the simplified registration mechanism for medicinal products in order to ensure effective and accelerated access of innovative treatment to the Ukrainian market;
- Priorities of state policy on attraction of clinical research in Ukraine, their procedural simplification and elimination of barriers;
- Bringing the provisions on the exclusivity of the data of the registration dossier for a medicinal product into compliance with the requirements of the Association Agreement between Ukraine and the EU;
- Implementation of the eCTD format, transition to full-fledged electronic interaction of business and state bodies as the main components of digitalization;
- Reorienting the control function of the state to the fight against falsification, illegal or uncontrolled circulation of medicinal products, "gray" imports;
- Ensuring that the procedure for confirming the compliance of the conditions for the production of medicinal products with the requirements of good manufacturing practice is functioning properly, including as part of the procedure for "recognition" of GMP certificates from countries with a strict regulatory environment;
- Implementation of modern requirements for confirming therapeutic equivalence (bioequivalence, if applicable) for all generic medicinal products on the market;
- Construction of a new regulatory body on the basis of transparency, financial stability, competitive principles, full digitalization of all services and processes, determination of mechanisms of public control over the activities of the body (for example, through the formation of a public control council) and elimination of conflicts of interest;
- Implementation of a modern system to prevent falsification of medicinal products - a system of verification of medicinal products in full institutional and technical compliance with the EU system;
- Deepening integration and cooperation with EU countries and countries with strict regulatory authorities (SRAs) (Conclusion with the EU of the Agreement on Conformity Assessment and Acceptability of Industrial Goods (ASAA Agreement), movement towards Ukraine being a member of the International Council for Harmonization of Technical Requirements for Pharmaceutical Products intended for human consumption (ICH)).



Full digitalization of drug registration procedures and approval of clinical trials

Currently, in Ukraine there are no implemented 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 the procedures of state registration (re-registration) of medicinal products, making changes to registration materials during the validity of the registration certificate, as well as approval of clinical trials and significant amendments to clinical trial protocols. The main modern mechanism of digitalization of these processes is the introduction of the electronic common technical document (eCTD) format and the eSubmission system into interaction of pharmaceutical business representatives with state regulators.

Solution:

It is necessary to continue the process of implementing the eCTD format and the eSubmission system in Ukraine and update the legal and technical regulation, including taking into account the provisions of Law No. 2469-IX. It is important to coordinate with the European Medicines Agency (hereinafter - EMA) the requirements for the eCTD format and the eSubmission system, to further integrate them with the EMA system.

Regarding the confirmation of compliance of the conditions of medicinal products production with the requirements of good manufacturing practice (hereinafter referred to as GMP confirmation) in Ukraine - implementation of European approaches

The Association's experts draw attention to the fact that the current format of the procedure for confirming the compliance of conditions for the production of medicinal products with GMP requirements and obtaining the GMP Conclusion is not fully effective; it causes an excessive bureaucratic burden on business' operations and does not correspond to the approaches used in the EU to recognition procedures and the sphere itself where the GMP certificates are applied.

Association member companies note that the EU does not issue a separate document and does not carry out a separate regulatory procedure for GMP confirmation for countries that are recognized (on the basis of the country's membership in the EU, the existence of separate international treaties, etc.). In such cases, during regulatory procedures, the applicant submits to the authorized bodies the original GMP Certificate of the country of recognition, whose regulatory body issued it, and this document is enough and works as a ground for its acceptance 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 applicant's responsibility for the submitted document is covered by the general provisions on the validity of official documents, as well as the licensing system for the production and import of medicinal products. Nevertheless, GMP confirmation is one of the requirements for obtaining a production license.

In accordance with the Licensing conditions for carrying out economic activities in the sphere of medicinal products manufacturing, wholesale and retail trade of medicinal products, import of medicinal products (except for active pharmaceutical ingredients), approved by Resolution of the Cabinet of Ministers of Ukraine No. 929 dated November 30, 2016, verification of the fact that production is carried out in accordance with GMP requirements is the responsibility of the authorized person during the import of medicinal products.

At the same time, currently in Ukraine, the State Service of Ukraine for Medicinal Products and Drug Control (hereinafter - the State Medical Service) is entrusted with the duty of checking the original GMP Certificates originating from recognized 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 spending their own financial and personnel resources on duplicating 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 separate employee on a permanent basis, who specializes exclusively in supporting GMP confirmation processes, which, as a minimum, causes costs in the amount of UAH 50,000 - 100,000 per month.

In general, experts of the Association Committee note that the conceptual inconsistency of approaches to GMP confirmation in the EU and Ukraine leads to the following undesirable results for the market of medicinal products of Ukraine:

- the need to submit documents in Ukraine that are not required in the EU for the purposes of GMP confirmation, and, accordingly, the irrational use of human resources of both: manufacturers working in Ukraine and the State Medical Service staff;
- significant bureaucratization of processes that do not provide confirmed additional guarantees of patient safety. According to the information of the Association's member companies, the absolute majority of comments during the specialized examination of the GMP Certificates of manufacturers, located on the territory of the EU or other countries of recognition, are comments of administrative nature, i.e. they concern either the set of documents provided or the design of the documents provided. In addition, there is no information that any of the submitted applications were rejected due to inconsistencies that could affect the quality or safety of products (for example, inconsistencies in the scope of permitted operations, etc.), as a result, GMP conclusions were obtained for all GMP Certificates. Thus, the rationale for conducting such a complex and lengthy examination and its final effectiveness from the point of view of the concept of risk management is questionable.
- impossibility to synchronize the receipt of GMP confirmation for the same site in the EU and Ukraine and, accordingly, significant delays in other procedures depending on the GMP confirmation procedure;
- impossibility to timely extend the validity period of the GMP Conclusion/obtain a new GMP Conclusion in Ukraine, which delays the decisions of manufacturers of EU countries regarding the import of medicinal products into Ukraine, leads to complications in carrying out part of the registration procedures (in particular, throughout the entire life cycle of the medicinal product, manufacturers must regularly make changes to registration certificates of the medicinal products, which is impossible without submitting a GMP Conclusion, which may also require an update outside schedule) and, ultimately, delays access to the necessary medicines for patients.

It is also worth noting that there is EudraGMP[22] database operating within the EU, which is available for any person, and which eliminates in most cases the need to obtain paper documents, and also eliminates doubts about the origin of the relevant GMP Certificates and their validity.

Thus, in the opinion of the experts of the Association Committee, in order to properly confirm the compliance of production conditions with GMP requirements, which takes place in Ukraine during the procedure of registration of medicinal products, licensing of activities for the production and import of medicinal products and state control of the quality 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 countries (associations of states), where such GMP Certificates are placed in electronic form.

Solution:

The Ministry of Health of Ukraine, the Ministry of Economy of Ukraine and the State Medical Service were sent an appeal from the Association with a request to consider the possibility of canceling the GMP Conclusions as an ineffective regulatory document and the procedure for obtaining it, while providing for the direct application of GMP Certificates issued by the regulatory authorities of the countries of recognition, within the procedures for licensing and registration of medicinal products, and determining the form and the procedure for applying such GMP Certificates by the authorized bodies of Ukraine during regulatory procedures in the format of their direct application. In the future, it is necessary to carry out a full update of the approaches to the procedure for confirming the compliance of conditions of the production of medicinal products with the requirements of good manufacturing practice, with the aim of harmonizing it with the legislation and practices of the European Union, as well as in the framework of preparing for the agreement on the mutual recognition of GMP documents between Ukraine and the EU.

[22]http://eudragmdp.ema.europa.eu/inspections/displayWelcome.do;jsessionid=10EB-Z7AFiN6o7nN3nhsle5lYyuyk9xGOjk_OsVqGEWFhRlYdDRbl-1896089308



Regarding the introduction of European practices in Ukraine, which are used in the registration/re-registration of medicinal products and making changes to the registration materials (namely, procedures of duplicating changes, "Worksharing", "Do and Tell", canceling the issuance of a conclusion on confirmation of the conditions of production of medicinal products in accordance with the requirements of good manufacturing practice (GMP))

Solution:

It is necessary to work through and make changes to the Procedure for examining the registration materials for medicinal products submitted for state registration (re-registration), as well as examining materials on making changes to registration materials during the validity of the registration certificate, approved by order of the Ministry of Health of Ukraine No. 426 of 26 August 2005 in order to harmonize the current legislation of Ukraine with EU legislation, as well as to optimize the current procedure. The changes developed by the Association are currently being reviewed by the Ministry of Health of Ukraine.

Regarding the further plans of the state to sign the Agreement on Conformity Assessment and Acceptability of Industrial Goods (ACCA) in the field of medicines and medical devices

Solution:

We draw attention to the importance and urgency of concluding the ACCA 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 ACCA Agreement. At the same time, there is still no clear understanding of the plans for the further development of this issue.

Currently, Ukrainian legislation does not provide for simplifying the conformity assessment in Ukraine for the manufacturers whose medical devices have already confirmed compliance with the requirements of European legislation. In particular, this applies to the 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 that process of including to the issues of the ACCA the provisions on mutual recognition by Ukraine and the EU of documents to confirm the compliance of the conditions of production of medicinal products with GMP requirements. This will ensure mutual simplification of operations for pharmaceutical manufacturers and guarantee the stability of providing patients in Ukraine with high-quality and safe medicinal products.

Ukraine's conclusion of the ACCA would provide an opportunity to supply more and more new names of innovative products to Ukraine, which could positively affect the quality and life expectancy of our citizens. We ask to consider the possibility of transferring medical devices to the second priority sectors as part of the future expansion of the ACCA, and including in the agreement the issue of mutual recognition of GMP confirmation documents for medicinal products, in order to facilitate the practical conclusion of the ACCA in the field of medical devices and medicinal products as soon as possible.



Regarding bringing the procedure of introducing disinfectants into circulation in accordance with the legal regulations and practices of the European Union

According to Article 48 of the Law of Ukraine “On the Public Health System” No. 2573-IX of September 6, 2022 (hereinafter - Law No. 2573-IX) *“the use and sale of disinfectants is allowed only under the condition of their state registration. The Regulation on State Registration of Disinfectants is approved by the Cabinet of Ministers of Ukraine <...> State registration of disinfectants and maintenance of the State Register of Disinfectants is carried out by the central body of executive power, which ensures the formation of state policy in the field of health care, based on the results of examination of registration materials for such means, carried out by an expert institution”.*

At the same time, the Association’s experts draw attention to the fact that Article 48 of Law No. 2573-IX does not take into account some provisions of the EU regulation, in particular, the entire complex of EU legal regulation, primarily Regulation of the European Parliament and Council No. 528/2012 of May 22, 2012 on supplying to the market and use of biocidal products (hereinafter - Regulation No. 528/2012).

In particular, Law No. 2573-IX completely ignores Article 2 of Regulation No. 528/2012, which provides for a whole series of exceptions from this regulation of other related pharmaceutical products, namely medicines and medical devices. In the event that a pharmaceutical product has undergone registration (compliance assessment) in accordance with the regulation on medicinal products or medical devices, it is not subject to the regulation of Regulation No. 528/2012 and its regulatory procedures.

Pursuant to Article 48 of Law No. 2573-IX of the Ministry of Health of Ukraine, a draft resolution of the Cabinet of Ministers of Ukraine “On approval of the Regulation on state registration of disinfectants” (hereinafter referred to as the Draft Regulation) was developed and made available for public discussion. Taking into account the above-mentioned inconsistency of Article 48 of Law No. 2573-IX with some provisions of the EU regulation, it is assumed that the developed Draft Regulation is also not fully congruous with the EU regulation on disinfectants.

Solution:

It is necessary to review the provisions of Article 48 of Law No. 2573-IX in order to bring the regulation of Ukraine in the field of disinfectants into compliance with the provisions of the EU legislation, and it is also necessary to postpone the development of subordinate legal acts, including the Draft Regulations, until the adoption of the specified changes.

Regarding abolishing the duplication of state quality control and licensing activities of importing medicinal products

In Ukraine, in accordance with EU regulations, in 2013 the importing of medicinal products^[23] became the subject of licensing. Each licensee must implement a quality management system, and his 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, regardless of this, since 2005, there has been a universal state quality control present for each series of medicinal products imported into Ukraine. In essence, as the experts of the Association note, it is similar to the powers and duties of authorized persons of licensees. We would like to emphasize that the introduction of licensing activities for the circulation of certain products is usually done to change the focus of state control from the stage of introducing products into circulation to the stage of selling products to end consumers. Thus, the purpose of state control, including sampling at this stage, is to identify interference in the circulation of unlicensed or unscrupulous entities. Unfortunately, in fact, this approach is almost never applied by the State Medical Service to the circulation of medicinal products.

23] <https://zakon.rada.gov.ua/laws/show/z0307-13#Text>



It should be noted that Article 117 of Law No. 2469-IX implements a risk-oriented approach to the implementation of state quality control of medicinal products, which corresponds to the EU approaches outlined in Chapter XI “Supervision and Sanctions” of Directive 2001/83/EU of the European Parliament and of the Council of November 6 of 2001 on the Community Code on Medicinal Products for Human Use (hereinafter referred to as Directive 2001/83/EC).

Such parallel existence of two systems presents not only a theoretical contradiction, but also leads to significant complications in the process of supplying medicines to Ukraine. Thus, according to the Association's experts, the state quality control procedure involves execution of a number of actions that are absent in the EU, as well as the submission of documents that are not typical for this stage of the circulation of medicinal products.

We emphasize that it is not possible to make “insignificant” changes to the relevant regulation, because its conceptual difference from approaches in the EU makes it impossible to solve such problematic issues.

Solution:

We propose to cancel mandatory state quality control of each series of medicinal products imported into Ukraine, if the release of the series is carried out on the territory of countries with strict regulatory bodies, replacing it with a risk-oriented approach, which places the responsibility for product quality on the licensee, thus, control will be concentrated on the stage of final sale of products to consumers.

Please be mindful of the fact that Article 114 of Directive 2001/83/EC clearly stipulates grounds for such control in the EU, which are much narrower than those defined in Ukraine.

Regarding creation of a new state control body

In accordance with Paragraph 3, Clause 6 of Chapter XII “Transitional Provisions” of Law No. 2469-IX, the Cabinet of Ministers of Ukraine is to establish a new state control body prior to this Law entering into force. In our opinion, the creation of this body will become a central component of the reform of the entire system of regulation and control of the circulation of medicinal products and the implementation of EU regulation in the pharmaceutical sphere. At the same time, this is a complex process that requires involvement of a large number of resources in order to be implemented.

Solution:

We propose to consider the possibility of Ukraine initiating (within the framework of further negotiations with the EU) revival^[24] or a start of a new project of EU technical assistance to Ukraine regarding the creation of a new state control body and updating the industry legislation that will regulate its activities. We are confident that this approach will significantly speed up the process of European integration of the industry, ensure the implementation of the best EU standards and practices in the field and improve the conditions of its operation and investment attractiveness.

[24] Since 2016 there has been a project of technical assistance at work “Consulting on regulatory changes in the pharmaceutical sector of Ukraine” from the European Bank of Reconstruction and Development with the participation of the Ministry of Health of Ukraine, DEC and representatives of the pharmaceutical industry, based on the results of which recommendations were prepared. The association is not aware of the current status of the project. Links 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



Regarding strengthening the fight against falsification and gray import of pharmaceutical products

The Law of Ukraine No. 4908-VI dated June 7, 2012 ratified the Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes Threatening Health Protection, so following its recommendations the responsibility for the introduction and sale of falsified medicinal products in Ukraine was increased.

At the same time, according to the experts of the Association, responsibility for the falsification of medical devices has not been properly introduced in Ukraine and effective mechanisms for combating “gray” import and circulation of medicinal products and medical devices have not been provided for.

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

Solution:

Develop and adopt changes to criminal, administrative and other legislation in order to implement effective mechanisms for preventing and countering the falsification of medicines and medical devices, as well as their circulation.

Regarding the promotion of development of the pharmaceutical industry in Ukraine, with a focus on encouraging investment in research and development, drawing in international clinical research (trials) to Ukraine

Solution:

Develop and adopt the Law of Ukraine “On Clinical Research” to harmonize the national legislation on clinical research (hereinafter - CR) of medicinal products, medical devices, etc. with EU legislation.

Contribute to the restoration of the CR 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 approval and conduct of CR in Ukraine.

It is necessary to update of the current legislation on clinical research (CR) - adopt amendments to the current Law of Ukraine “On Medicinal Products” No. 123/96-BP (Article 8) in accordance with the provisions of the adopted Law No. 2469-IX:

- to update the terminology regarding CR;
- to shorten the terms of approval of interventional CRs and to establish a general deadline for making a decision of the Ministry of Health, which allows interventional CRs, from the date of submission to the Ministry of Health by the applicant/sponsor of the relevant application and the specified package of documents attached to the application, and includes the period for conducting an examination of such documents - to 25 calendar days for international multi-center phase II-III clinical trials, the protocols of which have been agreed/approved in countries with strict regulatory authorities (SRAs) or under a centralized procedure by a competent authority of the European Union to be carried out on the territory of such countries or member states of the European Union; to 45 calendar days for interventional CRs; to 20 calendar days for low-intervention CRs;



Solution (continuation):

- to update the requirement for insurance in the CR, namely to word part 8 as follows: "The sponsor or a person authorized by him is obliged before the start of clinical studies, except for non-interventional studies, to conclude a contract of voluntary insurance of the sponsor's liability in the case of damage to the life and health of the subject of the research (a patient, a healthy volunteer)".
- to regulate the requirements for involving persons under the age of 18 to participate in the CR, in particular children of young age or minors, young children or minors deprived of parental care, adopted children or orphans, incompetent or persons with limited legal capacity, etc.;
- to legislatively regulate the possibilities of introducing the latest technologies for conducting CR in Ukraine (implementation of decentralized CR, use of telemedicine, conducting procedures and providing services within the framework of CR at the place of residence/staying of research subjects, remote monitoring and data verification, etc.)

It is important to adopt legislation on stimulating the development of the CR sphere - adopt amendments to the Tax Code of Ukraine: to exempt from VAT the importation into the customs territory of Ukraine and/or operations of supplying the investigational medicinal products and concomitant therapy medicinal products, medical devices and related materials imported for carrying out CR in Ukraine; to exempt from VAT services within the scope of CR (scientists, research doctors, service organizations) for a period of 10 years; regulate the taxation of researchers (without introducing additional benefits), etc.

It is necessary to introduce a 5-year moratorium on the cost of the examination by the SE "State Expert Center of the Ministry of Health of Ukraine" in order to make a decision to conduct a CR and approve significant amendments in the hryvnia in terms of price level that were applicable in February 2022.

It is important to legislatively regulate and introduce tax benefits for international and domestic applicants/sponsors that conduct CR in Ukraine - the proportionality of benefits in accordance with the level of investment in Ukraine, which corresponds directly to how attractive investment in research and development works in Ukraine is. It is deemed appropriate to introduce a tax calculator for investments in research and development works, in particular for international CRs.

It would be helpful to develop and implement a plan for the development of the national infrastructure for the conduct of CR, including through public-private partnership.

It is necessary to ensure permanent access of CR experts to advanced training in Ukraine.

It would be useful to evaluate the effectiveness of the introduced tools for stimulating international investments, in particular through the attraction of international CRs to Ukraine.

Regarding regulation of the procedure of providing patients with medicines out of compassion

On February 15, 2022, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Settlement of the Issue of Providing Medicines to Patients Out of Compassion" No. 2054-IX (hereinafter - Law No. 2054-IX), which entered into force on April 30, 2022. Law No. 2054-IX provides for creating in Ukraine the conditions for patients' access to innovative treatment and the implementation of programs for the provision of medicines to patients out of compassion, thanks to attuning legal relations in this area and consideration of the practices of European Union member states in the national legislation.



For the practical implementation and application of the provisions of Law No. 2054-IX, the Order of the Ministry of Health of Ukraine No. 1525 of August 24, 2022 approved the [Procedure for approval and implementation of the program of extended access of patients to unregistered medicinal products and the program of research subjects \(patients\) accessing the research medicinal product after the clinical trial is completed](#). Taking into account the fact that the approval and implementation of compassion programs in accordance with the adopted legislation will be implemented in Ukraine for the first time ever, it is considered necessary to analyze the effectiveness of the specified regulation in order to make the necessary adjustments to the NPA.

Solution:

It is important to conduct monitoring, identify problems and, if necessary, propose changes to be made in the relevant regulatory and legal acts.

Amendments to the TCU to regulate the issue of providing patients with medicines for compassionate use²

In order to implement the possibility for patients to receive innovative medicinal products, which are provided free of charge and for humanitarian reasons, it is important to reduce the cost of such programs for sponsors, in particular by making them exempt from VAT on import operations in the customs territory of Ukraine and/or supply operations in the customs territory of Ukraine of unregistered medicinal products for clinical trials and programs for the provision of medicinal products compassionate use. Such programs are widely active in the world, in particular in the United States of America (hereinafter - the USA), European countries, etc.

On February 15, 2022, the Verkhovna Rada of Ukraine approved Law No. 2054-IX, which entered into force on April 30, 2022. Law No. 2054-IX provides for creating conditions in Ukraine for patients accessing the innovative treatment and implementing programs to provide patients with medicines for compassionate use. It will become possible to actively develop such programs in Ukraine with the adoption of the Draft Law "On Amending the Tax Code of Ukraine on the Settlement of the Issue of Providing Medicines to Patients Out of Compassion" No. 5737 of July 6, 2021 (hereinafter - Draft Law No. 5737), because it regulates the issue of taxation of relevant operations by economic entities that will participate in the programs that provide patients with medicines for compassionate use.

The Association's experts are convinced that the adoption of Draft Law No. 5737 is an integral part of the compassion programs functioning in Ukraine. Its adoption would demonstrate the state's understanding of the importance of compassionate drug provision programs and would show full support for such programs from the state's side - reducing the tax burden on the import of drugs that are provided to patients free of charge would be a powerful spur for initiating and developing such programs in Ukraine. These programs will increase the availability of innovative medicines for seriously ill patients, as well as reduce the cost of treatment of seriously ill patients for the state. Draft Law No. 5737, which was developed with the participation of the Association's experts, was adopted on August 15, 2022 in the first reading as a basis with a shortened preparation period.

The Association's experts emphasize that even in such difficult times for our country, the legislative process in the field of clinical research should not stop, but on the contrary - solve such urgent issues for a part of the Ukrainian population and ensure the expansion of tools for patients accessing innovative treatment, given that programs for providing patients compassionate medicines give free access to such treatment.

Solution:

It is necessary to adopt Draft Law No. 5737, taking into account the proposals of the Association's experts, as it will allow pharmaceutical manufacturers to implement such programs in Ukraine as well, to import and provide free drugs to seriously ill patients, which will significantly improve the situation with the treatment of such patients with innovative drugs, and ease the financial burden on the health care system regarding providing seriously ill patients with treatment.



Article 321² of the Criminal Code of Ukraine "Violation of the established order of preclinical study, clinical trials and state registration of medicinal products" actually establishes the same criminal liability for offenses with different degrees of public danger

According to business representatives, this approach does not correspond to the principle of justice as a component of the constitutional principle of the rule of law. In addition, according to the Association's experts, the criminal liability introduced by Article 321² of the Criminal Code, including for procedural violations, 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 worsens Ukraine's investment attractiveness on the international clinical research market.

Solution:

It is necessary to adopt Draft Law, registered in the VRU, "On Amendments to the Criminal Code of Ukraine and the Code of Ukraine on Administrative Offenses Regarding Improvement of Liability for Violation of the Established Procedure of Preclinical Study, Clinical Trials and State Registration/Re-registration of Medicinal Products" dated July 21, 2021, developed with the participation of Association experts.

Regarding regulation of insurance requirements in clinical trials

There is a lack of clearly regulated provisions regarding insurance in clinical trials that affects the field of clinical research and reduces the attractiveness of Ukraine for sponsors of clinical research.

Solution:

Amendments to the current Law of Ukraine "On Medicinal Products" No. 123/96-BP of April 4, 1996 in accordance with the provisions of the adopted Law of Ukraine "On Insurance" No. 1909-IX of November 18, 2021, namely wording Section 8 of Article 8 as follows: "The sponsor or a person authorized by him is obliged, before the start of clinical studies, except for non-interventional studies, to conclude a contract of voluntary insurance of the sponsor's liability in the case of damage to the life and health of the subject of the study (patient, healthy volunteer)".

Regarding the implementation of digitalization in the field of clinical trials

The first positive changes regarding digitalization in the field of clinical trials have already taken place, in particular, changes in accordance with the Order of the Ministry of Health of Ukraine "On Approval of Changes to the Procedure for Conducting Clinical Trials of Medicinal Products and Examination of Clinical Trial Materials" No. 538 of March 28, 2022.



The further implementation of digitalization can significantly improve the conditions for conducting CR and improve Ukraine's attractiveness for attracting international clinical research, taking into account the critical impact of martial law and active military operations on the territory of Ukraine. As business representatives report, the elements of digitalization in the field of clinical trials are insufficient or not implemented at all, which would cover the relevant actions in the process of conducting CR, and this is something that is directly related to the digitalization of the health care sector, namely the implementation of eHealth.

Solution:

It is judicious to work out proposals regarding elements of digitalization for conducting CR to be included in the **development program for eHealth** in the healthcare system of Ukraine, namely to introduce a patient's electronic office for the purpose of conducting CR, in particular, the electronic form of primary medical documentation with the data from examinations and the results of the patient's treatments, including notes about side effects and other messages on safety of medicinal products, as well as to provide access to primary medical documentation in electronic information systems of the health care system of Ukraine, related to the conduct of CR, to representatives of CR's sponsors, regulatory authorities of other countries to enable conducting audits and inspections of CR, to store CR materials/documents in archives in electronic information systems for the time determined by international requirements and the legislation of Ukraine, as well as to provide for possibilities for telemedicine, etc., which will correspond to the general processes of digitization both in the world and in the field of health care.

WORK FORCE





Today, the basis of labor legislation is the Code of Labor Laws of Ukraine, adopted way back in 1971. This document was based on an administrative command system, which in practice meant rather limited opportunities for changing the employee's workplace. In this regard, from the very beginning, such aspects as: dismissal, employee's business trip, system of vacations, etc. were not regulated in a balanced manner.

Solution:

It is crucial to make amendments to the labor legislation, by revising and updating it. The key issues which must be improved in labor legislation are: simplifying the process of obtaining employment permits, concluding employment contracts and increasing their role in the process of regulating labor relations, deregulating the trade unions powers, improving the system of supervisory and control bodies watching over compliance with labor legislation, creating conditions for the forming an open, competitive labor market in Ukraine by de-shadowing labor relations and, in particular, prioritizing the development of the labor market of regions affected by the war.

Regarding bringing legislation in line with international standards and EU requirements

After February 24, 2022, a number of acts have already been adopted with the aim of optimizing and simplifying the regulation of labor relations, in particular during the period of martial law. At the same time, considering the fact that Ukraine has acquired the status of a candidate for EU membership, there is an urgent need to bring the legislation in line with international standards and direct EU requirements. Ukraine needs a more dynamic reform of the legislation: (1) on labor, (2) on employment, and (3) on labor protection and safety, which will meet the requirements of the time and the task of restoring the economy in the post-war period, and will also be understandable for investors. At the same time, the main course on the liberalization of labor legislation should be preserved.

Solution:

Taking into account the needs of the time and the task of post-war reconstruction, further reform 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 labor contracts, increasing the role of such contracts in the process of regulating labor relations (such norms should apply not only during martial law, but also in the post-war period, and at the same time ensure a balance between rights and interests of employees and employers);
- expanding the scope of fixed-term employment contracts, as well as employment contracts with peculiar forms of employment: remote, home, part-time, seasonal, etc. (including for persons with disabilities);
- ensuring equal opportunities for women and men in labor relations, in the work process and during employment;
- reducing the influence of trade unions on the regulation of labor relations in order to prevent trade unions from abusing their rights and powers;
- improving the norms for obtaining permits for the employment of foreigners, creating a more simplified mechanism for issuing permits to foreigners who are sent to Ukraine to perform functions important for the post-war recovery of Ukraine's economy;
- placing a greater focus on the performance of the service function rather than the control function by the State Service of Ukraine on labor issues; implementation of a risk-oriented approach to issues of 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 the SES on the part of clients of all categories (especially unprotected/vulnerable categories of the population) and improving the efficiency of the service by SES implementing active employment programs for certain categories of citizens with the aim of increasing their competitiveness in the labor market;
- simplifying the procedure for acquiring Ukrainian citizenship for ethnic Ukrainians born outside the state and the status of a tax resident of Ukraine with the acquiring the right to a pension in Ukraine for foreigners and stateless persons who have been employed by Ukrainian companies abroad with the prospect of obtaining a work permit in Ukraine.

STATE POLICY

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





Taking into account the current challenges of martial law and the post-war development of the state, it is important to create a model of full integration of war veterans and injured citizens into social processes and communities at the local, regional and state level. According to the experts of the Association, the main emphasis of this model should be placed on the implementation of policies that would form a proactive position among veterans and affected citizens.

The implementation of such a model should take place in parallel with the maintenance and development of the existing social security system, which should also be aimed at:

- providing attractive conditions of social protection, which will contribute to the return and retention of able-bodied citizens and their families in Ukraine, them being an important resource for the post-war reconstruction of the state, by means of modernization and targeted (determined) rather than mass distribution of social benefits and guarantees;
- simplifying the procedure of passing the military medical commission by veterans and the preparation of relevant medical reports and recommendations for medical and labor rehabilitation. This will allow, in particular, to intensify the participation of veterans in the Programs for Recovery and Restoration of Working Capacity, including the chance to use the currently available possibilities for cooperation with international partners;
- promoting the restoration of a fully functioning labor market, taking into account the existing migration and European integration intentions of Ukraine;
- overcoming the demographic crisis by stimulating the birth rate in Ukrainian families and improving the conditions for acquiring education;
- implementation of targeted social payments according to modern European standards at the expense of reparations received from the aggressor country and financial assistance from foreign partners.

Solution:

It is necessary to develop and adopt the Procedure for determining and compensating employees and employers the money, related to labor relations, lost as a result of armed aggression against Ukraine, provided for in Section 2 of Article 15 of the Law of Ukraine “On the Organization of Labor Relations in Martial Law” No. 2136-IX dated March 15 in 2022.

Initiate programs on legal assistance to facilitate filing lawsuits by citizens of Ukraine against the aggressor country to collect compensation payments for the benefit of affected citizens and communities.

Initiate changes to labor legislation in order to stimulate employers to employ veterans in Ukraine, as well as graduates of educational institutions (both domestic and foreign) in order to create an inclusive environment on the national labor market and retain young specialists in Ukraine and attract them from abroad.

Make appropriate changes to subordinate legal acts with the aim of simplifying the process of granting permits to employ foreigners and stateless persons, and to extend the social protection system to the specified categories of persons on the territory of Ukraine, which will contribute to the recruitment of labor resources.

It is important to consider the following:

- to introduce a system of preferences for secondary school graduates who will continue their studies in vocational and technical education institutions to acquire working professions, for example, long-term preferential mortgage loan;
- differentiation of taxation of citizens' incomes and the size of pension savings for regions affected by military operations in relation to those regions where military operations were not conducted;
- to prioritize the development of the social infrastructure of the de-occupied territories, to introduce a system of preferential mortgage loans, which will extend both to the construction of new housing and to the secondary real estate market in cities affected by military actions;
- develop and publicize a long-term program of post-war reconstruction of the affected regions in order to create for investors, including foreign ones, an up-to-date understanding of business prospects, the labor market and the need for labor in specific regions.



Solution (continuation):

It is important to develop effective mechanisms for socio-economic rehabilitation and integration of veterans, for assisting families of persons killed as a result of hostilities, by way of the following measures:

- create the Unified Register of Veterans and develop the “Veteran’s Electronic Cabinet” (implementation of the “eVeteran” project) to remotely provide the entire range of services from the processing of documents confirming the status of veterans and their family members, as well as satisfies their rights to information about support programs (grants for the creation business, projects for training veterans and their labor rehabilitation, veteran communities, etc.);
- simplify legal procedures for the heirs of persons killed as a result of hostilities, in particular, optimize legal mechanisms created in the event of the death of a serviceman (expanding the practice of establishing the fact of death of missing persons in courts as part of separate proceedings throughout the territory of Ukraine during martial law; including in the list recipients of one-time cash benefits for children conceived during the life of a deceased serviceman; abolish the right to one-time monetary assistance in the event of the death of a serviceman of those persons who, during his lifetime evaded the obligation to support the deceased or committed criminal offenses against the deceased; to renew the effect of Article 161 “Persons entitled to the appointment and receipt of one-time cash assistance” of the Law of Ukraine “On Social and Legal Protection of Servicemen and Members of Their Families” No. 2011-XII of December 20, 1991 in the version valid until August 25, 2022);
- increase the range of services for veterans in the Administrative Services Centers at their place of residence, as well as introduce a veteran’s assistant institute or create service offices for veterans’ affairs;
- introduce a National Program “Housing for Veterans” or include veterans in preferential mortgage lending programs, the conditions of which will be differentiated by region, with the aim of developing war-affected cities, communities and territories and expanding local and regional labor markets by attracting there demobilized veterans;
- implement a National Program for the Development of Small Farming Businesses among veterans who have used the right to priority allocation of land plots for constructing individual housing, horticulture and vegetable gardening, which is provided for in Clause 14 of Part 1 of Article 12 of the Law of Ukraine “On the Status of War Veterans, Guarantees of Their Social Protection” No. 3551- XII of October 22, 1993 and settled in rural areas with the aim of creating their own farm (preferential lending rates for all veteran private farms, including those located in the de-occupied territories; state and international programs for civilian demining of agricultural lands in the de-occupied territories and in the zone of former hostilities; grants for creating green generation facilities on a local scale in de-occupied territories, etc.);
- create specialized programs and involve subjects of the insurance medicine system in the process of physical rehabilitation of veterans and provide for the health care system of military personnel in peacetime;
- create a system of psycho-emotional rehabilitation and socio-psychological support of veterans and employees by way of creating a National Program for Ensuring Psycho-Emotional Safety at 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 interested parties;
- use the project management approaches in implementing initiatives aimed at labor and economic rehabilitation of veterans in the post-war period (replace open-ended programs that provide care for veterans, with projects with defined deadlines, clear key performance indicators that will contribute to the social realization of veterans in the post-war period);
- create a labor market for military specialties in Ukraine to complete a professional army of a modern type with competitive terms of payment of service, social guarantees and terms of employment, with the aim of maintaining the combat capability of the Armed Forces of Ukraine and other power structures of Ukraine in peacetime.

PENSION REFORM





Regarding implementation of the accumulative system of mandatory state pension insurance and development of the voluntary non-state pension provision system

Business representatives are convinced that due to demographic trends in Ukraine the joint system of mandatory state pension insurance is unable to single-handedly provide an acceptable level of pensions to the elderly, and this situation will only worsen in the future.

Instead, in most countries of the world, joint pension systems are supplemented by accumulative ones. Besides additional pensions for people, this approach provides the economy with long-term investment resources. Of the 77 countries watched by the Organization for Economic Cooperation and Development, which have accumulative pension systems, Ukraine ranks last in terms of assets.

At the same time, voluntary savings have been working in Ukraine for more than 18 years. As experts of the Association note, about 900 thousand people have more than 3.5 billion hryvnias of savings in non-state pension funds^[25] (hereinafter - NPF). The large-scale war only emphasized how important the functioning of the NPF is for both people and the state. As Association member companies report, pension savings are invested by the NPF during wartime mainly in military bonds of Ukraine, which is an additional contribution to supporting the state's economy.

Solution:

According to the Association's member companies, the plan of measures for the post-war recovery and development of Ukraine should include the implementation of the second level of the pension system - mandatory pension savings due to the redistribution of unified social security payment with the preservation of the existing rate of 22% and the development of the third level - voluntary pension savings, increasing the coverage of people by them due to the implementation of state programs at the third level:

- accumulative pensions for employees of socially important professions (doctors, teachers, social workers, military personnel, police officers - gradually from 2024);
- accumulative pensions for employees of industries with harmful and difficult working conditions (from 2024);
- accumulative pensions for employees of state enterprises, banks, enterprises that are being privatized.

[25] 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

POLICY

OF EQUAL OPPORTUNITIES AND DIVERSITY





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 June 27, 2014, Ukraine must harmonize its legislation with European requirements in the labor sphere, in particular regarding anti-discrimination. We are talking about Council Directive 2000/78/EC of November 27, 2000 on establishing general rules of equal treatment in the field of employment and professional activity (hereinafter - Directive 2000/78/EC). It is a framework document that prohibits discrimination in employment and occupation against anyone based on the following four grounds: religion or belief, age, disability and sexual orientation. Some of the separate 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 on the labor market, according to business, remain persons with disabilities. As of December 31, 2020, 417,897 people out of 2.7 million people with disabilities were officially employed in Ukraine. At the same time, at the beginning of 2017, this indicator was equal to 666.8 thousand working people.

In addition, please take into consideration that on April 14, 2021, the Cabinet of Ministers of Ukraine Decree No. 366-r approved the National Strategy for Creating a Barrier-Free Space in Ukraine for the Period Until 2030 (hereinafter - 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 on the labor market, which include, in particular, persons with disabilities.

It is important to Finalise the Draft Law "On Amendments to Certain Laws of Ukraine on Ensuring the Rights of Persons with Disabilities to Work" No. 5344-d of November 18, 2022 (hereinafter - Draft Law No. 5344-d) as it is being prepared for the second reading.

At the same time, the main challenges on the way to implementation of the inclusion policy are the insufficient level of practical knowledge of business regarding the selection of candidates with disabilities and their support in the workplace; the low level of qualifications and the lack of motivation to work in candidates with disabilities; high interest of specialized institutions in collecting sanctions for uncreated jobs; extending the standard for employment of persons with disabilities to workplaces with difficult, harmful and dangerous working conditions; the employer's obligation to independently search for persons with disabilities to employ and bear financial responsibility in the absence of those who wish to be employed by him.

Solution:

Finalise Draft Law No. 5344-d in the field of stimulating the employment of persons with disabilities, as well as make changes to subordinate legal acts taking into account the following aspects:

- It is possible to include persons with disabilities who undergo internships by profession (specialty) as fulfillment of the workplace standard by amending the CMU resolution "On Approval of the Procedure for Concluding an Internship Contract for Students of Higher Educational Institutions and Students of Vocational (vocational-technical) Educational Institutions at Enterprises, in Institutions and Organizations and the Standard Form of the Agreement on the Internship of Students of Higher Educational Institutions and Pupils of Vocational (Vocational and Technical) Educational Institutions at Enterprises, Institutions and Organizations" No. 20 dated January 16, 2013 in terms of providing the opportunity for persons with disabilities to undergo an internship at enterprises.
- The possibility to count employees with complex nosologies as 1 working person with a disability for 2 full-time employees to fulfill the standard of workplaces.
- The possibility to provide a person with a disability, employed on the referral of the Employment Center of the State Employment Service, with social support services at the workplace at the expense of the Fund for the Social Protection of Persons with Disabilities.
- The possibility to employ persons with disabilities in the civil service.



Solution (continuation):

- Create a mechanism for employers to be able to fulfill the standards of workplaces intended for employment of persons with disabilities by ordering services or goods from enterprises whose owners and employees are organizations of persons with disabilities, as well as create a special register of enterprises that provide social services, employ persons with disabilities or ensure their employment.
- When calculating the standard of workplaces for employing people with disabilities, it is advisable to take into account full-time employees of the accounted staff whose work is not associated with dangerous or harmful working conditions, taking as a basis the lists of industries, jobs, professions, positions and indicators in jobs with harmful, especially harmful, difficult and particularly difficult working conditions, in which full-time employment gives the right to an old-age pension on preferential terms, approved by the resolution of the CMU "On approval of lists of industries, works, professions, positions and indicators, in which employment gives the right to an old-age pension on preferential terms" No. 461 dated June 24, 2016.
- It is judicious to foresee the possibility of financing from the funds of the Fund for Social Protection of Persons with Disabilities not only the creation of new jobs, but also the technical (including transportation) and organizational equipment of already existing jobs, including for enterprises, institutions and organizations, individuals entrepreneurs, as well as for individual entrepreneurs with disabilities.
- Introduce an electronic registration form for employers in the territorial branches of the Fund for Social Protection of Persons with Disabilities, as well as the possibility for employers to submit reports on the employment of persons with disabilities in electronic form.

FINANCIAL SERVICES





Regarding the acceleration of implementation of the Strategy for Development of the Financial Sector of Ukraine until 2025 and adopting a regulatory framework to implement the provisions of the Law of Ukraine "On Payment Services" No. 1591-IX of June 30, 2021 (hereinafter - Law No. 1591-IX)

In accordance with the current legislation of Ukraine, in the financial services market, banks have the exclusive right to provide such services as keeping accounts, acquiring (Internet and trade), issuing debit and credit cards. Over the past 20 years, there has been a significant transformation of the global market of financial services, new requirements from the business side have led to the emergence of the concept of "fintech" and the creation of fintech companies all over the world.

In 2020, the National Bank of Ukraine, the National Securities and Stock Market Commission, the National Commission for State Regulation of Financial Services Markets, the Ministry of Finance of Ukraine and the Individual Deposit Guarantee Fund approved the Strategy for Development of the Financial Sector of Ukraine by 2025^[26] (hereinafter referred to as the Financial Sector Development Strategy). On August 1, 2022, Law No. 1591-IX entered into force, which provides for the introduction of open banking standards in Ukraine from August 1, 2025, namely: clear regulation and requirements for the rules for storing personal data, moving away from the model of monopolizing customer data by banks, as well as enabling the client to independently determine and allow other payment service providers to use their data. As the experts of the Association note, Law No. 1591-IX eliminates the problem of arduous entering to the market of financial services, but the norms of the current legislation do not clearly and unambiguously regulate the requirements and criteria for market access. Conditions for ensuring their protection and protection of clients on the regulator's side also play an important role for foreign companies.

According to the estimates of the Association's experts, the implementation of the mechanisms specified in Law No. 1591-IX may take about 5 years. At the same time, as business representatives assert, the financial market is developing dynamically and the proposed legislative changes may no longer be relevant in 5 years. Indeed, there is a need for more rapid change in the regulatory environment. According to business expectations, the regulator's response to changes in the market situation should take place within 3 years, which in turn will contribute to Ukraine, which has the status of a candidate country and thus bears certain obligations, fulfilling the conditions for EU membership sooner.

Solution:

It is important to implement the goals and provisions of Law No. 1591-IX approved by the Financial Sector Development Strategy by the end of 2023, so that in the following years they can be improved and supplemented, since, as business representatives note, the existing regulation does not fully cover all market requirements. It is also necessary to adopt the legal acts and technical specifications provided for by the Open Banking Concept, considering the experience of EU-member countries and countries that have EU candidate status, and to implement the process of monitoring the implementation of both the provisions of the Financial Sector Development Strategy and the Open Banking Concept.

[26] 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



Regarding the development of the investment market

Today, the issue of financial companies and the resources that can be used to develop them has been worked through insufficiently. In the world, there are various tools for attracting investments in business and they are successfully used, thus providing an opportunity for one party to choose a project to invest in, and for the other party to receive these funds and use them for development. However, the level of trust of potential investors in the development of financial companies in Ukraine is still low due to the imperfection of the judicial system.

Solution:

It is crucial to facilitate development of the investment market for the financial sector of the economy through creation of new investment instruments, such as investment funds, crowdfunding platforms, as well as platforms through which companies will be able to attract financing to realise projects of implementing innovative technological solutions, while at the same time strengthening the protection of private property and the rights of investors.

Regarding providing access to the securities market

Another area of development of the Ukrainian financial services market that needs attention is expansion of opportunities for individuals and legal entities to invest in securities.

Solution:

It is necessary to create platforms that will allow all interested parties to invest in securities on the domestic and international markets.

Lending platforms

Due to the lending market in Ukraine being over-regulated and presence of strict requirements for the resources at the expense of which companies can carry out lending operations, the segment of alternative lending, except for banking, is hardly developing. In European countries, financial companies can provide loans to legal entities at the expense of the raised funds (not deposits), but in Ukraine such a mechanism is not implemented in practice and financial institutions do not have the right to provide financial loans at the expense of the raised funds at their own risk.

If we look at the experience of European and American financial companies, the process of evaluating a business for the purpose of further issuing a loan takes several times less time compared to banks.

Solution:

It is crucial to enable alternative lending platforms that will boost business growth, because an additional source of lending will appear in the market. To ensure the implementation of this proposal, a systematic update of the regulatory framework, which will provide for the protection of investors' rights, is necessary.



Regarding the infrastructure projects

We deem there should be a mandatory step done to stimulate the implementation of infrastructure projects, in particular, remote identification, KYC/KYB verification, monitoring and screening of outsourced transactions. This type of service is not available on the Ukrainian market due to the fact that remote identification cannot be used in the way it is possible in Europe - through mobile applications such as BankID and Diya. The Association's member companies assert that by creating comprehensive conditions, when access to databases will be carried out in accordance with clear requirements and the requirements for data storage will be clearly defined, this will contribute to market participants treating data not as their property, but as the property of the client - a natural person who himself determines who and when can use the data. Such measures will contribute to the emergence of new identification technologies.

Solution:

It is important to make appropriate changes to the Regulation on banks of Ukraine determining the amount of credit risk for active banking operations, approved by the resolution of the Board of the National Bank of Ukraine No. 351 dated June 30, 2016.

Regarding creation of a market and ensuring a possibility of attracting investments for financial institutions, at the expense of which companies will be able to develop

Today, financial companies can attract investments only from professional organizations and foundations, and accepting funds from private investors is prohibited by law. The same applies to the formation of the company's authorized capital, which is prohibited to form by borrowed funds, only by the founders' own funds. This greatly limits the number of sources of financing for creating and developing companies.

The current legislation of Ukraine does not allow attracting funds from investors for the purpose of forming the company's authorized capital. In particular, Part 3 of Article 13 of the Law of Ukraine "On Economic Associations" No. 1576-XII of September 19, 1991 (hereinafter - Law No. 1576-XII) prohibits the use of budget funds, funds received on credit for the formation of the statutory (compound) capital of an economic association and as collateral, promissory notes, property of state (communal) enterprises, which according to the law (decision of the local self-government body) is not subject to privatization, and property under the operational management of budgetary institutions, unless otherwise provided by law. Paragraph 2 of Part 2 of Article 5 of the Law of Ukraine "On Financial Services and State Regulation of Financial Services Markets" No. 2664-III of July 12, 2001 (hereinafter - Law No. 2664-III) specifies that financial institutions are prohibited from attracting funds from individuals (except participants such an institution) with an obligation to return them, including by obtaining a loan, if this is not expressly provided for by the law on the activity of the relevant financial institution. In addition, according to Part 3 of Article 5 of Law No. 2664-III, only a credit institution has the right to provide financial loans at the expense of the funds raised, based on the corresponding license. Part 4 of Article 6 of Law No. 1591-IX stipulates that payment service providers (except banks) are prohibited from executing activities to engage financial assets with an obligation to return them, except for cases specified by legislative acts of Ukraine and regulatory acts of the National Bank of Ukraine .

Thus, it is not provided for and expressly prohibited by the current legislation of Ukraine to attract financing from investors by increasing the authorized capital of a financial company in order to realise projects on implementing innovative technological solutions.



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 realising projects on implementation of innovative technological solutions.

At the same time, the use of such a tool is possible only in case the appropriate changes are made to the current legislation of Ukraine, in particular, to Law No. 1576-XII and Law No. 2664-III, namely:

- in Part 3 of Article 13 of Law No. 1576-XII, delete the words: "<...> funds received on credit and as collateral, promissory notes <...>".
- in Law No. 2664-III:

-to expressly provide by law the possibility to attract funds of individuals in accordance with Part 2 of Article 5 of Law No. 2664-III;

-part 3 of Article 5 of Law No. 2664-III - to be excluded.

Regarding the development of cross-border payments

In Ukraine, a large number of small entrepreneurs sell abroad. Also, Ukraine is a country with a high level of emigration of workers to European countries. That is why, according to business representatives, the cross-border payments for foreign and local companies should be liberalized in our country, and relations with European banks should be established with clear regulation of procedures to prevent money laundering, to conduct incoming and outgoing payments.

Today there is distrust for the banking sector due to instability of the financial market, high level of monopolization and a lack of additional control tools and ways of using additional solutions to control transactions.

Solution:

It is crucial to provide for transparent regulation, uniform norms and rules to be able to demonstrate that the financial market of Ukraine is stable, open and equal in its requirements to all players. The unity of rules and requirements will lead to the same rules for verification and control of transactions and, accordingly, will reduce the risk of fraudulent payments and cases that are equated to violation of the rules for preventing money laundering.

Regarding simplifying excessive regulation of the non-banking financial sector

According to business representatives, the NBU excessively over-regulates the sphere of non-banking financial sector regulation, which causes a slowdown in its development. It is deemed quite ambiguous the judiciousness of such excessive regulation, especially in the conditions of martial law and considering the practice of regulating such services in the EU. For example, the microcredit or financial leasing sector in many EU countries is much less regulated than in Ukraine.

Also, as the experts of the Association note, the Law No. 1591-IX sets higher requirements for banks and non-banking financial institutions, in particular regarding the submission of more reports than provided for by the current regulation in the EU.



Solution:

It is important to conduct a comprehensive reassessment of the necessary level of regulation of the non-banking financial sector by the NBU, taking into account the practice of EU member states and making appropriate changes to the legislation.

Regarding resuming audit and assessment of objects of large privatization

Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Regarding Facilitation of Enterprise Relocation Processes in Conditions of Martial Law and Economic Recovery of the State” No. 2468-IX of July 28, 2022 (hereinafter - Law No. 2468-IX) made changes, in particular, to Paragraph 5, Clause 1, Part 2, Article 14 of the Law of Ukraine “On the Privatization of State and Communal Property” No. 2269-VIII dated January 18, 2018 (hereinafter - Law No. 2269-VIII), which canceled the requirement to confirm the financial statements of a potential buyer - a legal entity of large privatization objects.

In addition, Law No. 2468-IX Chapter V “Final and Transitional Provisions” of Law No. 2269-VIII was supplemented by Clause 74, which, in particular, stipulates that during the period of martial law, audit, environmental audit, inventory, assessment of the object privatization (of its components) is not carried out.

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

Cancelling the requirement for audit and assessment of the privatization object (its components) does not fully correlate with the buyer's right to information about the privatization object and may lead to potential investors refusing to participate in the privatization or a sale of such objects at a significantly reduced price to less reliable buyers.

Solution:

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

Regarding the need to cancel the reduction of criteria for auditors

The Law of Ukraine “On Amendments to the Law of Ukraine “On the Audit of Financial Statements and Auditing Activities” Regarding the Provision of Auditing Activities for the Period of Martial Law and Postwar Economic Recovery” No. 2285-IX of May 31, 2022 suspended Paragraph 5 of Part 1 of Article 23 of the Law of Ukraine “On the Audit of Financial Statements and Audit Activity” No. 2258-VIII of December 21, 2017 (hereinafter - Law No. 2258-VIII), in particular, in the part about involving at least two persons in the execution of tasks, who must confirm their qualifications in accordance with Article 19 of the 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 December 31, 2024 year



Taking into account the need to ensure a sufficient level of qualification and experience of auditors and personnel involved in providing services in accordance with international auditing standards, as well as in order to fulfill the requirements of the Association Agreement, which, in particular, provides for the implementation at the national level of international standards in the field of accounting and auditing, we believe that the suspension of paragraph 5 of part 1 of Article 23 of Law No. 2258-VIII has a negative impact on the staffing of auditing activities and the quality of auditing services.

The experts of the Association note that the requirements for the qualifications and experience of auditors are especially important during the period of martial law and post-war reconstruction of the country, since during this period the need to conduct audits in accordance with international standards will increase significantly, and, according to business, a quality audit cannot be conducted by auditors who do not have adequate qualifications and experience and do not understand international financial reporting standards at a sufficient level.

Solution:

To restore the effect of Paragraph 5 of Part 1 of Article 23 of Law No. 2258-VIII in the previous version.

Regarding updating the deadlines for providing financial statements together with the auditor's opinion

As the experts of the Association note, the Law of Ukraine “On Protection of Interests of Subjects Submitting Reports and Other Documents During the Period of Martial Law or State of War” No. 2115-IX of March 3, 2022 (hereinafter Law No. 2115-IX) in its current version does not fully comply with the principle of systemic legislation, and also contains somewhat discriminatory conditions regarding its non-application to certain business entities (banks, financial institutions, persons operating in financial services markets, state regulation and supervision of whose activities is carried out by the NBU, in particular in part of the need to submit other than financial statements and audit reports based on the results of the mandatory audit of annual financial statements), and application to others.

Also, Subclause 4¹ of Clause 1 of Law No. 2115-IX postponed the submission and publication, in particular, of annual financial statements together with the corresponding audit report for a period of up to three months after the termination or cancellation of martial law or the state of war. As a result, businesses have concerns that some business entities may have a false impression that it is possible to not fulfill the obligations regarding the preparation and audit of financial statements during the period of martial law.

Solution:

According to business representatives, it is judicious to discuss the possibility of making amendments to this Law No. 2115-IX in order to resolve existing problematic points.

Regarding the compilation of a report on management of small enterprises in the mining industry

According to 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 July 16, 1999 (hereinafter - Law No. 996-XIV) “<...> *business entities that carry out activities in the extractive industries, are obliged to publish on its web page or its website (in full), no later than by April 30 of the year following the reporting period, annual financial statements and annual consolidated financial statements together with the relevant audit reports, management report, consolidated management report, report on payments in favor of the state, consolidated statement of payments in favor of the state.*”



However, according to Part 7 of Article 11 of Law No. 996-XIV, “micro-enterprises and small enterprises are exempted from submitting a management report.” In this regard, there are no recommendations on the preparation of a report on the management of small enterprises and micro-enterprises in the Methodological recommendations for the preparation of a management report, approved by order of the Ministry of Finance No. 982 of December 7, 2018.

Thus, the experts of the Association come to the conclusion that micro-enterprises and small enterprises operating in 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 draw it up.

Solution:

It is necessary that the Ministry of Finance develop and adopt methodological recommendations on preparing a management report for micro-enterprises and small enterprises, which are economic entities and which carry out activities in the extractive industries, as well as lay down the provision regarding such economic entities having or not having the right to not reflect non-financial information in the management report.

Regarding recognition of foreign electronic trust services

In July 2022, the NBU settled the issue of recognising the qualified electronic trust services provided in the EU, in the banking system of Ukraine and during the transfer of funds.

Taking into account the large number of foreign economic contracts, it is extremely important for Ukrainian business to extend the recognition of the qualified electronic trust services provided in the EU and other developed countries of the world (USA, Canada, Great Britain, Australia, etc.), to civil (contractual) relations as well.

Solution:

It is important to recognize at the level of Ukrainian legislation the qualified electronic trust services (electronic signatures) provided in the EU and the USA, Canada, Great Britain, and Australia. And for the purpose of general recognition of foreign qualified electronic trust services in Ukraine when conducting business activities, it is necessary to make appropriate changes to the Economic Code of Ukraine, Law of Ukraine “On Electronic Trust Services” No. 2155-VIII of October 5, 2017 (hereinafter - Law No. 2155-VIII), or to adopt a separate normative legal act, which will determine that when conducting economic activities in Ukraine, recognized and accepted are:

1) qualified electronic signatures and/or qualified electronic seals, respectively by qualified electronic signatures and/or qualified electronic seals in accordance with Law No. 2155-VIII, if they are created in compliance with the requirements of Regulation of the European Parliament and Council (EU) No. 910/2014 of July 23, 2014 on electronic identification and trust services for electronic transactions in the internal market and on the repeal of Directive 1999/93/EC (hereinafter - Regulation 910/2014), which is confirmed within the scope of the provision of a qualified service of verification of qualified electronic signatures and/or qualified electronic seals by a qualified provider of electronic trust services, information about which and its qualified electronic trust services are included in the Trust List of the EU member state and published by the European Commission on the official EU website;

2) means of a qualified electronic signature or seal, which are used in accordance with the requirements of legal acts regulating legal relations in the field of electronic trust services in foreign countries (hereinafter - foreign means of a qualified electronic signature or seal), by means of a qualified electronic signature or seal in accordance with the Law No. 2155-VIII, if foreign means of a qualified electronic signature or seal meet the requirements of Regulation 910/2014, which is confirmed by a certification document issued by a body accredited by the National Accreditation Body, which is part of the European Accreditation Cooperation.



Regarding the confirmation of the fact of providing services without signing the act

The current legislation of Ukraine does not provide for typical primary documents for documenting the operations of providing (receiving) services. As a rule, such a document is an Act of services provided. At the same time, as reported by the Association's member companies, in international practice, the signing of the Act of services provided by the parties to the contract is not considered mandatory to confirm the fact of providing services. In particular, in accordance with Part 2 of Article 6 of the Law of Ukraine "On Foreign Economic Activity" No. 959-XII of April 16, 1991 (hereinafter - Law No. 959-XII) "*<...> In the case of export of services (except for transport), a foreign economic agreement (contract) can be concluded by accepting a public proposal for an agreement (offer) or by exchanging electronic messages, or in another way, in particular by issuing an invoice (invoice), including in electronic form, for services provided <...>*". Having analysed this norm, the experts of the Association come to the conclusion that issuing a bill (invoice) after the provision of services is in fact the confirmation of the fact of concluding a foreign economic contract, and, accordingly, payment of such a bill (invoice) after the full provision of services can be considered a confirmation of the performance of the contract (rendering of services).

In addition, in accordance with the letter of the Ministry of Finance No. 31-11410-06-5/4339 dated February 16, 2017, "*<...> A duly executed invoice can be the basis for reflecting in the accounting records an economic transaction for the supply of goods, works (services) without drawing up an act of acceptance-handover only in the case it was paid, which is confirmed by relevant documents <...>*".

Solution:

It is important to supplement Article 6 of Law No. 959-XII with a provision that will provide for allowing a duly executed invoice (invoice) for services provided under a foreign economic agreement (contract), on the basis of which payment was made, which is confirmed by relevant documents, be the basis for reflecting an economic transaction for the supply of goods, works (services) in the accounting data without drawing up an act of acceptance and handover, unless otherwise stipulated by a foreign economic agreement (contract).

Improvement of the financial monitoring system

In general, the main problems of the current system of financial monitoring and ways to solve them are outlined in the Main directions of development of the system of prevention and countermeasures against the legalization (laundering) of proceeds obtained through crime, against financing of terrorism and financing of the proliferation of weapons of mass destruction in Ukraine for the period until 2023 and the Action Plan regarding their implementation, approved by the order of the CMU No. 435-r dated May 12, 2021.

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

1. low effectiveness of the investigation of crimes related to the legalization of proceeds obtained through crime and to financing of terrorism (according to the annual reports of the State Financial Monitoring Service of Ukraine, on average, out of 10 cases for which materials are sent to law enforcement agencies, only 1 case is issued a court decision);
2. insufficient effectiveness of financial monitoring due to insufficient implementation of a risk-oriented approach (both at the level of subjects of primary and state financial monitoring);
3. insufficient quality of regulatory acts of some subjects of state financial monitoring. For example, the Ministry of Finance has still not approved the updated Regulation on the implementation of financial monitoring by primary financial monitoring entities, the state regulation and supervision of whose activities is carried out by the Ministry of Finance of Ukraine in accordance with the provisions of the new Law of Ukraine "On Preventing and Combating the Legalization (Laundering) of Criminal Proceeds, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction" No. 361-IX dated December 6, 2019 in terms of bringing regulatory acts in line with its provisions, which was supposed to be done more than two years ago (until July 28, 2020).

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



Solution:

It is necessary to conduct a comprehensive review of the legal framework in the field of financial monitoring in order to strengthen the focus on a risk-oriented approach in legal regulation and supervision of compliance with the legislation on financial monitoring.

Regarding currency liberalization

The Association's member companies note that after the end of the war and the moderate stabilization of Ukraine's balance of payments, the NBU should continue the course of restoring currency liberalization established by the Law of Ukraine "On Currency and Currency Operations" No. 2473-VIII of June 21, 2018 (hereinafter - Law No. 2473-VIII). Moreover, 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 for the following: *"In the event that the provisions of this Law or the normative-legal act of the National Bank of Ukraine issued on the basis of this Law, or the norms of other normative-legal acts of the National Bank of Ukraine allow an 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 norm is interpreted in the interests of residents and non-residents"*. At the same time, as business representatives point out, in practice the servicing banks take the opposite position, and the NBU, in turn, does not perform the function of pre-trial settlement of disputes on currency supervision issues, which often leads to an ambiguous understanding of some norms by the servicing banks, and, as a result, leads to a violation rights and interests of business.

Solution:

To grant the NBU with the authority/function of pre-trial solution of disputes on foreign exchange supervision between servicing banks and their clients. To grant the NBU with the authority/ function of pre-trial solution of disputes on foreign exchange supervision between the servicing banks and their clients.

Regarding the restoration of the infrastructure of the city, village, settlement, social facilities on their territory by means of introducing targeted bonds

Unfortunately, as a result of the full-scale armed aggression of the Russian Federation against Ukraine, many cities, villages and towns of our country have been destroyed, mutilated and need a lot of financial support today right away. One of the already working mechanisms for attracting financial resources is the issuance of municipal bonds of local communities (bonds of internal local loans), in particular, these can be targeted bonds for the restoration of the infrastructure of a city, village, settlement, and social facilities on their territory. Such projects require attracting funds for a long period: 5-10 years. As the member companies of the Association note, there are potential institutional investors in Ukraine - NPFs who can provide such funds, because the assets of NPFs can be used as long-term investments. At the same time, as the experts of the Association note, a rather complicated procedure for registering an issue of municipal bonds becomes an obstacle for the use of this mechanism.

Solution:

It is necessary to simplify the procedure for registering the issuance of municipal bonds, shorten the terms of registration of municipal bonds, reduce or even completely cancel the state registration fee so as to contribute to a faster flow of the necessary resources to finance such projects. The state supporting such projects, and not only local authorities, but also the Ministry of Finance, would be the additional guarantees that will contribute to greater protection of investors.



Regarding the additional protection coming from the state, reduction of risks and increase of guarantees of returning funds to investors

In order to support and restore certain sectors of the economy, state institutions can also become issuers of securities. For example, the state in the form of the State Mortgage Institution or the Fund for the Reconstruction of Ukraine, which was specially created for such needs, can issue “green”, “energy”, “mortgage” bonds, etc. Such a mechanism, according to the estimates of business representatives, will allow obtaining additional protection from the state, reduce risks and increase guarantees of return of funds to investors. State guarantees are one of the important criteria for choosing investment instruments.

Solution:

It is important to simplify the bond issue registration procedure, shorten the terms of registration of “green”, “energy”, “mortgage” bonds, etc., with additional state guarantees.

eLECTRONIC PAYMENTS





Regarding the update of the legislation in the field of regulating electronic payments in order to ensure fair competitive conditions for all participants of the electronic payments market

Existing shortcomings, as well as inconsistencies and ambiguities of individual legal norms, slow down the process of achieving priority business goals.

Solution:

- It is necessary to make changes to the Procedure of selecting banks through which pensions, cash benefits, mandatory state social insurance payments, and wages to employees of budget institutions are paid, approved by CMU Resolution No. 1231 of September 26, 2001, with the aim of canceling the obligation to provide free servicing of the budget payments by the authorized banks;
- It is important to introduce amendments to the Law of Ukraine "On Wages" No. 108/95-BP of March 24, 1995, according to which to record the employee's right to choose a bank for receiving wages and at the same time to prohibit the employer to limit the employee in exercising this right;

Regarding the implementation of measures to increase awareness and the general level of financial literacy of the population

Increasing the level of financial literacy is necessary both to ensure the stability of the financial sector and to properly inform consumers (individuals and legal entities), and increase their security. Therefore, it is very important to provide an appropriate legislative and regulatory framework that would support consumers when they make financial decisions based on new knowledge. In Ukraine, there is a need for better standards of information disclosure and implementation of financial services for consumers. This is due to the fact that a large number of citizens (taking into account the peculiarities of historical development of the state) have quite vague ideas about the basic principles of functioning of the financial market and potential investment opportunities. In addition, business representatives observe a lack of trust in domestic financial institutions among the population. At the same time, before the introduction of the concept of Open Banking in the market of financial services, it is extremely important to prepare the population for changes in the procedures for obtaining financial services, informing them in detail about new opportunities and advantages, rights and responsibilities.

Solution:

It is important to develop a National strategy for increasing financial literacy and include measures to improve the awareness of the population and employees of financial institutions regarding the principles of the financial market, including the concept of Open Banking.

Regarding taking into consideration the proposals of business and population during the further implementation of the "State in a smartphone" concept

The business is ready to participate in the implementation of projects related to the integration of additional services to the web portal of public services and the application "Diya" (hereinafter - the web portal "Diya"), in particular, in the field of public transport, municipal services, arrangement of parking space, etc. Thus, the Association's member companies propose to introduce the possibility of remote ordering of hourly payment for a parking space or the possibility of registering an electronic parking pass through the Diya web portal.



Also, in connection with the ever-growing demand among the population for services which are possible to access on the Diya web portal, it is judicious to consider the possibility of integrating a relevant information block there in order to increase the financial literacy of the population.

Solution:

It is important to conduct regular meetings of the Digital Transformation Ministry with representatives of the business community, with the aim of receiving proposals from businesses regarding the integration of additional services to the web portal and application “Diya”, and discussing issues related to the possibility and prospects of this integration, as well as the terms of implementation of the relevant initiatives.

Regarding creation of conditions for voluntary legalization of self-employed individuals

According to business representatives, it is necessary to create attractive conditions that will facilitate the voluntary legalization of self-employed persons. Thus, the experts of the Association propose to extend the institute of tax agent to banks that serve individuals who are self-employed and carry out their activities, in particular, through online platforms, which are not registered as SPs, but have a desire to make their activities legal. Business representatives propose to introduce a declarative principle of starting a business for such self-employed persons, instead of registering a sole proprietorship, and exempting self-employed persons from the need to keep records of income and expenses, and to prepare tax reports.

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

At the same time, the experts of the Association see that the implementation of the above-mentioned proposals is possible through the introduction of 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 the automatic mode.

Solution:

Important steps in this direction will be the adoption of draft laws of Ukraine “On freedom of entrepreneurial (economic) activity of households” No. 8143 dated October 20, 2022 and “On amendments to the Tax Code of Ukraine and some legislative acts of Ukraine regarding the special regime of taxation of individual taxpayers of the third group of the unified tax” No. 8226 of November 24, 2022, for which the Association expressed its support, along with proposals to ensure the extension of the tax agent institute to banks serving self-employed persons.