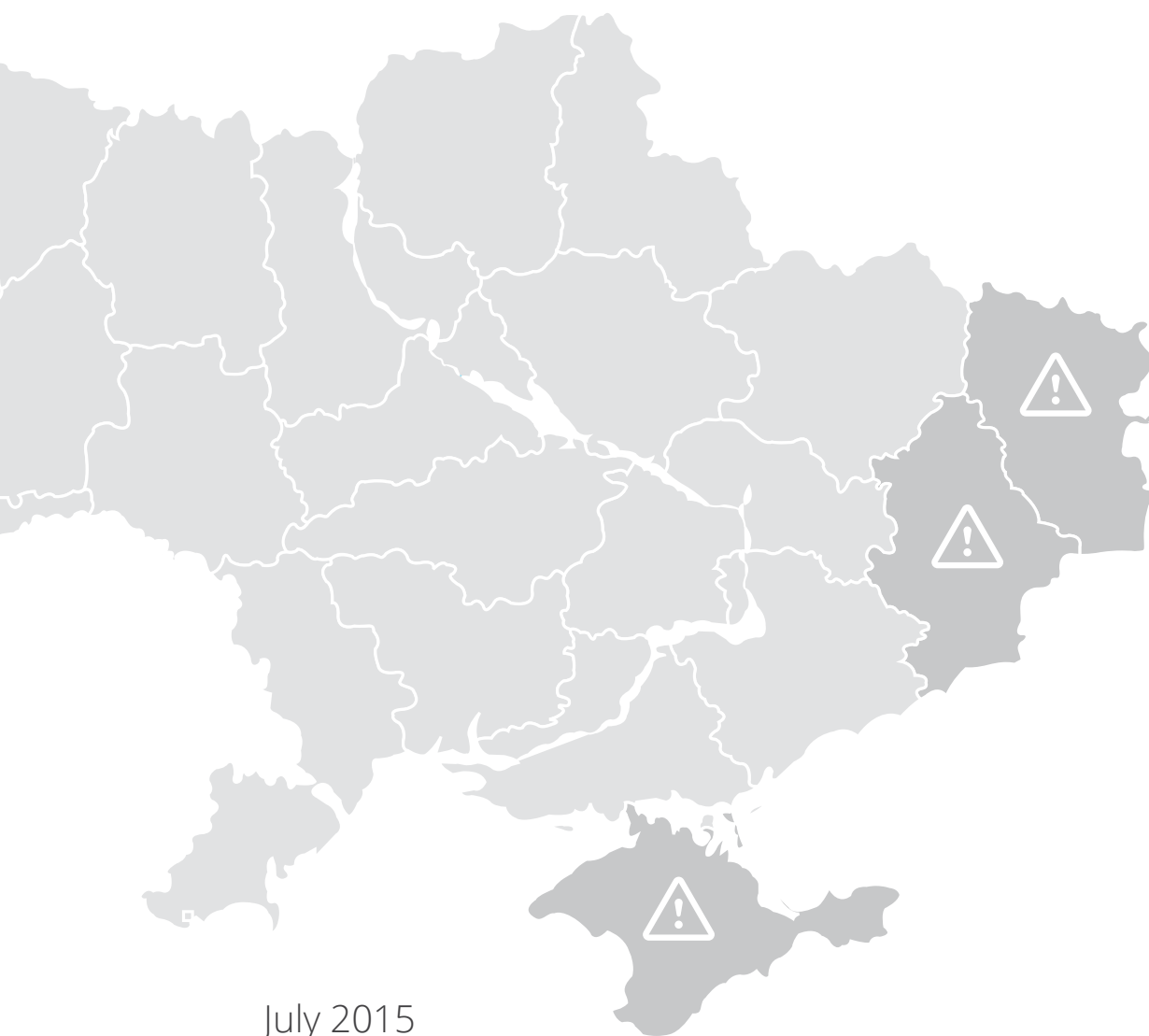


REPORT ON SYSTEMIC PROBLEM

Problems for businesses as a result
of the military situation in the East
of Ukraine and the annexation of Crimea



July 2015

Contents

EXECUTIVE SUMMARY	4
FOREWORD	6
SECTION 1.	7
COMPENSATION TO FIRMS FOR EMPLOYEES MOBILIZED FOR A SPECIFIED TERM	
1.1. The problem	7
1.2. The BOC position	7
1.3. Situation update	8
Mechanisms for paying compensation	
Status of compensation payouts	
Recommendations	11
SECTION 2.	12
TRANSPORTING GOODS (FREIGHT) TO AND FROM UNCONTROLLED ATO TERRITORY	
2.1. The problem	12
2.2. The BOC Position	12
2.3. Situation update	
Issuing permits to transport goods (freight) to and from uncontrolled territory	12
Recommendations	15
SECTION 3.	16
RETURNING UKRAINIAN-OWNED TRAIN CARS FROM ANNEXED CRIMEA TO MAINLAND UKRAINE	
3.1. The Problem	16
3.2. The BOC position	17
3.3. Situation update	17
Recommendations	18

EXECUTIVE SUMMARY

Despite military activity and territory in Ukraine that is temporarily occupied by outside forces-parts of Donetsk and Luhansk Oblasts and the Crimean peninsula-, some companies and entrepreneurs are forced to continue certain operations linked with the movement of goods (freight) in these areas and with the impact of mobilization on their organizations.

Given the need to maintain a balance between the interests of the state and those of its citizens, the Business Ombudsman Council decided to highlight problems that have arisen among those who have filed complaints with our office, to study those problems more in-depth, and to prepare specific recommendations for the Government of Ukraine on how the situation might be improved.

For the purpose of devising these recommendations, we used information documented in the complaints filed with the Business Ombudsman Council office, the results of our investigations into these complaints, and information gathered from BOC sources, reports published by international organizations, and official data from three Ministries: Labor, Finance and Infrastructure.

Section 1 looks at the problem of reimbursing employers for costs incurred to pay an average salary to employees who have been mobilized for a specified time.

In March 2014, the Verkhovna Rada established a formal procedure to reimburse companies from the State Budget for the salaries they paid employees who were mobilized. Though this law was passed, many complaints were received from businesses that the state had failed to fulfill this obligation.

A deeper analysis of the current reimbursement procedure, including how state compensation was calculated, accounted for and paid, and whether the necessary funding was in place, allowed the Council to offer three recommendations to the Government:

- to fulfill all current commitments to such companies, starting on June 8, 2014, when the Decree #1169-VII came into force;

- to amend the Law of Ukraine “On the 2015 State Budget,” in order to provide the necessary funding to reimburse companies for payroll costs incurred in 2014 (UAH 1.6bn), to secure funding for similar upcoming reimbursements in 2015 (UAH 955m), and to include these expenses under the appropriate State Budget items in future periods;
- to ensure the targeted nature of reimbursements by establishing a unified register of State Budget reimbursements for mobilized employees; to set up an electronic information exchange mechanism between the State Fiscal Service, the Pension Fund, the Ministry of Labor and Social Policy, and the Ministry of Defense; and to provide the necessary accounting and banking infrastructure for such payments.

Section 2 looks into the way that goods (freight) are being moved in and out of the territory of the Anti-Terrorist Operation (ATO).

Despite the ongoing crisis that has led to the Anti-Terrorist Operation, some flow of goods (freight) across the nominal border with the occupied territory has had to continue. The procedure for crossing this border needs to include clear, transparent rules, to minimize the risks of abuse on the part of the government agencies involved, and to facilitate better security control. To this end, the Council suggested three steps:

- to establish clear quantitative criteria for assessing which companies are allowed to move across this nominal border;
- to have the Security Bureau of Ukraine (SBU), Ministry of Interior, and State Fiscal Service establish the terms and the procedures for the relevant Ministries to issue the necessary border-crossing permits and to clearly define the list of Ministries authorized to issue such permits;
- to improve the current system of issuing border-crossing permits and transporting goods (freight), following the “one-stop shop”

principle, where authorized government employees verify the required data using the electronic consolidated registers of various government agencies, saving time and minimizing risks of abuse.

Section 3 examines the problem with returning rail cars belonging to Ukrainian owners from the territory of annexed Crimea to the mainland of Ukraine.

Since the Law “On establishing the Crimea Free Economic Zone and on the specifics of engaging in commercial activity on the temporarily occupied territory of Ukraine” was passed in September 2014, business activity between Ukraine and the Crimea free economic zone, including customs clearance of freight, has been settled. In December 2014, when UkrZaliznytsia, the national railway operator, limited the movement of trains to and from occupied Crimean territory for security reasons, some 1,000 rail cars owned by Ukrainian companies, some empty and some loaded, were left on the other side of the temporary “border.”

Although the Council fully understands the political and security context in which UkrZaliznytsia made its decision to suspend rail links between Crimea and mainland Ukraine, we believe the rolling stock of Ukrainian companies and the freight they contained

before the moratorium came into force, should be returned to mainland Ukraine and put to work to benefit the country's economy.

**The Council recommends
that UkrZaliznytsia:**

1. review its decision and lift the moratorium on the movement of any Ukrainian-owned boxcars — many of which were loaded when the ban came into force — for which the owners have confirmation documents;
2. establish a joint Commission with the Ministry of Infrastructure, the SBU, the Customs Service, in order to resolve the issue of ensuring the security of freight crossing the nominal border with occupied Crimea, and to set up procedures for verifying the content of loaded boxcars pending crossing the border with mainland Ukraine.

In summary, we would like to note that by consistently introducing the principles of transparency in making policy linked to rights and fulfilling commitments made to the business community even in force majeure circumstances, the government will not just pay lip service to integration into the global trade network but will actually ensure it in practice.

Report "Problems for businesses as a result of the military situation in the East of Ukraine and the annexation of Crimea" has been prepared by Deputy Business Ombudsman **Tetyana Korotka**.

FOREWORD

The Office of the Business Ombudsman Council has received a series of complaints from businesses that raise issues related to the Anti-Terrorist Operation in eastern Ukraine and the annexation of Crimea. Given the urgency and significance of these issues, we decided to select specific problems, to analyze them in greater depth, and to prepare specific recommendations for the Government of Ukraine on how these problems might be resolved.

Given the need to maintain a balance between the interests of the state and those of its citizens, and the highly specific nature

of the information we received for the purpose of our recommendations, we used information documented in the complaints filed with the Business Ombudsman Council office, the results of our investigations into these complaints, information gathered from BOC sources, reports published by international organizations—including the OSCE Special Monitoring Mission in Ukraine’s topical report entitled “The protection of civilians and freedom of movement in Donetsk and Luhansk Oblasts” dated May 6, 2015 — and, last but not least, official data from three Ministries: Labor, Finance and Infrastructure.

¹ <http://www.osce.org/uk/ukraine-smm/157021?download=true>

SECTION 1.

Compensation to firms for employees mobilized for a specified term

1.1. The problem

Together, the Labor Code, the Laws “On military duty and military service” and “On basic training and mobilization,” and Cabinet Resolution #105 dated March 4, 2015, establish a procedure for compensating companies, institutions and organizations for the payment of an average salary to mobilized employees from funds anticipated in the State Budget. The relevant budget items are included in the Budget Program KPKVK² 2501350, “Compensation to companies, institutions and organizations in the amount of an average salary for employees called up to serve in the military during mobilization for a specified term.”

Despite these provisions in law, there are system-wide complaints:

Firstly, that state labor and social security offices refuse to register companies to monitor actual payments of average salaries for 2014 and thus the obligation to pay compensation for 2014;

Secondly, the total absence of any compensation paid out for all of 2014, across the country;

Thirdly, incomplete compensation of companies for the current year, 2015.

1.2. The BOC position

By changing legislation to provide clear guarantees for those individuals who were mobilized and those companies who support such employees, the government offered Ukrainian society as a whole and businesses in particular the hope that the state is responsible to its citizens and recognizes the risk for businesses, by approving these policies.

The Government of Ukraine must be responsible and consistent in actions that directly affect public trust towards those in power and impact the financial position of enterprises. In short, it must fully carry out its commitment to business owners whose employees were mobilized for a specified term by compensating them for the average salary they have paid these employees, from the minute that Law #1169-VII was adopted on June 8, 2014.

² Program Expenditures and Crediting Classification Code

1.3. Situation update

Art. 119 of the Labor Code of Ukraine says that their job position at the time when they were called up for the draft during mobilization must be kept for them and that they should be paid an average wage from budget funds, regardless of the company's subordination or the form of ownership.

Moreover, these rules extend to employees who are subject to release from military service in the event that the military is demobilized but nevertheless continue in the military under contract, but no longer than for the duration of the original contract. As of June 2015, this Article was amended by Law #433-VIII passed on May 14, 2015, which removes the one-year limitation by the phrase "until the date of de facto demobilization." By extending the term during which the employee will continue to be paid by their employer and the related

compensation provided from the State Budget, employees are encouraged to continue in the military service on a contractual basis.

Similar rules are found in Sec. 2 of Art. 39 of the Law "On military duty and the military service," which states that these categories of citizens enjoy guarantees provided for in labor law. At the same time, employers are compensated out of the State Budget according to a procedure outlined in Cabinet Resolution #105, dated March 4, 2015.

By adopting these changes, the government of Ukraine declared that the Verkhovna Rada and Government are responsible before their citizens and business community alike and will not only encourage individuals to mobilize but will also acknowledge the financial burden that is being placed on domestic businesses.

- (1) On May 25, 2015, a small Kyiv-based manufacturer turned to the BOC with the complaint that it had not been reimbursed for the employees who had been mobilized to the ATO in 2014 and 2015. The company was particularly upset that, of the 7 workers directly involved in production, two of the specialists who ran the processes were mobilized, one in September 2014 and the other in May 2015. In the course of reviewing the complaint, it turned out that mobilization payments for 2015 had been made, but the government agency have the company's claim for 2014. In this particular case, it was a matter of UAH 3,500 per month from September through December 2014 or UAH 14,000, just under US \$1,000 at the time.
- (2) On June 2, 2015, the Chernihiv Oblast Palace of Trade and Industry contacted the BOC on behalf of a number of large companies — staff size ranging from 61-600 — in Chernihiv Oblast regarding the rejection of reports on the actual compensation that had been paid out for mobilized employees in 2014 and apparently incomplete compensation for 2015.

Mechanisms for paying compensation

At this time, the algorithm for instituting the rules is as follows:

Phase 1.

Employees called up to serve in the military during mobilization for a specified term continue to be counted among staff and are paid the average company wage at their place of employment.

Phase 2.

In order for the company to be reimbursed for the amounts paid from the Stated Budget, the company must report by the 15th of every month to the county or municipal department of labor and social security a report about its actual costs for paying out the average salary to their employee. This report has to first be approved by the county or municipal draft board that actually issued the call to duty to the employee in order to confirm the call-up and acceptance in the service.

Phase 3.

Next, consolidated reports on the actual cost of an average salary of employees in the county or city are submitted by the 19th of each month to the appropriate oblast social security sub-units.

Phase 4.

By the 23rd of each month, the oblast social security offices are to submit reports on the total actual cost of paying the average wage to employees in the oblast to the Labor Ministry for the next tranche of budget funding. This is then distributed among companies as compensation for their expenditures. Opening accounts, registering, tracking budget liabilities at Treasury offices, and operations related to the use of public funds are all carried out as required by law.

A look at the mechanism for the payment of average salaries to mobilized employees and subsequent compensation of employers for these costs revealed a number of problems:

- (1) No all-Ukrainian registry to track such payments at the national level, that is, registers of recipients of compensation are only maintained at the county level.

This creates additional risks for employees, who potentially might not get paid, should their company not undertake its responsibilities conscientiously and corrupt “deals” exist at the local level with the social security offices and the draft board for the company to get fictitious compensation.

It also creates problems for the employer, if the company in fact fulfills its obligations to mobilized employees, reducing its own working capital and then is not able to use this money to develop the business because it does not get reimbursed from the State Budget.

At the state level, all the cash flows connected to these expenditures and their compensation are non-targeted in nature, which distorts the real needs of the state.

- (2) No government oversight mechanism to ensure that employers actually pay the compensated amounts to their mobilized employees:

- no timeframes for payment or compensation (monthly or annually);
- method of compensation;
- a check on the actual payouts (actual or accrued costs).

Status of compensation payouts

Ukraine's 2015 State Budget designates the Ministry of Labor as the main manager of the expenditures to pay this compensation, under the budget program code KPKVK 2501350, "Compensation to companies, institutions and organizations in the amount of an average salary for employees called up to serve in the military during mobilization for a specified term," with a budget of UAH 1.79bn allocated to it.

Note:

UAH 1.79bn of budget funds were allocated to compensate pay for 47,200 mobilized employees in 2015, although at the time that this decision was made in March 2014, 72,600 had already been mobilized. As for compensation for 2014, this was not calculated into the 2015 State Budget. The public funds that need to be allocated to cover debts before companies for 2014 amount to UAH 1.6bn, while an additional UAH 955mn will be needed for 2015 on top of what has already been allocated.³ As far as the BOC has understood, companies are generally doing good on their promises to mobilized employees.

As of July 7, 2015, expenditures in this area were financed in the sum of UAH 522.5mn or about 53.6% of the planned indicators for January-July 2015.⁴

Getting compensated with public funds is provided for in Sec. 3, Art. 119 of the Labor Code for payments issued starting March 18, 2014, but the procedure for doing so was only established by the Government nearly nine months later. The problems this engendered was raised more than once by various businesses and became the subject of discussion between the Ministry of Labor, and the Finance and Justice Ministries, at the request of Vice Premier and Culture Minister Viacheslav Kyrylenko, Order #13603/1/1-15 dated April 2, 2015.

Note:

According to Para. 1, Art. 23 of the Budget Code, any commitments and payments from the budget may only be carried out if there is the necessary budget item, unless otherwise specified in the Law on the Budget of Ukraine. This means that, even if, on the one hand, a company has the right to compensation, if there is no appropriate line item in the budget for the current year, the Treasury cannot open an account for the company, register it or monitor budget commitments. The Ministry of Labor and Social Policy thus avoids responsibility for hanging on to the submitted reports on payments issued since it technically has no options for covering them.

³ According to the Labor Ministry.

⁴ According to Finance Ministry data.

As a result of the Vice Premier's order, the options for compensating companies for expenses incurred in 2014 were discussed. Unfortunately, they led to no practical outcome for those employers who are eligible for this kind of compensation. Meanwhile, the situation is getting harder for businesses, given the state of the economy and the volume of costs that were withdrawn from working capital as a result.

From the point of view of the Labor Ministry, the only legally correct option that will enable it to carry out its commitments is to amend the Law "On the 2015 State Budget," taking into account that the Law "On the 2014 State Budget" did not anticipate the necessary allocations. This is, in fact, the formal reason why labor and social

security agencies are not only not paying out the necessary reimbursements, but are not even taking on responsibility to keep track of them.

Recognizing that by not recording the actual costs incurred in 2014, the labor and social security offices that are under the Labor Ministry, are in violation of budget legislation and the provisions in Art. 119 of the Labor Code, the Labor Ministry wrote a letter on May 21, 2015, to the Cabinet of Ministers with a request that the Finance Ministry review the option of entering the necessary changes to the 2015 State Budget. Vice Premier Kyrylenko issued the necessary Order #13603/3/1/1-15 on May 29, 2015, to the Ministry of Finance, instructing it to deal with the issue raised and to report to the Government.

Recommendations

1. To fulfill all commitments to businesses whose employees were mobilized for a "specified term" by compensating them the average salary of such employees for the entire period starting March 27, 2014, when Law #1169-VII was adopted.
2. To amend the Law "On the 2015 State Budget" to provide for the necessary expenditures to compensate businesses for 2014 and to fully reimburse them for expenses in 2015. Given the number of mobilized individuals, the amount of budget funds required to cover the arrears for 2014 is UAH 1.6bn, while an additional UAH 955mn is needed to completely cover this compensation in 2015. Since the State Budget is in dire straits and the macro-financial risk of additional expenditures is high, we propose that the Finance Ministry work together with the Labor Ministry to review and redistribute planned spending under Labor Ministry programs that are not being undertaken at this time or are being carried out ineffectively.
3. To institute "targeted" payments to mobilized employees by:
 - (1) setting up a single register to track budget payments to employees mobilized for a specified term;
 - (2) establishing electronic exchange of information among the State Fiscal Service, the Pension Fund, the Labor Ministry and the Defense Ministry;
 - (3) working on the issue of organizing a bank account set-up for such payments.

SECTION 2.

Transporting goods (freight) to and from uncontrolled ATO territory

2.1. The problem

Despite the crisis situation due to the Anti-Terrorist Operation, some goods (freight) continue to move through the nominal border to occupied territory. The process for crossing

this line has a number of shortcomings that can be improved to have more effective control on one hand and fewer burdensome procedures for enterprises, on the other.

2.2. The BOC position

Because the Procedure for Crossing the Nominal Border is a document that affects commercial activity even in the unusual situation that has developed on the temporarily occupied territories of Donetsk and Luhansk

Oblasts, it needs to establish understandable, transparent rules for such crossings for goods (freight) and foster more efficient interaction among the state agencies involved.

2.3. Situation update

Given that the state has no control over some sections of the state border between Ukraine and the Russian Federation due to the documented presence of military activity on the part of foreign military formations on Ukrainian territory, the commander of the Anti-Terrorist Operation made a decision to establish a Temporary Procedure to control the movement of people, vehicles and goods along the line of contact within Donetsk and Luhansk Oblasts, which was confirmed by Order #27 dated January 22, 2015.

This procedure was devised with three purposes in mind:

- countering terrorism;
- countering espionage and sabotage on the part of foreign groups;
- increasing control over the movement of people, vehicles and freight (goods) to the occupied territory.

This Procedure regulates the movement of freight (goods) from or to the occupied territory both by truck and by rail.

In May 2015, the BOC received a complaint from private business that the corporation's request to be included in the list of enterprises that have the right to move freight from and to the occupied territory was being held up unnecessarily long

The plaintiff was one of the top Ukrainian manufacturers of equipment for filling stations, natural gas compressor stations, and oil storage bases. The plaintiff is located in Donetsk Oblast but changed locations at the end of 2014-early 2015 and moved the company's production facilities from the occupied territory to Ukrainian territory outside the conflict.

The company complained about the State Fiscal Service's dilatory review of their request for permission to move freight, including equipment, supplies and surplus finished products, using highways on territory controlled by Ukraine.

After they turned to the BOC, the plaintiff was granted permission, long after the timeframe established in the January 22, 2015 Temporary Procedure to control the movement of people, vehicles and goods along the line of contact had passed. But because changes were made to the Procedure on June 12, 2015, this Permit was no longer valid before the plaintiff was able to move freight to the occupied territory of Ukraine.

The time wasted going through a second round of requesting the permit from the SFS and ineffective communication at checkpoints resulted in the company losing its window of opportunity for moving the freight during a relatively lull in the conflict.

According to the plaintiff, all the goods and other material valuables belonging to it in a convoy of freight trucks waiting for permission to exit were seized by fighters from terrorist organizations that operate in the occupied territories. The drivers were later let go, but the plaintiff claims that its losses from the seizure of the freight added up to more than US \$100,000.

From the time that the BOC Office began to operate on May 20, 2015, the First Deputy Commander of the ATO Center under the Security Bureau of Ukraine (SBU), who is the commander of the ATO in Donetsk and Luhansk Oblasts, issued a Decree #415 on June 12, 2015, on the Procedure that formally normalizes the transport of freight (goods) was amended and significantly improved. Moreover,

a number of issues connected to the submission of applications to transport goods (freight) in or out and the recording movement were resolved.

Still, given the uncertain timeframe during which Ukraine's territory is likely to remain partly and temporarily occupied, a number of issues need to be addressed.

Issuing permits to transport goods (freight) to and from uncontrolled territory

The main problem that the BOC office has been able to ascertain, based on the materials we received is that permits are issued far later than the timeframes stated in normative documents.

The owner or authorized person who intends to ship freight (goods) needs to submit the proper application to the Main Interregional Administration for Operational Provision (MIAOP) for the Anti-Terrorist Operation zone, which is part of the State Fiscal Service, whose representatives work in designated population centers.

These applications can be submitted in written form or can be e-mailed to the MIAOP. SFS agents are supposed to review them within 5 (five) working days from the moment that they are registered and carry out an inspection, and MIAOP then sends a request to the crisis center to have the company added to the relevant list.

A company or entrepreneur is added to the list of goods only provided that it “has paid all taxes, fees and other mandatory payments to the Budget of Ukraine, and provided that full information as to the transparency of this process is provided and that the requesting party has no connection to terrorist activity, such as financing terrorism.”

It is our opinion at the Office of the BOC that certain provisions in the Procedure really open loopholes for corruption to take place because of the possibility of variously assessing how well the entrepreneur meets the criteria. First of all, the requirement that “full information as to the transparency of this process is provided and that the requesting party has no connection to terrorist activity” is ambiguous and not clearly defined, including:

- no indication what state agency(ies) are qualified to provide verification about the presence or absence of a link to terrorist activity, which is mandatory and reason to be excluded from the list;
- the vague criterion “full information as to the transparency of this process.”

More questions arise in the application of such criteria as “priority in the review of applications.” According to law, the priority in issuing permits is given to those commercial enterprises that meet these criteria:

- re-registration with tax authorities on the free territory of Ukraine (re-register tax address);
- “socially” oriented, that is, manufacturing aimed at creating new jobs, paying salaries, providing material assistance, ensuring the exercise of their rights to working collectives;
- a closed manufacturing cycle on both occupied and free territories;
- export-oriented;
- settle payments exclusively through the domestic banking system of Ukraine.

But these criteria for prioritizing have a number of serious flaws:

- lack of clear quantitative parameters to assess social and export orientation;
- the criteria “settle payments exclusively through the domestic banking system of Ukraine” needs to be more specific since no commercial entity that engages in foreign trade will be able to meet this criterion because it has to settle payments through foreign banking systems as well as the domestic one.

Requests for permission to transport certain types of goods for industrial purposes by entities engaged in commercial activity in line with current law on the occupied territories are considered in exceptional cases with the approval (special permits) of line ministries, such as the Interior Ministry, SBU, Ministry of Health, and so on, except for benzene, which is a by-product of coal processing. Yet even this rule does not provide any procedure or timeframe for approvals or a list of line ministries and agencies.

Recommendations

- 1.** To revise the criteria used as a basis for including a commercial entity on a given list. Some of the criteria presented in the Procedure for being entered into the list and the priority for reviewing such applications leave room for corruption because of the possibility of variously assessing how well the entrepreneur meets the criteria. In particular, the Procedure should clearly state:
 - a. what state agency's assessment regarding the applicants lack of links to terrorist activity is necessary and sufficient to be included in the list;
 - b. clear, quantitative parameters for determining an organization's social and export orientation.
- 2.** To get the state agencies that coordinate the process of crossing the border — SBU, MIA and SFS — to establish the timeframes and procedure for getting approvals from line ministries for special permits: a list of documents needed, timeframes, a clear series of steps the business entity must take in order to receive special permits and transport goods (freight) across the line of contact. This requires a specific list of line ministries that approve and issue such special permits.
- 3.** To improve the current system of issuing permits for transporting goods (freight) using a "one-stop-shop" approach, where the responsible state agencies can review the necessary information using available registers from various agencies, thus both saving time and reducing the risks of corruption connected with the issuing of such permits.

SECTION 3.

Returning Ukrainian-owned train cars from annexed Crimea to mainland Ukraine

3.1. The Problem

Since the Law “On establishing the Crimea Free Economic Zone and on the specifics of engaging in commercial activity on the temporarily occupied territory of Ukraine” was passed in September 2014, business activity between Ukraine and the Crimea free economic zone, including customs clearance of cargo,

has been settled. In December 2014, when UkrZaliznytsia, the national railway operator, limited the movement of trains to and from occupied Crimean territory for security reasons, a large number of rail cars owned by Ukrainian companies, some empty and some loaded, were left on the other side of the temporary “border.”

In June 2015, the subsidiary of a foreign company turned to BOC regarding the ban on transporting any kind of freight by rail between mainland Ukraine and Crimea.

Because of this ban, private owners had not been able to return their property for nearly six months, amounting to nearly 1,000 both empty and loaded cars, to free Ukrainian territory. This company has not only suffered significant losses, but it cannot properly plan its main commercial operations.

After taking on this complaint, BOC immediately turned to the Ministry of Infrastructure and UkrZaliznytsia with a request to allow Ukrainian are to be returned, both empty and loaded.

On June 17, UkrZaliznytsia changed the convention, once again allowing the empty cars to be moved from the Crimean Peninsula to mainland Ukraine. Still, as of early July, nearly 500 loaded cars that belong to Ukrainian owners remain on temporarily occupied Crimean territory.

3.2. The BOC position

Although the Council fully understands the political and security context in which UkrZaliznytsia made its decision to suspend rail links between Crimea and mainland Ukraine, the BOC believes the rolling stock of Ukrainian

companies and the cargo they contained before the moratorium came into force, should be returned to mainland Ukraine and put to work to benefit the country's economy.

3.3. Situation update

On September 27, 2014, Crimea and Sevastopol became free economic zones under the Law #1636-VII "On setting up the Krym free economic zone and providing conditions for engaging in commercial activities on temporarily occupied territories of Ukraine" dated August 12, 2014. This law is a special law that defines the way commercial activity will take place on temporarily occupied territories of Ukraine, in line with Art. 13 of the Law "On ensuring civil rights and freedoms on temporarily occupied territories of Ukraine," establishes a free economic zone (FEZ) called Krym (Crimea), and regulates other legal relations between physical and legal entities located both on temporarily occupied territory and beyond it.

Based on the regime for commercial activities on the territory of Crimea outlined in this law, companies under Ukrainian jurisdiction can carry out requests from other resident enterprises to organize the transport of freight from Crimea to the mainland.

However, in December 2014, UkrZaliznytsia suddenly introduced an instruction prohibiting the rail transport of any freight between mainland Ukraine and Crimea. Thus, as of December 26, Order of UkrZaliznytsia-14/2250 banned the movement of rail cars to and from Crimea whether

empty or loaded, leading to a situation where nearly 1,000 privately owned cars registered with UkrZaliznytsia were suddenly blocked in Crimea. Nearly half of these cars were loaded with various goods and commodities.

This means that, since December 2014, private owners cannot get the freight cars back to mainland Ukraine, and customers who ordered these shipments cannot claim their goods. Altogether, both groups are facing losses that are now adding up to millions of hryvnia.

After the business community put pressure on UkrZaliznytsia and the Business Ombudsman Council's office intervened, the railway company issued Order of UkrZaliznytsia-14/776 on June 17, 2015, to amend the ban issued in Order of UkrZaliznytsia-14/2250 on December 26. Now empty cars registered to UkrZaliznytsia may be moved out of Crimea. Despite this decision to allow the cars to be returned, in fact, empty Ukrainian-owned rolling stock is not being moved from Crimea and the cars continue to idle there.

The issue of what to do with Ukrainian-owned cars that were loaded with goods to be shipped to Ukrainian firms prior to the institution of the moratorium also remains unresolved. Meanwhile, UkrZaliznytsia has already taken the money for the transport of these goods.

⁴ За даними, зібраними з відкритих джерел.

Note:

The BOC has received information that there is now a situation where, on one hand, a significant number of Ukrainian cars are blocked on Crimean territory, while on the other, UkrZaliznytsia is borrowing

mothballed cars from other countries to ship freight both domestically and abroad. Belarus Railway's rolling stock alone transported more than 11,368 carloads of freight to domestic and foreign destinations in June 2015.

Recommendations

1. To revisit the decision and lift the moratorium on the movement of any Ukrainian-owned boxcars — many of which were loaded before the ban came into force — for which the owners have confirmation documents;
2. To establish a joint Commission with the Ministry of Infrastructure, the SBU, the Customs Service, in order to resolve the issue of ensuring the security of cargo crossing the nominal border with occupied Crimea, and to set up procedures for verifying the content of loaded boxcars pending crossing the border with mainland Ukraine.



Podil Plaza Business Centre,
30A Spaska St.,
04070 Kyiv, Ukraine
(entrance from 19 Skovorody Str.)

Phone: +380 (44) 237-74-01
Fax: +380 (44) 237-74-25
E-mail: info@boi.org.ua

www.boi.org.ua

