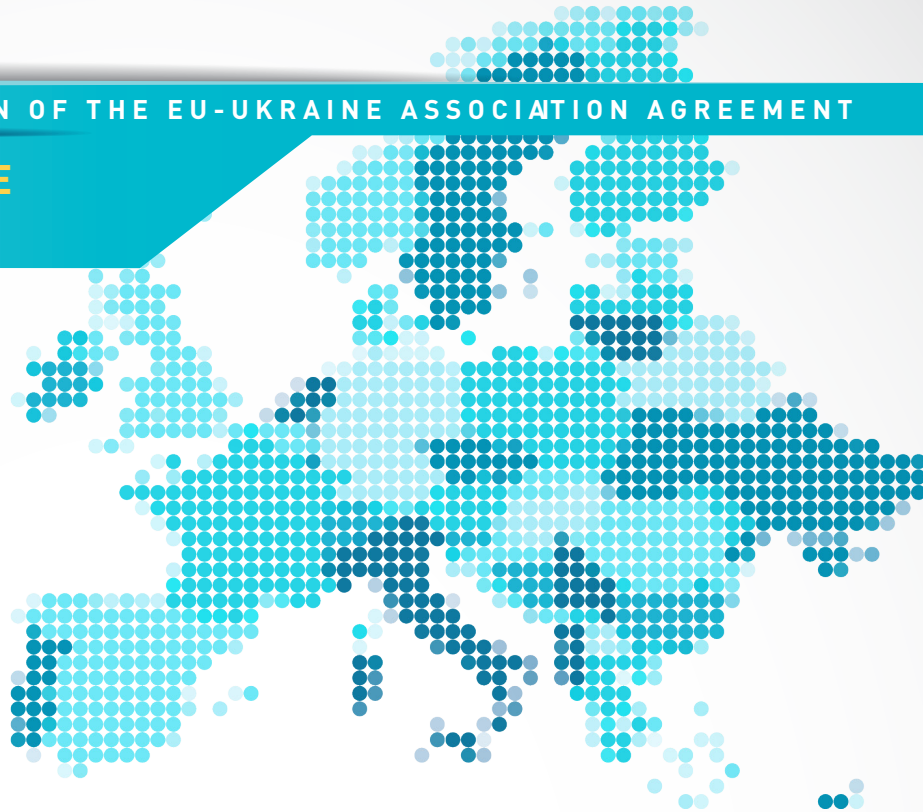


## EUROPEAN INTEGRATION IN THE NATIONAL BUDGET-2017



**PARLIAMENTARY  
EXPERT GROUP ON  
EUROPEAN INTEGRATION**

Parliamentary Expert Group on European Integration is an independent expert community established by the Open Society Foundation NGO to promote implementation of the EU – Ukraine Association Agreement by improving the quality of lawmaking processes.



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Ukraine expects to receive 43.5 mln euros (1.2 bln hryvnias) of the EU financial assistance in 2017, of which 32.6 mln euros (913.9 mln hryvnias) will be directed to the sectoral budget support. The latter amount is also provided as national budget expenditures with no detailed directions, except for a small amount of 1 mln hryvnias for "Promoting mutual trade by removing technical barriers in trade between Ukraine and the European Union." The remaining funds are assigned to the Ministry of Finance, which can distribute them among the other ministries for the implementation of sectoral projects.

In addition, the budget foresees the expenditures on the obligations of Ukraine within The EU Framework Programme for Research and Innovation "Horizon 2020" in the amount of 11.2 mln euros (312.2 mln hryvnias), co-financing of European Investment Bank projects with nearly 2 mln euros (55 mln hryvnias), harmonization of national standards with the international and European standards with 1.4 mln euros (38.5 mln hryvnias).

## AIRCRAFT MANUFACTURING WILL RECEIVE STATE SUPPORT

The Parliament passed two laws amending the Tax and Customs Codes to support the aircraft industry of Ukraine. In particular, the law **1795-VIII** amending Section XX «Transitional Provisions» of the Tax Code of Ukraine concerning support of the aircraft industry aims at extension of a number of tax benefits, including zero VAT rate, exemption from taxation of corporate profits and from land tax, to January 1, 2025. Under World Trade Organization (further - WTO) rules, state aid in the form of tax exemption should be considered a subsidy. The Agreement on Subsidies and Countervailing Measures states that aid in research activities is possible if consti-

tutes not more than 75% of industrial experiments. So, in this case, the exemption is possible, but the subsidy amount should be revised. The Association Agreement contains no global bans on state support. However, such support must not harm competition. To avoid this risk, the Agreement provides for the gradual introduction of EU state aid rules. This first step was made two years ago by the Law of Ukraine On State Aid to Undertakings. So when planning state support for the aircraft or other sectors one should closely examine the provisions of the Association Agreement and the relevant principles of the EU.

## CORPORATE LAW

On 20 December 2016 the Parliament adopted in principle the bill **4666** On Limited Liability Companies and Additional Liability Companies. For a long time there was a need to adopt a separate comprehensive law that would properly regulate the activities of Limited Liability Companies (LLC).

Today the activities of LLC are regulated by the laws of Ukraine On Business Associations of 1991 and by Civil and Commercial Codes of Ukraine of 2003, while the activities of the Joint Stock Companies (JSC) are regulated by the special Law On Joint Stock Companies of 2008. Therefore, there is an obvious imbalance in the regulation on JSC and LLC; the former have modern legislation, although it does not include all the provisions

of the EU Directives that were to be implemented, and for the latter legislation is outdated, sometimes with Soviet rudiments.

The bill 4666 implements the basic concepts and modern approaches to the legislation of the EU member states. Particularly, it enhances the protection of the rights of company members at the general meeting of the company and secures the judicial procedure for the exclusion of the company member. Its adoption would provide the favorable conditions for business for a significant number of small and medium enterprises. These changes are important for 500,000 registered LLC, which is 43% of all legal entities registered in Ukraine.

## THE MORATORIUM ON THE EXPORT OF TIMBER: MPS SEEK THE SOLUTION TO THE PROBLEM

It is well-known that the progress towards abolition or suspension of the moratorium on the export of unprocessed wood is probably the most critical and problematic issue of EU-Ukraine relations. First, a bill that would suit the interests of supporters and opponents of the moratorium, should be prepared by the government. The talks about this are lasting at least since spring of 2016, when Kyiv hosted a meeting of the Ukraine-EU Association Committee which deals with trade. Today the situation became more complicated, as on 1 January moratorium on exports included also pine trees. Along with this, three bills which may contribute to the problem solving were introduced to the Parliament.

The debate recently unfolded focused on the ban on the export of raw timber with the provisions of Article 35 of the Association Agreement and the obligations of Ukraine under WTO. In general,

the argument that the moratorium is justified from the standpoint of Article XX of the General Agreement on Tariffs and Trade, (GATT) may be correct, if concerns the «conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic *production or consumption*». However, this argument is correct only in principle. The Article XX of GATT, paragraph (g) allows such restrictions, provided they do not lead to arbitrary or unjustifiable discrimination between countries where the same conditions prevail or to a disguised restriction on international trade. Based on WTO practice in the application of Article XX, except that the export restrictions should take effect with limited domestic production and consumption, they should be quite reasonable in terms of the need for their application and directly aimed at preserving natural resources.

However, the legislative initiatives currently proposed by the MPs contain neither the sufficient justification to apply the export prohibition, nor the proper mechanism for limiting domestic production and consumption.

The bills 5471 and 5495-1 relate more to the logging market regulation, but also provide for the export ban. Both draft laws were prepared by MP Yuriy Derevyanko and include increasing penalties for illegal deforestation, enhancing the role of local government, introducing open forest inventory and other innovations. His suggestion to issue a special permit for logging through the information and telecommunications system, which is part of the electronic system of public procurement through the Internet according to the law of Ukraine on public procurement (Prozorro system) is particularly interesting.

Without going into detailed analysis of the innovations proposed by the two bills (as most of them do not belong to areas covered by the EU law), one can assume that, if appropriate and strategically thought-out, the implementation of these bills will **at least indirectly affect the consumption and production of timber**. At the same time, empowerment of village, town and city councils in the field of forest regulations in the respective territory and their participation in the management of natural reserve funds requires special attention. Execution of these powers will require adequate financial and human resources, which is important in the context of the current process of sectoral decentralization.

However, both bills also include the introduction of a temporary ban for 10 years for exports of timber (codes 4401 and 4404 of the Ukrainian Classification of Goods of Foreign Economic Activity). However, legislative introduction of the export ban only, without restricted production or consumption, will violate the provisions of

GATT/WTO and Association Agreement with the EU, as the basic principles of cooperation between the parties to these agreements foresee non-application of prohibitions and restrictions in international trade. In addition, the application of the export ban, and not, say, the export quota, is not consistent with the principle of proportion and comparability of burden imposed on domestic and foreign companies (see WTO dispute settlement: China - Raw Materials).

A special attention should be paid to the procedure - in case of implementation of the trade restrictions by the Member of the WTO, such country must prepare and send a message to the WTO Secretariat for distribution among the WTO members.

The Bill 5495-1 is also an alternative to the bill amending some laws of Ukraine to preserve Ukrainian forests and prevent illegal export of unprocessed timber (5495 was introduced by Oleg Lyashko).

Lyashko's bill *provides for limiting domestic consumption* of unprocessed timber to 20 million cubic meters per year and increases penalties for illegal logging. However, the mechanism of implementing such restrictions was not offered, but sanctions, as in the case of bills 5471 and 5495-1, can facilitate this. If this bill gets adopted, the government will have to seek solutions to ensure the mentioned consumption limit, while avoiding discrimination of individual countries in foreign trade. Therefore, the argument of the bill author to enhance the negotiating position at the WTO on a moratorium on the export of round timber can be considered controversial, given the fact that Ukraine will have to present a mechanism limiting domestic consumption (see paragraph 246 of the Report of the Working Party on the Accession of Ukraine to the WTO, which prevents discrimination).



**LAWMAKING AND IMPLEMENTATION OF THE EU-UKRAINE ASSOCIATION AGREEMENT**

**EUROPEAN INTEGRATION BILLS CONSIDERED CURRENTLY BY THE VERKHOVNA RADA OF UKRAINE**

Nº	r/n	Title	Stage
1.	0906	On the government control to observe the compliance with laws on safety and quality of food and animal feedstock, on animals' health and welfare	Recommended by the relevant Committee to be approved in principle (02.06.2014)
2.	2431	On amending legislation on protection of economic competition regarding establishment by the Antimonopoly Committee of Ukraine the size of penalties for violations of the competition laws	Handed for additional second reading (26.01.2016)
3.	2845	On Animal Feedstock Security and Hygiene	Recommended by the relevant Committee to be approved in principle (30.06.2015)
4.	4493	On the Electricity Market of Ukraine	Endorsed in the first reading (22.09.2016)
5.	4579	On amending certain regulatory acts of Ukraine to acquire, exercise and protect the copyright and related rights	Being considered by the relevant Committee
6.	4584	On amending certain laws of Ukraine that regulate government statistics	Received the Committee submission for consideration (31.05.2016)
7.	4589	On amending certain food safety laws of Ukraine	Recommended by the relevant Committee to be approved in principle (06.12.2016)
8.	4591	On Business Ombudsman	Endorsed in the first reading (31.05.2016)
9.	4593	On Rail Transport of Ukraine	Received the Committee submission for revision (15.11.2016)
10.	4611	On Requirements to Food Contact Items and Materials	Recommended by the relevant Committee to be approved in principle (20.09.2016)
11.	4614	On amending the Customs Code of Ukraine to protect intellectual property in the movement of commodities across customs borders of Ukraine	Not included onto the agenda
12.	4615	On amending the Customs Code of Ukraine to comply with the EU – Ukraine Association Agreement	Not included onto the agenda
13.	4619	On amending the Tax Code of Ukraine (in regard to tobacco products taxation)	Voted as an amendment (06.12.2016)



**LAWMAKING AND IMPLEMENTATION OF THE EU-UKRAINE ASSOCIATION AGREEMENT**

**EUROPEAN INTEGRATION BILLS CONSIDERED CURRENTLY BY THE VERKHOVNA RADA OF UKRAINE**

Nº	r/n	Title	Stage
14.	4629	On amending certain regulatory acts of Ukraine to protect the copyright and related rights in the Internet	Being considered by the relevant Committee
15.	4644	On amending certain regulatory acts of Ukraine to harmonize them with the EU legislation on transportation of dangerous goods	Recommended by the relevant Committee to be approved in principle (15.07.2016)
16.	4646	On amending the Law of Ukraine On Accounting and Financial Reporting in Ukraine to improve certain provisions	Being considered by the relevant Committee
17.	4683	On amending certain automotive transport acts of Ukraine to harmonize them with the EU regulatory acts	Received the Committee submission for revision (15.11.2016)
18.	4685	On Electronic Trust Services	Endorsed in the first reading (20.09.2016)
19.	4775	On amending certain laws of Ukraine related to European groupings of cross-border cooperation	Being considered by the relevant Committee
20.	4777	On amending the Customs Code of Ukraine regarding authorized economic operator and simplified customs formalities	Being considered by the relevant Committee
21.	4776	On amending the Tax Code of Ukraine regarding peculiarities of taxation of import of goods to Ukraine by authorized economic operators	Being considered by the relevant Committee
22.	4941	On the Energy Efficiency of Buildings	Returned to the Committee for revision (17.11.2016)
23.	4941-1	On the Energy Characteristics of Buildings	Being considered by the relevant Committee
24.	5448	On the basic principles and requirements for the organic production, handling and labeling of the organic products	Being considered by the relevant Committee
25.	5598	On the Energy Efficiency Fund	Being considered by the relevant Committee