

FEATURED: IMPLEMENTATION OF THE EU LAW IN THE FIELD OF RAIL TRANSPORT



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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Over the past 15 years the railways of Poland and the Baltic States have lost more than 25% of freight turnover. This was largely due to economic disintegration with Russia. However, the losses would be even more drastic in the absence of reforms and integration with the European Union. Ukraine now faces the similar circumstances, and a conflict with Russia further accelerates these processes.

In 2015 PJSC Ukrzaliznytsya (Ukrainian Railways) resulted with UAH 15 billion of losses according to the international accounting standards. In 2016 the amount of losses was UAH 6 billion. According to prospective plans for 2017, the company is expected to gain UAH 15 million of profit. The company's management considers the entry into the European Union transport services market and the creation of new transport corridors among the top priorities. Achievement of these priorities requires comprehensive reforms, including those of railway infrastructure and management.

The situation is complicated by the fact that the EU rail transport undergoes reforming itself. With the new directives adopted, the provisions listed in the EU-Ukraine Association Agreement become irrelevant. The experts of the project "Enhancing Parliamentary Capacity in European Integration by Improving the Quality of Legislation and Accelerating Legal Approximation on the basis of the EU-Ukraine Association Agreement" (the project is supported by the British Embassy in Ukraine) suggested the optimal way to proceed in these difficult circumstances. This was discussed at the seminar in the framework of the project, which took place in the Verkhovna Rada Committee on European Integration.

One may draw interesting parallels: in the EU the freight rail transport accounts for 10% of the total freight turnover and the profit of EUR 13 billion, while in Ukraine the share of rail transport is 6-8 times higher, but such high intensity is accompanied by significant losses.

EUROPE OPENS THE MARKETS

In general, the railway market in many EU member states, both freight and passenger transportation, shows the negative trends, and much of passenger transportation remains subsidized. Therefore, in early 2013, the European Commission presented a set of measures aimed at improving the quality of rail services. Planned technical and structural reforms will save EUR 40 billion by 2035 and increase the customer focus of the industry. The “Fourth Railway Package” aims at a consistent restructuring of the EU’s rail transport.

First of all, the package foresees the reduction of the administrative costs and simplification of the entry for the new operators into the rail services market. Other measures include replacement of the national system of permits and certificates with the Europe-wide certificates for operators, as well as all-European licenses for the use of locomotives and the rolling stock. It is proposed to open up the

market for passenger services within the EU borders. The companies will carry out domestic rail transport across Europe through the introduction of commercial services, or through tenders that distribute governmental contracts. Up until now, in the EU the domestic rail passenger market was fully open only in Sweden and the UK, and partly open in Germany, Austria, Italy, the Czech Republic and the Netherlands.

According to the proposals of the European Commission it is necessary to create a European network connecting independent railway infrastructure operators. Independence is also a key criterion for any transport operator in the EU. United Europe is moving towards reduced regulations in rail transport, enhancing the quality and safety of transportation through increased competition among market operators. The model seems quite simple. Are any of these aspects possible to implement in Ukraine?

THE COMMITMENTS ARE OUTDATED, YET...

Under the Association Agreement, Ukraine has agreed to implement the EU Directive 91/440, issued a while ago. This is the minimum standard. However, to accelerate the integration, to enter the European transport market and increase in the volume of the transit traffic, it is necessary to explore the possibility of introducing more recent standards. In the case of a positive decision, sufficient transitional periods must be guaranteed, so that the market players can adapt.

Today, Ukrzaliznytsya serves both as a carrier and a manager of the railway infrastructure. Undoubtedly, the key requirement of reform in the industry, according to the European standards, is the separation of these functions. However, this cannot be done immediately. Implementation of the Directive 91/440 in the EU member states highlights different experiences of transformation: leaving the integrated company and ensuring the separation of functions at the level of the internal organizational structure; creating a holding, the enterprises of which will be separated to serve as a network operator and a carrier; or creating two fully independent enterprises.

The debate in the society about whether the corporatization of “Ukrzaliznytsya” complied with the requirements of the Directive on the independence of the infrastructure operators is ongoing. In fact, the legal acts adopted by Ukraine, on the basis of which the corporatization of the enterprise was carried out, did not contain provisions stipulated by the Directive or the Association Agreement. This means that the real reform is still ahead.

We have at least five years to ensure the independence of the Ukrzaliznytsya management and to divide infrastructure management and transport operations. Although it may sound as plenty of time, the experience of the Central and Eastern European countries suggests these processes are rather complex. They are accompanied by losses of certain market segments, reorientation, modernization of the rolling stock and infrastructure, which cannot be carried out simultaneously.

Of course, the railway reform assumed a different pace and depth in different countries, but in the majority of the EU member states there was a competitive, safe transportation market and state control over the infrastructure.

EUROPEAN INTEGRATION BILLS CONSIDERED CURRENTLY BY THE VERKHOVNA RADA OF UKRAINE (II QUARTER 2017)

No	Registration number	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	Signed by the President and returned to Parliament
2.	2009a-A	On Environmental Impact Assessment with the proposals of the President of Ukraine as of 28.10.2016	Signed by the President and returned to Parliament
3.	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)
4.	2845	On Animal Feedstock Security and Hygiene	Released by the Committee to be approved in principle (30.06.2015)
5.	3445	On amending legislation on protection of flora and fauna under international agreements	Prepared for the second reading (29.11.2016)
6.	4126-1	On Consumer Information on Food	Received the Committee submission for revision (14.03.2017)
7.	4493	On the Electricity Market of Ukraine	Signed by the President and returned to Parliament
8.	4571	On amending Article 5 of the Law on Distribution of Copies of Audiovisual Works, Phonograms, Videograms, Computer Programs, Databases to combat piracy and improve the investment climate	Received the Committee submission for consideration
9.	4577	On amending Article 31 of the Law on Employment on regulating public works	Declined
10.	4578	On amending legislation on employment of disabled persons	Released by the Committee to be approved in the first reading (17.06.2016)

№	Registration number	Title	Stage
11	4579	On amending certain legislative acts of Ukraine to acquire, exercise and protect the copyright and related rights	Being studied by the Committee
12	4584	On amending certain laws of Ukraine that regulate government statistics	Received the Committee submission for consideration (31.05.2016)
13	4589	On amending certain food safety laws of Ukraine	Released by the Committee to be approved in principle (06.12.2016)
14	4591	On Business Ombudsman	Endorsed in the first reading (31.05.2016)
15	4593	On Rail Transport of Ukraine	Returned for revision to the introducing body (21.02.2017)
16	4611	On Requirements to Food Contact Items and Materials	Released by the Committee to be approved in principle (20.09.2016)
17	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
18	4615	On amending the Customs Code of Ukraine to comply with the EU – Ukraine Association Agreement	Not included onto the agenda
19	4619	On amending the Tax Code of Ukraine (in regard to tobacco products taxation)	Voted as an amendment (06.12.2016)
20	4629	On amending certain legislative acts of Ukraine to protect the copyright and related rights in the Internet	Being studied by the Committee
21	4644	On amending certain legislative acts of Ukraine to harmonize them with the EU legislation on transportation of dangerous goods	Declined
22	4646	On amending the Law of Ukraine On Accounting and Financial Reporting in Ukraine to improve certain provisions	Considered while revising the bill 4646-A
23	4683	On amending certain automotive transport acts of Ukraine to harmonize them with the EU regulatory acts	Returned for revision to the introducing body (21.02.2017)

№	Registration number	Title	Stage
24	4685	On Electronic Trust Services	Additional second reading postponed
25	4775	On amending certain laws of Ukraine related to European groupings of cross-border cooperation	Received the Committee submission for consideration (07.02.2017)
26	4776	On amending the Tax Code of Ukraine regarding peculiarities of taxation of import of goods to Ukraine by authorized economic operators	Received the Committee submission for consideration (11.07.2017)
27	4777	On amending the Customs Code of Ukraine regarding authorized economic operator and simplified customs formalities	Received the Committee submission for consideration (11.07.2017)
28	6229	On Ensuring Transparency in Extracting Industries	Included onto the agenda (25.05.2017)
29	4901	On Commercial Accounting of Utility Services	Signed by the President and returned to Parliament
30	4941-А	On the Energy Efficiency of Buildings	Signed by the President and returned to Parliament
31	5448	On the basic principles and requirements for the organic production, handling and labeling of the organic products	Received the Committee submission for consideration (14.03.2017)
32	5548	On amending legislation on protection of consumer rights	Being studied by the Committee
33	5598	On the Energy Efficiency Fund	Signed by the President and returned to Parliament
34	5627	On amending the Customs Code of Ukraine to bring transit procedures in line with the Convention on a common transit procedure and Convention concerning the simplification of formalities in trade in goods	Received the Committee submission for consideration
35	6106	On Strategic Environmental Assessment	Endorsed in the first reading, prepared for the second reading
36	6016	On the Audit of Financial Statements and Audit Activity	Returned to the Committee for revision

№	Registration number	Title	Stage
37	6023	On amending certain legislative acts of Ukraine to improve the legal protection of geographical values	Received the Committee submission for consideration
38	6085	On amending legislation on cross-border cooperation	Endorsed in the first reading
39	6598	On amending legislation on implementation of provisions of certain international agreements and EU directives on protection of flora and fauna	Being studied by the Committee
40	6602	On amending the Law on Waste regarding the implementation of EU directives on waste management	Being studied by the Committee