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PARLIAMENTARY EXPERT GROUP

TEMPORARY IMPORT OF VEHICLES WITH A FOREIGN REGISTRATION: AN OVERVIEW OF THE PROPOSED LEGISLATIVE SOLUTIONS



**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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It has been a few months since the Parliament promised to solve the problem of legalizing the cars with foreign license plates. The Verkhovna Rada Committee on Tax and Customs Policy insisted that the new compromise bill will be issued this November. The Presidential Decree No. 146/2017 stressed that the legal framework of the European Union has to be taken into account in solving this complex problem. Yet, there is a risk that by addressing one problem, the parliamentarians will create another.

Today, the situation is critical: some reports suggest that due to the legislative gaps about 1.5 million of the vehicles were imported into Ukraine without customs clearance. The police do not have the effective mechanisms for tracking the legality of the cars with a foreign registration, so the semi-legal import schemes continue flourishing. Uncontrolled, this flow of the vehicles threatens the road safety. As the number of such “illegal” cars is rocketing sky-high, it is no longer possible to ignore the problem. The authorities are no longer capable to simply confiscate such great number of vehicles, and the car owners well understand this. Therefore, they continue to “temporarily” import cars, despite the warnings of the fines and confiscations.

What legislative changes are needed to stop the illegal import of cars with the European license plates?

One would suggest that the Ukrainian legislation restricts the import of used foreign cars fairly rigidly. However, the semi-legal schemes operate successfully, supported by an increased demand among the Ukrainian drivers for relatively inexpensive but decent quality cars. Legislation currently in force provides that all cars imported by residents must be customs-cleared. At the same time, only the vehicles that comply with the environmental standard Euro-5 or higher are allowed to be imported. Ukrainians can import cars no older than seven years at the reduced rates of the excise duty, and such preferential rates are valid only if no more than one car is imported during one year. The owner

can sell such vehicle only in a year, otherwise the privilege is canceled and one has to pay a tax.

Several bills amending these norms had been registered in the Verkhovna Rada.

The bill amending the law On Certain Issues of Import into the Customs Territory of Ukraine and the Registration of Vehicles on the formation of the civilized market of used cars No. 5561 proposes to terminate the requirements of Euro-5 environmental standards for the used vehicles, but retain these for the new ones. For the drivers of the used cars the authors of the bill introduce a mandatory vehicle inspection and cancel the mandatory certification.

The practices of the EU Member States and the study of the European market for used cars reveal no ban on such imports. Europeans are dealing with the importation of high-emission vehicles with the fiscal instruments. The taxes for import / registration / use of the used cars increase depending on the amount of harmful emissions into the atmosphere and / or the year of issue of the car. The bill No. 5561 proposes to carry out a mandatory technical inspection of vehicles imported into the territory of Ukraine, including for the compliance with the requirements for harmful emissions.

One can agree with the authors of the draft law that the introduction of Euro-5 environmental standards from January 1, 2016 contributed to a significant reduction in the number of legally imported used cars in Ukraine and a decrease in revenues to the state budget, while illegal imports increased. The legal market was somewhat revived only with the temporary introduction of the reduced rates of excise duty on used cars by the end of 2017 (Law 1389-VIII amending Section 5 of Section XX Transitional Provisions of the Tax Code of Ukraine to stimulate the development of the market for used vehicles). Starting January 2018 there is a risk of the effective cessation of the legal import of used cars when the requirement for the Euro-6 standard, which under the current edition of the Law will stand for both new and used vehicles, will enter into force. The cars com-

plying with this standard were manufactured in Europe starting 2014. Without termination of the Euro standard provisions for used cars, the situation will further aggravate, since most of the imported cars with the European license plates are of the cheapest price segment. Their potential owners have no ability to purchase an Audi or a Volkswagen no older than three years.

The bills amending Article 2 of the Law On Certain Issues of Importation into the Customs Territory of Ukraine and the Registration of Vehicles regarding the improvement of the norms of the law No. 5470 and 5470-d, in particular, abolish the provisions on entry into the territory of Ukraine of vehicles that meet the environmental standards only. According to the acting legislation of Ukraine, checking of conformity of vehicles with the environmental norms is carried out twice: at the customs registration by the customs authority and during state registration by the territorial bodies of the Ministry of Internal Affairs. The bills №5470 and 5470-d foresee such control only during the state registration, which will allow be upgrade the vehicle to the appropriate technical condition in Ukraine. Both initiatives comply with the EU law and can be adopted. Either will partially solve the problems with the customs clearance of foreign cars and eliminate the social tension.

Today the reduced rates of excise taxes on imports of used cars still apply; they allow to reduce the cost of customs clearance by a range from 30 to 40 per cent. But the relevant law No. 1389-VIII, conditionally referred to as “The law on the reduction of excise duty”, will expire in 2019. However, the Verkhovna Rada registered a bill No. 5562, which proposes to extend the effect of reduced excise rates until December 31, 2020. Additionally, the bill proposes to remove restrictions on the application of these rates: the current legislation allows an individual to apply for the reduced excise duty with no more than one car for one year, and sell this vehicle no earlier than in a year. If the document is adopted, the reduced rates will also apply to imported cars manufactured in 2010 or earlier.

There is no uniform legislative approach to the issue of the excise tax on used vehicles in the EU. The above draft law certainly does not contradict Ukraine’s obligations under the Association Agreement and the principles of the EU law, thus the concessional terms of excise duties on used cars may be extended. The authors

of the bill believe that such relaxation should reduce the black market and contribute to the balanced customs policy.

All three above legislative initiatives aim to create the equal opportunities for the car owners who import or plan to import the vehicles into Ukraine. There are, however, other initiatives, such as proposals to close the border for used cars imported with the semi-legal schemes or to allow those who have already imported such car to clear them at preferential rates, and leave the legislation as it is. If adopted, such initiatives will lead to the emergence of new problems. Firstly, the level of tension in the society will increase, as a very small part of drivers would wish to import cars issued post 2014. Secondly, preferences for a certain category of citizens, de-facto violators of the law, would distort the free market and competition, which completely contradicts the standards and principles of the EU.

Separately we will analyze the draft law amending the Customs Code of Ukraine regarding the regulation of transit and temporary import of vehicles for personal use No. 5567. The authors of the document suggest to allow the residents to import the used cars for a small fee and drive them without customs clearance for a year. After this year the driver would again pay the relevant tax rates and drive for another year without problems. A simple and understandable mechanism, so it seems.

However, it does not comply with Article 162 of EU Regulation No. 450/2008 and Article 250 of EU Regulation No. 952/2013, which provides for the temporary admission of goods with the possibility of full or partial exemption from customs duties only for non-residents. This principle is also enshrined in Convention relating to temporary admission as of 1990 (the Istanbul Convention). Article 5 of Annex C (Annex concerning means of transport) states that in order to qualify for the privileges, the vehicles must be registered in a territory other than that of temporary admission, in the name of a person established or resident in a territory other than that of temporary admission, and be imported and used by persons resident in such a territory.

In other words, there is no other way but to carry out the customs clearance of cars that actually belong to Ukrainian citizens, but nominally to Europeans.

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

N ^o	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	Returned for revision to the introducing body (03.10.2017)
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	Recalled (03.10.2017)
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	Recalled (03.10.2017)
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-А

№	Registration number	Title	Stage
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)
24	4685	On Electronic Trust Services	Adopted
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

№	Registration number	Title	Stage
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
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	Recalled (03.10.2017)
40	6602	On amending the Law on Waste regarding the implementation of EU directives on waste management	Being studied by the Committee