

Overview of legislative initiatives impacting international business in Ukraine

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I. SUMMARY:

1. Legislative draft Nr. 7264 **on simplification of sanitary and phytosanitary (SPS) formalities for imports of plant-based foodstuffs** and live animals passed the first reading.
2. Legislative draft Nr. 7279 proposes **to introduce criminal liability for** performing management of Ukrainian subsidiaries of international companies from regional HQs established in Russia.
3. Legislative draft Nr. 7309 **simplifies procedures and formalities** for Europe-issued electronic trust services in Ukraine.

II. FACTS:

1. **Simplified SPS formalities for food imports.** On April 21, the Ukrainian Parliament had a first reading of legislative draft Nr. 7264 which seeks to simplify SPS requirements applicable for export, import and transit of agrifood products of plant origin as well as live animals. Members of Parliament are invited to submit another round of amendments to the draft law (second reading stage). It is expected that the second reading will proceed at an accelerated procedure.

Key elements of the draft law:

- Simplification of PS requirements for export, import and transit across Ukraine of plant-based agricultural products, including introduction of electronic phytosanitary certificate.
- Expanding a list of laboratories authorised to perform phytosanitary analysis, simplified procedure of endorsement of authorised laboratories and PS inspectors.
- Expanding the list of plant protection products (PPPs) allowed for imports to Ukraine. Simplification of registration procedures for PPPs, including their marketing without prior registration, harmonization of procedures with EU Regulation 396/2005 rulebook.
- Temporary suspension of import bans of live animals transiting countries with epizootic risks.

2. **Criminal liability for subordinating companies to Russia-based headquarters.** Legislative draft Nr.7279 (submitted on April 12, 2022) proposes to introduce criminal liability for performing operational management of Ukraine-based subsidiaries of international companies.

In particular, the draft law proposed to introduce criminal liability for the following actions by executive officers of Ukraine-based international companies:

- Executing instructions, guidelines, and other management directive actions issued in the framework of relationship of economic control as defined by Ukrainian antitrust legislation, by natural persons-citizens of Russia or by management officers of legal persons, registered in Russia;
 - Executing actions on behalf and in the interest of natural persons-citizens of Russia or legal persons, registered in Russia, or natural persons sentenced in accordance with Ukrainian criminal law in connection with crimes related to Russia-related economic activities.
3. **Simplified formalities for electronic trust services.** Legislative draft Nr. 7309 (submitted on 21 April 2022) simplifies recognition of international (foreign) electronic trust services pending the conclusion of the relevant EU-Ukraine agreement on mutual recognition of electronic trust services. The draft law proposes unilateral recognition of European electronic trust services (electronic signatures and seals) provided by service providers duly authorized in the countries of origin of services.

III. RISKS & OPPORTUNITIES

The legislative drafts point out to several emerging risks to international companies operating in Ukraine which still maintain corporate links with Russia-based companies. Other legislative drafts may lead to significant improvements of business operating conditions for companies or international exporters to Ukraine of live animals, plant-based agrifood products and plant protection products (PPPs):

- risk of personal criminal liability of managers of Ukrainian subsidiaries of international companies if their actions are proven to be guided by management instructions from Russia-based entities in the framework of intra-corporate management settings;
- opportunity of improved access to Ukrainian market for plant-based agrifood products, live animals, plant protection products in terms of significantly simplified non-tariff measures (SPS requirements);
- opportunity of simplified use of electronic signatures and seals issued in the EU.

All three legislative drafts are still pending in the Ukrainian Parliament, although their accelerated adoption remains a distinct possibility. Hence, companies are advised to closely follow the parliamentary deliberations to understand the scope of eventual amendments.

UBTA Legal & Policy team offers advice regarding current political, policy and legal developments in Ukraine arising in the context of the ongoing Russia's aggression against Ukraine. The information provided above does not constitute a legal advice. Please contact us if you need more information, advice or legislative follow up.

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