

RAIL CARGO TRANSPORTATION: GREEN PAPER EXECUTIVE SUMMARY

Brief illustration of the problem and effect this problem has on broader functioning of the business/consumers in Ukraine

BRDO Infrastructure sector based on its analytical studies and the feedback received from numerous stakeholders recommends to examine the ongoing challenges facing the cargo transport sector in Ukraine relates to the fluid contractual terms, lack of tariff transparency, uneven transportation quality, factors that may cause misuse of monopoly position on the rail transportation market.

Regulatory changes proposed by BRDO aim at vast simplification in the transport transactional field that will positively affect cargo dispatchers and rolling stock operators (including SMEs), by simplifying rules of setting transportation tariffs and increasing their transparency, decreasing the number of conditions and mitigation of factors that cause or could cause corruption risks and unfavorably impact further business development in this sector.

BRDO regulatory solutions and impact on the stakeholders

To develop competitiveness, prevent law violations in part of economic competitiveness protection, increase quality and effectiveness of services, BRDO experts propose the following changes:

Recommend the Parliament and the Government to:

- Create independent national commission that would regulate the transportation sector.
- Speed up the legislative process for the draft law “On railway transport of Ukraine”.
- Restore the practice of mandatory approval by the Government (as the sole shareholder of the JSC “Ukrzaliznytsia”) of changes to any components of the railway transportation costs that exceed inflation rate forecast of the current year, including costs for railway cars.

Recommend the Ministry of Infrastructure to:

- Develop, approve and present for approval draft laws needed for simplifying rules of setting transportation tariffs and increasing their transparency while simultaneously improving business conditions for cargo dispatchers and private rolling stock operators (including SMEs).

Recommend to JSC “Ukrzaliznytsia” to take actions for:

- Providing open, transparent and non-discriminative access for business entities to infrastructure regardless of the type and ownership of rolling stock that is utilized (owned by JSC “Ukrzaliznytsia” or by other rolling stock operators).
- Providing transparency and predictability of the tariff policy, by mandatory publication combined with public consultations of the main performance indicators which influence setting and alternation of any of the components of railway transportation costs.
- Unbundling the JSC “Ukrzaliznytsia into separate operators (cargo, passenger, and infrastructure) to create competitive environment and attract investments.
- Necessary State registration of the Agreement on Services Provision in Transportation Organization in the Ministry of Justice, in order to obtain full legal force and effect, as Measures mentioned above will simplify doing business for cargo dispatchers and rolling stock operators (including SMEs), as well as clarify the rules of setting transportation tariffs, which in general will increase quality and decrease costs for providing services. Apart from that, it is expected that factors that cause or could cause corruption risks and augment monopolistic tendencies in the sector would be mitigated, thus accelerating competition development and openness to business.

How the BRDO proposed solutions positively affect harmonization of Ukraine’s regulatory environment in a given sphere with best international (EU) practices

The railway transport harmonization requirements of Ukraine are described in the Annex XXXII to the Chapter 7 “Transport” of the Association Agreement. The national legislation needs to be brought into full legislative compliance with the list of EU directives and regulations set in the Annex and listed below, especially in the field of access to markets and infrastructure:

- Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways.
- Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings.
- Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification.
- Regulation (EU) No 913/2010 of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight.

Specific measures and time frame for harmonization of the Ukrainian legislation with the EU in transportation sector are defined in the Government Action Plan on implementation of the Association Agreement approved by the Resolution of the Cabinet of Ministers of Ukraine “Regarding agreement performance of association between Ukraine, on the one hand, and the European Union, European Atomic Energy Community and their state members, on the other hand” (#1106 from October 25, 2017, with changes).